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December 7, 2000

**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrson *JAP*  
Staff Director

FROM: Lawrence M. Noble *LN*  
General Counsel

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Associate General Counsel

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SUBJECT: Dole/Kemp '96, Inc. - Statement of Reasons  
(LRA #506)

**AGENDA ITEM**  
For Meeting of: 12-14-00

~~CONFIDENTIAL~~

The Office of General Counsel has prepared the attached revised draft Statement of Reasons for Dole/Kemp '96, Inc. ("the General Committee") based on the Commission's discussions at its October 19, 2000 open meeting.<sup>1</sup>

The revised draft supports repayment determinations that the General Committee repay \$46,510 for earned income and \$1,629,456.26 for expenditures incurred in excess of the expenditure limitation. Therefore, the proposed repayment determination totals \$1,675,966.26 (\$46,510 + \$1,629,456.26). The draft no longer seeks a repayment of

<sup>1</sup> This draft includes revised or new attachments, but not attachments that are unchanged from the previous draft. Please refer to the Agenda Document No. 00-82 to examine the unchanged attachments.

\$574,158 for non-qualified campaign expenses related to transfers from Dole for President, Inc. ("the Primary Committee"). The draft concludes that the General Committee's October 13, 2000 submission demonstrates that the non-qualified campaign expenses were cured by the Primary Committee's transfer to the General Committee.

Based on an Audit Division calculation, the amount in excess of the expenditure limitation is reduced from the originally proposed amount of \$2,003,839.99 to \$1,629,456.26. See Attachment 3D of the draft Statement of Reasons at 15-17. The revision of \$374,383.73 (\$2,003,839.99 - \$1,629,456.26) is based primarily on two Commission determinations from October 19, 2000: (1) unbilled lighting costs totaling \$245,749.02 were deducted from the expenditure limitation; and (2) revisions set forth in Agenda Document 00-82C, totaling \$124,273.07 were deducted from the expenditure limitation.<sup>2</sup> In addition, the legal analysis was changed in conformance to these Commission's determinations to conclude that lighting costs could be allocated between the press and the General Committee. Other revisions to the calculation, totaling \$4,361.64, are based on minor corrections addressed in Agenda Document No. 00-82-B (this Office's October 16, 2000 memorandum to the Commission). Similarly, some of the calculations set forth in Agenda Document No. 00-82-B were inserted into the draft in appropriate places.

Finally, in response to Commission discussions, the draft addresses more fully the General Committee's contention that the Dole/Kemp '96 Compliance Committee, Inc. ("the GELAC") may reimburse \$263,313 in travel costs.<sup>3</sup> The draft explains that the costs are not compliance related and that, in any event, could not be reimbursed by the GELAC because they were used to document the General Committee's 10% administrative fee that was assessed on press travel billings. See 11 C.F.R. § 9004.6(c)(ii)(B).

## RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

<sup>2</sup> Agenda Document No. 00-82-C was a memorandum dated October 19, 2000 from Commissioner Smith to the Commission. It proposed various changes to the analysis of specific invoices. The Audit Division found that the changes proposed in the Agenda Document No. 00-82-C result in a deduction of \$124,273.07 from the expenditure limitation. See Attachment 4D at to the draft Statement of Reasons at 5-6. The Audit Division table sets forth the standards applied to the invoices. *Id.* The Audit Division analysis was limited to the invoices addressed in Agenda Document No. 00-82-C. Attachments 14, 15, and 18 from Agenda Document No. 00-82 (the original draft Statement) have been revised to conform to Agenda Document No. 00-82-C.

<sup>3</sup> On October 26, 2000, the General Committee submitted a memorandum providing information on the GELAC reimbursement. The Office of General Counsel is addressing the issue of whether the additional submission should be considered by the Commission in a separate memorandum.

1. Determine that Senator Robert J. Dole, Secretary Jack Kemp, and Dole/Kemp '96, Inc. must repay \$46,510 within 30 days to the United States Treasury pursuant to 11 C.F.R. §§ 9004.5, 9007.2(b)(4) and 26 U.S.C. § 9007(b)(3);
2. Determine that Senator Robert J. Dole, Secretary Jack Kemp, and Dole/Kemp '96, Inc. must repay \$1,629,456.26 within 30 days to the United States Treasury pursuant to 26 U.S.C. § 9007(b)(2);
3. Approve the attached Statement of Reasons; and
4. Approve the appropriate letters.

**Attachment**

Draft Statement of Reasons (with additional and revised attachments )

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
Senator Robert J. Dole, )  
Secretary Jack Kemp, and )  
Dole/Kemp '96, Inc. ) LRA #506

**STATEMENT OF REASONS**

On \_\_\_\_\_, 2000, the Federal Election Commission (the "Commission") determined that Senator Robert J. Dole and Secretary Jack Kemp (the "candidates") and Dole/Kemp '96, Inc. (the "General Committee") must repay a total of \$1,675,966.26 to the United States Treasury. The Commission determines that the General Committee must repay: 1) \$46,510 for earned income from the use of public funds; and 2) \$1,629,456.26 for expenses incurred in excess of the expenditure limitation. The General Committee is ordered to repay these amounts to the United States Treasury within thirty (30) calendar days after service of this determination. See 11 C.F.R. § 9007.2(d)(2), see also 26 U.S.C. § 9007(b)(2). This Statement of Reasons sets forth the factual and legal basis for this Post Administrative Review Repayment Determination. See 11 C.F.R. § 9007.2(c)(3).

**I. INTRODUCTION**

The General Committee registered with the Commission on May 3, 1996 and served as the principal campaign committee for Senator Robert J. Dole, a candidate for the office of President of the United States, and Secretary Jack Kemp, a candidate for the

1 office of Vice President of the United States.<sup>1</sup> Attachment 1 at 2. On August 15, 1996,  
2 the candidates were certified to receive public funding for the general election. *Id.* The  
3 General Committee received \$61,820,000 from the United States Treasury for the purpose  
4 of seeking election to the offices of President and Vice President. *Id.*

5 The Commission conducted an audit of the General Committee's qualified  
6 campaign expenses pursuant to 26 U.S.C. § 9007(a). On June 3, 1999, the Commission  
7 approved the Audit Report for the General Committee and determined that the General  
8 Committee and the candidates must repay a total of \$3,168,097 to the United States  
9 Treasury. Attachment 1. Specifically, the Commission determined that the General  
10 Committee must repay: 1) \$574,158 for the use of public funds to defray non-qualified  
11 campaign expenses; 2) \$46,510 for earned income from the use of public funds; and  
12 3) \$2,547,429 for expenses incurred in excess of the expenditure limitation.

13 On August 31, 1999, the General Committee submitted legal and factual materials  
14 in an effort to demonstrate that no repayment or a lesser repayment is required to be paid  
15 to the United States Treasury. *See* 11 C.F.R. § 9007.2(c)(2)(i); Attachment 2.<sup>2</sup> The  
16 General Committee also requested an oral hearing. *See* 11 C.F.R. § 9007.2(c)(2)(ii). On  
17 October 21, 1999, the Commission granted the General Committee's request for an oral  
18 hearing. The hearing was held on December 15, 1999. Attachment 4.

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<sup>1</sup> The General Committee originally registered as Dole for President - General, Inc. and renamed itself Dole/Kemp '96, Inc. when it filed an amended Statement of Organization with the Commission on August 28, 1996. This name change coincided with Secretary Kemp's nomination for the office of Vice President of the United States from the Republican Party.

<sup>2</sup> On July 30, 1999, the Commission granted the General Committee a fifteen-day extension of time to respond to the Commission's repayment determination.

1 Following the oral hearing, the General Committee submitted additional documentation on  
2 December 22, 1999.<sup>3</sup> Attachment 5.

## 3 **II. AUDIT REPORT REPAYMENT DETERMINATION**

4 On June 3, 1999, the Commission determined that the General Committee must  
5 repay a total of \$3,168,097 to the United States Treasury. Attachment 1. The  
6 Commission ordered the General Committee to repay: 1) \$574,158 for the use of public  
7 funds to defray non-qualified campaign expenses; 2) \$46,510 for earned income from the  
8 use of public funds; and 3) \$2,547,429 for expenses incurred in excess of the expenditure  
9 limitation.

10 The repayment determination for non-qualified campaign expenses related to  
11 expenditures the General Committee incurred on behalf of Dole for President, Inc. ("the  
12 Primary Committee"). Attachment 1 at 34-46, 53. The determination on earned income  
13 was based on the General Committee's receipt of interest payments on bank notes and  
14 security deposits. Attachment 1 at 53-55.

15 In the Audit Report, the Commission concluded that the General Committee  
16 incurred expenditures in excess of the \$61,820,000 expenditure limitation for the 1996  
17 presidential general election. See 2 U.S.C. § 441a(b)(1)(A). After examining the General  
18 Committee's expenditures and making all necessary adjustments, the Commission  
19 determined that the General Committee incurred expenses totaling \$64,367,429.  
20 Attachment 1 at 50. Therefore, the Commission made a determination that the General  
21 Committee must repay \$2,547,429 (\$64,367,429 - \$61,820,000) for expenditures incurred

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<sup>3</sup> As a matter of policy, the Commission allows a committee five business days from the date of the oral hearing to submit additional documentation to the Commission.

1 in excess of the expenditure limitation. Certain adjustments to the expenditure limitation  
2 sought by the General Committee that would have lowered the amount by which the  
3 General Committee exceeded the expenditure limitation were disallowed in the Audit  
4 Report.

5 The first category of adjustments that were disallowed were reimbursements  
6 collected from the press and Secret Service in the amount of \$1,219,281 for air travel and  
7 related services. During the general election campaign, the General Committee operated  
8 three chartered aircraft to transport the candidates, campaign staff, the press, and Secret  
9 Service personnel. The costs incurred for campaign travel and ground services and  
10 facilities are qualified campaign expenses attributable to the expenditure limitation. *See*  
11 11 C.F.R. § 9004.6(a)(1) (1999). However, the General Committee is permitted to seek  
12 reimbursements from the press for amounts representing the pro rata share of their actual  
13 cost of travel and ground costs and offset these amounts against the expenditure  
14 limitation. *See* 11 C.F.R. § 9004.6(a)(2) (1999). Pursuant to this framework, the press  
15 and Secret Service were billed by the General Committee for the cost of the flights.  
16 Similarly, costs for ground services made available to the press such as catering and  
17 ground transportation were also charged to the press and Secret Service. Finally, portions  
18 of certain other ground costs, generally related to staging campaign events, such as  
19 lighting and sound equipment rentals, were charged to the press.

20 The Audit Report concluded that the General Committee received reimbursements  
21 from the press and Secret Service for certain travel services in excess of the pro rata share  
22 of the actual cost of the goods and services. Attachment 1 at 31. The Audit Report

1 concluded that the expenditures for these amounts are attributable to the General  
2 Committee's expenditure limitation. *Id.*<sup>4</sup>

3 The press reimbursements that were at issue fall into three types of expenses.  
4 First, the General Committee sought reimbursements for the actual air travel in amounts  
5 exceeding the press and Secret Service's pro rata share. Attachment 1 at 23. Secondly,  
6 the press was charged for various ground services such as food and ground transportation  
7 in amounts deemed to be excessive in the Audit Report. *Id.* at 23-29. Finally, the Audit  
8 Report disallowed in their entirety charges to the press for other ground items such as  
9 lighting. *Id.* at 25-29.

10 The second category of expenses attributed to the expenditure limitation that is at  
11 issue in this Statement of Reasons relates to reimbursements collected from the  
12 Dole/Kemp '96 Compliance Committee, Inc. ("GELAC"), totaling \$564,432 for shared  
13 office space that exceeded the amount representing GELAC's share of expenses. In the  
14 Audit Report, the Commission concluded that these expenditures incurred on behalf of the  
15 General Committee by the GELAC should be attributed to the General Committee's  
16 expenditure limitation. Generally, the General Committee and the GELAC may share  
17 offices and employees and, therefore, incur shared overhead expenses. *See* 11 C.F.R.  
18 § 9003.3(a)(2)(ii). However, the expenses must be shared in a manner conforming to  
19 Commission's regulations. *Id.* The Audit Report concluded that the GELAC had paid  
20 the General Committee an excessive portion of the shared costs. Attachment 1 at 48.

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<sup>4</sup> The Audit Report also concluded that the General Committee should refund the excessive reimbursements to the press and Secret Service. Attachment 1 at 31.



1           The final category of expenses attributable to the expenditure limitation that are at  
2 issue in this Statement of Reasons are accounts payable totaling \$830,496. These  
3 payables related to expenses incurred by the General Committee during the course of the  
4 campaign. While the General Committee never paid the expenses, they were included in  
5 the calculation of the expenditure limitation since they were incurred by the General  
6 Committee. See 26 U.S.C. § 9007(b)(2).

7 **III. GENERAL COMMITTEE'S RESPONSE TO AUDIT REPORT**  
8 **REPAYMENT DETERMINATION**

9  
10 **A. Repayment Notification**

11           At the oral hearing, the General Committee argued that it was not timely notified  
12 of the Commission's repayment determination. Attachment 4 at 7-8. The General  
13 Committee challenged the timeliness of notification of the Commission's repayment  
14 determination as follows:

15                   ... we preserved our procedural and due process defenses,  
16                   and we are preserving or making the argument herein that  
17                   the notices for repayment are not timely at this point  
18                   because we don't believe that the notices that had been  
19                   provided to us in the form of the exit conference  
20                   memorandum is sufficient to fulfill the three-year  
21                   requirement under the statute.

22  
23                   That was not ripe at the time of our response to the exit  
24                   conference memorandum because we responded in August.  
25                   The three-year period ran in November after that at that  
26                   time, but we did preserve that right for both the  
27                   committees....

28  
29 Attachment 4 at 8-9. The written response contains a "catchall" statement, wherein the  
30 General Committee claims that it "preserves all constitutional, procedural and  
31 jurisdictional claims that may be available to it." Attachment 2 at 1. However, the

1 General Committee's written response to the Audit Report does not assert that the  
2 Commission's notification was deficient for three-year notification purposes.

3 **B. Press Reimbursements**

4 The General Committee disputes the Commission findings on press  
5 reimbursements, generally asserting that it did not overbill the press and that the  
6 reimbursements that it collected from the press should be deducted from the expenditure  
7 limitation. With respect to the overall billing for aircraft service, the General Committee  
8 states that the calculation of the cost of air travel was difficult because of its billing  
9 arrangement with the air charter firm. Under the contract with the firm, the General  
10 Committee agreed to pay a flat fee for a certain amount of hours of flight time for the  
11 entire campaign. Attachment 2 at 2. This arrangement, according to the General  
12 Committee, did not provide for a set price for each individual flight. Consequently, the  
13 amounts billed to the press were estimated based on prorating the flat fee across several  
14 flights. Moreover, according to the General Committee, estimating flight costs became  
15 increasingly difficult due to changing air travel plans and due to a "last minute decision to  
16 do a whirl-wind tour of the United States during the last four days of the campaign." *Id.*

17 The General Committee also argues that \$267,861 in costs related to air travel  
18 were improperly disallowed during the audit. Attachment 2 at 3-4. These costs were  
19 incurred for aircraft electrical work, telephone installation, and fuel. According to the  
20 General Committee, these costs were properly charged to the press since they "were  
21 necessary for the working of the aircraft and thus necessary for the press ... ." *Id.* at 4.  
22 Thus, the General Committee concludes, "given the flat rate lease arrangement ... [the

1 General Committee] took all reasonable steps to properly bill the press its share of the  
2 aircraft cost.” *Id.* at 2.

3 The General Committee also challenges the Audit Report finding that ground costs  
4 associated with the press billings, totaling \$918,740, were not reimbursable.

5 Attachment 2 at 4. According to the General Committee, these costs include ground  
6 transportation, facilities, filing centers, catering, press risers, pipe and drape, telephones,  
7 and sound and lighting. *See id.* The General Committee asserts that these expenditures  
8 were incurred for items that “were [obtained] exclusively for use by the press.” *Id.* at 4.

9 The General Committee further argues that the costs of providing security for the press  
10 were erroneously disallowed in the Audit Report. Attachment 4 at 20-21. The General  
11 Committee avers that all of the disputed costs were sufficiently documented, and that it  
12 submitted detailed invoices and related memoranda for the billings. Two statements  
13 claiming that these were legitimate press-related charges were also provided in the  
14 response. Attachments 6 and 7.

15 The General Committee suggests that the Audit Report findings on press  
16 reimbursements constitute an improper “efficiency audit” and that it is not the role of the  
17 Commission to subjectively determine whether funds could have been better spent by  
18 “ordering less food or buses.” Attachment 2 at 6. According to the General Committee,  
19 disallowed expenditures were rejected “by second guessing, on a *post-hoc* and subjective  
20 basis, the campaign staff’s decisions, which were made during the intensity of conducting  
21 a campaign ...” *Id.* at 5-6.

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1 Finally, with respect to ground costs, the General Committee asserts that it did not  
2 bill the press for certain other ground costs incurred by the General Committee on behalf  
3 of the press. Attachment 2 at 8. The General Committee seeks to receive a credit against  
4 the expenditure limitation of \$571,690 in what it contends are unbilled, but legitimate,  
5 press expenses. According to the General Committee, this is the total of lighting costs  
6 (\$340,114); telephone expenses (\$45,263); and filing center and ground costs (\$186,313).  
7 Attachment 2 at 8.

### 8 C. GELAC Reimbursement

9 The General Committee also contests the finding on excessive reimbursements  
10 from the GELAC. Attachment 2 at 12. The General Committee claims that its allocation  
11 of expenses with the GELAC was reasonable since it was based on a periodic review of  
12 the square footage of office space and the payroll size of the respective entities to devise a  
13 formula to split expenses. *Id.* The Audit Report's formula for sharing expenses, the  
14 General Committee asserts amounts to a "*post hoc* reallocation [that] does not recognize  
15 the realities of a campaign ... [which] cannot reallocate ... overhead expenses every day."  
16 *Id.* At the oral hearing, the General Committee elaborated that it made "painstaking  
17 efforts" to allocate costs between the committee with "monthly adjustments" based on the  
18 "realities of the campaign" and that this "contemporaneous" allocation was more accurate  
19 than the Commission's "after-the-fact allocation methodology." Attachment 4 at 32-33.  
20 The General Committee acknowledged that it was "tricky" to allocate costs based on  
21 "moving targets," and did not represent that it had documentation to support the changing  
22 allocations. *Id.* at 33. However, it did point to the final payroll of the campaign as "the  
23 most representative one," and argued that the number of compliance staff on the final

1 payroll supported the campaign-long allocation. *Id.* at 34. In its post-oral hearing  
2 submission, the General Committee submitted a payroll that it stated supports the  
3 allocation. Attachment 5 at 29-46. Finally, at the oral hearing, the General Committee  
4 posited that the costs associated with “accounting/compliance [personnel] presence on the  
5 campaign airplanes” should also be included into compliance fund costs, and that these  
6 costs total \$263,313. Attachment 4 at 34.

#### 7 **D. Accounts Payable**

8 Finally, the General Committee contends that \$124,405 in accounts payable are  
9 not “actually owed.” Attachment 2 at 11. At the oral hearing, the General Committee  
10 explained that the debts were not settled or forgiven, but that they were originally  
11 “misstated.” Attachment 4 at 31. According to the General Committee, after receiving  
12 the Audit Report, it contacted the vendors to whom it owed debts and inquired whether  
13 the vendors’ records supported the Audit Report amount. *Id.* Based on this survey, the  
14 General Committee states that it identified \$124,000 in debts that are no longer owed.  
15 Additionally, in its written response, the General Committee maintains that accounts  
16 payable in general should not be counted towards the expenditure limitation since these  
17 amounts in fact have not been spent. Attachment 2 at 11.

### 18 **IV. POST-ADMINISTRATIVE REVIEW REPAYMENT DETERMINATION**

#### 19 **A. Repayment Notification**

20 The Commission concludes that the General Committee failed to raise the issue of  
21 repayment notification in a timely fashion. The Commission’s regulations provide that a  
22 candidate who disputes the repayment determinations shall submit in writing, within 60  
23 calendar days after service of the Commission’s notice, legal and factual materials

1 demonstrating that no repayment, or a lesser repayment, is required. *See* 11 C.F.R.  
2 § 9007.2(c)(2)(i). A candidate's failure to timely raise an issue in the written materials  
3 will be deemed a waiver of the candidate's right to raise the issue at any future stage of  
4 proceedings, including any petition for review filed under 26 U.S.C. § 9011(a). *Id.*

5         The General Committee did not raise the issue of any deficiencies in the  
6 Commission's repayment notification in its written response to the Commission's  
7 repayment determination. Attachment 2. Rather, the General Committee raised the issue  
8 for the first time at the oral hearing. Thus, the Commission concludes that the General  
9 Committee failed to raise the issue of repayment notification in a timely fashion.  
10 Therefore, the Commission concludes that the General Committee waived the right to  
11 present this challenge at the oral hearing pursuant to section 9007.2(c)(2)(1). *See*  
12 11 C.F.R. § 9007.2(c)(2)(i); *Robertson v. Federal Election Commission*, 45 F.3d 486,  
13 491 (D.C. Cir. 1995); *see also Explanation and Justification for § 9007.2(c)(2)(i)*, 60  
14 Fed. Reg. 31864 (June 16, 1995) (Candidate's failure to timely raise an issue in the written  
15 materials presented pursuant to paragraph (c)(2)(i) will be deemed a waiver of the  
16 candidate's right to raise the issue at any future stage of the proceedings).

17         The General Committee claims that it raised the repayment notification issue in its  
18 written response when it stated that it "preserves all constitutional, procedural and  
19 jurisdictional claims that may be available to it." Attachment 2 at 1. This catchall  
20 statement provides the Commission with no notice of the nature of the General  
21 Committee's challenges to the repayment determination as it brings within its ambit an  
22 endless array of possible arguments. Simply including such a broad and vague  
23 prescription in the written response cannot be construed as having raised or preserved any

1 particular issue inasmuch as this does not give the Commission timely notice of the nature  
2 of the challenges to its repayment determination as required by section 9007.2(c)(2)(i).

3 The Commission does not require a perfect pleading in a written response to a  
4 repayment determination. Nonetheless, the response must be sufficient to place the  
5 Commission on timely notice as to the nature of the committee's challenges. *See Fulani v.*  
6 *Federal Election Commission*, 147 F.3d 924, 927 n.5 (D.C. Cir. 1998) (court denied  
7 committee's petition for rehearing for not setting forth clear and convincing grounds why  
8 new questions of fact and law were not and could not have been presented during the  
9 earlier determination process, and the court noted that the committee may have been  
10 barred from raising the new theory at oral hearing pursuant to 11 C.F.R. § 9007.2(c)(2)(i)  
11 where the issue had been generally, but not specifically, raised by the committee in its  
12 written submissions).<sup>5</sup>

13 The General Committee's written response to the Audit Report contained some  
14 general complaints concerning the specificity of findings related to certain campaign event  
15 and aircraft costs which the Commission disallowed the General Committee to bill to the  
16 press. The General Committee's written response, however, does not assert that these  
17 alleged deficiencies amounted to a failure on the Commission's part to satisfy the  
18 repayment notification statute. The General Committee claimed that it was unable to  
19 interpret certain spreadsheets relating to the Dole aircraft that the Commission had

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<sup>5</sup> At the oral hearing, the General Committee stated that it did not believe that notice "in the form of the Exit Conference Memorandum" was sufficient, and that it responded to the Exit Conference Memorandum in August. The Commission presumes that the General Committee is referring to the Audit Report, not the Exit Conference Memorandum, with regard to its notification claim because it is the Audit Report, approved by the Commission on June 3, 1999, to which the General Committee responded in August 1999. It is also the Commission's issuance of the Audit Report, not the Exit Conference Memorandum, that constitutes notification for purposes of the 3-year notification requirement. *See* 11 C.F.R. § 9007.2(a)(2).

1 produced during the course of the audit.<sup>6</sup> Attachment 2 at 3. Additionally, it claimed that  
2 certain disallowed press reimbursements related to event costs were labeled “egregious”  
3 or “not allowed” and that this was an insufficient reason to reject the claimed  
4 reimbursements. *Id.* at 5.

5 In order to satisfy the repayment notification requirement, the notification must be  
6 more than a “progress report of a continuing audit.” *Simon v. Federal Election*  
7 *Commission*, 53 F.3d 356, 359 (D.C. Cir. 1995). The notification must be based on a  
8 legitimate repayment amount that relies on a thorough examination and audit. *Fulani v.*  
9 *Federal Election Commission*, 147 F.3d 924, 926-27 (D.C. Cir. 1998). The Audit  
10 Report was the result of a thorough examination of the Committee’s records.<sup>7</sup> The text  
11 of the Audit Report set forth the standards applied by the Commission. Attachment 1  
12 at 23. The Audit Report explains that sound and lighting equipment, spotlights, port-a-  
13 Johns, security personnel, barricades and other event-related equipment was not billable to  
14 the press since it related to campaign events, and therefore, should have been paid by the  
15 General Committee, not the press. Similarly, the Audit Report rejected certain catering  
16 and ground transportation invoices where the press was billed for amounts “in excess of

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<sup>6</sup> The Audit Report’s finding on press reimbursements addressed aircraft devoted to Senator Dole’s and Congressman Kemp’s travel itineraries separately. The General Committee agreed that the Kemp spreadsheets were adequate. Attachment 2 at 4.

<sup>7</sup> As noted, the General Committee’s criticisms of the Audit Report relate to the press reimbursements finding. However, much of the confusion may relate to the General Committee’s failure to maintain adequate records relating to their aircraft expenditures. The General Committee’s general ledgers for the aircraft were “replete with errors and correcting entries” and included “no check numbers making it very difficult to match up the various parts of a payment that may be charged to more than one expense category.” Attachment 3A at 2. Consequently, the General Committee’s “cost calculations” had “little apparent relationship to the amounts billed for travel on the various aircraft.” *Id.* at 3. Thus, the Commission had to develop an independent aircraft cost figure for each aircraft. *Id.* at 2.



1 their needs (for example, 20 traveling press billed for 40 dinners) or which may have been  
2 for an event.” *Id.* at 23. Thus, the General Committee was on notice as to the basis of the  
3 repayment determination.

#### 4 **B. Non-Qualified Campaign Expenses**

5 The Commission determined that the General Committee must repay \$574,158 for  
6 non-qualified campaign expenses incurred on behalf of Dole for President, Inc. (“the  
7 Primary Committee”). Attachment 1 at 34-46, 53. The Audit Report noted that if a  
8 reimbursement is received from the Primary Committee, then the General Committee’s  
9 expenses will no longer be considered non-qualified and no repayment for the  
10 expenditures will be required. Attachment 1 at 53.

11 In response to the Audit Report, the General Committee states that it “has  
12 demonstrated in prior submissions and still asserts that these expenditures are not non-  
13 qualified expenditures.” Attachment 2 at 9. Nevertheless, the General Committee states  
14 that rather than “reiterating” its earlier arguments, the Primary Committee “will be  
15 transferring” the amounts to the General Committee. Attachment 2 at 10. At the oral  
16 hearing, counsel to the General Committee asserted that the transfer did occur.  
17 Attachment 4 at 29.

18 On September 13, 2000, the General Committee submitted a letter to the  
19 Commission with a copy of a bank statement dated October 29, 1999 evidencing a transfer  
20 of \$574,000 from a Primary Committee account to a different account. Attachment 23.<sup>8</sup>

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<sup>8</sup> Commission regulations provide that materials challenging a repayment determination must be submitted within 60 days of a committee’s receipt of the determination. 11 C.F.R. § 9007.2(c)(2)(i). The Commission has a policy of allowing committees to submit additional documentation up to five days after the oral hearing. The Commission will generally not consider information submitted after these timeframes. However, because the documentation submitted by the General Committee serves to

1 Because the Committees' bank changed ownership since the time of the audit,  
2 Commission records could not confirm that the recipient account was one held by the  
3 General Committee. However, a certification from the assistant comptroller for the  
4 Committees attesting to the transfer and recently filed disclosure reports reporting such a  
5 transfer, indicates that the transfer was made to a General Committee account. *Id.* Based  
6 on the foregoing, the Commission concludes that the Primary Committee reimbursed the  
7 General Committee for non-qualified campaign expenses incurred on behalf of the Primary  
8 Committee. Therefore, no repayment is required to be paid by the General Committee  
9 with respect to those expenses.<sup>9</sup>

### 10 C. Earned Income

11 The General Committee did not submit a response with respect to the  
12 Commission's determination that the General Committee must repay \$46,510 for earned  
13 income from interest payments on bank notes and security deposits. Therefore, the  
14 Commission determines that this income is repayable pursuant to 11 C.F.R. §§ 9004.5,  
15 9007.2(b)(4) and 26 U.S.C. § 9007(b)(3).

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supplement issues that were timely raised in the General Committee's written response, and addressed throughout the administrative review process, the Commission determined that it would consider the untimely submitted memorandum from the General Committee.

<sup>9</sup> The Commission determined that the General Committee made \$574,158 in disbursements on behalf of the Primary Committee. Documentation submitted by the General Committee demonstrates a \$574,000 transfer from the Primary Committee to the General Committee, leaving a balance of \$158 in non-qualified campaign expenses made on behalf of the Primary Committee. The General Committee did not submit any evidence to show that the \$158 represented a qualified campaign expense, or that the remaining \$158 was reimbursed to the General Committee from the Primary Committee. However, because of the amount remaining at issue, the Commission determines that this payment is immaterial. Therefore, the remaining \$158 is not subject to repayment.

#### **D. Expenditures in Excess of Expenditure Limitation**

No candidate for the office of President of the United States who is eligible under 26 U.S.C. § 9003 to receive payments from the Secretary of the Treasury may make expenditures in excess of \$20,000,000 in the case of a campaign for election to such office as adjusted by inflation. *See* 2 U.S.C. § 441a(b)(1)(B) and (C). In 1996, the inflation-adjusted overall expenditure limitation was \$61,820,000. In order to be eligible to receive payments, the candidates of a major party in a presidential election shall certify to the Commission, under penalty of perjury, that such candidates and their authorized committees will not incur qualified campaign expenses in excess of the aggregate payments to which they will be entitled to receive. *See* 26 U.S.C. § 9003(b)(1).

If the Commission determines that the eligible candidates of a political party and their authorized committees incurred qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party were entitled, it shall notify such candidates of the amount of such excess and such candidates shall pay to the Secretary of the Treasury an amount equal to such amount. *See* 26 U.S.C. § 9007(b)(2).

##### **1. Summary of Expenditures Attributable to the Expenditure Limitation**

In calculating the expenditures incurred by the General Committee and allowing for all permissible deductions, the Commission determines that the General Committee has incurred expenses totaling \$63,449,456.26. Attachment 19. The amount is based on a calculation of the General Committee's operating expenditures which total \$62,224,769.20, and several adjustments. *Id.* at 1. The adjustments include the addition to the expenditure limitation calculation of \$487,033.10 in press and Secret Service reimbursements collected in excess of actual press and Secret Service travel costs,

1 \$564,432 in excess reimbursements collected from the GELAC, and \$830,496 in accounts  
2 payable. *Id.* at 2.

3 The amount attributable to the expenditure limitation exceeds the \$61,820,000  
4 expenditure limitation for publicly-financed candidates for the office of President and Vice  
5 President in the 1996 presidential election. 2 U.S.C. § 441a(b)(1)(A). Therefore, the  
6 Commission determines that Senator Dole, Secretary Kemp, and the General Committee  
7 must repay \$1,629,456.26 (\$63,449,456.26 - \$61,820,000) for expenses incurred in  
8 excess of expenditure limitation. 26 U.S.C. § 9007(b)(2).

## 9 2. Press Reimbursements

10 Commission regulations provide that “[e]xpenditures by an authorized committee  
11 for transportation, ground services or facilities (including air travel, ground transportation,  
12 housing, meals, telephone service and typewriters) made available to media personnel . . .  
13 will be considered qualified campaign expenses, and . . . will be subject to the overall  
14 expenditure limitations.” See 11 C.F.R. § 9004.6(a)(1) (1999).<sup>10</sup> Commission  
15 regulations further provide that “committees may seek reimbursement for these expenses,  
16 and may deduct reimbursements received from media representatives from the amount of  
17 expenditures subject to the overall expenditure limitations.” See 11 C.F.R. § 9004.6(a)(2)

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<sup>10</sup> The Commission recently revised section 9004.6 in its rulemaking process for the 2000 presidential elections. See *Explanation and Justification for 11 C.F.R. § 9004.6*, 64 Fed. Reg. 42581 (Aug. 5, 1999). The new regulation provides that “[c]ommittees may seek reimbursement from the media only for the billable items specified in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office.” 11 C.F.R. § 9004.6(a)(3) (2000). The White House Press Corps Travel Policies and Procedures in effect in 1996 provide that “[s]ite expenses such as lighting, press risers, pipe and drape” may not be billed to the press unless the item is specifically ordered by a news organization. See Attachment 9 at 10. This document further provides that if an item is specifically ordered by a news organization, only “the specific organization (e.g. TV pool) will be billed.” *Id.* The new regulation further requires the committee to submit an itemized bill to the media representative on whose behalf the committee incurred the cost within 60 days. See 11 C.F.R. § 9004.6(b)(3) (2000).

1 (1999). The amount of reimbursement is limited to 110% of the media representative's  
2 pro rata share of the services provided. *See* 11 C.F.R. § 9004.6(b)(1) (1999). This share  
3 is calculated by dividing the total actual cost of the transportation, ground services and  
4 facilities provided by the total number of individuals to whom they were made available.  
5 *See* 11 C.F.R. § 9004.6(b)(2) (1999). For purposes of this calculation, the total number of  
6 individuals includes committee staff, media personnel, Secret Service personnel, national  
7 security staff and any other individuals to whom the transportation, services and facilities  
8 are made available. *See id.* The purpose of this regulation is to eliminate the possibility  
9 that a committee could be subsidized by the media or other individuals by the committee  
10 charging higher than pro rata shares for the use of candidate-supplied transportation,  
11 services, or facilities. *See Explanation and Justification for* 11 C.F.R. § 9004.6, 45 Fed.  
12 Reg. 43376 (Sept. 5, 1980).

13 To receive a deduction from the expenditure limitation corresponding to the costs  
14 of transportation, ground services, and facilities made available to media personnel, a  
15 committee must show that it received a reimbursement from the press for those costs. *See*  
16 11 C.F.R. § 9004.6(a) (1999); *see also* 11 C.F.R. § 9003.5(a) (1999) (each candidate has  
17 the burden of proving that committee expenditures are qualified campaign expenses);  
18 11 C.F.R. § 9003.5(b) (1999) (indicating the documentation required to satisfy this  
19 burden). The committee's burden does not, however, consist solely of showing that it  
20 received a reimbursement from the press. The committee must also demonstrate that it  
21 made the transportation, ground services or facilities available to the press. *See* 11 C.F.R.  
22 § 9004.6(a) (1999). Because the regulations limit the amount of reimbursement that a  
23 committee may seek from the press to the individual traveling press member's pro rata

1 share of the actual costs that the committee incurred, the committee must document the  
2 total number of persons to whom the transportation, services or facilities were made  
3 available. *See* 11 C.F.R. § 9004.6(b) (1999).

4       Moreover, where the committee seeks a deduction from the expenditure limitation  
5 for a service or facility that is not expressly provided for in the regulation, the committee  
6 must demonstrate that the cost it incurred in providing the service or facility was a  
7 legitimate press expense. The examples of ground services or facilities provided in the  
8 regulation is not an exhaustive list. However, the types of services included -- air travel,  
9 housing, meals, telephone service, typewriters -- indicate that the regulation encompasses  
10 only services and facilities that involve transporting the press, or that enable or assist the  
11 press to perform its work obligations. *See* 11 C.F.R. § 9004.6(a) (1999). If a member of  
12 the press requested that a particular service or facility be provided, this would entitle the  
13 committee to a reimbursement for expenses incurred in providing that service. To receive  
14 a corresponding deduction from the expenditure limitation, the committee would need to  
15 show that the press requested that particular service or facility. *See id.* This demonstrates  
16 that the service or facility is press-related rather than campaign-related, thereby eliminating  
17 the possibility of subsidization by the media. *See Explanation and Justification for*  
18 *11 C.F.R. § 9004.6, 45 Fed. Reg. 43376 (Sept. 5, 1980)*

#### 19                   **a. Audit Report Summary**

20       In the Audit Report, the Commission determined that the General Committee had  
21 collected \$1,219,281 in excessive travel reimbursements from the press and Secret  
22 Service, and concluded that the General Committee could not deduct this amount from the  
23 expenditure limitation. Attachment 1 at 22-31. In light of the fact that reimbursements

1 will reduce the amount of expenditures that are subject to the expenditure limitation and  
2 the possibility that reimbursements can be used as a mechanism to subsidize a campaign,  
3 the Commission examines publicly-financed committees' receipts to ensure that the  
4 reimbursements from the press and Secret Service conform to the regulatory standards.  
5 *See* 11 C.F.R. § 9004.6(a)(2) (1999); *Explanation and Justification for* 11 C.F.R.  
6 § 9004.6, 45 Fed. Reg. 43376 (Sept. 5, 1980). Depending on the good or service, the  
7 Audit Report did not permit the General Committee to seek reimbursement from the press  
8 or Secret Service for one of four reasons: (1) the good or service is not covered under the  
9 regulations as transportation, ground services or facilities; (2) the amount of goods or  
10 services was provided in excessive amounts raising the issue of whether the items were  
11 made available to the press (*e.g.* catering and ground transportation); (3) the amounts  
12 charged were not documented at all or the documents presented did not establish that  
13 goods or services were made available to the press; (4) the amounts collected exceeded  
14 the General Committee's records state to be the reimbursement amount.<sup>11</sup>

15 In order to calculate press and Secret Service reimbursements, the Commission  
16 first aggregated the total amount of expenses incurred for travel and ground services made

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<sup>11</sup> Tables setting forth in greater detail the precise charges that were disallowed are attached. Attachment 3A at 31-32. The tables at Attachments 14 and 15 break down the event-related costs in greater detail. Catering and ground transportation costs disallowed in the Audit Report are broken down in greater detail in Attachments 21 and 22.

With respect to press filing center telephone costs, the Commission credited the General Committee in the Audit Report for unbilled costs that were considered reimbursable. The General Committee was forced to estimate telephone bills for the press filing centers at its various events at the time it billed the press because telephone vendors, unlike, for instance, catering or sound equipment vendors, could not invoice the General Committee immediately. The Commission determined that the amounts eventually billed by the vendors exceeded the estimated amounts billed to the press by the General Committee. Therefore, a corresponding credit was given to the General Committee's press billings.

1 available to the press and Secret Service, and then divided that amount by the number of  
2 persons utilizing the service.<sup>12</sup> See 11 C.F.R. § 9004.6(b)(1) (1999). The calculation,  
3 therefore, did not include those items that were not press expenses, or were not made  
4 available to the press, or that were not documented with invoices.

5 **b. Post-Administrative Review Summary**

6 Based on its administrative review, the Commission concludes that documented  
7 press travel costs total \$9,160,993.22. However, General Committee receipts indicate  
8 that \$9,648,026.32 was collected from the press for travel reimbursements. The resulting  
9 excessive amount is \$487,033.10 and it cannot be deducted from the expenditure  
10 limitation. Therefore, the amount of excessive press reimbursements noted in the Audit  
11 Report is reduced by \$732,247.90 (\$1,219,281 - \$487,033.10).

12 The \$487,033.10 in excessive reimbursements can be divided into two groups: (1)  
13 \$303,362.56 in costs, related to catering, ground transportation and events, were  
14 considered not to be press costs, and therefore, the General Committee was disallowed to  
15 seek reimbursement for them; and (2) \$183,670.54 was collected by the General  
16 Committee in excess amounts, not attributable to any specific invoice.

17 **c. Previously Unbilled Press Expenses**

18 As a threshold matter, the General Committee seeks to have a variety of costs  
19 which it has not billed to the press, but which it contends are legitimate press  
20 expenditures, be deducted from the expenditure limitation. In particular, the General

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<sup>12</sup> For individual trips, the Commission reviewed the invoices supporting the General Committee's charges. For instance, for an event in a certain city, the Commission would total up the costs of catering, ground transportation, and press filing center costs to determine the total ground services costs. A separate analysis was performed for the aircraft costs, using the fixed contract price for the aircraft and the variable operating charges.



1 Committee seeks a deduction of \$571,690 (\$340,111 (lighting costs) + \$45,263  
2 (telephone costs) + \$186,313 (miscellaneous filing center and grounds costs)) from the  
3 expenditure limitation. Commission regulations do not require a committee to seek  
4 reimbursements from media representatives for expenditures made for services or facilities  
5 made available to them. *See* 11 C.F.R. § 9004.6(a)(2) (1999). Where a committee  
6 receives reimbursements, however, reimbursements received may be deducted from the  
7 amount of expenditures subject to the overall expenditure limitation. *See id.*

8 The General Committee has not received reimbursements for the particular  
9 expenditures it now seeks to have deducted from the expenditure limitation. In the Audit  
10 Report, the Commission determined that the General Committee received excessive  
11 reimbursements from the press and Secret Service in the amount of \$1,219,281. The  
12 Commission concludes that because the General Committee received these excessive  
13 reimbursements from the press, the General Committee may deduct legitimate, but  
14 unbilled, expenditures from the excessive reimbursement figure. In effect, the Commission  
15 will allow the General Committee to substitute legitimate expenditures it could have billed  
16 to the press for the improper expenditures on which it received reimbursements. This will  
17 result in a corresponding reduction in the General Committee's repayment amount. The  
18 legitimacy of these unbilled expenses will be examined in the following sections of this  
19 Statement in the subparts devoted to the specific type of expense.

20 **d. Flight costs**

21 As part of its review, the Commission reviewed costs directly related to chartering  
22 and operating the aircraft that transported the General Committee personnel, the press,  
23 and the Secret Service. The General Committee contracted with two aircraft vendors to

1 lease three separate aircraft. The fixed cost of the three leases was \$4,491,560.  
2 Attachment 20. Additionally, the General Committee incurred variable costs related to  
3 operating the aircraft such as expenses for fuel and airport landing fees. These variable  
4 costs totaled \$1,834,424 over the course of the campaign. Combining the fixed costs of  
5 the lease and the variable operating costs renders the total cost of the flights, \$6,325,984  
6 (\$4,491,560 + \$1,834,424). Using this figure, the Commission divided the total cost of  
7 the flights by the amount of passengers to develop the pro rata cost. After performing this  
8 calculation, the Audit Report concluded that the costs for the leasing and operation of the  
9 aircraft were billed to the press at an amount in excess of the pro rata amount of the costs  
10 to each individual member of the press.<sup>13</sup>

11 The General Committee's response to the Audit Report does not challenge the  
12 calculations made by the Commission with respect to the contract costs of the aircraft.<sup>14</sup>  
13 Instead, the General Committee explains why it was difficult to determine the appropriate  
14 hourly rate to charge the press personnel using the airplanes. Specifically, the General  
15 Committee points to its flat fee payment arrangement with the aircraft charter company  
16 and changing travel plans of the campaign, both of which made estimating the amount to  
17 bill difficult.

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<sup>13</sup> Several costs associated with operating the aircraft were considered by the Commission and set forth in Attachment 3A at 15-27.

<sup>14</sup> The costs of the aircraft as calculated by the General Committee and as calculated by the Commission are materially the same. The Audit Report response states that \$267,861 in variable costs related to the aircraft were incorrectly disallowed. Many of these expenses are addressed at attachment 3A and have been credited to the General Committee. For instance, a fuel bill from Exxon corporation was credited since it has been established that the charge was, in fact, incurred by a campaign airplane. Additionally, various charges related to the installation of airphones were not considered billable in the Audit Report, but the General Committee submitted information indicating that the airphones were made available to the press. However, other charges are still disallowed, primarily because no documentation was submitted to support the charge. Attachment 3A at 15-27.

1           However, based on a review of General Committee billings, it can be surmised that  
2 a significant amount of the excess collections may be related to the method of billing for  
3 the three General Committee aircraft. General Committee billing records indicate that it  
4 may have overbilled the press for the actual cost of flights by approximately \$800,000.<sup>15</sup>  
5 The General Committee and the Commission have similar calculations for the actual  
6 contract and variable costs of the flights. However, the Committee did not use the actual  
7 hourly cost figure to prepare billings for the press and the Secret Service, and it has not  
8 provided an explanation for the derivation of its billing rates. The hourly rates used for  
9 billing varied significantly during the campaign, but generally exceeded the rate that should  
10 have been generated by the use of the actual costs. The amount actually collected from  
11 the press, when added to the accounts receivable reported by the Committee, exceeded the  
12 amount that Committee records show as the amount billed.

13           Notwithstanding the General Committee's aircraft billing arrangements, the  
14 regulation only permits the collection of reimbursements for the actual pro rata share. *See*  
15 11 C.F.R. § 9004.6(a)(1) (1999). Therefore, any excess collection would constitute an  
16 impermissible subsidization of the campaign by the media. *See Explanation and*  
17 *Justification for § 9004.6*, 45 Fed. Reg. 43372, 43376 (June 27, 1980). In this case, the  
18 General Committee's cost to transport its candidate and staff was subsidized with the  
19 excess amounts billed to the press.

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<sup>15</sup> This figure, however, has limited relevance since the press reimbursements determination focuses on amounts *collected* versus actual costs. *See* 11 C.F.R. § 9004.6(a)(2). As noted, the amounts billed by the Committee did not bear a relation to either the actual costs or the amounts collected. Moreover, the excess billings for flights were partially offset by approximately \$300,000 underbilled for phones.

1           **e. Catering and Ground Transportation**

2           In the Audit Report, the Commission determined that \$71,291.53 in catering costs  
3 provided on the ground were not reimbursable by the press and could not be deducted  
4 from the expenditure limitation. *See Attachment 1 at 23.* The catering costs at issue were  
5 incurred by the General Committee on 37 separate trips from August 22, 1996 to  
6 November 5, 1996. The Commission also determined that \$60,998.56 in ground  
7 transportation costs were not reimbursable by the press, and that the General Committee  
8 could not offset the amounts against the expenditure limitation. *See Attachment 1 at 23.*  
9 The ground transportation expenses at issue were incurred by the General Committee on  
10 35 separate trips from August 17, 1996 to November 5, 1996.

11           The Commission's regulations limit the amount of reimbursement that may be  
12 sought from the press for catering and ground transportation to the press' pro rata share  
13 of the actual costs of the food and transportation made available. *See 11 C.F.R.*  
14 *§ 9004.6(b) (1999).* However, the record contains instances in which catering costs that  
15 the General Committee charged to the press covered a greater number of meals than the  
16 number of press.<sup>16</sup> Similarly, with respect to ground transportation, the record reflects  
17 that transportation costs that the General Committee charged to the press covered more  
18 transportation than may have been necessary to transport the number of press traveling  
19 with the candidates. This raises questions as to whether catering and ground  
20 transportation was made available to individuals who were not included in the calculation

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<sup>16</sup> A review of invoices from the catering orders on the aircraft indicates that, in general, the catering costs on the aircraft covered one meal per the number of press aboard the aircraft. By contrast, for the meals served on the ground which are addressed in the Audit Report, the General Committee's catering costs covered from 1 ½ to three meals per the number of press.

1 of the pro rata share that the General Committee charged the press. Hence, the evidence  
2 raises the issue of whether the General Committee charged the press greater than its pro  
3 rata share and thereby received a subsidization.

4         The General Committee asserts that its decisions with respect to ground services  
5 “were made during the intensity of conducting a campaign,” and that “those decisions  
6 were made by highly experienced campaign staff in the exigency of the moment and in  
7 response to the contemporaneous requests and suggestions of the members of the press as  
8 to what they needed.” Attachment 2 at 5-6. In addition, the General Committee asserts  
9 that such decisions were “based on trip logistics, the anticipated number of traveling press,  
10 press feedback and other first-hand knowledge of the actual situation.” Attachment 2 at 7.  
11 The General Committee also indicated that it had previously received complaints from the  
12 press about inadequate services and inadequate quantities of food. *Id.* The General  
13 Committee explained that in making decisions regarding the amount of transportation  
14 needed, it took into account contingencies for press traveling to different locations at  
15 approximately the same time. Attachment 2 at 6; Attachment 4 at 17-18.

16         While the costs that the General Committee passed on to the press covered a  
17 greater amount of meals and ground transportation than may have been necessary to  
18 accommodate the number of press traveling with Senator Dole, the issue before the  
19 Commission is not whether the General Committee made too much food or too many  
20 buses available to the press. Rather, the factual determination for Commission resolution  
21 is whether the General Committee received reimbursement from the press in an amount  
22 that exceeded the press’ pro rata share of the meals and transportation provided. *See*  
23 11 C.F.R. § 9004.6(b) (1999). The record does not conclusively establish that the General

1 Committee made meals or transportation available to individuals who were not members  
2 of the traveling press and billed the press greater than its pro rata share of the costs.  
3 Indeed, the General Committee has provided plausible explanations for the disparity in the  
4 amount of food and transportation made available and the number of traveling press, such  
5 as having previously received complaints from the press about inadequate quantities of  
6 food and inadequate services. *See* discussion, *supra*. Thus, the Commission concludes  
7 that the disparity between the amount of food or transportation made available and the  
8 number of traveling press, alone, does not establish that the General Committee subsidized  
9 the campaign by overcharging the press. *See Explanation and Justification for § 9004.6,*  
10 *45 Fed. Reg. 43372, 43376 (June 27, 1980).*

11 However, the record contains evidence that some press reimbursements subsidized  
12 the general election campaign. Specifically, the General Committee was improperly  
13 reimbursed: \$4,554.17 and \$212.46 for the costs of campaign staff hotel rooms that were  
14 charged as press catering; \$2,610.59 for a double-billing to the press of telephone charges;  
15 \$2,963.20 for the costs of catering associated with meetings, and \$1,001.79 for other  
16 catering, for which no documentation exists that establishes that the catering was made  
17 available to the press; \$1,355.24 for buffet breakfasts billed to the traveling press who,  
18 according to itineraries, were not scheduled to arrive until 7:30 that evening; \$8,183.70 in  
19 catering costs, which represents the difference between the amount that the traveling press  
20 was charged and the amount that campaign staff was charged for identically described  
21 catering services (campaign staff was charged \$45 per person; the traveling press was  
22 charged \$135 per person); and \$1,802.66 for the costs of a "BBQ" for 500 attendees,

1 which the General Committee acknowledged to be a campaign event and billed to the  
2 press in error.

3         Additionally, the record contains evidence that the General Committee improperly  
4 received traveling press reimbursements for the following transportation costs: \$4,048.00,  
5 \$1,200.00, and \$1,597.87 for transportation costs for which no invoices establishing that  
6 the transportation was made available to the traveling press exist; \$623.91 for a duplicate  
7 payment for the cost of van services; \$1,838.20 for the cost of transportation provided to  
8 campaign staff and the local press; \$1,792 for the cost of transportation provided to  
9 campaign supporters (rally buses); \$2,762.00 for the cost of bus transportation that the  
10 bus vendor refunded to the General Committee as an overpayment; and \$1,959.75,  
11 \$892.00, and \$3,232.00 for transportation costs for destinations that did not appear on the  
12 itinerary of the traveling press. Based on these press reimbursements, the Commission  
13 concludes that \$46,892.49 (\$24,952.19 in catering costs and \$21,940.30 in ground  
14 transportation costs (includes a 10% administrative fee that the General Committee had  
15 charged the press)) were not reimbursable by the press and could not be offset against the  
16 General Committee's expenditure limitation.

17                                   *Improper Reimbursements for Catering*

\$4,554.17 - (leg 50631008) \$ 212.46 - (50671011)	For the cost of campaign staff hotel rooms charged as press catering
\$2,610.59 - (30660926)	For a double-billing to the press of telephone charges
\$2,963.20 - (31151028)	For the cost of catering associated with meetings
\$1,001.79 - (50400919)	For catering for which no documentation exists establishing that the catering was made available to the press
\$1,802.66 - (131008 Bus CA Day 2)	"BBQ" for 500 people, General Committee acknowledges billed to press in error

\$1,355.24 - (30620924)	For buffet breakfasts billed to the traveling press who, according to itineraries, were not scheduled to arrive until 7:30 that evening
\$8,183.70 - (131008 Bus NJ Day 2)	For the cost of catering, which represents the difference between the amount that the traveling press was charged and the amount that campaign staff was charged for identically described catering services

1 \$22,683.81 - Total  
 2 +10% (admin)  
 3 \$24,952.19  
 4

5 The difference between the amount disallowed in the Audit Report (\$71,291.53)  
 6 and the amount disallowed in this Statement (\$24,952.19) is \$46,339.34.

7  
 8 *Improper Reimbursements for Ground Transportation*  
 9

\$4,048.00 (leg 131021 Bus MI Day 1) \$1,200.00 (50601003) \$1,597.87 (50721014)	For transportation cost for which no invoices were provided establishing that the transportation was made available to the traveling press
\$ 623.91 (50671011)	For a duplicate payment for the cost of van services
\$1,838.20 (50971028) \$1792.00 (50671011)	For the cost of transportation provided to campaign staff and supporters and the local press
\$2,762.00 (30170825)	For the cost of bus transportation that the bus vendor refunded to the General Committee as an overpayment
\$1,959.75 (51201104) \$ 892.00 (30170825) \$3,232.00 (31151028)	For transportation cost for destinations that did not appear on the itinerary of the traveling press

10 \$19,945.73 - Total  
 11 + 10% (admin.)  
 12 \$21,940.30  
 13

14 The difference between the amount disallowed in the Audit Report (\$60,998.56)  
 15 and the amount disallowed in this Statement (\$21,940.30) is \$39,058.26.

16



1           **f. Event-related costs**

2           In the Audit Report, the Commission disallowed \$487,781 as not being  
3 reimbursable by the press. See Attachment 3A at 31-32 (this figure includes all amounts  
4 set forth in the tables, excluding catering and ground transportation costs). Nevertheless,  
5 the Commission recognized that some costs associated with an event may be billed to the  
6 press. These costs primarily related to press filing centers and press risers which fall into  
7 the category of facilities. See 11 C.F.R. § 9004.6(a)(1) (1999). Consequently, at the  
8 Audit Report stage, the Commission allowed the following costs to be billed to the press:  
9 (1) press risers and camera platforms; steps to the risers and platforms; related carpet,  
10 pipe or railings; drape, skirts, or bunting; and related labor, transportation and delivery; (2)  
11 multiboxes; power distribution to the platform; associated equipment (power strips,  
12 extension cords, quad boxes); and related labor, transportation and delivery; (3) pro rated  
13 press filing center costs including tents; chairs; tables; tablecloths; barricades (snow fences,  
14 bicycle racks); telephone service; power distribution to filing area; press cable bridges; and  
15 related labor, transportation and delivery. Attachment 1 at 22-29; Attachment 3A at 6.

16           However, other costs were not allowed as billable to the press because they were  
17 event-related campaign costs. The Audit Report disallowed lighting costs, sound costs,  
18 related generator and technician costs, and other expenses which did not appear to be  
19 related to the press, but rather, appeared to relate to the staging of campaign events.  
20 Attachment 1 at 22-29. In other circumstances, certain event costs were billed to the  
21 press twice or invoices supporting billings to the press were lost or lacked sufficient  
22 information to establish that the good or service was made available to the press. In those

1 instances, the General Committee could not sufficiently document the reimbursement  
2 request for it to be permitted.

3         The General Committee challenges the Commission's conclusion that these costs  
4 were not billable to the press. The General Committee argues that lighting invoices  
5 totaling \$340,114 and press filing center costs totaling \$186,313 for which it has not yet  
6 sought reimbursement from the media should be allowed as services made available to  
7 media personnel, and that this amount should be deducted from the amount of  
8 expenditures subject to the expenditure limitation.

9         The General Committee argues that pursuant to 11 C.F.R. § 9004.6(a)(2), its  
10 burden is to demonstrate that an expenditure for which it seeks reimbursement was made  
11 available to the press, and that once it satisfies this burden, it is entitled to receive the  
12 deduction from the expenditure limitation corresponding to that reimbursement.

13 Attachment 4 at 66, 110-111. The General Committee states that the services were  
14 provided because the press needed them. In support of this argument, the General  
15 Committee submitted the statement of Sandra Pack, who as the General Committee's  
16 Deputy Director of Treasury, was in charge of press billing. According to Ms. Pack,  
17 "[t]hese expenses [ground transportation, facilities, filing centers, catering, phones, press  
18 risers, pipe and drape, and sound and lighting] would not have been billed unless they  
19 were directly related to the press." Attachment 6. The General Committee also submitted  
20 the statement of Kim Fuller, who served as Director of Press Advance for the Primary and  
21 General Committees. Ms. Fuller states that she has done press advance work for nine  
22 years, including work at the White House during the Bush administration. According to  
23 Ms. Fuller:

1 I based my procedures at the campaign on operations at the White House, with  
2 adjustments made to account for the differences at the campaign. The amount and  
3 type of facilities and transportation which were provided were adjusted over time  
4 in response to daily interaction with the press corps and continuing efforts to meet  
5 logistical needs.

6  
7 Attachment 7.<sup>17</sup>

8 The General Committee further argues that it does not seek reimbursement for  
9 event-related services; only for services required by the press. Attachment 4 at 22, 61-62.

10 In addition, the General Committee asserts that the lighting, sound and generator systems  
11 costs it billed to the press is a "standard campaign operation." Attachment 4 at 109.

12 According to the General Committee, the invoices submitted by the vendors who supplied  
13 these services separated event-related costs from press-related costs. Attachment 4 at 64.

14 The General Committee stated that it does not have the technical information regarding  
15 how these costs were divided. Attachment 4 at 65. The General Committee maintains,

16 however, that the press was only charged for press-related costs because the press

17 invoices only had press charges on them. The press-related costs included costs for HMI

18 lighting,<sup>18</sup> which according to the campaign, was provided only because the press needed

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<sup>17</sup> Notwithstanding Ms. Fuller's claim that the General Committee's billing practices conformed with past campaign operations, other evidence points to the contrary. Contradicting Ms. Fuller's statement is testimony provided recently in a Commission rulemaking regarding what costs may be billed to the press. At the public hearing, representatives of 29 news organizations that cover presidential campaigns asserted that in the past, the press has not been billed for lighting and sound systems. Attachment 8 at 7. According to one of the witnesses, "[s]ince the FEC came into existence there have been approximately 100 major presidential candidates and with 98 of those 100 there has been absolutely no problem because they have followed basically what is set out in the White House guidelines." *Id.* The White House guideline in 1996 did not permit billings for sound or light equipment as a general rule, although press entities with special needs could request to be accommodated. Attachment 9.

<sup>18</sup> HMI (Hydrargyrum Medium Arc-length Iodide) lighting is type of lighting element that emits the same color temperature as sunlight. See R. Whitaker, *Lighting Instruments* (visited March 2, 2000), <<http://www.cybercollege.com/typ030.html>> and <[http://www.cybercollege.com/gloss\\_h.html](http://www.cybercollege.com/gloss_h.html)> (Attachment 13). For that reason, HMI lighting is often used for on-location television production to fill in the shadows caused by sunlight. See *id.* HMI lighting may also be preferable when shooting in a

1 it to ensure clear pictures of the candidate. The General Committee further explained that  
2 it divided lighting costs between itself and the press according to whether the event was  
3 held during the day or night, and whether it was held indoors or outdoors. Attachment 4  
4 at 61. Under this allocation, if it was an indoor event or an outdoor event at night, the  
5 costs were divided evenly between the campaign and the press. *Id.* If it was an outdoor  
6 event during the daytime, the General Committee charged the entire cost to the press. *Id.*  
7 Finally, the General Committee stated that there was constant interaction between the  
8 campaign and the press regarding what the press needed and what would be provided to  
9 them. Attachment 4 at 25, 65.

10 Costs for lighting, sound, generators, and for technicians to install and run the  
11 equipment are not specifically included in the Commission's regulations as examples of  
12 ground services a committee may make available to the press and for which a committee  
13 can receive reimbursement and a corresponding deduction from the expenditure limitation.  
14 *See* 11 C.F.R. § 9004.6(a)(1) (1999). However, a committee may demonstrate that  
15 services not specifically included as examples fall within the regulation if the committee is  
16 able to show that services made available to media personnel enabled them to perform  
17 their work obligations or assisted them in performing their work obligations and therefore  
18 were press-related rather than event-related costs. *See id.*

19 The Commission concludes that certain costs related to events may legitimately be  
20 billed to the press because they enable the press to perform their work obligations or assist  
21 the press in performing their work obligations. In particular, if a member of the press

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confined space because it generates less heat than the more commonly-used tungsten-halogen lamps. *See id.* However, HMI lighting requires a large and expensive power source. *See id.*

1 requested that a particular service or facility be provided, this would entitle the committee  
2 to a reimbursement for expenses incurred in providing that service.<sup>19</sup> Press filing centers  
3 are needed to provide the press with a place to set up their computers and write and file  
4 their stories. Consequently, room rental or tents, tables, linens, chairs, and fencing or  
5 barriers may legitimately be billed to the press.<sup>20</sup> Multiboxes are needed for the press to  
6 record what is being said into the microphones.<sup>21</sup> Consequently, the cost of multiboxes  
7 and related equipment, labor, delivery and taxes may legitimately be billed to the press.  
8 Electricity is necessary to power multiboxes and in the press filing centers. Consequently,  
9 the Commission concludes that generator costs which are related to supplying electrical  
10 power to multiboxes, risers, platforms, and press filing centers may legitimately be billed to  
11 the press.<sup>22</sup> Similarly, power distribution costs, technical labor and delivery costs may also  
12 legitimately be billed to the press. From time to time, a committee may determine that it  
13 needs to provide security to the press. Consequently, costs for security made available to  
14 the press may legitimately be billed to the press. Finally, press risers provide a place for

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<sup>19</sup> The White House Press Corps Travel Policies & Procedure Manual does not allow for the billing of "site expenses such as lighting, press risers, pipe and drape, unless the item is ordered by a news organization itself." Attachment 9 at 11.

<sup>20</sup> The General Committee billed the press for the cost of photocopiers in the press filing centers. In the Audit Report, the Commission disallowed the cost of copiers. The General Committee has not explained why the photocopiers were related to the needs of the press, therefore, the costs are not billable to the press.

<sup>21</sup> Multiboxes connect the microphone on the podium or stage to recording devices that permit the press to record events, eliminating the need for each individual press member to place her own microphone on the podium. Attachment 4 at 14.

<sup>22</sup> The Audit Report disallowed generator costs across the board. The Commission determines that the press, however, did have certain needs for power, for instance, to power their laptop computers. Therefore, the Commission will allow the press to pay generator costs. However, in several instances, it appears that the General Committee has billed the press for all generator costs related to an event. Since the General Committee and press both shared the need for generators, these costs should be allocated.

1 the press to stand during an event. Consequently, press risers, and the costs related to  
2 them for pipe and drape, labor, delivery, and taxes may legitimately be billed to the press.<sup>23</sup>

3 Although a variety of expenses may be billed to the press, the General Committee  
4 must submit invoices or other documentation demonstrating that the services were made  
5 available to the press. An analysis of submitted invoices demonstrates that the General  
6 Committee did not always meet this burden. The submitted invoices raise a series of  
7 problems that are addressed in the accompanying tables, addressing costs by travel leg.  
8 Attachments 14-16. While some invoices do not state that the expense is for the press,  
9 others state that the costs are press-related but contain no itemization or details on what  
10 was provided.

11 Additionally, in several cases, invoices do not demonstrate that services were  
12 provided exclusively to the press, but suggest that the press and the General Committee  
13 both made use of the services. This appears to be the case for items such as lighting,  
14 sound, and generators.<sup>24</sup> These items provide a benefit to the candidate insofar as sound,  
15 lighting, and power to operate the sound and lighting is needed to conduct a campaign  
16 event. The Commission also recognizes that these services enable the press to perform  
17 their work. Therefore these costs should be allocated evenly between the General  
18 Committee and the press since both the Committee benefited from a well-lit stage and an

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<sup>23</sup> The Commission's Audit Report allowed the General Committee to bill the press for press risers and related pipe and drape. However, pursuant to the White House Rules that will be in effect for the next presidential election cycle, these expenses will not be billable to the press unless a request is made for the items.

<sup>24</sup> In several cases, invoices indicate that certain sound or generator systems were devoted exclusively to press needs (in those cases the Commission attributed the entire cost of the system to the press).

1 audience that could hear the proceedings, and the press was able to do its job better under  
2 these conditions as well.

3 By allocating these expenses, the Commission declines to allow the General  
4 Committee to bill the press for the entire costs of lighting in those instances where the  
5 General Committee has sought to do so. Ms. Fuller asserts that she was in charge of press  
6 advance, and based her procedures on "operations at the White House, with adjustments  
7 made to account for differences at the campaign." However, this general statement  
8 similarly fails to explain how or why these particular services enabled media personnel to  
9 perform their work obligations. Moreover, the White House guidelines, in fact, do not  
10 permit billing of lighting equipment absent a request, in which case, the requester is billed  
11 for the equipment.<sup>25</sup> Attachment 9. The General Committee submitted no documentation  
12 on requests for lighting and sound or separate billing schedules for those media entities  
13 that may have requested the equipment.

14 The General Committee asserts that its vendors divided press-related costs from  
15 event-related costs according to a technical standard.<sup>26</sup> However, the General Committee  
16 does not know what standard was used by the vendors. Since the General Committee has  
17 failed to provide the Commission with this standard, the Commission is unable to evaluate

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<sup>25</sup> The White House guidelines do not specifically mention sound costs in any context. If they are considered site expenses, then they would also not be billable to the press absent a request.

<sup>26</sup> While it is not entirely clear, the General Committee appears to be advancing two contradictory standards in explaining how costs were divided between the campaign and the press. The General Committee asserts that the vendors divided the costs between the campaign and the press according to an unknown technical standard. At the same time, the General Committee asserts that it divided the costs between itself and the press depending upon the time of day the event was held, and whether the event was held indoors or outdoors. Thus, while asserting that it does not seek to bill the press for event-related costs, the General Committee has failed to explain how either method of allocating costs between itself and the press prevented this from occurring.

1 whether these services indeed enabled the press to perform its work obligations, or  
2 whether these services were event-related costs. Furthermore, the invoices submitted by  
3 the General Committee supporting its claim that it is entitled to a deduction from the  
4 expenditure limitation for previously unbilled expenses vary greatly in regard to whether  
5 the vendor itself divided costs between the campaign and the press, whether the campaign  
6 divided costs between itself and the press, and which costs the vendor and or campaign  
7 determined were press-related costs and which costs were event-related costs.  
8 Consequently, these invoices do not appear to support the General Committee's claim that  
9 the vendors, rather than the committee, divided costs between the campaign and the press  
10 according to a technical standard.

11 Consequently, sound and lighting costs for which the General Committee received  
12 reimbursement by the press have been allocated by the Commission, resulting in  
13 disallowed sound and lighting costs totaling \$109,897.78.<sup>27</sup> Similarly, the Commission has  
14 allocated the costs represented by the lighting invoices submitted by General Committee  
15 totaling \$340,114, for which it has not yet billed the press. The Commission has given the  
16 General Committee a credit totaling \$245,749.02 against the expenditure limitation for  
17 these unbilled lighting costs. Attachment 4D. Additional costs, relating to, *inter alia*,  
18 generators, security services, pipe and drape, and miscellaneous items such as  
19 microphones, flags, podiums, and stages are set forth in attached tables, and are  
20 considered on an invoice-by-invoice basis. Attachments 14-15. Additionally, the tables  
21 set forth information concerning disallowed billings which represent inadvertent double

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<sup>27</sup> Sound and lighting costs totaling \$205,880.88 were disallowed in the Audit Report. Attachment 3A at 32-33. Based on the responses submitted during administrative review, the total disallowed sound and lighting costs is adjusted to \$109,987.78. Attachments 14-18.



1 billings of the press. *Id.* Finally, the tables set forth instances where the General  
 2 Committee failed to produce invoices or other documentation to sufficiently support its  
 3 billings to the press. *Id.*

4 The totals represented in these attached tables result in disallowed billings totaling  
 5 \$144,344.37, as shown in this table:

Generators	\$13,959.50
Security	\$6,443.25
Press Risers	\$16,885.31
Technicians	\$1,292.50
Baggage	\$1,980.35
Misc. costs (flags, ropes, drapes)	\$62,391.65
Phones	\$6,352.50
No invoice	\$35,039.31
<b>TOTAL</b>	<b>\$144,344.37</b>

7  
 8 In response to the Exit Conference Memorandum, the General Committee further  
 9 sought an offset against the expenditure limitation of \$121,496 in "Additional Press  
 10 Costs," which it had not billed to the press, but maintained were legitimate press costs.  
 11 The Commission reviewed the General Committee's request, and in the Audit Report  
 12 allowed an additional \$11,879.60 to be deducted from the excessive press reimbursement  
 13 figure. In response to the Audit Report, the General Committee resubmitted this request.  
 14 Because the Commission had allowed \$11,879.60, the actual amount at issue is

1 \$109,617.74. In response to the General Committee's second request regarding these  
2 item, the Commission has thoroughly analyzed these invoices, and concludes that  
3 \$2,352.50 will be deducted from the excessive press reimbursement figure for the reasons  
4 set forth in the table. Attachment 16. The Commission disallows the remaining amount  
5 requested by the General Committee.<sup>28</sup>

#### 6 **g. Ground Telephone Expenses**

7 In response to the Audit Report, the General Committee argued that an additional  
8 \$45,263 should be allowed as expenditures for telephone services made available to media  
9 personnel, and should be deducted from the amount of expenditures subject to the  
10 expenditure limitation. This total consists of \$23,658.06 in telephone costs for the press  
11 traveling with Senator Dole, and \$21,604.60 in telephone costs for the press traveling with  
12 Secretary Kemp ( $\$23,658.06 + \$21,604.60 = \$45,263.66$ ).

13 For the reasons explained in the table, the \$45,263 was properly collected from the  
14 press, and no excess collections exist with respect to the ground telephones. First,  
15 \$22,061.50 was already credited to the General Committee prior to administrative review,  
16 and was not in dispute. Further, the Commission concludes that the balance of the  
17 amounts, \$23,201.50, will be allowed as billable to the press and deducted from the  
18 excessive press reimbursement total. See Attachment 17.

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<sup>28</sup> Included in this amount is the \$33,413.50 for photocopier rental and supplies the General Committee requested be deducted from the excessive press reimbursement total. As the Commission indicated, *supra*, the General Committee did not explain how photocopiers enabled the press to perform its work obligations at the press filing centers.

1                   **h.      Post-Nomination Expenses**

2                   The General Committee seeks to have \$24,911.85 ( $\$22,467.14 \times 1.1$  for  
3 administrative fee) in costs incurred on August 16, 1996 in San Diego, California for press  
4 costs offset against the expenditure limitation. In the Audit Report, the Commission  
5 disallowed \$22,647.14 in filing center and ground costs incurred in San Diego,  
6 California,<sup>29</sup> on August 16, 1996. This amount was disallowed because the Commission  
7 believed that these costs should have been billed by the Primary Committee rather than the  
8 General Committee. Commission regulations provide that travel from the convention city  
9 following the nomination is a primary, rather than general election expense. *See* 11 C.F.R.  
10 § 9034.4(e)(7). However, costs incurred the day after the nomination are general election  
11 expenses. *See id.* Costs at issue were incurred the day after the nomination, but before  
12 Senator Dole left San Diego. Consequently, the Commission concludes that \$24,911.85  
13 ( $\$22,647.14 \times 1.1 = \$24,911.85$ ) in filing center and ground costs incurred the day after the  
14 nomination were general election expenses, and has deducted them from the excessive  
15 press reimbursement amount. 11 C.F.R. § 9004.6(a) (1999).

16                  The General Committee seeks to have \$30,292.10 in filing center and ground costs  
17 incurred the same day in Denver, Colorado be allowed as a deduction from the  
18 expenditure limitation. In the Audit Report, the Commission allowed \$12,421.53 of this  
19 amount. Of the remaining amount, \$17,870.57 ( $\$30,292.10 - \$12,421.53 = \$17,870.57$ )  
20 \$9,817.01 represents catering and banquet room costs, and \$8,053.56 represents lighting,  
21 sound and generator costs. The documentation the General Committee submitted to the  
22 Commission fails to indicate the number of people to whom the catering was provided.

1 Despite this lack of documentation, the Commission concludes that this expenditure was  
2 for catering made available to media personnel, and has deducted this amount from the  
3 excessive press reimbursement figure. *See* 11 C.F.R. § 9004.6(a) (1999). However, for  
4 the reasons set forth in the table, the Commission concludes that \$4,465.98 of the lighting  
5 and related sound and generator costs may not be billed to the press. *See* Attachment 18.

### 6 **3. Reimbursement from GELAC**

7 Expenses can be paid from a compliance fund if they are for the costs of legal and  
8 accounting compliance or associated payroll, overhead and computer services. *See*  
9 11 C.F.R. § 9003.3(a)(2)(i). Generally, a compliance fund may reimburse up to 10% of  
10 the overhead and payroll costs and 50% of computer services costs to a general election  
11 committee. *See* 11 C.F.R. § 9003.3(a)(2)(ii)(A) & (D). However, if a higher  
12 reimbursement percentage is sought, the candidate must be able to document the  
13 alternative allocation. *See* 11 C.F.R. § 9003.3(a)(2)(ii)(C). The Commission's Financial  
14 Control and Compliance Manual for Presidential Primary Candidates Receiving Public  
15 Financing ("Compliance Manual") sets forth potential alternative allocations.  
16 *See* Financial Control and Compliance Manual for Presidential Primary Candidates  
17 Receiving Public Financing, 1996, p. 31-32 (the Compliance Manual for General Election  
18 Candidates does not contain a specific discussion on allocation methods, but instead,  
19 incorporates the Primary Election Manual by reference). The Compliance Manual  
20 suggests that committees can base an alternative allocation on the relative amount of

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<sup>29</sup> The 1996 Republican National Convention was held in San Diego, California. Senator Robert J. Dole received the Republican nomination on August 15, 1996.

1 office square footage used by compliance staff, the relative payroll dollars for the  
2 compliance staff, or by any other reasonable method. *Id.*

3 The General Committee established the GELAC for certain compliance-related  
4 expenses. The Audit Report concluded that the GELAC had reimbursed the General  
5 Committee for its share of overhead and payroll expenses in an amount exceeding the  
6 prescribed 10% limitation. The Audit Report noted that the Commission could not  
7 determine what alternative allocation method, if any, was used by the General Committee  
8 to allocate compliance costs with the GELAC. Consequently, the Commission utilized an  
9 allocation based on the relative payroll dollars of the GELAC staff, and the percentages  
10 set forth in the Compliance Manual, since this allocation method could be calculated based  
11 on the available information.<sup>30</sup> The total amount in excessive reimbursements was  
12 determined to be \$564,432. The Commission determined that the General Committee  
13 must pay the GELAC the excess amount and attributed this amount to the General  
14 Committee's expenditure limitation. *See* 11 C.F.R. § 100.8(g)(1).

15 In response to the Audit Report, the General Committee challenged the  
16 Commission's allocation and argued that its own allocation was acceptable. The General  
17 Committee submitted materials that it asserted supported its alternative allocation.<sup>31</sup>  
18 However, the materials submitted consisted of a list of names of individuals who were on

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<sup>30</sup> This calculation permitted the General Committee to obtain a larger reimbursement from the GELAC than the 10% rule permitted. No other allocation method was feasible because of the limited records maintained by the General Committee related to this calculation.

<sup>31</sup> The written response did not explain or justify the General Committee's allocation. At the oral hearing, General Committee representatives addressed the issue and promised informational materials on its allocation in a supplemental response. Attachment 4 at 31-34. The General Committee representatives suggested at the oral hearing that its allocation was based on the amount of compliance staff on the overall payroll. *Id.* at 32-33. However, the supplemental materials do not explain the allocation.

1 the overall General Committee and GELAC payroll at one undefined point during the  
2 campaign. This payroll was not dated and does not match up to the final General  
3 Committee payroll obtained by the Commission during audit fieldwork. Attachment 3B  
4 at 6; attachment 5. Because the payroll size changed over the course of the campaign, this  
5 material does not produce accurate information upon which to base an allocation. Even if  
6 the Commission were to use this one payroll the General Committee submitted, it cannot  
7 determine what payroll the General Committee submitted since the submitted information  
8 is inconsistent with payroll ledgers obtained during the Commission's audit. Attachment  
9 3B at 6.<sup>32</sup>

10 The General Committee also claims that air travel costs totaling \$263,313 for  
11 personnel traveling with the candidates for the purpose of maintaining flight manifests and  
12 handling traveling press billings should be included as part of the costs of compliance.  
13 However, these activities appear to be "accounting functions [that] generally must be  
14 performed irrespective" of the FECA and therefore cannot be attributed completely to the  
15 GELAC. Compliance Manual at 30-31; Attachment 3B at 4.

16 Additionally, if the \$263,313, or a portion thereof, were considered a GELAC  
17 expense, this would not permit the amount to be used to support the General Committee's  
18 10% administrative fee assessed to the press for travel costs. 11 C.F.R.  
19 § 9004.6(c)(ii)(B). The General Committee is entitled to deduct from the expenditures  
20 attributable to the expenditure limitation an amount for reimbursements received and up to

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<sup>32</sup> The General Committee's proposed "payroll numbers" standard is similar to the Compliance Manual's "payroll dollars" standard. The "payroll dollars" standard was the allocation method used by the Commission in the Audit Report. The payroll dollars standard is more accurate in assessing the net contribution of the staff since staff earning higher salaries are considered to incur more overhead costs.

1 a 10% administrative fee, if administrative costs in that amount can be documented. *Id.*  
2 The Commission's calculation of the amounts that support the assessment of the fee  
3 includes the \$263,313.<sup>33</sup>

4 The Committee submitted other expenses in addition to the \$263,313 to support  
5 the 10% fee. However, the Commission concludes that the General Committee cannot  
6 document the 10% administrative fee without applying the \$263,313 in travel costs. In  
7 calculating the 10% figure, the Commission relied on costs that were "verifiable and  
8 directly related to press travel." Attachment 3D at 2. Among verifiable costs were  
9 \$254,409.43 in credit card processing fees and the \$263,313 in travel costs of the  
10 personnel administering the press travel program. The General Committee seeks to  
11 include salaries and overhead related to advance staff and national office personnel in the  
12 calculation of the 10% calculation. The General Committee seeks to have between 25%  
13 to 40% of these costs attributable to the press program, but has not provided information  
14 to verify their suggested allocation percentages. In the absence of verifiable evidence that  
15 the personnel at issue were working on press travel administration, and in the quantities  
16 asserted (25% to 40% of their time).

17 The General Committee has the burden to justify the reasonableness of an allocation  
18 of compliance expenses if it does not use the 10% allocation set forth in the Commission's  
19 regulations. *See* 11 C.F.R. § 9003.3(a)(2)(ii)(A). By not producing a justification or an  
20 explanation of its allocation, the General Committee has not met its burden. Therefore,  
21 the Commission determines that \$564,432, related to the reimbursement the General

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<sup>33</sup> If that amount is no longer available for the calculation of the 10% fee, the \$263,313 will effectively be another overcollected press reimbursement. This would increase the amount in excess of the expenditure limitation and the repayment obligation.

1 Committee owes the GELAC, is attributable to the General Committee's expenditure  
2 limitation.

#### 3 **4. Accounts Payable**

4 In calculating the amounts subject to the expenditure limitation, the Commission  
5 included accounts payable totaling \$830,496 that the General Committee owed various  
6 vendors. Thus, these amounts contributed to the repayment for making expenditures in  
7 excess of the expenditure limitation. The General Committee argues that "a repayment  
8 figure should not be based on unspent funds." Attachment 2 at 11. Moreover, the  
9 General Committee contends that six debts totaling \$124,405 are not "actually owed." *Id.*  
10 The General Committee states that it contacted several of its vendors and confirmed that  
11 some of its "alleged" debts are not owed. *Id.* at 10-11.

12 As a threshold matter, the Commission rejects the General Committee's argument  
13 that unpaid expenses cannot be part of a repayment determination. In effect, the General  
14 Committee argues that these expenses are not attributable to the expenditure limitation.  
15 When discussing the amounts that are attributable to the candidate's expenditure  
16 limitation, the Presidential Election Campaign Fund Act provides that qualified campaign  
17 expenses that are "incurred" will be included in the repayment calculation. 26 U.S.C.  
18 § 9007(b)(2). Thus, the incurring of an obligation subjects it to the expenditure limitation,  
19 not the payment of an expenditure. In addition to the plain language of the statute, the  
20 construction of section 9007(b)(2) to not require an actual payment is consistent with the  
21 language of section 9007(b)(3) which requires fully funded committees to repay any  
22 private contributions that they may receive. If a repayment resulted from section  
23 9007(b)(2) only when a committee actually made expenditures in excess of the limitation,



1 then this statute would have operation only when a committee received private  
2 contributions to supplement their full public grant. In that case, section 9007(b)(2) would  
3 be superfluous because the private contributions used to make the excess expenditure  
4 would be repayable as a private contribution under section 9007(b)(3).<sup>34</sup>

5 The Commission also rejects the General Committee's argument that the six debts  
6 totaling \$124,405 represent accounts payable that are not "actually owed." The accounts  
7 in question were reported as debts by the General Committee and the General Committee  
8 has not documented the current account balances that would support their proposed  
9 recalculation. In its response, the General Committee produced a revised invoice for only  
10 one of the six challenged debts. Attachment 12.<sup>35</sup> However, this invoice is not persuasive  
11 on the issue of whether an expense was incurred by the General Committee or whether the  
12 General Committee had already paid the debt since invoice contains two credit entries  
13 stating "close out." *Id.* Therefore, the Commission determines that \$830,496 in unpaid  
14 accounts payable are attributable to the General Committee's expenditure limitation.

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<sup>34</sup> The Commission notes that the General Committee's argument here is inconsistent with its argument, *supra*, that an account payable of \$3,135.97 to GTE - North be allowed as a reimbursable expense for telephone services made available to media personnel, to be deducted from the expenditure limitation. In regard to that account payable, the Commission has concluded that the account payable was incurred for telephone services made available to media personnel, and has deducted it from the excessive press reimbursement total.

<sup>35</sup> The General Committee has stated that these debt recalculations are not disputed debts or debt settlements. In the primary election context, disputed debts will not be applied to a primary committee's expenditure limitation in certain circumstances. See 11 C.F.R. § 9035.1(a)(2). In order to have the disputed debt not count toward the limitation a primary committee must demonstrate that the "lower amount paid reflects a reasonable amount paid of a bona fide dispute with the creditor." *Id.* Otherwise, the "full amounts originally charged" are attributable to the expenditure limitation. *Id.* A similar regulation does not exist for the general election. However, even if such a regulation was available to the General Committee, the information provided on the six vendor billings at issue fails to demonstrate that these were reasonable settlements of bona fide disputes since the only documentation submitted were revised invoices.

1 **V. CONCLUSION**

2  
3 For the foregoing reasons, the Commission determines that Senator Robert J.  
4 Dole, Secretary Jack Kemp, and Dole/Kemp '96, Inc. must repay a total of \$1,675,966.26  
5 to the United States Treasury pursuant to 26 U.S.C. § 9007(b)(2). The Commission  
6 determines that the General Committee must repay: 1) \$46,510 for earned income  
7 received from the use of public funds; and 2) \$1,629,456.26 for expenses incurred in  
8 excess of the expenditure limitation.

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10  
11 **Attachments**

- 12 1. Report of the Audit Division on Dole/Kemp '96, Inc., dated  
13 June 3, 1999.
- 14  
15 2. Response of Dole/Kemp '96, Inc. to Audit Report, dated August 30, 1999.
- 16  
17 3A. Audit Division Analysis of Dole/Kemp '96, Inc. Response to Audit Report, dated  
18 December 8, 1999.
- 19  
20 3B. Audit Division Analysis of Dole/Kemp '96, Inc. Supplemental Response to Audit  
21 Report, dated March 31, 2000
- 22  
23 3C. Audit Division Analysis of Dole/Kemp '96, Inc. Supplemental Response to Audit  
24 Report, dated April 19, 2000.
- 25  
26 3D. Audit Division Analysis, dated November 29, 2000.
- 27  
28 4. Transcript of the Dole/Kemp '96, Inc. Oral Hearing before the  
29 Federal Election Commission on December 15, 1999.
- 30  
31 5. Supplemental Submissions of Dole/Kemp '96, Inc., dated December 22, 1999.
- 32  
33 6. Statement of Sandy Pack, Deputy Director of Treasury for Dole/Kemp '96, Inc.,  
34 undated.
- 35  
36 7. Statement of Kim Fuller, Director of Press Advance for the Dole for President  
37 and Dole-Kemp '96 campaigns.
- 38  
39 8. Transcript of the Public Hearing on Proposed Revisions to the Commission's

- 1 regulations Governing the Public Financing of Presidential Primary and  
2 General Election Candidates before the Federal Election Commission on  
3 March 24, 1999.
- 4
- 5 9. White House Press Corps Travel Policies and Procedures.
- 6
- 7 10. Comments Submitted on Behalf of Major News Organizations that cover  
8 Presidential Campaigns dated December 17, 1998.
- 9
- 10 11. Letters received by the Federal Election Commission in regard to Dole/Kemp '96,  
11 Inc. billing practices and procedures.
- 12
- 13 12. Invoice submitted by Dole/Kemp related to accounts payable.
- 14 13. R. Whitaker, *Lighting Instruments* (visited March 2, 2000),  
15 <<http://www.cybercollege.com/typ030.html>> and  
16 <[http://www.cybercollege.com/gloss\\_h.html](http://www.cybercollege.com/gloss_h.html)>
- 17
- 18 14. Table of Dole event-related expenses.
- 19
- 20 15. Table of Kemp event-related expenses.
- 21
- 22 16. Table of miscellaneous unbilled event expenses.
- 23
- 24 17. Table of telephone expenses.
- 25
- 26 18. Table of post-nomination costs.
- 27
- 28 19. Calculation of Expenditures Subject to Expenditure Limitation, calculated as of  
29 11/21/00.
- 30
- 31 20. Dole/Kemp '96 Aircraft Charter Cost Analysis (February 1999).
- 32
- 33 21. Tables of Catering Costs Disallowed in the Audit Report.
- 34
- 35 22. Tables of Ground Transportation Costs Disallowed in the Audit Report.
- 36
- 37 23. Letter from Kenneth L. Gross to Lawrence M. Noble, dated September 13, 2000.