FEDERAL ELECTION COMMISSION
Washington, DC 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2001-18

Jan Witold Baran
Wiley, Rein & Fielding, LLP
1776 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Baran:

This responds to your letter dated November 1, 2001, as supplemented by your letter dated December 3, 2001, on behalf of BellSouth Corporation ("BellSouth"), concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the possible affiliation of its separate segregated fund to the political action committee established by Cingular Wireless LLC ("Cingular").

BellSouth is the 40 percent owner of a joint venture limited liability company, Cingular, which is also 60 percent owned by SBC Communications, Inc. ("SBC"). All three business entities sponsor PACs. This opinion analyzes whether the separated segregated fund ("SSF") of BellSouth is affiliated with Cingular's PAC, and the consequences of any such affiliation.

Factual Background

During October 2000 and January 2001, SBC and BellSouth contributed substantially all of their wireless assets to Cingular, a Delaware limited liability company, including a number of wireless businesses conducted under various names. In return for the contribution of these assets, SBC and BellSouth (along with subsidiaries of each corporation) received approximately 60 percent and 40 percent interests in Cingular, respectively. A very small interest in Cingular is also owned by the Cingular Wireless Corporation (the "Managing Company"), a Delaware company which manages Cingular

and is owned equally by BellSouth and SBC.[1] Cingular files as a partnership with the Internal Revenue Service.

SBC is the connected organization of the SBC Communications Inc. Employee Federal Political Action Committee ("SBC PAC"), which filed its statement of organization with the Commission on April 11, 1979. BellSouth is the connected organization of BellSouth Corporation Employees' Federal Political Action Committee ("BellSouth PAC"), which filed its statement of organization on December 22, 1983. Cingular Wireless LLC Employee Political Action Committee ("Cingular PAC") filed its statement of organization on September 7, 2001.[2] On that statement, it listed SBC PAC, but not BellSouth PAC, as an affiliated committee.

You present information about Cingular's relationship with SBC and with BellSouth.[3] Such information pertains to factors set out in the Commission regulations for determining whether two or more connected organizations are related in such a way that their separate segregated funds ("SSFs") are affiliated for purposes of the Act. You ask whether the SSF of BellSouth, Bell South PAC**,** is affiliated with Cingular PAC. You maintain that SBC has a "majority interest" in Cingular, and that BellSouth PAC should not be considered as affiliated with Cingular PAC, given that BellSouth holds only a 40 percent interest in Cingular.

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), 110.3(a)(1)(ii). 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). 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 and limited liability companies. Advisory Opinions 2000-36, 1997-13, 1994-11, and 1992-17; *see also* Advisory Opinions 2001-07 and 1996-38.

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[1] Currently, the participating entities in Cingular are the Managing Company, SBC Alloy Holdings, BellSouth Cellular Corp., BellSouth Mobile Data, AB Cellular Holding, LLC, Wireless Telecommunications Investment Company, LLC, and RAM Communications Corporation .

[2] As indicated below in the legal analysis, although Cingular is not a corporation, Cingular PAC may function, and file with the Commission, as an SSF because Cingular is owned wholly by corporations and affiliated with at least one of them. *See* Advisory Opinions 1997-13, 1996-49, 1994-11, and 1992-17.

[3] Included in the request are relevant governing documents: the Cingular LLC Agreement; the Stockholders Agreement by and among SBC, BellSouth, and the Management Company ("SA"); the Restated Certificate of Incorporation of the Managing Company ("RCI"); and the Amended and Restated By-laws of the Managing Company ("By-laws").

According to Commission regulations, committees established by a single corporation and its subsidiaries are affiliated *per se*. 11 CFR 110.3(a)(2)(i). Where an entity is not an official or obvious subsidiary of another entity, 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).[4]

The relevant factors are: (A) whether a sponsoring organization owns a controlling interest in voting stock or securities of another sponsoring organization; (B) whether a sponsoring organization or committee has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, by-laws, contracts or other rules, or through formal or informal practices or procedures; (C) whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees of another sponsoring organization or committee; (E) whether a sponsoring organization or committee has common or overlapping officers or employees with another sponsoring organization or committee which indicates a formal or ongoing relationship between the organizations or committees; (F) whether a sponsoring organization or committee has any members, officers, or employees who were members, officers, or employees of another sponsoring organization or committee which indicates a formal or ongoing relationship or the creation of a successor entity; and (I) whether a sponsoring organization or committee had an active or significant role in the formation of another sponsoring organization or committee. 11 CFR 110.3(a)(3)(ii)(A), (B), (C), (E), (F), and (I). 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.

You discuss the effect of the ownership percentages in Cingular. Distributions by Cingular, as a limited liability company, are based on equity ownership. For example, SBC receives 60 percent of any distributed Cingular profits, and BellSouth receives the remaining 40 percent. Capital contributions, debt funding, and debt repayment are also based on the majority and minority equity stakes in Cingular held by SBC and BellSouth respectively.

The control of Cingular by SBC and BellSouth is apportioned differently, however. Although SBC owns 60 percent of the voting power in Cingular and BellSouth owns 40 percent, BellSouth and SBC formed the Managing Company to act as manager and to control the management and operation of Cingular, and the total voting power in

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[4] 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.

Cingular is not currently being exercised.[5] Cingular has no separate "board of directors" of its own. Under the Cingular LLC Agreement, the management of Cingular is "vested exclusively" in the Managing Company. Cingular LLC Agreement, §5.1. The executive officers of Cingular are, at all times, the executive officers of the Managing Company. Cingular LLC Agreement, §5.4(b). The Managing Company has no other employees.

BellSouth and SBC each own one share of super-voting Class B common stock in the Managing Company.[6] Through their Class B common shares, SBC and BellSouth each appoint two directors of the Managing Company's four-person Board of Directors.[7] The Managing Company's by-laws provide that the business and affairs of the Managing Company "shall be managed by or under the direction of the Board, except as may be otherwise provided by law or in the Certificate of Incorporation." By-laws, §2.1. Decisions of the board require a majority vote of the entire board. RCI, Article Fifth, clause (h).

Pursuant to the Certificate of Incorporation, the Managing Company's board of directors has a Strategic Review Committee ("SRC"), comprised of the four directors. See RCI, Article Fifth, Clause (j) (stating that the SRC shall consist of two Class B directors selected by each of SBC and BellSouth). Thus, the same four individuals currently constitute both the Managing Company's Board of Directors and its SRC. The SRC, by a two-thirds vote, must approve substantially all important decisions pertaining to the operations of the Managing Company and Cingular prior to submitting such decisions to the board of the Managing Company.[8] These are known as "Strategic Decisions," and the RCI lists 27 categories of such decisions, including approval of a business plan; appointment, removal, or material change in compensation of executive officers; capital calls; declaration of dividends; purchases of new technology; issuances of equity securities; changes to the certificate of incorporation, by-laws, or any ancillary agreements; tax and accounting policies; change in company or brand name; introduction of new products and services; change of the business form; changes in employee benefit or compensation plans or policies; transactions in excess of $50 million or otherwise material to the normal business of the LLC; engagement in businesses other than the normal business; mergers or other consolidations; disposition of substantially all of the assets; entry into non-competition and non-solicitation agreements; and change in regulatory policies or public advocacy positions in any manner that an ultimate parent (i.e., SBC or BellSouth) reasonably deems to be inconsistent with those supported by the ultimate parent. RCI, Article Fifth, Clause (j) and Schedule Fifth, Clause (j). Deadlocks

[5] See Cingular LLC Agreement, §6.1, which states: "Except as expressly set forth in this Agreement, no action by [Cingular] or Members shall require the vote or approval of any Member in its capacity as a Member."

[6] The Managing Company is authorized to have both Class A and Class B common stock, and the Managing Company's board of directors has the ability to issue preferred stock. Currently, it has issued only two shares of Class B common stock.

[7] The structure of the Board will change following any initial public offering by Cingular in order to comply with stock exchange listing rules. There is no indication at this time that such an offering is imminent.

[8] The Managing Company's RCI states that, unless prohibited by the Delaware General Corporation Law, the SRC shall have the full authority of the board of directors, and the SRC's decision on any "Strategic Decision" (discussed below) will be binding on the Managing Company. RCI, Article Fifth, clause (j).

on the SRC between the directors from SBC and BellSouth are resolved by the CEOs of SBC and BellSouth. SA, §4.4.

Included in the voting provisions of the stockholders agreement are requirements that SBC and BellSouth will vote their shares for (i) the election of Class B directors nominated by each company; (ii) the removal of a director as determined by the shareholder who nominated the director; and (iii) the approval of any matter submitted to the stockholders that has been previously approved by the SRC. SA, §3.1. The agreement also provides that the Managing Company will not take any actions that are subject to the approval of the SRC without prior approval from the SRC. SA, §3.2.[9]

Of the 16 Cingular executive officers, ten (including the CEO) were formerly employed by SBC, and four previously worked for BellSouth. Most of the 34,000 employees and officers of Cingular were formerly employed by SBC and BellSouth, approximately two-thirds and one-third respectively. Pursuant to employee leasing agreements no longer in effect as of January 1, 2002, SBC and BellSouth each transferred all of their respective wireless business employees to wholly-owned leasing company subsidiaries, which leased the employees to Cingular. These employees were subject to the hiring decisions of the leasing companies in consultation with Cingular. As of the beginning of 2002, all the wireless employees are employees of Cingular. Thus, there are no overlapping officers or employees between BellSouth (or SBC) and Cingular. There are no formal or informal agreements in place that any Cingular officer or employee will return to SBC or BellSouth after working at Cingular for a set period of time.

The management and operation of Cingular PAC, including the setting of its budget, are not decisions that require the approval of the Managing Company's SRC or board of directors. You state that Cingular's management handles the day-to-day aspects of Cingular's activities and Cingular's executive officers will manage and operate the PAC. You state that, "[e]ven if a question regarding the operation of the PAC were to come before the SRC or Board, BellSouth would not participate in the operation and management of Cingular PAC and would not direct or control the operation of Cingular PAC."

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[9] Article Fourth, clause (b)(i)(B)(2) of the RCI provides that each Class B share of the Managing Company is entitled to the voting power equivalent to the number of LLC units that the Class B holder has in Cingular; this would grant 60 percent voting power in the Managing Company to SBC and 40 percent to BellSouth on all matters submitted to a vote of the stockholders of the Managing Company. As indicated, the decision-making power with respect to substantially all important decisions, however, resides with the SRC. You note ten corporate decision areas in Delaware law where the stockholders would exercise voting power. These are amendment of the certificate of incorporation and bylaws, business combination with interested stockholders, election of directors, merger, authorization of equity, conversion of a domestic corporation to another entity, sale of substantially all of the assets, dissolution, and revocation of voluntary dissolution. With one exception (the remote possibility of revoking voluntary dissolution), these decisions require either the unanimous approval of the stockholders or are matters for the SRC (or both), and the SRC still holds the decision-making power for such decisions because the Stockholders' Agreement provides that each of the stockholders must vote their shares for the approval of any matter submitted to them that has been previously approved by the SRC. Thus, BellSouth's approval is required for such decisions.

Analysis and Conclusions

Affiliation of BellSouth PAC with Cingular PAC

In analyzing joint venture partnerships or LLCs and their relationship to their owners, the Commission has examined the degree and nature of ownership, control, and participation by partners or members in the joint venture. This has been done through the application of the relevant factors set forth in 11 CFR 110.3(a)(3)(ii) to the relationships presented, including whether one or more of the owner companies has the power to determine the decisions of the joint venture or to foreclose the making of certain decisions. A number of these joint ventures were owned 50-50 by the owning corporations. These situations also entailed equal control by each corporation over the governing body of the joint venture so that, although neither owner exercised greater control than the other, the assent of each was necessary for important operations of the venture (including the appointment of top management). *See* Advisory Opinions 1997-13 and 1992-17; *see also* Advisory Opinion 1996-49 (where a joint venture was owned 50-25-25 and the Commission concluded that the SSF of the 50 percent owner, but not the SSFs of the other two corporations, was affiliated with the PAC of the joint venture). Thus, each 50 percent owner had the ability, equal to the other (or to the combination of the other owners), to direct or participate in the governance of the joint venture; and to hire, appoint, demote or otherwise control the officers or decisionmaking employees of the joint venture. *See* 11 CFR 110.3(a)(3)(ii)(B), (C), and (E). In these situations, the fact that the venture was founded by the owner corporations was also pertinent to the owners' relationship to the venture. *See* 11 CFR 110.3(a)(3)(ii)(I). The Commission concluded that the SSFs of the 50 percent owner corporations were affiliated with the PAC of the joint venture (but also noted that the SSFs of the owners were not affiliated with each other by virtue of the joint venture). The Commission also interpreted the Act and regulations to conclude that the 50 percent owner corporations, as affiliates of the joint venture, could pay the administration and solicitation costs of the joint venture's PAC, and that the joint venture itself (even though not formed as a corporation) could pay such costs because it was owned entirely by corporations and affiliated with at least one of them.[10] The Commission then prescribed how the joint venture PAC should share limits, under 2 U.S.C. §441a(a), with the SSFs of the 50 percent owners. *See* Advisory Opinions 1997-13, 1992-17, and 1987-34.

In considering the *per se* affiliation rules and application of the factors to the situation you present, the Commission notes that SBC owns 60 percent of Cingular. Although majority ownership would normally indicate that the owned company is a subsidiary and affiliated *per se* with the owner, that fact does not preclude the affiliation of other companies with the joint venture. *See* Advisory Opinion 1985-27 (discussing the definition of subsidiary); *see also* 11 CFR 110.3(a)(2)(i). An examination of the factors

[10] With respect to LLCs, the issue of whether the joint venture could actually pay for administrative and solicitation costs, even though it is not itself a corporate entity, would only arise if it filed with the IRS as a partnership, and not as a corporation. *See* 11 CFR 110.1(g)(2) and (3); Advisory Opinion 2001-07. As indicated above, Cingular files as a partnership. In Advisory Opinion 1997-13, which was issued before the Commission promulgated rules treating LLCs as either partnerships or corporations in accordance with how they filed with the IRS, the Commission treated the joint venture LLC as a partnership.

in the context of the operations of Cingular indicates the compelling similarity of this situation to the 50-50 joint ventures.

Although Cingular is 60 percent owned by SBC, it is managed, pursuant to relevant governing documents, exclusively by the Managing Company. The business and affairs of the Managing Company are managed by or under the direction of the SRC and the board of directors which both consist of two persons selected by SBC and two persons selected by BellSouth, and which, pursuant to the RCI, both consist of the same four individuals. Under the SRC provisions, approval of representatives of each owner is needed for substantially all important decisions of the Managing Company and Cingular. These decisions include the appointment, removal, and material change in compensation of executive officers who are accountable to the board of directors and hence the SRC, approval of a business plan, and other decision categories enumerated above, which indicate the authority to direct the governance of Cingular and to hire, demote and otherwise control Cingular's decisionmakers in a comprehensive manner. This authority is exercised equally by both owner corporations; neither has more power than the other, and both companies must consent for Cingular to take action with respect to the listed decision areas. Moreover, under the stockholders agreement, each owner's representatives on the board (and hence the SRC) can be appointed and replaced only by the parent company they represent, and the other company must vote in favor of those decisions. *See* 11 CFR 110.3(a)(3)(ii)(B) and (C). As with other joint ventures reviewed by the Commission, both companies were founders of Cingular. Moreover, although substantial employee overlap between the owner corporations and Cingular no longer exists after January 1, 2002, the presence of the representatives of BellSouth on the board and the SRC still indicates an important overlap, comparable to the situations referred to in Advisory Opinions 1996-49 and 1992-17. *See* 11 CFR 110.3(a)(3)(ii)(I) and (E).

As indicated by factor (F), the presence of a substantial amount of one company's former officers or employees in another company may be significant when it indicates a formal or ongoing relationship or the creation of a successor entity. You note that only one-fourth of the executive officers of Cingular are former BellSouth employees, that the majority of executive officers, including the CEO, are former SBC personnel, and that approximately one-third of Cingular's employees are former BellSouth personnel while two-thirds are former SBC personnel. However, factor (F), used as a way of comparing the influence of the two owners, is somewhat reduced in significance here, particularly in comparison to the factors discussed above, because there are no formal or informal agreements in place whereby any Cingular officer or employee will return to SBC or BellSouth. The officers and employees are responsible to the Managing Company's Board and SRC, and thus they must answer to each owner equally.

You also state that Cingular's PAC will be controlled by Cingular's executive officers, that the approval of the SRC or the Board is not required for the management and operation of the PAC, and that, even if such a question were to come before those bodies, BellSouth would not participate in the management and operation of the PAC. In past joint venture situations, the requester asserted the independence of the joint venture's PAC from the owner companies or their PACs. *See* Advisory Opinions 1996-49 and

1992-17; *see also* Advisory Opinion 1991-13 (involving the SSFs of labor unions that jointly controlled another union with an SSF). In these cases, such contentions did not persuade the Commission to conclude that the PACs were not affiliated. The Commission based its affiliation conclusions on the relationships between the sponsoring organizations and the control and influence exerted by the owner entities on the joint venture. This is consistent with the U.S. Supreme Court's assertion in *Pipefitters Local Union No. 562 v. United States,* 407 U.S. 385 (1972), that an SSF must be separate from its connected organization "only in the sense that there must be a strict segregation of its monies from" general treasury funds. 407 U.S. at 414. The Court also stated that, in view of a sponsoring entity's ability to establish, administer, and solicit contributions to the SSF, "it is difficult to conceive how a valid political fund can be meaningfully 'separate' from [the sponsoring entity] in any way other than 'segregated'." 407 U.S. at 426.[11]

You argue that the situation presented is similar to that presented in Advisory Opinion 1984-36 which involved a joint venture partnership owned 60-40. In that opinion, the 40 percent owner was the managing partner and, as such, managed the day-to-day affairs of the partnership, had authority to bind the partnership, act in its name, and execute contracts on its behalf. Nevertheless, the Commission concluded that the parent of that managing partner was not affiliated with the joint venture partnership, and therefore could not solicit the partnership's executive and administrative personnel for contributions to its SSF. A significant basis for this conclusion, however, was the fact that the managing partner appointed only four of the nine members of the joint venture's board while the other partner appointed five. The managing partner reported to the board and could only take certain major actions with the consent of the board, thus significantly limiting that partner's authority. By contrast, BellSouth is not in an inferior position with respect to decisionmaking for Cingular.[12]

The foregoing facts and analysis indicate that the relationship of SBC and BellSouth includes a number of the affiliation factors set out in 11 CFR 110.3(a)(3)(ii) in a context that is substantially similar to the relationship discussed in previous advisory

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[11] *See also Bread Political Action Committee v. Federal Election Commission,* where the Court of Appeals for the Seventh Circuit, citing *Pipefitters*, stated that "the separate segregated funds are simply political arms of the parent organizations." 635 F.2d 621, 624, n.3 (7th Cir. 1980) (en banc), *rev'd on jurisdictional grounds*, 455 U.S. 577 (1982). Although Cingular is an LLC that elects IRS tax treatment as a partnership, partnership and LLC PACs may operate as SSFs, under the circumstances described above. *See* Advisory Opinions 1997-13, 1996-49, 1994-11, and 1992-17.

The Commission has considered the issue of management and operations of the PAC where the relationship of the sponsoring organization indicated non-affiliation. This occurred recently in a disaffiliation situation in order to illustrate the separation of the two organizations, and in a five-way joint venture situation where, although facts corresponding to affiliation factors were present in some respect, the control over the joint venture was too diffused to affiliate any one owner, and the low level of the relationship among the PACs was used as one of the other factors tending toward non-affiliation. *See* Advisory Opinions 2001-07 and 2000-36.

[12] The Commission also notes that Cingular's situation differs from the facts presented in Advisory Opinion 1994-11 where the Commission concluded that, with respect to a joint venture owned 60-40 by two corporations, the 60 percent owner was an affiliate but the 40 percent owner was not. In that situation, the 60 percent owner, in addition to its majority interest, was the general partner and held the "management and control of the joint venture."

opinions involving a 50-50 joint venture partnership or LLC where the Commission concluded there was affiliation. The Commission concludes therefore that both SBC PAC and BellSouth PAC are affiliated with Cingular PAC.

Consequences of Affiliation

Contribution Aggregation

Because Cingular PAC is affiliated with SBC PAC and BellSouth PAC, both of which are multicandidate committees, Cingular PAC qualifies as a multicandidate committee. *See* Advisory Opinions 1997-25, 1997-13, and 1993-23. Multicandidate committees are subject to the limits of 2 U.S.C. §441a(a)(2), e.g., $5,000 to a candidate per election. However, as indicated above, contributions by affiliated political committees are treated as contributions by one committee and cannot exceed the limits when aggregated with each other. 2 U.S.C. §441a(a)(5); 110.3(a)(1).

In advisory opinions addressing contributions by PACs of joint ventures owned and controlled on a 50-50 basis, the limit of the joint venture PAC was apportioned half to the limit shared with one corporation's SSF and half to the limit shared with another corporation's SSF. Advisory Opinions 1997-13, 1992-17, and 1987-34. This was based on an analogy to the dual attribution concepts of 11 CFR 110.1(e) (which also apply to members of certain LLCs); these concepts include the apportionment of each contribution on a *pro rata* basis to the partners according to their ownership shares, in the absence of a different agreement by the partners as to contribution apportionment. *See* 11 CFR 110.1(e)(1) and (2) and 110.1(g)(2).[13] By analogy, contributions by Cingular PAC would, in the absence of an agreement as discussed below, be apportioned half to the limit of SBC PAC and half to the limit of BellSouthPAC. Such apportioned contributions are only permitted to the extent the aggregate §441a(a) limits shared with SBC PAC and BellSouthPAC are not exceeded by virtue of Cingular PAC's contributions.

This variation on the usual manner for aggregating contributions by affiliated committees 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. Advisory Opinions 1997-13 and 1987-34, n.3. The contributions made by SBC PAC and BellSouth PAC will not be aggregated with each other for the purposes of either PAC's $5,000 limit. However, Cingular PAC's contributions will be aggregated with the contributions made by each of SBC PAC or

[13] Specifically 11 CFR 110.1(e) provides that a partnership may make contributions subject to the limits of 2 U.S.C. §441a(a)(1). However, such contributions must also be attributed to each partner either (1) in direct proportion to her share of the partnership profits, according to instructions which must be provided by the partnership to the recipient political committee; or (2) by agreement of the partners, as long as only the profits of the partners to whom the contribution is attributed are reduced (or losses increased) and the partner's profits are reduced (or losses increased) in the amount of the contribution attributed to each of them.

BellSouth PAC on a 50/50 basis for the purposes of the latter two PACs' $5,000 limits; that is, by attributing half of a Cingular PAC contribution to SBC PAC and half to BellSouth PAC. Thus, depending on actual contribution activity, Cingular PAC's contributions may be restricted to less than $5,000 (or even to $0) to assure that BellSouth PAC and SBC PAC will avoid exceeding their limits.

For example, if Cingular PAC made a $2,000 contribution to Federal candidate X, $1,000 would count toward the limit shared with SBC PAC and $1,000 would count toward the limit shared with BellSouth PAC. If SBC PAC subsequently made a $3,000 contribution to Federal candidate X for the same election, Cingular PAC could only contribute an additional $2,000 to X for that election, because $1,000 of that additional contribution would be attributed to SBC PAC, bringing the latter up to its $5,000 limit. Assuming Cingular PAC makes that additional $2,000 contribution and BellSouth PAC had not made any contributions to X at that point, BellSouthPAC could only contribute $3,000 because $2,000 of Cingular PAC's contributions will have already been attributed to BellSouthPAC.[14]

Consistent with 11 CFR 110.1(e)(2) and as stated in prior opinions, an alternative apportionment may be used in specific cases as long as SBC PAC, BellSouthPAC, and Cingular PAC agree and no excessive contributions result. *See* Advisory Opinions 1997-13, 1992-17, 1991-13, and 1987-34. In that event, Cingular PAC must provide written instructions to recipient political committees or candidates so those committees can monitor their acceptance of contributions subject to the shared limits of the three contributing committees. 2 U.S.C. §441a(f); 11 CFR 110.9(a). The written instructions must also be maintained as contribution records of Cingular PAC for three years after the contribution is reported. 11 CFR 104.14(b); *see also* 11 CFR 102.9(b)(1) and (c).

Statements of Organization

BellSouth PAC must amend its statement of organization to include Cingular PAC as an affiliated committee within 10 days of your receipt of this opinion. 2 U.S.C. §433(b)(2) and (c); 11 CFR 102.2(a)(1)(ii) and (2). Cingular PAC must also amend its statement of organization to include BellSouth PAC as an affiliated committee. Currently, Cingular PAC's statement of organization lists Cingular as its connected organization. Although the Commission has interpreted the Act and regulations to permit a partnership owned entirely by corporations and affiliated with one of them to pay for administrative and solicitation costs for its PAC, it has concluded that when such support is provided, the PAC must list the affiliated corporate owners as the connected organizations. *See* Advisory Opinions 1997-13, 1996-49, and 1992-17. Thus, Cingular PAC should list SBC and BellSouth as its connected organizations.

[14] The Commission notes that, under this scenario, a combined total of $10,000 would be contributed ($4,000 from Cingular PAC and $3,000 each from SBC PAC and BellSouth PAC) with no PAC exceeding the $5,000 limit. This illustrates that the three PACs can share two §441a limits, provided that no one PAC among them exceeds $5,000 in contributions per election to a candidate.

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)

David M. Mason
Chairman

Enclosures (AOs 2001-07, 2000-36, 1997-25, 1997-13, 1996-49, 1995-36, 1994-11, 1993-23, 1992-17, 1991-13, 1987-34, 1985-27, and 1984-36)