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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 10, 2000

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrson
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Leslie Bright
Associate General Counsel

Rhonda J. Vosdingh
Assistant General Counsel

Delbert K. Rigsby
Attorney

SUBJECT: Revision to the Statement of Reasons concerning the 1996 Democratic National Convention Committee, Inc. (LRA #471)

AGENDA ITEM
For Meeting of: 2-17-00

At the Open Session Commission meeting of February 3, 2000, the Commission directed the Office of General Counsel to revise the Statement of Reasons concerning the 1996 Democratic National Convention Committee, Inc. (the "DNCC") to reflect the determination that the telephone expenses at issue are not in-kind contributions to the DNCC. In accordance with the Commission's direction, this Office has prepared the attached draft Statement of Reasons in support of a Commission determination that the telephone charges paid by Chicago's Committee for '96 (the "Chicago Host Committee") and the City of Chicago were permissible expenses under 11 C.F.R §§ 9008.52(c)(1) and 9008.53(b). Because the telephone expenses paid by the Chicago Host Committee and the City of Chicago totaling \$726,835 on behalf of the DNCC are permissible expenses, this Office recommends that the Commission determine that the DNCC does not owe a repayment to the United States Treasury.

The revisions are marked in the draft Statement of Reasons that is attached to this memorandum.¹ In addition, this Office revised the draft to include the regulatory provisions applicable to payments made by the City of Chicago. The Office of General Counsel recommends that the Commission approve the attached draft Statement of Reasons.

RECOMMENDATION

The Office of General Counsel recommends that the Commission:

1. Determine that the 1996 Democratic National Convention Committee, Inc. and the Democratic National Committee do not owe a repayment to the United States Treasury;
2. Approve the attached Statement of Reasons; and
3. Approve the appropriate letter.

Attachment

Proposed Statement of Reasons

¹ There are five attachments (Attachments A through E) to the proposed Statement of Reasons that were submitted to the Commission on January 5, 2000. Because there have been no changes to the attachments, this Office is not resubmitting those attachments with this memorandum; however, they will be included in the document forwarded to the DNCC.

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2 In the Matter of

3 The 1996 Democratic National)
4 Convention Committee, Inc.)

LRA #471

5)
6)
7)
8 **STATEMENT OF REASONS**

9 On _____, 2000, the Federal Election Commission (the "Commission") determined
10 that the telephone expenses paid by Chicago's Committee for '96 (the "Host Committee") and
11 the City of Chicago on behalf of the 1996 Democratic National Convention Committee, Inc.
12 (the "Convention Committee") are permissible expenses under 11 C.F.R. §§ 9008.52(c)(1)(v)
13 and 9008.53(b)(1) and thus, the telephone expenses are not in-kind contributions to the
14 Convention Committee that count against the Convention Committee's expenditure limit,
15 11 C.F.R. § 9008.8(b)(1). The Commission also determined that there is no repayment due by
16 the Convention Committee and the Democratic National Committee (the "DNC") to the United
17 States Treasury. This Statement of Reasons sets forth the legal and factual basis for the
18 Commission's determination that no repayment is due. 11 C.F.R. § 9007.2(c)(3).

19 **I. BACKGROUND**

20 On June 6, 1995, the Convention Committee registered with the Commission as a
21 national convention committee of the Democratic Party. The Convention Committee received
22 \$12,364,000 in public funds under the Presidential Election Campaign Fund Act. 26 U.S.C.
23 §§ 9001-9013. After the Convention was completed, the Commission conducted an audit and
24 examination of the Convention Committee's receipts and disbursements, as provided in the

1 Presidential Election Campaign Fund Act and the Commission regulations. Attachment A;
2 26 U.S.C. § 9008(g); 11 C.F.R. § 9008.11.

3 The Host Committee was established to serve as a host committee for the Democratic
4 National Convention pursuant to 11 C.F.R. §§ 9008.50 - 9008.54. The Host Committee did not
5 receive any public funds pursuant to Title 26 of the United States Code. However, the Host
6 Committee received \$21,481,973 from other sources, and it spent \$20,960,388 in connection
7 with the 1996 Democratic National Convention.¹

8 On August 7, 1997, the Commission's Audit staff held an exit conference with the
9 Convention Committee to discuss preliminary findings and recommendations based upon
10 information obtained during the audit that the Audit staff planned to submit to the Commission
11 for approval. See 11 C.F.R. §§ 9008.11, 9038.1(b)(2)(iii) and 9007.1(b)(2)(iii). The Audit
12 Division's preliminary findings and recommendations were contained in an Exit Conference
13 Memorandum ("ECM"). See *id.* In the ECM, the Audit staff identified payments to Ameritech
14 totaling \$512,637 from the Host Committee and \$105,621 from the City of Chicago for local
15 telephone charges related to Convention Committee telephone numbers or accounts assigned to
16 the Convention Committee. Attachment A at 11. The Audit staff also identified payments to
17 AT&T totaling \$87,688 from the Host Committee and \$20,889 from the City of Chicago for long
18 distance charges related to Convention Committee telephone numbers or accounts assigned to the
19 Convention Committee. *Id.* Memoranda from the Host Committee also attributed the
20 expenditures for telephone charges to the Convention Committee. *Id.*

¹ Pursuant to 11 C.F.R. § 9008.54, the Commission audited the Host Committee, and the receipts and expenditures stated above are as of March 31, 1997, the effective date of the Audit Report. The Commission approved the Host Committee's Audit Report on June 25, 1998.

1 The Audit staff requested that the Convention Committee provide documentation that the
2 telephone charges were a permissible host committee expense pursuant to 11 C.F.R.
3 § 9008.52(c). *Id.* The Audit staff also cited the Explanation and Justification for 11 C.F.R.
4 § 9008.52, 59 Fed. Reg. 33614 (June 29, 1994), which states that the revised rules do not permit
5 host committees to pay for the convention committee's or the national party's overhead expenses
6 for the convention. *Id.* at 10. Finally, the Audit staff concluded that the telephone charges were
7 an overhead expense of the convention, and did not promote the City of Chicago or prepare the
8 convention site. *Id.* at 12.

9 On October 21, 1997, the Convention Committee filed its written response to the ECM.
10 The Convention Committee stated that it interpreted 11 C.F.R. § 9008.52(c) to permit the Host
11 Committee to pay for telephone service charges for the convention, and that the regulation does
12 not distinguish between the costs of office telephones and the costs of using the telephones.
13 Attachment A at 11. Moreover, the Convention Committee argued that the Explanation and
14 Justification for 11 C.F.R. § 9008.52 should not be given precedence over the plain language of
15 the regulation, and that the language of the Explanation and Justification is ambiguous. *Id.*

16 On June 25, 1998, the Commission approved the Audit Report of the Convention
17 Committee, including a determination that the Host Committee made in-kind contributions
18 totaling \$600,325 to the Convention Committee, and the City of Chicago made in-kind
19 contributions totaling \$126,510. *Id.* Thus, the Commission determined that the Convention
20 Committee should make a repayment of \$726,835 to the United States Treasury for the in-kind
21 contributions received from the Host Committee and the City of Chicago. *Id.* at 12; 26 U.S.C.
22 § 9008(h); 11 C.F.R. § 9008.12(b)(3).

1 On September 8, 1998, the Convention Committee submitted legal and factual materials
2 to demonstrate that no repayment is required to be paid to the United States Treasury.
3 Attachment B;² 11 C.F.R. § 9007.2(c)(2)(i). The Convention Committee also requested an
4 opportunity to address the Commission in open session pursuant to 11 C.F.R. § 9007.2(c)(2)(ii).
5 Attachment B at 1. On November 8, 1998, the Commission granted the Convention
6 Committee's request for an oral hearing, which was held on January 13, 1999. Attachment D.
7 Within five days after the oral hearing, the Convention Committee submitted a supplemental
8 submission. Attachment E.

9 **II. CONVENTION COMMITTEE'S RESPONSE TO THE REPAYMENT**
10 **DETERMINATION**

11 The Convention Committee disputes the repayment determination based on the
12 conclusion that telephone charges paid by the Host Committee and the City of Chicago are in-
13 kind contributions to the Convention Committee. Attachment B at 1. The Convention
14 Committee states that there should be no repayment because the Commission did not provide
15 "fair notice" that 11 C.F.R. § 9008.52(c) prohibited a host committee's payment of telephone
16 service charges. *Id.* at 2. The Convention Committee argues that the Commission is imposing a
17 "civil sanction"³ against the Convention Committee without giving the Convention Committee
18 notice of the conduct that is prohibited. *Id.* at 3.

² The Commission's Audit Division noted that there was no need to modify the conclusions reached in the Audit Report based on these materials. Attachment C.

³ There is a critical distinction between repayments and civil liability or violations of law. A repayment involves the return of public funds received by a political committee to the United States Treasury. Contrary to the Convention Committee's assertion, the Commission's repayment determination does not impose any civil penalty upon the Convention Committee. See *Kennedy v. FEC*, 734 F.2d 1558, 1565 (1984); see also *Reagan Bush Comm. v. FEC*, 525 F. Supp. 1330, 1337 (1981) (repayment determinations are not considered to involve violations of law).

1 Specifically, the Convention Committee asserts that the language of the regulation does
2 not enable persons to distinguish between equipment, facilities and services that are permissible
3 host committee expenses and telephone charges. *Id.* at 4. In addition to items specifically
4 mentioned in 11 C.F.R. § 9008.52, the regulation provides that host committees may pay for
5 “other similar convention-related facilities and services.” 11 C.F.R. § 9008.52(c)(xi). The
6 Convention Committee argues that telephone service charges should be considered as other
7 similar convention-related facilities and services. *Id.* Moreover, it argues that telephone service
8 charges should not be considered any different from items such as air conditioning and
9 electricity, which are specifically mentioned in the regulation as permissible host committee
10 expenses. *Id.*

11 Additionally, the Convention Committee argues that the administrative history of
12 11 C.F.R. § 9008.52 does not give fair notice that telephone charges are excluded as permissible
13 host committee expenses. Attachment B at 5. The Convention Committee states that the
14 language in the Explanation and Justification, which reads “please note that the revised rules do
15 not permit host committees . . . to pay the convention committee’s or the national party’s
16 overhead and administrative expenses related to the convention,” directly contradicts the
17 language of the regulation which permits administrative and overhead expenses, such as “offices
18 and office equipment.” Attachment B at 6.

19 Furthermore, the Convention Committee argues that the Audit Division applied 11 C.F.R.
20 § 9008.52(c) in a contradictory and inconsistent manner because it allowed the Host Committee
21 to pay for Convention Committee expenses such as pager charges, usage charges for cellular
22 phones, rental of certain office equipment, office supplies and postage, but not telephone charges.
23 Attachment B at 7, 8. Moreover, the Convention Committee disagrees with the Commission’s

1 reliance upon 11 C.F.R. § 9008.7(a)(4)(x) with respect to the types of convention expenses that
2 should be paid by the convention. Attachment B at 8. Specifically, the Convention Committee
3 argues that because a convention committee may pay for certain expenses with its own funds, it
4 does not necessarily mean that the host committee may not also pay for such expenses. *Id.*

5 Finally, the Convention Committee asserts that the notice of proposed rulemaking on
6 11 C.F.R. § 9008.52 contained no suggestion that there would be prohibitions on host committee
7 use of funds to pay convention committee administrative and overhead expenses. Attachment B
8 at 12-15. While it acknowledges that agencies may modify proposed rules, the Convention
9 Committee argues that language in the Explanation and Justification for 11 C.F.R. § 9008.52,
10 which restricts a host committee's payment of convention administrative and overhead expenses,
11 appears to control the entire scope of section 9008.52(c), that it was inserted at the final
12 Commission meeting on the proposed regulation, and that they did not have notice or opportunity
13 to comment upon such language. *Id.* at 13, 14.

14 During the oral hearing, the Convention Committee's counsel argued that the
15 Commission's regulations restrict only the source of funds that can be donated to host
16 committees, but does not restrict "the purposes for which the Host Committee could spend its
17 funds in terms of covering the costs of convention facilities and services." Attachment D at 10.
18 The Convention Committee's counsel also stated that "in prior conventions, the Host
19 Committees clearly paid these [telephone] charges." *Id.* at 23.

20 In its supplemental submission to the Request for an Administrative Review of the
21 Repayment Determination, the Convention Committee noted that after searching its records,

22
23 it appears that a substantial amount of local telephone service charges for
24 the 1992 Convention Committee were paid for by the City of New York.

1 We are unable to determine whether the City of New York or the 1992
2 Host Committee paid for any long distance service charges. We are also
3 unable to determine who paid for the 1988 Convention Committee's local
4 and long distance telephone service charges.
5

6 Attachment E at 3. The Convention Committee also states that its contract with the City of
7 Chicago required the City and/or the Host Committee to pay for telephone charges. *Id.* at 3, 4.
8 This contract provision required the "City to pay for cellular telephone usage charges (air time)
9 and long distance service charges for the Convention Committee." *Id.* at 4. Furthermore, the
10 Convention Committee states that "we have been unable to determine definitively how the Audit
11 Division treated cellular telephone and pager charges, because we cannot determine exactly
12 which invoices were included in the \$726,835 disallowed." *Id.*

13 III. ANALYSIS

14 A. LAW

15 In order to be eligible to receive public funds to finance the presidential nominating
16 convention, a national party committee must establish a convention committee, which is
17 responsible for conducting the day to day arrangements and operations of that party's presidential
18 nominating convention and must register with and report to the Commission as a political
19 committee. 11 C.F.R. §§ 9008.3(a)(1), (a)(2) and (b). A national party committee and its
20 convention committee must also file a written agreement with the Commission agreeing to
21 conditions set forth in 11 C.F.R. § 9008.3(a)(4)(i) through (viii) to be eligible for public funding.
22 11 C.F.R. § 9008.3(a)(4). As part of this agreement, the national party committee and its
23 convention committee must agree to comply with 2 U.S.C. §§ 431 through 451, 26 U.S.C.
24 § 9008, and applicable Commission's regulations. 11 C.F.R. § 9008.3(a)(4)(vii). Thus, the
25 committees must agree to abide by 2 U.S.C. §§ 441a and 441b, which prohibit, *inter alia*,

1 corporate and labor organization contributions or expenditures in connection with conventions,
2 and they must agree to comply with the applicable expenditure limitation set forth at 26 U.S.C.
3 § 9008(d) and 11 C.F.R § 9008.8. 11 C.F.R. § 9008.3(a)(4)(vii) and (i), respectively. The
4 national committee of a major party may not make expenditures with respect to a publicly-
5 financed presidential nominating convention which, in the aggregate, exceed the amount of
6 payments to which such committee is entitled under 26 U.S.C. § 9008(b)(1). 26 U.S.C.
7 § 9008(d)(1). Thus, the expenditure limitation is equal to the convention committee's
8 entitlement to public funds. 26 U.S.C. § 9008(d).

9 A host committee may be created to represent a city hosting a nominating convention in
10 matters involving a presidential nominating convention. 11 C.F.R. § 9008.51. Any local
11 organization that is not organized for profit, whose net earnings do not inure to the benefit of any
12 private shareholder or individual and whose principal objective is the encouragement of
13 commerce in the convention city, as well as the projection of a favorable image of the city to
14 convention attendees, may serve as a host committee. 11 C.F.R § 9008.52(a).⁴

15 Host committees may receive funds or in-kind donations from local businesses
16 (excluding banks), local labor organizations, and other local organizations and individuals for
17 specific purposes relating to hosting a national party convention.⁵ The purposes for which a
18 host committee may use funds in connection with a nominating convention are specified in
19 11 C.F.R § 9008.52(c)(1)(i) through (xi) and include: (i) "promoting the suitability of the city

⁴ Section 9008.52(a) gives the following examples of local organizations that may serve as host committees: a local civic association, business league, chamber of commerce, real estate board, board of trade, or convention bureau.

⁵ Host committees may also accept goods or services from commercial vendors under the terms and conditions set forth at 11 C.F.R. § 9008.9, which also apply to convention committees. 11 C.F.R. § 9008.52(b).

1 as a convention site;" (ii) "welcoming the convention attendees to the city;" (iii) "facilitating
2 commerce;" (vi) "local transportation services;" (vii) "law enforcement;" (viii) "convention
3 bureau personnel to provide central housing and reservation services;" (ix) "hotel rooms at
4 no charge or at a reduced rate;" and (x) "accommodations and hospitality for committees
5 of the parties responsible for choosing the site of the conventions." 11 C.F.R. § 9008.52(c)(1)(i)-
6 (iii) and (vi)-(x). Host committees may also provide "use of an auditorium or convention center
7 and to provide construction and convention related services" such as "construction of podiums,
8 press tables, false floors, camera platforms, additional seating, lighting, electrical, air
9 conditioning and loud speaker systems, offices, office equipment, and decorations." 11 C.F.R.
10 § 9008.52(c)(1)(v). Finally, in addition to those facilities and services specifically enumerated in
11 11 C.F.R § 9008.52(c)(1)(i) through (x), a host committee is permitted to provide "other similar
12 convention-related facilities and services" under section 9008.52(c)(1)(xi).

13 Government agencies and municipal corporations may also provide services to a party
14 convention. The Commission's regulations permit local businesses (excluding banks), local
15 labor organizations and other local organizations or individuals to donate funds or make in-kind
16 donations to a separate fund or account of the government agency or municipality to pay for
17 expenses listed in 11 C.F.R. § 9008.52(c). 11 C.F.R. § 9008.53(b)(1). However, the fund or
18 account must not be restricted for use in connection with any particular convention, and the
19 donations to the fund or account must be unrestricted and not solicited or designated for use in
20 connection with any particular convention. *Id.*

21 A convention committee may use its public funds only for the purposes set forth at
22 11 C.F.R § 9008.7. See 26 U.S.C. § 9008(c). Convention expenses include all expenses incurred
23 by or on behalf of a political party's national committee or convention committee with respect to

1 and for the purpose of conducting a presidential nominating convention or convention-related
2 activities. 11 C.F.R. § 9008.7(a)(4). Some examples of convention expenses include
3 administrative and office expenses for conducting the convention including stationery, office
4 supplies, office machines, and telephone charges, but exclude the cost of any services supplied by
5 the national committee at its headquarters or principal office if such services are incidental to the
6 convention and not utilized primarily for the convention. 11 C.F.R. § 9008.7(a)(4)(x).
7 Generally, convention expenses incurred with respect to a presidential nominating convention are
8 subject to the expenditure limitation. See 11 C.F.R. § 9008.8(a). Nevertheless, certain
9 expenditures related to a convention are not subject to the expenditure limitation. For example,
10 permissible host committee expenditures like those examples listed in 11 C.F.R. § 9008.52 shall
11 not be considered convention committee expenditures and shall not count against the convention
12 committee's expenditure limit. 11 C.F.R. § 9008.8(b)(1).⁶ Host committee expenditures that are
13 not in accordance with section 9008.52 are in-kind contributions to the convention committee
14 that may be considered convention committee expenditures and count against the expenditure
15 limit. See *id.*

16 If the Commission determines that a national party committee accepted contributions to
17 defray convention expenses which, when added to the amount of payments received, exceeds the
18 expenditure limitation, it shall notify the national committee of the amount of contributions so
19 accepted, and the national committee shall pay the amount specified to the United States

⁶ Additionally, Host Committee expenditures that are permitted under section 9008.52 are exempt from the prohibition of corporate and labor organization contributions or expenditures. 11 C.F.R. § 114.1(a)(2)(viii).

1 Treasury, 11 C.F.R. § 9008.12(b)(3); *see also* 26 U.S.C. §§ 9007(b)(3), 9008(h); and 11 C.F.R.
2 § 9008.12(a).⁷ A convention committee's entitlement to public funds shall be adjusted so as
3 not to exceed the difference between the expenditure limitation and the amount of private
4 contributions received to defray convention expenses. 11 C.F.R. § 9008.5(b). If the Commission
5 determines that any portion of the payments to the national committee or convention committee
6 was in excess of the aggregate payments to which the national committee was entitled under
7 11 C.F.R. §§ 9008.4 and 9008.5, it shall notify the national committee and the national
8 committee shall pay an amount equal to such portion to the United States Treasury.
9 11 C.F.R. § 9008.12(b)(1); *see also* 26 U.S.C. § 9007(b)(1). If the Commission determines that
10 the national committee or convention committee incurred convention expenses in excess of the
11 limitation, it shall so notify the national committee and the national committee shall pay an
12 amount equal to such excessive expenditures to the United States Treasury. 11 C.F.R.
13 § 9008.12(b)(2); *see also* 26 U.S.C. § 9007(b)(2). In the case of in-kind contributions from a
14 host committee, government agency or municipal corporation that cause the convention
15 committee to exceed the expenditure limitation, the Commission may seek repayment if a
16 convention committee knowingly helps, assists or participates in the making of a convention
17 expenditure by a host committee, government agency, or municipal corporation that is not in
18 accordance with 11 C.F.R. §§ 9008.52 or 9008.53. 11 C.F.R. § 9008.12(b)(7).

19

⁷ The statute authorizes the Commission to require repayment of public funds equal to any contributions, 26 U.S.C. § 9007(b)(3), while the regulation requires a repayment equal to those contributions that, when added to the amount of public funds received, exceed the expenditure limit, 11 C.F.R. § 9008.12(b)(3). In these circumstances, the full amount of any contributions is subject to repayment under either the statute or the regulation because the Convention Committee received public funds equal to its expenditure limit.

1 **B. REPAYMENT DETERMINATION UPON ADMINISTRATIVE REVIEW**

2 The Commission determines that the telephone charges of \$726,835 paid by the Host
3 Committee and the City of Chicago on behalf of the Convention Committee were permissible
4 expenses. Therefore, the telephone charges are not in-kind contributions to the Convention
5 Committee that count against the Convention Committee's expenditure limit, 11 C.F.R.
6 § 9008.8(b)(1). The Commission also determines that there is no repayment due by the
7 Convention Committee and the DNC to the United States Treasury, 11 C.F.R. § 9007.2(c)(3).

8 The telephone charges paid by the Host Committee are permissible host committee
9 expenditures under 11 C.F.R. § 9008.52(c)(1)(v). Section 9008.52(c)(1)(v) lists office
10 equipment as a permissible host committee expense, and the Commission concludes that the cost
11 of using the equipment is a part of providing the equipment. Thus, in addition to paying for the
12 telephone equipment and the installation of the telephone equipment, the Host Committee is
13 permitted to pay for telephone charges associated with using the telephone equipment. The Host
14 Committee paid telephone charges totaling \$600,325. Similarly, the City of Chicago is permitted
15 to pay for the telephone charges on behalf of the Convention Committee. The City of Chicago
16 paid telephone charges totaling \$126,835. The Commission's regulation, which concerns
17 receipts and disbursements of government agencies and municipal corporations for party
18 conventions, permits those government agencies and municipal corporations to receive donations
19 for expenses listed in 11 C.F.R. § 9008.52(c). 11 C.F.R. § 9008.53(b). The cost of using office
20 equipment is a permissible host committee expense under 11 C.F.R. § 9008.52(c)(1)(v).
21 Therefore, the Commission concludes that the City of Chicago could pay for the telephone
22 charges.

1 **IV. - CONCLUSION**

2 For the foregoing reasons, the Commission determines that the telephone expenses paid
3 by the Host Committee and the City of Chicago on behalf of the Convention Committee are
4 permissible expenses under 11 C.F.R. §§ 9008.52(c)(1)(v) and 9008.53(b)(1). Therefore, the
5 Commission determines that no repayment is due by the 1996 Democratic National Convention
6 Committee, Inc. and the Democratic National Committee to the United States Treasury.

7 **Attachments**

- 8 A. Audit Report on the 1996 Democratic National Convention Committee, Inc., approved
9 June 25, 1998.
- 10
- 11 B. Request of 1996 Democratic National Convention Committee, Inc. for Administrative
12 Review of Repayment Determination, dated September 8, 1998.
- 13
- 14 C. Memorandum from Robert Costa to Kim Bright-Coleman regarding the 1996 Democratic
15 National Convention Committee, Inc.'s response to the Audit Report, dated January 4, 1999.
- 16
- 17 D. Transcript of the 1996 Democratic National Convention Committee, Inc. Oral Hearing before
18 the Federal Election Commission on January 13, 1999.
- 19
- 20 E. Supplemental Submission of the 1996 Democratic National Convention Committee, Inc.,
21 dated January 21, 1999.

