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**MEMORANDUM**

**TO:** The Commission

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**SUBJECT:** 1996 Committee on Arrangements for the Republican National Convention – Alternative Draft Statement of Reasons (LRA 472)

**AGENDA ITEM**  
For Meeting of: 3-16-00

**SUBMITTED LATE**

**I. INTRODUCTION**

On February 9, 2000 the draft Statement of Reasons for the 1996 Committee on Arrangements for the Republican National Convention (the "Convention Committee") concluding that the Convention Committee and the Republican National Committee (the "RNC") must repay \$774,858 was on the Commission's agenda. With its draft Statement of Reasons, the Office of General Counsel recommended that the Commission determine that the San Diego Host Committee (the "Host Committee") made an in-kind contribution to the Convention Committee in the amount of \$482,111 and that the RNC made an in-kind contribution to the Convention Committee in the amount of \$292,747. This Office's draft Statement of Reasons also recommended that the Commission deny the Convention Committee's request to offset the in-kind contribution made by the Host Committee with expenses the Convention Committee paid, but that could have permissibly been paid by the Host Committee. (See Agenda Doc. No. 00-04).

At the February 9, 2000 Commission meeting, the Commission directed this Office to draft two alternatives to the Host Committee in-kind contribution section of the Statement of Reasons, and one alternative approach to the RNC in-kind contribution section of the Statement of Reasons. The three alternative sections of the draft Statement of Reasons are identified as Attachment A through C. The revisions to the affected portions of the Statement of Reasons are marked. Also attached are corresponding Appendices I and II for Alternatives A and B. Finally, an additional attachment, labeled Attachment D, is the Audit Division's analysis of the amount that can be offset from the Convention Committee's expenditure limitation. Once the Commission has determined which analysis it prefers, this Office will prepare a final document that reflects that determination, and the Audit Division will prepare a final Statement of Net Outstanding Convention Expenses (Agenda Doc. No. 00-04, Attachment 2).<sup>1</sup>

## **II. IN-KIND CONTRIBUTION FROM THE SAN DIEGO HOST COMMITTEE**

### **A. Alternative A**

In the first alternative related to the Host Committee contribution, the draft removes \$22,629 in expenses related to the Sail Area entertainment, Sail Area entertainment coordinator, and the entertainment incidentals from the in-kind contribution from the Host Committee, and considers these expenditures to be permissible host committee expenses. In order to hold all of the participants and guests of the convention, the Host Committee was permitted to construct the Sail Area. 11 C.F.R. § 9008.52(c)(1)(v). The draft states that the Sail Area entertainment, the Sail Area entertainment coordinator, and the entertainment incidentals are expenses that related to the Host Committee's provision of the Convention Center, including its Sail Area, and are therefore a permissible Host Committee expenses pursuant to 11 C.F.R. § 9008.52(c)(1)(v) and (xi). These changes reduce the in-kind contribution from the Host Committee to \$456,957, which includes a reduction in allocated overhead of \$2,525 (\$482,111 - \$22,629 - \$2,525).

The analysis of the other Nash expenditures has not changed. The amounts included in allocable overhead for telephone (\$1,054) and office expenses (\$2,693) are related to Nash and other vendors' telephone and office expenses. In its audit of the 1996 Democratic National Convention Committee, Inc. ("DNCC"), the Commission is currently considering a determination that telephone charges are a permissible host committee expense because the cost of using office equipment is part of providing office equipment. Providing office equipment is listed as an example of permissible host

<sup>1</sup> Attachment 3 to the draft Statement of Reasons (Agenda Doc. No. 00-04) is the Convention Committee's Administrative Review Request. The Committee also submitted six volumes of exhibits, which are available for review in the Commission Secretary's Office.

committee expenses in 11 C.F.R. § 9008.52(c)(1)(v). However, the telephone charges at issue in the DNCC audit were charges incurred by the convention committee. The \$1,054 of telephone charges in this audit were not incurred by the Convention Committee itself, but instead were incurred by Nash and other Convention Committee vendors. Consequently, no change is required by the action proposed in the DNCC audit.

The Alternative A draft Statement of Reasons permits an offset of the entire Host Committee's in-kind contribution. The draft considers \$722,817 of the Convention Committee's expenditures to be permissible host committee expenditures.<sup>2</sup> Alternative A offsets all of the Host Committee's in-kind contribution by these expenditures, which eliminates the repayment related to this in-kind contribution.

#### B. Alternative B

Like Alternative A, Alternative B also concerns the Host Committee in-kind contribution to the Convention Committee section of the Statement of Reasons. Alternative B also considers the Sail Area entertainment, the Sail Area entertainment coordinator, and the entertainment incidentals to be permissible host committee expenses. Additionally, this draft considers \$77,595 related to special effects to be a permissible host committee expense. The \$77,595 was for fireworks, a confetti cannon and a balloon drop, and Alternative B treats these expenditures as permissible decorations under 11 C.F.R. § 9008.52(c)(1)(v). These changes further reduce the in-kind contribution from the Host Committee to \$371,793, which includes a reduction in allocated overhead of \$7,569 (\$456,957 - \$77,595 - \$7,569).

While Alternative A would permit all of the Host Committee's in-kind contribution to be offset, Alternative B limits the offset to the \$50,018 expenditures related to the orchestra and the announcers travel expenses plus \$2,776 for related, allocated overhead. The Commission instructed this Office to prepare an analysis that concludes that in this instance the application of 11 C.F.R. § 9008.52 may have been unclear with respect to these expenses. Under this approach, only the expenses to which

<sup>2</sup> The Audit Division believes that the Convention Committee presented documentation to show that it made payments totaling \$718,384 that could have been paid by the Host Committee. This figure is \$4,433 less than the amount stated in Alternative A. The Audit Division states that the invoice for a \$4,433 payment to Red Sun Custom Screening for screen printing for shirts was not sufficient to show that the expense was for security shirts because the invoice only noted "Republican shirts." However, the Audit Division did find that a \$40,890 payment to Fruit of the Loom for shirts, hats, and screen printing was a permissible host committee expense because the invoice noted "convention logo." The Office of General Counsel believes that both expenditures should be treated the same way and have been adequately documented to show that they were part of the expenditures that the Convention Committee argues were permissible host committee expenses. Even without the \$4,433 addition to the offset, the amount is sufficient to offset the Host Committee contribution.

this regulation's application may have been unclear can be offset.<sup>3</sup> This approach would require the RNC and the Convention Committee to repay \$318,999 (\$381,887 - \$50,018 - \$2,776) to the United States Treasury.

### III. IN-KIND CONTRIBUTION FROM THE REPUBLICAN NATIONAL COMMITTEE: ALTERNATIVE C

Alternative C relates to the in-kind contribution from the RNC. Alternative C concludes that the RNC did not make an in-kind contribution to the Convention Committee with its payment of the production costs related to the Creative Broadcast Techniques ("CBT") contract. Therefore, there is no repayment related to the CBT contract in Alternative C. The draft also states that the RNC should have paid the production and airtime costs related to both the GOP-TV programming and the convention programming because all of the programs represent national party expenses. Alternative C states that the Convention Committee's payment of \$1,170,000 in airtime costs for the convention programming should have been paid by the RNC, and that the \$1,170,000 was therefore an improper use of funds by the Convention Committee. Similarly, the Convention Committee's payment of \$65,973 in excess of its share of the basic feed costs was an improper use of funds. In the previous analysis, this amount served to reduce the amount of the contribution from the RNC for production expenses. Because the Commission was required to notify the Convention Committee of all repayment determinations by August 15, 1999, or 3 years after the last day of the convention, the Commission cannot seek a repayment of those funds. 11 C.F.R. § 9008.12(a)(2).

Attachments as stated

<sup>3</sup> Instead of permitting a total offset of the Host Committee's in-kind contribution, Alternative B seeks to divide the Nash expenditures into three categories: clearly permissible, clearly impermissible, and those where the application of this regulation may have been unclear.

1           **C.    REPAYMENT DETERMINATION UPON ADMINISTRATIVE**  
2           **REVIEW**

3           The Convention Committee's administrative review request presents the  
4           Commission with several issues related to whether certain Nash expenses were  
5           permissible host committee expenditures. Because permissible host committee  
6           expenditures that are made in accordance with 11 C.F.R. § 9008.52 are not subject to the  
7           convention committee's expenditure limitation, these issues require an interpretation of  
8           the breadth of host committee activity permitted under section 9008.52(c). The  
9           Commission's recognition of an exception to the convention committee expenditure  
10          limitation for host committee activity is in the context of public funds that are provided to  
11          convention committees only upon the recipients' agreement to an expenditure limitation.

12          As the Commission previously noted, "the national committee of a political party is  
13          entitled to receive public money to pay for its convention and is in turn limited in the  
14          amount which it may spend on that convention." 44 Fed. Reg. 63038 (1979).

15          Section 9008.52(c) is based on previous 11 C.F.R. § 9008.7(b) and (d), which  
16          permitted government agencies to make certain expenditures for facilities and services  
17          with respect to a convention without the value of the facilities and services counting  
18          toward the party's expenditure limitation, 11 C.F.R. § 9008.7(b) (1994), permitted host  
19          committees to promote the convention city and its commerce, 11 C.F.R. § 9008.7(d)(2)  
20          (1994), and permitted host committees to make expenditures similar to government  
21          agencies, 11 C.F.R. § 9008.7(d)(3) (1994). See 11 C.F.R. § 9008.7(b), (d) (1994);  
22          *Explanation and Justification for 11 C.F.R. § 9008.52*, 59 Fed. Reg. 33614 (1994) and  
23          *Explanation and Justification for 11 C.F.R. § 9008.7*, 44 Fed. Reg. 63037 (1979). While

1 the provisions related to host committees permitted unlimited donations from individuals,  
 2 local businesses, local government agencies, and union locals to the host committee for  
 3 use in promoting the city and its commerce, "far greater restrictions [were] placed on  
 4 funds received and expended to defray convention expenses." 44 Fed. Reg. 63037  
 5 (1979). Specifically, only local retail businesses were permitted to donate funds to defray  
 6 convention expenses and such donations were "limited to an amount proportionate to the  
 7 commercial return reasonably expected during the life of the convention by the particular  
 8 business." 44 Fed. Reg. 63037 (1979). This provision for the host committee to defray  
 9 convention expenses under these limited circumstances, i.e., 11 C.F.R. § 9008.7(d)(3)  
 10 (1994), was "intended to be a narrow exception to the statutory limitation on convention  
 11 expenses." 44 Fed. Reg. 63038 (1979).

12 In 1994, the Commission revised its regulation to the current structure, but the  
 13 regulation permitting host committees to make expenditures in connection with  
 14 conventions continues to be an exception to convention committees' expenditure limits.  
 15 11 C.F.R. § 9008.8(b)(1). Therefore, it still must be narrowly construed in order to  
 16 preserve the statutory expenditure limit. Similarly, because host committees may accept  
 17 funds from local corporations and local labor organizations that would otherwise be  
 18 prohibited from use in connection with conventions, the regulatory exception must be  
 19 construed narrowly. 2 U.S.C. § 441b. Host committee expenditures are not, however,  
 20 limited in amount.<sup>15</sup> Instead, host committee expenditures are limited in purpose, which

<sup>15</sup> The focus on permissible purposes, instead of amounts, permits a wider variety of cities to compete to host conventions as host committees are permitted to provide construction services in order to provide a suitable convention center or auditorium. 11 C.F.R. § 9008.52(c)(1)(v). The Convention Committee points to the amounts of expenditures in connection with previous conventions, arguing they indicate the Commission has interpreted section 9008.52(c) as "a very broad exception." Attachment 3,

1 reflects the Commission's determination that expenditures for purposes such as those  
 2 listed in 11 C.F.R. § 9008.52(c)(1)(i) through (xi) are consistent with the host  
 3 committees' principal objectives: the encouragement of commerce in the convention city  
 4 and the projection of a favorable image of the city to convention attendees, 11 C.F.R.  
 5 § 9008.52(a), rather than election-influencing purposes.

6 As a threshold matter, the Commission determines that the Convention  
 7 Committee knowingly helped, assisted, and participated in Nash's activities. As required  
 8 under Nash's contracts with the Convention Committee and the Host Committee, Nash  
 9 performed his services to the Convention Committee's specifications and under the  
 10 direction of the Convention Manager, a Convention Committee employee. Attachment 6,  
 11 at 1 and 11. Consequently, to the extent that any of Nash's expenses were not  
 12 permissible host committee expenditures, the Commission may seek a repayment for such  
 13 disbursements from the Convention Committee pursuant to 11 C.F.R. § 9008.12(b)(7).

14 1. Permissible Host Committee Expenditures

15 The Commission concludes that the Convention Committee has demonstrated that  
 16 a number of the Nash expenses that compose the \$892,489 Audit Report Repayment  
 17 Determination were, in fact, permissible host committee expenditures. The Host  
 18 Committee may expend funds for decorations, which are listed as an example of  
 19 permissible host committee expenditures in 11 C.F.R. § 9008.52(c)(1)(v). Nash spent  
 20 \$26,684 on "main and end titles" that were computer-generated graphics projected onto  
 21 the television screens that were part of the podium; as such, the graphics were

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at 21; see Attachment 5, at 4. However, the breadth of permitted host committee purposes cannot be evaluated by an examination of expenditure amounts.

1 decorations. See Attachment 1, at 63, and Attachment 3, at 36-37. Similarly, still  
 2 photographs displayed in the same locations would be within decorations as listed in  
 3 section 9008.52(c)(1)(v). The additional technology in the computer-generated graphics  
 4 does not deprive those graphics of their decorative character. Therefore, the Commission  
 5 determines that the main and end titles were decorations of the Convention Center and as  
 6 such were permissible host committee expenditures.

7 Section 9008.52(c)(1)(v) specifically lists lighting among the examples of  
 8 infrastructure-related permissible host committees expenditures. Nash paid \$11,735 for a  
 9 Moving Light Operator, as part of \$540,345 spent on lighting Rigging and Staging  
 10 Labor.<sup>16</sup> Because lighting is listed as an example of permissible host committee  
 11 expenditures in section 9008.52(c)(1)(v), the \$11,735 expenditures for a Moving Light  
 12 Operator are permissible host committee expenditures.<sup>17</sup> Similarly, Nash spent \$56,781  
 13 designated as video crew labor.<sup>18</sup> Of this amount, \$10,008 was paid to the technical  
 14 director and is discussed below. According to Nash, the remaining \$46,773 (\$56,781 -  
 15 \$10,008) was for "a cadre of engineers and video utility persons" who operated several of

<sup>16</sup> The Convention Committee allocated most of this amount, \$526,610, to lighting and rigging expenses necessary to prepare the Convention Center to host the convention, and the Commission did not include any of that category in its Audit Report Repayment Determination. Attachment 1, at 63. However, in its response to its Exit Conference Memorandum, the Convention Committee separated the expenses for the Moving Light Operator and categorized those expenses as related entirely to the closed circuit television production. See Bing affidavit, Attachment 3, at A74.

<sup>17</sup> This determination is consistent with the Commission's evaluation of apparently similar expenditures in the DNCC Audit Report, in which the Commission determined that host committee expenditures for, *inter alia*, "lighting instruments, . . . follow spotlights, floodlights, special effects lighting, spotlights, etc." and related operator staff were permissible host committee expenditures. See Attachment 3, at A1144 and A1147.

<sup>18</sup> Also included in Video Crew Labor was an additional \$5,321 which was not included in the Audit Report Repayment Determination. It was not allocated to the closed circuit television category, but was assigned to the miscellaneous category by the Convention Committee. See Attachment 1, at 63; Bing affidavit, Attachment 3, at A70, 74 and 76. These expenditures were related to the satellite links for the live video remote productions. See Nash affidavit, Attachment 3, at A591.



1 the technical systems that were part of the Convention Center's infrastructure.  
 2 Attachment 7, at 8. As such, the Commission determines that payments for their services  
 3 are permissible host committee expenditures.<sup>19</sup>

4 Nash also spent \$73,748 for satellite expenses, which served two purposes, one of  
 5 which was to provide the basic feed to news organizations that did not have facilities at  
 6 the San Diego Convention Center. See Nash affidavit, Attachment 3, at A591, ¶ 32b.  
 7 This purpose served by the satellite expenses was the functional equivalent of laying a  
 8 cable to the press room at the Convention Center to provide the same material to the news  
 9 organizations that did have facilities at the San Diego Convention Center. Such a  
 10 function is consistent with the examples of permissible host committee expenditures  
 11 related to construction for the convention center that are listed in 11 C.F.R.  
 12 § 9008.52(c)(1)(v). On this basis, the Commission determines that the expenditures for  
 13 satellite expenses that were the functional equivalent of a cable at the Convention Center  
 14 were permissible host committee expenditures.<sup>20</sup>

15 Nash spent \$138,442 on live video productions at six sites away from the  
 16 Convention Center: two in San Diego, California; and one each in Sacramento,  
 17 California; Miami, Florida; Fond du Lac, Wisconsin; and Russell, Kansas. See Greener

<sup>19</sup> This determination is consistent with the Commission's evaluation of apparently similar expenditures in the DNCC Audit Report, in which the Commission determined that host committee expenditures for, *inter alia*, broadcast engineers, cameramen, and projectionists were permissible host committee expenditures. See Attachment 8, at 3.

<sup>20</sup> Although the Convention Committee argued that one-half of the satellite costs should be allocated to each function, Attachment 3, at 36, documentation available to the Commission supports a more refined allocation. However, such an allocation is unnecessary because the Commission determines the other purpose served by the satellite costs is also permissible host committee activity so the entire \$73,748 has been excluded from the Repayment Determination upon Administrative Review. The satellite time's other purpose was to send the signal from the sites of the live remote video productions to the convention center. The remaining one-half of the expenditures for satellite time is discussed in this section in connection with the live remote video productions.

1 affidavit, Attachment 3, at A107 and A109-12, ¶¶ 15 and 19-27; Nash affidavit,  
 2 Attachment 3, at A584 and A588-89, ¶¶ 12 and 25; *see also* Attachment 7, at 4. One of  
 3 the functions served by the \$73,748 satellite costs that are also discussed above was  
 4 related to transmitting the signal from the site of the live videos back to the Convention  
 5 Center. Nash also spent \$70,000 on another taped video of a tour of Russell, Kansas.  
 6 Attachment 3, at 40. Additionally, \$6,250 of the Television Producer's fee was related to  
 7 the remote videos. *See* Bing affidavit, Attachment 3, at A76. The Convention  
 8 Committee argues that the determination that these amounts are repayable is inconsistent  
 9 with the Commission's treatment of certain taped remote video productions.<sup>21</sup> The  
 10 Commission has concluded that the taped and live videos at issue should be treated  
 11 consistently; consequently, the Nash expenditures for the live videos, related satellite  
 12 costs and the Russell tour have been excluded from the Repayment Determination upon  
 13 Administrative Review.

14 Nash provided entertainment in the Sail Area, which was the overflow seating  
 15 area on the roof of the Convention Center. The expenses related to the sail area include  
 16 Sail Area entertainment (\$18,935), Sail Area entertainment coordinator (\$3,481),<sup>22</sup> and  
 17 entertainment incidentals (\$213). The Convention Committee defends all of the expenses  
 18 listed above as necessary parts of the Sail Area. *See* Attachment 3, at 39-40.  
 19 Specifically, the Convention Committee explains that "the Host Committee was

<sup>21</sup> The taped videos consisted of "video clips highlighting profiles of delegates . . . [and] Maury Taylor, Joe Paterno, Mrs. Laura Bush (never used), Connie Mack, and Steve McDonald." *See* Attachment 7, at 5.

<sup>22</sup> The Sail Area entertainment coordinator could also be considered a "producer" or "director" of that portion of the convention proceedings, but is considered here to reflect the Convention Committee's argument that the Sail Area entertainment coordinator was part of the Sail Area.

1 concerned that attendees relegated to the Sail Area would not be happy. It therefore  
 2 strove to make the Sail Area as pleasant as possible by providing, among other things,  
 3 entertainment.” *Id.*, at 39. On this basis, the Commission has concluded the expenses  
 4 identified above that total \$22,629 (\$18,935 + \$3,481 + \$213) were sufficiently related to  
 5 the use of the Sail Area as an auxiliary area to the Convention Center that incurring these  
 6 expenses was part of the Host Committee’s provision of the “use of an auditorium or  
 7 convention center and . . . convention related services for that location.” 11 C.F.R.  
 8 § 9008.52(c)(1)(v). Therefore, pursuant to 11 C.F.R. § 9008.52(c)(1)(v) and (xi), the  
 9 Host Committee’s \$22,629 expenditures for entertainment in the Sail Area were  
 10 permissible host committee expenditures and have been removed from the Repayment  
 11 Determination upon Administrative Review.<sup>23</sup>

12 Thus, the Nash expenses described above totaling \$396,261 (\$26,684 + \$11,735+  
 13 \$46,773 + \$73,748 + \$138,442 + \$70,000 + \$6,250 + \$18,935 + \$3,481 + \$213) were  
 14 permissible host committee expenditures. As such, they do not represent in-kind  
 15 contributions that are subject to the Convention Committee’s expenditure limitation.  
 16 Consequently, they are not included in the Repayment Determination upon  
 17 Administrative Review.

<sup>23</sup> The Convention Committee also argued that these expenditures were permissible as entertainment expenditures. See Attachment 3, at 39. However, 11 C.F.R. § 9008.52(c) does not list entertainment as an example of a permissible host committee expenditure. Pursuant to section 9008.52(c)(1)(ii), host committees are permitted to provide “information booths, receptions, and tours” as part of “welcoming the convention attendees to the city,” and entertainment could be provided at such receptions. The principal objective of host committees and the context of the regulation makes clear that receptions must be to welcome attendees to the city and as such must be events that are clearly separate from the convention itself. The regulation’s reference to “receptions” for this expressed and particular purpose cannot be fairly read to permit host committees to provide entertainment that is part of the convention’s proceedings.

1                    2.     **Impermissible Host Committee Expenditures**

2                    The Commission determines that \$456,957 of Nash's expenses were not  
 3 permissible host committee expenditures and, therefore, are in-kind contributions that are  
 4 subject to the Convention Committee's expenditure limit. Given the Convention  
 5 Committee's role in supervising Nash, and because the Convention Committee received  
 6 public funds equal to its expenditure limit, the Commission determines that the  
 7 Convention Committee exceeded its expenditure limit and must therefore repay these in-  
 8 kind contributions to the United States Treasury.<sup>24</sup> The impermissible host committee  
 9 expenditures at issue can be categorized as belonging to two groups: the first group  
 10 consists of expenditures to vendors who produced or directed the convention proceedings,  
 11 and the second group consists of expenditures to vendors who provided content that was  
 12 used as a portion of the convention proceedings.

13                    a.     **Vendors Who Produced or Directed Proceedings**

14                    While 14 C.F.R. § 9008.52(c) lists examples of permissible host committee  
 15 expenditures, the Commission's regulations do not list impermissible host committee  
 16 expenditures. The purposes listed in section 9008.52(c)(1) and the principal objectives of  
 17 host committees of encouraging commerce and projecting a favorable image of the  
 18 convention city establish the criteria for permissible host committee expenditures. The  
 19 Commission has determined that Nash's payments to vendors who produced or directed  
 20 the convention proceedings are not consistent with the purposes listed in  
 21 section 9008.52(c)(1) nor are they consistent with a host committee's principal objectives.

<sup>24</sup> In addition to the following discussion, the appended chart shows the amounts associated with each of the repayable expenditures. Appendix 1.

1 Consequently, the Commission concludes that expenditures to vendors who produced or  
 2 directed the convention proceedings are impermissible host committee expenditures and  
 3 in-kind contributions to the Convention Committee.

4 These expenditures include \$40,000 for the Co-Producer. According to Nash, the  
 5 Co-Producer was "responsible for all operational aspects for production and show  
 6 elements in the Main Venue and the Sail Area," and was paid a total of \$60,000. See  
 7 Nash Line Item Descriptions, Attachment 7, at 3. Given the Co-Producer's  
 8 responsibilities, the Commission concludes that the expenditures related to the Co-  
 9 Producer were to create or enhance a portion of the convention proceedings and were  
 10 impermissible host committee expenditures.<sup>25</sup> Therefore, the \$40,000 payment to the Co-  
 11 Producer is included in the Repayment Determination upon Administrative Review.

12 The Directors were paid \$39,016. Nash's description of the Directors' functions  
 13 stated that they:

14 [d]irected television coverage of the convention that was  
 15 distributed as a basic feed via satellite throughout the United States, as  
 16 well as to monitors throughout the convention center. Also directed the  
 17 video mix of the program material that was displayed on the giant  
 18 projection screens in the Main Venue and the sail area.

19  
 20 Attachment 7, at 3. Directing the television coverage of the Convention that was  
 21 distributed for broadcast throughout the United States is a necessary part of creating and  
 22 enhancing the convention proceedings. Expenditures for directors are not a permissible

<sup>25</sup> The Host Committee paid the Co-Producer a total of \$60,000. One-third, or \$20,000, was not included in the Audit Report Repayment Determination to recognize that some of the Co-Producer's services were related to the Sail Area. The Convention Committee allocated the Co-Producer's fee with \$40,000 for closed circuit television and \$20,000 for the Sail Area. See Bing affidavit, Attachment 3, at A74-76.

1 host committee expenditure.<sup>26</sup> Consequently, the entire amount paid to the Directors is  
 2 included in the Repayment Determination upon Administrative Review.

3 Nash paid \$50,000 to the Television Producer. Nash's description of the  
 4 Television Producer's functions stated that the Producer was "[r]esponsible for television  
 5 coverage, including live remotes and creation of video segments for the big screens.  
 6 Also responsible for supervision of entire production budget." Attachment 7, at 3. Like  
 7 the Directors, the Television Producer created or enhanced the convention's proceedings.  
 8 Therefore, the Producer's fee is not a permissible host committee expenditure. The  
 9 Convention Committee allocated \$6,250 of the \$50,000 fee paid to the Television  
 10 Producer to the remote video productions. See Bing affidavit, Attachment 3, at A74-76.  
 11 Because the Commission has determined that expenditures related to the remote video  
 12 productions are permissible host committee expenditures, the \$6,250 of the Television  
 13 Producer's fee is not included in the Repayment Determination upon Administrative  
 14 Review. The remaining \$43,750 (\$50,000 - \$6,250) paid to the Television Producer is  
 15 included in the Repayment Determination upon Administrative Review.

16 Fees associated with additional production staff have also been included in the  
 17 Repayment Determination upon Administrative Review because their purpose was to

<sup>26</sup> Although the Nash Line Item Descriptions mentions the Directors' duties in connection with the Sail Area, the Convention Committee did not allocate any of the Directors' fees to the Sail Area category of expenses. Instead, the Convention Committee allocated the entire fee paid to the Directors to closed circuit television. See Bing affidavit, Attachment 3, at A74-75; Attachment 7, at 3. Such an allocation is unreasonable in that it fails to recognize the most significant aspect of the Directors' duties, namely directing the television coverage that was distributed throughout the United States. The Convention Committee admits that a Convention Committee function was to "facilitate[] media coverage, especially television coverage." Attachment 3, at 11. Other Convention Committee affiants emphasized the importance of this coverage to the success of the convention. See Greener affidavit, Attachment 3, at A106-08, ¶¶ 10-16; see also Geraghty affidavit, Attachment 3, at A87-88, ¶ 5, and Nash supplemental affidavit, Attachment 3, at A744-45, ¶ 3. The Convention Committee did not provide the Commission with documentation to support a more refined allocation of these costs.

1 create or enhance the convention proceedings. The job titles and related fees are as  
 2 follows: Technical Director (\$10,008);<sup>27</sup> Production Coordinator (\$5,570); Stage  
 3 Manager (\$8,438); Script Supervisor (\$6,442); Production Assistant (\$6,163); Make up  
 4 (\$3,000); Tape stock (\$200); Sound Operations (\$5,250); Tape Coordinator (\$7,806);  
 5 Continuity Writer (\$10,000); and Stand-ins (\$2,691).<sup>28</sup> None of these expenses was a  
 6 permissible host committee expenditure, so these amounts have been included in the  
 7 Repayment Determination upon Administrative Review.

8 The Convention Committee argues that many of these expenditures were  
 9 necessary television production services and that such services were permissible host  
 10 committee expenditures. See Attachment 3, at 26-33.<sup>29</sup> The Convention Committee  
 11 argues that the expenditures were similar to expenditures that the Chicago Host  
 12 Committee was permitted to provide to the DNCC. *Id.*, at 27-31. However, the  
 13 Commission has reviewed documentation related to the Chicago Host Committee  
 14 payments and determined that the cited payments are not similar to those included in this  
 15 Repayment Determination. See Memorandum from Audit Division to Office of General  
 16 Counsel, Attachment 8. Thus, the two audits are consistent.

<sup>27</sup> See Attachment 8, at 3 (specifying that the Technical Director was paid \$10,008 as part of \$56,781 for Video Crew Labor).

<sup>28</sup> In addition to the production staff listed above, Nash also expended \$38,500 for the Staging (or Production) Supervisor and \$22,790 for the Production Manager. The Convention Committee categorized these expenses as part of the lighting and rigging expenses that were necessary to prepare the Convention Center. See Bing affidavit, Attachment 3, at A74. The Commission did not include any of these amounts in the Audit Report Repayment Determination.

<sup>29</sup> Specifically, the Convention Committee initially placed the Continuity Writer and the Stand-ins in the miscellaneous category, see Bing affidavit, Attachment 3, at A76, but later categorized them as television production services, *id.*, at 26. The Convention Committee assigned the Production Coordinator to the overhead category. *Id.*, at 25-26 and Bing affidavit, A75. All of the remaining production staff—Co-producer, Directors, Television Producer, Video Crew Labor, Stage Manager, Script Supervisor, Production Assistant, Make-up, Tape Stock, Sound Operations, Tape Coordinator—were in the category

1 In particular, the Convention Committee identifies certain expenditures made by  
 2 the City of Chicago or the Chicago Host Committee that the Commission determined  
 3 were permissible host committee expenditures and argues that the television production  
 4 services provided by the San Diego Host Committee should be treated the same way.<sup>30</sup>  
 5 The Convention Committee points to the Chicago Host Committee's payment of  
 6 \$615,083 to Chicago Scenic Studios and argues that Nash's Stage Manager and Video  
 7 Crew Labor were for the same purposes. See Attachment 3, at 27. With respect to the  
 8 Video Crew Labor, the Commission has already determined that \$46,773 of the \$56,781  
 9 is a permissible host committee expenditure, which leaves the Technical Director's fee,  
 10 \$10,008, in dispute.

11 The payments to Chicago Scenic Studios were for broadcast engineers, stagehands  
 12 and riggers for the lighting, sound, Teleprompter, and Scenic systems, teamsters,  
 13 cameramen and projectionists. Attachment 8, at 3. Such services are closely linked to  
 14 the infrastructure of the convention center. Additionally, section 9008.52(c)(1)(v)  
 15 specifically lists decorations, lighting and loudspeaker systems. In contrast, the  
 16 remaining challenged payments to Nash were for vendors who produced or directed the  
 17 convention proceedings. According to Nash, the Stage Manager was: "Responsible for  
 18 running the operation of the podium during the convention, including cueing the talent  
 19 (speakers) and stage effects. Coordinates podium activities with the executive producer .

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initially called closed circuit television and later deemed television production services. See Attachment 3, at 25-26 and Bing affidavit, A74-75; see also Attachment 1, at 63-64.

<sup>30</sup> Among these arguments was the Convention Committee's argument that the expenditures for the Moving Light Operator (\$11,735) had a purpose similar to the payments to Chicago Scenic Studios. The Commission determined that provision of the Moving Light Operator is a permissible host committee expenditure, as discussed above.



1 . . . and the television director . . . .” See Attachment 7, at 3. As described by Nash, the  
2 Technical Director’s “overall responsibility . . . was the coordination of all aspects of the  
3 video engineering.” *Id.*, at 8. Thus, because the services provided by Chicago Scenic  
4 Studios are different from the services provided by Nash’s Stage Manager and Technical  
5 Director, the Convention Committee’s claim of inconsistent treatment fails.

6 The Convention Committee also states that the Chicago Host Committee reported  
7 “spending over \$12,000 on various ‘stage hands’ and ‘stage technicians,’” and it cites a  
8 few examples of such reporting entries, claiming that this is another inconsistency  
9 between the DNCC audit report and the Convention Committee’s audit report.  
10 Attachment 3, at n.5, 27. Although the Convention Committee does not precisely identify  
11 the disbursements that make up the “over \$12,000,” the attached schedule displays 35  
12 Chicago Host Committee disbursements that were reported for stagehands or stage tech  
13 crew and total \$13,930. See Audit Division, Schedule of Payments for “Stagehands” and  
14 “Stage Tech Crew Member,” Attachment 9. (The particular disbursements cited as  
15 examples by the Convention Committee are included on Attachment 9.) As shown on  
16 that schedule, all of the disbursements were in connection with events that were held  
17 outside of the convention hall and occurred prior to the convention. *Id.* As such, they  
18 were permissible host committee expenditures for receptions welcoming the convention  
19 attendees to the city, which is listed as an example in 11 C.F.R. § 9008.52(c)(1)(ii).  
20 Thus, the cited Chicago Host Committee expenditures were fundamentally different from  
21 the Nash expenditures that are included in the Convention Committee’s Repayment  
22 Determination.

1 The Convention Committee cites the audio system and related services provided  
2 by the City of Chicago to DNCC as another example of an inconsistency between the  
3 DNCC audit and the Convention Committee audit. Attachment 3, at 27-28. It argues that  
4 the \$5,250 for Sound Operations is the same as Sound Operations in the DNCC's audit,  
5 which were not included in the DNCC's Repayment Determination. *Id.* However,  
6 Nash's Sound Operations were described as closed captioning for Convention Committee  
7 television programming on Nash's general ledger, Attachment 8, at 3-4, while the Sound  
8 Operations in the DNCC audit were for an audio system and the services of audio  
9 consultants and an audio designer to operate the system, Attachment 3, at 27-28.<sup>31</sup> Thus,  
10 although the expenditures bear a similar label, the functions served were quite different.  
11 See Attachment 8, at 3-4. Section 9008.52(c)(1)(v) specifically lists loudspeaker systems  
12 as an example of permitted host committee expenditures. Consequently, despite the  
13 Convention Committee's suggestion to the contrary, the Sound Operations included in its  
14 repayment determination are not similar to the audio system operations addressed in the  
15 DNCC audit. Thus, the Audit Reports for the DNCC and the Convention Committee are  
16 consistent in this regard as well.

17 The Convention Committee's final example of inconsistency is the City of  
18 Chicago's provision of grips, chyron operators,<sup>32</sup> and a property master. See  
19 Attachment 3, at 28. The Convention Committee claims that Nash's stand-ins, script

<sup>31</sup> Both the Chicago Host Committee and the San Diego Host Committee made substantial payments to the same vendor for such services. See Attachment 8, at 3.

<sup>32</sup> The Convention Committee included script supervisors, instead of chyron operators, in the text of its Administrative Review Request, citing the DNCC Audit Report at 6 (Attachment 3, at A1143). Attachment 3, at 28. However, that page of the DNCC Audit Report does not refer to script supervisors. Convention Committee counsel stated that the reference should have been to chyron operators, as reflected in the text above. Attachment 8, at 4.

1 supervisors and a production accountant should be treated the same as the cited services  
2 for the Chicago convention. According to Nash's Line Item Descriptions, the purposes  
3 served by the stand-ins, script supervisors, and production accountant were just as their  
4 titles suggest. See Attachment 7, at 3, 4 and 7. The Commission does not have a  
5 description of the services provided by the grips, chyron operators, and property masters.  
6 However, the Convention Committee has not shown any basis to conclude that grips,  
7 chyron operators, and property masters are equivalent to stand-ins, script supervisors and  
8 a production accountant. Consequently, this aspect of the Convention Committee's  
9 argument of inconsistent treatment fails for a lack of supporting information.

10 The Convention Committee argues that the Commission has not stated a reason  
11 for treating some television production expenditures differently from others.  
12 Attachment 3, at 31-33. However, the television production expenditures that are  
13 repayable are those with specific purposes that were not for permissible host committee  
14 expenditures such as the examples listed in 11 C.F.R. § 9008.52(c), but were instead to  
15 create or enhance the convention proceedings. The specific purpose of the expenditures,  
16 rather than a broad, categorical purpose such as television production, determines whether  
17 the expenditures are permissible host committee expenditures similar to those listed in  
18 section 9008.52(c). Thus, some of the expenditures that fall under the Convention  
19 Committee's broad category of television production were permissible host committee  
20 expenditures; this does not mean, however, that all of the expenditures in the same broad  
21 category were permissible.

22 Finally, the Convention Committee claims that all of the television production  
23 expenses were required in order to provide the closed circuit television system with

1 programming. *Id.*, at 33. As the Convention Committee's own affiants clearly state,  
 2 facilitating nationwide television coverage of the convention is a significant focus of the  
 3 convention's efforts, yet allocating all of television production expenses to the closed  
 4 circuit television system makes that significant effort merely a by-product of the closed  
 5 circuit system. See Greener affidavit, Attachment 3, at A106-09, ¶¶ 10-16, and 18; see  
 6 also Geraghty affidavit, Attachment 3, at A87-88, ¶ 5, and Nash supplemental affidavit,  
 7 Attachment 3, at A744-45, ¶ 3. The Convention Committee's affiants make clear that its  
 8 efforts to facilitate the nationwide television broadcast cannot be ignored. Thus, the  
 9 Commission concludes that allocation of all the television production expenditures to the  
 10 closed circuit television system is clearly unreasonable.

11 **b. Vendors Who Provided Content**

12 The Host Committee made expenditures to vendors who provided content that  
 13 was used as a portion of the convention proceedings.<sup>33</sup> None of these expenditures is  
 14 similar to the purposes listed in 11 C.F.R. § 9008.52(c), nor is any consistent with a host  
 15 committee's principle purpose of promoting its city. Consequently, the following  
 16 expenditures are impermissible host committee expenditures and in-kind contributions to  
 17 the Convention Committee.

18 The travel expense for the Convention Announcer (\$986) is part of the expenses  
 19 necessary to create the content of convention proceedings, based on the Announcer's  
 20 apparent function. As such, it is not a permissible host committee expenditure. The  
 21 Convention Committee notes that the announcer may have welcomed speakers to the

<sup>33</sup> With such a purpose, these expenditures fail even the Convention Committee's simplified test for distinguishing permissible host committee expenditures from impermissible. They are not for the

1 podium; however, section 9008.52(c)(1)(ii) use of welcoming is expressly limited to  
2 welcoming attendees to the city, which reflects the permitted role of host committees, –  
3 rather than assisting the creation of convention proceedings.

4 Similarly, \$49,032 were spent to bring an orchestra to perform before and during  
5 the convention. While a host committee might be permitted to provide an orchestra at a  
6 welcoming reception pursuant to 11 C.F.R. § 9008.52(c)(1)(ii), or even to provide tickets  
7 to an orchestra concert analogous to the baseball game tickets in Advisory Opinion 1980-  
8 21, providing entertainment as part of the convention's proceedings is not a permissible  
9 host committee expenditure.

10 Nash spent \$77,595 on Special Effects, which consisted of indoor fireworks for  
11 the San Diego Convention Center, a confetti cannon, and a balloon drop. The  
12 Convention Committee contends these services are permitted by section 9008.52(c)(1)(v),  
13 which permits decorations. However, the services provided are not decorations as  
14 contemplated by section 9008.52(c)(1)(v). Rather, they are events that are part of the  
15 convention proceedings. As Mr. Nash explained in his affidavit, "the moment of the  
16 candidate's nomination is one of the climactic moments of the Convention. It is  
17 traditionally accompanied by huge balloon drops, confetti, music, and fireworks." Nash  
18 affidavit, Attachment 3, at A584, ¶ 12. Mr. Nash describes a moment of the convention,  
19 indeed, the climactic moment, and as such the balloon drops, confetti cannon, and  
20 fireworks are explained as accompanying that moment; thus, even Mr. Nash's description  
21 of the services portrays them as events, not as a decorative backdrop that would be

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"microphone," or the permitted host committee expenditures, but rather are for the "message," which the host committee may not provide. See Attachment 4, at 48.

1 permitted. As events that occur at particular points in the convention proceedings, the  
 2 balloon drops, confetti cannon, and fireworks are more analogous to entertainment than to  
 3 decorations, and as stated above, expenditures for entertainment are permissible host  
 4 committee expenditures only to the extent they are part of efforts to welcome convention  
 5 attendees to the city pursuant to section 9008.52(c)(1)(ii).<sup>34</sup> Therefore, the \$77,595  
 6 expenditures were not permissible host committee expenditures and are included in the  
 7 Repayment Determination upon Administrative Review.

8 The Convention Committee referred to a number of expenditures reported by the  
 9 Chicago Host Committee that were not included in the DNCC Audit Report Repayment  
 10 Determination and argued that the Commission must exclude certain expenditures from  
 11 the Convention Committee's repayment determination on this basis. Specifically, the  
 12 Convention Committee refers to expenditures for production labor, fireworks, an air  
 13 show, and entertainment. Attachment 3, at 27, 37, 38, and 39. The Commission has  
 14 reviewed documentation related to these disbursements and concluded that all of the  
 15 disbursements referenced by the Convention Committee were associated with events held  
 16 by the Chicago Host Committee that were to welcome convention attendees to the City of  
 17 Chicago and were therefore consistent with 11 C.F.R. § 9008.52(c)(1)(ii). All of these  
 18 events were held at locations away from the location of the Chicago convention, and all  
 19 but one of these events occurred prior to the first day of the convention. Attachment 8,  
 20 at 5-6, and Audit Division, Schedule of Payments for "Entertainment" as Reported on the

<sup>34</sup> The Commission's inclusion of "decorations" in section 9008.52(c)(1)(v) requires that the Commission determine the scope of that term. While the Commission has determined that decorations as used in the regulation may include the use of newer technologies, the Commission has also determined that decorations as used in the regulation does not include events merely because the events have a visual element.

1 DNC Host FEC Disclosure Reports, Attachment 10. It is therefore clear that the events  
 2 were similar to the baseball game in Advisory Opinion 1980-21 and were not part of the  
 3 convention proceedings. Consequently, the referenced expenditures are not similar to any  
 4 of the expenditures included in the Convention Committee's repayment determination.

5 Thus, the Commission determines that \$315,947 of the Nash expenses were not  
 6 permissible host committee expenditures and as such represent in-kind contributions to  
 7 the Convention Committee.

### 8 3. Overhead and Indirect Expenses

9 In the Audit Report Repayment Determination, Nash's indirect expenses were  
 10 attributed between Nash's functions that were permissible host committee expenditures  
 11 and those that were not in order to reflect the Commission determinations related to the  
 12 other Nash expenditures.<sup>35</sup> See Attachment 1, at 37-38 (describing attribution process).  
 13 The Nash indirect and overhead expenses must be reattributed to reflect the  
 14 Commission's other determinations in this Statement of Reasons.

15 First, the pool of expenses subject to this attribution must be adjusted. In the  
 16 Audit Report, a total of \$346,559 was considered subject to attribution. The Commission  
 17 has determined that the Production Accountant (\$19,984) should be subject to attribution,  
 18 so those expenditures have been added to the pool of attributable expenses.<sup>36</sup> Thus, the

<sup>35</sup> In its Administrative Review Request, the Convention Committee combined the Overhead and Indirect Expense categories. See Attachment 3, at 26. Two types of expenses included in Overhead – \$25,000 of the Television Producer's fee and \$5,570 for a Production Coordinator – are discussed above. The remaining expense in the Overhead category, \$15,000 for a Production Accountant, was not subject to allocation in the Audit Report Repayment Determination, but is considered with the indirect expenses in this Statement of Reasons. Attachment 8, at 4.

<sup>36</sup> Because the Accountant's fee related to all of Nash's activities, the Commission determines that the fee should be attributed to calculate an amount related to Nash's activities that were impermissible host committee expenditures, rather than allowing the entire fee as a compliance cost. See Attachment 3, at 41.

1 total amount of attributable expenses revised to reflect the Commission determinations is  
2 \$366,543 (\$346,559 + \$19,984).

3 The Convention Committee also argues that hotel expenses of \$105,603.94 should  
4 not be subject to attribution as 11 C.F.R. § 9008.52(c)(1)(ix) permits host committees to  
5 incur expenses "to provide hotel rooms at no charge or a reduced rate on the basis of the  
6 number of rooms actually booked for the convention." 11 C.F.R. § 9008.52(c)(1)(ix).  
7 See Attachment 3, at 41 and Attachment 4, at 42. The Convention Committee is  
8 incorrectly attempting to extend the regulation to include not only the complimentary  
9 rooms the Host Committee properly provided in accordance with  
10 section 9008.52(c)(1)(ix), but also some of the underlying rooms that the Host Committee  
11 would have been required to book in order to receive the complimentary rooms.  
12 Section 9008.52(c)(1)(ix) is not so broad, but is instead limited to any rooms received by  
13 a host committee from hotels at a reduced rate or no charge in return for a specified  
14 number of other rooms booked. Therefore, the \$105,603.94 remain subject to attribution.

15 The Convention Committee also argues that transportation expenses of  
16 \$10,643.49 should not be subject to attribution as 11 C.F.R. § 9008.52(c)(1)(vi) permits  
17 local transportation. Attachment 3, at 41. However, the Convention Committee has not  
18 shown those expenses to have been exclusively local, so they remain subject to  
19 attribution.

20 Once the pool of Overhead and Indirect Expenses subject to attribution was  
21 identified, that pool was attributed between those related to impermissible host committee



1 expenditures and those related to permissible host committee expenditures.<sup>37</sup> This  
 2 resulted in an attribution of \$141,010 of Overhead and Indirect Expenses related to  
 3 Nash's expenses that were impermissible host committee expenditures, and \$225,533 to  
 4 Nash's expenses that were permissible host committee expenditures.<sup>38</sup> Thus, the  
 5 Commission determines that \$141,010 of Overhead and Indirect Expenses related to  
 6 Nash's expenses that were impermissible host committee expenditures plus \$315,947 of  
 7 the other Nash expenses that were impermissible host committee expenditures for a total  
 8 in-kind contribution of \$456,957 to the Convention Committee.

9 **4. Offset**

10 Once the Commission has determined the amount of the in-kind contribution from  
 11 the Host Committee, the Commission must address the Convention Committee's

<sup>37</sup> In addition to the following discussion, the appended chart identifies the allocation pools and the amount by which each pool was allocated. Appendix 2.

<sup>38</sup> In the Audit Report, the Commission approved a two-step process for attribution of Nash's indirect expenses. First, indirect expenses that could be associated with other particular Nash expenditures were attributed based on whether the associated Nash expense was determined to be an impermissible host committee expenditure. These indirect expenses were primarily travel and living expenses that could be associated with particular persons. Of the \$346,559 total Indirect Expenses, \$107,785 were attributed to the Convention Committee, \$102,695 were attributed to the Host Committee, and \$136,078 could not be associated with other Nash expenses, so this \$136,078 of indirect expenses were subject to the second step of the attribution process. (Included in the permitted \$102,695 were \$23,633 for equipment rental cited by the Convention Committee. Attachment 3, at 41.) In the context of the Audit Report, the \$136,078 was divided into three groups: Travel and Living Expense—Producers and Directors (\$9,702); Travel and Living Expenses—Others (\$32,886); and Overhead (\$93,491). The two travel and living expense groups were attributed to either the Convention Committee or the Host Committee based on the distribution of associated direct costs. The overhead expenses were attributed based on the distribution of all non-overhead expenses. See Attachment 1, at 38. Of the \$136,078 subject to the second step of the attribution, \$57,496 was attributed to the Convention Committee, and \$78,583 was attributed to the Host Committee.

As a final result of this attribution process in the Audit Report, the Commission determined that a total of \$165,281 (\$107,785 + \$57,496) of Nash's Indirect Costs were related to the Nash expenses that were impermissible host committee expenditures. As such, that portion of the indirect expenses was part of the in-kind contributions from the Host Committee to the Convention Committee and therefore subject to the latter's expenditure limitation.

1 proposed offset.<sup>39</sup> A convention committee must agree to an expenditure limitation as  
 2 well as established parameters on how the public funds can be used as conditions to  
 3 receiving public funds. In addition, a convention committee's entitlement to those public  
 4 funds is equal to the expenditure limitation. Exceeding the expenditure limitation, the  
 5 improper use of public funds and the receipt of excessive public funds are all bases for  
 6 repayment. 11 C.F.R. § 9008.12(b)(1), (2) and (4). Therefore, the Commission must  
 7 examine the impact of the offset transaction on the expenditure limitation, the use of  
 8 public funds, and the Convention Committee's entitlement.

9 Allowing the Convention Committee to offset the in-kind contribution received  
 10 from the Host Committee by its expenses that could have been paid by the Host  
 11 Committee does not have an impact on the Convention Committee's expenditure  
 12 limitation. If the expenditures at issue were permissible host committee expenditures and  
 13 are ultimately paid for with Host Committee funds, they can not be subject to the  
 14 Convention Committee's expenditure limitation. 11 C.F.R. § 9008.8(b)(1). There is no  
 15 requirement in section 9008.52(c)(1) that the funds must be initially expended from the  
 16 Host Committee's accounts, nor is there a prohibition against the initial use of the

<sup>39</sup> The Convention Committee defines its proposal as a recoupment. A recoupment is not applicable in this situation. Recoupment is appropriate when the defendant in a suit has a monetary claim against the plaintiff. See 6 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure, Civil* § 1401 (2d ed. 1990). The purpose of a recoupment is to prevent the unjust enrichment of a party to a lawsuit and to avoid wasteful multiplicity of litigation. *Estate of Mueller v. Commissioner of Internal Revenue*, 101 T.C. 551, 551-552 (1993). This matter does not involve an unjust enrichment of a party involved in litigation nor does it involve any economies of litigation. Rather, this matter involves the Convention Committee's proposal to restructure expenses that it claims could have been spent by the Host Committee without counting towards the Convention Committee's expenditure limitation. In order for the recoupment to be appropriate in this context, the government would have to owe the Convention Committee monetary relief for actions arising out of its contract with the Convention Committee. See *United States v. Consumer Health Services of America, Inc.*, 108 F.3d 390, 395 (D.C. Cir. 1997) (stating that recoupment requires both debts to arise out of a single integrated transaction so that it would be inequitable for the debtor to enjoy the benefits of that transaction without also meeting its obligations).

1 Convention Committee's public funds for the purposes set forth in section 9008.52(c).

2 See 11 C.F.R. § 9008.7(b)(1).

3 The proposed offset does not have an impact on the Convention Committee's  
 4 entitlement to public funds. Private funds can be used for the purpose of paying  
 5 convention expenses. 11 C.F.R. § 9008.6(a)(1). However, if private funds are spent on  
 6 convention expenses, the convention committee's entitlement to public funds may be  
 7 reduced by the same amount. See 26 U.S.C. § 9007(b)(3). The sum of a convention  
 8 committee's entitlement and the private contributions cannot exceed a convention  
 9 committee's expenditure limitation. 11 C.F.R. § 9008.5(b). However, if the Host  
 10 Committee expenses were permissible host committee expenditures, they are not  
 11 contributions to the Convention Committee. 11 C.F.R. §§ 114.1(a)(2)(viii)  
 12 and 9008.8(b)(1). Therefore, there are no additional private contributions provided to the  
 13 Convention Committee when the Host Committee reimbursement is for permissible host  
 14 committee expenditures.<sup>40</sup>

15 Therefore, the Commission concludes that the Convention Committee may offset  
 16 the \$456,957 in-kind contribution it received from the Host Committee by expenses that  
 17 were incurred by the Convention Committee, but that were also permissible host

<sup>40</sup> The Commission permits such offsets in other similar circumstances where there is no adverse affect on the expenditure limitation or the entitlement. In the context of general election financing, a general election candidate committee may receive a reimbursement from its legal and accounting compliance fund for expenses that could have been paid by the legal and accounting compliance fund. 11 C.F.R. § 9003.3(a)(2)(ii)(A), (D) and (G). Such reimbursed expenditures are not subject to the general election expenditure limitation. 11 C.F.R. § 9003.3(a)(2)(iii). Unlike convention committees, general election committees are usually not permitted to accept private contributions. However, in the limited situation where the general election committee can accept private contributions (i.e. when there is a shortage in the Presidential Election Campaign Fund), the general election committee's entitlement will be adjusted to reflect these additional funds. 11 C.F.R. § 9004.3(b)(2). The adjustment of the general election committee's entitlement is similar to convention committee financing. See *Explanation and Justification for 11 C.F.R. § 9008.3*, 44 Fed. Reg. 63036 (Nov. 1, 1979); see also 11 C.F.R. § 9008.5.

1 committee expenditures. Of such expenses put forth by the Convention Committee, the  
 2 Commission determines that expenses totaling \$722,817 would have been permissible  
 3 host committee expenditures had the Host Committee incurred those expenses. See  
 4 Attachment D.<sup>41</sup> The Commission will take administrative notice of a reimbursement  
 5 from the Convention Committee to the Host Committee of the Nash expenses that were  
 6 impermissible host committee expenditures, which eliminates the contribution for  
 7 repayment purposes. In exchange, a reimbursement in the same amount from the Host  
 8 Committee to the Convention Committee for Convention Committee expenditures that  
 9 were permissible host committee expenditures will also be noted. Because the  
 10 reimbursements are equal, they result in a net exchange of zero; therefore, the Convention  
 11 Committee and Host Committees are not required to transfer funds. However, both the  
 12 Convention Committee and the Host Committee must amend their reports accordingly to  
 13 reflect the transaction. Similarly, the Commission has appropriately noted the  
 14 adjustments on the Convention Committee's Net Outstanding Convention Expenses  
 15 Statement.<sup>42</sup> Attachment 2.

16 The Commission examined documentation relating to \$1,606,138 in expenditures  
 17 that the Convention Committee made that it argued could have been paid by the Host  
 18 Committee. The Commission has divided the expenditures into five categories: (1) office  
 19 equipment and construction of \$611,800; (2) local transportation and security of

<sup>41</sup> The Audit Division's analysis states that the Convention Committee paid permissible host committee expenses of \$718,334. The Commission concludes that an additional \$4,433 paid to Red Sun Custom Screening was also a permissible host committee expense, for a total of \$722,817 (\$718,334 + \$4,433). See Attachment D, at 6.

<sup>42</sup> The revised Net Outstanding Committee Expenditure statement is dated as of September 30, 1996 with the final amount determined as of December 31, 1998. See 11 C.F.R. § 9008.10(g).

1 \$111,017; (3) hotels of \$743,924; (4) caucus and platform meeting of \$25,651; and (5)  
2 undocumented of \$113,746.

3 With respect to the office equipment and construction expenses of \$611,800, the  
4 Commission concludes that the Convention Committee has presented documentation to  
5 demonstrate that these expenses were permissible host committee expenditures. Host  
6 committees may provide offices, office equipment, and construction services for the  
7 convention center location, as well as similar convention-related facilities and services.  
8 11 C.F.R. § 9008.52(c)(1)(v) and (xi). The \$611,800 of expenses include photocopying  
9 machines and copies, computer equipment, and repaving certain roads and walkways near  
10 the convention center. Attachment D, at 4.

11 The Convention Committee also presented documentation demonstrating that  
12 local transportation and security expenses totaling \$111,017 were permissible host  
13 committee expenses. The expenditures relate to parking lot rentals and uniforms used for  
14 security purposes. Attachment D, at 4. The Commission's regulations state that host  
15 committees may defray the costs of various local transportation services, including the  
16 provision of buses, automobiles, and the cost of law enforcement services. 11 C.F.R.  
17 § 9008.52(c)(1)(vi) and (vii).

18 The Convention Committee's \$743,924 payment for hotel rooms is not a  
19 permissible host committee expense, and therefore, a reimbursement of these expenses is  
20 not included in the offset. Section 9008.52(c)(1)(ix) states that a host committee can  
21 incur expenses "to provide hotel rooms at no charge or a reduced rate on the basis of the  
22 number of rooms actually booked for the convention." Thus, section 9008.52(c)(1)(ix)  
23 permits host committees to provide convention committees with any rooms the host

1 committee receives at no charge or at a reduced rate based on the number of rooms  
2 actually booked for the convention.

3 Contracts obtained from the San Diego Convention & Visitors Bureau ("ConVis")  
4 between the Convention Committee and hotel vendors demonstrate that the Convention  
5 Committee received one free room for every 40 rooms booked by the Host Committee.  
6 See Attachment 8, at 8. The contracts reviewed by the Commission demonstrate that  
7 after the hotels received full payment, the hotels gave a 5% commission to ConVis, and  
8 ConVis forwarded this 5% commission to the Host Committee. *Id.*, at 8.

9 In attempting to use the \$743,924 paid for the rooms as a host committee expense  
10 pursuant to section 9008.52(c)(1)(ix), the Convention Committee is incorrectly  
11 attempting to extend the regulation to include not just the complimentary rooms the Host  
12 Committee properly provided in accordance with section 9008.52(c)(1)(ix), but also some  
13 of the underlying 40 rooms the Host Committee would have been required to book in  
14 order to receive the complimentary rooms. Section 9008.52(c)(1)(ix) is not so broad  
15 because it is limited to any rooms received by a host committee from hotels at a reduced  
16 rate or no charge, in return for a specified number of other rooms booked. Therefore, the  
17 \$743,924 would not be a permissible host committee expenditure pursuant to  
18 section 9008.52(c)(1)(ix).<sup>43</sup>

19 The fourth category, caucus and platform meeting, relates to payments totaling  
20 \$25,651 made to a single vendor. According to documents reviewed by the Commission,  
21 the purpose of the payments was to provide facilities, sound, and lighting for Caucus and

<sup>43</sup> The Convention Committee made a similar argument related to \$105,603.94 of hotel expenses in the overhead and indirect costs category. Attachment 3, at 41. For the same reasons cited above, that argument is rejected and the costs remain subject to attribution.

1 Platform Committee meetings on August 5, 1996 through August 9, 1996, before the start  
2 of the convention. See Attachment 3, at 47 and Attachment D, at 5. The Commission  
3 concludes that this meeting was for the purpose of conducting national party business,  
4 and is therefore not a permissible host committee expense.

5 The last category of expenses labeled undocumented totals \$113,746. No  
6 documentation was submitted to determine the nature of these expenses. Attachment D,  
7 at 5. Therefore the Commission does not include these expenses among those that have  
8 been determined to be permissible host committee expenses.

9 The Commission determines that \$722,817 in expenses paid by the Convention  
10 Committee are permissible Host Committee expenses. This amount is more than  
11 sufficient to offset the \$456,957 in-kind contribution from the Host Committee to the  
12 Convention Committee. Therefore, the Commission concludes that the Convention  
13 Committee does not owe a repayment for exceeding the expenditure limit.

## APPENDIX I

## Host Committee's In-Kind Contribution to Convention Committee

DESCRIPTION	AMOUNT
Co-Producer	\$40,000
Directors	39,016
TV-Producer	43,750
Video Crew Labor	10,008
Production Coordinator	5,570
Stage Manager	8,438
Script Supervisor	6,442
Production Assistant	6,163
Make up	3,000
Tape stock	200
Sound ops	5,250
Tape coordinator	7,806
Continuity Writer	10,000
Stand-ins	2,691
Announcer travel expense	986
Music	49,032
Special Effects	77,595
*T&L for Co-Producer, TV-Producer and Directors	29,448
*Transportation Fares	13,072
*Hotels	33,732
*Catering	7,513
*Telephone	1,054
*Per Diems	27,107
*Fees	790
*Operations	6,938
*Wind-down	8,697
*Office Expense	2,693
*Runners	1,846
*Transportation	4,926
*Production Accountant	3,194
<b>TOTAL IN-KIND CONTRIBUTION</b>	<b>\$456,957</b>
Offset	(\$456,957)
<b>NET CONTRIBUTION AFTER OFFSET</b>	<b>\$0</b>

The figures listed above are rounded to the nearest dollar.

\* denotes allocable overhead.



## San Diego Host Committee / Sail to Victory San Diego'96

	<u>Account Total</u>	<u>COA Amount</u>	<u>Host Amount</u>
<b>Producer and Director Travel and Living Expenses (PD Travel)</b>			
Total 2002 Co-Producer	\$ (60,000.00)	\$ (40,000.00)	\$ (20,000.00)
Total 2003 Television Producer	\$ (50,000.00)	\$ (43,750.00)	\$ (6,250.00)
Total 2100 Director	\$ (28,875.00)	\$ (28,875.00)	\$ -
Total 2102 Associate Directors	\$ (10,140.94)	\$ (10,140.94)	\$ -
<b>Totals</b>	<b>\$ (149,015.94)</b>	<b>\$ (122,765.94)</b>	<b>\$ (26,250.00)</b>
<b>Percentage</b>	<b>-</b>	<b>0.823844348</b>	<b>0.176155652</b>

### Travel and Living Expenses Other Than Producers and Directors (Other Travel)

	<u>COA Amount</u>	<u>Host Amount</u>
Total 3001 Production Coordinator	\$ (5,588.92)	\$ (5,588.92)
Total 3003 Stage Manager	\$ (8,437.50)	\$ (8,437.50)
Total 3004 Staging Supervisor	\$ (38,500.00)	\$ (38,500.00)
Total 3005 Production Manager	\$ (22,790.00)	\$ (22,790.00)
Total 3006 Script Supervisor	\$ (6,441.71)	\$ (6,441.71)
Total 3007 Production Assistants	\$ (6,163.33)	\$ (6,163.33)
Total 3101 Musical Dir/Orchestra	\$ (49,032.24)	\$ (49,032.24)
Total 3201 Head Electrician	\$ (48,031.25)	\$ (48,031.25)
Total 3202 Moving Light Operator	\$ (11,735.00)	\$ (11,735.00)
Total 3203 Head Rigger - IFA	\$ (38,192.50)	\$ (38,192.50)
Total 3204 Key Electrics	\$ (128,869.38)	\$ (128,869.38)
Total 3204A Other	\$ (42,467.00)	\$ (42,467.00)
Total 3205 Local Electrician	\$ (273,050.15)	\$ (273,050.15)
Total 3607 Confetti cannons, balloons	\$ (77,594.57)	\$ (77,594.57)
Total 4000 Makeup & Hairdressing	\$ (3,000.00)	\$ (3,000.00)
Total 4201 Video Crew Labor	\$ (82,101.50)	\$ (10,008.00)
Total 8005 Announcer	\$ (988.00)	\$ (988.00)
Total 8008 Tape Coordinator	\$ (7,805.51)	\$ (7,805.51)
Total 8010 Entertainment Coordinator	\$ (3,481.20)	\$ (3,481.20)
Total 8011 Continuity Writer	\$ (10,000.00)	\$ (10,000.00)
Total 8012 Stand Ins	\$ (2,690.65)	\$ (2,690.65)
<b>Totals</b>	<b>\$ (844,939.41)</b>	<b>\$ (657,209.98)</b>
<b>Percentage</b>	<b>0.059197428</b>	<b>0.777819063</b>

**San Diego Host Committee / Sail to Victory San Diego'96**

**Overhead Expenses (OH)**

Grand Total After Allocation of Travel and Living Expenses	<u>Acct. Total</u>	<u>COA Amount</u>	<u>Host Amount</u>	<u>Neither</u>
	\$ (432,731.37)	\$ (1,616,603.45)	\$ (113,744.96)	
<b>Less Overhead Categories</b>				
Total 4508 Office Expense	\$ (8,819.17)	\$ (1,257.02)	\$ (817.26)	\$ (6,744.89)
Total 4507 Telephone & Telegraph	\$ (2,240.50)	\$ (771.71)	\$ (141.08)	\$ (1,327.71)
Total 7500 Fees & Charges	\$ (3,709.49)			\$ (3,709.49)
Total 8002 Change Orders - Operations	\$ (56,354.46)		\$ (23,774.96)	\$ (32,579.47)
Total 8003 Runners	\$ (6,666.90)			\$ (6,666.90)
Total 8015 Wind down & Audit	\$ (20,000.00)			\$ (20,000.00)
4407 Mileage Allowance	\$ (12.60)			\$ (12.60)
4408 Parking	\$ (54.00)			\$ (54.00)
<b>Nash General Ledger Totals</b>	<u>\$ (430,702.84)</u>		<u>\$ (1,691,870.13)</u>	
<b>Total COA and Host Non-Overhead</b>		<u>\$ (2,022,572.78)</u>		
<b>Percentage</b>		<b>COA</b> 0.212947906	<b>Host</b> 0.787052091	

1           **C.    REPAYMENT DETERMINATION UPON ADMINISTRATIVE**  
2           **REVIEW**

3           The Convention Committee's administrative review request presents the  
4           Commission with several issues related to whether certain Nash expenses were  
5           permissible host committee expenditures. Because permissible host committee  
6           expenditures that are made in accordance with 11 C.F.R. § 9008.52 are not subject to the  
7           convention committee's expenditure limitation, these issues require an interpretation of  
8           the breadth of host committee activity permitted under section 9008.52(c). The  
9           Commission's recognition of an exception to the convention committee expenditure  
10          limitation for host committee activity is in the context of public funds that are provided to  
11          convention committees only upon the recipients' agreement to an expenditure limitation.  
12          As the Commission previously noted, "the national committee of a political party is  
13          entitled to receive public money to pay for its convention and is in turn limited in the  
14          amount which it may spend on that convention." 44 Fed. Reg. 63038 (1979).

15          Section 9008.52(c) is based on previous 11 C.F.R. § 9008.7(b) and (d), which  
16          permitted government agencies to make certain expenditures for facilities and services  
17          with respect to a convention without the value of the facilities and services counting  
18          toward the party's expenditure limitation, 11 C.F.R. § 9008.7(b) (1994), permitted host  
19          committees to promote the convention city and its commerce, 11 C.F.R. § 9008.7(d)(2)  
20          (1994), and permitted host committees to make expenditures similar to government  
21          agencies, 11 C.F.R. § 9008.7(d)(3) (1994). See 11 C.F.R. § 9008.7(b), (d) (1994);  
22          *Explanation and Justification for 11 C.F.R. § 9008.52*, 59 Fed. Reg. 33614 (1994) and  
23          *Explanation and Justification for 11 C.F.R. § 9008.7*, 44 Fed. Reg. 63037 (1979). While

1 the provisions related to host committees permitted unlimited donations from individuals,  
 2 local businesses, local government agencies, and union locals to the host committee for  
 3 use in promoting the city and its commerce, "far greater restrictions [were] placed on  
 4 funds received and expended to defray convention expenses." 44 Fed. Reg. 63037  
 5 (1979). Specifically, only local retail businesses were permitted to donate funds to defray  
 6 convention expenses and such donations were "limited to an amount proportionate to the  
 7 commercial return reasonably expected during the life of the convention by the particular  
 8 business." 44 Fed. Reg. 63037 (1979). This provision for the host committee to defray  
 9 convention expenses under these limited circumstances, i.e., 11 C.F.R. § 9008.7(d)(3)  
 10 (1994), was "intended to be a narrow exception to the statutory limitation on convention  
 11 expenses." 44 Fed. Reg. 63038 (1979).

12 In 1994, the Commission revised its regulation to the current structure, but the  
 13 regulation permitting host committees to make expenditures in connection with  
 14 conventions continues to be an exception to convention committees' expenditure limits.  
 15 11 C.F.R. § 9008.8(b)(1). Therefore, it still must be narrowly construed in order to  
 16 preserve the statutory expenditure limit. Similarly, because host committees may accept  
 17 funds from local corporations and local labor organizations that would otherwise be  
 18 prohibited from use in connection with conventions, the regulatory exception must be  
 19 construed narrowly. 2 U.S.C. § 441b. Host committee expenditures are not, however,  
 20 limited in amount.<sup>15</sup> Instead, host committee expenditures are limited in purpose, which

<sup>15</sup> The focus on permissible purposes, instead of amounts, permits a wider variety of cities to compete to host conventions as host committees are permitted to provide construction services in order to provide a suitable convention center or auditorium. 11 C.F.R. § 9008.52(c)(1)(v). The Convention Committee points to the amounts of expenditures in connection with previous conventions, arguing they indicate the Commission has interpreted section 9008.52(c) as "a very broad exception." Attachment 3,

1 reflects the Commission's determination that expenditures for purposes such as those  
2 listed in 11 C.F.R. § 9008.52(c)(1)(i) through (xi) are consistent with the host  
3 committees' principal objectives: the encouragement of commerce in the convention city  
4 and the projection of a favorable image of the city to convention attendees, 11 C.F.R.  
5 § 9008.52(a), rather than election-influencing purposes. —

6 As a threshold matter, the Commission determines that the Convention  
7 Committee knowingly helped, assisted, and participated in Nash's activities. As required  
8 under Nash's contracts with the Convention Committee and the Host Committee, Nash  
9 performed his services to the Convention Committee's specifications and under the  
10 direction of the Convention Manager, a Convention Committee employee. Attachment 6,  
11 at 1 and 11. Consequently, to the extent that any of Nash's expenses were not  
12 permissible host committee expenditures, the Commission may seek a repayment for such  
13 disbursements from the Convention Committee pursuant to 11 C.F.R. § 9008.12(b)(7).

14 **1. Permissible Host Committee Expenditures**

15 The Commission concludes that the Convention Committee has demonstrated that  
16 a number of the Nash expenses that compose the \$892,489 Audit Report Repayment  
17 Determination were, in fact, permissible host committee expenditures. The Host  
18 Committee may expend funds for decorations, which are listed as an example of  
19 permissible host committee expenditures in 11 C.F.R. § 9008.52(c)(1)(v). Nash spent  
20 \$26,684 on "main and end titles" that were computer-generated graphics projected onto  
21 the television screens that were part of the podium; as such, the graphics were

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at 21; see Attachment 5, at 4. However, the breadth of permitted host committee purposes cannot be evaluated by an examination of expenditure amounts.

1 decorations. See Attachment 1, at 63, and Attachment 3, at 36-37. Similarly, still  
2 photographs displayed in the same locations would be within decorations as listed in  
3 section 9008.52(c)(1)(v). The additional technology in the computer-generated graphics  
4 does not deprive those graphics of their decorative character. Therefore, the Commission  
5 determines that the main and end titles were decorations of the Convention Center and as  
6 such were permissible host committee expenditures.

7 Nash also spent \$77,595 on special effects, which consisted of indoor fireworks  
8 for the San Diego Convention Center, a confetti cannon, and a balloon drop. The  
9 Convention Committee contends these services are permitted by section 9008.52(c)(1)(v),  
10 which permits decorations since the balloon drop and the confetti were ornate features  
11 used to enhance the aesthetics of the convention center. Attachment 3, at 36-38. The  
12 Commission agrees and determines that the expenditure of \$77,595 on Special Effects  
13 was a permissible host committee expenditure pursuant to 11 C.F.R. § 9008.52(c)(1)(v).  
14 This amount has been removed from the Repayment Determination upon Administrative  
15 Review.

16 Section 9008.52(c)(1)(v) specifically lists lighting among the examples of  
17 infrastructure-related permissible host committees expenditures. Nash paid \$11,735 for a  
18 Moving Light Operator, as part of \$540,345 spent on lighting Rigging and Staging  
19 Labor.<sup>16</sup> Because lighting is listed as an example of permissible host committee  
20 expenditures in section 9008.52(c)(1)(v), the \$11,735 expenditures for a Moving Light

<sup>16</sup> The Convention Committee allocated most of this amount, \$526,610, to lighting and rigging expenses necessary to prepare the Convention Center to host the convention, and the Commission did not include any of that category in its Audit Report Repayment Determination. Attachment 1, at 63. However, in its response to its Exit Conference Memorandum, the Convention Committee separated the expenses for

1 Operator are permissible host committee expenditures.<sup>17</sup> Similarly, Nash spent \$56,781  
 2 designated as video crew labor.<sup>18</sup> Of this amount, \$10,008 was paid to the technical  
 3 director and is discussed below. According to Nash, the remaining \$46,773 (\$56,781 -  
 4 \$10,008) was for "a cadre of engineers and video utility persons" who operated several of  
 5 the technical systems that were part of the Convention Center's infrastructure.  
 6 Attachment 7, at 8. As such, the Commission determines that payments for their services  
 7 are permissible host committee expenditures.<sup>19</sup>

8 Nash also spent \$73,748 for satellite expenses, which served two purposes, one of  
 9 which was to provide the basic feed to news organizations that did not have facilities at  
 10 the San Diego Convention Center. See Nash affidavit, Attachment 3, at A591, ¶ 32b.  
 11 This purpose served by the satellite expenses was the functional equivalent of laying a  
 12 cable to the press room at the Convention Center to provide the same material to the news  
 13 organizations that did have facilities at the San Diego Convention Center. Such a  
 14 function is consistent with the examples of permissible host committee expenditures  
 15 related to construction for the convention center that are listed in 11 C.F.R.

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the Moving Light Operator and categorized those expenses as related entirely to the closed circuit television production. See Bing affidavit, Attachment 3, at A74.

<sup>17</sup> This determination is consistent with the Commission's evaluation of apparently similar expenditures in the DNCC Audit Report, in which the Commission determined that host committee expenditures for, *inter alia*, "lighting instruments, . . . follow spotlights, floodlights, special effects lighting, spotlights, etc." and related operator staff were permissible host committee expenditures. See Attachment 3, at A1144 and A1147.

<sup>18</sup> Also included in Video Crew Labor was an additional \$5,321 which was not included in the Audit Report Repayment Determination. It was not allocated to the closed circuit television category, but was assigned to the miscellaneous category by the Convention Committee. See Attachment 1, at 63; Bing affidavit, Attachment 3, at A70, 74 and 76. These expenditures were related to the satellite links for the live video remote productions. See Nash affidavit, Attachment 3, at A591.

<sup>19</sup> This determination is consistent with the Commission's evaluation of apparently similar expenditures in the DNCC Audit Report, in which the Commission determined that host committee expenditures for, *inter alia*, broadcast engineers, cameramen, and projectionists were permissible host committee expenditures. See Attachment 8, at 3.

1 § 9008.52(c)(1)(v). On this basis, the Commission determines that the expenditures for  
 2 satellite expenses that were the functional equivalent of a cable at the Convention Center  
 3 were permissible host committee expenditures.<sup>20</sup>

4 Nash spent \$138,442 on live video productions at six sites away from the  
 5 Convention Center: two in San Diego, California; and one each in Sacramento,  
 6 California; Miami, Florida; Fond du Lac, Wisconsin; and Russell, Kansas. See Greener  
 7 affidavit, Attachment 3, at A107 and A109-12, ¶¶ 15 and 19-27; Nash affidavit,  
 8 Attachment 3, at A584 and A588-89, ¶¶ 12 and 25; see also Attachment 7, at 4. One of  
 9 the functions served by the \$73,748 satellite costs that are also discussed above was  
 10 related to transmitting the signal from the site of the live videos back to the Convention  
 11 Center. Nash also spent \$70,000 on another taped video of a tour of Russell, Kansas.  
 12 Attachment 3, at 40. Additionally, \$6,250 of the Television Producer's fee was related to  
 13 the remote videos. See Bing affidavit, Attachment 3, at A76. The Convention  
 14 Committee argues that the determination that these amounts are repayable is inconsistent  
 15 with the Commission's treatment of certain taped remote video productions.<sup>21</sup> The  
 16 Commission has concluded that the taped and live videos at issue should be treated  
 17 consistently; consequently, the Nash expenditures for the live videos, related satellite

<sup>20</sup> Although the Convention Committee argued that one-half of the satellite costs should be allocated to each function, Attachment 3, at 36, documentation available to the Commission supports a more refined allocation. However, such an allocation is unnecessary because the Commission determines the other purpose served by the satellite costs is also permissible host committee activity so the entire \$73,748 has been excluded from the Repayment Determination upon Administrative Review. The satellite time's other purpose was to send the signal from the sites of the live remote video productions to the convention center. The remaining one-half of the expenditures for satellite time is discussed in this section in connection with the live remote video productions.

<sup>21</sup> The taped videos consisted of "video clips highlighting profiles of delegates . . . [and] Maury Taylor, Joe Paterno, Mrs. Laura Bush (never used), Connie Mack, and Steve McDonald." See Attachment 7, at 5.



1 costs and the Russell tour have been excluded from the Repayment Determination upon  
2 Administrative Review.

3 Nash provided entertainment in the Sail Area, which was the overflow seating  
4 area on the roof of the Convention Center; the expenses related to the Sail Area  
5 entertainment (\$18,935), Sail Area entertainment coordinator (\$3,481),<sup>22</sup> and  
6 entertainment incidentals (\$213). The Convention Committee defends all of the expenses  
7 listed above as necessary parts of the Sail Area. See Attachment 3, at 39-40.  
8 Specifically, the Convention Committee explains that "the Host Committee was  
9 concerned that attendees relegated to the Sail Area would not be happy. It therefore  
10 strove to make the Sail Area as pleasant as possible by providing, among other things,  
11 entertainment." *Id.* at 39. On this basis, the Commission has concluded the expenses  
12 identified above that total \$22,629 (\$18,935 + \$3,481 + \$213) were sufficiently related to  
13 the use of the Sail Area as an auxiliary area to the Convention Center that incurring these  
14 expenses was part of the Host Committee's provision of the "use of an auditorium or  
15 convention center and . . . convention related services for that location." 11 C.F.R.  
16 § 9008.52(c)(1)(v). Therefore, pursuant to 11 C.F.R. § 9008.52(c)(1)(v) and (xi), the  
17 Host Committee's \$22,629 expenditures for entertainment in the Sail Area were  
18 permissible host committee expenditures and have been removed from the Repayment  
19 Determination upon Administrative Review.<sup>23</sup>

<sup>22</sup> The Sail Area entertainment coordinator could also be considered a "producer" or "director" of that portion of the convention proceedings, but is considered here to reflect the Convention Committee's argument that the Sail Area entertainment coordinator was part of the Sail Area.

<sup>23</sup> The Convention Committee also argued that these expenditures were permissible as entertainment expenditures. See Attachment 3, at 39. However, 11 C.F.R. § 9008.52(c) does not list entertainment as an example of a permissible host committee expenditure. Pursuant to section 9008.52(c)(1)(ii), host committees are permitted to provide "information booths, receptions, and tours" as part of "welcoming the

1           Thus, the Nash expenses described above totaling \$473,856 (\$26,684 + \$77,595 +  
 2 \$11,735 + \$46,773 + \$73,748 + \$138,442 + \$70,000 + \$6,250 + \$18,935 + \$3,481 +  
 3 \$213) were permissible host committee expenditures. As such, they do not represent in-  
 4 kind contributions that are subject to the Convention Committee's expenditure limitation.  
 5 Consequently, they are not included in the Repayment Determination upon  
 6 Administrative Review.

7                       **2. Impermissible Host Committee Expenditures**

8           The Commission determines that \$371,793 of Nash's expenses were not  
 9 permissible host committee expenditures and, therefore, are in-kind contributions that are  
 10 subject to the Convention Committee's expenditure limit. Given the Convention  
 11 Committee's role in supervising Nash, and because the Convention Committee received  
 12 public funds equal to its expenditure limit, the Commission determines that the  
 13 Convention Committee exceeded its expenditure limit and must therefore repay these in-  
 14 kind contributions to the United States Treasury.<sup>24</sup> The impermissible host committee  
 15 expenditures at issue can be categorized as belonging to two groups: the first group  
 16 consists of expenditures to vendors who produced or directed the convention proceedings,  
 17 and the second group consists of expenditures to vendors who provided content that was  
 18 used as a portion of the convention proceedings.

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convention attendees to the city," and entertainment could be provided at such receptions. The principal objective of host committees and the context of the regulation makes clear that receptions must be to welcome attendees to the city and as such must be events that are clearly separate from the convention itself. The regulation's reference to "receptions" for this expressed and particular purpose cannot be fairly read to permit host committees to provide entertainment that is part of the convention's proceedings.

<sup>24</sup> In addition to the following discussion, the appended chart shows the amounts associated with each of the repayable expenditures. Appendix 1.

1                    a.     **Vendors Who Produced or Directed Proceedings**

2                    While 11 C.F.R. § 9008.52(c) lists examples of permissible host committee  
 3 expenditures, the Commission's regulations do not list impermissible host committee  
 4 expenditures. The purposes listed in section 9008.52(c)(1) and the principal objectives of  
 5 host committees of encouraging commerce and projecting a favorable image of the  
 6 convention city establish the criteria for permissible host committee expenditures. The  
 7 Commission has determined that Nash's payments to vendors who produced or directed  
 8 the convention proceedings are not consistent with the purposes listed in  
 9 section 9008.52(c)(1) nor are they consistent with a host committee's principle objectives.  
 10 Consequently, the Commission concludes that expenditures to vendors who produced or  
 11 directed the convention proceedings are impermissible host committee expenditures and  
 12 in-kind contributions to the Convention Committee.

13                    These expenditures include \$40,000 for the Co-Producer. According to Nash, the  
 14 Co-Producer was "responsible for all operational aspects for production and show  
 15 elements in the Main Venue and the Sail Area," and was paid a total of \$60,000. *See*  
 16 *Nash Line Item Descriptions, Attachment 7, at 3.* Given the Co-Producer's  
 17 responsibilities, the Commission concludes that the expenditures related to the Co-  
 18 Producer were to create or enhance a portion of the convention proceedings and were  
 19 impermissible host committee expenditures.<sup>25</sup> Therefore, the \$40,000 payment to the Co-  
 20 Producer is included in the Repayment Determination upon Administrative Review.

<sup>25</sup> The Host Committee paid the Co-Producer a total of \$60,000. One-third, or \$20,000, was not included in the Audit Report Repayment Determination to recognize that some of the Co-Producer's services were related to the Sail Area. The Convention Committee allocated the Co-Producer's fee with \$40,000 for closed circuit television and \$20,000 for the Sail Area. *See* Bing affidavit, Attachment 3, at A74-76.

1 The Directors were paid \$39,016. Nash's description of the Directors' functions  
2 stated that they:

3 [d]irected television coverage of the convention that was  
4 distributed as a basic feed via satellite throughout the United States, as  
5 well as to monitors throughout the convention center. Also directed the  
6 video mix of the program material that was displayed on the giant  
7 projection screens in the Main Venue and the sail area.  
8

9 Attachment 7, at 3. Directing the television coverage of the Convention that was  
10 distributed for broadcast throughout the United States is a necessary part of creating and  
11 enhancing the convention proceedings. Expenditures for directors are not a permissible  
12 host committee expenditure.<sup>26</sup> Consequently, the entire amount paid to the Directors is  
13 included in the Repayment Determination upon Administrative Review.

14 Nash paid \$50,000 to the Television Producer. Nash's description of the  
15 Television Producer's functions stated that the Producer was "[r]esponsible for television  
16 coverage, including live remotes and creation of video segments for the big screens.  
17 Also responsible for supervision of entire production budget." Attachment 7, at 3. Like  
18 the Directors, the Television Producer created or enhanced the convention's proceedings.  
19 Therefore, the Producer's fee is not a permissible host committee expenditure. The  
20 Convention Committee allocated \$6,250 of the \$50,000 fee paid to the Television

<sup>26</sup> Although the Nash Line Item Descriptions mentions the Directors' duties in connection with the Sail Area, the Convention Committee did not allocate any of the Directors' fees to the Sail Area category of expenses. Instead, the Convention Committee allocated the entire fee paid to the Directors to closed circuit television. See Bing affidavit, Attachment 3, at A74-75; Attachment 7, at 3. Such an allocation is unreasonable in that it fails to recognize the most significant aspect of the Directors' duties, namely directing the television coverage that was distributed throughout the United States. The Convention Committee admits that a Convention Committee function was to "facilitate[] media coverage, especially television coverage." Attachment 3, at 11. Other Convention Committee affiants emphasized the importance of this coverage to the success of the convention. See Greener affidavit, Attachment 3, at A106-08, ¶¶ 10-16; see also Geraghty affidavit, Attachment 3, at A87-88, ¶ 5, and Nash supplemental affidavit, Attachment 3, at A744-45, ¶ 3. The Convention Committee did not provide the Commission with documentation to support a more refined allocation of these costs.

1 Producer to the remote video productions. See Bing affidavit, Attachment 3, at A74-76.  
 2 Because the Commission has determined that expenditures related to the remote video  
 3 productions are permissible host committee expenditures, the \$6,250 of the Television  
 4 Producer's fee is not included in the Repayment Determination upon Administrative  
 5 Review. The remaining \$43,750 (\$50,000 - \$6,250) paid to the Television Producer is  
 6 included in the Repayment Determination upon Administrative Review.

7 Fees associated with additional production staff have also been included in the  
 8 Repayment Determination upon Administrative Review because their purpose was to  
 9 create or enhance the convention proceedings. The job titles and related fees are as  
 10 follows: Technical Director (\$10,008);<sup>27</sup> Production Coordinator (\$5,570); Stage  
 11 Manager (\$8,438); Script Supervisor (\$6,442); Production Assistant (\$6,163); Make up  
 12 (\$3,000); Tape stock (\$200); Sound Operations (\$5,250); Tape Coordinator (\$7,806);  
 13 Continuity Writer (\$10,000); and Stand-ins (\$2,691).<sup>28</sup> None of these expenses was a  
 14 permissible host committee expenditure, so these amounts have been included in the  
 15 Repayment Determination upon Administrative Review.

16 The Convention Committee argues that many of these expenditures were  
 17 necessary television production services and that such services were permissible host  
 18 committee expenditures. See Attachment 3, at 26-33.<sup>29</sup> The Convention Committee

<sup>27</sup> See Attachment 8, at 3 (specifying that the Technical Director was paid \$10,008 as part of \$56,781 for Video Crew Labor).

<sup>28</sup> In addition to the production staff listed above, Nash also expended \$38,500 for the Staging (or Production) Supervisor and \$22,790 for the Production Manager. The Convention Committee categorized these expenses as part of the lighting and rigging expenses that were necessary to prepare the Convention Center. See Bing affidavit, Attachment 3, at A74. The Commission did not include any of these amounts in the Audit Report Repayment Determination.

<sup>29</sup> Specifically, the Convention Committee initially placed the Continuity Writer and the Stand-ins in the miscellaneous category, see Bing affidavit, Attachment 3, at A76, but later categorized them as

1 argues that the expenditures were similar to expenditures that the Chicago Host  
 2 Committee was permitted to provide to the DNCC. *Id.*, at 27-31. However, the  
 3 Commission has reviewed documentation related to the Chicago Host Committee  
 4 payments and determined that the cited payments are not similar to those included in this  
 5 Repayment Determination. See Memorandum from Audit Division to Office of General  
 6 Counsel, Attachment 8. Thus, the two audits are consistent.

7 In particular, the Convention Committee identifies certain expenditures made by  
 8 the City of Chicago or the Chicago Host Committee that the Commission determined  
 9 were permissible host committee expenditures and argues that the television production  
 10 services provided by the San Diego Host Committee should be treated the same way.<sup>30</sup>  
 11 The Convention Committee points to the Chicago Host Committee's payment of  
 12 \$615,083 to Chicago Scenic Studios and argues that Nash's Stage Manager and Video  
 13 Crew Labor were for the same purposes. See Attachment 3, at 27. With respect to the  
 14 Video Crew Labor, the Commission has already determined that \$46,773 of the \$56,781  
 15 is a permissible host committee expenditure, which leaves the Technical Director's fee,  
 16 \$10,008, in dispute.

17 The payments to Chicago Scenic Studios were for broadcast engineers, stagehands  
 18 and riggers for the lighting, sound, Teleprompter, and Scenic systems, teamsters,

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television production services, *id.*, at 26. The Convention Committee assigned the Production Coordinator to the overhead category. *Id.*, at 25-26 and Bing affidavit, A75. All of the remaining production staff—Co-producer, Directors, Television Producer, Video Crew Labor, Stage Manager, Script Supervisor, Production Assistant, Make-up, Tape Stock, Sound Operations, Tape Coordinator—were in the category initially called closed circuit television and later deemed television production services. See Attachment 3, at 25-26 and Bing affidavit, A74-75; see also Attachment 1, at 63-64.

<sup>30</sup> Among these arguments was the Convention Committee's argument that the expenditures for the Moving Light Operator (\$11,735) had a purpose similar to the payments to Chicago Scenic Studios. The Commission determined that provision of the Moving Light Operator is a permissible host committee expenditure, as discussed above.

1 cameramen and projectionists. Attachment 8, at 3. Such services are closely linked to  
2 the infrastructure of the convention center. Additionally, section 9008.52(c)(1)(v)  
3 specifically lists decorations, lighting and loudspeaker systems. In contrast, the  
4 remaining challenged payments to Nash were for vendors who produced or directed the  
5 convention proceedings. According to Nash, the Stage Manager was: "Responsible for  
6 running the operation of the podium during the convention, including cueing the talent  
7 (speakers) and stage effects. Coordinates podium activities with the executive producer,  
8 . . . and the television director . . ." See Attachment 7, at 3. As described by Nash, the  
9 Technical Director's "overall responsibility . . . was the coordination of all aspects of the  
10 video engineering." *Id.*, at 8. Thus, because the services provided by Chicago Scenic  
11 Studios are different from the services provided by Nash's Stage Manager and Technical  
12 Director, the Convention Committee's claim of inconsistent treatment fails.

13 The Convention Committee also states that the Chicago Host Committee reported  
14 "spending over \$12,000 on various 'stage hands' and 'stage technicians,'" and it cites a  
15 few examples of such reporting entries, claiming that this is another inconsistency  
16 between the DNCC audit report and the Convention Committee's audit report.  
17 Attachment 3, at n.5, 27. Although the Convention Committee does not precisely identify  
18 the disbursements that make up the "over \$12,000," the attached schedule displays 35  
19 Chicago Host Committee disbursements that were reported for stagehands or stage tech  
20 crew and total \$13,930. See Audit Division, Schedule of Payments for "Stagehands" and  
21 "Stage Tech Crew Member," Attachment 9. (The particular disbursements cited as  
22 examples by the Convention Committee are included on Attachment 9.) As shown on  
23 that schedule, all of the disbursements were in connection with events that were held

1 outside of the convention hall and occurred prior to the convention. *Id.* As such, they  
2 were permissible host committee expenditures for receptions welcoming the convention  
3 attendees to the city, which is listed as an example in 11 C.F.R. § 9008.52(c)(1)(ii).  
4 Thus, the cited Chicago Host Committee expenditures were fundamentally different from  
5 the Nash expenditures that are included in the Convention Committee's Repayment  
6 Determination.

7 The Convention Committee cites the audio system and related services provided  
8 by the City of Chicago to DNCC as another example of an inconsistency between the  
9 DNCC audit and the Convention Committee audit. Attachment 3, at 27-28. It argues that  
10 the \$5,250 for Sound Operations is the same as Sound Operations in the DNCC's audit,  
11 which were not included in the DNCC's Repayment Determination. *Id.* However,  
12 Nash's Sound Operations were described as closed captioning for Convention Committee  
13 television programming on Nash's general ledger, Attachment 8, at 3-4, while the Sound  
14 Operations in the DNCC audit were for an audio system and the services of audio  
15 consultants and an audio designer to operate the system, Attachment 3, at 27-28.<sup>31</sup> Thus,  
16 although the expenditures bear a similar label, the functions served were quite different.  
17 See Attachment 8, at 3-4. Section 9008.52(c)(1)(v) specifically lists loudspeaker systems  
18 as an example of permitted host committee expenditures. Consequently, despite the  
19 Convention Committee's suggestion to the contrary, the Sound Operations included in its  
20 repayment determination are not similar to the audio system operations addressed in the

<sup>31</sup> Both the Chicago Host Committee and the San Diego Host Committee made substantial payments to the same vendor for such services. See Attachment 8, at 3.



1 DNCC audit. Thus, the Audit Reports for the DNCC and the Convention Committee are  
2 consistent in this regard as well.

3 The Convention Committee's final example of inconsistency is the City of  
4 Chicago's provision of grips, chyron operators,<sup>32</sup> and a property master. See  
5 Attachment 3, at 28. The Convention Committee claims that Nash's stand-ins, script  
6 supervisors and a production accountant should be treated the same as the cited services  
7 for the Chicago convention. According to Nash's Line Item Descriptions, the purposes  
8 served by the stand-ins, script supervisors, and production accountant were just as their  
9 titles suggest. See Attachment 7, at 3, 4 and 7. The Commission does not have a  
10 description of the services provided by the grips, chyron operators, and property masters.  
11 However, the Convention Committee has not shown any basis to conclude that grips,  
12 chyron operators, and property masters are equivalent to stand-ins, script supervisors and  
13 a production accountant. Consequently, this aspect of the Convention Committee's  
14 argument of inconsistent treatment fails for a lack of supporting information.

15 The Convention Committee argues that the Commission has not stated a reason  
16 for treating some television production expenditures differently from others.  
17 Attachment 3, at 31-33. However, the television production expenditures that are  
18 repayable are those with specific purposes that were not for permissible host committee  
19 expenditures such as the examples listed in 11 C.F.R. § 9008.52(c), but were instead to  
20 create or enhance the convention proceedings. The specific purpose of the expenditures,

<sup>32</sup> The Convention Committee included script supervisors, instead of chyron operators, in the text of its Administrative Review Request, citing the DNCC Audit Report at 6 (Attachment 3, at A1143). Attachment 3, at 28. However, that page of the DNCC Audit Report does not refer to script supervisors. Convention Committee counsel stated that the reference should have been to chyron operators, as reflected in the text above. Attachment 8, at 4.

1 rather than a broad, categorical purpose such as television production, determines whether  
2 the expenditures are permissible host committee expenditures similar to those listed in  
3 section 9008.52(c). Thus, some of the expenditures that fall under the Convention  
4 Committee's broad category of television production were permissible host committee  
5 expenditures; this does not mean, however, that all of the expenditures in the same broad  
6 category were permissible.

7 Finally, the Convention Committee claims that all of the television production  
8 expenses were required in order to provide the closed circuit television system with  
9 programming. *Id.*, at 33. As the Convention Committee's own affiants clearly state,  
10 facilitating nationwide television coverage of the convention is a significant focus of the  
11 convention's efforts, yet allocating all of television production expenses to the closed  
12 circuit television system makes that significant effort merely a by-product of the closed  
13 circuit system. *See* Greener affidavit, Attachment 3, at A106-09, ¶¶ 10-16, and 18; *see*  
14 *also* Geraghty affidavit, Attachment 3, at A87-88, ¶ 5, and Nash supplemental affidavit,  
15 Attachment 3, at A744-45, ¶ 3. The Convention Committee's affiants make clear that its  
16 efforts to facilitate the nationwide television broadcast cannot be ignored. Thus, the  
17 Commission concludes that allocation of all the television production expenditures to the  
18 closed circuit television system is clearly unreasonable.



1           The Convention Committee referred to a number of expenditures reported by the  
2 Chicago Host Committee that were not included in the DNCC Audit Report Repayment  
3 Determination and argued that the Commission must exclude certain expenditures from  
4 the Convention Committee's repayment determination on this basis. Specifically, the  
5 Convention Committee refers to expenditures for production labor, fireworks, an air  
6 show, and entertainment. Attachment 3, at 27, 37, 38, and 39. The Commission has  
7 reviewed documentation related to these disbursements and concluded that all of the  
8 disbursements referenced by the Convention Committee were associated with events held  
9 by the Chicago Host Committee that were to welcome convention attendees to the City of  
10 Chicago and were therefore consistent with 11 C.F.R. § 9008.52(c)(1)(ii). All of these  
11 events were held at locations away from the location of the Chicago convention, and all  
12 but one of these events occurred prior to the first day of the convention. Attachment 8,  
13 at 5-6, and Audit Division, Schedule of Payments for "Entertainment" as Reported on the  
14 DNC Host FEC Disclosure Reports, Attachment 10. It is therefore clear that the events  
15 were similar to the baseball game in Advisory Opinion 1980-21 and were not part of the  
16 convention proceedings. Consequently, the referenced expenditures are not similar to any  
17 of the expenditures included in the Convention Committee's repayment determination.

18           Thus, the Commission determines that \$238,352 of the Nash expenses were not  
19 permissible host committee expenditures and as such represent in-kind contributions to  
20 the Convention Committee.

21           3.     Overhead and Indirect Expenses

22           In the Audit Report Repayment Determination, Nash's indirect expenses were  
23 attributed between Nash's functions that were permissible host committee expenditures

1 and those that were not in order to reflect the Commission determinations related to the  
 2 other Nash expenditures.<sup>34</sup> See Attachment 1, at 37-38 (describing attribution process).  
 3 The Nash indirect and overhead expenses must be reattributed to reflect the  
 4 Commission's other determinations in this Statement of Reasons.

5 First, the pool of expenses subject to this attribution must be adjusted. In the  
 6 Audit Report, a total of \$346,559 was considered subject to attribution. The Commission  
 7 has determined that the Production Accountant (\$19,984) should be subject to attribution,  
 8 so those expenditures have been added to the pool of attributable expenses.<sup>35</sup> Thus, the  
 9 total amount of attributable expenses revised to reflect the Commission determinations is  
 10 \$366,543 (\$346,559 + \$19,984).

11 The Convention Committee also argues that hotel expenses of \$105,603.94 should  
 12 not be subject to attribution as 11 C.F.R. § 9008.52(c)(1)(ix) permits host committees to  
 13 incur expenses "to provide hotel rooms at no charge or a reduced rate on the basis of the  
 14 number of rooms actually booked for the convention." 11 C.F.R. § 9008.52(c)(1)(ix).  
 15 See Attachment 3, at 41 and Attachment 4, at 42. The Convention Committee is  
 16 incorrectly attempting to extend the regulation to include not only the complimentary  
 17 rooms the Host Committee properly provided in accordance with  
 18 section 9008.52(c)(1)(ix), but also some of the underlying rooms that the Host Committee

<sup>34</sup> In its Administrative Review Request, the Convention Committee combined the Overhead and Indirect Expense categories. See Attachment 3, at 26. Two types of expenses included in Overhead -- \$25,000 of the Television Producer's fee and \$5,570 for a Production Coordinator -- are discussed above. The remaining expense in the Overhead category, \$15,000 for a Production Accountant, was not subject to allocation in the Audit Report Repayment Determination, but is considered with the indirect expenses in this Statement of Reasons. Attachment 8, at 4.

<sup>35</sup> Because the Accountant's fee related to all of Nash's activities, the Commission determines that the fee should be attributed to calculate an amount related to Nash's activities that were impermissible host committee expenditures, rather than allowing the entire fee as a compliance cost. See Attachment 3, at 41.

1 would have been required to book in order to receive the complimentary rooms.  
 2 Section 9008.52(c)(1)(ix) is not so broad, but is instead limited to any rooms received by  
 3 a host committee from hotels at a reduced rate or no charge in return for a specified  
 4 number of other rooms booked. Therefore, the \$105,603.94 remain subject to attribution.

5 The Convention Committee also argues that transportation expenses of  
 6 \$10,643.49 should not be subject to attribution as 11 C.F.R. § 9008.52(c)(1)(vi) permits  
 7 local transportation. Attachment 3, at 41. However, the Convention Committee has not  
 8 shown those expenses to have been exclusively local, so they remain subject to  
 9 attribution.

10 Once the pool of Overhead and Indirect Expenses subject to attribution was  
 11 identified, that pool was attributed between those related to impermissible host committee  
 12 expenditures and those related to permissible host committee expenditures.<sup>36</sup> This  
 13 resulted in an attribution of \$133,441 of Overhead and Indirect Expenses related to  
 14 Nash's expenses that were impermissible host committee expenditures, and \$233,102 to  
 15 Nash's expenses that were permissible host committee expenditures.<sup>37</sup> Thus, the

<sup>36</sup> In addition to the following discussion, the appended chart identifies the allocation pools and the amount by which each pool was allocated. Appendix 2.

<sup>37</sup> In the Audit Report, the Commission approved a two-step process for attribution of Nash's indirect expenses. First, indirect expenses that could be associated with other particular Nash expenditures were attributed based on whether the associated Nash expense was determined to be an impermissible host committee expenditure. These indirect expenses were primarily travel and living expenses that could be associated with particular persons. Of the \$346,559 total Indirect Expenses, \$107,785 were attributed to the Convention Committee, \$102,695 were attributed to the Host Committee, and \$136,078 could not be associated with other Nash expenses, so this \$136,078 of indirect expenses were subject to the second step of the attribution process. (Included in the permitted \$102,695 were \$23,633 for equipment rental cited by the Convention Committee. Attachment 3, at 41.) In the context of the Audit Report, the \$136,078 was divided into three groups: Travel and Living Expense—Producers and Directors (\$9,702); Travel and Living Expenses—Others (\$32,886); and Overhead (\$93,491). The two travel and living expense groups were attributed to either the Convention Committee or the Host Committee based on the distribution of associated direct costs. The overhead expenses were attributed based on the distribution of all non-overhead expenses. See Attachment 1, at 38. Of the \$136,078 subject to the second step of the attribution, \$57,496 was attributed to the Convention Committee, and \$78,583 was attributed to the Host Committee.

1 Commission determines that \$133,441 of Overhead and Indirect Expenses related to  
 2 Nash's expenses that were impermissible host committee expenditures plus \$238,352 of  
 3 the other Nash expenses that were impermissible host committee expenditures for a total  
 4 in-kind contribution of \$371,793 to the Convention Committee.

5 **4. Offset**

6 Once the Commission has determined the amount of the in-kind contribution from  
 7 the Host Committee, the Commission must address the Convention Committee's  
 8 proposed offset.<sup>38</sup> The Commission will allow a partial offset of the Host Committee's  
 9 \$52,794 in-kind contribution to the Convention Committee. The Commission determines  
 10 that the Convention Committee incurred expenses totaling \$722,817 that would have  
 11 been permissible host committee expenditures had the Host Committee incurred those  
 12 expenses. See Attachment D.<sup>39</sup> However, the Commission concludes that the

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As a final result of this attribution process in the Audit Report, the Commission determined that a total of \$165,281 (\$107,785 + \$57,496) of Nash's Indirect Costs were related to the Nash expenses that were impermissible host committee expenditures. As such, that portion of the indirect expenses was part of the in-kind contributions from the Host Committee to the Convention Committee and therefore subject to the latter's expenditure limitation.

<sup>38</sup> The Convention Committee defines its proposal as a recoupment. A recoupment is not applicable in this situation. Recoupment is appropriate when the defendant in a suit has a monetary claim against the plaintiff. See 6 *Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure, Civil* § 1401 (2d ed. 1990). The purpose of a recoupment is to prevent the unjust enrichment of a party to a lawsuit and to avoid wasteful multiplicity of litigation. *Estate of Mueller v. Commissioner of Internal Revenue*, 101 T.C. 551, 551-552 (1993). This matter does not involve an unjust enrichment of a party involved in litigation nor does it involve any economies of litigation. Rather, this matter involves the Convention Committee's proposal to restructure expenses that it claims could have been spent by the Host Committee without counting towards the Convention Committee's expenditure limitation. In order for the recoupment to be appropriate in this context, the government would have to owe the Convention Committee monetary relief for actions arising out of its contract with the Convention Committee. See *United States v. Consumer Health Services of America, Inc.*, 108 F.3d 390, 395 (D.C. Cir. 1997) (stating that recoupment requires both debts to arise out of a single integrated transaction so that it would be inequitable for the debtor to enjoy the benefits of that transaction without also meeting its obligations).

<sup>39</sup> The Audit Division's analysis states that the Convention Committee paid permissible host committee expenses of \$718,334. The Commission concludes that an additional \$4,433 paid to Red Sun Custom Screening was also a permissible host committee expense, for a total of \$722,817 (\$718,334 + \$4,433). See Attachment D, at 6.

1 Convention Committee may offset only the portion of the in-kind contribution where the  
 2 application of this regulation outlining permissible host committee expenses may have  
 3 been unclear. The Commission determines that expenses totaling \$52,794 that relate to  
 4 the cost of the orchestra and the program announcer's travel expenses plus allocated  
 5 overhead are the only portion of the in-kind contribution that will be subject to the offset.

6 The Commission will take administrative notice of a \$52,794 reimbursement from  
 7 the Convention Committee to the Host Committee for those Nash expenses that were  
 8 impermissible host committee expenditures and to which the application of 11 C.F.R.  
 9 § 9008.52 may have been unclear. This eliminates that portion of the contribution for  
 10 repayment purposes. In exchange, a reimbursement in the same amount from the Host  
 11 Committee to the Convention Committee for Convention Committee expenditures that  
 12 were permissible host committee expenditures will also be noted. Because the  
 13 reimbursements are equal, they result in a net exchange of zero; therefore, the Convention  
 14 Committee and Host Committees are not required to make the actual reimbursements.  
 15 However, both the Convention Committee and the Host Committee must amend their  
 16 reports accordingly to reflect the transaction. Similarly, the Commission has  
 17 appropriately noted the adjustments on the Convention Committee's Net Outstanding  
 18 Convention Expenses Statement.<sup>40</sup> Attachment 2.

19 The Commission concludes that the Convention Committee's proposal of a  
 20 complete offset of the Host Committee's in-kind contribution is not appropriate. The  
 21 Convention Committee must follow the details of the regulations to determine how its

<sup>40</sup> The revised Net Outstanding Committee Expenditure statement is dated as of September 30, 1996 with the final amount determined as of December 31, 1998. See 11 C.F.R. § 9008.10(g). The adjustments



1 finances must be structured with the Host Committee. Therefore, if the regulations  
2 provide clear guidance as to whether the expense was a permissible host committee  
3 expense, the Commission will not allow the Convention Committee to simply offset the  
4 in-kind contribution. The Commission determines that an offset of the in-kind  
5 contribution from the Host Committee is only warranted where the application of this  
6 regulation to a particular expense may have been unclear.

7 The purposes for which a host committee may use funds in connection with a  
8 nominating convention are specified in 11 C.F.R. § 9008.52(c)(1)(i) through (xi). Host  
9 committee expenditures are limited to things that are consistent with a host committee's  
10 principal objective of encouraging commerce in the convention city and projecting a  
11 favorable image of the city to convention attendees, rather than election-influencing  
12 purposes. The Commission determines that the Host Committee's payments to vendors  
13 who assisted in the production and direction of the convention proceedings are clearly  
14 outside of the types of expenses specified in 11 C.F.R. § 9008.52(c)(1)(i) through (xi), and  
15 will not be subject to the offset.

16 Based on the Commission's review of the expenses incurred by the Host  
17 Committee, the Commission concludes that the application of 11 C.F.R. § 9008.52(c)  
18 may have been unclear only to the payments related the orchestra and the travel expenses  
19 for the announcer. Therefore, the Commission will allow the Convention Committee to

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to that statement will not produce a surplus or deficit in the Convention Committee's funds because that same amount will be noted as both a liability and an asset.

1 offset the \$52,794 portion of the Host Committee's in-kind contribution that relates to the  
 2 orchestra and the announcers travel expenses and related overhead.<sup>41</sup>

3 The Commission examined documentation relating to \$1,606,138 in expenditures  
 4 that the Convention Committee made that it argued could have been paid by the Host  
 5 Committee. The Commission has divided the expenditures into five categories: (1) office  
 6 equipment and construction of \$611,800; (2) local transportation and security of  
 7 \$111,017; (3) hotels of \$743,924; (4) caucus and platform meeting of \$25,651; and (5)  
 8 undocumented of \$113,746.

9 With respect to the office equipment and construction expenses of \$611,800, the  
 10 Commission concludes that the Convention Committee has presented documentation to  
 11 demonstrate that these expenses were permissible host committee expenditures. Host  
 12 committees may provide offices, office equipment, and construction services for the  
 13 convention center location, as well as similar convention-related facilities and services.  
 14 11 C.F.R. § 9008.52(c)(1)(v) and (xi). The \$611,800 of expenses include photocopying  
 15 machines and copies, computer equipment, and repaving certain roads and walkways near  
 16 the convention center. Attachment D, at 4.

<sup>41</sup> The Commission determines that the general policy of offsetting a host committee's in-kind contribution to a convention committee with expenses paid by a convention committee that could have been permissibly paid by a host committee does not impact the convention committee expenditure limit, use of public funds, or the convention committee's entitlement. The Commission permits such offsets in other similar circumstances where there is no adverse affect on the expenditure limitation or the entitlement. In the context of general election financing, a general election candidate committee may receive a reimbursement from its legal and accounting compliance fund for expenses that could have been paid by the legal and accounting compliance fund. 11 C.F.R. § 9003.3(a)(2)(ii)(A), (D) and (G). Such reimbursed expenditures are not subject to the general election expenditure limitation. 11 C.F.R. § 9003.3(a)(2)(iii). Unlike convention committees, general election committees usually are not permitted to accept private contributions. However, in the limited situation where the general election committee can accept private contributions (*i.e.* when there is a shortage in the Presidential Election Campaign Fund), the general election committee's entitlement will be adjusted to reflect these additional funds. 11 C.F.R. § 9004.3(b)(2). The adjustment of the general election committee's entitlement is similar to convention committee financing.

1        The Convention Committee also presented documentation demonstrating that  
 2 local transportation and security expenses totaling \$111,017 were permissible host  
 3 committee expenses. The expenditures relate to parking lot rentals and uniforms used for  
 4 security purposes. Attachment D, at 4. The Commission's regulations state that host  
 5 committees may defray the costs of various local transportation services, including the  
 6 provision of buses, automobiles, and the cost of law enforcement services. 11 C.F.R.  
 7 § 9008.52(c)(1)(vi) and (vii).

8        The Convention Committee's \$743,924 payment for hotel rooms is not a  
 9 permissible host committee expense, and therefore, a reimbursement of these expenses is  
 10 not included in the offset. Section 9008.52(c)(1)(ix) states that a host committee can  
 11 incur expenses "to provide hotel rooms at no charge or a reduced rate on the basis of the  
 12 number of rooms actually booked for the convention." Thus, section 9008.52(c)(1)(ix)  
 13 permits host committees to provide convention committees with any rooms the host  
 14 committee receives at no charge or at a reduced rate based on the number of rooms  
 15 actually booked for the convention.

16        Contracts obtained from the San Diego Convention & Visitors Bureau ("ConVis")  
 17 between the Convention Committee and hotel vendors demonstrate that the Convention  
 18 Committee received one free room for every 40 rooms booked by the Host Committee.  
 19 See Attachment 8, at 8. These contracts reviewed by the Commission demonstrate that  
 20 after the hotels received full payment, the hotels gave a 5% commission to ConVis, and  
 21 ConVis forwarded this 5% commission to the Host Committee. *Id.*, at 8.

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*See Explanation and Justification for 11 C.F.R. § 9008.3, 44 Fed. Reg. 63,036 (Nov. 1, 1979); see also 11 C.F.R. § 9008.5.*

1        In attempting to use the \$743,924 paid for the rooms as a host committee expense  
2 pursuant to section 9008.52(c)(1)(ix), the Convention Committee is incorrectly  
3 attempting to extend the regulation to include not just the complimentary rooms the Host  
4 Committee properly provided in accordance with section 9008.52(c)(1)(ix), but also some  
5 of the underlying 40 rooms the Host Committee would have been required to book in  
6 order to receive the complimentary rooms. Section 9008.52(c)(1)(ix) is not so broad  
7 because it is limited to any rooms received by a host committee from hotels at a reduced  
8 rate or no charge, in return for a specified number of other rooms booked. Therefore, the  
9 \$743,924 would not be a permissible host committee expenditure pursuant to  
10 section 9008.52(c)(1)(ix).<sup>42</sup>

11        The fourth category, caucus and platform meeting, relates to payments totaling  
12 \$25,651 made to a single vendor. According to documents reviewed by the Commission,  
13 the purpose of the payments was to provide facilities, sound, and lighting for Caucus and  
14 Platform Committee meetings on August 5, 1996 through August 9, 1996, before the start  
15 of the convention. Attachment 3, at 47 and Attachment D, at 5. The Commission  
16 concludes that this meeting was for the purpose of conducting national party business,  
17 and is therefore not a permissible host committee expense.

18        The last category of expenses labeled undocumented totals \$113,746. No  
19 documentation was submitted to determine the nature of these expenses. Attachment D,  
20 at 5. Therefore the Commission does not include these expenses among those that have  
21 been determined to be permissible host committee expenses.

<sup>42</sup> The Convention Committee made a similar argument related to \$105,603.94 of hotel expenses in the overhead and indirect costs category. Attachment 3, at 41. For the same reasons cited above, that argument is rejected and the costs remain subject to attribution.

1     -     The Commission determines that \$722,817 in expenses paid by the Convention  
2     Committee are permissible Host Committee expenses. This amount is more than  
- 3     sufficient to offset the \$52,794 of in-kind contribution from the Host Committee to the  
4     Convention Committee that may be offset. Therefore, the Commission concludes that the  
5     Convention Committee must repay \$318,999 (\$371,793 - \$52,794) to the United States  
6     Treasury for exceeding the expenditure limitation.  
7

## APPENDIX I

## Host Committee's In-Kind Contribution to Convention Committee

DESCRIPTION	AMOUNT
Co-Producer	\$40,000
Directors	39,016
TV-Producer	43,750
Video Crew Labor	10,008
Production Coordinator	5,570
Stage Manager	8,438
Script Supervisor	6,442
Production Assistant	6,163
Make up	3,000
Tape stock	200
Sound ops	5,250
Tape coordinator	7,806
Continuity Writer	10,000
Stand-ins	2,691
Announcer travel expense	986
Music	49,032
*T&L for Co-Producer, TV-Producer and Directors	29,448
*Transportation Fares	12,925
*Hotels	33,004
*Catering	5,683
*Telephone	1,002
*Per Diems	27,028
*Fees	642
*Operations	5,639
*Wind-down	7,069
*Office Expense	2,424
*Runners	1,500
*Transportation	4,481
*Production Accountant	2,596
<b>TOTAL IN-KIND CONTRIBUTION</b>	<b>\$371,793</b>
Offset	(\$52,794)
<b>NET CONTRIBUTION AFTER OFFSET</b>	<b>\$318,999</b>

The figures listed above are rounded to the nearest dollar.

\* denotes allocable overhead.

## San Diego Host Committee / Sail to Victory San Diego'96

	<u>Account</u>		<u>COA Amount</u>	<u>Host Amount</u>
	<u>Total</u>			
<b>Producer and Director Travel and Living Expenses (PD Travel)</b>				
Total 2002 Co-Producer	\$ (60,000.00)	\$	(40,000.00)	\$ (20,000.00)
Total 2003 Television Producer	\$ (50,000.00)	\$	(43,750.00)	\$ (6,250.00)
Total 2100 Director	\$ (28,875.00)	\$	(28,875.00)	-
Total 2102 Associate Directors	\$ (10,140.94)	\$	(10,140.94)	-
<b>Totals</b>	<b>\$ (149,015.94)</b>	<b>\$</b>	<b>(122,765.94)</b>	<b>\$ (26,250.00)</b>
<b>Percentage</b>			<b>0.823844348</b>	<b>0.176155652</b>

### Travel and Living Expenses Other Than Producers and Directors (Other Travel)

			<u>COA Amount</u>	<u>Host Amount</u>
Total 3001 Production Coordinator	\$ (5,569.92)	\$	(5,569.92)	\$ -
Total 3003 Stage Manager	\$ (8,437.50)	\$	(8,437.50)	-
Total 3004 Staging Supervisor	\$ (38,500.00)	\$	-	\$ (38,500.00)
Total 3005 Production Manager	\$ (22,790.00)	\$	-	\$ (22,790.00)
Total 3006 Script Supervisor	\$ (6,441.71)	\$	(6,441.71)	-
Total 3007 Production Assistants	\$ (6,163.33)	\$	(6,163.33)	-
Total 3101 Musical Dir/Orchestra	\$ (49,032.24)	\$	(49,032.24)	-
Total 3201 Head Electrician	\$ (48,031.25)	\$	-	\$ (48,031.25)
Total 3202 Moving Light Operator	\$ (11,735.00)	\$	-	\$ (11,735.00)
Total 3203 Head Rigger - IFA	\$ (38,192.50)	\$	-	\$ (38,192.50)
Total 3204 Key Electric	\$ (126,869.38)	\$	-	\$ (126,869.38)
Total 3204A Other	\$ (42,467.00)	\$	-	\$ (42,467.00)
Total 3205 Local Electrician	\$ (273,050.15)	\$	-	\$ (273,050.15)
Total 3607 Confetti cannons, balloons	\$ (77,594.57)	\$	-	\$ (77,594.57)
Total 4000 Makeup & Hairdressing	\$ (3,000.00)	\$	(3,000.00)	-
Total 4201 Video Crew Labor	\$ (62,101.50)	\$	(10,008.00)	\$ (52,093.50)
Total 8005 Announcer	\$ (986.00)	\$	(986.00)	-
Total 9008 Tape Coordinator	\$ (7,805.51)	\$	(7,805.51)	-
Total 9010 Entertainment Coordinator	\$ (3,481.20)	\$	-	\$ (3,481.20)
Total 9011 Continuity Writer	\$ (10,000.00)	\$	(10,000.00)	-
Total 9012 Stand Ins	\$ (2,690.65)	\$	(2,690.65)	-
<b>Totals</b>	<b>\$ (844,939.41)</b>	<b>\$</b>	<b>(110,134.86)</b>	<b>\$ (734,804.55)</b>
<b>Percentage</b>			<b>0.130346499</b>	<b>0.869653501</b>

**San Diego Host Committee / Sail to Victory San Diego'96**

**Overhead Expenses (OH)**

Grand Total After Allocation of Travel and Living Expenses	<u>Acct. Total</u>	<u>COA Amount</u>	<u>Host Amount</u>	<u>Neither</u>
	\$ (352,116.77)	\$ (1,697,218.05)	\$ (113,744.86)	
<b>Less Overhead Categories</b>				
Total 4506 Office Expense	\$ (8,819.17)	\$ (1,257.02)	\$ (817.26)	\$ (6,744.89)
Total 4507 Telephone & Telegraph	\$ (2,240.50)	\$ (771.71)	\$ (141.08)	\$ (1,327.71)
Total 7600 Fees & Charges	\$ (3,709.49)			\$ (3,709.49)
Total 8002 Change Orders - Operations	\$ (56,354.46)		\$ (23,774.98)	\$ (32,579.47)
Total 8003 Runners	\$ (8,868.90)			\$ (8,868.90)
Total 8015 Wind down & Audit	\$ (20,000.00)			\$ (20,000.00)
	\$ (20,842.00)			\$ (20,842.00)
4407 Mileage Allowance	\$ (12.60)			\$ (12.60)
4408 Parking	\$ (54.00)			\$ (54.00)
<b>Non-Overhead Amounts</b>		<u>\$ (350,088.04)</u>	<u>\$ (1,672,484.74)</u>	
<b>Total COA and Host Non-Overhead</b>		<u>\$ (2,022,572.78)</u>		

Percentage	COA	Host
	0.173090492	0.826909508

**Amounts Subject to Offset**

	<u>Contract Amount</u>	<u>Accts 3101 &amp; 8005</u>
Percent of Contract	\$ 2,049,334.83	\$ 50,018.24
		0.024407061



**Amount Subject to Offset-Alternative B**

Total 3101 Musical Dir/Orchestra	\$	49,032.24
Total 8005 Announcer	\$	986.00
<i>Total</i>	\$	50,018.24

**Overhead(Neither Category)**

Amount of "Neither" Overhead	\$	113,744.96
Accts 3101 & 8005 as a % of Contract less OH		0.024407061
<i>Overhead Associated with Accts 3101 &amp; 8005</i>	\$	2,776.18

<b><i>Total Cost Recovery</i></b>	\$	<b>52,794.42</b>
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1           **C.     REPAYMENT DETERMINATION UPON ADMINISTRATIVE**  
2           **REVIEW**

3           The Commission determines that the RNC did not make an in-kind contribution to  
4           the Convention Committee when it paid the production costs for various television  
5           programs. The Commission concludes that the costs associated with producing and  
6           airing the programs relate to party building and are therefore a national party committee  
7           expense, rather than a convention expense. Therefore the production and airtime costs of  
8           the convention programming should have been paid by the RNC.

9                    1.     Airtime Costs

10           The RNC paid for the airtime for the morning programs that were similar in  
11           format to GOP-TV's regular program, "Rising Tide." These programs included an  
12           anchor person in a booth at the Convention Center and presented the previous night's  
13           convention highlights (not a comprehensive summary); interviews of convention  
14           speakers; and other articles and "human-interest" segments, according to an affidavit  
15           submitted by Patrice Geraghty, the Director of Broadcast and the Executive Producer for  
16           GOP-TV. See Geraghty affidavit, Attachment 3, at A93-94 and A92. The interviews  
17           were conducted backstage at the Convention Center and at a separate location known as  
18           the Marina Set. Id., at A92. The segments were "on such topics as community efforts to  
19           move welfare recipients into the workforce and the impact of tax relief on ordinary  
20           American families." The "human-interest segments" were about "events in San Diego  
21           apart from the Convention such as a visit by Convention attendees to Sea World, work  
22           performed by several Convention attendees with Habitat for Humanity in San Diego, and  
23           a carnival hosted by Mr. & Mrs. Barbour for San Diego foster children." Id., at A89. The

1 programs were broadcast from 7:00 to 7:30 AM EST on Monday, August 12 through  
2 Friday, August 16, 1996. Additionally, the RNC paid the airtime costs for a one-hour  
3 evening program that aired the day after the conclusion of the convention. The  
4 Commission determines that the airtime costs were not a contribution to the Convention  
5 Committee because the costs of distributing this programming is a national party expense,  
6 not a convention expense.

7 The Convention Committee paid National Media, Inc. \$1,170,000 in airtime costs  
8 associated with evening programs that were aired on the Family Channel and NewsTalk  
9 Television.<sup>1</sup> Attachment 1, at 42. The programs carried "five, prime-time coverage of  
10 the Convention proceedings." Id., A89. These programs were broadcast from 9:00 to  
11 11:00 PM EST from Monday, August 12 through Wednesday, August 14, 1996, and from  
12 8:00 PM to Midnight EST on Thursday, August 15, 1996, the last night of the  
13 convention.

14 In the Audit Report Repayment Determination, the Commission did not challenge  
15 the Convention Committee's payment of the airtime costs associated with the evening  
16 programs as a convention expense in accordance with 11 C.F.R. § 9008.7(a)(4).  
17 However, after further consideration of the facts, the Commission concludes that payment  
18 of the distribution costs of this programming does not qualify as a convention expense  
19 because it is a national party expense. Section 9008.7(a)(4) of the Commission's  
20 regulations defines "convention expenses" to include "all expenses incurred by or on  
21 behalf of a political party's national committee or convention committee with respect to

<sup>1</sup> On August 16, 1996 the Convention Committee wired \$1,188,000 to National Media, Inc. On March 31, 1997, the Convention Committee was refunded \$18,000, which leaves a net payment of \$1,170,000 to National Media, Inc. for the airtime costs. Attachment 1, at 42.

1 and for the purpose of conducting a presidential nominating convention or convention-  
 2 related activities.” The *Explanation and Justification* for 11 C.F.R. § 9008.7 recognizes  
 3 that “[g]iven that the convention not only serves as the vehicle for nominating the party’s  
 4 Presidential candidate, but is also used to conduct ongoing party business, the line  
 5 between convention expenses and party expenses can be a fine one.” *Explanation and*  
 6 *Justification* for 11 C.F.R. § 9008.7, 59 Fed. Reg. 33,608 (1994). The Commission  
 7 determines that the costs related to airing or producing the television programming were  
 8 not for the purpose of conducting a presidential nominating convention, but were instead  
 9 to promote the party. As such, they were for national party committee activities.  
 10 Consequently, the Convention Committee was not required to pay any of those costs, and  
 11 the RNC’s payment of those costs is not a contribution to the Convention Committee.<sup>2</sup>

## 12 2. Production Costs

13 In order to properly allocate the expenses related to all 25 of the cameras under  
 14 the CBT contract, the cost of the basic feed which used the 14 cameras must be separated  
 15 from the production costs related to the television programs which used the 11 cameras.

16 Although the Convention Committee allocates the expenses between the two  
 17 categories based solely on the numbers of cameras used for each purpose, the RNC has  
 18 provided an actual cost of \$833,345 for the basic feed’s 14 cameras. The Convention  
 19 Committee agrees that the RNC stated the cost of the basic feed as \$833,345; however,

<sup>2</sup> The Commission further determines that the Convention Committee’s \$1,170,000 payment to National Media, Inc. for costs associated with airing the convention proceedings on the Family Channel and NewsTalk Television is an impermissible convention committee expense. Although the Convention Committee improperly used convention funds of \$1,170,000, because the Commission is required to notify the Convention Committee of all repayment determinations by August 15, 1999, or 3 years after the last day of the convention, the Commission cannot seek a repayment of those funds. 11 C.F.R. § 9008.12(a)(2).

1 the Convention Committee asserts that the amount was merely an interim figure and was  
 2 stated before all of the charges related to the basic feed were fully assimilated.  
 3 Attachment 4, at 92-93. However, the RNC submitted documents to the Commission  
 4 dated as late as March 10, 1997, and September 16, 1997 which lists the actual price for  
 5 the 14 cameras as \$833,345. Attachment 12. Although the Convention Committee  
 6 claims that it is unable to reconstruct the exact cost, the Commission has adopted the  
 7 figure provided by the RNC to represent the cost of the basic feed, instead of using an  
 8 allocation. Such an approach is consistent with a sworn statement submitted by Michael  
 9 Simon on behalf of the Convention Committee, in which he states that before an expense  
 10 is "allocated using assumptions, an effort should be made to reduce the amount of  
 11 expenses that must be allocated;" this is done by first identifying any actual costs and  
 12 only allocating the remaining unascertainable amounts. See Michael Simon affidavit,  
 13 Attachment 3, at A682.

14 The Commission determines that the cost of the 14 cameras that were used to  
 15 produce images for the basic feed that was provided to all of the networks, and viewed on  
 16 closed circuit television by convention attendees was properly divided evenly between the  
 17 Convention Committee and the RNC. The cost of the basic feed is \$833,345, therefore,  
 18 the RNC and the Convention Committee should have each paid \$416,672  
 19  $(\$833,345 \div 2)$ .<sup>3</sup>

<sup>3</sup> The Convention Committee paid \$482,645 or \$65,973 more than its share of the cost for the basic feed. ( $\$482,645 - \$416,672 = \$65,973$ ). The \$65,973 overpayment went toward the remainder of the CBT contract which covered television program production costs. The Commission determines that the production costs are not a Convention Committee expense, but rather, an expense that should be paid by the RNC. Therefore, the \$65,973 overpayment by the Convention Committee represents improperly used convention funds.

1        With respect to the 11 cameras, the Commission has determined that the cost of  
2 airing the programs are party building in nature and should be paid by the RNC rather  
3 than the Convention Committee. The Commission determines that the related production  
4 costs should be an RNC expense instead of a Convention Committee expense. Although  
5 there is admittedly a fine line between convention expenses and expenses that should be  
6 paid by the national party, the Commission concludes that the purpose of producing and  
7 broadcasting the convention-related television programming is to promote the national  
8 party, thus they should have been incurred by the RNC.

9        The Commission determines that the RNC should have paid the entire amount  
10 under the CBT contract related to the 11 cameras, which represent the production costs of  
11 the television programs. Therefore, in connection with the CBT contract, the Convention  
12 Committee was only required to pay for its share of the basic feed. Because it paid more  
13 than that amount, the Commission concludes that the RNC did not make an in-kind  
14 contribution to the Convention Committee in connection with the CBT contract.

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2000 FEB -2 P 12:05

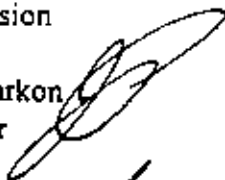



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20461


February 2, 2000


**MEMORANDUM**


TO: The Commission

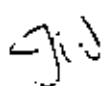
THROUGH: James A. Pehrkon   
Staff Director

FROM: Lawrence M. Noble   
General Counsel

Kim Leslie Bright   
Associate General Counsel

Lorenzo Holloway   
Assistant General Counsel

J. Duane Pugh Jr.   
Attorney

Jamila I. Wyatt   
Attorney

**AGENDA ITEM**  
For Meeting of: 2-3-00

**SUBMITTED LATE**

**SUBJECT:** Audit Division Analysis of Potentially Permissible Host Committee Expenses Paid by the 1996 Committee on Arrangements for the Republican National Convention dated January 31, 2000

The draft Statement of Reasons for the 1996 Committee on Arrangements for the Republican National Convention ("Convention Committee") was discussed at the January 27, 2000 open session Commission meeting. The draft Statement of Reasons proposed a total repayment of \$774,858 by the Convention Committee to the United States Treasury. The repayment amount includes a \$482,111 in-kind contribution from the San Diego Host Committee ("Host Committee") to the Convention Committee, and a \$292,747 in-kind contribution from the Republican National Committee ("RNC") to the Convention Committee (\$482,111 + \$292,747 = \$774,858).

At the Commission meeting of January 27, 2000, the Commission directed the Audit Division to review expenses that the Convention Committee paid, but that it claims could have been permissibly paid by the Host Committee. The Audit Division has

prepared an analysis of the expenses. The Office of General Counsel concurs with the Audit Division's analysis of permissible host committee expenses.

This Office notes that the proposed offset does not impact the \$292,747 in-kind contribution from the RNC. The proposed offset would exchange the contribution from the Host Committee for Convention Committee expenditures that could have been made by the Host Committee pursuant to 11 C.F.R. § 9008.52. The Audit Division's analysis addresses whether the specified Convention Committee's expenditures could have been permissibly provided by a host committee pursuant to 11 C.F.R. § 9008.52. Because national party committees like the RNC are not permitted to provide permissible host committee expenditures, the \$292,747 contribution from the RNC should not be offset by Convention Committee expenditures that could have been permissibly provided by a host committee. The funds that the RNC could have spent in connection with the convention are limited to the public funds that it already received and spent in accordance with 11 C.F.R. §§ 9008.4(a) and 9008.7(a). 11 C.F.R. § 9008.8(a).





FEDERAL ELECTION COMMISSION

January 31, 2000

**MEMORANDUM**

**TO:** LAWRENCE M. NOBLE  
GENERAL COUNSEL

**THROUGH:** JAMES A. PEHRKON  
STAFF DIRECTOR

**FROM:** ROBERT J. COSTA  
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

**SUBJECT:** ANALYSIS OF COA PAID EXPENSES THAT MAY HAVE BEEN  
PERMISSIBLY PAID BY THE HOST COMMITTEE

At the Commission meeting of January 27, 2000, the Audit Division was directed to review the list of expenses that the COA claims could have been permissibly paid by the Host Committee. The COA argues that it should be permitted to offset expenses it paid, that could have been paid by the Host Committee, against expenses that the Host Committee paid that were required to be paid by the COA. Such an offset would eliminate a portion of the repayment recommended in the draft Statement of Reasons. If the offset is permitted it will apply to \$482,111 of the \$774,858 recommended repayment. That is the portion that is related to convention expenses paid by the Host Committee. The remaining \$292,747 relates to convention expenses paid by the RNC and can not be offset by permissible Host Committee expenses paid by the COA.

The attached chart is a list of expenses that are claimed to be permissible Host Committee expenses. The expenses total \$1,606,138<sup>1</sup>. For ease of presentation the expenses have been grouped into seven categories as follows:

1	Construction and facilities	\$212,407
2	Office Equipment	\$399,393
3	Parking	\$64,680
4	Security	\$46,337

<sup>1</sup> The COA has submitted two lists. One in response to the ECM and a "refined" list with the request for an administrative review of the repayment determination. The analysis is based on the earlier list. The amount that is available for potential offset is greater on the that list.

5	Hotels	\$743,924
6	Caucus and Platform Meeting	\$25,651
7	Undocumented	\$113,746

Of these categories, the Audit staff believes that all of Categories 1 through 3 could have been paid by the Host Committee pursuant to 11 CFR §9008.52 (c), along with most of the expenses in Category 4. Category 1 consists of a payment to a paving company for landscaping and to prepare sites for temporary facilities, and payments to Motorola for a two-way radio system. Category 2 is payments to Xerox for photocopiers and to AT&T for computer equipment. As the title suggests, Category 3 is for parking the week of the convention. Security, Category 4, is mostly for shirts that COA claims were for security personnel. Although it is clear that the shirts and caps were imprinted with the convention logo, the relationship to security is based on the COA's explanation. There is also a payment to a security company for the safeguarding of COA equipment. These items are accepted. The payment classified as security by COA and not accepted is for printing shirts but the invoice is less specific than those for the amounts accepted.

The total amount accepted as permissible Host Committee expenses is \$718,384, more than sufficient to offset the payments by the Host Committee determined to be COA expenses

The large majority of the expenses that are not accepted as permissible Host Committee expenses are hotel costs for COA staff and volunteers. These expenses are Category 5 on the chart and total \$743,924. Section 9008.52(c)(1)(ix) states that a host committee can incur expenses "to provide hotel rooms at no charge or a reduced rate on the basis of the number of rooms actually booked for the conventions." Thus, section 9008.52(c)(1)(ix) permits host committees to provide convention committees with any rooms the host committee receives at no charge or at a reduced rate based on the number of rooms actually booked for the convention.

Contracts obtained from the San Diego Convention & Visitors Bureau ("ConVis") between the COA and hotel vendors demonstrate that the COA received one free room for every 40 rooms booked by the Host Committee. In addition, these contracts and other evidence reviewed demonstrate that after the hotels received full payment, the hotels gave a 5% commission to ConVis, and ConVis forwarded this 5% commission to the Host Committee.

In attempting to use the \$743,924 paid for the rooms as a host committee expense pursuant to section 9008.52(c)(1)(ix), the COA is incorrectly attempting to extend the regulation to include not just the complimentary rooms the Host Committee properly provided in accordance with section 9008.52(c)(1)(ix), but also the underlying rooms the Host Committee would have been required to book in order to receive the complimentary rooms. Section 9008.52(c)(1)(ix) is not that broad.

Category 6 contains payments to only one vendor. The purpose of the payments was to provide facilities, sound and lighting for Caucus and Platform Committee meetings on August 5, through August 9, 1996, before the start of the convention. This is a National Party business meeting and not a Host Committee expense.

Finally, Category 7 is expenses for which documentation was not submitted to establish the nature of the expense. A search of the audit files did not provide sufficient additional information for these expenses. The total amounts not accepted as permissible Host Committee expenses is \$887,754.

Should you have any questions please contact Joe Stoltz or Erica Holder at 694-1200.

Committee on Arrangements for the 1996 Republican National Convention

Analysis of COA Expenses Claimed As Permissible Host Expense

Vendor Name	Amount	Category of Expense	Permissible	COA	Indeterminable	Explanation if Not a Permissible Host Expense
	Per COA Response See F111		Host Expense	Expense	No Documentation	
	Per COA		Per Audit	Per Audit		
1 Motorola	\$186,407.00	1	\$186,407.00			
2 J.D. Paving	\$26,000.00	1	\$26,000.00			
3 Xerox	\$272,399.00	2	\$272,399.00			
4 ATT Capital	\$126,994.00	2	\$126,994.00			
5 Ace Parking	\$30,850.00	3	\$30,850.00			
6 Parking Company of America	\$21,000.00	3	\$21,000.00			
7 Horton Plaza	\$7,500.00	3	\$7,500.00			
8 Allright San Diego Parking	\$5,330.00	3	\$5,330.00			
9 Fruit of the Loom	\$40,890.00	4	\$40,890.00			
10 Red Sun Custom Screening	\$4,433.00	4		\$4,433.00		Custom T-Shirts Contract Printing, Republican T-shirt
11 Weddington's Inc.	\$1,014.00	4	\$1,014.00			
12 Clanton Hotel Bay View	\$240,891.00	5		\$240,891.00		Hotel Rooms For Convent. staff & Volunteers
13 San Diego Marmot & Manns	\$192,336.00	5		\$192,336.00		Hotel Rooms For Convent. staff & Volunteers
14 Doubletree Hotel	\$76,153.00	5		\$76,153.00		Hotel Rooms For Convent. staff & Volunteers
15 Hyatt Regency San Diego	\$44,404.00	5		\$44,404.00		Hotel Rooms For Convent. staff & Volunteers
16 Radisson Harbor View	\$31,803.00	5		\$31,803.00		Hotel Rooms For Convent. staff & Volunteers
17 Holiday Inn on the Bay	\$20,925.00	5		\$20,925.00		Hotel Rooms For Convent. staff & Volunteers
18 Holiday Inn on Mission Valley	\$19,722.00	5		\$19,722.00		Hotel Rooms For Convent. staff & Volunteers
19 Howard Johnson's Harbor View	\$17,488.00	5		\$17,488.00		Hotel Rooms For Convent. staff & Volunteers
20 Holiday Inn Harbor View	\$15,583.00	5		\$15,583.00		Hotel Rooms For Convent. staff & Volunteers
21 Super 8	\$15,129.00	5		\$15,129.00		Hotel Rooms For Convent. staff & Volunteers
22 Embassy Suites Hotel	\$12,742.00	5		\$12,742.00		Hotel Rooms For Convent. staff & Volunteers
23 The Westgate Hotel	\$12,477.00	5		\$12,477.00		Hotel Rooms For Convent. staff & Volunteers
24 Marmot Suites	\$8,794.00	5		\$8,794.00		Hotel Rooms For Convent. staff & Volunteers
25 Kona Kai Continental Plaza	\$8,773.00	5		\$8,773.00		Hotel Rooms For Convent. staff & Volunteers
26 Days Inn Downtown	\$7,121.00	5		\$7,121.00		Hotel Rooms For Convent. staff & Volunteers
27 Quality Suites San Diego	\$6,242.00	5		\$6,242.00		Hotel Rooms For Convent. staff & Volunteers
28 The Comfort Inn	\$6,205.00	5		\$6,205.00		Hotel Rooms For Convent. staff & Volunteers
29 Radisson Hotel	\$4,199.00	5		\$4,199.00		Hotel Rooms For Convent. staff & Volunteers
30 Radisson Suites	\$2,927.00	5		\$2,927.00		Hotel Rooms For Convent. staff & Volunteers
31 Meeting Services, Inc.	\$25,651.00	6		\$25,651.00		Preparation for Caucus & Platform Meeting on Aug
32 Rally's West Coast Real	\$32,788.00	7			\$32,788.00	
33 Televideo	\$26,320.00	7			\$26,320.00	
34 M Griffin & CO.	\$10,994.00	7			\$10,994.00	
35 Harbor Bar & Tackle	\$10,000.00	7			\$10,000.00	
36 Charles Satter Associates	\$9,389.00	7			\$9,389.00	
37 Communications Group	\$9,100.00	7			\$9,100.00	
38 Heintz Media Group	\$4,386.00	7			\$4,386.00	
39 Sonoma Cleaning Service	\$3,270.00	7			\$3,270.00	
40 TECM Inc.	\$3,000.00	7			\$3,000.00	
41 ESC	\$2,529.00	7			\$2,529.00	
42 Synectic Systems	\$1,548.00	7			\$1,548.00	
43 Personal Computer Rental	\$413.00	7			\$413.00	
Total of Column 2	\$1,808,138.00					
Total of Cols 4,5 and 6	\$1,808,138.00		\$716,384.00	\$774,008.00	\$113,746.00	

Legend (Column 3)

- 1=Construction & Facilities
- 2=Office Equipment
- 3=Parking
- 4=Security
- 5=Hotels
- 6=Caucus & Platform Mtg
- 7=Undocumented