



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

January 17, 1997

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1996-49

William H. Boger  
Wilkinson, Barker, Knauer & Quinn  
1735 New York Avenue, N.W.  
Washington, D.C. 20006-5209

Dear Mr. Boger:

This responds to your letter dated November 8, 1996, as supplemented by your letters dated December 12 and 20, 1996, requesting an advisory opinion on behalf of PrimeCo Personal Communications, L.P. ("PrimeCo") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the relationship between a political committee established by PrimeCo and other political committees.

Your request presents the situation of the establishment of a political committee by a joint venture partnership owned indirectly by corporations that are connected organizations of a number of separate segregated funds (SSFs). You ask whether the partnership's PAC would be affiliated with those committees and the effects of any affiliated relationship.

*Factual Background*

PrimeCo was established as of October 20, 1994, as a non-corporate joint venture partnership by PCSCO Partnership ("PCSCO") and PCS Nucleus, L.P. ("PCSN"), pursuant to the Delaware Revised Uniform Limited Partnership Act. PCSCO and PCSN each hold a 50 percent partnership interest in PrimeCo, including a 20 percent general partnership interest for each.

PCSN is a Delaware Limited Partnership which is 50 percent owned by AirTouch Communications ("AirTouch"), a California corporation, and 50 percent owned by US West, a Colorado corporation. PCSCO is a Delaware General Partnership which is indirectly owned (50/50) by NYNEX Corporation ("NYNEX"), through a wholly-owned subsidiary and by Bell Atlantic Corporation ("Bell Atlantic"), through a wholly-owned subsidiary. (PCSCO and PCSN

will hereafter be referred to as the "partners" or each separately as a "partner," and the corporations making up these partnerships will be referred to as "constituent corporations.") PrimeCo as formed by the constituent corporations to acquire, manage and maintain personal communications services ("PCS") licenses.

On April 21, 1996, Bell Atlantic Corporation and NYNEX announced an agreement to merge their corporations. The resulting corporation will be known as Bell Atlantic Corporation.<sup>1</sup> For the purposes of this opinion, the Commission will assume that the merger is effective.

According to the Agreement of Limited Partnership for PrimeCo ("Partnership Agreement"), an Executive Committee, composed of six persons, is responsible for managing the business affairs of PrimeCo, including hiring top personnel, and delegating responsibilities to officers, employees, agents and representatives as appropriate. Partnership Agreement, 5.1.1 and 5.1.9. Each general partner (i.e., PCSCO and PCSN) has the right to select three members of the Executive Committee. Each member must be an officer or former employee of the partner or an affiliate of the partner, and may be removed or replaced by the partner that made the appointment. Partnership Agreement, 5.1.2. Three members of the Executive Committee represent Bell Atlantic (and NYNEX), and three represent AirTouch and US West. Presently, the members consist of three present high level executives from Bell Atlantic and NYNEX, two from Air Touch, and one from US West.<sup>2</sup>

The Partnership Agreement spells out the decision-making process of the Executive Committee. If only one member appointed by a general partner is present (or participates by proxy), that member may exercise "the entire voting power" held by all members appointed by that partner. If more than one member (appointed by a general partner) is present, that partner's entire voting power is voted by those members as a single unit. If there is a disagreement among a general partner's members, the vote of the member designated by that partner as its senior representative is controlling and the vote of the other members representing that partner is disregarded with respect to the matter. Partnership Agreement, 5.1.7. The Partnership Agreement provides that any action of the Executive Committee requires the affirmative vote of the members representing each of the general partners, except as specifically provided by the agreement. Partnership Agreement, 5.1.8.

The Partnership Agreement lists eleven specific actions requiring an Executive Committee vote and the affirmative vote of each partner.<sup>3</sup> These actions include the admission of a new partner; PrimeCo's engagement in any business other than the personal communications services business; amending the agreement; dissolution or initiation of bankruptcy; major acquisitions or dispositions of property or assets; approval or material modification of a one-year or five-year Business Plan; the making of a request for additional contributions of capital to the partnership ("Capital Call") other than as provided for in a Business Plan; appointment, removal, and compensation of PrimeCo's three top executive officers; and entry into material transactions outside the scope of the Business Plan, or any other material deviation from the Business Plan. Partnership Agreement, 5.1.9.

With respect to PCSN, the partner that is still owned by two constituent corporations, you have stated that the PCSN partnership agreement makes no provision for picking a senior

representative, as to whether this person will be a senior representative for all votes, or as to which corporation will provide the senior representative. You state that, thus far, there has been no need to utilize the voting procedures and a senior representative for PCSN has not been picked. Moreover, there is no provision in that agreement or any other agreement for determining how the three PrimeCo Executive Committee memberships from PCSN will be apportioned.

The Partnership Agreement also provides for a two-stage procedure to break a deadlock between the partners in certain disputes pertaining to approval of an annual business plan, the choice of PrimeCo's CEO, and CapitalCalls.<sup>4</sup> First, each partner refers the matter to a CEO from one of its constituent corporations designated by that partner to resolve the matter. If the designated CEOs from each partner cannot agree within 20 days of the referral, the CEOs of each of the constituent corporations attempt to resolve the dispute. If there is no agreement within 40 days after that, the matter is defeated. Partnership Agreement, 5.1.12. You state that it has not been necessary to resolve an Executive Committee deadlock, and there is no procedure set out in the PCSN partnership agreement for choosing the CEO for the first stage.

Although certain officers and employees of PrimeCo are former employees of the constituent corporations, you note that, with the exception of the Executive Committee members, PrimeCo shares no executive or administrative personnel, or other employees, with either the partners or the constituent corporations. In addition, there are no formal or informal agreements in place that any PrimeCo officers or employees will return to the constituent corporations after working at PrimeCo for a set period of time.

You state that neither PCSCO nor PCSN has established a political committee, but that each of the four constituent corporations, along with entities affiliated with some of the corporations, has established at least one political committee.<sup>5</sup>

You describe PrimeCo's reasons for establishing a political committee. You state that PrimeCo's purpose, i.e., the acquisition, management, and maintenance of PCS licenses, is a separate and distinct line of business from that engaged in by the partners or the constituent corporations. You maintain that PrimeCo's political interests can, and often do, differ from those of the constituent corporations, and thus it "seeks to have an independent and distinct voice on political issues." To that end, PrimeCo's officers and employees intend to establish a non-connected political committee. It would solicit contributions from PrimeCo's officers and employees, but not from the officers or employees of PCSCO, PCSN, or the constituent corporations. It is also PrimeCo's "intent" that the SSFs of the constituent corporations will not solicit contributions from PrimeCo's officers or employees.

### *Questions Presented*

You ask a number of questions pertaining to the question of affiliation and its consequences which the Commission restates and reorders as follows:

(1) Would PrimeCo's "non-connected political committee" be affiliated with the SSFs of the constituent corporations?

(2) If PrimeCo's PAC is affiliated with one or more of the SSFs, may PrimeCo's PAC solicit contributions from the officers and employees of those SSFs' connected organizations?

(3) If PrimeCo's PAC is considered to be affiliated with one or more of the SSFs, may the affiliated SSFs' connected organizations pay the expenses of PrimeCo's PAC?

(4) May PrimeCo establish an SSF?

## Legal Analysis

The Commission's response to these questions is divided into two parts. The first part will address question one, i.e., whether PrimeCo's PAC would be affiliated with the committees of the constituent corporations. The second part will address the consequences of any such affiliation in response to questions two through four.

### *A. The Affiliated Entities*

The Act and Commission regulations provide that committees, including separate segregated funds, that are established, financed, maintained or controlled by the same corporation, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated. 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g)(2). Contributions made to or by such committees shall be considered to have been made to or by a single committee. 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g)(2), 110.3(a)(1), and 110.3(a)(1)(ii). In addition, a corporation may make communications to and solicit the restricted class (i.e., executive and administrative personnel and stockholders, and the families thereof) of its subsidiaries or other affiliates for contributions to the corporation's separate segregated fund. 2 U.S.C. 441b(b)(2)(A) and (4)(A)(i); 11 CFR 114.3(a)(1) and 114.5(g)(1). The Commission has long held that affiliates may include entities other than corporations, such as partnerships. Advisory Opinions 1994-11, 1992-17, 1989-8, 1987-34, and 1983-48. See also Advisory Opinion 1996-38.

Where an entity is not an acknowledged subsidiary of another entity, as in 11 CFR 110.3(a)(2)(i),<sup>6</sup> Commission regulations provide for an examination of various factors in the context of an overall relationship to determine whether one company is an affiliate of another and, hence, whether their respective SSFs are affiliated with each other. 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J).<sup>7</sup>

The relevant factors in the situation you have presented are as follows: (B) whether a sponsoring organization has the authority or ability to direct or participate in the governance of another sponsoring organization through provisions of constitutions, by-laws, contracts or other rules, or through formal or informal practices or procedures; (C) whether a sponsoring organization has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees of another sponsoring organization; (E) whether a sponsoring organization has common or overlapping officers or employees with another sponsoring organization which indicates a formal or ongoing relationship between the organizations; (F) whether a sponsoring organization has any members, officers, or employees who were members, officers, or employees of another sponsoring organization which indicates a formal or ongoing

relationship or the creation of a successor entity; and (I) whether a sponsoring organization had an active or significant role in the formation of another sponsoring organization. 11 CFR 110.3(a)(3)(ii)(B), (C), (E), (F), and (I).<sup>8</sup>

Bell Atlantic, along with its wholly-owned subsidiary NYNEX, exercises 50 percent control of the Executive Committee through its ownership of PCSCO, a PrimeCo partner. The Executive Committee is the governing body of PrimeCo. As indicated in the Partnership Agreement provisions described above, the assent of the members appointed by PCSCO is necessary for the PrimeCo Executive Committee to take a significant number of major actions. These are actions that determine how the officers and employees of PrimeCo will conduct business operations and the appointment, removal, and compensation of top executive officers. The Executive Committee itself includes the Chief Operating Officer of Bell Atlantic and two other high ranking officers of Bell Atlantic affiliates. With respect to the final factor listed above, Bell Atlantic was one of the creators of PrimeCo.

The position of Bell Atlantic in PrimeCo is similar to the positions of the corporate owners of a joint venture partnership in Advisory Opinion 1992-17. In that opinion, two corporations each had a fifty percent interest in the partnership. The Board of the partnership consisted of three senior officers of each of the two corporations who represented their respective corporations. The Commission concluded that, although neither partner had the predominant management role or a controlling position, each corporation was affiliated with the partnership and thus their SSFs were each affiliated with the partnership's PAC. The Commission noted the presence of the high-ranking corporate officers on the Board, the creation of the partnership by the corporations, and the fact that the assent of each corporation was necessary in order to make a significant number of major decisions. Similar circumstances are present in your request and the Commission concludes that PrimeCo is an affiliate of Bell Atlantic. Although the Act does not specifically provide for the establishment by partnerships of SSFs, the Commission has concluded that a PAC established and sponsored by a partnership is affiliated with the SSF of an affiliated corporation. Advisory Opinions 1994-9, 1992-17, and 1989-8. The Commission concludes, therefore, that PrimeCo's PAC would be affiliated with the committees established by Bell Atlantic and its affiliated entities, including NYNEX. The PAC's statement of organization should list Bell Atlantic Corporation PAC, the political committee established by the top-level parent entity, as an affiliated committee. 2 U.S.C. 433(b)(2); 11CFR 102.2(b)(1)(ii)(B).

The Commission does not reach the same conclusion with respect to PrimeCo's PAC and the committees established by AirTouch, US West, and its affiliates. In view of the fact that the Executive Committee members from either AirTouch or US West could conceivably exercise a veto power over the vote exercised by PCSN, and thus affect the Executive Committee's ability to make a decision, the Commission acknowledges that there may be a basis for affiliating the two corporations with the partnership's PAC. However, there are a number of factors weighing against such a conclusion. First, unlike Bell Atlantic, each corporation by itself does not carry the full vote necessary to prevent the Executive Committee from taking an action. Moreover, although either AirTouch or US West could conceivably obstruct an affirmative vote by the PCSN side, this would occur at a secondary voting level, rather than the primary level exercised by the two corporations together.<sup>9</sup> Second, at this secondary level of decision making, the powers that each corporation exercises on a consistent basis are speculative, due to the fact that there are,

and have been, no arrangements for selecting a deciding senior representative for PCSN or a CEO for the first stage of resolution in a deadlock event.<sup>10</sup> The Commission emphasizes that its conclusion is based on the combination of the factors, and that each of those factors might not, by itself, be sufficient to lead to a conclusion of non-affiliation.

### *B. The Consequences of Affiliation*

Although PACs sponsored by partnerships (as non-connected committees) do not normally carry the same restrictions on solicitations that SSFs do, a PAC of a partnership that is an affiliate of a corporation that has an SSF may not make solicitations to an unlimited class, but is limited in a way that a corporate SSF would be. Advisory Opinions 1992-17 and 1989-8. See 11 CFR 114.5(g)(1). As a result of the affiliation of PrimeCo with Bell Atlantic and the affiliation of their respective political committees, PrimeCo's PAC may solicit contributions from PrimeCo's executive and administrative personnel and the families thereof. It may, if desired, also solicit the executive and administrative personnel and stockholders, and families thereof, of Bell Atlantic, Bell Atlantic's subsidiaries (such as NYNEX), and other entities that are affiliated with Bell Atlantic under 11 CFR 110.3(a)(3). It may not solicit the personnel, stockholders, or families thereof, of AirTouch or US West, or their subsidiaries and affiliates. Since PrimeCo's PAC and the political committees of Bell Atlantic and its subsidiaries and affiliates are considered to be one committee for the purpose of contribution limitations, contributions to all of those committees must be aggregated with each other and all contributions by those committees must be aggregated with each other.

Under 2 U.S.C. 441b(b)(2)(C), a corporation may use its general treasury funds to pay for the costs of establishing, administering, or soliciting contributions to its SSF, without a resultant contribution or expenditure. See also 2 U.S.C. 431(8)(B)(vi) and (9)(B)(v). In applying this law in the context of affiliation, the Commission has permitted a corporation that is affiliated with another corporation to pay the administration and solicitation costs of the latter corporation's SSF. Advisory Opinions 1996-26 and 1983-19. Similarly, it has permitted incorporated entities to pay such costs for the political committees of its affiliated entities that are not incorporated. Advisory Opinions 1996-38 and 1992-17. Therefore, Bell Atlantic may pay for the establishment, administration, and solicitation costs for PrimeCo's PAC. In that event, the PAC would be an SSF of Bell Atlantic. See 2 U.S.C. 431(7) and 11 CFR 100.6(a).

With respect to the ability of PrimeCo itself to establish an SSF, the Commission notes that the Act does not extend to a partnership the ability granted to a corporation at 2 U.S.C. 441b(b)(2)(C) to conduct itself as a connected organization and avail itself of the exemptions. Advisory Opinions 1991-1 and 1990-20. See also *California Medical Association v. Federal Election Commission*, 453 U.S. 182(1981). Nevertheless, the Commission has treated joint venture partnerships differently as a result of the partnership's ownership by, and affiliation with, corporations. Advisory Opinions 1994-11, 1994-9, 1992-17, and 1987-34. If a partnership is owned entirely by corporations and affiliated with at least one of them, it may perform the functions of a connected organization for its PAC. Advisory Opinions 1994-11, 1994-9, and 1992-17. Therefore, PrimeCo may pay the establishment, administration, and solicitation costs of PrimeCo's PAC without a resulting contribution from PrimeCo.

Even though the Commission has concluded that a partnership can perform the functions of a connected organization under the above-described circumstances, Commission regulations defining "connected organization" do not include partnerships. 11 CFR 100.6(a). Bell Atlantic would be the connected organization of PrimeCo's PAC and would pay for the exempt costs either by itself or through PrimeCo. Advisory Opinions 1994-11 and 1992-17. If such support is provided directly by Bell Atlantic or its affiliates, or indirectly by Bell Atlantic by virtue of support from PrimeCo, then PrimeCo's PAC should amend its statement of organization and identify Bell Atlantic as its connected organization. 2 U.S.C. 433(b)(2); 11 CFR102.2(b)(2).

In that event, the name of PrimeCo's PAC would have to include the name "Bell Atlantic Corporation." 2 U.S.C.432(e)(5). For example, the PAC's name could be PrimeCo/Bell Atlantic Corporation Political Action Committee. See Advisory Opinions 1994-11 and 1989-8. Additionally, PrimeCo's PAC may use a clearly recognized abbreviation or acronym by which the company is commonly known (e.g., PrimeCo PAC) provided that the PAC's full name and such abbreviation are included on the PAC's Statement of Organization, on all its disclosure reports, and in all its disclaimers under 11 CFR 110.11. 11 CFR 102.14(c).<sup>11</sup> The PAC may make contributions using the abbreviated name by itself, and the Commission has explicitly permitted the use of the abbreviation by itself for documents such as checks and letterheads. 11 CFR 102.14(c); Advisory Opinion 1980-23. Moreover, Commission regulations do not require the use of the full name on solicitations of the restricted class of the company.

This response constitutes an advisory opinion concerning the 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,

(signed)

John Warren McGarry  
Chairman

Enclosures (AOs 1996-38, 1996-26, 1995-36, 1994-11, 1994-9, 1992-17, 1991-1, 1990-20, 1989-8, 1987-34, 1983-48, 1983-19, and 1980-23)

1 Regulatory approvals with respect to the merger are pending from Federal and state agencies and are expected by the first quarter of 1997. Once the merger is effective, Bell Atlantic will own 50 percent, rather than 25 percent of PrimeCo, and NYNEX will remain a wholly-owned subsidiary of Bell Atlantic.

2 These are the Executive Vice President and Chief Operating Officer of Bell Atlantic, the President and CEO of Bell Atlantic Mobile, the President and Group Executive of NYNEX Worldwide Services, the President and CEO of the US West Media Group, AirTouch's Vice President for Corporate Strategy and Development, and the President and CEO of AirTouch Cellular Operations, who is also the Executive Committee's Chairman.

3 The preface to this list indicates that the list is not meant to exclude other powers and authority of the Executive Committee. Partnership Agreement, 5.1.9.

4 Specifically, the "deadlock events" are: (1) a disagreement on an annual Business Plan within 90 days of the next fiscal year (where no Business Plan had been approved for the current year); (2) a disagreement lasting for at least 30 days over the removal of a CEO, or a vacancy in the CEO position lasting more than 30 days after a partner has proposed a candidate; and (3) a disagreement lasting for at least 30 days over the timing or amount of a Capital Call other than as provided for in a Business Plan.

5 Bell Atlantic and its affiliates have established several committees, including Bell Atlantic Corporation PAC, Bell Atlantic-Pennsylvania Inc. Federal PAC, New Jersey Bell Telephone Company Federal PAC, Chesapeake & Potomac Telephone Co. Federal PAC, and Diamond State Telephone Co. PAC. NYNEX and its affiliates have established NYNEX Employees' Federal PAC, New England Telephone & Telegraph Co. Federal PAC, and New York Telephone Federal PAC. US West has established US West Inc. PAC and AirTouch has established AirTouch Communications PAC.

6 According to Commission regulations, committees established by a single corporation and its subsidiaries are affiliated per se. 11 CFR 110.3(a)(2)(i).

7 Specifically, the regulations, at 11 CFR 110.3(a)(3)(ii), state in part: The Commission will examine these factors in the context of the overall relationship between committees or sponsoring organizations to determine whether the presence of any factor or factors is evidence of one committee or organization having been established, financed, maintained or controlled by another committee or sponsoring organization.

8 The list of ten circumstantial factors set out at 11 CFR 110.3(a)(3)(ii) is not an exclusive list, and other factors may be considered. See Advisory Opinion 1995-36.

9 It may be possible to conclude that Air Touch and US West are affiliated with PrimeCo by virtue of the fact that each has equal representation and voting power in PCSN and that PCSN has fifty percent control over PrimeCo. This conclusion would be reached by stating that PCSN is affiliated with each of the corporations and PrimeCo is affiliated with the corporations in a direct line through its affiliation with PCSN. However, although there is a partnership agreement for PCSN, it is not an operating entity and has no officers or employees. It exists only as a vehicle for investments by Air Touch and US West in "PCS ventures of mutual interest."

10 The Commission's conclusion as to the affiliated status of AirTouch or US West might differ if there were arrangements indicating a senior representative designation that consistently or predominantly went to one of the two companies, or if the same were the case with respect to the choice of CEO in a deadlock event.

11 The applicable regulation states that the SSF may use a clearly recognized abbreviation or acronym by which the *connected organization* is commonly known. Although the connected organization would be Bell Atlantic, this draft has explained that PrimeCo may function as an SSF under the ownership and affiliation circumstances presented. For purposes of the abbreviation, therefore, PrimeCo's PAC need not include the Bell Atlantic name.