



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 30, 1989

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1989-7

R.S. Petterson, Administrator  
New Jersey Bell Telephone Company Federal Political Action Committee  
540 Broad Street, Room 1004  
Newark, New Jersey 07101

Dear Mr. Petterson:

This responds to your letter dated May 2, 1989, supplemented by your letter of May 16, 1989, requesting an advisory opinion on behalf of the New Jersey Bell Telephone Company Federal Political Action Committee ("NJB FED PAC") concerning application of the Federal Election Campaign Act of 1971, as amended, (the "Act") and Commission regulations to a proposed charitable donation plan.

NJB FED PAC is a separate segregated fund of the Bell Atlantic Corporation, its connected organization. To encourage greater participation in its political program, NJB FED PAC proposes to ask a wholly owned subsidiary of Bell Atlantic, the New Jersey Bell Telephone Company ("Company"), to match all voluntary individual personal contributions to NJB FED PAC with an equal amount to be given to charity. If adopted, the plan would allow each individual NJB FED PAC member<sup>1</sup> to designate a section 501(c)(3) charity<sup>2</sup> as the recipient of a Company contribution equal to the sum of the contributions that the member had made to NJB FED PAC the previous year. You state that the contributing individuals would receive no tax benefit from this "infusion of charitable giving." Further, the plan would exclude all 501(c)(3) charities that provide contributors with premiums, awards, or other tangible benefits in return for contributions.<sup>3</sup> You note that "NJ Bell personnel are not currently obligated or expected, in order to comply with Company policy, to make a specified amount of charitable donations . . . to any of the 501(c)(3) entities that would be eligible."

You ask whether the Act and Commission regulations permit NJB FED PAC to implement its proposed charitable donation plan.

The Act prohibits a corporation from making contributions or expenditures in connection with any Federal election. The Act excludes from the definition of "contribution or expenditure," however, "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes" by a corporation. 2 U.S.C. 441b(a) and 441b(b)(2)(C). Although Commission regulations explain that a corporation may use its general treasury monies to pay the expenses of establishing and administering such a fund and of soliciting contributions to the fund, the regulations also provide that a corporation may not use this process "as a means of exchanging treasury monies for voluntary contributions." 11 CFR 114.5(b). In this respect, the regulations further explain that a contributor may not be paid for his or her contribution through a bonus, expense account, or other form of direct or indirect compensation. 11 CFR 114.5(b)(1).

The Act and regulations provide that a corporation or its separate segregated fund may solicit contributions to the fund at any time from the corporation's executive or administrative personnel and their families and from its stockholders and their families. 2 U.S.C. 441b(b)(4)(A)(i); 11 CFR 114.5(g)(1). Any solicitation of these persons for contributions to the fund must meet certain requirements. See 11 CFR 114.5(a).

As you point out, the plan that you outline resembles one approved by the Commission in Advisory Opinion 1986-44, which allowed a corporation to match contributions made to its separate segregated fund with donations to charities. The Commission viewed the corporation's matching of voluntary political contributions with charitable donations as a solicitation expense related to its separate segregated fund. 2 U.S.C. 441b(a) and 441b(b)(2)(C). See also Advisory Opinion 1988-48. Similarly, the Company's matching of contributions with donations to charities would be a permissible solicitation expense related to NJB FED PAC. Because the individual contributors to the separate segregated fund will not be paid for their voluntary contributions through this process and will not receive any other financial or tangible benefit, the Company will not be exchanging treasury monies for voluntary contributions.

The Commission concludes, therefore, that NJB FED PAC's plan is lawful under the Act and the regulations. This opinion assumes that the charitable donees in fact qualify as section 501(c)(3) entities under the Internal Revenue Code and that the matching plan would be limited to the categories of persons whom the Company or NJB FED PAC may solicit at any time. See Advisory Opinion 1986-44, esp. at n.3.

The Commission expresses no opinion regarding any tax ramifications of the proposed charitable donation plan. Such matters are outside the Commission's jurisdiction.

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.

Yours truly,

(signed)

Danny L. McDonald  
Chairman for the Federal Election Commission

Enclosures (AOs 1986-44 and 1988-48)

1/ Commission regulations permit a separate segregated fund established by a corporation to characterize persons who contribute to the fund as "members" of the fund. Such a characterization, however, gives the corporation no greater right of communication or solicitation than it otherwise is granted under the regulations. 11 CFR 114.5(c)(1) and (2).

2/ See 26 U.S.C. 501(c)(3) (Internal Revenue Code).

3/ You also state that, "[t]o avoid any attempt to substitute NJB FED PAC matching contributions for United Way pledging," the plan would exclude the United Way as an eligible charitable donee. Any individual NJB FED PAC member would be able, however, to designate any of the charitable organizations under the United Way umbrella.