



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 18, 1988

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1987-34

Leslie J. Kerman
Epstein Becker & Green P.C.
1140 19th Street, N.W.
Washington, D.C. 20036-6601

Dear Ms. Kerman:

This refers to your letter of December 7, 1987 and your letter supplement dated March 3, 1988, which request an advisory opinion on behalf of Telenet Communications Corporation ("Telenet") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to contribution solicitations for a separate segregated fund that Telenet proposes to establish.

Your request indicates that Telenet was originally incorporated under Delaware law in 1974 and as of June 30, 1986 all Telenet stock was owned by GTE Corporation ("GTE"). On July 1, 1986, GTE conveyed all Telenet stock to US Sprint Communications Company ("Sprint JV") which is a noncorporate joint venture partnership between GTE and United Telecommunications, Inc. ("United"). Your request further states that Sprint JV was formed on January 31, 1986 with a specified term of existence until December 31, 2086, unless terminated earlier by agreement or otherwise. In addition, you explain that Sprint JV is governed by the laws of the State of New York and that GTE and United each have a 50 percent interest in Sprint JV. The management and control of Sprint JV is held jointly by GTE and United pursuant to their amended and restated partnership agreement dated July 1, 1986. Through this agreement Sprint JV owns, directs, and controls Telenet. In addition, through Sprint JV, the control of Telenet is held jointly by GTE and United who are equal partners in Sprint JV. Your request explains that the ownership interest, control, and operational management of Telenet are evenly divided between GTE and United. You further indicate that no special agreements, conditions, policies, or procedures apply to Telenet stock which could, if present, allow either GTE or United to dominate, or exercise greater influence over, the other with respect to Telenet.

With respect to the proposed establishment of a separate segregated fund ("SSF") by Telenet, your request describes the personnel groups that Telenet wants to solicit for contributions to its SSF. You state that Telenet proposes to solicit contributions to the SSF from its own executive and administrative personnel, as well as from the executive and administrative personnel of Sprint JV, the sole stockholder of Telenet. Telenet and its SSF do not propose to solicit any executive and administrative personnel of either United or GTE or their subsidiaries.

On the basis of the foregoing factual situation, you request an opinion that Telenet may solicit contributions for its SSF from the executive and administrative personnel of Sprint JV. You also request an opinion allowing Telenet or Sprint JV, or both, to establish and defray the expenses of administering a voluntary payroll deduction plan to facilitate contributions by the described Sprint JV personnel to Telenet's SSF.

The first issue raised by your request is application of Commission regulations that allow a corporation to solicit the executive or administrative personnel of its "affiliates" for voluntary contributions to the soliciting corporation's separate segregated fund. Commission regulations provide that a corporation's solicitable class extends to executive or administrative personnel of the corporation's "subsidiaries, branches, divisions, and affiliates and their families." 11 CFR 114.5(g)(1). Applying this regulation, the Commission has long held that contribution solicitation rights in a corporate context go downstream (parent to subsidiary), upstream (subsidiary to parent), and between subsidiaries of the same parent corporation. Advisory Opinions 1982-18, 1980-18, 1979-44, 1978-75. The Commission has also concluded that the term "affiliates" may include entities other than corporations in some circumstances. Advisory Opinion 1983-48. In addition, individual partners of a partnership that owned all the stock of a corporation were held to be solicitable by the corporation for contributions to the corporation's political fund. Advisory Opinions 1985-23 and 1979-77.¹

In the situation presented here, the Commission concludes that Sprint JV is an affiliate of Telenet. Sprint JV has ownership of all Telenet stock and therefore has control of Telenet. Pursuant to the partnership agreement, Sprint JV has authority to make all decisions regarding its operations and business including the direction and management of Telenet. This authority presumably extends to Telenet's establishment and administration of its SSF. Given the pervasive authority and control held by Sprint JV over Telenet, the executive and administrative of Sprint JV, the parent affiliate of Telenet, may be solicited for voluntary contributions to the Telenet SSF. All contribution solicitations for Telenet's SSF must, of course, comply with the requirements of the Act and regulations. See generally, 2 U.S.C. 441b(b)(3) and 11 CFR 114.5; see also 11 CFR 102.5(a).

The foregoing conclusion as to the affiliate status of Sprint JV in relation to Telenet, also means that either Telenet or Sprint JV may establish and finance a payroll deduction plan to facilitate voluntary contributions to the SSF from executive and administrative personnel of Sprint JV.² Advisory Opinions 1983-19, 1982-34, and 1980-18. Such a plan must be implemented in accordance with Commission regulations and may only be used to facilitate voluntary contributions. 11 CFR 114.5(a)(1) through (a)(5). The expenses for administering voluntary payroll deduction programs to collect contributions for a separate segregated fund are costs incident to the solicitation of contributions for, and administration of, the separate segregated

fund of a corporation or labor organization. See 11 CFR 114.1(b). Furthermore, these expenses are not contributions or expenditures under the Act and are not subject to the disclosure requirements of the Act. 2 U.S.C. 431(8)(B)(vi), 431(9)(B)(v).

Although not expressly included within your questions, your request necessarily raises the issue of affiliation between Telenet's proposed SSF ("political committee" or "PAC") and the political committees established by GTE and United, the corporate partners of Sprint JV which owns all Telenet stock.

The Act and Commission regulations provide that contributions received and made by political committees established or financed or maintained or controlled by the same corporation, including its subsidiaries, are subject to a single set of contribution limits. 2 U.S.C. 441a(a)(5), 11 CFR 100.5(g)(2), 110.3(a)(1). The cited regulations also include criteria that govern the affiliation of political committees sponsored by or connected with either corporate or noncorporate entities. The affiliation analysis used in applying the indicia looks to the relationships between or among the entities which sponsor or direct the political committees in question. The affiliation criteria and indicia have been applied by the Commission in advisory opinions presenting corporate reorganizations such as subsidiary "spin-offs" and leverage buy-out acquisitions. Advisory Opinions 1987-21, 1986-42, and 1988-4. They have also been applied in the context of joint venture entities, both corporate and noncorporate. Advisory Opinions 1984-36, 1983-19 and 1979-56; compare Advisory Opinion 1981-54.

In Advisory Opinion 1979-56 where two corporations each owned 50% of the stock of a third corporation they jointly created, the Commission concluded that the PACs of each of the parent corporations would be affiliated with the PAC of the jointly held corporation, but not with each other. Similarly, affiliation was held to occur between PAC's of two corporations where one corporation owned 50% of the stock in the other corporation which was established to engage in a joint venture with two additional corporations (owning the other 50%). Advisory Opinion 1983-19.

In this case the stock of Telenet is owned and controlled equally by United and GTE through Sprint JV. Both partners have jointly established, financed, maintained, or controlled Telenet, which will sponsor the SSF, and thus come within the affiliation criteria in the Act and regulations, and as applied in prior opinions. While this relationship does not mean that the political committees of GTE and United are affiliated with each other, they will each be affiliated with Telenet's PAC.³ Given that their joint ownership and control of Telenet is through the 50-50 Sprint JV partnership, and given Commission regulations applicable in the related context of contributions by partnerships, the Commission concludes that, for contribution limit-purposes, each Telenet PAC contribution should be apportioned half to the limit shared with GTE's PAC, and half to the separate limit shared with United's PAC. See the analogous partnership regulations at 11 CFR 110.1(e). Such apportioned contributions are only permitted to the extent the aggregate 441a(a) limits shared with the two parent corporation's PACs are not exceeded by virtue of Telenet PAC's contributions. If an excessive contribution would result from a 50-50 apportionment of a Telenet PAC contribution, the contribution may not be made. However, if an alternative apportionment would not result in an excessive contribution, and if both GTE PAC and United Telecom PAC agree to such alternative apportionment, a Telenet PAC contribution

otherwise within the limits may be made. Written instructions should be provided to recipient political committees or candidates so those committees can monitor their acceptance of contributions subject to the shared limits of the three committee contributors. 2 U.S.C. 441a(f), 11 CFR 110.9(a). The written instructions should also be maintained as contribution records of Telenet PAC for three years after the contribution is reported. 11 CFR 104.14(b), also see 11 CFR 102.9(b)(1), 102.9(c).

Finally, the Commission notes that both the GTE PAC and the United PAC will be required to identify the Telenet PAC as an affiliated committee on their respective statements of organization. 2 U.S.C. 433(b)(2). Telenet PAC will similarly have to identify both GTE PAC and United PAC as its affiliated committees. All three committees will retain their separate entity status for purposes of filing reports and statements under the Act. 2 U.S.C. 434(a)(4), 11 CFR 104.1(a).

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Thomas J. Josefiak
Chairman for the Federal Election Commission

Enclosures (AOs 1988-4, 1987-21, 1986-42, 1985-23, 1984-36, 1983-48, 1983-19, 1982-18, 1981-54, 1980-18, 1979-77, 1979-56, 1979-44, 1978-75)

P.S. Commissioner Thomas voted to approve this opinion, but will file a concurring opinion at a later date.

1/ Compare Advisory Opinion 1984-36 where the executive and administrative personnel of a joint venture partnership were not solicitable by one of the corporate partners because that corporation had an inferior ownership interest (40%) in the partnership, compared to the other corporate partner (60%), and because in certain additional respects the 40% partner was subject to the control of the 60% corporate partner as regards the management of their joint venture partnership.

2/ The fact that Sprint JV is a joint venture partnership does not change this result. Because Sprint JV is owned 50-50 by GTE and United, the same exceptions that apply to Telenet's activity with respect to its SSF would apply to Sprint JV's activity on behalf of Telenet's SSF. Payroll deduction for contributions from the personnel of corporate "affiliates" is permitted by the regulations. 11 CFR 114.5(k)(1). The regulations also provide that any activity specifically permitted thereunder does not constitute a prohibited contribution or expenditure. 11 CFR 114.1(a)(2)(x).

3/ This partial affiliation result means that as among all three committees there will be two sets of contribution limits available. Thus, the aggregate contributions to the same candidate may not exceed \$10,000 per election from all three committees, and may not exceed \$5,000 from any one of the committees.