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WASHINGTON, D.C.

April 12, 2000

Mr. Scott E. Thomas, Chairman
Federal Election Commission
999 E. Street NW
Washington, DC 20463

AOR 2000-07

Dear Sir:

Background

We represent Alcatel USA, Inc. ("Alcatel USA"). Alcatel USA is a Delaware corporation with its principal place of business in the United States. Several years ago, Alcatel USA's predecessor established a separate segregated fund to make contributions to federal election candidates. Alcatel USA continues the separate segregated fund (the "Alcatel PAC"). The Alcatel PAC is funded in its entirety by contributions made by stockholders, members of Alcatel USA's executive and administrative personnel and/or the families of such individuals (the "Restricted Class").

Alcatel USA has developed a new intranet web site called the AUSA Government Relations Web Site (the "Intranet Web Site"), available only to employees of Alcatel USA, and wishes to post certain brief factual information regarding the Alcatel PAC and its activities thereon. Alcatel USA seeks an advisory opinion from the Federal Election Commission (the "Commission") that it may post on its Intranet Web Site such information regarding the Alcatel PAC and its activities under the Federal Election Campaign Act of 1971, as amended (the "Act"), and the Commission's regulations pertaining thereto.

Facts Concerning Alcatel USA's Intranet Web Site

As noted above, Alcatel USA has developed its new Intranet Web Site, which is accessible to all employees of Alcatel USA. Alcatel USA will post on this web site information regarding (a) the status of regulatory and legislative activities of interest to the company and its employees, (b) contact information for the elected representatives in both the House of Representatives and the Senate for locales where Alcatel has a presence, (c) information on the activities of the Alcatel government relations office, and (d) general information on Washington, D.C. and its resident federal agencies, and will also post the following informational paragraph:

Advisory Opinion Request

April 12, 2000

Page 2

Alcatel USA, Inc. supports the operation of the Alcatel USA, Inc. Political Action Committee (the "Alcatel PAC") as authorized by, and in accordance with, federal law. Under applicable law, participation in the Alcatel PAC is limited to only those Alcatel USA employees who hold high-level administrative, executive or managerial responsibilities in the U.S. The Alcatel PAC funds are used to make contributions to candidates for federal office. Under applicable law, the amounts that may be contributed to and by a PAC are limited, and steps must be taken to ensure that employee contributions to the PAC are strictly voluntary and without coercion. The Executive Committee of the Alcatel PAC decides what federal candidates merit consideration for contributions. Employees desiring additional information on their eligibility or about the activities of the Alcatel PAC may contact Alcatel USA Political Action Committee, 1000 Coit Road, Plano, TX 75075, Attention: [name, phone number and e-mail address of Alcatel PAC official].

In addition to the paragraph provided above, the Intranet Web Site will provide a link to a separate web site specifically for the Alcatel PAC (the "PAC Web Site"). The link will take readers to a web page that requests a password before access will be granted to the PAC Web Site. This web page will contain the following messages, set off in contrasting type and within a border:

Federal law prohibits the Alcatel USA Political Action Committee from soliciting donations from other than stockholders, executive and administrative personnel and the families of such individuals. Any contribution received from any other person will be returned to the donor.

Employees desiring additional information on their eligibility to participate or about the activities of the Alcatel PAC may contact Alcatel USA Political Action Committee, 1000 Coit Road, Plano, TX 75075, Attention: [name, phone number and e-mail address of Alcatel PAC official].

When an employee contacts the Alcatel PAC for additional information, the individual's eligibility will be determined before any additional information is provided. If, in response to a request for information, an individual is determined to be not a member of the Restricted Class, such person will be referred to the Commission for any information on file and publicly available. A member of Alcatel USA's Restricted Class will be provided with further information, including access to the PAC Web Site. A separate and unique password will be provided to the member of the Restricted Class in order to access the PAC Web Site.

BAKER & MCKENZIE

Advisory Opinion Request
April 12, 2000
Page 3

The PAC Web Site will contain information about the activities of the Alcatel PAC, including discussion of the aims and philosophy of the Alcatel PAC, the candidates it endorses and the legislation it supports.

E-Mail Mailing List

The Alcatel PAC also proposes to institute an e-mail mailing list (the "ListServe") to which only members of the Restricted Class will belong. When employees contact the Alcatel PAC for additional information, and after their eligibility is confirmed, such members of the Restricted Class will be invited to participate in the ListServe. The individual will be free to decline such participation. The ListServe will consist of the e-mail addresses of only solicitable members of the Restricted Class. The Alcatel PAC will use the ListServe to send e-mail messages to its members containing information about the activities of the Alcatel PAC, including discussion of the aims and philosophy of the Alcatel PAC, the candidates it endorses and the legislation it supports.

Analysis of Alcatel USA's Position

The Act and its regulations allow a corporation or a separate segregated fund established by a corporation (a "PAC") to freely solicit funds from the corporation's stockholders, its executive and administrative personnel and the families of such persons.¹ Such persons comprise and are referred to as the "Restricted Class." The Act and regulations also permit a PAC to solicit contributions, with certain restrictions, from other employees twice yearly. The restrictions on such solicitations include a custodial arrangement insuring the anonymity of employees and mailing such solicitations only to employees' residences.² In Alcatel USA's case, the Intranet Site is accessible to a more than de minimus number of persons outside of the Restricted Class, and therefore, Alcatel may not post any information on the Intranet Site that would constitute a solicitation of a contribution under the Act. The Commission has considered and issued Advisory Opinions ("AOs") on fact situations similar to that in question here.

Use of Corporate Publications by a PAC

The Commission has determined that material that can be fairly read as a solicitation may not be published in any medium that will be distributed to a more than de minimus number of nonsolicitable recipients.³ In AO 1997-16, the Commission determined that a communication posted on an organization's web site, without some limit on access to the site by nonsolicitable persons, could not be viewed as only a de minimus corporation communication by electronic means outside the Restricted Class. The Commission recommended restricting access to the site to only those whom the PAC could solicit under the Act. The Commission stated that "[the

¹ See 2 U.S.C. Sc441b(b)(4)(A)(i); 11 CFR 114.5(g)(1).

² See 2 U.S.C. Sc441b(b)(4)(B); 11 CFR 114.6(a).

³ See AOs 1978-97, 1979-50, 1980-139 and 1997-16.

Advisory Opinion Request

April 12, 2000

Page 4

PAC] is required to use some meaningful identification system to screen out [nonmembers of the Restricted Class]." In a footnote, the Commission suggested that each qualified contributor could be provided with an "individual, unique identification number or password" in order to access the portion of the web site that would constitute a solicitation.

Alcatel USA and the Alcatel PAC propose to limit access to the PAC Web Site as provided above. The Intranet Web Site will contain only a short factual paragraph disclosing the existence of the Alcatel PAC and directing interested employees to a contact number. Any employee contacting the Alcatel PAC will be screened for eligibility. In addition, an individual and unique password will be provided to each member of the Restricted Class that contacts the Alcatel PAC for further information. Such password will be granted only after the individual's eligibility and membership in the Restricted Class is confirmed. Any nonsolicitable individual requesting additional information will be referred to the Commission for any information on file and publicly available.

Encouraging Contributions or Participation

The Commission has concluded that a communication regarding a PAC's activity is not a solicitation under Section 441b of the Act when the information provided would neither encourage readers to support the PAC's activities nor facilitate making contributions to the PAC.⁴ In AO 1979-66, the Commission concluded that a notice published in a trade publication was not a solicitation because the notice did not encourage its readers to support PAC activities, nor did it provide information on how to contribute to the PAC. In AO 1982-65, the Commission allowed a corporation to insert a notice in its annual report stating that the corporation supported the operation of a PAC and that further information on the PAC could be obtained by contacting the PAC directly. The Commission concluded that the insert was solely informational and in no way encouraged support of the PAC or facilitated contributions to it. The notice placed the burden on the reader to affirmatively request additional information directly from the PAC. Thus, the corporation was merely a passive conduit of such information.

In 1983-38, a PAC established by E.I. duPont Nemours and Company ("DuPont") requested an opinion on whether it could publish an article in a newsletter published monthly and sent to all DuPont employees and retirees. The article announced the formation of the PAC according to federal law, explained that only certain employees could be solicited and provided certain other information on the legal restrictions imposed by the Act. The article then stated that a committee of DuPont employees would decide which candidates would receive contributions. The Commission found that the article contained factual, historical or statistical information about the PAC and, while the article might engender some inquiries about the PAC from readers, it did nothing to encourage participation in PAC activities or to praise those employees who did participate.

⁴ See AOs 1979-13, 1979-66, 1982-65 and 1983-38.

BAKER & MCKENZIE

Advisory Opinion Request
April 12, 2000
Page 5

The proposed wording for the Intranet Site contains no information that might be read as encouraging readers to support the Alcatel PAC and its activities. The paragraph to be posted on the Intranet Site is a factual recitation of the existence of the Alcatel PAC and, following the example set forth in AO 1982-65, places the burden on the reader to affirmatively request additional information directly from the Alcatel PAC. In addition, any employee attempting to use the link to the PAC Web Site cannot gain access without first directly contacting the Alcatel PAC and having his eligibility confirmed. Thus, Alcatel USA is merely a passive conduit of such information.

Use of E-Mail for Solicitation

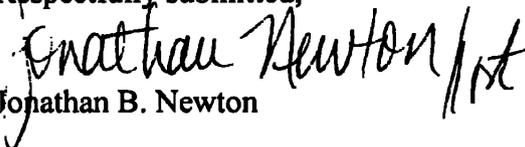
As an exception to the general prohibition against corporate contributions and expenditures, the Act and Commission regulations permit a corporation, or its separate segregated fund, to solicit voluntary contributions to such a fund at any time from its Restricted Class.⁵ In AO 1995-33, the Commission determined that the use of e-mail to distribute a PAC newsletter containing information about the PAC's activities, including solicitation efforts, was permissible as long as the solicitations were directed only to members of the Restricted Class.

The Alcatel PAC will ensure that the ListServe membership only consists of members of the Restricted Class. Because such messages will be directed only to solicitable persons, e-mail messages containing solicitations and information about the activities of the Alcatel PAC, including discussion of the aims and philosophy of the Alcatel PAC, the candidates it endorses and the legislation it supports, are permissible under the Act and Commission regulations.

Conclusion

Based upon the facts and circumstances above, Alcatel USA seeks an advisory opinion from the Commission stating that Intranet Web Site, the PAC Web Site and the ListServe may be operated as described above. We believe the described structure complies with the Commission's requirements and look forward to a favorable advisory opinion. In the interim, if you have any questions, please contact me at 214-978-3076.

Respectfully submitted,


Jonathan B. Newton

cc: George Brunt
Sue Jordan
Sylvia Braddom
Daniel W. Rabun

⁵ See 2 U.S.C. 441b(b); 11 CFR 114.5(g).