

November 18, 1998

Ralph D. Cox, Voice Services Manager
Oregon Department of Administrative Services
Telecommunication Services
550 Airport Road SE
Salem, OR 97310

Dear Mr. Cox:

This letter is in response to your correspondence, dated October 29, 1998, concerning whether or not it is appropriate to use three members of the State of Oregon Voice Communications Network evaluation committee that have submitted certificates of conflict of interest in relation to the evaluation of vendor proposals for the statewide leased telecommunications network services.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 98S-036

STATED FACTS: The Department of Administrative Services, Information Resources Management Division (DAS IRMD) Network Communications Section, is engaged in a solicitation for the privatization of the State of Oregon Voice Communications Network.

The project is worth an estimated \$6 million per year to the successful responder. AT&T, GTE and US West have submitted proposals.

As part of the solicitation process, the DAS IRMD selected evaluation committee members with technology knowledge and expertise. Three of the evaluation committee members have submitted certificates that state they have a potential conflict of interest. The three members are former telephone company employees with retirement and stock plans that may entail ownership in one or more of the proposers to the solicitation.

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The three individuals have different roles in the process. They are:

Chris Bazant

Ms. Bazant is the network manager representing DAS, IRMD, Voice Communications. Ms. Bazant's responsibilities are to review all vendors proposals for technical accuracy and merit, develop questions to be pursued during vendors formal presentations and to provide technical consultation to financial and legal teams. Ms. Bazant will not vote on the final choice.

Ms. Bazant is a former employee of Pacific Northwest Bell, now US West, and AT&T. She holds small amounts of stock in several telecommunications firms, including US West and AT&T. Collectively, her stock is valued at more than \$1,000.

Pat Smith

Ms. Smith is a consultant representing Northwest Information Services. Ms. Smith's responsibilities are to review all vendors proposals for technical merit, develop questions to be pursued during vendors formal presentations and to provide technical consultation to financial and legal teams. Ms. Smith will not vote on the final choice.

Ms. Smith holds stock in several telecommunications firms. Her stock is valued at more than \$1,000.

Harry Green

Mr. Green is the president of Pacific NetCom, Inc., a consulting firm. Mr. Green's responsibilities are to review all vendors proposals for technical merit, develop questions to be pursued during vendors formal presentations and to provide technical consultation to financial and legal teams. Current plans are to allow Mr. Green to be one of seven individuals who will vote on the final choice.

Mr. Green holds stock, valued at more than \$1,000, in several telecommunications firms.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to the issues addressed herein:

ORS 244.020(1): Actual conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's

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relative or any business with which the person or a relative of the person is associated...

ORS 244.020(7): Potential conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated...

ORS 244.020(3): Business with which the person is associated means any business of which the person or the person's relative is a director, officer, owner or employee, or agent or any corporation in which the person or the person's relative owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year.

ORS 244.020(15): Public official means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services.

ORS 244.040: Code of ethics; prohibited actions; honoraria. The following actions are prohibited regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120.

(1)(a) No public official shall use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official's holding of the official position or office, other than official salary, honoraria, except as prohibited in paragraphs (b) and (c) of this subsection, reimbursement of expenses or an unsolicited award for professional achievement for the public official or the public official's relative, or for any business with which the public official or a relative of the public official is associated.

ORS 244.120: Methods of handling conflicts; generally; application to elected officials or members of boards. (1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:

(c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.

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Question: Would the participation of these three persons in the Department of Administrative Services, Information Resources Management Division's selection process for the privatization of the State of Oregon Voice Communications Network violate Oregon Government Standards and Practices laws?

Opinion: According to the stated facts, the participation of the two non-voting members would not give rise to violations of law. The participation of the voting member could give rise to violations.

A public official is considered associated with a business when that official or the official's relative owns or has owned stock worth \$1,000 or more in a business entity during the preceding calendar year. The stated facts indicate that all three members own stock valued at more than \$1,000 in telecommunications firms. The combined ownership of stock worth \$1,000 or more in companies doing business in a specific industry does not meet the definition of Business with which the person is associated as stated in ORS 244.020(3). If the value of the stock in any one business entity is \$1,000 or more, that public official, by definition, would be considered associated with that business.

The Oregon Standards and Practices laws require **disclosure** of conflicts of interest for the benefit of other voting members of the government body and the public at large. A public official is required by ORS 244.120 to declare a conflict of interest when an action or any decision or recommendation made in an official capacity would be or could be to the private pecuniary benefit or detriment of the person or person's relative or any business with which the person or a person's relative is associated.

ORS 244.120(1)(c) requires an appointed public official, such as a member of the selection committee, to notify the official's appointing authority in writing of any actual or potential conflict of interest. The appointing authority is then required to dispose of the matter giving rise to the conflict. The stated facts indicate the three committee members filed written certificates that declared conflicts of interest.

ORS 244.040(1)(a) prohibits a public official from using or attempting to use official position or office to obtain financial gain or avoidance of financial detriment for the official, the official's relative or a business with which the official or the official's relative is associated. This prohibition exists regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120.

The stated facts indicate that the three members will review the proposals of all vendors for technical merit and will develop questions to be pursued during vendors

formal presentations. These responsibilities do not appear to include making a decision or

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recommendation which would be to the pecuniary benefit or detriment of a business with which they are associated. Accordingly, it does not appear that conflicts of interest would arise. Likewise, it does not appear that reviewing the vendors proposals and developing the questions for the vendors formal presentations would constitute either an attempt to use or the use of official position for financial gain in violation of ORS 244.040(1)(a).

The appropriateness of Mr. Green s participation as one of seven individuals who will vote on the final choice is dependant upon the value of the stock that he owns in any one of the three companies that submitted a proposal for the State of Oregon Voice Communications Network. If the value of stock he owns in either AT&T, GTE or US West exceeds \$1,000 or more and that company was to become a final choice to be voted upon, Mr. Green would have an actual conflict of interest. He would then be required to declare an actual conflict of interest pursuant to ORS 244.120(1)(c) and refrain from taking part in any further official action on the matter.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TO THE FACTS STATED HEREIN. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 244.280. IT IS MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.

Do not hesitate to call or write again if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director

LPH:aip/cox.so