



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

2002 DEC -6 A 11: 31

December 5, 2002

**MEMORANDUM**

**TO:** The Commissioners

**THROUGH:** James A. Pehrkon  
Staff Director

Robert J. Costa  
Deputy Staff Director

**FROM:** Joseph F. Stoltz  
Assistant Staff Director  
Audit Division

Thomas J. Nurthen  
Audit Manager

Jeff Spilizewski  
Lead Auditor

**SUBJECT:** Agenda Document No. 02-92

The Bush-Cheney 2000, Inc. and Bush-Cheney 2000 Compliance Committee, Inc. final audit report was circulated to the Commission on December 4, 2002. The following attachments were inadvertently omitted from the final audit report.

If you have any questions, please contact Jeff Spilizewski or Tom Nurthen at extension 1200.

Attachments:

Legal Analysis, dated December 2, 2002

Narrative portion of the response to the preliminary audit report

**AGENDA ITEM**

For Meeting of: 12-12-02

**SUBMITTED LATE**



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
AUDIT DIVISION

2002 DEC -2 A 9:42

December 2, 2002

**MEMORANDUM**

TO: Robert J. Costa  
Deputy Staff Director

THROUGH: James A. Pehrkon  
Staff Director

FROM: Lawrence H. Norton  
General Counsel

Gregory R. Baker  
Acting Associate General Counsel

Lorenzo Holloway  
Assistant General Counsel

Albert R. Veldhuyzen  
Attorney

Tracey L. Ligon  
Attorney

SUBJECT: Report of the Audit Division on Bush-Cheney 2000, Inc. and  
Bush-Cheney 2000 Compliance Committee, Inc. (LRA #593)

I. **Introduction**

The Office of General Counsel has reviewed the proposed Report of the Audit Division on Bush-Cheney 2000, Inc. (the "General Committee") and Bush-Cheney 2000 Compliance Committee, Inc. ("BCCC"), which was submitted to this Office on October 9, 2002.<sup>1</sup> This memorandum presents our comments on the proposed Report. We concur with any findings not specifically discussed in this memorandum. If you have any

<sup>1</sup> This Office recommends that the Commission consider the proposed Report in open session. See 11 C.F.R. § 9007.1(e)(1).

questions, please contact Albert Veldhuyzen or Tracey Ligon, the attorneys assigned to this audit.

The proposed Audit Report includes several findings and repayment recommendations that are intricately linked to each other. In order to place our comments in context, we need to unravel the complex linkages. The report recommends that the General Committee repay a total of \$1,555,062 to the United States Treasury. The repayment includes \$594,167 for contributions received from private sources, \$255,003 for income received on an investment and the use of the General Committee's asset, and \$664,776 for exceeding the expenditure limitation.<sup>2</sup> The contributions repayment is composed of funding from several state party committees ("Party Committees") and funding from the General Committee's air charter vendors. The amounts subject to the expenditure limitation also include the funding from the private sources, plus a reimbursement from the Bush-Cheney 2000 Recount Fund ("Recount Fund") for winding down expenses that should have been paid by the General Committee. Therefore, the private source funding is the basis of two independent bases for repayment: contribution repayment and the repayment for exceeding the expenditure limitation.

The General Committee and BCCC could have taken action to bring the General Committee within the expenditure limitation and eliminate this basis for repayment. The proposed Audit Report notes that there were sufficient expenses that were subject to the expenditure limitation that BCCC could have paid to bring the General Committee within the limitation. *See* 11 C.F.R. §§ 9003.3(a)(2)(i) and 9003.3(a)(2)(iii). However, this adjustment would require BCCC to reimburse the General Committee. *See* 11 C.F.R. § 9003.3(a)(2)(ii)(G). The Preliminary Audit Report ("PAR") recommended that BCCC reimburse the General Committee. However, both committees elected not to consummate the reimbursement.<sup>3</sup> Rather, the General Committee's response to the Preliminary Audit Report addresses certain expenses that the auditors had found subject to the expenditure limitation. The General Committee disputes the finding that it received a contribution from the Party Committees. The General Committee also contends that a reimbursement to the Recount Fund is not necessary because the Recount Fund did not incur winding down expenses on its behalf.<sup>4</sup> Our comments address the two issues that the General Committee disputes as well as the issue of whether it is

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<sup>2</sup> The General Committee and BCCC also owe \$41,116 to the United States Treasury for stale-dated checks. However, the committees already paid \$296,119. Therefore, the total outstanding balance owed to the Treasury is \$1,258,943 (\$1,555,062 - \$296,119).

<sup>3</sup> BCCC may still reimburse the General Committee prior to any repayment determination by the Commission pursuant to 11 C.F.R. § 9007.2. 11 C.F.R. § 9003.3(a)(2)(ii)(G).

<sup>4</sup> In its cover memorandum to the Preliminary Audit Report, the Audit Division explained that it was not seeking a repayment of these recount contributions pursuant to 26 U.S.C. § 9007(b)(3) because the "Recount Fund is within the Bush-Cheney organization." The Audit Division is treating these private contributions from the Recount Fund that defray qualified campaign expenses as misallocations.

appropriate to seek repayments for contributions from private sources and exceeding the expenditure limitation when the private contributions are also subject to the expenditure limitation.

## II. Funding from State Party Committees (Finding II.A.1.)

The Proposed Report notes that 15 Republican Party Committees and the General Committee paid \$1,994,631 for a phone bank that was a get-out-the-vote effort. Feather Hodges Larson & Synhorst conducted the phone bank the week prior to the general election. The callers requested that the individuals "get . . . families and friends . . . out . . . to vote for Governor George W. Bush and all of our great Republican team." The Party Committees paid 75% of the cost (\$1,495,973) while the General Committee paid 25% (\$498,658) of the cost of the solicitation effort. The Proposed Report notes that the General Committee "could not provide documentation to support its 75%/25% allocation." It is this Office's understanding that the Audit Division means the General Committee has not provided a legal basis for its allocation.<sup>5</sup>

The Audit staff analyzed the text of the phone bank script under 11 C.F.R. § 106.1(a)(1) and concluded that a 50% allocation was more appropriate. Section 106.1(a)(1) provides that expenditures, including in-kind contributions, made on behalf of more than one clearly identified federal candidate shall be attributed to each candidate according to the benefit reasonably expected to be derived. Although the Audit staff acknowledged that the only clearly identified candidate<sup>6</sup> was Governor George W. Bush, they treated the reference to "our great Republican team" as another clearly identified candidate. Thus, the Audit staff determined that an allocation of 50% for the General Committee was reasonable given that the script was equally devoted in space and time to the candidate and the entity.<sup>7</sup> The Audit Division's 50% allocation results in a \$498,658 contribution to the General Committee from the Party Committees.

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<sup>5</sup> Audit staff indicated that the General Committee provided documentation reflecting its payment of 25% of the costs of the phone bank.

<sup>6</sup> Under the Act and the Commission's regulations, a candidate is clearly identified if his or her name or likeness appears (*e.g.* nickname, photograph, drawing) or if his or her identity is apparent by unambiguous reference (*e.g.* "the President," "your Congressman," "the incumbent," "the Republican candidate for Senate in the State of Georgia"). 2 U.S.C. § 431(18); 11 C.F.R. §§ 106.1(d), 100.17.

<sup>7</sup> The Commission's regulations provide that the attribution for *publication and broadcast communications* shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates (*emphasis added*). 11 C.F.R. § 106.1(a)(1). Similarly, the costs for phone banks should be allocated "according to the number of questions or statements devoted to each candidate." Explanation and Justification for 11 C.F.R. § 106.1(a)(1), 55 *Fed. Reg.* 26061 (June 26, 1990).

In response to the PAR, the General Committee argues that the Audit staff is attempting to impose a new and incorrect standard for phone bank allocations without a formal rulemaking process. The General Committee further argues that it did not have notice that the proposed 50% allocation would be imposed. Finally, the General Committee argues that its 75%/25% allocation is appropriate under both 11 C.F.R. § 106.1(a)(1) and 11 C.F.R. § 106.5(e). Initially, the General Committee relied on a regulation meant to allocate the costs of exempt activities, 11 C.F.R. § 106.5(e), to justify its allocation. The General Committee noted that Governor Bush was mentioned in only two of the ten lines of the script.

The Commission's regulations do not provide for allocation of the type of expenditure at issue. Section 106.5(e) is not applicable because this regulation applies to party committees allocating the cost of exempt activities. The amount paid to the vendor for the phone bank was not for exempt activity.<sup>8</sup> Similarly, Section 106.1(a) does not provide for allocation of the cost of the phone bank since it only applies to expenditures made on behalf of *more than one* clearly identified federal candidate, and "our great Republican team" is not a clearly identified candidate. 11 C.F.R. §§ 106.1(a) and (d). Significantly, the Commission considered alternative approaches to the definition of "clearly identified candidate" to include broader concepts. Explanation and Justification for 11 C.F.R. § 100.17; 60 *Fed. Reg.* 35292, 35293-94 (July 6, 1995). The definition would have been expanded to include candidates of a clearly identified political party and a clearly identified group of candidates (e.g. "Vote Pro-Life"). *Id.* However, the Commission declined, stating it would be difficult to determine the candidates in such a group. *Id.* Thus, the Commission specifically considered and declined to broaden its allocation provisions to encompass expenditures that refer to both specific individuals and a description of a group of candidates.

This raises the question of whether the expenditures at issue should be allocated at all. In the past, the Commission has permitted allocations that were not provided for in the regulations with respect to expenditures involving multiple purposes.<sup>9</sup> In Advisory

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<sup>8</sup> Exempt activities include phone bank costs for get-out-the-vote efforts. 11 C.F.R. § 100.7(b)(17). However, paid professionals cannot be used to operate the phone bank. 11 C.F.R. § 100.7(b)(17)(v). In this case, paid professionals were used to operate the phone banks.

<sup>9</sup> In Matter Under Review ("MUR") 4131, the First General Counsel's Report addressed the failure of the National Abortion and Reproductive Rights Action League PAC to properly allocate the costs of a seven panel voter's guide as contributions to specific candidates. The publication/voter's guide endorsed specific candidates and also contained non-candidate specific language, including a solicitation for contributions to a state PAC. According to the First General Counsel's Report, "neither the language of the regulation itself nor the Commission's explanation and justification of the specific rule for publications describe how to allocate space in publications parts of which advocate the election of Federal or non-Federal candidates and parts of which do not refer to specific candidates or elections." The Office of General Counsel recommended that the cost of panels not endorsing Federal candidates be subtracted "from the total cost of the Voter's Guide prior to making the particular-candidate-to-all-candidates calculation mandated by Section 106.1(a)(1)." MUR 4131, 1<sup>st</sup> Gen. Counsel's Rep., at 22. Without discussion on the

Opinion ("AO") 1988-6, the Albert Gore, Jr. for President Committee requested advice on whether a portion of the costs of a broadcast advertisement featuring the candidate discussing trade policy along with a visual listing of the words "Vote - Volunteer - Contribute" could be considered as an exempt fundraising expense pursuant to 11 C.F.R. § 100.8(b)(21). The Commission answered the question in the affirmative and agreed that a 50% allocation of the costs was reasonable.<sup>10</sup>

In this matter, the phone bank communication appears to have had the multiple purpose of benefiting then-Governor Bush as well as "our great Republican team." This Office does not have information that suggests that the phone bank communication exclusively benefited then-Governor Bush. This Office is not aware of the identity or the number of candidates that were being referenced by the term "our great Republican team" in the phone bank script. However, it appears likely that this reference in the communication provided some benefit to the state party committees as such organizations are generally interested in promoting the election of all federal, state, and local candidates on the Republican ticket. Under the circumstances, this Office believes that it would be reasonable for the Commission to recognize the apparent multiple purposes for which the phone bank expenditures were made, and to accordingly permit allocation of the costs. Given that the script was equally devoted in space and time to then-Governor Bush and "our great Republican team," this Office believes it is reasonable to allocate the costs of the phone bank on a 50% basis. This allocation percentage is consistent with the Commission's treatment of other expenditures involving two purposes. *See* Advisory Opinion 1988-6.

Finally, the General Committee's argument that it did not have notice that it would be required to pay 50% of the cost of the phone bank has no merit since, as stated previously, the Commission's regulatory framework does not specifically provide for allocation of the type of expenditure at issue. Thus, the General Committee knew or should have known that it could be held responsible for paying the entire cost of the phone bank.

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specific issue of allocation, the Commission found reason to believe that the National Abortion and Reproductive Rights Action League PAC and the recipient federal committees violated the Act.

<sup>10</sup> The Commission wrote,  
Because these provisions recognize that expenditures within the purview of the Act may be made for multiple purposes, the Commission believes that expenditures for broadcast time to run an advertisement which includes a fundraising solicitation may be allocated on a 'reasonable basis' to the fundraising exclusion for presidential candidates who accept matching funds.

### **III. Amount Due to Recount Fund for Payroll and Overhead (Finding II.D)**

Immediately following the 2000 elections, the General Committee established the Recount Fund to receive private funds to defray the costs associated with the challenges to the vote count in Florida. However, at the same time the General Committee began its campaign to defend the vote count, it is reasonable to assume that the General Committee was also winding down its political campaign. Winding down expenses are recognized as qualified campaign expenses at 11 C.F.R. § 9004.4(a)(4), and as such the General Committee must document the expenses. However, the General Committee has not provided documentation of its winding down costs to the Audit Division despite specific evidence of winding down activity during the recount period.<sup>11</sup> In the absence of a winding down figure from the General Committee, the Audit Division derived a formula to estimate the winding down expenditures<sup>12</sup> and determined that the Recount Fund contributed \$288,437 for payroll and overhead expenditures that should have been paid by the General Committee.<sup>13</sup>

The General Committee objects to the Audit Division's finding that it accepted an in-kind contribution from the Recount Fund and it asserts that the Audit Division's formula is a "wild guess" and that the auditors are substituting their judgment in place of what the General Committee knows its staff was doing. However, the General Committee failed to provide its own calculation of winding down costs.

The regulations do not presume or require a minimum amount of winding down costs by a committee.<sup>14</sup> 11 C.F.R. § 9004.4(a)(4). However, in this instance, the Audit

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<sup>11</sup> The Preliminary Audit Report noted that the General Committee issued 474 checks during the recount period, totaling approximately \$2,400,000 to various vendors, for obligations incurred before the date of the general election. Although the \$2,400,000 is attributable as general election expenditures since paid prior to the end of the expenditure report period, the cost of the effort to issue checks after the election to pay vendors is an administrative cost associated with winding down the campaign. 11 C.F.R. § 9004.4(a)(4)(i).

<sup>12</sup> The Audit Division reviewed the General Committee's travel expense vouchers and found that 24% of the General Committee's salary was paid to individuals who were working in states where there was no issue of recounting the general election votes. The auditors conclude that the remaining 76% of the salary must have been related to the General Committee's recount efforts and they assigned this percentage of the salary to the General Committee's recount efforts accordingly. The auditors used the same 24%/76% allocation formula for the overhead costs.

<sup>13</sup> This issue is different from the prior issue on the proper allocation between the General Committee and the Party Committees. Here, the issue is a factual question of how much did the General Committee expend in winding down expenses. The prior discussion is a legal question of what standard determines the allocation of expenses between the General Committee and the Party Committees.

<sup>14</sup> The Commission repeatedly declined to adopt proposals to limit winding down expenses by time or amount. Explanation and Justification for 11 C.F.R. § 9034.4; 48 *Fed. Reg.* 5228 (Feb. 4, 1983), 60 *Fed. Reg.* 31866 (June 16, 1995) ("the final rules contain no new restrictions on the amount spent on

Division has shown that there was at least some winding down activity after the date of the election.<sup>15</sup> Since winding down costs are qualified campaign expenses, the General Committee must document the expenses. 11 C.F.R. § 9003.5(a). This documentation issue is complicated by the fact that the winding down activity occurred at the same time as the recount activity. However, this complicated scenario does not mean that the General Committee is entitled to ignore its documentation requirements. 11 C.F.R. § 9003.5(b). Given the dual activities in which it was engaged at this point, this Office believes that the General Committee should have been more vigilant in documenting its qualified campaign expenses. Therefore, in the absence of documentation, we agree with the Audit Division's approach in using a formula to estimate the General Committee's winding down expenses. *See John Glenn Presidential Committee v. FEC*, 822 F.2d 1097, 1103 (D.C. Cir. 1987) (Commission may estimate allocation of expenses to state expenditure limitations in the absence of documentation of the exact allocation).

#### **IV. Repayments for Contributions from Private Sources and Exceeding Expenditure Limitation**

In the Summary of Amounts Due to the United States Treasury of the proposed Report, the Audit Division lists \$594,167 as due to the Treasury for the General Committee's acceptance of in-kind contributions from the Party Committees (\$498,658) and from air charter vendors (\$95,509) (Finding II.A.). 26 U.S.C. § 9007(b)(3). However, these same amounts are also included as part of Finding II.D. (Amount in Excess of the Expenditure Limitation). 26 U.S.C. § 9007(b)(2). It is appropriate to include these amounts in both findings for accounting purposes since in-kind contributions are both contributions and expenditures. 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv)(A). However, when doing so triggers a double repayment to the United States Treasury, the Office of General Counsel believes that a repayment on both grounds is inappropriate. 26 U.S.C. § 9007(b)(5).

As a pre-condition for the receipt of federal funds for the general election, presidential candidates must agree not to accept contributions. 11 C.F.R. § 9003.2(a)(2). Such a receipt of contributions to defray qualified campaign expenses triggers a repayment of the amounts in question to the United States Treasury. 26 U.S.C. § 9007(b)(3). The statute provides that "no payment shall be required from the eligible candidates of a political party under this subsection to the extent that such payment, when added to other payments required from such candidates under this subsection, exceeds the amount of payments received by such candidates under section 9006." 26 U.S.C. § 9007(b)(5). Therefore, the basic principle in the law is that the government should not profit from repayments under the public financing system. While this case does not

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winding down or the time taken."). Furthermore, the Commission has not required committees to have a pre-set level of winding down expenses.

<sup>15</sup> See *supra* note 11.



represent a specific instance where the total repayments exceed the payments made to the candidate as a part of his entitlement to public funds, this is a case where the government would recoup two repayments from the same transaction. If the Commission seeks a repayment from the General Committee on both bases, the government may be placed in a better position than it was prior to the dispensing of the funds to the General Committee.<sup>16</sup>

General election public financing is an aggregate financing system, with the premise that 100% of the candidate's funding will flow from the government. If the candidate uses financing from any source other than the government, the government's share of the financing is reduced through a repayment to the Treasury in direct proportion to the amount provided from the other source. 26 U.S.C. § 9007(b)(3). Therefore, once the Commission recoups a repayment for private source financing, the Commission has achieved its goal of maintaining an aggregate financing system. There is no need to seek an additional repayment based on the fact that the General Committee received funding from a source other than the government. Thus, the Office of General Counsel recommends that the Audit Division revise the report to eliminate the repayment for exceeding the expenditure limitation to the extent that such repayment is based on private source funding.

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<sup>16</sup> The regulations do provide one instance where the government may be placed in a better situation than prior to the dispensing of public funds; namely when a candidate who invested public funds must repay the resulting derived income. 11 C.F.R. § 9007.2(b)(4). However, this is distinguishable from a situation of mixed public and private funds that results in a double repayment to the United States Treasury. In the primary context, a committee, exceeding both the overall expenditure limitation and one or more State expenditure limitations, is required to repay only the larger amount and not both amounts in excess of the limit. 11 C.F.R. § 9038.2(b)(2)(v). The Explanation and Justification for this rule state that "to avoid the possibility of double counting," the lesser amount of expenditures exceeding either the state-by-state limit or the overall limit are subsumed into the larger amount of expenditures exceeding either limit. Explanation and Justification for 11 C.F.R. § 9038.2(b)(2)(v), 56 *Fed. Reg.* 35908 (July 29, 1991). In both contexts discussed above, a double repayment would place the government in a better position than it was prior to the dispensing of public funds. This interpretation is consistent with the decision in *Kennedy For President Committee v. Federal Election Commission*. The Kennedy primary committee, using a mix of federal funds and private contributions, had exceeded campaign expenditure limits. Subsequently, the Commission ordered the Kennedy committee to repay the full amount of unqualified expenditures to the Treasury without regard to whether the monies originated from matching funds or private contributions. Reasoning that this could result "in the repayment of a greater sum of money than the candidate received in federal matching payments," the Court found that the Commission exceeded its statutory authority by ordering a full repayment. *Kennedy For President Committee v. Federal Election Commission*, 734 F.2d 1558, 1561-62 (D.C. Cir. 1984).

**PATTON BOGGS LLP**  
ATTORNEYS AT LAW

2550 M Street, NW  
Washington, DC 20037-1350  
202-457-6000

Facsimile 202-457-6315  
[www.pattonboggs.com](http://www.pattonboggs.com)

March 22, 2002

Benjamin Ginsberg  
(202) 457-6405  
[bginsberg@pattonboggs.com](mailto:bginsberg@pattonboggs.com)

Mr. Tom Nurthen  
Audit Division  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: Response to Bush-Cheney 2000, Inc.  
& Bush-Cheney 2000 Compliance Committee, Inc.  
Audit Exit Conference

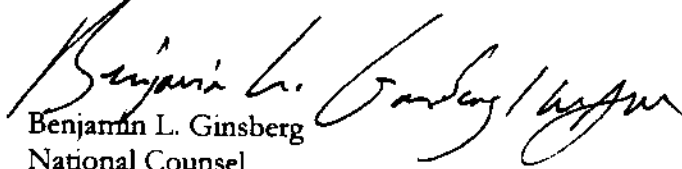
Dear Mr. Nurthen:

As counsel to Bush-Cheney 2000, Inc. and the Bush-Cheney 2000 Compliance Committee, Inc., we appreciate the opportunity to present additional documents and factual evidence in response to the Audit Division's Findings as presented in the March 8, 2002 Exit Conference. Also enclosed are stale-dated check repayments from Bush-Cheney 2000, Inc. for \$7,701.00 and from Bush-Cheney Compliance Committee, Inc. for \$33,415.00.

We appreciate the hard work you and your team put into this Audit and believe that the attached response will help clarify a number of the Findings.

Please do not hesitate to contact us if you have any questions.

Best regards,

  
Benjamin L. Ginsberg  
National Counsel  
Bush-Cheney 2000, Inc.

Attachments

**RESPONSE OF BUSH-CHENEY 2000, INC. TO FEDERAL ELECTION  
COMMISSION AUDIT EXIT CONFERENCE FINDINGS**

**Finding 1**

You question the allocation formula used for a get-out-the-vote telephone script. We have searched for any precedent in the Commission's regulations, Advisory Opinions or enforcement matters on the proper allocation of a telephone script. The only guidance appears to be 11 C.F.R. sections 106.1(a)(1) and 106.5(e) which both indicate that the allocation should be determined by the "space or time" devoted to all candidates. The most specific guidance is in 11 C.F.R. section 106.5(e), which states that an allocation should be "according to the proportion of time or space devoted in a communication. Under this method, the committee shall allocate expenses of a particular communication based on the ratio of the portion of the communication devoted to federal candidates or elections as compared to the entire communication."

A fair reading of the script in question shows that it describes the entire "Republican Team" and mentions Gov. Bush only twice in its roughly 20 seconds. Specifically, then-Governor Bush is mentioned in only two of the ten lines - or 20% of the script. Based on the actual time of the script and the number of mentions of Gov. Bush, the allocation formula of 25 percent to the campaign and 75 percent to the state party is squarely within the black letter law of the Commission's regulations.<sup>1</sup>

At the exit conference, we asked you for any written legal authority to support your "belief" that a 50/50 split was "more appropriate". You could provide none and we concur in your conclusion that there is no direct precedence, or even guidance, from the Commission. The Committee contends that a 25/75 split is accurate under the time-space allocation method described

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<sup>1</sup> Given that then-Governor Bush was mentioned in only 20% of the lines of the script and a smaller percentage of the actual "time" in the scripts, the 25% allocation assigned to the Bush-Cheney campaign was done out of an abundance of caution.

in the Regulations and that if the Audit Division and the Commission wish to clarify the meaning of the time-space allocation method, the proper forum is a rulemaking proceeding and not as part of an audit.

### **Finding 2**

The Committee agrees with the Audit Division's findings, with the exception of the payment to Portmans Equipment Company ("Portmans") for the use of its aircraft. Under 11 C.F.R. § 114.9(e), a campaign is eligible to pay the first class rate if a corporation owns or leases the aircraft. In the case of Portmans, the aircraft is owned by Aquila Air, LLC. Aquila Air, LLC is owned by Portmans and another unrelated company. Portmans paid Aquila Air, LLC for the use of the aircraft. The Committee paid Portmans the required first class rate for the flight and, therefore, satisfied section 114.9(e).

### **Finding 3**

a. The Committee agrees with the Audit Division's finding concerning interest income. A check for \$251,503 payable to the U.S. Treasury will be included with the Committee's response to the Audit Division's preliminary audit report, less any taxes that are paid with the Committee's federal and state tax returns filed following the close of its fiscal year on May 31, 2002.

b. The Committee agrees with the Audit Division's finding concerning payment from Red October to the Committee for the use of certain media film footage. A check in the amount of \$3,500 payable to the U.S. Treasury will be included with the Committee's response to the Audit Division's preliminary audit report, less any taxes that are paid with the Committee's federal and state tax returns filed following the close of its fiscal year on May 31, 2002.

### **Finding 4**

The Committee agrees with the Audit Staff finding of \$7,701 in stale-dated checks. Enclosed is a check in that amount payable to the U.S. Treasury. (See Attachment A.)

### Finding 5

The Audit Division questions whether the Committee failed to prepay corporations for the use of their aircraft on six occasions. The Committee notes that it made over 300 flights during the time period covered by the audit and that the Audit Division has questioned only six of those flights.

As detailed below, four of these prepayments were based, as they had to be, upon the preflight itineraries and manifests. However, after the initiation of these flights, the itineraries or manifests changed unexpectedly. These unanticipated changes necessitated the additional payments. The Committee made the required additional payments as soon as practical. Another flight was taken as part of the recount and so should not be included as part of this audit. Under the circumstances, the Committee believes it fully complied with the Act and applicable Commission regulations with respect to those flights.

Cintas Corporation. An internal audit by the Committee revealed an underpayment to the corporation of \$2,497 and check number 33278 was issued on November 13, 2000, to correct the imbalance. Post-takeoff changes to both the manifests and destinations of the flights were paid for by check numbers 32440 on October 19, 2000, and 32481 on October 20, 2000. In addition, check number 33803 was issued on December 30, 2000, to correct a miscalculation in check number 33278 which was \$20.50 short of the amount owed to the corporation.

Federal Express Corporation. The original payment for this flight was made on October 19, 2000, by check number 32450. Check number 32819 was issued on October 28, 2000, to compensate for changes made to the flight's destinations after the flight's commencement.

McRae Aviation Services, Inc. The flights were originally paid for on October 16, 2000, by check number 32347. Check number 32723 was issued on October 26, 2000, to compensate for changes made to the flight manifest after takeoff.

RDV Corporation. The flights were originally paid for by check numbers 32447 on October 19, 2000, and 32496 on October 20, 2000. Check number 33261 was issued on November 9, 2000, to compensate for changes made to the flight manifests after takeoff.

W.W. Tichenor & Company. This November 8, 2000 trip was taken during the recount and paid for by the Recount Committee. Committee check number 33452 (November 14, 2000) was repaid by the Recount Committee with check number 50034 on November 21, 2000. Since this flight constituted recount activity, it should not be a part of this audit.

MBNA Corporation. The flight on MBNA's aircraft is the only flight that was not paid for in advance of the flight. Following an internal audit by the Committee, check number 33685 was issued on December 17, 2000.

#### **Finding 6**

As of the date of this response, the Committee has located documentation supporting \$859,850.20 worth of payments to Garcia LKS. (See Attachment B.) The Committee is continuing to search for documentation supporting the remaining payments and will update this response accordingly.

#### **NOQCE**

As discussed in this Response, the Committee disputes the Audit staff's calculation of expenditures subject to the limit. The Committee concurs that under any scenario there were a significant number of expenditures that could have been paid by the Compliance Committee.

#### **Payment of Salary and Overhead**

Furthermore, the Committee disagrees with the basic assumptions in the Audit Staff's finding on the payment of salaries during the recount period. Given the unprecedented situation in which the campaign found itself in from November 8, 2000 on, the attentions of virtually all staff members were focused on the recount. (This was the first Presidential recount in 134 years and the

staff had just been through the intensity of a Presidential campaign. It should be beyond dispute that this post-election period was not like any other wind-down period. The Audit Division's analysis makes the opposite assumption.)

Given this unprecedented situation, the Committee opted to reflect the reality of where the staff's efforts were directed and paid salaries from the private funds raised for the recount. Therefore, the Committee staff tried to complete its wind down duties on an expedited time frame. The Audit Staff now wants the taxpayers to carry the costs of the campaign's staff members who were focused on the recount.

As the records made available to the Audit Division show, the Recount Committee did not assume the headquarter and state office staff payroll until November 11, 2000. The Committee (general election campaign) paid the headquarter and state office staff through November 10, 2000. (See Attachment C.)

Moreover, the Audit Staff is fundamentally incorrect that there were any wind-down activities in the state offices after November 11. The attached leases for the Committee's state offices demonstrate that the leases for all of the offices expired by November 15 and that most were shut down by November 10. (See Attachment D.) As a result there were no wind-down activities in the state offices and no support for state wind-down activities that had to be performed during the period in question beyond the time period during which salaries were paid by the Committee (general election campaign).

**RESPONSE OF BUSH-CHENEY 2000 COMPLIANCE COMMITTEE, INC. TO  
FEDERAL ELECTION COMMISSION AUDIT EXIT CONFERENCE FINDINGS**

**Finding 1**

Any suggestion that Automated Compliance Services ("ACS") did not follow its normal course of business with Bush-Cheney Compliance Committee, Inc. ("Compliance Committee") is contradicted by the facts. At the Audit Division's request, attached is a memorandum from ACS (Compliance Attachment 1) providing evidence that the alleged extension of credit was in the normal course of its business. ACS followed the procedures outlined in the attached memorandum in its dealings with the Compliance Committee. In addition, the Compliance Committee did not list ACS as a debt owed because the Compliance Committee and ACS were involved in extended negotiations during the time period in question -- it was unclear whether the Compliance Committee owed ACS any payments. Therefore, the Compliance Committee contends that the alleged extensions of credit from ACS were, in fact, part of the normal course of business.

**Finding 2**

The requested amended Schedules D have been filed electronically, except for ACS, because the extension of credit was in the normal course of business. See discussion infra Finding 1.

**Finding 3**

The Committee agrees with the Audit Staff. Attached is a check for \$33,415 made payable to the U.S. Treasury. (Compliance Attachment 2.)