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January 31, 2019

By Email and FedEx

Federal Election Commission
Office of General Counsel
1050 First Street, NE
Washington, DC 20463

Re: *Advisory Opinion Request 2018-13 (OsiaNetwork LLC)*

Dear Commissioners:

This firm represents OsiaNetwork LLC (“OsiaNetwork”) in connection with the above-referenced advisory opinion request (“AOR”). On November 13, 2018, the Commission’s Office of General Counsel published a proposed Draft Opinion (the “Draft Opinion”). We are writing to request that the Commission issue a new draft opinion concluding that, under OsiaNetwork’s proposal, the individuals who use its services would be engaged in volunteer activity, and OsiaNetwork would not be a contributor.

We also wish to respond to a comment from Free Speech for People (“FSFP”) that was posted on the Commission website on December 11, 2018 (the “FSFP Comment”). FSFP’s arguments lack merit because they are premised on a misunderstanding or mischaracterization of key aspects of OsiaNetwork’s AOR and applicable law.

First, FSFP mischaracterizes the action taken by an OsiaNetwork volunteer as “obtain[ing] economically valuable commodities . . . and then donat[ing] them to the campaign.” FSFP Comment at 1. As OsiaNetwork explained in the AOR, a volunteer will not receive mining rewards and will not donate any funds or valuable commodities to political committees. *See* AOR at 5, 7. *Second*, FSFP’s argument rests on the false premise that the “services” and time volunteered by an individual are entirely distinct from the computing power that such

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volunteering requires. *See* FSFP Comment at 1-3. This is an artificial distinction that has been rejected by Commission regulations, which exempt both personal services and computing power and recognize that the two are intertwined.¹ *Third*, FSFP would arbitrarily restrict the scope of the exemption by limiting it to “activities that either directly involve communication and similar core First Amendment activity . . . or closely facilitate such activity.” FSFP Comment at 3. But that limitation cannot be found in the text of the Federal Election Campaign Act (the “Act”) or the Commission’s regulations; nor is it supported by Section 100.94’s administrative history.² *Fourth*, FSFP is simply wrong to argue that under Section §30101(8)(B)(ii) of the Act, a volunteer’s use of personal property, including computer equipment, is capped at relatively low dollar amounts (“\$1,000 with respect to any single election, and on behalf of all political committees of a political party . . . \$2,000 in any calendar year”). FSFP Comment at 1; 52 U.S.C. § 3010(8)(B)(ii). As the Act and the Commission’s regulations make clear, these caps apply only to “invitations, food, and beverages”—not to personal property generally, and not to computer equipment.³

Lastly, FSFP posits a hypothetical scenario under which a wealthy individual could use the OsiaNetwork platform to generate a large amount of money—secretly and manipulatively—and thereby bypass contribution disclosure requirements. But the scenario put forward by FSFP makes no sense as a matter of logic and dollars-and-cents. For a wealthy individual to abuse the process as described by FSFP, an individual may have to pay more for electricity than could be earned by mining cryptocurrency, and would also have to spend a significant amount of money on computers, housing and setup to make any significant impact within the timeframe of an election cycle.

Further, the Act and the Commission’s regulations now permit wealthy individuals to contribute unlimited amounts of money spread across numerous candidates and committees, and unlimited amounts to independent-expenditure-only political action committees, also known as super PACs. FSFP offers no reason to believe that wealthy individuals would abandon the

¹ *See* 11 C.F.R. 100.94(a)(2), (c) (explicitly exempting an individual’s use of “equipment and services”—defined to include “computers” and “software”—for uncompensated Internet activities). The examples of exempt internet activities provided by the Commission (for example, “creating, maintaining, or hosting a Web site”) entail very different relative amounts of services and computing power—some involve substantial services (creating a Web site), while some do not (hosting a Web site)—but in each instance time, personal services and computing power are all being volunteered.

² *See, e.g.*, Internet Communications, 71 Fed. Reg. 18,509, 18,603 (Apr. 12, 2006) (“any individual or group of individuals who, without compensation, uses Internet equipment and services for the purpose of influencing a Federal election does not make a contribution or expenditure”).

³ *Compare* 52 U.S.C. 30101(8)(B)(ii) (limiting exemption “to the extent that *the cumulative value of such invitations, food, and beverages* provided by such individual on behalf of any single candidate does not exceed \$1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed \$2,000 in any calendar year”) (emphasis added); 11 C.F.R. § 100.77 (imposing \$1,000 and \$2,000 limits on the cost of invitations, food, and beverages) *with* 11 C.F.R. § 100.75 (imposing no monetary limitation on the use of real or personal property in connection with volunteering personal services).

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current contribution structure, which allows them to contribute to any number of committees on a dollar-for-dollar basis with relative ease, in favor of FSFP's hypothetical, which would require significant outlays of cash just to raise relatively small amounts of money and incur financial losses.

OsiaNetwork's AOR is based on the proposition that most individuals own a computer and that they do not use 100 percent of its processing power. This means that individual volunteers would not need to purchase a computer to volunteer, nor would their electric bill increase by more than a nominal amount. This is voluntary activity that is exempt under Section 100.94. If a practice is permitted by a Commission rule, it should not be barred because of baseless speculation about possible misuse in the future.

* * *

For these reasons, and the reasons set forth in our previous correspondence regarding the AOR, OsiaNetwork urges the Commission to issue an advisory opinion concluding that neither volunteers using OsiaNetwork's platform nor OsiaNetwork will be deemed to have made a contribution under the Federal Election Campaign Act. If the Commissioners or Commission staff would like to discuss this letter or the AOR further, I am happy to answer any questions, whether orally or in writing.

Very truly yours,



Jonathan S. Sack

cc: Joanna Waldstreicher, Esq. (By email)
Robert Knop, Esq. (By email)