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Lisa J. Stevenson, Acting General Counsel
Office of the General Counsel
Federal Election Commission
1050 First Street NE
Washington, DC 20463

October 5, 2018

RE: Advisory Opinion Request 2018-13 (OsiaNetwork LLC)

Dear Ms. Stevenson,

We write to ask the FEC to deny the above-captioned request of OsiaNetwork LLC.[1] In brief, OsiaNetwork proposes that "volunteers" lend their computing power to cryptocurrency "mining" efforts, and that the cryptocurrency generated from these efforts be given to a political committee, without being treated as a contribution under the Federal Election Campaign Act. Under OsiaNetwork's theory, the donor has not "contributed" anything, but rather "volunteered."

This twists the "volunteer" exception beyond all recognition. To use the mining analogy, if individuals volunteer to mine precious metals or gems (e.g., diamonds) from the ground, and then contribute the resulting precious diamonds (or sell them for dollars, and then contribute the dollars) to a political campaign, that does not fall under the "volunteer" exception—it is a contribution. The point is not that the individual was not compensated for their mining work; the point is that they contributed money or its equivalent to the committee.

The "volunteer" exception is for volunteer services provided *to the campaign*, such as making phone calls, communicating with voters, and so forth—not "volunteering" to obtain economically valuable commodities, cash-equivalent resources, or currency, and then donate them to the campaign without being subject to any contribution limits.

OsiaNetwork conflates the distinction by claiming that "volunteering the processing power of an internet enabled device is a volunteer activity."[2] But the volunteering exception is for the volunteer's time, not for "volunteering" resources available to them. When an individual provides economically valuable resources to a committee without charge, this is not considered "volunteering"—it is an in-kind contribution.

[1] We request a brief extension under 11 C.F.R. § 112.3(b) as needed.

[2] Advisory Opinion Request, p. 12.

Similarly, the exception for uncompensated Internet activity does not apply to OsiaNetwork's proposal. As the list of examples in 11 C.F.R. § 100.94(b) illustrates, this exception was intended for an entirely different category of Internet activity, such as blogging, emailing, and designing web sites in support of candidates. It is not the case that *all* money-generating activity is exempt from *all* contribution limits simply because it involves computers or the Internet.

The danger of OsiaNetwork's proposal is clear. There is no limit on the extent of an individual's computing processing power. A wealthy donor might have access (including temporary, leased access) to vast amounts of computing power capable of generating millions of dollars' worth of cryptocurrency. This could result in contributions substantially exceeding the federal contribution limits at 52 U.S.C. § 30116. Allowing OsiaNetwork's request would create an enormous loophole by which wealthy donors could circumvent contribution limits and contribute large amounts of money directly to political committees, simply by doing it with a computer. [3]

Indeed, because OsiaNetwork's apparent business plan would result in the cryptocurrency donation not being attributed to particular users/donors, a single wealthy donor could simultaneously make a maximum cash contribution, and then use the services of OsiaNetwork and other similar companies relying on the same advisory opinion to repeatedly exceed the contribution limit. In this scenario, the committee would not even be able to determine that the same donor was making parallel contributions through OsiaNetwork and its competitors.

The FEC should reject the request entirely, because it is based on a business model that is fundamentally at odds with the basic principles of the Federal Election Campaign Act. In the alternative, at the very least, the FEC must condition any approval on requiring OsiaNetwork and similarly situated entities to: (1) track the portion of cryptocurrency attributable to each donor and report that amount separately to the political committee, so that the committee can ensure that donors are not making aggregate contributions in excess of applicable limits; (2) not itself permit any platform user to contribute an aggregate amount exceeding the applicable contribution limit under 52 U.S.C. § 30116, and (3) ensure that the platform user is not otherwise prohibited from contributing to political campaigns (e.g., is not a foreign national under 52 U.S.C. § 30121).

OsiaNetwork inadvertently concedes the necessity of such conditions by suggesting that it will use "'Best Practices' to screen for illegal contributions," citing AO 2012-09.[4] But this masks the true issue. AO 2012-09 (Points for Politics) involved a proposal by which a

[3] Consider, as another example, an individual who opens an Internet brokerage account with a small initial deposit, and then uses the Internet to invest it in stocks which then grow to be worth much more than the initial investment. Under OsiaNetwork's logic, the individual has simply "volunteered" time and Internet services, and could give the profits to a committee without being subject to contribution limits.

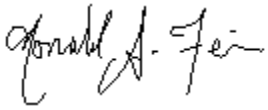
[4] Advisory Opinion Request, p. 13 & n. 19.

commercial vendor sought to facilitate individuals making *regulated contributions*. As the FEC noted, Points for Politics proposed to provide "contribution processing and transmittal services" to facilitate individuals' contribution of non-cash economic resources (loyalty program points), convert them to dollars (less a processing fee), and then forward them *as contributions*.[5] Points for Politics did not seek a determination that the individuals' contributions were not contributions, but only that its own involvement in processing did not constitute a contribution. Similar logic applied in AO 2007-04 (Atlatl), where the FEC advised that a credit card processing company could process individual credit card contributions and forward them to a political committee without it being considered an impermissible corporate contribution from the vendor itself, and AO 2004-19 (DollarVote), where the FEC advised that DollarVote could similarly collect and forward individual contributions under the rubric of a commercial fundraising firm rather than the contributions being attributed to DollarVote itself.

Points for Politics, Atlatl, and DollarVote all acknowledged that the underlying contributions *were in fact contributions*, and sought only to confirm that the commercial vendor's *own* role as an intermediary did not render it a contributor. Here, by contrast, OsiaNetwork seeks a determination that potentially limitless amounts of cryptocurrency can be given to political committees without *anyone* being deemed to have made a contribution.

If OsiaNetwork simply sought to act as a commercial vendor processing cryptocurrency contributions from donors and transferring them to recipient political committees, there would be far fewer problems with its proposal. But apparently its business plan rests on providing a complete exemption from all federal limits on campaign contributions, and this the FEC cannot permit.

Sincerely,



Ronald A. Fein
Legal Director, Free Speech For People

[5] AO 2012-09, p. 5.