U.S. DEPARTMENT OF LABOR
Pension and Welfare Benefit Programs
Washington, D.C. 20216

FEB 9 1977

OPINION 77-22 A

3(2)
4(a)
201(6)
301(a)(7)

Thomas G. Mancuso, Esquire
Robison, Belser, Brewer,
and Phelps
815-830 Bell Building
Montgomery, Alabama 36102

Dear Mr. Mancuso:

This is in reply to your letter concerning the Employee Retirement Income Security Act of 1974 (ERISA). We regret that the volume of correspondence has resulted in a delay in responding.

You state that you represent the Union Springs Telephone Company (the Company), a firm which has established a bonus program for employees. An employee who has reached the age of 21 years and who has three or more years of consecutive service as of June 30 of each year shall be eligible to participate and receive a bonus. The Company will make direct deposits into each eligible employee's Individual Retirement Account (IRA) established with First Alabama Bank of Montgomery, N.A., the employees do not have an option to receive the bonus in cash, and the maximum bonus to be paid to any individual employee is $1,500 or 15 per cent of wages, whichever is less. You question whether this program is an employee pension plan and, if so, whether the Company will be obligated to comply with any part of Title I of ERISA other than Part I.

The Department of Labor has adopted an advisory opinion procedure (ERISA Procedure 76-1, copy enclosed) which describes the general procedures for issuing information letters and advisory opinions under ERISA. Pursuant to ERISA Procedure 76-1, this letter is to have the effect of an advisory opinion.

Section 3(2) of ERISA defines the term "pension plan" to include any program established or maintained by an employer to the extent that it provides retirement income or results in a deferral of income to periods extending to the termination of covered employment or beyond. An IRA established by an employer would therefore, constitute a pension plan within the meaning of section 3(2) of ERISA. Section 4(a) of ERISA indicates that such plans are subject to the provisions of Title I of ERISA.

Section 2510.3-2 of regulations issued by the Department on August 15, 1975 (copy enclosed) clarifies the definition of "pension plan" by identifying certain specific programs which do not constitute pension plans. Section 2510.3-2(c), to which you refer, indicates that the term "pension plan" does not include bonus payments for work performed unless such payments are systematically deferred to the termination of covered employment or beyond or so as to provide retirement income to employees. The bonus program maintained by the Company requires that the bonus be deposited in an IRA. As a result, the payments provide retirement income and the plan does not qualify as a bonus program under section 2510.3-2(c).

Section 2510.3-2(d) indicates that in certain circumstances, an IRA will not be deemed a pension plan within the meaning of section 3(2) of ERISA. In order to qualify under this section, there must be no employer contributions, participation must be voluntary, the sole involvement of the employer must be the collection of contributions through payroll deductions, and the employer must receive no consideration other than reasonable compensation for services rendered in connection with payroll deductions. As the Company's participation in the plan is more pervasive than that permitted and as the condition to receipt of the bonus precludes employee participation from being considered voluntary, the program would not qualify under section 2510.3-2(d).

Therefore, the program maintained by the Company is a pension plan within the meaning of section 3(2) of ERISA and, pursuant to sections 4(a), is covered under Title I. Sections 201(6) and 30l(a)(7), however, exempt IRAs established pursuant to section 408 of the Internal Revenue Code of 1954 from coverage under Parts 2 and 3 of Title I which contain the participation,

vesting, accrual, and funding provisions. As such, the Company's plan will be subject to Parts 1, 4, and 5 of Title I of ERISA which contain the reporting and disclosure, fiduciary responsibility and enforcement provisions respectively. As indicated in section 402(a)(1), every employee benefit plan must be maintained pursuant to a written instrument.

Sincerely,

Fred W. Stuckwisch
Director
Office of Regulatory
Standards and Exceptions

Enclosures