

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 01-38

September 28, 2001

RE: May PSC employees accept service from AT&T during testing period?

DECISION: No, unless a fair value is paid for the service.

This opinion is in response to your September 13, 2001, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 28, 2001, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. AT&T Communications, in conjunction with Insight Communications, Inc., is involved in testing a new broadband service to be offered in the Lexington, Kentucky area. This new service involves technically complex systems and AT&T anticipates initial problems that will require "customers" willing to deal with uncertain telecommunication services during this testing phase. Only after this initial testing period is complete, and problems encountered during the testing have been resolved, will the new service be offered to the general public. AT&T estimates that the service will be offered to the public near the end of this calendar year. Normally, those individuals who are test "customers" and receive free service for the testing period are employees of AT&T.

A Commissioner for the Public Service Commission ("PSC") has suggested to AT&T the possibility of using up to three PSC employee as "customers" during their testing process. It is possible that such employees could become material witnesses in a PSC proceeding concerning issues arising during the process. They would provide objectivity in any subsequent investigation. In order to ensure the integrity of its fact-finding in any such investigation, the PSC would establish a "Chinese wall" to ensure that employees taking part in the testing process would not discuss the testing with any Commissioner or staff member advising the PSC Commission. The employees would receive the service free of charge during the testing period. In order to avoid the appearance of impropriety, however, you propose that the employees could be assessed a charge by AT&T that would subsequently be reimbursed by the PSC. You also state that no employees involved in the regulation of telephone companies will participate as "customers."

ADVISORY OPINION 01-38

September 28, 2001

Page Two

You ask the Commission for an opinion as to whether the PSC may allow its employees to participate as “customers” in the testing of this new service. If not, you ask whether other executive branch employees not employed by the PSC may participate.

KRS 11A.045(1) provides:

(1) No public servant, his spouse, or dependent child knowingly shall accept any gifts or gratuities, including travel expenses, meals, alcoholic beverages, and honoraria, totaling a value greater than twenty-five dollars (\$25) in a single calendar year from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. Nothing contained in this subsection shall prohibit the commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety.

Based on the provisions above, the Commission believes that employees of the Public Service Commission are prohibited from accepting a free service from AT&T even during the testing phase of the service. Although the employees accepting the service would not be directly involved in the agency’s regulation of AT&T, a definite appearance of a conflict will exist if individuals employed by the agency regulating AT&T accept a free service from AT&T. However, if AT&T is paid a fair value for the service, then the service is not a gift and may be obtained by the employees. The Commission believes that the decision for the PSC to reimburse the employees is a management decision and should be based on whether such expenditure is an appropriate use of state funds.

Employees in other state agencies that do not regulate or do business directly with AT&T may accept the free service from AT&T for testing purposes.

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 01-38

September 28, 2001

Page Three

The Commission cautions the PSC not to suggest to regulated entities that employees of the PSC be used as such “customers” to receive free service during a testing phase. Additionally, employees of the PSC should have no involvement in contacting other state agencies or employees regarding the offering of this service.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia Stone, J.D.