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FEDERAL ELECTION COMMISSION

Washington, DC 20463

JAN 20 2000

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan M. Levin
Senior Attorney

SUBJECT: Revised Draft AO 1999-33

AGENDA ITEM
For Meeting of: 1-27-00

At the Open Session of December 16, 1999, the Commission considered a draft response to Advisory Opinion Request 1999-33, as presented in Agenda Document #99-141. The Commission instructed this office to draft a revised response in accordance with the views expressed in the meeting discussion. The attached draft contains revisions in the legal analysis and in the proposed remedial action. The new language is in bold type. This office requests that the attached draft be placed on the Agenda for January 27, 2000.

Attachment

1 ADVISORY OPINION 1999-33

DRAFT

2
3 Rahn Porter, Treasurer
4 MediaOne PAC
5 188 Inverness Drive West
6 Englewood, CO 80112

7
8 Dear Mr. Porter:

9 This responds to your letter dated October 28, 1999, on behalf of MediaOne PAC,
10 requesting an advisory opinion concerning the application of the Federal Election
11 Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the
12 collection of contributions by payroll deduction.

13 MediaOne PAC ("the PAC") is the separate segregated fund ("SSF") of
14 MediaOne Group ("MediaOne"), and is registered with the Commission as a
15 multicandidate committee.¹ In January 1998, MediaOne instituted a payroll deduction
16 system for contributions by "eligible employees" to the PAC.² You state that payroll
17 deduction for PAC contributions was instituted because a majority of the company was
18 on a centralized payroll system.

19 On October 1, 1999, the PAC discovered that one of MediaOne's regional payroll
20 offices had been collecting employee payroll deductions on a monthly basis since January
21 1998 and holding these funds in a general ledger account. The region had not been
22 converted to the new centralized payroll system until the fall of 1999 and operated on a
23 separate stand alone payroll system. The holding of the contributions was detected when
24 the regional office converted to the new system, and the PAC received year-to-date PAC
25 contribution information on 20 employees from the region. The funds were not received
26 into the PAC account and were not reported in the PAC's monthly reports to the
27 Commission. The total of funds collected and not reported from January 1998 to August
28 1999 was \$7,983. You ask the Commission whether the PAC may "deposit the funds in
29 [the] PAC account and report them appropriately on [your] monthly FEC reports."

¹ MediaOne PAC (formerly named Continental Cablevision, Inc. PAC) filed its statement of organization with the Commission on March 17, 1993. It qualified as a multicandidate committee in 1994.

² The Commission understands your reference to "eligible employees" to mean those employees who would qualify as members of the restricted class of MediaOne. See footnote 3.

1 Commission regulations provide that when a corporation raises funds for its SSF,
2 it may collect such funds and forward them to the SSF without incurring an obligation to
3 register and report. 11 CFR 102.6(b)(2). It is thereby acting as a collecting agent. See
4 11 CFR 102.6(b)(1).³ By definition, a collecting agent may include such entities as the
5 connected organization of the SSF and a branch or local unit of the connected
6 organization. 11 CFR 102.6(b)(1)(ii) and (iii). When a collecting agent receives
7 contributions that are not made by check payable to the SSF, one of its options is to
8 deposit the contributions into its treasury and keep separate records of such deposits.
9 That is essentially what occurred when the deducted amounts were kept by the regional
10 office in the general ledger account. 11 CFR 102.6(c)(4)(ii)(B). However, the collecting
11 agent has certain obligations with respect to the transmittal of such contributions. An
12 individual's contribution of \$50 or less shall be forwarded to the SSF's treasurer within
13 30 days of the collecting agent's receipt. 11 CFR 102.6(c)(4) and 102.8(b)(1); 2 U.S.C.
14 §432(b)(2)(A). If the contribution exceeds \$50, the collecting agent must forward the
15 contribution within 10 days of its receipt, along with the name and address of the
16 contributor and the date of receipt of the contribution. For contributions over \$200, the
17 contributor's occupation and employer must also be forwarded with the contribution. 11
18 CFR 102.6(c)(4) and (5) and 102.8(b)(2); 2 U.S.C. §432(b)(2)(B). **The date of receipt of**
19 **the contribution is the date that the agent obtains possession. 11 CFR 102.8(b)(2).**

20 **When an individual's contributions aggregate in excess of \$200 for the**
21 **calendar year, the SSF must disclose the date of receipt for the contribution that**
22 **brings the total amount above \$200, along with the identification of the contributor**
23 **and his aggregate year-to-date total. 2 U.S.C. §434(b)(3)(A); 11 CFR 104.3(a)(4)(i).**
24 **The identification of the contributor is her name, address, occupation, and name of**
25 **employer. 2 U.S.C. §431(13)(A); 11 CFR 100.12. An SSF receiving contributions**
26 **through payroll deduction, however, does not need to separately itemize each**
27 **contribution received from the contributor during that reporting period. Instead,**

³ Commission regulations permit a corporation to use a payroll deduction system for soliciting and collecting voluntary contributions from its restricted class to the corporation's SSF. See 11 CFR 114.5(k)(1) and 114.1(f); see also 11 CFR 114.1(j), 114.5(g)(1), and Advisory Opinions 1999-3 and 1996-10.

1 for the reporting period in which the \$200 aggregate amount has been exceeded and
2 for each succeeding reporting period in that year, it may report the aggregate
3 amount received from the contributor through payroll deduction during the
4 reporting period, the identification of the individual, and a statement of the amount
5 deducted per pay period. 11 CFR 104.8(b). In addition, the SSF must report the
6 totals of the contributions received and the amounts that were itemized and
7 unitemized. 2 U.S.C. §434(b)(2)(A); 11 CFR 104.3(a)(2)(i). The foregoing
8 information is required to be disclosed in the reports covering the period in which
9 the contributions were received. See 2 U.S.C. §434(a)(4); 11 CFR 104.5(c).

10 In this situation, the contributions were made by the donors on each date
11 that the funds were withheld from salary payments made to them. See 11 CFR
12 110.1(b)(6) [contribution shall be considered to be made when contributor
13 relinquishes control over contribution].⁴ The contributions of the 20 employees were,
14 in effect, also received by the collecting agent and, hence, by the committee on that date.
15 You have explained that such contributions were not transmitted to the PAC's treasurer
16 (you) in a timely manner.

17 In a recent opinion, the Commission examined a situation where a deferred
18 transmittal of PAC contributions was allowed because of a previous legal bar to the
19 transmittal. Advisory Opinion 1998-25.⁵ The situation you present is distinguishable
20 because the ability to transmit the contributions was entirely under the control of
21 MediaOne or its regional office. The Commission concludes, therefore, that MediaOne
22 must take some remedial action in connection with the PAC's receipt and deposit of
23 the contributions in question.

⁴ A contributor relinquishes control over the contribution when it is delivered by the contributor to the political committee or to an agent of the political committee. 11 CFR 110.1(b)(6).

⁵ In Advisory Opinion 1998-25, an intermediate unit of a labor union, which was a collecting agent for the union's SSF, had held the contributions of union members in an escrow account for periods well exceeding 30 (or 10) days. Contributions received over an 18 month period were placed and held in the account without transmittal because a Federal monitor, performing his duty pursuant to authority granted by a Federal court, had ordered that the members' contributions not be forwarded to the SSF without his authorization. The Commission concluded that, under the circumstances presented, the contributions could be forwarded after the ban was lifted.

1 **As PAC treasurer, you may receive and deposit the delayed funds into the**
2 **PAC's account at this time. Upon doing so, the PAC must amend each of the**
3 **previous reports covering the periods of these payroll deductions in order to reflect**
4 **the dates of receipt of the contributions. Each report shall be amended in**
5 **accordance with the disclosure provisions discussed above.⁶ Thus, each of the**
6 **amended reports shall include revised totals on the summary page and detailed**
7 **summary page, and the Schedule A of each report naming a contributor should be**
8 **amended.⁷ Each amended report should also be accompanied by a short statement**
9 **which explains why the report is being amended (including the reasons for the late**
10 **disclosure) and which makes reference to this advisory opinion. The required**
11 **amendments should be filed with the Commission within 30 days after the receipt of**
12 **this opinion.**

13 **This opinion does not consider whether issues raised by the past activity of**
14 **the corporation should be addressed in an enforcement context by the Commission.**
15 **See 2 U.S.C. §437g; 11 CFR Part 111. Advisory opinions address specific**
16 **transactions or activity that the requester "plans to undertake or is presently**
17 **undertaking and intends to undertake in the future." 11 CFR 112.1(b). They do not**
18 **address past activity, except to the extent past activity is proposed to continue or**
19 **recur. Moreover, the remedial action prescribed in this advisory opinion is based in**
20 **part on the factual situation presented and the desirability of an efficient resolution**
21 **of the problem. The relevant facts are that MediaOne PAC discovered the error**
22 **and asked for the Commission's guidance in a timely manner, that the mistake**
23 **appears inadvertent, that the amounts at issue are not large, and that the prescribed**
24 **action is provided as part of an advisory opinion rather than in an enforcement**

⁶ It appears that 20 reports will need to be amended, since the PAC is a monthly filer and the underlying contributions were made in reporting periods that span 20 report filing dates.

⁷ You may follow the procedures set out in 11 CFR 104.8(b) for contributions aggregating in excess of \$200 in the calendar year, and the amounts in excess of \$200 should be included in the itemized totals on the detailed summary page. In addition, if the amount deducted in a particular pay period varied from the usual amount, the Schedule A should indicate how many pay periods and the amount deducted in each of those periods. For an illustration of reporting by SSFs under 11 CFR 104.8(b), refer to the Commission's publication, *Campaign Guide for Corporations and Labor Organizations*, on page 32.

1 **context. In view of the combination of these circumstances, the remedial action**
2 **proposed should not be viewed as a precedent for any other situation entailing a**
3 **delayed transmittal of contributed funds, particularly a delay addressed in a**
4 **Commission enforcement proceeding that would be conducted under 2 U.S.C. §437g**
5 **and 11 CFR Part 111.**

6 — This response constitutes an advisory opinion concerning the application of the
7 Act and Commission regulations to the specific transaction or activity set forth in your
8 request. See 2 U.S.C. §437f.

9

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Sincerely,

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Darryl R. Wold
Chairman

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Enclosures (AOs 1999-3, 1998-25, and 1996-10)

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