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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 18, 1998

**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkon  
Acting Staff Director

FROM: Lawrence M. Noble  
General Counsel

BY: Kim Bright-Coleman  
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Law Clerk

SUBJECT: 1996 Committee on Arrangements for the Republican National  
Convention Request for Oral Hearing (LRA #472)

On June 25, 1998, the Commission determined that the 1996 Committee on Arrangements for the Republican National Convention ("COA") must repay \$1,772,643 to the United States Treasury. On September 24, 1998, COA submitted its written response to the repayment determination and requested the opportunity to address the Commission in open session to demonstrate that no repayment is required. 11 C.F.R. § 9007.2(c)(2)(ii).<sup>1</sup> See Attachment. The Office of General Counsel recommends that

<sup>1</sup> Pursuant to 11 C.F.R. § 9008.12(c), the repayment determination procedures in 11 C.F.R. § 9007.2(c)-(h) for general election financing are applicable to convention committees. See also 11 C.F.R. §§ 9008.11 (incorporating 11 C.F.R. § 9007.1) and 9008.14 (incorporating 11 C.F.R. § 9007.5).

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the Commission grant COA's request for an oral hearing and schedule the presentation for February 24, 1999.

The Commission's regulations provide national committees that have received public funds in connection with their nominating conventions the opportunity to respond to a repayment determination by submitting written legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. 11 C.F.R. § 9007.2(c)(2)(i). A committee may request an opportunity to address the Commission in open session. 11 C.F.R. § 9007.2(c)(2)(ii). The committee should identify in its legal and factual materials the repayment issues it wants to address at the oral hearing. *Id.* The Commission may grant this request by an affirmative vote of four of its members and inform the committee of the date and time set for the oral hearing. *Id.*

The repayment determination at issue is based on in-kind contributions to COA from the Republican National Committee ("RNC") and the San Diego Host Committee that, when added to COA's expenditures, result in COA exceeding the expenditure limitation. The response argues that the RNC's in-kind contributions to COA that related to television production were treated differently than similar expenses incurred by the Democratic National Convention. With respect to the San Diego Host Committee's in-kind contributions to COA, the response contends that the Host Committee is permitted to pay such expenses pursuant to 11 C.F.R. §§ 9008.52 and 9008.53. COA asserts that the regulations permit host committees to pay for convention related facilities and services in addition to those specifically listed in the regulation. *See* 11 C.F.R. § 9008.52(c)(1)(xi). Since COA argues that the expenses are permitted, it concludes that the expenses should not count toward its expenditure limitation pursuant to 11 C.F.R. § 9008.8(b)(1).

The Office of General Counsel believes that an oral hearing would be beneficial due to the large volume of transactions and types of expenditures related to the \$1,772,643 repayment determination at issue, as well as the factual complexity of the issues underlying the repayment determination. An oral hearing may provide the Commission with an opportunity to clarify these complicated issues and may assist the Commission in reaching any post-administrative review repayment determination. Accordingly, this Office recommends that the Commission grant the Committee's request for an oral hearing.

Should the Commission approve our recommendation, the Office of General Counsel proposes that the same procedures used for previous oral hearings during the 1996 election cycle be followed. Pursuant to these procedures, the Office of General Counsel will prepare an agenda document containing materials relevant to COA's oral hearing. This document will be provided to the Commission and to COA prior to the date of the hearing.

At the presentation, the Chairman will make an opening statement. COA will then be given 30 minutes in which to make a presentation on the issues raised in the legal and factual materials submitted by COA. *See generally* 11 C.F.R. § 9007.2(c)(2)(ii). Following the presentation, individual Commissioners, the General Counsel, and the Audit Division may ask questions. *Id.* The letter to COA will inform COA of these procedures and also state that any additional materials COA may wish to have the Commission consider should be submitted to the Office of General Counsel within five (5) days following the presentation.

### **RECOMMENDATIONS**

The Office of General Counsel recommends that the Commission:

1. Grant the request of the 1996 Committee on Arrangements for the Republican National Convention for an oral hearing as provided at 11 C.F.R. § 9007.2(c)(2)(ii);
2. Schedule the oral hearing for February 24, 1999; and
3. Approve the appropriate letter.

### **Attachment**

1996 Committee on Arrangements for the Republican National Convention  
response dated September 24, 1998.

2025-09-24 10:00 AM



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

DATE & TIME OF TRANSMITTAL: Friday, December 18, 1998 4:00

BALLOT DEADLINE: Wednesday, December 23, 1998 4:00

COMMISSIONER: ELLIOTT, MASON, McDONALD, SANDSTROM, THOMAS, WOLD

SUBJECT: **1996 Committee on Arrangements for the Republican  
National Convention Request for Oral Hearing (LRA #472).  
Memorandum to the Commission dated December 18, 1998.**

( ) I approve the recommendation(s)

( ) I object to the recommendation(s)

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the Commission Secretary. Please return ballot no later than date and time shown above.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION

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**BEFORE THE FEDERAL ELECTION COMMISSION**

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**RESPONSE OF THE COMMITTEE ON ARRANGEMENTS  
FOR THE 1996 REPUBLICAN NATIONAL CONVENTION  
TO THE AUDIT REPORT**

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Dated: September 24, 1998

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INTRODUCTION

The Committee on Arrangements for the 1996 Republican National Convention ("COA") disputes the Commission's repayment determination and requests an administrative review and an oral hearing. In addition, COA submits the following legal and factual information demonstrating that no repayment is required. At the hearing, COA will make a presentation on the legal and factual issues discussed herein.

SUMMARY OF RESPONSE

This response begins by discussing the pertinent procedural history, particularly the Commission's determination that it may not retain any individual component of the repayment unless four Commissioners vote for it. The response then outlines the background of the 1996 Republican National Convention. It next summarizes the statutory and regulatory framework governing convention and host committee financing, rebutting the audit report's claim that a stray Commission statement from 1979 somehow supports the decision to disallow nearly one million dollars in San Diego Host Committee payments.

Part I of the response demonstrates why none of the Host Committee's payments to David J. Nash & Associates should be deemed impermissible, in-kind contributions to COA. The Host Committee's payment for the largest component of these -- television production services -- was part of preparing the San Diego Convention Center for use by COA. Similarly, other expenses for such things as live video remotes, satellite time,

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decorations and music, entertainment and an announcer, a short documentary about Russell, Kansas, and overhead were permissible.

Part II demonstrates that the Republican National Committee ("RNC") properly paid 72% of the cost for equipment and services provided to the RNC's GOP-TV and COA by Creative Broadcast Techniques. Ironically, COA feared that if it paid more of these costs, it would be accused of using public funds to subsidize GOP-TV. Instead, now that it has properly spent its money, COA finds itself accused of not using enough public funds to pay for GOP-TV's production of convention coverage containing the RNC's party building messages.

Part III demonstrates that COA will not have any net outstanding convention expenses in excess of the statutory grant.

#### PERTINENT PROCEDURAL HISTORY

**COA Audit.** For over two years, COA has labored under an unprecedented challenge to its operations by the audit staff. In the Exit Conference Memorandum, the audit staff proposed a total repayment of \$4,258,054 (34% of the \$12 million public grant.) COA responded with a fifty-six page document and thirteen sworn affidavits and declarations.<sup>2</sup> After considering that response, the audit staff reduced the recommended repayment determination by over half a million dollars to \$3,709,356 in a forty-seven page initial audit report.

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<sup>2</sup> For the Commission's convenience, a copy of COA's Response to the Exit Conference Memorandum ("COA ECM Response") and its supporting exhibits is included in Volumes I-III of the Appendix. (App. Vols. I-III.)

During the Commission's consideration of the audit report, COA submitted four letters in response to issues raised by the audit staff in its report and questions posed by Commissioners during the open sessions.<sup>2/</sup> At the staff's urging, however, the Commission repeatedly voted not to consider these additional submissions. The Commission likewise declined to order the audit staff to undertake additional fieldwork, despite a regulation authorizing it to do so. 11 C.F.R. § 9007.1(b)(3).

Of critical importance, the Commission determined on April 16, 1998, that any particular component of the repayment determination would survive only if the Commission, after considering submissions made by COA during the administrative review, voted by a majority of four Commissioners to retain that component of the repayment determination.<sup>3/</sup> Put another way, unless four Commissioners vote to keep any particular component of the repayment determination, that component may not be included in the final repayment determination.

After seven months of consideration and at least sixteen separate votes in six open sessions, the Commission approved the audit report on June 25, 1998. The audit report

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<sup>2/</sup> Copies of these submissions are attached in Volume III of the Appendix, and are incorporated herein by reference. (App. Vol. III at A645-A750.)

<sup>3/</sup> Tr. of Open Session, April 16, 1998, Tape 1, pp. 2-6 (App. Vol. IV at A930-A934); *id.*, Tape 2, pp. 13-14 (App. Vol. IV. at A941-A942); Agenda Document No. 97-84-C (App. Vol. V at A1113-A1116).

concluded that the San Diego Host Committee and the RNC made in-kind contributions to COA. Because these in-kind contributions placed COA over the spending limitation, the Commission ordered COA to "repay" the dollar value of the contributions to the Treasury. The total repayment ordered was \$1,772,643, or 14% of the entire public grant.

This repayment determination, if upheld, would be unprecedented. First, it is huge, much larger in both absolute dollars and as a percentage of the public grant than any other convention repayment determination in history. Second, unlike other convention repayment determinations, neither the audit staff nor the Commission found so much as a penny of public money to have been spent on an impermissible purpose.

The audit report was served on COA on June 26, 1998. This submission originally was due on August 25, 1998. By letter dated August 14, the Commission granted COA an extension through and including September 24, 1998.

**Democratic National Convention Committee Audit.** As required by statute, the staff also audited the Democratic National Convention Committee ("DNCC") and the Chicago Host Committee. Although the Democratic National Convention occurred only days after the Republican National Convention, the audits of the DNCC and Chicago Host Committee were presented to the Commission and made publicly available 198 days (6 months and 16 days) after the COA and San Diego Host Committee audits. Indeed, the DNCC audit report was not presented to the Commission until

after the Commission had completed its review of the COA audit. This delay allowed the staff to omit from the DNCC audit a number of items similar to those challenged in the COA audit. The effect of this delay was to subject COA and the RNC -- but not the DNCC -- to substantial adverse publicity on these items, including a front page story in the *New York Times* (attached at App. Vol. VI at A1612).

In contrast to the COA audit, the Commission found that DNCC spent some of its public grant on an impermissible purpose. (DNCC Audit Report at 16 (App. Vol. V at A1153).) DNCC does not dispute this finding, having already repaid the \$19,052 at issue.<sup>4</sup>

#### BACKGROUND ON THE 1996 REPUBLICAN NATIONAL CONVENTION

The factual background of the 1996 Republican National Convention is fundamental to this response. Some, but not all, of this information can be found in greater detail at pp. 9-17 of COA's ECM Response (App. Vol. I at A13-A21).

**The Purpose of Republican National Conventions.** Every four years, the Republican Party holds a convention for the purpose of nominating the Party's candidates for President and Vice-President, crafting a Party platform, and adopting rules that will govern the Party until the next convention. (See Rules of the Republican Party, Preamble, Rules 2, 9, 16 (App. Vol. II

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<sup>4</sup> Copies of the Reports of the Audit Division on the 1996 Democratic National Convention Committee and Chicago's Committee for '96, together with accompanying memoranda, are attached at App. Vol. V at A1117-A1165.

at A496, A498, A500).) In keeping with the Republican Party's status as a national party, the Party holds its conventions in different locations around the United States. In the last forty years, the convention has been held in such diverse cities as San Diego, Houston, New Orleans, Dallas, Detroit, Kansas City, Miami, San Francisco, and Chicago.

Another important function of Republican conventions is to create enthusiasm and support for the Party's platform and candidates. (See COA ECM Response at 9 (App. Vol. I at A13).) The 1996 Republican National Convention generated this enthusiasm and support in two ways. First, the convention committee encouraged active party members to attend. Over 40,000 people attended the 1996 Republican Convention. This figure included 1,990 delegates; 1,990 alternates; hundreds of national and state party officials and staff; hundreds of national, state, and local elected officials; and approximately 25,000 spectators. (Id. at 10 (App. Vol. I at A14).)

Second, the convention committee facilitated media coverage of the Convention, especially television coverage. Several national television networks (ABC, CBS, NBC, CNN); non-traditional television networks (C-Span, GOP-TV, and others); and thousands of print, radio, and local television reporters covered the Convention. (Id.) Although gavel to gavel coverage of political party conventions by major networks is a thing of the past, and even the limited coverage now consists largely of editorial commentary and interviews, this media coverage

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nevertheless allowed people across the country to watch some portion of the convention proceedings.

**Competition for Political Conventions by Cities and Host Committees.** Hosting a convention is an important event for a host city, bringing millions of dollars of business to a host city during the convention. (See, e.g., Declaration of John Reyes ("Reyes Dec."), ¶ 2 (App. Vol. VI at A1952).) Because the convention is a national, news-worthy event, hosting a convention provides a city with a unique opportunity for extensive exposure to the rest of the country. (Id.) This exposure typically generates increased tourist and convention revenues for the host city long after the convention has ended. (Id.)

Because of these benefits, cities compete to host conventions. There is nothing inappropriate about this. In fact, during the 1984 debate on increasing public funding for conventions, Congress explicitly recognized that cities compete to attract conventions to their cities. (See 130 Cong. Rec. 20202 (House, June 29, 1984) (statement of Mr. Hartnett); id. at 20204 (statements of Mr. McEwen and Mr. Bartlett) (App. Vol. V at A1169, A1171).)

Cities compete by offering to make numerous improvements to their convention facilities and to provide numerous other convention related facilities and services. For example, in 1996 the City of Chicago proposed a minimum \$20 million commitment of city resources if the RNC would choose to hold its convention in the brand new United Center. The United

Center, the City of Chicago boasted, was an enormously valuable resource "designed with television in mind." (App. Vol. II at A214). It had "seating for 23,000, over 200 skyboxes, exceptional acoustics, extraordinary communications capabilities, unobstructed views, and a variety of private rooms for meetings and gatherings off the convention floor . . ." (App. Vol. II at A175). In addition, the Center offered "an eight-sided color video scoreboard, television monitors throughout the building's concourses, an unparalleled sound system, and the most modern cable and wiring systems [to] insure that people inside the building and inside their homes don't miss a minute of the action." (Id.)

Notwithstanding the outstanding capabilities of the United Center, Chicago offered even more. It offered, for example, "to include 16 strategically located television camera platforms, all equipped with hard-wired electrical power and intercom systems connected to the production facility." (App. Vol. II at A214.) It also offered "to provide for the rental, installation, and operation of a special lighting system to meet the requirements of the media within the main convention area." (App. Vol. II at A236.) The City further proposed "to pay the cost of providing mobile television control facilities should the need arise." (App. Vol. II at A214.) It even offered to make "wholly available" one of the city's two cable stations "to the RNC for gavel-to-gavel coverage." (App. Vol. II at A245.) In short, the City of Chicago recognized that, even with its brand



new United Center, considerable modifications and accommodations needed to be made for the site to be suitable for use by a modern political convention. Presumably, all the promised facilities, improvements, and devices were provided to the Democratic National Convention, which accepted Chicago's offer.

These convention related facilities and services do more than induce a Party to hold its convention in a particular city. They also help the host city project a favorable image to the convention attendees and the nationwide television audience. Without the improvements and other services, the extensive television exposure that a convention brings might actually harm a host city's tourist economy. For example, if the television coverage projected an image of an antiquated and awkward convention center, the host city's ability to attract future conventions -- whether political or not -- would be seriously damaged.

In sum, host cities and host committees have dual incentives to help pay as many convention related facilities and services as they can. First, the promise helps attract a convention to the city in the first place. Second, the improvements and services ensure that the city will reap maximum benefit from the nationwide exposure that a convention brings.

**The Decline of Convention Television Coverage.** In recent years, television coverage of conventions has declined from full "gavel to gavel" coverage with minimal interruptions to very scant coverage. In 1992, and again in 1996, the major

networks devoted at most two hours an evening to convention coverage. Much of that time was consumed by interviews and editorial commentary, with ever decreasing time devoted to live coverage of the convention itself. As little as 40% to 50% of the networks' "coverage" of the convention consisted of the broadcast of the actual proceedings. (See COA ECM Response at 11 (App. Vol. I at A15).)

Because of declining television coverage, convention committees, host cities, and host committees must strive to present a convention that induces the networks to broadcast the proceedings. They do so by presenting an attractive, media-friendly facility and searching for innovative means of transmitting the proceedings to the public.

*The Role of the City of San Diego and the San Diego Host Committee in the 1996 Republican National Convention.* The transformation of the San Diego Convention Center into a viable major party convention site was a formidable task. Unlike the modern sports arenas that were the sites for most of the recent national party conventions, the San Diego Convention Center was constructed as an exhibition hall. (Affidavit of William D. Harris ("Harris Aff."), ¶ 3a (App. Vol. III at A566); see also Photograph attached as Tab C.) Unlike many of the facilities offered to the RNC, it was far from state of the art, containing inadequate lighting, wiring, telecommunications infrastructure, camera platforms, sound systems, and other amenities of a modern convention hall. It had no seating -- the limited seating that

it eventually gained had to be added. Views of the podium from over a tenth (1/10) of the seats were obstructed by columns or other obstacles. (Id. at ¶ 3c (App. Vol. III at A567).) In short, considerable effort, time, and expense were required to bring the San Diego Convention Center up to parity with other facilities.

The Site City Agreement among the City of San Diego, the San Diego Convention Center, the San Diego Host Committee, the Republican National Committee, and COA addressed these issues. (A copy of this Agreement is attached at App. Vol. II at A325-A494.) Section 5.6(a)(ii) of the Agreement provided:

"As an inducement [to the RNC and COA] to enter into this Agreement, the City and [the San Diego Host Committee] agree to pay for the necessary additions and improvements to the Convention Center and all of the other facilities and services described herein."

In particular, the City, Convention Center, and Host Committee agreed to provide elevated flooring; chairs; office trailers for management and staging personnel; camera stands; 36 skyboxes; media space; air conditioning; lighting; sound shielding; purchase, placement, and removal of exterior decorations; janitorial services; increased electrical power sources; transformers; numerous other upgrades to the facility; tear-down; and related services. (App. Vol. II at A368.)

One of the great challenges for any convention, and in particular for the 1996 San Diego convention, was to accommodate approximately 40,000 guests. As stated above, over one-tenth (1/10th) of the seats in the San Diego Convention Center had

obstructed views of the podium. To compensate for this problem, giant monitors were installed behind the podium, and closed circuit television monitors were distributed throughout the convention hall to allow persons in locations with poor views to follow the proceedings. (Harris Aff. at ¶ 8 (App. Vol. III at A569-A570).) Such monitors and closed circuit television systems are now common in major entertainment and sports arenas, including Chicago's United Center (see COA ECM Response at 12-14 (App. Vol. I at A16-A18)), so that persons in walkways or distant seats can view the proceedings. In addition, a number of guests could not be seated in the convention hall, but had to be seated on the roof of the building in what was called the "Sail Area." (App. Vol. III at A568.) In order for these guests to see the convention proceedings at all, two things had to be done: hardware, including television monitors and wiring, had to be installed on the convention center's roof and a signal had to be produced and transmitted to those monitors. (App. Vol. III at A569.)

#### STATUTORY AND REGULATORY FRAMEWORK

The pertinent regulation governing host committee funding of convention activities is found in 11 C.F.R. § 9008.52(c)(1). As shown below, this regulation permits host committees to pay an unlimited amount of a broad range of convention related facilities and services.

**A. Neither the Statute Nor the Regulation Limits Host Committee Expenses.**

The statute limiting convention spending by political parties that accept public financing states:

"the national committee of a major party may not make expenditures with respect to a presidential nominating convention which, in the aggregate, exceed the amount of payments to which such committee is entitled . . ."  
26 U.S.C. § 9008(d)(1).

Significantly, the statute limits spending only by national parties. The statute in no way limits the amount that other persons, such as host cities or host committees, may spend.

Indeed, the Commission's regulations expressly recognize that money spent by host cities and host committees is not subject to the statutory limit:

"(1) *Host committee expenditures.* Expenditures made by the host committee shall not be considered expenditures by the national committee and shall not count against the expenditure limitations of this section provided the funds are spent in accordance with 11 C.F.R. 9008.52.

(2) *Expenditures by government agencies and municipal corporations.* Expenditures made by government agencies and municipal corporations shall not be considered expenditures by the national committee and shall not count against the expenditure limitations of this section if the funds are spent in accordance with the requirements of 11 C.F.R. 9008.53." 11 C.F.R. § 9008.8(b)(1), (2) (emphasis added).

In turn, 11 C.F.R. §§ 9008.52 and 9008.53 (incorporating § 9008.52 by reference) set forth ten broad categories of expenses that host committees and host cities may pay without regard to the spending limit imposed on national party committees. The list of permissible Host Committee

expenses is illustrative, rather than exclusive. For example, Section 9008.52(c)(1)(v) allows host committees to pay expenses for convention related facilities and services "such as: construction of podiums; press tables; false floors, camera platforms; additional seating; lighting, electrical, air conditioning and loud-speaker systems; offices; office equipment; and decorations." (Emphasis added.) The regulation even concludes with a catch-all provision allowing payment for "other similar convention related facilities and services." 11 C.F.R. § 9008.52(c)(1)(xi) (emphasis added). By its very terms, therefore, the regulation permits host committees to pay convention related facilities and services in addition to those listed in the regulation.

Although the staff repeatedly describes this regulation as an "exception" to the spending limit, that is a mischaracterization. The statute does not limit the convention related spending of any entity but the political party holding the convention. So long as host cities and host committees limit the types of their activities to those "similar" to the activities described in 11 C.F.R. § 9008.52(c)(1), they are not precluded from spending any amount on those activities.

**B. A Stray Commission Statement from 1979 Cannot Limit Host Committee Expenses.**

The audit report repeatedly invokes a 1979 Commission statement to argue that several San Diego Host Committee expenses were not permissible. (COA Audit Report at 5 (twice), 8, 17, 26,

33; see also Chorba Aff., Ex. A, Tr. of Open Session, Jan. 22, 1998, Tape 1 at 3 and 35 (App. Vol. IV at A756, A788).) The statement, which accompanied a predecessor to the current regulation, is as follows:

"The restrictions concerning who may donate funds to defray convention expenses and the amounts which may be donated are necessary to insure that such donations are commercially, rather than politically motivated. Further, the national committee of a political party is entitled to receive public money to pay for its convention and is in turn limited in the amount which it may spend on that convention. Defrayal of convention expenses by a host committee is intended to be a very narrow exception to the statutory limitation on convention expenses." 44 Fed. Reg. 63036, 63038 (Nov. 1, 1979) (emphasis added).

The host committee regulations have been considerably revised since this statement, however. The 1979 regulation limited the amount of host committee expenses to defray convention expenses by requiring such expenses to "be proportionate to the commercial return reasonably expected by the business, corporation or agency during the life of the convention," 11 C.F.R. § 9008.7(d)(3)(ii) (1979). By contrast, the current regulation contains no such limitation. As the Commission explained in 1994, this limitation was dropped in recognition of the fact that "local businesses and organizations that donate to municipal funds are motivated by commercial and civic reasons, rather than election-influencing purposes." 59 Fed. Reg. 33606, 33615 (June 29, 1994). This explanatory statement reflects a judgment by the Commission that local

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businesses support political conventions in their city for commercial, not political, reasons.

Indeed, the 1979 statement is inconsistent with the current language of the regulation. As shown above, the current regulation is illustrative, not exclusive. It contains no overall limit on the amount of money that a host committee may spend. Rather, it enumerates ten broad categories of permissible expenses. And it contains a catch-all provision for other "similar" expenses. Although courts often defer to agency interpretations of their own regulations, courts do not defer to agency interpretations that are inconsistent with the regulation's plain language. *Stinson v. United States*, 508 U.S. 36, 45 (1993); *Military Toxins Project v. EPA*, 146 F.3d 948, 954 (D.C. Cir. 1998).

Moreover, far from interpreting the regulation to provide a "very narrow exception" to the spending limit, the Commission has in the past interpreted the regulation to allow a very broad exception. As the attached chart shows, host committee spending in the years since the 1979 statement has steadily increased. (Tab A; see also Affidavit of Christopher P. Zubowicz ("Zubowicz Aff."), ¶ 2, and Exs. 1 and 2 (App. Vol. VI at A1504, A1512 and A1513).) The Commission has approved, for example, spending by the Atlanta Host Committee for the 1988 Democratic National Convention that significantly exceeded the public grant. Notably, the Commission's repayment determination for the Democratic National Convention Committee in 1988 was

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minimal -- just \$64,389.70, and resulted not from excessive host committee expenses but merely from the fact that the convention committee did not spend all of its grant. Similarly, in 1992, the Commission approved host committee spending in Houston and New York equal to 78% of the public funds spent by the national committees. Most recently, in 1996, the Commission allowed host committees to spend a combined total of \$42,615,208 (net of the Commission's current, disputed repayment determinations) versus a combined public grant of \$24,728,000. These figures and the accompanying chart completely debunk any notion that the host committee regulation is, or should be, a "very narrow exception."

Finally, the staff's attempt to limit, retroactively, in a less than obvious way, undefined terms like "such as" and "similar" is unfair. The money at issue has already been spent based upon a reasonable reading of the regulation. For years, the Commission has permitted a very broad range and quantity of host committee spending. (See Tab A.) At the same time, modern political conventions have changed, presenting new technical challenges to convention and host committee staff. We respectfully submit that the Commission should afford the regulated community some deference to adopt good faith, reasonable interpretations of the regulations. At the very least, the Commission should give the regulated community clear prior notice of the range and quantity of permissible host committee spending.

**C. The Spending Limit Is an Unconstitutional Condition.**

If the Commission adheres to its repayment determination, COA reserves the right to argue before reviewing courts that the spending limit is an unconstitutional condition because it forces COA to give up rights of speech and association to receive a public benefit. *E.g., FCC v. League of Women Voters*, 468 U.S. 364, 366 (1983).

**I. THE COMMISSION SHOULD NOT ORDER COA TO REPAY ANY AMOUNTS PAID BY THE SAN DIEGO HOST COMMITTEE TO DAVID J. NASH & ASSOCIATES (\$892,489).**

None of the amounts that the San Diego Host Committee paid to David J. Nash & Associates should be included in the repayment. All of Nash's services were necessary to render the San Diego Convention Center suitable for use as a national nominating convention. Without these services, for example, 10% of Convention attendees seated in the hall could not have even seen the proceedings. Similarly, the many convention attendees who could not be seated in the hall at all, but had to be seated on the roof in the "Sail Area," could not have seen the proceedings without the installation of closed circuit television equipment and production of the closed circuit feed. In short, Nash's services would have been necessary even if not one minute of the Convention proceedings had been broadcast beyond the Convention facility.

**A. Background of David J. Nash & Associates.**

David J. Nash & Associates is a theatrical production company. (Affidavit of David J. Nash ("Nash Aff."), ¶ 2 (App. Vol. III at A579).) Nash provided services to the Convention under two separate contracts: one with COA and one with the Host Committee. Pursuant to its contract with COA, Nash provided various consulting services to COA. In exchange, Nash received \$117,500. (*Id.*, ¶ 4.)

Nash also provided a much broader range of services to the Host Committee, for which it was paid over \$2 million. (*Id.*) In addition to his responsibilities once the Convention proceedings commenced, Nash played a role in supervising the design, build-out, and other preparation of the Convention.

(*Id.*, ¶¶ 10, 13 (App. Vol. III at A583, A584-A585).)

Essentially, Nash functioned much like a general contractor for the Host Committee with responsibilities for rendering the San Diego Convention Center suitable for use as a national nominating convention. (*Id.*, ¶¶ 9, 13 (App. Vol. III at A582, A584-A585).)

In many instances, Nash did not provide equipment or services directly to the Host Committee but retained third parties who provided equipment (ranging from lights to teleprompters) and services (ranging from cameramen to an orchestra) to the Host Committee. Although the staff is correct that one essential aspect of Nash's responsibility was to coordinate the equipment and services to insure that the overall image of the Convention was telegenic, that was not Nash's only responsibility by any

means. Many if not all of the services provided by Nash -- installation and production of closed circuit television, contracting for teleprompters, contracting for construction of the Sail Area, and many others -- would have been required even if not one minute of Convention proceedings had been broadcast beyond the four walls of the San Diego Convention Center. (Id., ¶¶ 11, 13, 15 (App. Vol. III at A583, A584-A585, A585).)

The audit staff recommended that the Commission find almost all of the \$2 million paid to Nash by the Host Committee to be an impermissible, in-kind contribution from the Host Committee to COA. A majority of the Commission refused to accept this recommendation. Instead, the Commission properly allowed the Host Committee payments to Nash for \$589,900 of lighting and rigging, \$147,162 of closed circuit television expenses, \$165,299 of improvements to the rooftop "Sail Area," \$186,955 of expenses associated with the production of taped video segments, and \$181,278 of indirect costs allocable to categories that were allowed.

On the other hand, the Commission determined, improperly, we submit, that \$892,489 of Nash's expenses should have been paid by COA. These expenses consisted of \$153,311 for decorations and music, \$203,581 for closed circuit television production services, \$22,416 in Sail Area entertainment expenses, \$45,570 in overhead, \$302,330 in miscellaneous television production costs (including television production services,

remote video production, and satellite time), and \$165,281 in "indirect costs."

For convenience, we will address these expenses as follows:

- Closed Circuit Television Production Services & Miscellaneous Television Production Services (\$222,522)
- Remote Video Productions (\$138,442)
- Satellite Time (\$73,748)
- Decorations & Music (\$153,311)
- Sail Area Entertainment & Announcer Expenses (\$23,615)
- A Documentary About Russell, Kansas (\$70,000)
- Overhead & Indirect Costs (\$210,851)

**B. The Commission Should Not Order Repayment of Any Television Production Services (\$222,522).**

Although the Commission has approved the Host Committee's payments to Nash for \$589,900 for lighting and rigging, \$147,162 for closed circuit television equipment, and \$186,955 for video crew labor and video segment production and editing, the Commission has rejected the Host Committee's payment to Nash for \$203,581 for closed circuit television services and \$18,941 for the miscellaneous production services of a TV producer, continuity writer, and stand-ins. None of these expenses should be included in the repayment, however.

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1. **The Commission's Treatment of Television Production Expenses for the Republican and Democratic Conventions Is Inconsistent.**

The audit staff initially treated the television production expenses of the Democratic and Republican conventions identically, concluding that all such expenses were not permissible City or Host Committee expenses. Compare DNCC Audit Report at 8 (A1145) with COA Audit Report at 15. After the Commission rejected the audit staff's reasoning with respect to some, but not all, of the San Diego Host Committee expenses, the audit staff reversed course completely and permitted all, not some, of the Chicago Host Committee and City of Chicago television production expenses (totalling at least \$1,688,907). (DNCC Audit Report at 10 (App. Vol. V at A1146).)

As a result, the two audit reports are inconsistent. For example, the Commission has allowed the Chicago Host Committee to make a \$615,083 payment to Chicago Scenic Studios for "production labor" including "stagehands, riggers, teamsters, projectionists, broadcast engineers, cameramen, carpenters, and decorators for the convention." (DNCC Audit Report at 6-7 (App. Vol. V at A1143-A1144).)<sup>5</sup> On the other hand, the Commission has not allowed the San Diego Host Committee to pay for Rigging/Staging labor (\$11,785), a stage manager (\$8,438), and video crew labor (\$56,781). As another example, the Commission has allowed the City of Chicago to pay not only for "an audio

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<sup>5</sup> The Chicago Host Committee also reported spending over \$12,000 on various "stage hands" and "stage technicians." (E.g., App. Vol. VI at A1862, A1866, A1872.)

system" but also for "the services of audio consultants and an audio designer to operate the system." (DNCC Audit Report at 5 (App. Vol. V at A1142).) But the Commission has not allowed the San Diego Host Committee to pay for sound operations (\$5,250). As still another example, while the Commission permitted the City of Chicago to provide "grips," "script supervisors," and a "property master," DNCC Audit Report at 6 (A1143), it has prevented San Diego from providing "stand-ins," "script supervisors," and a "production accountant" (\$24,133).

The audit staff may claim that the inconsistency is justified by the fact that DNCC paid approximately \$1.2 million to "Smith Hemion Productions to produce and design the staging of the Democratic National Convention." (Memorandum from Robert J. Costa to Commissioners, dated June 12, 1998; Agenda Doc., No. 98-44 at 2 (App. Vol. V at A1137).) This observation would not explain the inconsistent treatment. First, this argument is a *non sequitur*. DNCC's payment of money to Smith Hemion does not refute that the City of Chicago and the Chicago Host Committee paid, with Commission approval, many of the very same categories of costs that SDHC is not being allowed to pay. That SDHC payments to Nash were higher than analogous payments made by the City of Chicago and the Chicago Host Committee is hardly surprising in view of the much greater suitability of the United Center for a convention of this nature than the San Diego Convention Center.

Second, as we have earlier shown (COA's ECM Response at 8 (App. Vol. I at A12))-- and as the staff now appears to concede -- there is a broad range of convention related expenses that may be paid by either the convention committee or the host committee. For this reason, DNCC's decision to pay a greater percentage of television production expenses than COA is irrelevant. So long as television production expenses are permissible host committee expenses, and the DNCC Audit Report clearly indicates that they are, then the San Diego Host Committee properly paid them.

Third, the evidence indicates that Smith Hemion played a role in developing the substantive content of the Democratic Convention. For example, Smith Hemion was responsible for "developing the overall creative concepts to present the Party message to the public." (Agenda Doc. 98-44 at 2 (App. Vol. V at A1137) (emphasis added).) Smith Hemion also was responsible for "designing and developing" the "content of video presentations and of the taped material." (*Id.* (emphasis added).) Nash, by contrast, had "no input whatsoever into the political message presented during the Convention proceedings." (Nash Aff., ¶ 5 (App. Vol. III at A581).) Nor did he "play any role in drafting the party platform or the substantive content of the speeches given from the Convention podium." (*Id.*) Nash had no input into who would speak from the podium or what the speakers would talk about. In addition, the agreement between Nash and the Host Committee nowhere mentions anything having to do with the



substantive content of the Convention. (See Nash Aff., Ex. 1 (App. Vol. III at A594-A602).) To the contrary, the contract contains a proposed budget with zero (\$0.00) dollars budgeted for "writers." (Nash Aff., Ex. 1, Schedule A (App. Vol. III at A600).) COA paid for whatever limited advice Nash may have provided on the actual staging of the Convention as part of Nash's \$117,500 contract with COA.

Repeatedly, the staff misleadingly refers to a memorandum that, it contends, fully describes Nash's role. The memorandum states: "David Nash Associates has been engaged by the COA to produce the television event and staging of the Convention proceedings. David Nash and a team of professional television production and technical associates will present and enhance the Republican message for presentation to the television networks and the media in general." As shown, this tersely-worded statement generally described substantial services provided by or subcontracted by Nash for major modifications to the convention center infrastructure, lighting, enhancement, constructing of a closed circuit television system (which already existed in the United Center), and other plainly allowable expenses. The staff's continuing misinterpretation of this statement cannot transform Nash's services into something they are not. (See, e.g., Nash Aff., ¶ 34 (App. Vol. III at A592).)

Throughout COA's operations, it endeavored to maintain a distinction between "the message" and "the show." In general, COA was responsible for the message of the Convention and the

Host Committee and Nash were responsible for creating "the show" -- the stage, the lights, the television production. While it is true that the show was the vehicle through which the Convention message was presented, packaging the message into this vehicle had absolutely nothing to do with creating the content that the vehicle presented. The Commission, we respectfully submit, should at least recognize that COA's distinction was reasonable. As Commissioner Elliott aptly observed, "if it was part of the show, let it go." (Chorba Aff., Ex. C, Tr. of Open Session, March 5, 1998, at 7 (App. Vol. IV at A897).)

**2. The Commission's Distinction Between Permissible and Impermissible Television Production Costs Is Not Supported by a Statement of Reasons.**

It is axiomatic that final agency action must be accompanied by a statement of reasons that is sufficient to enable a reviewing "court to evaluate the agency's rationale at the time of decision." *Dickson v. Secretary of Defense*, 68 F.3d 1396, 1404 (D.C. Cir. 1995). The audit report's discussion of closed circuit television expenses does not supply any reason for treating some television production expenses differently from others. Accordingly, the Commission's conclusion that \$222,522 in television production expenses should have been paid by COA is arbitrary and capricious. *United Mine Workers v. Federal Mine Safety and Health Admin.*, 920 F.2d 960, 964 (D.C. Cir. 1990) (remanding agency determination that contained "no explanation at all"); see also *City of Mesa v. Federal Energy Regulatory Comm'n*, 993 F.2d 888, 897 (D.C. Cir. 1993) (remanding where agency has

"not explained its application of those principles to this particular case sufficiently to allow a reviewing court to find that it gave reasoned consideration to all the factors relevant to its decision").

**3. Allowing Host Committees to Pay for Television Production Equipment But Not Television Production Services Is Not Reasonable.**

During the open sessions individual Commissioners suggested that Nash's expenditures on equipment were permissible, but expenditures on services were not. Even if this suggestion were to be adopted by the Commission as a whole, the mere recital of an interpretation is not sufficient. The statement of reasons must explain why such an interpretation is reasonable. *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Ins. Co.*, 463 U.S. 29, 43 (1983) ("the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made") (internal quotations omitted).

Moreover, such an interpretation would be contrary to the plain language of the regulation. 11 C.F.R. § 9008.52(c)(1) clearly permits host committees to defray not just the cost of equipment and infrastructure, but also the cost of "services." Indeed, Section 9008.52(c)(1) mentions the word "services" no fewer than five times. The Commission cannot adopt an interpretation of its regulation that is directly contrary to the very language of that regulation. *Stinson*, 508 U.S. at 45; *Military Toxins Project*, 146 F.3d at 954.

Further, adopting such an interpretation in the face of plain regulatory language that permits host committees to pay for "services" violates COA's rights to fair notice under the Due Process Clause incorporated in the Fifth Amendment. "It is well-settled in [the D.C. Circuit] that agencies must provide fair notice of the conduct required or prohibited by a regulation before a violation of a regulation can occur." *United States v. Chrysler Corp.*, 995 F. Supp. 150, 160 (D.D.C. 1998); see also *Freeman United Coal Mining Co. v. FMSHRC*, 108 F.3d 358, 362 (D.C. Cir. 1997) ("In order to satisfy constitutional due process requirements, regulations must be sufficiently specific to give regulated parties adequate notice of the conduct they require or prohibit").

Finally, there is no evidence in the record to support a distinction between equipment and services.

**4. The Host Committee Properly Paid All \$222,522 of the Disputed Nash Television Production Expenses.**

The San Diego Host Committee properly paid all of the disputed television production expenses. The closed circuit television expenses that have been included in the repayment determination were necessary to render the San Diego Convention Center suitable for use by a national nominating convention. Without the closed circuit television system, many guests would have been unable to view the proceedings. (Nash Aff., ¶¶ 10-11 (App. Vol. III at A583).) So long as the Host Committee could permissibly pay for the closed circuit equipment, the Host Committee could pay to operate the equipment.

C. Host Committee Payments for Remote Video Productions Were Permissible (\$138,442).

The Host Committee also properly paid the infrastructure related costs of video remote productions (\$138,442). These costs consisted of a camera and camera crew, a microphone, and remote production technology that brought video images into the Convention Center live from remote locations. (E.g., Nash Aff., ¶ 25 (App. Vol. III at A588-A589).) The Commission has allowed the Host Committee to pay for the costs of integrating taped video segments featuring delegates or notable Americans addressing the Convention. It has refused, however, to allow the Host Committee to pay for the cost of producing live video images and presenting them in the Convention hall. There is nothing in the regulations that would have apprised COA or the Host Committee that the Host Committee could pay for one, but not the other. Further, there is no statement of reasons in the audit report explaining why the Host Committee could pay for taped video segments but not live video remote productions.

It is true, as one Commissioner observed, that some of the video segments "welcomed" delegates to the Convention. (App. Vol. II at A551.) Other video segments, however, did not include the magic "welcoming" words. (App. Vol. II at A552.) Nevertheless, they were allowed because their purpose was fundamentally the same as those that did. The video segments entertained delegates during lulls in the proceedings. (Nash Aff., ¶ 29 (App. Vol. III at A589-A590).) Accordingly, they served a purpose that was "similar" to decorations. (*Id.*) They

kept attendees' attention, made them feel comfortable, and entertained them. (Id.) Also, the video segments were an important means of compensating for the physical limitations of the San Diego Convention Center. (Id.) Due to these limitations, many attendees wound up watching the Convention proceedings on closed circuit television. (Id.) It is very difficult to produce a signal that will hold the attention of such viewers and give them a favorable impression of the convention and the convention facilities. (Id.)

The video remotes were indistinguishable from the video segments in all of these respects. They served to entertain Convention attendees during lulls in proceedings and they created visual diversity to hold the attention of those attendees who had no choice but to watch the proceedings on closed circuit television. (Id.) The video remotes, therefore, should be allowed for the same reasons that the video segments were.

**D. Host Committee Payments for Satellite Time Were Permissible (\$73,748).**

The satellite time (\$73,748) was purchased by the Host Committee for two reasons. One was to beam the signal from the video remotes back to the Convention. (Nash Aff., ¶ 32b (App. Vol. III at A591).) Accordingly, if the Commission excludes the cost of the video remotes in the repayment, it should also exclude approximately half of the satellite costs in the repayment.

The other purpose of the satellite time was to make the closed circuit television signal available to any news organization that wanted it, but that could not afford to come to San Diego. (*Id.*) In this respect, the satellite time was no different than simply laying a cable from the closed circuit television system to a press room at the Convention. Because the Host Committee could clearly pay for such an infrastructure cost relating to physical cable, it could pay for the modern equivalent.

**E. Host Committee Payments for Decorations and Music Were Permissible (\$153,311).**

Nash incurred some \$153,311 in expenses for decorations and music. Initially, the audit staff simply treated decorations and music as part of the overall services provided by Nash -- services that the staff argued should have been paid virtually in toto by COA. Although the Commission rejected that blanket recommendation, it did find that COA should have paid Nash for decoration and music expenses. This finding, however, is arbitrary and capricious.

**1. Decorations (\$104,279).**

Nash spent \$104,279 on balloons, confetti, fireworks, and video graphics for the Convention. Although the regulations expressly permit host committees to pay for "decorations" and "other similar convention related . . . services," 11 C.F.R. § 9008.52(c)(1)(v) and (xi), the Commission held that the Host Committee should not have paid these expenses because:

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"The regulation allowance for decorations is provided relative to the use of an auditorium or convention center. The use of balloons, confetti, fireworks and video graphics by Nash are related to his presentation of the "picture" or "show" to the convention attendees and television viewers. These items are for the conduct of the convention, not decorations related to the use of an auditorium." COA Audit Report at 20.

This interpretation simply makes no sense. The text of the regulation draws no distinction between decorations "relative to the use of an auditorium or convention center" and decorations relative to the "presentation of the 'picture' or 'show'" of the convention. How can decorative bunting on the podium be distinguished from a decorative balloon drop or confetti? Dictionary definitions of the term "decoration" disclose no basis for the distinction. See Webster's New World Dictionary (2d Collegiate ed. 1980) (defining "decorate" as "to add something to so as to make more attractive; adorn; ornament" and "decoration" as "anything used for decorating").

Moreover, the Commission has again treated the DNCC more favorably. The Chicago Host Committee reported spending \$37,550 on "fireworks" (App. Vol. VI at A1825, A1832, A1852), and this expense was not challenged by the Commission.

Video graphics (\$26,648) or, as they are described in Attachment 2 of the Audit Report, "Main & End Titles," consisted of such things as the convention logo displayed on giant television screens on either side of the podium. There was no material difference between these logos and the logo affixed to



the lectern and hung from the ceiling behind the lectern; all are "decorations." (See Photographs attached at Tab D.)

As for balloons, the Commission's interpretation appears to be that a host committee can pay for balloons that are hung from a wall or ceiling, but cannot pay for the balloons if they are released and allowed to fall to the Convention floor. There is no support for such a distinction in the text of the regulation, the Commission's prior practices, or in any of the evidence before the Commission. Also, the Commission has approved \$4,600 paid by the Chicago Host Committee to "Warbird Airshows." (App. Vol. VI at A1857.) If the Chicago Host Committee can pay for an airshow, the San Diego Host Committee should be able to pay for a balloon drop. To hold otherwise would, we respectfully submit, be arbitrary.

Finally, even if contrary to our submission, one could argue that these items are not precisely "decorations," they are at the very least "similar" to decorations. (See Photographs attached at Tab E.) The Audit Report does not argue to the contrary.

**2. Music (\$49,032).**

Nash spent \$49,032 on an orchestra. The orchestra played music while delegates and attendees gathered in the Convention hall prior to each session. (App. Vol. II at A550.) This music "welcomed" the attendees to the City of San Diego and the Convention facility. It is therefore a permissible expense under 11 C.F.R. § 9008.52(c)(1)(ii). Also, the Host Committee

certainly could have paid to provide a concert for Convention attendees. Indeed, the Commission has previously allowed a host committee to treat convention attendees to a baseball game. Advisory Opinion 1980-21 (April 20, 1980). There is no material difference between taking Convention attendees to a concert and bringing the concert to convention attendees. Finally, the Commission has approved over \$68,000 spent by the Chicago Host Committee on "entertainment" including \$5,900 on "instrument rental," \$7,827.26 for a "symphony performance," and thousands more on various musical groups. (E.g., App. Vol. VI at A1836, A1931.)

**F. Host Committee Payments for Entertainment & Announcer Expenses Were Permissible (\$23,615).**

The bulk of these expenses (\$22,416) was to provide entertainment in the roof-top "Sail Area." As stated, due to the limitations of the San Diego Convention Center, not all of the attendees could be seated in the hall. Many guests had to be seated on the roof in the "Sail Area." These attendees were consigned to watch the Convention proceedings on large screen television.

Understandably, the Host Committee was concerned that attendees relegated to the Sail Area would not be happy. It therefore strove to make the Sail Area as pleasant as possible by providing, among other things, entertainment. The entertainment provided was local. Just as the Host Committee could have paid to bring the Sail Area guests to a local baseball game or a local

concert, Advisory Opinion 1980-21 (April 20, 1980), it properly paid to bring a local band to the Sail Area guests. As noted above, the Commission has already approved thousands of dollars of "entertainment" expenses by the Chicago Host Committee.

The remaining expense (\$1,199) was the cost of an announcer for the Convention's public address system. The announcer welcomed delegates to the Convention and welcomed speakers to the podium. (Nash Aff., ¶ 32c (App. Vol. III at A591).) The announcer merely read a prepared script, exercising no control over the content. This insignificant expense should be allowed as sufficiently similar to the convention related services enumerated at 11 C.F.R. § 9008.52(c)(1).

**G. Host Committee Payments for a Documentary About Russell, Kansas Were Permissible (\$70,000).**

The documentary about Russell, Kansas, was a short film prepared for display during the Convention. (See COA ECM Response at 39 (App. Vol. I at A43).) The only differences between the Russell film and the taped video segments are that the Russell film was longer and it was never actually used. (*Id.*; see also App. Vol. II at A109).) Just as the Commission refused to include the taped video segments in the repayment, it should refuse to include the costs of this film.

**H. Host Committee Payments for Overhead & Indirect Costs Were Permissible (\$210,851).**

The Commission has permitted the Host Committee to pay for over \$1.2 million of Nash's expenses. It cannot be disputed,

therefore, that Nash would have incurred overhead and indirect costs even if Nash's activities had been limited to those that the Commission has allowed. Further, even if a portion of the overhead and indirect costs are attributable to activities that the Commission will not allow, the Host Committee could have paid these costs as office expenses of COA. 11 C.F.R.

§ 9008.52(c)(1)(v) and (xi).

Even if Nash's overhead and indirect costs are not to be allowed in their entirety, but allocated among permissible and impermissible Host Committee expenses, the Commission should first deduct expenses that are otherwise entirely payable by the Host Committee. The costs of Nash's production accountant (\$15,000) should be deducted as a necessary cost incurred by the Host Committee to comply with the Commission's regulations regardless of whether all or some of the Nash activities were permissible. Also, \$23,633 of the so-called indirect costs were fees for equipment rental paid to Hawthorne Machinery for equipment used to rig the lights. In addition, a sizeable portion of these indirect costs relate to hotel expenses (\$105,603.94) or local transportation costs (\$10,643.49). Both of these expenses are expressly permitted under the regulation. See 11 C.F.R. § 9008.52(c)(1)(vi) and (ix).

Once the portion of Nash's indirect costs attributable to the production accountant, Hawthorne Machinery, hotels, and local transportation are deducted, the remaining indirect costs (\$55,970.57) should be allocated between permissible and

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impermissible Host Committee expenses. This amount includes \$30,570 in overhead costs attributable to the services of the T.V. Producer and a Production Coordinator. The Commission's decision to deny this amount in its entirety cannot be supported on the basis of some distinction between equipment and services. (See Part I.B.3 above.) Accordingly, this amount should be allocated along with the indirect costs that the Commission previously recognized should be allocated.

**I. The Commission Should Allow COA to Exercise the Common Law Right of "Recoupment" or "Offset" to Reduce the Amount of Any Impermissible In-Kind Host Committee Contributions.**

As shown throughout this response, COA strongly disputes that there should be any repayment. If the Commission disagrees, however, and votes to retain some or all of these Host Committee expenses in the repayment determination, the Commission should allow COA to reduce these expenses by the amount of expenses that COA paid even though they could have been paid by the Host Committee. The theory behind this request is simple: had COA known in advance that the Commission would have disallowed the Nash expenses still at issue, it simply would have restructured its arrangements with the Host Committee so that the Host Committee paid other, indisputably permissible costs. The total expenses of both COA and the Host Committee would have remained unchanged -- they would have been merely restructured to comply with an interpretation of 11 C.F.R. § 9008.52(c)(1) that

was not available until the Commission completed its seven-month-long review of the audit report.

During consideration of the audit report, the Commission deferred a ruling on COA's offset argument for two reasons: first, the Commission was uncertain whether it should permit an offset; second, the Commission sought additional documentation of the expenses that COA hoped to offset. (Chorba Aff., Ex. A, Tr. of Open Session of January 22, 1998, at 91 (Aikens) (App. Vol. IV at A844); *id.* at 90, 91 (Stoltz) (App. Vol. IV at A843-A844); *id.* at 89-90 (Bruner) (App. Vol. IV at A842-843); Chorba Aff., Ex. E, Tr. of Open Session of April 23, 1998, at 3 (Stoltz) (App. Vol. IV at A1013).)

**1. The Commission Should Permit a Recoupment.**

Recoupment is "the setting off against asserted liability of a counterclaim arising out of the same transaction." *Reiter v. Cooper*, 507 U.S. 258, 263-64 (1993); *see Beach v. Owen Federal Bank*, 118 S. Ct. 1408, 1411 (1998). The right of recoupment is derived from equitable principles of common law. *Estate of Mueller v. Commissioner*, 101 T.C. 551, 551-52 (1993) ("The ancient doctrine of equitable recoupment, which developed concurrently at common law and in equity, was judicially created to preclude unjust enrichment of a party to a lawsuit and to avoid wasteful multiplicity of litigation").

A recoupment claim is appropriate if the claim "(i) arise[s] from the same transaction or occurrence as the main claim; (ii) seek[s] relief of the same kind and nature as that

sought by the main claim; and (iii) [is] defensive in nature and seek[s] no affirmative relief." *Berger v. City of North Miami, Florida*, 820 F. Supp. 989, 992 (E.D. Va. 1993). Recoupment is especially fitting where it would help accomplish substantial justice. See, e.g., *Mueller*, 101 T.C. at 563-64 (Halpern J., concurring) ("'equal and complete justice [can]not be meted' unless the defendant [is] permitted to set up evidence for recoupment").

Recoupment claims have been allowed in a broad range of legal and administrative contexts. See, e.g., *Reiter*, 507 U.S. at 264 (recoupment available in Interstate Commerce Act tariff context); *United States v. M/V Santa Clara I*, 819 F. Supp. 507, 513 (D.S.C. 1993) (recoupment available in CERCLA context). In *Estate of Mueller*, for example, the Tax Court specifically determined that it has jurisdiction to consider recoupment, even without specific statutory authorization to do so. *Estate of Mueller*, 101 T.C. at 552. The court reasoned that it "need[ed] no additional source of jurisdiction to render a decision with respect to the [recoupment] defense," because it "is part of the entire action over which [the court] ha[s] jurisdiction." (*Id.* at 556; see also *Estate of Bartels v. Commissioner*, 106 T.C. 430, 434 (1996) (refusing to overrule *Estate of Mueller* regarding jurisdiction to hear recoupment claims).)

The Commission has allowed similar reallocations in other contexts. For example, the Commission has allowed the retroactive reallocation of fund-raising expenses between

accounts for direct and administrative costs, and between accounts for federal and nonfederal costs. See Advisory Opinion 1992-27 (Aug. 13, 1992); Advisory Opinion 1991-15 (June 6, 1991).

Moreover, although we respectfully disagree with the ruling, the Commission's previous ruling regarding the Creative Broadcast Techniques ("CBT") expenses implies that the Commission has the power to allow a *post hoc* reallocation. COA Audit Report at 39-44. CBT provided television production equipment and services to COA and the Republican National Committee ("RNC") for approximately \$1.8 million. (*Id.* at 39.) Because COA and RNC shared the CBT system, they also shared its cost, which they allocated based on estimated usage. (*Id.* at 39-40.) The Commission ultimately determined that the CBT costs should instead be allocated based on the broadcast hours of each user. (We contest the ruling below, in Part II.) The number of broadcast hours, however, cannot be determined until after the convention, well after the system was purchased and its cost initially allocated. Thus, the Commission's ruling requires a subsequent adjustment to the initial allocation of the CBT expenses.

Finally, the Commission permitted the DNCC to exercise the common law right of recoupment. According to the DNCC audit report, the DNCC previously repaid \$120,562 of unspent public funds to the Treasury. DNCC Audit Report at 20. The Commission, however, determined that the DNCC could offset this amount



against the Commission's repayment determination of \$676,218.  
Id.

COA's recoupment claim satisfies the three requirements: it arises from the same transaction or occurrence as the government's claim, that is, the contractual relationship between COA and the Host Committee; it seeks monetary relief, as does the government's claim; and it seeks only a reduction in the government's recovery, not an affirmative recovery for COA. Further, the spending limit will not be jeopardized by allowing recoupment. Had COA foreseen the interpretations embodied in the audit report, it simply would have restructured which of the convention related facilities and services the Host Committee paid for. The net amount spent by both COA and the Host Committee would have been unchanged. Substantial justice would not be served by holding COA to Commission interpretations of the regulation that even the Commission's own audit and legal staff did not anticipate.

**2. COA Has Identified and Documented Expenses That More Than Offset the Questioned Host Committee Expenses.**

COA has identified over \$1.3 million in expenses that COA paid, but that the Host Committee could have paid instead under even the most literal reading of 11 C.F.R. § 9008.52(c)(1). The Declaration of Michael Simon ("Simon Dec.") both details these expenses and attaches all necessary supporting documentation.

a. Office Equipment, Offices, and Other  
Convention Center Infrastructure (\$441,185).

A host committee clearly may pay for office equipment.  
11 C.F.R. § 9008.52(c)(1)(v). Indeed, the Commission has  
approved extensive payments by both the Republican and Democratic  
Host Committees for such equipment including photocopying  
machines and computers. (Simon Dec., ¶ 5a (App. Vol. V at  
A1175).) Accordingly, there can be no dispute that the San Diego  
Host Committee could have paid the almost \$400,000 in expenses  
for photocopying and computer equipment that COA actually paid.  
(See Simon Dec., ¶ 2 (App. Vol. V at A1174).)

Similarly, the Host Committee could have paid \$26,000  
for the repaving of certain roads and walkways near the  
convention center. (Simon Dec., Ex. 2 (App. Vol. V at A1177).)  
The Commission has already approved over \$118,000 for the  
renovation of the convention center parking lot, and over \$15,000  
for similar work at the United Center. (Simon Dec., ¶ 5c (App.  
Vol. V at A1175).)

Moreover, COA paid for part of the build-out of the  
"offices" in the convention concourse, including certain "office  
equipment" items, such as table microphones, speakers, and  
lighting. (Simon Dec., ¶ 3 (App. Vol. V at A1178).) That office  
equipment was essential to the purpose for which those offices  
were constructed: to serve as a venue for Caucus and Platform  
Committee meetings. (Id.) Those COA expenditures should  
therefore be treated as either "office" or "office equipment"  
costs under the regulations.

b. **Local Transportation and Security (\$110,387).**

Host committees may "defray the costs of various local transportation services, including the provision of buses and automobiles," as well as "the costs of law enforcement services necessary to assure orderly conventions." 11 C.F.R.

§ 9008.52(c)(1)(vi); 11 C.F.R. § 9008.52(c)(1)(vii). The Commission has already approved \$16,000 in parking lot rentals and almost \$340,000 in other parking expenses incurred by the Host Committee. (Simon Dec., ¶ 5c and 5d (App. Vol. V at A1175).) Similarly, the Commission approved \$15,000 in parking lot rentals by Chicago's Host Committee. (Id., ¶ 5d (App. Vol. V at A1175).) Therefore, the San Diego Host Committee could have paid the approximately \$110,000 incurred by COA to rent parking lots; to purchase uniforms for local transportation and security staff; and to retain garage security services. (Id., ¶ 2, Ex. 1 (App. Vol. V at A1174, A1177).)

c. **Hotel Rooms (\$803,499).**

The Commission's regulation also permits host committees "to provide hotel rooms at no charge or a reduced rate on the basis of the number of rooms actually booked for the convention." 11 C.F.R. § 9008.52(c)(1)(ix). When measured "on the basis of the number of rooms actually booked for the convention," COA's hotel expenditures were very small indeed. According to the San Diego Convention & Visitors Bureau ("ConVis"), approximately 100,000 room-nights were "actually booked for the convention" in the San Diego Metropolitan area.

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(Reyes Dec., ¶ 3 (App. Vol. VI at A1952).) At an estimated average cost of approximately \$130 per room-night, the total cost of those rooms was approximately \$13 million. (Id.) COA paid for only 4,936 room-nights at an average cost of just under \$163 per room-night, totaling \$803,499. (Simon Dec., ¶¶ 2, 4 (App. Vol. V at A1174-A1175).) Thus, COA provided less than 5% of the room-nights "actually booked for the convention," representing less than 6.2% of the total cost. Accordingly, on any reasonable reading of § 9008.52(c)(1)(ix), COA's hotel expenditures must be viewed as a permissible Host Committee expense.

During the Commission's consideration of the Audit Report, the auditors expressed a concern that they did not have the invoices to support the hotel expenses cited in COA's response to the ECM. They further expressed a concern that the hotel expenses might include items in addition to hotel rooms, such as catering costs. In response to these concerns, COA submits herewith all of the invoices to support the hotel expenses. (See Simon Dec., Ex. 2 (App. Vol. V at A1178-A1405).) COA has subtracted from the hotel expenses all costs associated with items other than hotel rooms. (Id., ¶ 4 (App. Vol. V at A1175).)

**II. THE COMMISSION SHOULD NOT ORDER COA TO REPAY ANY AMOUNTS PAID BY THE REPUBLICAN NATIONAL COMMITTEE TO CREATIVE BROADCAST TECHNIQUES (\$729,994).**

Creative Broadcast Techniques ("CBT") provided 25 cameras and related equipment and services under a single

contract to both COA and RNC's GOP-TV in exchange for payments totalling \$1,758,297.64. There is no dispute that these costs must be allocated between COA and GOP-TV. The only dispute is over how to allocate them. After explaining the background of this transaction, we will show that COA's allocation was both reasonable and based on standard industry practice. We further show that the Commission's allocation method is not only unreasonable, but has the rather bizarre effect of requiring future conventions to use public funds to subsidize party building activities through party run broadcast networks.

**A. Background of Creative Broadcast Techniques.**

Creative Broadcast Techniques ("CBT") is a television production company that provided facilities and services to both GOP-TV and COA at the Convention. In anticipation of high demand for mobile television production equipment as a result of the Olympics and the Democratic Convention, the RNC prudently and properly began arranging for television production equipment and services during the latter part of 1995. Because the RNC believed that GOP-TV and COA could share some equipment, and thus realize economies, it contracted for sufficient equipment for both GOP-TV and COA. (Geraghty Aff., ¶¶ 12-14 (App. Vol. I at A90-A91).)

GOP-TV and COA did not share equally in all of the equipment and services provided by CBT. In all, CBT provided 25 cameras and supporting personnel and production equipment. Of these cameras, GOP-TV and COA shared only 14. Footage from these

14 cameras was used to produce the "basic feed," or the televised image of convention proceedings provided to all the networks, and the closed circuit television program. GOP-TV, and GOP-TV alone, used the remaining 11 cameras. These consisted of cameras in the GOP-TV anchor booth, cameras in the GOP-TV marina set, mobile cameras for interviews of convention attendees by Haley Barbour and GOP-TV correspondents, and other cameras used exclusively by GOP-TV. (Geraghty Aff., ¶¶ 14-15 (App. Vol. I at A91-A92).) In addition to the 25 cameras and crews, CBT provided supporting production equipment and services. (Nash Aff., ¶¶ 19, 21 (App. Vol. III at A587, A587-A588).) GOP-TV and COA each used the equipment and services provided by CBT for different purposes. A diagram depicting the actual use of CBT equipment and services is attached as Tab B.

**B. GOP-TV and Its Use of CBT Equipment and Services.**

The Republican National Committee formed GOP-TV in 1993 to produce media for the RNC, including a television show called "Rising Tide" that was broadcast live every Thursday night on several cable channels. (Geraghty Aff., ¶ 2 (App. Vol. I at A86-A87).) Hosted by then RNC Chairman Haley Barbour, the broadcasts were presented in a news magazine format consisting of interviews, special segments taped at various locations, editorial commentary, and so forth. (Id., ¶ 3 (App. Vol. I at A87).) Rising Tide was usually broadcast from the RNC's in-house television studio, but frequently it was broadcast from other locations. (Id., ¶ 4 (App. Vol. I at A87).)

As the Republican National Convention approached, the RNC decided that viewers of GOP-TV would enjoy an expanded format consisting of five, half-hour morning shows during the Convention week, plus four evening shows of live Convention coverage and one evening recap show. (*Id.*, ¶¶ 6-11 (App. Vol. I at A88-A90).) CBT equipment and services were used for these GOP-TV broadcasts.

Like other GOP-TV broadcasts, the morning shows adhered to a news magazine format, but were hosted by Laurie Clowers rather than Mr. Barbour. (*Id.*, ¶ 8 (App. Vol. I at A88-A89).) The shows were taped in advance and did not focus just on the Convention; the broadcasts also included coverage of events in San Diego apart from the Convention proceedings, including human interest items, such as how delegates were spending their free time. (*Id.*) Because the shows were broadcast in the early morning, they obviously did not provide live coverage of the Convention. (*Id.*) The RNC paid both the production costs and the cost of broadcast time for these shows, just as it did for all prior and subsequent GOP-TV news magazine broadcasts. (*Id.*, ¶¶ 10, 21 (App. Vol. I at A89, A95).) The Commission agreed that the allocation to the RNC of the morning show costs was proper.

The evening shows consisted of live coverage of Convention proceedings, plus one "recap" show. Like the major networks, GOP-TV had an "anchor booth" as well as mobile cameras for conducting interviews on the floor of the convention and behind the podium. (Geraghty Aff., ¶ 11 (App. Vol. I at A89-A90).) Rather than cover the events from the podium minute by

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minute, GOP-TV exercised editorial discretion about whether to cover particular speeches, or alternatively to provide editorial commentary, live interviews, or taped segments. (*Id.*)

Because (unlike the morning shows) the evening shows provided live convention coverage, COA paid the cost of the broadcast time for GOP-TV's live coverage of the convention. (*Id.*, ¶ 22 (App. Vol. I at A95).) Neither the audit staff nor the Commission has disputed that it was proper for COA to do so. The only dispute is whether COA should have also paid the cost of producing the shows.

**C. Convention Television Operations and COA's Use of CBT Equipment & Services.**

COA used the 14 shared cameras to produce, with the assistance of Nash, (a) the basic feed and (b) live closed circuit television coverage. (Geraghty Aff., ¶ 20 (App. Vol. I at A94).)

As at prior conventions, COA provided a live "basic feed" of events happening on the podium to all the networks covering the convention. Using 14 cameras stationed around the Convention Center, COA provided continuous sound and picture to all networks covering the convention. (*Id.*)

The basic feed was made available to GOP-TV on a take it or leave it basis. All networks other than GOP-TV employed their own cameras to cover the podium and other convention proceedings. (Declaration of Jack Kelly ("Kelly Dec."), ¶ 6 (App. Vol. V at A1496).) Since these network cameras provided



coverage similar to the basic feed, COA could not realistically recover subscription fees from the networks. Had COA charged for the basic feed, the networks likely would have declined to take it. In contrast, COA insisted that GOP-TV pay for its share of the feed because it did not want to be accused of subsidizing GOP-TV with private funds. The Commission accepted this position and allocated 50% of what it believed to be the basic feed costs to the RNC and 50% to COA.

Nash also produced a closed circuit television program from the basic feed that was transmitted live and without commercials or editorial interruption to television monitors throughout the Convention hall. (Nash Aff., ¶ 18 (App. Vol. III at A586-A587).)

**D. COA's Allocation of the CBT Costs Is Reasonable and Based on Industry Practice.**

As stated, the total value of the CBT contract was \$1,758,297.64. To arrive at an allocation of these costs between GOP-TV and COA, COA used a single, simple principle: COA's and GOP-TV's respective shares of the cost of the CBT contract should be determined by actual camera usage.

As explained above, CBT provided 25 cameras. Although GOP-TV used all 25 of these cameras, COA only used 14. Moreover, COA shared those 14 cameras with GOP-TV. Accordingly, COA was allocated 50% of the costs associated with 14 cameras and GOP-TV was allocated the remainder. In sum, COA's share of the CBT costs was  $\frac{14 \times \pi}{25}$  or 28% of the total cost of the CBT contract.

The amount ultimately paid by COA is virtually equal to that percentage:

<u>Allocation of Total CBT Costs Based on Actual Usage</u>		<u>Actual Allocation</u>	
Contract amount	\$1,136,000.00	Initial payments	\$408,875.00
Change orders	+ 543,130.14		
Add'l Pers. Expenses	+ <u>79,167.50</u>	Subsequent payment	73,769.88
	\$1,758,297.64		
	<u>X .28</u>		
TOTAL	\$ 492,323.34		<u>\$482,644.88</u>

Thus, the ultimate allocation was almost precisely the amount allocable to COA based on camera usage.<sup>5/</sup> Although COA did not pay precisely 28% of every invoice, it was always the intent that COA would pay its fair share of total production costs based upon camera usage. (Geraghty Aff., ¶ 19 (App. Vol. I at A94).)

COA's allocation method is based on standard industry practice. As no fewer than four professionals with extensive experience in the television news industry have stated in sworn affidavits and declarations, standard industry practice is that the cost of shared equipment is divided equally among the entities sharing it. (Geraghty Aff., ¶ 17 (App. Vol. I at A93); Declaration of William M. Headline ("Headline Dec."), ¶ 4 (App. Vol. V at A1499); Kelly Dec., ¶ 4 (App. Vol. V at A1496); Declaration of Wayne L. Wicks, ¶ 3 (App. Vol. III at A644).) The only difficulty in applying this principle to the CBT contract is

<sup>5</sup> Because COA has made a subsequent payment of \$73,769.88 to the RNC, any repayment arising out of the CBT contract should be reduced to reflect that payment, at least.

that COA and GOP-TV did not share all of the CBT equipment. COA therefore determined that it should pay 50% of the cost of the 14 cameras it did share, plus 50% of any production costs associated with those 14 cameras. Because COA's use of the supporting production equipment was roughly proportional to its camera usage, (Geraghty Aff., ¶ 17 (App. Vol. I at A93)), it was appropriate to allocate to COA 50% of 14/25 -- 28% -- of the cost of the production equipment. (Headline Dec., ¶ 5; Kelly Dec., ¶ 7 (App. Vol. V at A1499 and A1496-A1497, respectively).)

**E. The Commission's Allocation of the CBT Costs Is Not Reasonable.**

The Commission determined that COA should pay for \$1,138,869, or over 60%, of the total CBT costs. The Commission reached this determination through a three step process. First, the Commission allocated what it believed to be the cost of the "basic feed" equally between the RNC and COA. Second, from the remaining costs the Commission subtracted a \$22,000 reimbursement from a local television station for use of equipment at GOP-TV's marina set. Third, the Commission then divided the remaining costs between the RNC and COA based on the ratio of television broadcast time purchased by the RNC and COA. This method allocated 26% of the remaining costs to the RNC and 74% to COA.

**1. The Commission's Allocation Method Is Wholly Unsupported by Record Evidence.**

The Commission's method of allocating the remaining costs is wholly unsupported by any evidence in the record. In

particular, there is no evidence that the Commission's method is followed by anyone in the television industry.

**a. The Commission Allocation Method Is Unheard of in the Industry.**

The Commission's allocation method is completely foreign to the television industry. (Headline Dec., ¶ 6, Kelly Dec., ¶ 7 (App. Vol. V at A1500 and A1497, respectively).) Networks frequently "pool" coverage of major events including presidential inaugurations, presidential press conferences, etc. When they do so, the costs of the pooled coverage (net of any income that the networks receive from selling subscriptions to non-voting members of the pool) are divided equally among the networks that participate in the pool. (Headline Dec., ¶ 6, Kelly Dec., ¶ 4 (App. Vol. V at A1500 and A1496, respectively).)

As the sworn statements of industry professionals attest, under no circumstances would the costs payable to each network be determined by how much the networks ultimately use the pooled coverage, or even if they use it at all. (Headline Dec., ¶ 6, Kelly Dec., ¶ 7 (App. Vol. V at A1500 and A1496, respectively).) That is, if two networks participate in a pool and one network produces a one-hour show and the other network produces a two-hour show from the pooled coverage, each network still pays 50% of the cost of the pool. The commitment to have equipment and personnel available is a sunk cost that does not go away if one potential user uses less. Industry professionals with experience running network pools have simply never heard of news entities sharing the cost of equipment on the basis of

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broadcast duration. (Headline Dec., ¶ 6, Kelly Dec., ¶ 7 (App. Vol. V at A1500 and A1496, respectively).) In the words of Mr. William Headline, former Washington Bureau Chief of CNN and the Overall Pool Producer for four presidential inaugurations, "[t]he theory has always been that the members of the pool pay for the basic coverage capabilities provided by the pool and the usage of the pool materials is the business of the individual members." (Headline Dec., ¶ 6 (App. Vol. V at A1500).) There is simply no evidence in the record that the Commission's method is a reasonable means of estimating production costs.

**b. The Commission's Method Is as Unreasonable as It Is Unprecedented.**

The Commission's allocation method rests on a faulty premise that merely because COA paid the broadcast time in which GOP-TV's programs were aired, COA must also pay for the production costs of the programs. Whether or not COA was required to purchase the air time for the GOP-TV live convention coverage, it certainly was allowed to do so. The fact that COA was allowed to pay for the air time, however, does not suggest that COA was required to pay GOP-TV's production costs any more than it suggests that COA was required to pay Haley Barbour's salary, the salary of GOP-TV anchor people, or any other GOP-TV costs.

There are additional problems with the Commission's allocation method. It forces COA to use public funds to pay for the bulk of GOP-TV's marina set even though that set was used exclusively for GOP-TV's morning programs. (Geraghty Aff., ¶ 15

(App. Vol. I at A91-A92).) Further, the method makes no economic sense. If COA had used but one camera to produce a ten hour long show, while GOP-TV used 25 cameras to produce a one hour long show, the Commission's method would require COA to pay 90% of the total production costs. A television program that uses a single camera clearly has production costs much lower than a program of equivalent length that uses ten cameras, regardless of the cost of the air time. (Geraghty Aff., ¶ 18 (App. Vol. I at A93-A94); see also Daniel Golden, "Winds of Change at WGBH," *Boston Globe* at A1 (June 22, 1997) (describing disparate costs of similar-length television shows) (App. Vol. VI at A1602).) It is simply unreasonable, arbitrary, and at odds with industry practice to assume that production costs are proportional to the amount of air time. (Geraghty Aff., ¶ 18 (App. Vol. I at A93-A94).)

The Commission's allocation method is also unworkable. At the time the RNC entered its contract with CBT in January 1995, it was impossible to anticipate how much air time either the RNC or COA would eventually purchase. Indeed, up until a few days before the Convention, it had not been expected that COA would purchase any air time. (Helen O'Neill, "Republicans Ask Corporate Sponsor to Pull Out of Broadcasts," *Associated Press* (Aug. 12, 1996) (App. Vol. VI at A1594).) As a former network executive with extensive experience states in his attached declaration: "the potential usage of pool materials can never be known in advance because the use will depend on the editorial content and future use will be determined by events that cannot

be foreseen when the pool is established." (Headline Dec., ¶ 6 (App. Vol. V at A1500).) Since budgeting decisions always must be made before money is spent, especially for political committees operating under spending limitations, it would be unreasonable to require the allocation of production costs to await actual broadcast.

**2. The Commission's Treatment of COA's Share of the CBT Contract Is Inconsistent with the Commission's Treatment of the DNCC's Share of Chicago's Cable Station.**

The Commission's treatment of the cost of production equipment shared by GOP-TV and COA is inconsistent with the Commission's treatment of the DNCC. The DNCC Audit Report states that the City of Chicago paid for "the broadcast on one of the City's cable television stations [of] gavel to gavel coverage of the Convention and special programming directly related to the Convention." (DNCC Audit Report at 5 (App. Vol. V at A1142).) The DNCC Audit Report also states that the City of Chicago further agreed to provide "a tape of such coverage . . . without charge for rebroadcast, display, or other rights" to DNCC. (DNCC Audit Report at 6 (App. Vol. V at A1143).) Because DNCC shared in the production of Chicago's production equipment -- the tape of convention coverage paid for by Chicago -- it necessarily shared a benefit from the equipment used to produce the tape. Nevertheless, the Commission has not required DNCC to repay any costs associated with this equipment. COA was not so aggressive as to have San Diego or the San Diego Host Committee pay for its

share of the CBT equipment, but paid for its share itself. COA should not be punished as a result.

**III. COA HAS NO NET OUTSTANDING CONVENTION EXPENSES.**

The Audit Report concludes that COA has \$1,772,643 in net outstanding convention expenses and estimated winding down costs in excess of the spending limitation. Once in-kind contributions, which COA disputes, are subtracted from this figure, the Audit Report finds that COA has \$150,160 in expenses and estimated winding down costs in excess of the spending limitation.

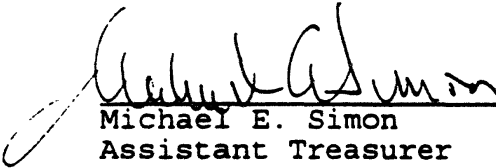
Based on COA's most recent information and estimates, COA will not incur expenses and winding down costs in excess of the spending limitation. COA's actual expenditures subject to limitation from inception to September 3, 1998, have been \$12,347,715. (Simon Dec., ¶ 6 (App. Vol. V at A1176).) COA estimates legal and accounting fees and expenses from September 4, 1998, to be \$16,285. (Id.) Any legal and accounting fees and expenses in excess of that estimate, including the costs of litigating any final repayment determination in the courts, will be paid by the RNC directly pursuant to 11 C.F.R. § 9008.8(b)(4)(ii). (Id.) Accordingly, COA's total expenditures will exactly equal the spending limitation -- \$12,364,000. (Id.)




CONCLUSION

For the reasons stated above, the Committee on Arrangements of the 1996 Republican National Convention urges the Commission to refuse to include any of the individual components of the San Diego Host Committee or Republican National Committee expenses in any final repayment determination.

Respectfully submitted,

  
Michael E. Simon  
Assistant Treasurer

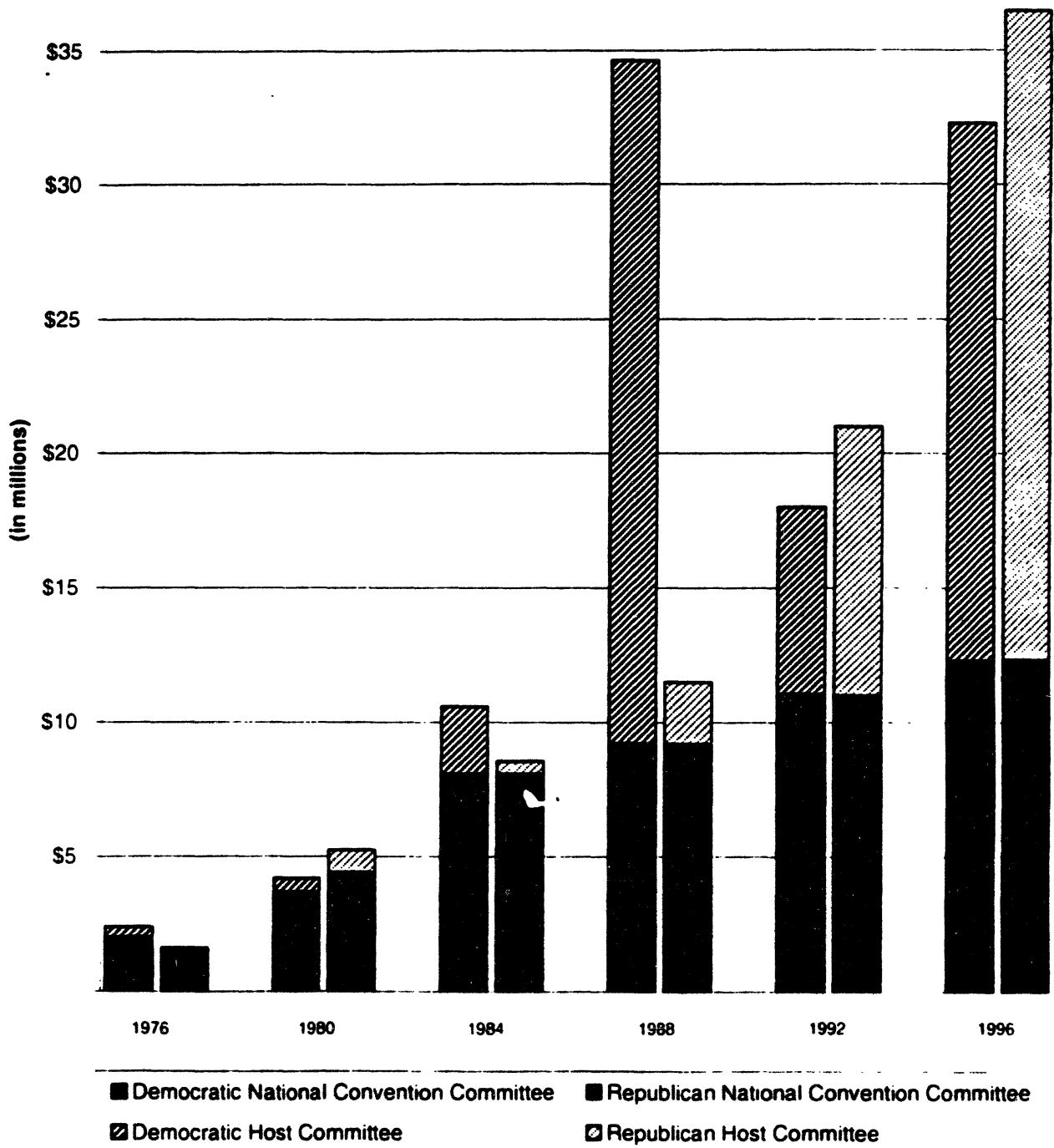
  
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Attorneys for the 1996 Committee  
on Arrangements for the 1996  
Republican National Convention

Dated: September 24, 1998

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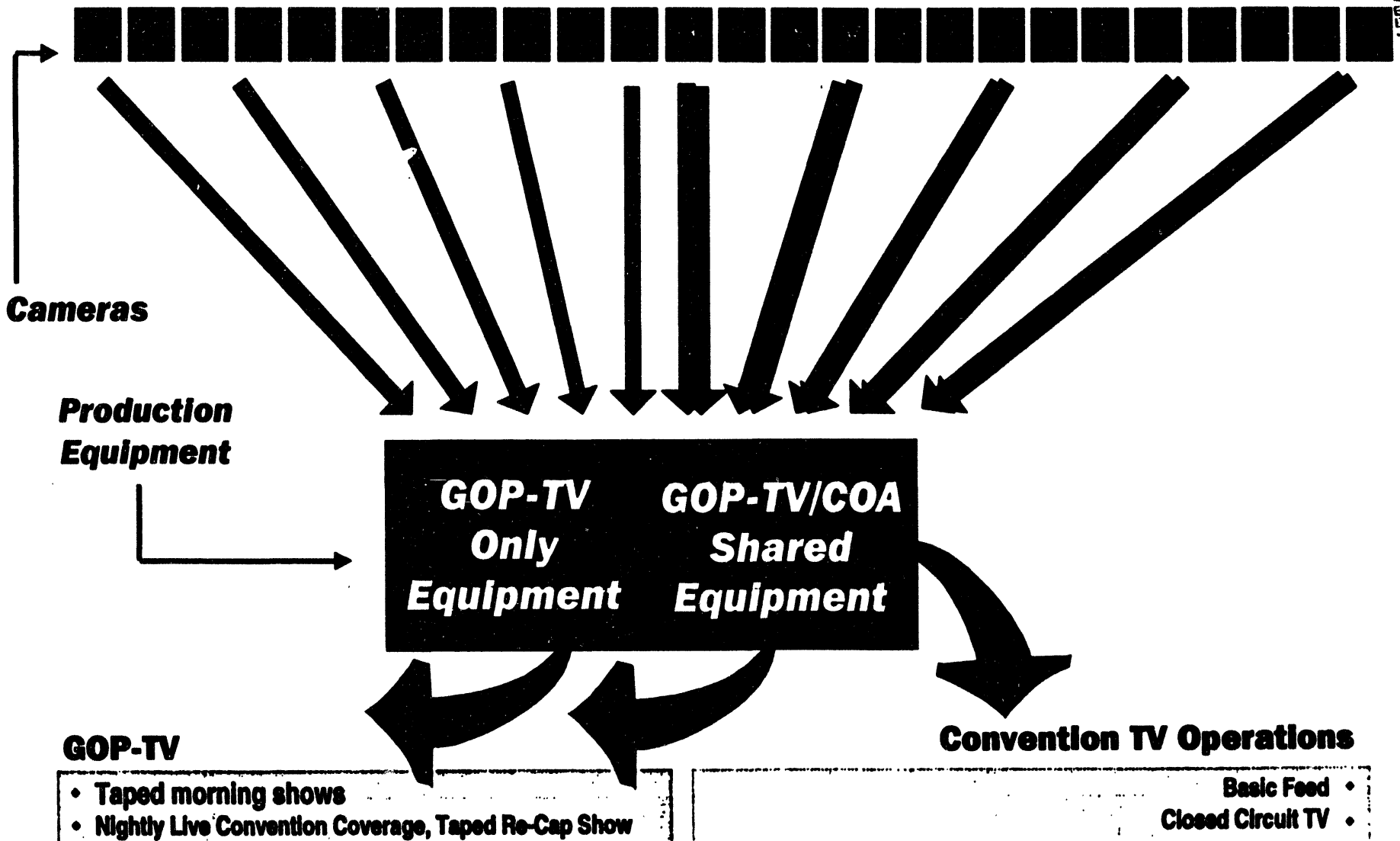
# Convention Committee and Host Committee Expenses 1976 - 1996

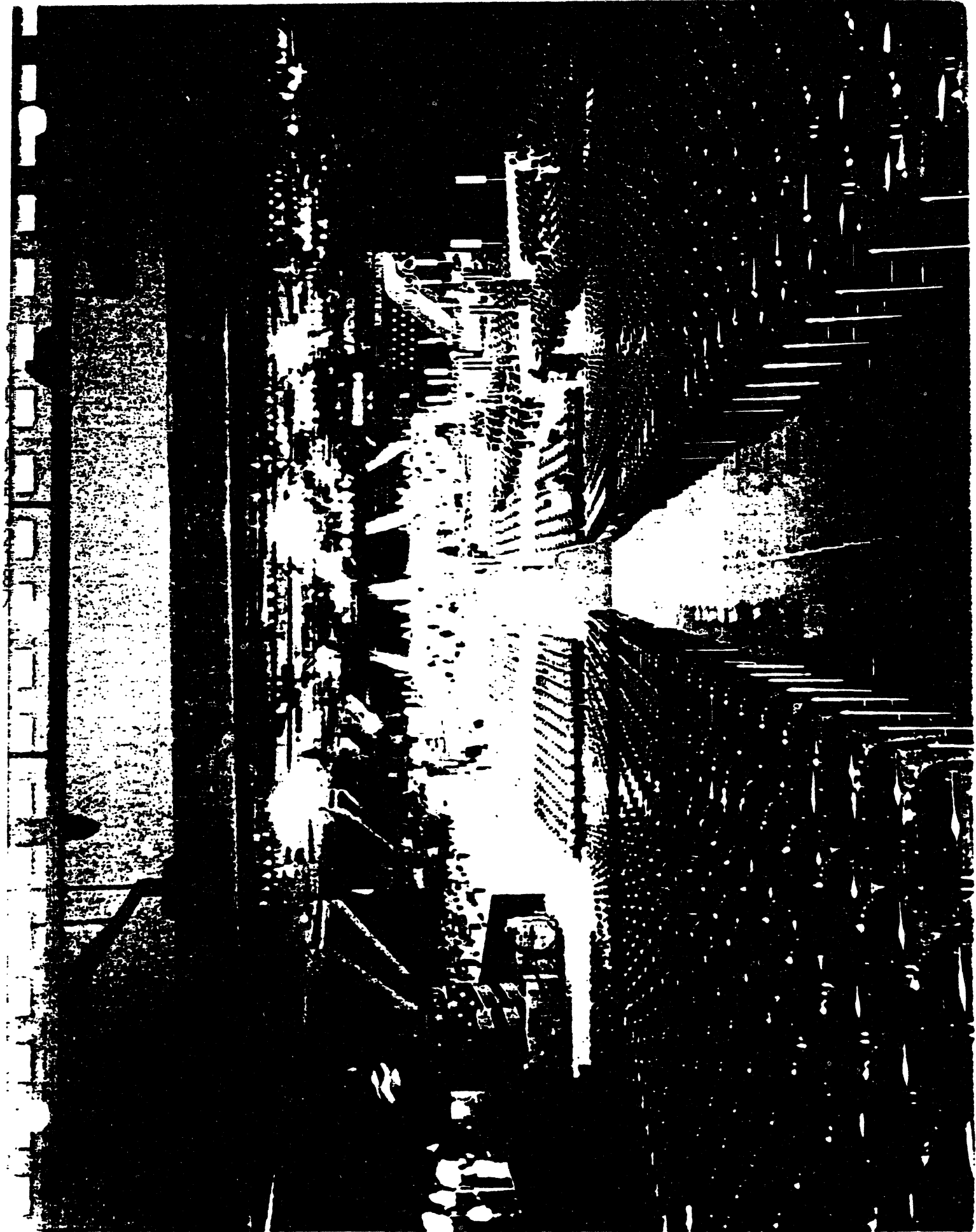


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# Actual Use of CBT Equipment and Services by GOP-TV and COA

ATTACHMENT 1  
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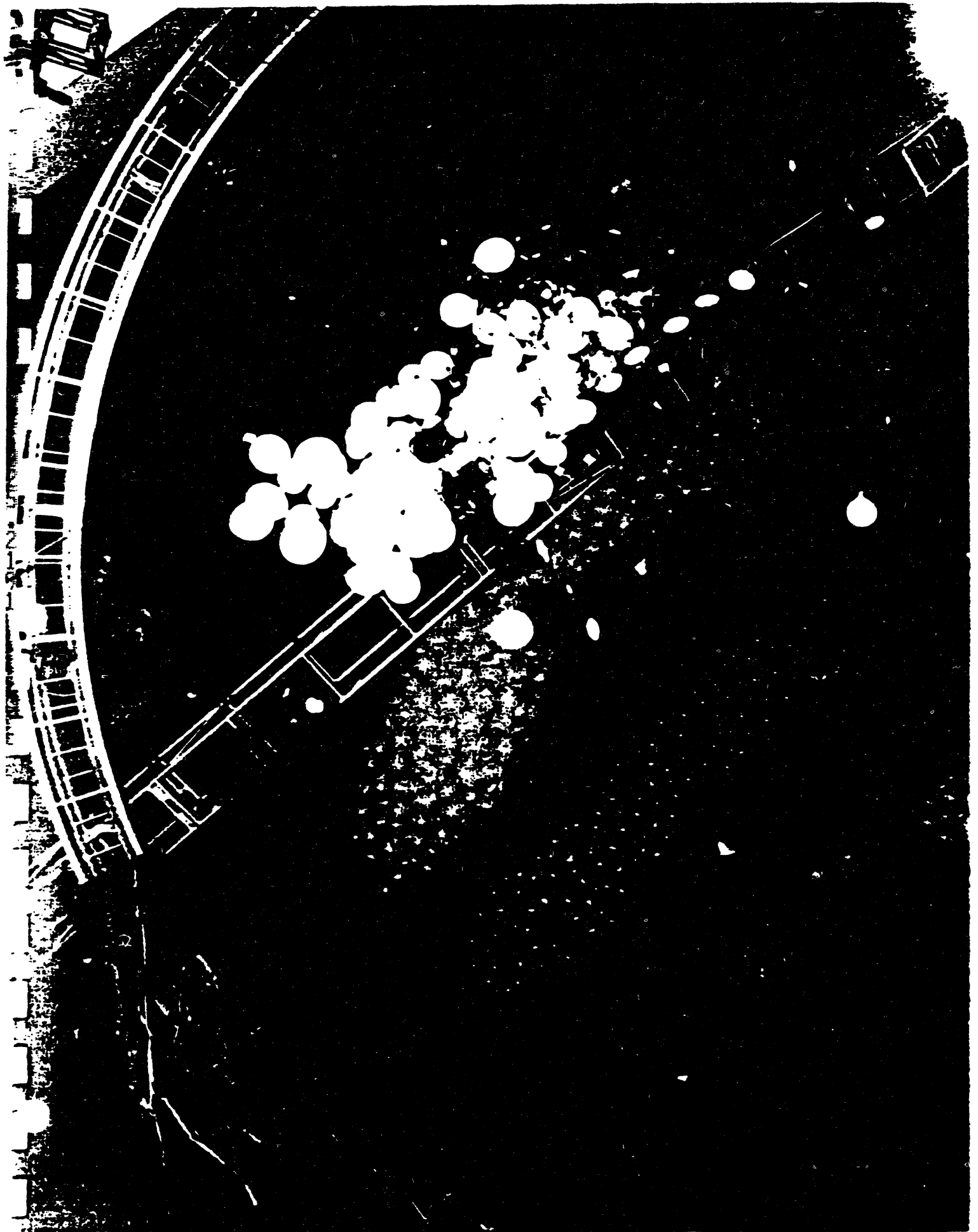


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NO. 100-100000-100000





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

July 6, 1998

**MEMORANDUM**

TO: RON M. HARRIS  
PRESS OFFICER

FROM: ROBERT J. COSTA  
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE AUDIT REPORT ON 1996 COMMITTEE  
ON ARRANGEMENTS FOR THE REPUBLICAN NATIONAL  
CONVENTION

Attached please find a copy of the final audit report and related documents on the 1996 Committee on Arrangements for the Republican National Convention which was approved by the Commission on June 25, 1998.

Informational copies of the report have been received by all parties involved and the report may be released to the public.

Attachment as stated

cc: Office of General Counsel  
Office of Public Disclosure  
Reports Analysis Division  
FEC Library

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**REPORT OF THE AUDIT DIVISION**  
**ON**  
**1996 COMMITTEE ON**  
**ARRANGEMENTS FOR**  
**THE REPUBLICAN**  
**NATIONAL**  
**CONVENTION**

**Approved June 25, 1998**



**FEDERAL ELECTION COMMISSION**  
**999 E STREET, N.W.**  
**WASHINGTON, D.C.**

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**FOR THE REPUBLICAN NATIONAL CONVENTION**

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

**REPORT OF THE AUDIT DIVISION  
ON  
1996 COMMITTEE ON ARRANGEMENTS  
FOR THE REPUBLICAN NATIONAL CONVENTION**

**EXECUTIVE SUMMARY**

1996 Committee on Arrangements for the Republican National Convention (the Committee) registered with the Federal Election Commission on May 5, 1994, as a National Convention Committee of the Republican Party.

The audit was conducted pursuant to 26 U.S.C §9008(g) which directs the Commission to conduct an examination and audit of the payments for presidential nominating conventions no later than December 31 of the calendar year in which the presidential nominating convention is held. The Committee received \$12,364,000 in federal funds under 26 U.S.C. §9008(b).

The findings of the audit were presented to the Committees at an exit conference held on June 25, 1997 and in the Exit Conference Memorandum. The Committee responses to those findings are contained in the audit report.

The following is an overview of the findings contained in the audit report.

**IN-KIND CONTRIBUTIONS FROM THE HOST COMMITTEE AND THE CITY OF SAN DIEGO**— 11 CFR §9008.7(a)(4)(ix), 11 CFR §9008.52(c)(1), and 11 CFR §9008.12(b)(3). The staff concluded the San Diego Host Committee/Sail to Victory '96 (Host Committee) made in-kind contributions to the Committee in the amount of \$2,128,122. The transactions involved three vendors: Weldon Williams and Lick for convention badges and tickets; AT &T for an electronic voting system; and, David Nash, Inc for the production of the live event and the related television coverage. The Commission determined that amounts paid to Weldon, Williams and Lick, and AT&T were permissible Host Committee expenditures. In addition, amounts totaling \$1,096,979 paid to David Nash, Inc. were determined to be permissible Host Committee expenditures, while amounts totaling \$892,489 were impermissible. This amount is to be repaid to the U.S. Treasury and should be itemized as an in-kind contribution on an amended disclosure report.

**IN-KIND CONTRIBUTIONS FROM THE REPUBLICAN NATIONAL COMMITTEE (RNC)**— 11 CFR §9008.12(b)(3). The staff concluded that the payments to National Media, Inc. for air time on the USA Network from Monday, August 12, 1996

through Thursday, August 15, 1996, represented an in-kind contribution from the RNC of \$90,000. In addition, the payments to Creative Broadcast Techniques, Inc. by the RNC totaling \$1,177,910 were questioned. The Commission decided that the broadcast costs on the USA Network and \$424,470 paid to Creative Broadcast Techniques, Inc., representing a portion of the cost of providing a basic television feed, were permissible RNC expenses. However, \$729,994 representing an allocable portion of the production costs of programs aired by the Committee were not permissibly paid by the RNC, but were an in-kind contribution from the RNC to the Committee. The Commission determined the \$729,994 was repayable to the U.S Treasury and should be itemized as an in-kind contribution on an amended disclosure report.

**IN-KIND CONTRIBUTION-PROMOTIONAL CONSIDERATIONS**

**MITSUBISHI CONSUMER ELECTRONICS AMERICA, INC. (MECA)** — 11 CFR §9008.9 (b)(1) and (4). The staff initially questioned whether \$35,192 of lost equipment was properly included as part of MECA's cost of providing equipment and services in exchange for promotional considerations. The Committee submitted an affidavit from the President of MCEA stating that he expected some damage, loss, or theft of equipment either at a political or non-political event. The staff recommended no further action on this matter and the Commission concurred.

**DETERMINATION OF NET OUTSTANDING CONVENTION EXPENSES AND AMOUNTS SUBJECT TO THE SPENDING LIMITATION** — 11 CFR §9008.8(a)(1)

and §9008.12(c) of the Title 11 of the Code of Federal Regulation. The Net Outstanding Convention Expenses amount of (\$1,772,643) represents convention expenses incurred in excess of the spending limitation. The majority of this amount consists of the previously mentioned in-kind contributions, while the remaining \$150,160, is convention expenses and estimated winding down costs incurred in excess of the limitation. The Commission determined that \$150,160 is repayable to the United States Treasury.



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

**REPORT OF THE AUDIT DIVISION  
ON THE  
1996 COMMITTEE ON ARRANGEMENTS  
FOR THE REPUBLICAN NATIONAL CONVENTION**

**I. BACKGROUND**

**A. AUDIT AUTHORITY**

This report is based on an audit of the 1996 Committee on Arrangements for the Republican National Convention (the Committee), to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 9008(g) of Title 26 of the United States Code which directs the Commission to conduct an examination and audit of the payments for presidential nominating conventions no later than December 31 of the calendar year in which the presidential nominating convention is held.

In addition to examining the receipt and use of Federal funds, the audit seeks to determine if the committee has materially complied with the limitations, prohibitions and disclosure requirements of the Federal Election Campaign Act of 1971, as amended.

**B. AUDIT COVERAGE**

The audit covered the period from May 12, 1994, the date the Committee executed a loan agreement, through September 30, 1996. In addition, certain financial activity was reviewed through August 26, 1997, to determine any amounts due to the United States Treasury. The Committee reported an opening cash balance of \$-0-, total receipts of \$13,703,064, total disbursements of \$11,965,637, and a closing cash balance on September 30, 1996 of \$1,737,427.<sup>1</sup>

**C. COMMITTEE ORGANIZATION**

The Committee registered with the Federal Election Commission on May 5, 1994, as a National Committee of the Republican Party. The Treasurers for the period audited were William McManus from May 5, 1994 to April 3, 1996, and Alec Poitevint

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<sup>1</sup> All figures in this report have been rounded to the nearest dollar.

from April 3, 1996 to the present. During various portions of the period audited, the Committee maintained offices in Washington, D.C., Alexandria, VA and San Diego, CA. The Committee records are maintained in Alexandria, VA.

The Committee used four bank accounts to handle its financial activity. From these accounts it made approximately 2,510 disbursements. The Committee received \$12,364,000 in federal funds which represents the full entitlement established at 26 U.S.C. §9008(b).

**D. AUDIT SCOPE AND PROCEDURES**

The audit of the Committee covered the following general categories as appropriate:

1. The receipt of contributions from prohibited sources;
2. the receipt of contributions or loans in excess of the statutory limitations (Finding II.A);
3. proper disclosure of receipts, including the itemization of receipts when required, as well as the completeness and accuracy of the information disclosed (Finding II.A);
4. proper disclosure of disbursements, including the itemization of disbursements when required, as well as the completeness and accuracy of the information disclosed;
5. proper disclosure of Committee debts and obligations;
6. the accuracy of total reported receipts, disbursements and cash balances as compared to Committee bank records;
7. adequate record keeping for Committee transactions;
8. accuracy of the Statement of Net Outstanding Convention Expenses filed by the Committee to disclose its financial condition (Finding II.B.);
9. compliance with requirements concerning expenditures for convention expenses;
10. the Committee's compliance with spending limitations (Finding II.B.); and
11. other audit procedures that were deemed necessary in the situation.



As part of the Commission's standard audit process, an inventory of Committee records was conducted prior to the audit fieldwork. This inventory is conducted to determine if the auditee's records are materially complete and in an auditable state. Based on the review of records presented, fieldwork began immediately. However, on March 4, 1997, fieldwork on the audit was suspended because certain items necessary to complete the audit were not present in the Committee's files. During a meeting on April 9, 1997, the Audit staff provided the Committee with a written request for the missing items. Not all of the requested records were provided. As a result, the Commission issued subpoenas to the Committee and New Century Media, Inc..

Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue further any of the matters discussed in this audit report in an enforcement action.

## **II. AUDIT FINDINGS AND RECOMMENDATIONS — AMOUNTS DUE TO THE U.S. TREASURY**

### **A. IN-KIND CONTRIBUTIONS**

Section 9008(h) of Title 26 of the United States Codes states, in part, that the Commission shall have the same authority to require repayments from the national committee of a political party as it has with respect to repayments from any eligible candidate under section 9007(b).

Section 9008.3(a)(4)(vii) of Title 11 of the Code of Federal Regulations states, the convention committee shall agree to comply with the applicable requirements of 2 U.S.C. 431 et seq., 26 U.S.C. 9008, and the Commission's regulations at 11 CFR Parts 100-116 and 9008.

In addition, Section 104.3(a) of Title 11 of the Code of Federal Regulations states, in part, that each report filed under 104.1, shall disclose the total amount of receipts for the reporting period and for the calendar year and shall disclose the information set forth at 11 CFR §104.3(a)(1) through (4).

Section 9008.12(b)(3) of Title 11 of the Code of Federal Regulations states, in part, if the Commission determines that contributions accepted to defray convention expenses which, when added to the amount of payments received, exceeds the expenditure limitation of such party, it shall notify the national committee of the amount of the contributions so accepted, and the national committee shall pay to the Secretary an amount equal to the amount specified.

Section 9008.12(b)(7) of Title 11 of the Code of Federal Regulations states, in part, that the Commission may seek repayment, or may initiate an enforcement action, if the convention committee knowingly helps, assists or participates in the making of a

convention expenditure by the host committee, government agency or municipal corporation which is not in accordance with 11 CFR §§9008.52 or 9008.53.

Section 9008.52(c) of Title 11 of the Code of Federal Regulations states, in part, that contributions received by Host Committees may be used to defray those expenses incurred for the purpose of promoting the suitability of the city as a convention site; to defray those expenses incurred for welcoming the convention attendees to the city, such as expenses for information booths, receptions, and tours; to defray those expenses incurred in facilitating commerce, such as providing the convention and attendees with shopping and entertainment guides and distributing the samples and promotional material specified under 11 CFR §9008.9(c); to defray the administrative expenses incurred by the host committee, such as salaries, rent, travel, and liability insurance; and to provide the national committee use of an auditorium or convention center and to provide construction and convention related services for that location such as: construction of podiums; press tables; false floors; camera platforms; additional seating; lighting; electrical, air conditioning, and loudspeaker systems; offices; office equipment; and decorations.

Further, contributions may be used to defray the cost of various local transportation services, including the provision of buses and automobiles; to defray the cost of law enforcement services necessary to assure orderly conventions; to defray the cost of using convention bureau personnel to provide central housing and reservation services; to provide hotel rooms at no charge or a reduced rate on the basis of the number of rooms actually booked for the convention; to provide accommodations and hospitality for committees of the parties responsible for choosing the sites of the conventions; and to provide other similar convention facilities and services.

1. In-Kind Contributions From the Host Committee and The City of San Diego

In the Exit Conference Memorandum (ECM), the Audit staff identified payments from the San Diego Host Committee/Sail to Victory '96 (the Host Committee) and the City of San Diego to three vendors totaling \$2,478,551, which appeared to be for convention-related expenditures and not for items noted at 11 CFR §9008.52(c). Most of the information pertaining to these vendors was obtained from the Host Committee audit. Naturally, these in-kind contributions were discussed in the ECMs of both the Committee and the Host Committee and both committees responded. The explanations provided and the arguments presented by both are discussed herein.

Both committees make the general observation that the convention expenses that the Host Committee may make and those that may be paid by the Committee are overlapping. The Committee's response goes on to state that the ECMs are based on the premise that any "convention expense" paid by the Host Committee or the City of San Diego are in-kind contributions to the Committee. It is certainly true that the allowable expenses of the City, the Host Committee, and the Committee overlap. However, the Committee misinterprets the premise of the ECMs. The ECMs conclude

that the expenses at issue are "convention expenses" and they do not fit within the categories of "convention expenses" that may be paid by the City or the Host Committee. The Explanation and Justification supporting the original host committee regulation (Federal Register notice: 44FR 63036; November 1 1979) is very clear. It states that the "defrayal of convention expenses by a host committee is intended to be a very narrow exception to the statutory limitation on convention expenses." The challenge of the expenses discussed below is consistent with that stated purpose.

In their responses to the respective Exit Conference Memoranda, both the Committee and the Host Committee argue that most or all of the expenses discussed below are covered by one of the categories of permissible host committee expenses at 11 CFR §9008.52(c)(1) or, referring to 11 CFR §9008.52(c)(1)(xi), are "similar" to expenses covered by one of the permissible expense categories. To read 11 CFR §9008.52(c)(1) as broadly as both committees propose, would effectively negate the limitation on convention expenses at 26 U.S.C. §9008(d); the prohibition on contributions to a convention committee that has received the full federal payment (11 CFR §9008.6(a)); the prohibition on the use of corporate contributions in connection with federal elections at 2 U.S.C. §441b; and the Commission's clear statement in the Explanation and Justification supporting the provisions contained in 11 CFR §9008.52(c)(1) that allowing the host committee to pay selected convention expenses is "intended to be a very narrow exception to the statutory limitation on convention expenses".

Each of the three vendors is discussed below.

a. Weldon, Williams & Lick, Inc.

Section 9008.7(a)(4)(ix) of Title 11 of the Code of Federal Regulations states that "Convention expenses" include all expenses incurred by or on behalf of a political party's national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities. Such expenses include expenses for printing convention programs, a journal of proceedings, agendas, tickets, badges, passes, and other similar publications.

Section 9008.53(a) of Title 11 of the Code of Federal Regulations states, in part, government agencies and municipal corporations may accept goods or services from commercial vendors for convention uses under the same terms and conditions set forth at 11 CFR §9008.9.

In the ECM, the Audit staff identified two payments to Weldon, Williams & Lick, Inc. for the production of credentials related to the convention.

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The agreement between the Host Committee<sup>2</sup> and Weldon, Williams, & Lick, Inc. established that the Host Committee would purchase up to 325,000 "tickets for admission to the 1996 Republican National Convention." These credentials were of different colors and used for access to the convention hall. According to the Host Committee, any of these credentials would gain a person entry into the convention hall and the different colors limited the areas of the convention hall to which a person would have access. For example, one color would grant access to the hospitality suite area, one color would be used by delegates for floor access, one color would be for the alternate delegates, and one color would be for individuals who had access to the entire convention hall. The Host Committee paid a total of \$106,645 for production of these items. It further appears that the City of San Diego paid an additional \$38,638. Given that these credentials were distributed for access within the convention hall, the staff concluded that they were tickets or passes as described at 11 CFR §9008.7(a)(4)(ix), and the cost of these tickets was a convention expense and not a permissible Host Committee, or City of San Diego expenditure as defined under 11 CFR §§9008.52(c) and 9008.53. As a result, the ECM concluded the Host Committee and the City of San Diego made in-kind contributions of \$106,645 and \$38,638, respectively, to the Committee.

The Audit staff recommended that the Committee provide evidence documenting that the above expenditures were permissible Host Committee and City of San Diego expenses. It was stated that absent such a demonstration, the Audit staff would recommend that the Commission determine that \$145,283 is repayable to the United States Treasury and the Committee would be required to itemize this in-kind contribution on an amended disclosure report.

In response to the ECM, the Committee argues that these badges were critical for law enforcement and security and explains in detail the various mechanisms built into badges to assure that they could not be reproduced. The Committee also submitted copies of various badges and correctly notes that the ECMs did not challenge payments for parking passes. As part of the response, the Committee explains that two of the invoices, totaling \$12,058, were for badges that allowed access to events outside the convention and for work crews who were responsible for "breaking down the convention center" after the convention.

The staff does not dispute that the credentials have a security component. However, in our opinion, the security aspect was not the primary reason for the issuance of credentials. Credentials were the means by which the Party hosting the convention not only decided who could attend its convention, but also managed those authorized attendees once inside the building so that it could conduct the proceedings as it desired. If security was the only purpose of these credentials, then once a person was in the convention hall there would be no need for the different colors to restrict where the person might go. All that would be needed would be an initial security checkpoint.

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<sup>2</sup> Although the contract was between the Host Committee and the vendor, attached to the contract are Committee approval sheets containing the signatures of five Committee officials.

Further, the Committee argues that since the credentials have a security aspect, they fall under the host committee regulations at 11 CFR §9008.52(c)(1)(vii). This regulation allows a host committee to pay for law enforcement services necessary to insure orderly conventions. Therefore, services provided by either the City of San Diego Police or private security firms could have been paid for by the City of San Diego or the Committee. However, the staff concluded that there is a distinct difference between law enforcement services and the production of credentials for limiting access to the Party's convention and managing those authorized attendees once inside the convention hall.

The Committee also makes the point that the need for security was magnified as a result of the Atlanta Olympic bombing. It is noted that the Host Committee entered into its agreement with Weldon, Williams, and Lick on July 17, 1996, and the Atlanta bombing did not occur until July 27, 1996.

In response to its Exit Conference Memorandum, the Host Committee stated that:

While it is true that the regulations specifically authorize committees such as the Committee on Arrangements (the "COA") to make expenditures for "tickets, badges, passes ..." (11 C.F.R. § 9008.7(a)(4)(ix)), this is irrelevant. Nowhere do the regulations make a distinction between permissible host committee expenses and permissible COA expenditures. In fact, the list of permissible COA and committee expenditures overlap. For example, either committee may pay for: convention hall rental (11 C.F.R. §§ 9008.7(a)(4)(i); 9008.52(c)(1)(v)); platforms, seating, decorations and utilities (Id.); transportation system (11 C.F.R. §§ 9008.7(a)(4)(vii); 9008.52(c)(1)(vi)); and security or law enforcement (11 C.F.R. §§ 9008.7(a)(4)(i); 9008.52(c)(1)(vii)). Had the Commission intended to restrict host committees to making only those expenditures which the COA could not make, it could have, and presumably would have, done so.

The Host Committee further states that "since the regulations governing permissible expenditures by the COA and the Host Committee are not mutually exclusive, the only germane question is whether or not the cost of the credentials are permissible host committee expenditures." The Host Committee believes that 11 CFR §9008.52(c)(1)(vii), which covers law enforcement, expressly permits a host committee to make these types of expenditures. In support of this position, the Host Committee provided a declaration from the Assistant Chief of Police for the City of San Diego to confirm "the importance of the convention credentials and badges to convention

security." The Host Committee also stated that "the concerns for security were especially high, not only because of the number of federal, state and local officials attending the convention, but also because of the bombing at the Olympic Games in Atlanta which occurred only a short time before."

The declaration provided by the Host Committee states that:

The City of San Diego Police Department worked very closely with the San Diego Host Committee's security consultants to develop and authorize the use of security access badges for the 1996 Republican National Convention. During the convention last August, all San Diego law enforcement officers assigned to the Convention Center and the auxiliary Republican National Committee sites recognized and permitted access to the bearers of these badges. These badges served as viable law enforcement and security devices because they had a special design that made unauthorized duplication virtually impossible.

As a result of the above, "it is the [Host] Committee's position that payments made for convention credentials and badges by both the [Host] Committee and the City are permissible payments expressly permitted by 11 C.F.R. § 9008.52(c)(1)(vii) and generally permitted by 11 C.F.R. § 9008.52(c)(1)(xi)."

The staff maintained that these badges were for the management and conduct of the convention as well as security. Given the expressed intention of the Commission that convention expenses paid by the Host Committee and the City are to be very narrow exceptions to the limitation on convention expenses, the staff concluded that these costs did not qualify as law enforcement costs or costs similar thereto. However, the Committee's response did establish that portions of the badges were used outside the convention facility and after the convention was over. The related costs, totaling \$12,058, are not convention expenses. Therefore, the Audit staff and Office of General Counsel concluded that the amount of the in-kind contribution from the Host Committee and the City of San Diego was \$133,225.

The Commission discussed this matter at its meeting of April 16, 1998. It decided that this amount was a permissible Host expense. (See Attachment 1, page 2, item 1 for a copy of the vote certification.)

b. AT & T

In addition, the Audit staff identified two payments to AT & T for invoices totaling \$251,982, which appeared to be for convention-related expenses. These payments were for delegate multi-media stations that were described as part of a voter tabulation system. According to Host Committee officials, the computer

system was designed so that each state delegation had a computer terminal in its section of the convention hall. These terminals would allow each delegation to record its votes on different issues in the event that results needed to be tabulated quickly. In addition to the actual cost of the system, the payments were for setup, operation and tear down of the system. Thus, this system was not installed in the convention hall to be used permanently for any convention held in San Diego, but rather was installed specifically for the Republican National Convention. The Host Committee believed that this system was never actually used during the convention. Also, when the ECMs were prepared, it was not known whether any information was included or accessible from this system, or if it was strictly to be used to tabulate the votes of the delegates.

Although 11 CFR §9008.52(c)(1)(v) allows a host committee to pay for office equipment, a computer system which allows votes by delegates to a national convention to be tabulated is not office equipment and instead is an expense related to conducting the convention. It is irrelevant that the system may never have been used; rather, the purpose of the system governs whether it is a convention-related expense. Therefore, we concluded in the ECMs, that these payments represented an in-kind contribution of \$251,982 by the Host Committee to the Committee.

In the Exit Conference Memoranda, the Audit staff : recommended that the committees provide documentation and information which demonstrated that the above payments represented allowable Host Committee expenses pursuant to 11 CFR §9008.52(c) and were not a contribution to the Committee.

In response to its ECM, the Host Committee makes numerous arguments as to why this computer system should be an allowable Host Committee expense. It argues that the installation was part of the construction necessary for preparing the convention site; that the computer system falls under the category of "office equipment;" that the Host Committee was assured that it was a permissible expense by the Committee; that its functions other than voter tabulation qualify the system for treatment as an "information booth" that is specifically allowed under Commission regulations; and, that it is simply a modern version of the past voter tabulation systems that utilized a microphone and loudspeakers and were allowable expenditures under 11 CFR §9008.52(c)(1)(v).

In addition the Host Committee noted that more detail on the functions and capabilities of this computer system would be supplied by the Committee in its response to the ECM issued as a result of our audit of the Committee. The Host Committee states that it "...incorporates those factual materials by reference." In the Committee's document, many of the same arguments are put forward, more detailed information about the computer system's capabilities is provided, and the fact that the voting system was not used is confirmed. Material was provided from AT & T and a subcontractor that allocated the cost of the system between the vote tabulation function

and the system's other capabilities. A single invoice in the amount of \$44,067 covers the vote tabulation function<sup>3</sup>.

The computer system's non-vote tabulation capabilities are described in a affidavit from an AT&T representative. They include an electronic bulletin board that could be used to leave messages for other delegates as well as receive information about convention scheduling; limited internet service that allowed delegates access to maps of the convention center and the city; information on local points of interest; and, information on local restaurants.

Given the computer system's multiple purposes and the cost allocation provided, the staff concludes that the costs associated with the non-vote tabulation functions were permissibly paid by the Host Committee as an "information booth" or a "shopping and entertainment guide." The amount attributed to these functions in the response is \$207,916.

However the staff concluded that the balance, \$44,067, was not a permissible Host Committee expense, but rather a cost of conducting the convention. Contrary to arguments put forth by the Host Committee, the system can not be considered "office equipment." No evidence was provided that this amount related in any way to any office provided by the Host Committee. Though it is true that office equipment often includes computer equipment, it does not follow that all computer services and equipment are office equipment. Further, the staff concluded that the provision of the voting software is not construction of the site. Rather, it is an expense incurred by the Committee for the conduct of a critical part of the convention. The fact that the Committee assured the Host Committee that the expense was permissible is of no significance. Finally, the staff concluded that it could not be likened to the registering of votes by voice via a Host Committee provided sound system. The sound system in a convention hall serves many functions, both in the past and in present day facilities, with announcing votes being only one.<sup>4</sup> Finally, the vote tabulation system clearly is not any sort of shopping or entertainment guide.

Therefore, the Audit staff and the Office of General Counsel concluded that the Host Committee made a contribution to the Committee of at least \$44,067.

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<sup>3</sup> It appears that the allocation of cost is an incremental analysis. The invoice that references the vote tabulation system covers only labor. There is no apparent charge for software or hardware.

<sup>4</sup> No information is provided in either response on how voting records were kept or documented in the past. For example, it seems likely that some record of the votes cast by members of delegations would be kept and collected centrally to avoid any later disputes. Such records would not be collected via the host committee provided sound system in the convention hall. In contrast, had the electronic voting system been used, a computer record would be generated for Committee records.



During its meeting of January 22, 1998, while discussing the same matter in the audit report on the Host Committee, the Commission decided that this expense was properly paid by the Host Committee. (See Attachment 1, page 1 for a copy of the vote certification.)

c. David J. Nash Associates, Inc.

On July 24, 1996, an agreement was signed between the Committee and David J. Nash and Associates, Inc. (Nash).<sup>5</sup> Under the agreement, Nash's duties included:

- (1) Providing or securing all production space and requirements necessary for producing the television broadcasting and the theatrical production of the Convention;
- (2) Securing written agreements with certain personnel, equipment, vendors or subcontractors for technical equipment, subject to the prior approval of the Convention Manager, or his designees;
- (3) Supervising and coordinating the activities of the Creative Producer, Art Director, Lighting Director and other production consultants hired by the COA.; and
- (4) Performing other duties as assigned by the Convention Manager or his designee.

Between May 6, 1996, and July 12, 1996, the Committee made four payments to Nash totaling \$250,000. As of August 16, 1996, Nash had refunded to the Committee a total of \$132,500, which leaves a total net payment of \$117,500.

Between July 1, 1996, and August 9, 1996, the Host Committee made four payments to Nash totaling \$2,645,520. Invoices indicating they were for television production supported each of these payments. Three of the four invoices stated that they were from David J. Nash, "Executive Producer COA-TV."

On July 25, 1996, the Host Committee entered into a contract with Nash that states Nash was to "render such television production and related services consistent with the specifications and requirements for the Convention established by the COA." The payments due under this contract were based on a production budget that totaled \$2,421,714. Line items in the budget include producers, directors, production

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<sup>5</sup> Although the contract was signed July 24, 1996, it went into effect in March of 1996.

staff, music/orchestra, rigging, staging labor, special effects, makeup and hairdressing, video operations, sound operations, video segments, editing, and graphics. The contract further states that "[T]he Consultant shall arrange to timely obtain the services and equipment specified in the Production Budget, provided, however, that the Consultant shall be required to obtain the approval of the Convention Manager or the Chief Financial Officer of the COA, prior to incurring, or committing to incur, any amount stated in Production Budget line items greater than \$5,000." In addition to these items, on August 2, 1996, Michael E. Simon, Chief Financial Officer for the Committee, submitted to the Host Committee for approval a change order to add \$223,806 to the original budgeted amount. This addendum included items such as "Film Shoot - Russell" for \$75,000, "Sail Area" for \$127,500, and "Sail Area Entertainment" for \$12,000.

The Host Committee paid for all of these budgeted amounts. After all services were provided, Nash was to provide a final accounting of his services and refund any unused moneys. The contract between Nash and the Host Committee specified that "[T]he Consultant shall maintain separate bank accounts for all monies relating to the television production of the Republican National Convention. Said funds shall be subject to audit and shall not be commingled with funds from other productions or projects. The Consultant shall provide the COA with a full and complete accounting of the Consultant's services including such copies of all checks, receipts, disbursements and other such documentation as may relate to such services."

Prior to entering the contract with Nash, the Host Committee received a memorandum from the Committee that stated, in part, "David Nash Associates has been engaged by the COA to produce the television event and staging of the Convention proceedings. David Nash and a staff of professional television production and technical associates will present and enhance the Republican message for presentation to the television networks and the media in general."<sup>6</sup> The Host Committee created a line item in its budget called "RNC Television Production Services" to which it charged the payments to Nash.

As of February 22, 1997, Nash had refunded to the Host Committee a total of \$400,000, which leaves a total net payment of \$2,245,520. After conclusion of audit fieldwork, the Host Committee provided a summary from Nash that gave the status of funds expended through February 22, 1997 for the general ledger codes corresponding to the line items in the original budget. This summary showed \$110,214 remaining unspent, of which \$88,456 was allocated for change orders to Creative Broadcasting Techniques, Inc./Republican National Committee ("RNC") agreement (Finding II.A.2.b.) and \$13,332 was allocated for wind down and audit expenses. In

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<sup>6</sup> The memorandum also states that one of the reasons Nash was selected was based on his performance of similar services for the 1992 convention. It appears that the television production services for that convention were paid by the Committee on Arrangements rather than by the Houston Host Committee. The Houston Host Committee reported paying Nash only \$46,000 for consulting and insurance. The 1992 Committee On Arrangements paid Nash \$1,125,025.

addition, the Host Committee provided bank statements from Nash and representative copies of invoices from vendors that contracted with Nash. These invoices document a total of \$933,241 of the amount shown by Nash as having been spent to date.

According to the Host Committee, the payments to Nash covered two specific areas: (1) infrastructure, facilities, and other services for television production and (2) improvements to and entertainment at the Sail Area of the San Diego Convention Center. With respect to the television production, the Host Committee stated:

[t]he audience for modern presidential nominating conventions includes delegates, other convention attendees and television viewers. Therefore, the San Diego Convention Center had to be prepared for television cameras, crews and facilities. Nash hired the professionals who coordinated the installation of the television facilities as well as the laborers who did the actual installations. In addition, Nash hired the professionals who implemented the production of the convention show from the perspective of the television audience. This included producers, directors and technicians. These individuals were responsible for implementing the 'picture' or 'show' that was seen by convention attendees (on screens throughout the Convention Center, including the Sail Area), as well as television viewers. However, Nash services to the SDHC had nothing to do with convention content; the speakers, the message and the sequencing of the convention were all determined by officials of the Committee on Arrangements. Nor did Nash provide any commentary or explanation of convention proceedings for convention attendees or television viewers.

Of the total spent by Nash for production, \$264,022<sup>7</sup> represented payments to producers, directors, and production staff. These individuals include the television producer who was "responsible for television coverage, including live remotes and creation of video segments for big screens", and directors who "directed television coverage of the convention that was distributed as a basic feed via satellite throughout the United States, as well as to monitors throughout the convention center" and "also directed the video mix of material that was displayed on the giant projection screens." Production staff included the stage manager, who was "responsible for running the operation of the podium during the convention, including cueing the talent (speakers) and stage effects. Coordinates podium activities with the executive producer (in the Convention Control Room), and the television director (in the television facilities truck)" and the script supervisor who "formats the television script after assembling all the written

<sup>7</sup> Nash was paid an additional \$100,000 as Executive Producer. The Committee provided the funds for these payments.

materials and technical information” and “generates a daily work schedule to the television and production staffs, the talent, and all convention program personnel.”

Other categories of expenditures included music and orchestra; special effects such as confetti, balloons and fireworks; makeup and hairdressing; closed captioning; stand-ins for convention participants during television technical rehearsals; various categories of travel; and, other expenses for personnel or minor expenses which were incurred. Major categories of expenditures included \$540,345 for rigging and staging labor that included “labor costs for stage hands, electricians, riggers for installation and operation during the convention sessions.” It appears this category covered electricians who rigged lighting and cameras and that some of the expenses for camera rigging were reimbursed by ABC, NBC, CBS and CNN.

Another major category of expenditure was \$421,652, spent for video operations. This includes payments for “television crew labor, television mobile unit for screen control, satellite time, TelePrompTer, other television equipment, and the remote productions.” Expenses related to the technical director were included under this category. The technical director had the overall responsibility for “the coordination of all aspects of the video engineering, including the timing and gen-lock synchronization of cameras, the design and routing of the intercom systems, and signal path and test designs for both incoming and outgoing satellite signals.” The remote production costs represented \$138,442 of the above amount and were originally to be for live television transmissions during the convention from six different locations. Two of the locations were later canceled and live transmissions occurred from Miami, FL; Russell, KS; Sacramento, CA; and San Diego, CA. According to the description provided by Nash, the

Russell remote was a gathering of several thousand citizens of Russell, Kansas who witnessed and participated in the nomination of Dole on the second to last night of the convention (included fireworks). Two high school students spoke on behalf of Russell. The Miami shoot highlighted a woman’s work in health care. The San Diego shoot was of Bob Dole watching Liddy Dole give her speech. The Sacramento shoot was with Steve Young and high school students concerning the students’ dreams for the future.

Other categories of interest included \$263,205 for video segments that were “expenses associated with producing video clips highlighting profiles of delegates participating in the process.” and \$10,000 for a continuity writer who was a “speech coach and transition writer [who] helped to reword speeches to help them flow better, added jokes, and in general punched up the speeches. He was not involved in any content decisions or writing of speeches.” Also, \$70,000 was spent for a Russell, KS shoot that contained “footage on the history of Russell, KS and the current Russell, KS (small town America).” According to the Committee, this footage was not used in the convention and was not the same as the “Dole Film.”

A final item of note with respect to the production was contained on a vendor invoice related to makeup. An item on the invoice stated that "air travel, hotel, and ground transportation to be covered by RNC." The Audit staff was told that the Committee did not pay these items; thus, it was assumed that the invoice meant the Republican National Committee.

In the ECMs, the staff concluded that disbursements related to television production were not expenses properly paid by a host committee pursuant to 11 CFR §9008.52(c). Rather, they were convention expenses that should have been paid by the Committee pursuant to 11 CFR §9008.7(a). The Host Committee argued that at least some of the payments should be considered permissible Host Committee expenses. As noted previously, some of these disbursements appeared to relate to salaries for electricians and other individuals for labor such as rigging cameras and lighting. Although 11 CFR §9008.52(c) allows a host committee to defray salaries and convention related expenses such as construction of camera platforms and lighting, the expenses paid by Nash related to rigging cameras and lighting were not host committee expenses. Rigging cameras and lighting for the purpose of providing a television picture that meets the television producer's requirements is not the same as building a platform from which cameras can be used for the television production. The Host Committee made numerous other disbursements, separate from the Nash expenditures, which related to construction at the convention center, lighting, sound systems, podiums and platforms. The disbursements in this case appear to be related to the overall process of television production and should have been paid by the Committee.

The categories of disbursements at 11 CFR §9008.52(c) deal with expenses for preparing the convention site to host the convention and to promote the convention city. The Host Committee noted that the Nash disbursements related to implementing the "picture" or "show" that was seen by convention attendees, as well as the television viewers, but provided no commentary to the proceedings and was not involved with convention content, implying that it should be a legitimate Host Committee disbursement. However, as noted previously, the Committee wrote that Nash "will present and enhance the Republican message for presentation to the television networks and media in general." Presenting the Republican message is clearly convention-related and not the type of disbursement envisioned under the host committee regulations. Further, preparing the convention site for television broadcast across the country and providing satellite uplinks and producing the "picture" and "show" of the convention as seen on television, is for the purpose of conducting the presidential nominating convention and should have been paid by the Committee. This is not preparing the convention center or site for the convention or promoting the City of San Diego. Instead, these disbursements are related to putting on a "show" to be seen by the country in hope of influencing the public to support the political party hosting the convention and its Candidate for President, in this case, the Republican Party and Senator Robert Dole.

Aside from overseeing television production, Nash was also responsible for the improvements to and entertainment at the Sail Area. The Sail Area was an area outside of the main convention hall but within the San Diego Convention Center. According to a Host Committee official, "because the main hall was too small to accommodate all guests and attendees, SDHC provided additional space in the Sail Area. Nash was hired by SDHC to improve the Sail Area so that convention attendees could watch convention proceedings on large television screens. In addition, Nash arranged for the entertainment which was provided in the Sail Area." According to Nash, the "Sail Area is an outside open air patio on top of the convention center." Food and drink were also available in the Sail Area. Nash also stated that the entertainers used in the Sail Area were local San Diego groups and that some of these groups also were used before the convention in the convention hall.

Based on available information, the ECMs stated that the amount spent by Nash for improving the Sail Area was \$145,299, and the amount spent for entertainment was \$18,935, for a total of \$164,234. The expenditures for setting up the stage, sound, and lighting equipment related to the Sail Area were not related to the television production and are an allowable expenditure under 11 CFR §9008.52(c). The ECMs also concluded that entertainment featuring San Diego groups could be considered as promoting the City of San Diego. Thus, of the \$2,245,520 net paid to Nash, the ECMs concluded that \$164,234 represented allowable Host Committee disbursements and the remaining \$2,081,286 should have been paid by the Committee and results in an in-kind contribution by the Host Committee.

Given the information available at the time, the ECMs recommended that the Committees provide documentation to demonstrate that the payments to Nash were allowable Host Committee expenses pursuant to 11 CFR §9008.52(c) and did not result in a prohibited in-kind contribution to the Committee. This documentation was to include copies of any checks issued by Nash related to the Republican Convention with copies of the invoices from the vendors which the Committee believed were specifically covered by 11 CFR §9008.52(c). Also, for these specific items, the Host Committee was to address whether these disbursements would have been necessary for the convention hall if not for the television production requirements. Finally, the Host Committee was to provide information and documentation that showed the disposition of the footage for the film shoot which occurred in Russell, KS.

As noted above, the permissibility of the Committee's payments to Nash was addressed in the ECMs resulting from the audits of both the committees. Although both responses reach the same conclusion and for similar reasons, they are different in approach. In the interest of a full discussion of the issue, the responses are addressed individually.

1) Response of the Committee

The Committee begins its response on this matter with a general discussion of the Nash expenses and then addresses a number of specific categories of expenses. These categories are not as presented in the ECM because Nash's production accountant has provided a more detailed analysis than was available at the time of the ECM and has allocated parts of the various miscellaneous and overhead categories to the direct cost categories. Each of these categories will be discussed below.

In its general comments, the Committee states that Nash provided similar services to the 1992 convention and the expenses were not challenged. As noted above, the 1992 Committee On Arrangements paid Nash \$1,125,000 while the host committee paid only \$46,000 for consulting and insurance. Unless the 1992 host committee's payments were made to subcontractors, the 1992 Committee On Arrangements paid for most of the Nash contract. No documentation was submitted to demonstrate otherwise.

The Committee also observes that there is nothing in the statute or regulations that states that a host committee may not pay costs associated with the television broadcast of the convention or preparing their sites for television broadcasts. Conversely, there is nothing that says it may pay those costs. As noted above, the list of expenses that the host committee may pay was meant to be a "very narrow exception" to the limit on convention expenses. Paying for the television broadcast of the convention to the American public in the hope of generating support for the Republican Party and its candidates is, in the staff's opinion, a convention expense not provided for at 11 CFR §9008.52(c). Also, as noted earlier, an overly broad reading of the provision that allows the host committee to pay some convention expenses has the effect of negating the limitation on such expenses and the limitations and prohibitions on contributions contained in the Act. Given the way the host committee regulations were formulated, it appears that the Commission did not intend that they be open-ended. The regulations include what expenses may be defrayed by a host committee and television is not included.

The Committee also notes that the selection of a convention site relies heavily on the "telegenicity" of the site and that it is important in promoting the suitability of a city as a convention site. An affidavit from the convention manager is provided that states in part:

Like any other national nominating convention, the 1996 Republican National Convention used its convention site as an arena in which the Republican Party would adopt a platform, choose nominees for the office of President and Vice-President of the United States, and articulate its common principles, ideas, and positions. The Convention also used its site as an arena from which the proceedings could be broadcast to the American public.

An important component of the Convention's purpose is to provide a setting that allows the Republican Party to generate enthusiasm and support for the Party's candidates and platform. This is done, in part, by encouraging party activist to participate in the Convention. The Convention also seeks to generate enthusiasm and support among Americans in general. In modern American politics, television coverage of conventions is the primary, if not exclusive, filter through which Americans receive the information that determines success or failure in generating such enthusiasm and support.

This affidavit recognizes that one of the primary purposes of television coverage is to generate enthusiasm and support for the Republican Party's candidates and platform. Expenses that are necessary for the Republican Party to use its convention site as "an arena from which its proceedings could be broadcast to the American public" is, in our opinion, clearly a convention expense. It is for the purpose of obtaining political advantage and should have been paid by the Committee.

The final general comment concerning payments to Nash, notes that some expenses would be necessary even without the proceedings being broadcast outside of the hall. The need for closed circuit television and the analysis of that argument will be discussed below in relation to the Host Committee's response. The Committee response adds that the closed circuit television signal was also made available to the media networks, GOP-TV, and other media entities.

The first specific category of expenses addressed is related to the Sail Area which was considered an allowable category in the Exit Conference Memorandum. The Committee on Arrangements notes that the updated total is \$196,032 as opposed to the \$164,234 noted in the Memoranda. The updated analysis was reviewed and the revised figure was accepted as the total related to the Sail Area. However, based on our review of information provided in the responses, we believe that the \$18,935 spent for entertainment in the Sail Area and the \$3,481 spent for an entertainment coordinator should have been paid by the Committee. The host committee regulations at 11 CFR §9008.52(c) do not contain a provision that allows for host committees to pay for entertainment. Thus, the amount for the Sail was \$173,616 (\$196,032 - \$18,935 - \$3,481).

The next category addressed is Lighting and Rigging, totaling \$689,535. The Committee notes that modern convention centers, such as the United Center in Chicago, have state-of-the-art lighting that can accommodate live network television broadcasts and that even so, the Chicago host committee reported spending an additional \$458,848 to enhance the United Center's lighting. The response further notes that the San Diego Convention Center's lighting was far from state-of-the-art and that as an inducement for the convention to come to San Diego, the Committee committed to bring the lighting up to the standard necessary.



Three specific arguments are presented related to the lighting and rigging. First, the response notes that all parties to the Site City Agreement recognized that the lighting in the convention center was inadequate. Thus, because the lighting equipment and labor costs would have been lower if the RNC had selected another site, these costs were incurred by the Host Committee "for the purpose of promoting the suitability of the city as a convention site." Second, lighting is specified as one of the "construction and construction related services" that host committees may provide, and over \$1 million that the Host Committee spent on lighting equipment with vendors other than Nash is not questioned, while the installation cost paid to Nash is disallowed. Third, the Houston Host Committee paid the labor costs of upgrading lighting at the Astrodome for the 1992 convention with no challenge by the Commission.

The response includes an affidavit from David Nash that discusses his responsibilities during the convention. He notes that they included the installation and operation of a lighting system, but that he did not provide the actual equipment. Rather, Bash Lighting (Bash) provided the equipment. Our review of the Host Committee expenditures indicated that the Host Committee paid Bash approximately \$906,000 that included a \$60,000 payment for 20% of the rigging contract; a \$147,500 payment described as rigging; and, a \$272,000 payment for lighting and rigging. Given substantial payments to Bash and other vendors for lighting equipment, design and installation, the costs that are questioned appear to be those Nash incurred as the television Executive Producer rather than the general lighting improvements to the hall. The costs of general lighting improvements are not questioned by the staff since they are specifically permitted host committee expenses. The question of payments to Nash in connection with the 1992 Convention was discussed above.

The Committee next discusses \$423,762, classified as closed circuit television expenses. The response states that since Nash's work on the Sail Area was allowed, the ECM implicitly conceded the appropriateness of the Committee paying for closed circuit television. The Committee argues that without closed circuit television, persons in the Sail Area, and in numerous other areas with restricted lines of sight, would have been unable to observe the convention proceedings. Also, since the networks did not provide gavel to gavel coverage, providing network coverage to the Sail Area would have provided the attendees with the same coverage they could have seen at home. Further, the response states that the ECM did not directly question the costs of installing the closed circuit television system but suggested that the portion attributable to labor, such as producers and directors, was an inappropriate Host Committee expense. The Committee states that the closed circuit television system was essential to make the Convention Center usable and the video feed was clearly an integral part of that system. The response also argues that the ECM statement that the closed circuit television production was "clearly convention related"

[p]rovides more, not less, justification for the costs being permissible SDHC expenses. After all, 11 C.F.R. § 9008.52(c)(xi) expressly permits host committee to pay the

costs of "convention-related facilities and services" that are "similar" to lighting and other enhancements that allow effective presentation of the convention. Thus, the expenditures were payable by SDHC pursuant to § 9008.52(c)(1)(i) ("promoting the suitability of the city"), 9008.52(c)(1)(v) ("construction and convention-related services" for "convention center"), and 9008.52(c)(1)(xi) ("similar ... convention-related facilities and services").

The Committee is incorrect in stating that because improvements to the Sail Area were permitted the costs of the closed circuit television system are conceded. Based on the information available from the Committee when the ECMs were drafted, Nash's work in the Sail Area was for improvements and entertainment in the Sail Area and was not related to television production. The conclusion reached in the ECM states, in part, that "the expenditures related to the Sail Area were not related to the television production and are an allowable expenditure." If that conclusion regarding the Sail Area is incorrect and these expenditures were actually related to the television production, then the costs associated with the Sail Area should be added to the in-kind contribution from the Host Committee to the Committee.

The Committee also believes that the ECM did not challenge the costs of the closed circuit television system but instead questioned labor costs such as producers and directors. The ECM drew no such distinction. It did state that television production was clearly a convention related expense that was not considered an allowable Host Committee expense.

The response also misinterprets and misstates the language of 11 CFR §9008.52(c)(1)(xi). That portion of the regulations says that a host committee may "provide for other similar convention-related facilities and services", referring back to the categories in sections (i) through (x). While lighting related to the use of an auditorium is one of those categories, the regulation never mentions "other enhancements that allow effective presentation of the convention." As noted before, reading allowances at 11 CFR §9008.52 as broadly as the Committee suggests has the effect of negating the spending limitations. Television production is not similar to the categories of expenditures allowed for the host committees but is a cost of presenting the Republican Party's message and candidates to the viewing public.

The response discusses \$156,399 that is categorized as "Decorations/Music." The Committee states that the \$104,279 spent for balloons, confetti, fireworks and video graphics were allowable host committee expenditures for "decorations" and "similar convention-related facilities and services." Further, \$49,032 was incurred for a musical director and orchestra and the remaining \$3,088 was for transportation and hotel expenses for the orchestra. The response also says that the orchestra welcomed and entertained the delegates and attendees as they gathered in the

convention hall prior to each session of the Convention and that providing music in the convention hall was a convention-related service "similar" to the provision of decorations.

The regulatory allowance for decorations is provided relative to the use of an auditorium or convention center. The use of balloons, confetti, fireworks and video graphics by Nash are related to his presentation of the "picture" or "show" to the convention attendees and television viewers. These items are for the conduct of the convention, not decorations related to the use of an auditorium. With respect to music and the orchestra, the Nash affidavit states that the orchestra was used to entertain the attendees when the convention ran ahead of schedule or if a speaker was not quite ready. The payment for an orchestra to entertain the delegates is part of the convention proceedings and is not a decoration. The regulations allow for a host committee to pay costs of welcoming convention attendees to the city, such as the use of information booths, receptions and tours, and to promote commerce by providing shopping and entertainment guides. Welcoming attendees to the convention proceedings and providing entertainment during lulls in the proceedings is part of those proceedings and is a convention expense which should have been paid by the Committee. With respect to the hotel and transportation costs, no documentation was provided to show that the requirements of 11 CFR §§9008.52(c)(1)(vi) and 9008.52(c)(1)(ix) had been complied with and accordingly, no adjustment has been made to the total contribution with respect to these costs.

Nash's analysis categorizes \$512,560 as Miscellaneous. Included in that amount is \$217,511 spent on video crew labor, satellite time and remote productions. These costs were for the production and transmission of interviews and broadcasts from remote locations such as Miami, Sacramento, San Diego, and Russell, Kansas. The response states that these productions were shown on large television monitors throughout the convention hall as part of the overall imagery for the convention. According to the Committee, each remote production served the same purpose as decorating the convention hall with standard political paraphernalia. For the Kansas remote production, the response says that the convention center's ceilings were too low for the traditional fireworks display when the Kansas delegation cast its votes to secure Senator Dole's nomination. As a result, a fireworks display was held in Russell and transmitted to the convention hall via satellite. The San Diego production was apparently used to transmit Senator Dole's live video image onto the screens in the convention hall during Elizabeth Dole's speech. The Committee argues that this is no different than the Committee paying for one or more large photographs of Senator Dole and hanging them in the convention hall as decorations. The response also argues that it can not be reasonably disputed that the Host Committee could pay for video graphics used as decorations. The Committee submits that these expenses are "similar" to standard decorations and are allowable host committee expenses. The response also states that the remote broadcasts featuring Steve Young interviewing students in Sacramento and Jason Poblet interviewing an elderly woman in Miami were to entertain the attendees during lulls in the proceedings and served to make the convention more interactive and inclusive.

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The staff concluded that these productions were a part of the convention proceedings. The Nash affidavit, in part, notes that "the live remotes and video segments were necessary to create a convention signal for broadcast on the Convention's closed circuit television that would hold the attention of viewers." Later, Nash writes with respect to satellite time, the expenses were to transmit the remote shots and "so that the Convention could make the closed circuit television signal available to television media across the country who chose not to send their own production personnel to the Convention and who did not want to rely completely on the major television networks for coverage." The live video of Senator Dole watching his wife's speech is not the same as a poster showing his image. This live shot was provided to the television networks for use during the speech and showed Senator Dole's reactions to different parts of his wife's speech. This feed was part of the convention's content on that evening and is not a decoration. The Russell feed of fireworks was used to show the excitement of the people of Russell at the moment Senator Dole secured the nomination. This was also used as a part of the convention's proceedings, not a decoration. Similarly, the other remote productions are not decorations, even if the television networks did not show them. As Nash stated, these productions were used to hold the attention of the viewers; not decorate the convention hall. In the staff's opinion, these expenses were political in nature. They were for the conduct of the convention and to create enthusiasm and support for the Republican Party and its candidates, not to decorate the hall. In the opinion of the staff they were convention expenses not permissibly paid by the Host Committee.

The Committee also states that the host committee in Chicago reported a payment for satellite time, presumably to demonstrate that the Democratic host committee also believed that expenditures for satellite time were legitimate host committee expenses. However, that committee's records show that the payment was made to the City of Chicago. The City of Chicago had initially made this payment for satellite time. The assistant treasurer for the host committee informed the Audit staff that the City of Chicago and the host committee determined that this was not an appropriate host committee or city expense and consequently requested a refund from the vendor. The vendor then refunded the payment to the host committee instead of the city. The host committee made a refund payment to the city which apparently is the item on the disclosure report noted by the Committee. Thus, neither the host committee or the city paid for satellite time.

Another part of the Miscellaneous category is \$180,414 for Film/Video Segments and Editing. The Committee believes that these were permissible Host Committee expenses for a number of reasons. First, some of the segments consisted of interviews with delegates and celebrities that were complimentary to the City of San Diego and, according to the response, served the purpose of promoting the City as a convention site or welcoming the convention attendees to the City. The Committee argues that other video segments served the purpose of welcoming or introducing speakers to the podium, or welcoming and acknowledging other attendees, and are permissible as welcoming or similar expenses. The response goes on to say that other video segments had already been produced and were provided to Nash for formatting for

use with the equipment in the convention center. The Committee believes that since the Committee could provide a sound and video presentation system, it could calibrate taped video segments for presentation on that system. Finally, the response states that all the segments were used as entertainment for the audience present at the convention center and since there was no expectation that the networks would air the segments they were "similar" to welcoming and entertainment expenses. The affidavit of the Convention Manager notes that "the video segments were taped presentations displayed during lulls in the Convention proceedings or, sometimes, during a speaker's presentation. Many of the segments were profiles of delegates or interviews with Americans about important issues... The primary purpose of the video segments was to entertain the delegates and the other attendees."

The staff concluded that the Committee had again applied an overly broad reading of the regulatory allowances. Allowable expenses include welcoming attendees to the city by providing information booths, receptions and tours. Allowable expenses include costs of promoting the suitability of the city as a convention site and the cost of facilitating commerce by providing shopping and entertainment guides, samples and promotional materials. These video segments are not expenses for welcoming the delegates to the city or promoting the city as a convention site. The City of San Diego had already been selected. The segments were used during lulls in the proceedings to hold the attention of the delegates and thus became a part of the convention proceedings. The response notes in several places that many of the items paid by Nash were used as entertainment and are somehow a permissible host committee expense. As noted, entertaining attendees is not included as an allowable expense. Given the above, in the opinion of the staff, the expenses for Film/Video Segments and Editing were convention expenses.

Two minor items included in the Miscellaneous category, are approximately \$1,200 for an Entertainer and Announcer and \$1,220 for the Convention Manager Shoot. With respect to the entertainer and announcer, the Committee states that "these insignificant costs are justifiable as promotional expenditures, welcoming expenditures, administrative expenditures, or convention center expenditures." "[T]he convention manager shoot was a short video segment welcoming the delegates to San Diego and showing the modifications being made to the Convention Center. Without question, it was payable by the host committee as a promotional, welcoming, or 'similar' expense." The response seems to indicate that the entertainer and announcer expenses must fall into one of the categories that a host committee may pay. Once again, it is the staff opinion, that these expenditures are for items that are part of the convention proceedings and not covered by one of the expense categories that the Host Committee may pay. Nash stated that the announcer, "quite literally, welcomed speakers to the Convention podium." This is not welcoming the convention attendees to the City of San Diego. The same can be said of the convention manager shoot. This shoot apparently showed all the modifications made to the Convention Center prior to the actual convention and welcomed the attendees to the Convention. The staff concluded that this is not the

same as expenditures for welcoming attendees to the city "such as information booths, receptions, and tours."

The Miscellaneous category also includes \$70,000 for the Russell Film Shoot and notes that New Century Media Group, Inc. was paid this amount "to design, create and produce" a filmed walking tour of Russell, Kansas hosted by Senator Nancy Kassebaum. The response states that although considerable effort was expended on this film, it was ultimately decided not to be usable at the convention. The purpose of this film was to entertain the delegates during a planned lull in the convention proceedings. The Committee believes that this expenditure was an allowable Host Committee expense because it was intended to entertain the delegates and was permissible under 11 CFR §§9008.52(c)(1)(ii) and (xi).

The regulations cited by the Committee deal with "those expenses incurred for welcoming the convention attendees to the city, such as expenses for information booths, receptions, and tours" and "to provide other similar convention-related facilities and services." For the same reasons the staff concluded that the video segments discussed above are not an allowable Host Committee expense, this film is not an allowable Host Committee expense. The Host Committee's response states that it has requested that it be reimbursed by the Committee, acknowledging that it should not have paid this expense.

The final items classified as Miscellaneous include a \$10,000 payment for a Continuity Writer, \$2,691 for Stand-ins, and \$29,524 for "Allocated Items." According to the Committee, the stand-ins were used during dress rehearsal in order to calibrate lights and sound systems and the continuity writer was charged with reading and editing the various convention speeches and "punching them up" without altering their substance or content. The Committee feels that these expenses were necessary components of producing the Convention's closed circuit television signal and were therefore appropriate Host Committee expenses for reasons previously stated. Although the continuity writer may not have made any substantive content changes in the speeches, the work was related to the speeches that are part of the convention proceedings and part of presenting the Republican message. The speeches were also part of both the closed circuit broadcast and the feed seen by the viewing public. As noted earlier, Nash also states that the closed circuit feed was also available to the media. In our opinion these are convention expenses that are not permissible for host committees to pay pursuant to 11 CFR §9008.52(c).

The allocated items represent expenses such as travel, hotel, vehicle rental, mileage, parking, transportation, motels, catering and per diem for Nash employees, many of whom worked on more than one project. The Committee contends that they should be distributed proportionately to the identified projects. The Audit staff agrees. However, since the staff concluded that the various categories discussed above were convention expenses, no allocation was required.

The final major expense category addressed is Overhead of approximately \$185,000. The Committee feels that to the degree that all categories of expenses were properly allowable Host Committee expenses, then these overhead expenses were properly payable by the Host Committee. However, the response notes that to whatever degree the Commission ultimately decides that one or more of the project categories was not properly paid by the Host Committee, then only those costs which are attributable to those categories would be repayable. As explained above, the staff concluded that none of the expenses associated with the Nash contract were allowable Host Committee expenses.

Finally, the Committee believes that even if the Commission rejects the argument that each of the general categories of Nash expenses were permissible Host Committee expenditures, it should not challenge expenses such as those for hotels and local transportation, which are expressly denominated as allowable host committee expenses pursuant to 11 CFR §§9008.52(c)(1)(vi) and (ix). The regulatory provision for local transportation concerns defraying "the costs of various local transportation services, including the provision of buses and automobiles" and the hotel provision concerns providing "hotel rooms at no charge or a reduced rate on the basis of the number of rooms actually booked for the convention." To the extent that Nash's employees took advantage of services provided by the Host Committee or the city under these provisions, Nash's cost savings are presumably passed along to the Host Committee. The remaining expenses are business expenses of a vendor hired to perform a specific convention-related task.

## 2) The San Diego Host Committee Response

In response to its ECM, the Host Committee noted that approximately 30,000 people came to San Diego during the Republican National Convention and that inside the convention hall there were approximately 15,000 members of the news media compared to only 3,980 delegates and alternates. The Host Committee further notes that this is not surprising since modern conventions are media-intensive presentations. The Host Committee goes on to explain that a facility's level of broadcast readiness or the willingness of the city or host committee to make it broadcast ready are important factors in the site selection process. The Host Committee also states that because of the shape and small size of the San Diego facility, it was necessary to provide closed circuit television inside the facility even if no external broadcast had been contemplated and that the Audit staff made no distinction between the two.

In its response, the Host Committee goes on to say:

The regulations specifically provide that host committees may expend moneys for preparation of the auditorium or convention center in a wide variety of ways, including, but not limited to, construction of camera

platforms and the provision of lighting, electrical and loudspeaker systems (11 C.F.R. § 9008.52(c)(1)(v)). As previously stated, the regulations also provide that "other similar convention-related facilities and services" are permissible host committee expenditures (11 C.F.R. § 9008.52(c)(1)(xi)). In light of the fact that the host committee regulations were rewritten, effective in 1994, and that the National Nominating Conventions have become increasingly media intensive, it is difficult to conclude that the host committee regulations, absent language to the contrary, prohibit all expenses directly or indirectly connected with television infrastructure, closed circuit or otherwise.

It seems clear that the regulations specifically contemplate such expenditures. Had the Commission wished to prohibit host committees from paying for television infrastructure, it could have, and presumably would have, so provided.<sup>2</sup> Had the Commission intended to specifically prohibit entire classes of expenditures by host committees, it might have included a provision similar to that found in the Convention Committee regulations listing specific prohibitions (11 C.F.R. § 9008.7(b) "Prohibited Uses"). Such a provision does not exist, presumably, because no federal money is spent by host committees and host committees are to be afforded a broad spectrum of permissible activities. [Text of footnote omitted]

The Host Committee then contends that the Nash contract was the result of the Committee requiring a broadcast ready facility and was analogous to a production studio providing a facility and a motion picture company providing the script and actors. The Host Committee argues that if it can pay for the "build out" of the shell that was the convention center, then it can pay for the "costs associated with facilitation of broadcasting." The response states that to "conclude otherwise is to deny the realities of modern conventions."

There can be no dispute that modern Presidential nominating conventions have become major media events. In most cases it is a near certainty who the nominee will be before the convention starts. As a result, media coverage is the best way to project a favorable image of the Party and the Candidate. The issue here is whether or not the expenses related to that media coverage should be paid by a host committee or the convention committee. As previously noted, the regulations for host committees were written with the primary purpose of allowing such committees to promote the city's commerce and image and to pay for certain convention-related expenses, primarily infrastructure related to preparing the convention hall to host the



convention. The cost of producing the television broadcast of the convention proceedings, including setting up the producer's equipment, is an expense of conducting the convention and should have been paid by the Committee. The preparations related to television are not associated with promoting a city's commerce and image, or expenses to prepare the convention hall to host the convention. The staff agrees that media coverage is intensive and that in this case the Republican Party required that the convention hall be made ready for television so that a favorable image of the Party and its nominee could be broadcast around the country. However, we disagree that a host committee should be allowed to make these payments under 11 CFR §9008.52(c). The Host Committee also notes that the political parties will only select a site that can be adequately prepared for television broadcast. Once again, the Audit staff and the Office of General Counsel do not dispute that this is the case, but we concluded that it was an expense of conducting the convention and should have been paid by the Committee. To borrow the Committee's analogy, the situation is like a production company preparing a site selected by the movie company for filming, and then arguing that the cost is not part of the cost of producing the movie.

The Host Committee once again states that the Commission regulations are permissive and if the Commission had wished to bar host committees from paying for expenses related to the media, then it would have done so. The staff once again notes that the host committee regulations were created with the intention of providing a "very narrow exception" to the limitation on convention expenses.

The Host Committee also provided a declaration from the production accountant for Nash for the 1996 Republican National Convention which takes exception with a number of statements made in the ECM and presented above. The points made in the declaration are as follows:

- The ECM noted that one category of expense was \$540,245 for rigging and staging labor, including labor costs for stagehands, electricians, riggers for installation and operation during the convention. It was noted that the category appears to cover electricians who rigged cameras and lighting and notes that the television networks reimbursed some of the costs of camera rigging. Nash states that all camera labor in this category was for rigging network cameras and it was all reimbursed by the television networks. No documentation was submitted to support this statement; however, since the \$540,245 is the net amount paid, there is no effect on the conclusions reached by the Audit staff.
- The declaration takes note of the Audit staff's conclusion that the expenses paid by Nash for rigging cameras and lighting are not Host Committee expenses, the section in the related ECM recommendation that invites the Host Committee to demonstrate otherwise, and the request for detailed documentation for specific expenses that the Host Committee believes are allowable under 11 CFR §9008.52(c). As part of that documentation, the Host Committee was to

demonstrate that the expenses would have been necessary in the absence of television. It is again pointed out that it was necessary to provide closed circuit television in various parts of the facility because of obstructed views or locations outside the main hall where the proceedings could not otherwise be seen. It is then concluded that all lighting would have been needed even if broadcast of the proceedings had not occurred. The Audit staff does not doubt that closed circuit television was used within the convention hall, as it probably has been in past conventions. However, we do not believe that the use of closed circuit television within the convention hall over shadows the overall purpose of the Nash expenditures. As stated previously, Nash's primary function was to "present and enhance the Republican message for presentation to the television networks and the media in general" and to produce the "picture" or "show" that was seen by the convention attendees and television viewers. Expenses associated with this function are related to conducting the convention and not the preparation of the convention hall.

- The declaration took note of the concern raised by certain invoices that suggested that some expenses had been paid by the "RNC" which the ECM assumed meant the Republican National Committee. Nash explains that vendors used those initials to refer to the "Republican National Convention" and states that "Nash has made no payments to the RNC, nor has any of its vendors been paid partially or fully by the RNC for Nash work."
- Finally, the declaration references the statement in the ECM that it appears television production services for the 1992 Republican Convention were paid by the COA rather than by the Houston Host Committee." It states that in 1992, equipment and labor for lighting was paid for by the Houston Host Committee.

Disclosure reports filed by the 1992 Houston Host Committee were reviewed and three payments to Nash totaling \$46,000 were identified. Two of these payments were described as consulting and one was for a reimbursement of production insurance. If the Houston Host Committee paid for the labor and equipment for television lighting, the payments were apparently made to vendors other than Nash. A review of the production budget for the Committee on Arrangements for the 1992 Republican National Convention shows a total of \$892,566, including music, producer and director expenses, TV transmission, TV production facility, TelePrompTer, closed caption, and balloon drops. This amount was paid by the 1992 Committee On Arrangements. Further, work papers from that audit indicated that there were two change orders to this production budget. The 1992 Committee on Arrangements paid a total of \$1,125,000 as of September 30, 1992 to Nash for work done on the 1992 Republican National Convention held in Houston.

The Host Committee also objects to the ECMs reliance on a June 19, 1996 memorandum from the Committee to the Host Committee which states that Nash had been "engaged by the COA to produce the television event and staging of the Convention proceeding. David Nash and a staff of professional television production and technical associates will present and enhance the Republican message for presentation to the television networks and the media in general ." The Host Committee argues that this memorandum is irrelevant because the same language does not appear in the contract between Nash and the Host Committee. That contract was signed some weeks later. Rather the Host Committee characterizes that language as written by a Committee's representative and probably expressing the "...hopes and aspirations of the COA at that time". The Host Committee goes on to note that the parties agreed that Host Committee funds would be spent only for permissible expenses as evidenced by the Committee's separate contract with Nash and the Host Committee's unwillingness to pay expenses related to GOP TV.

With respect to the June 19, 1996 memorandum, there is no question that it does not constitute a contract of any sort. Rather, as suggested in the ECM, it makes clear what the Committee expected Nash to do. This, taken together with the contract provision that requires the Committee to approve significant expenses incurred by Nash and another that requires Nash to do its work according to Committee requirements, clearly establishes Nash's function. In addition to the language previously cited, the June 19, 1996 memorandum states that "David J. Nash Associates is a television/theatrical company that produces major television events and theatrical productions. You should also have their contract." Thus, although the contract was not signed for another month, it appears that the Host Committee already had a copy. A memo dated June 21, 1996 from the Host Committee controller to a representative of the Committee appears to confirm this. Finally, although the contract with the Host Committee was not signed until late July, the terms of the contract with the Committee began on March 1, 1996 and the terms of the contract with the Host Committee began on May 1, 1996. As a result, it would appear that Nash had already been performing services for both entities at the time of the June 19, 1996 memorandum. The goal of the Nash contract was well established when the June 19, 1996 memorandum was written. Further evidence of Nash's role in enhancing and presenting the Republican message can be seen in some of the expense categories that the records document. These include:

- Payments for directors who, in part, "directed the video mix of the program material that was displayed on the giant projection screens in the Main Venue and the sail area."
- Payments for the script supervisor who "formats the television script after assembling all the written materials and technical information."
- Amounts associated with producing video clips highlighting profiles of delegates participating in the process."

- Expenses for a tape coordinator who “organized and edited all master tape footage for use on the big screens during the convention.”
- Expenses for a continuity writer who was a “speech coach and transition writer. He helped to reword speeches to help them flow better, added jokes, and in general punched up the speeches.”

The staff concluded that the cost of presenting and enhancing the Republican message to the media, and “implementing the ‘picture’ or ‘show’” that was seen by convention attendees as well as television viewers, and all of the associated costs, including the vendor’s equipment setup, are convention expenses that are not permissibly paid by the Host Committee.

The memorandum discussed above also states that Nash needs to receive payment “in order for the producer to provide initial payments and deposits to vendors and contracted creative talent to be engaged for this project. Currently, TV production equipment, services and creative talent are in high demand due to the Olympic Games in Atlanta.” This statement supports the Audit staff’s contention that Nash’s services and the installation of its equipment were, for the most part directly related to television production rather than site preparation.

The Host Committee also contends that it was clear to all parties that the Host Committee’s money was only to be used for permissible purposes, thus implying that the money Nash spent must have been permissible. A contract stating that the money spent can only be spent for permissible purposes does not mean that it was.

With respect to its separate contract with Nash, the Committee paid only \$117,500 as compared to the \$2,245,520 paid by the Host Committee. The payments by the Committee were \$100,000 for David Nash as Executive Producer, \$12,500 for producer expenses and an additional \$5,000 for accounting. Thus, it appears that there was no attempt to divide the actual costs of television production services between the Committee and the Host Committee. The Committee paid the individual who was responsible for overseeing the whole project. If the cost of the project was a legitimate Host Committee expense, it would seem that the Host Committee could have paid the fees for the person overseeing the project. However, in the opinion of the staff, if the Committee felt that the services of the person overseeing the project were not host committee expenses, then it would seem that all the costs of the project were not host committee expenses and should have been paid in its entirety by the Committee.

The Host Committee further contends that:

The Nash Contract can be divided into different categories and during the audit process, the [Host] Committee, working with the Audit Staff, made some progress in doing this for analytical purposes. The [Host] Committee believes that its expenditures in connection with the Nash contract were permissible under sections 9008.52(c)(1)(ii), (v) and (xi). By letter dated April 23, 1997, the [Host] Committee provided the Audit Staff with copies of invoices for approximately \$876,000 related to items which it believes are specifically permissible expenses under 11 C.F.R. § 9008.52(c)(1)(v). Since that time, the [Host] committee has received a detailed analysis of the Nash contract which indicates the true number is almost twice that amount.

Using the analysis of expenditures provided by the production accountant for Nash, the Host Committee further notes that:

It is the [Host] Committee's position that lighting/rigging, decorations/music, all labor and equipment for the convention closed circuit TV, the Sail Area (not at issue here) and general overhead are authorized expenditures under regulation 11 C.F.R. § 9008.52(c)(1)(ii) and (v). Such expenses are also permissible under 11 C.F.R. § 9008.52(c)(1)(xi). This accounts for \$1,644,505.

It is the position of the [Host] Committee that the expenditures listed under "Miscellaneous" which deal specifically with television broadcast infrastructure expenses in the amount of \$512,560 are authorized by 11 C.F.R. § 9008.52(c)(1)(xi). This is consistent with the intent of the host committee regulations which are clearly written to be permissive and not prohibitive. Any doubt about this intent is dispelled by the language of 11 C.F.R. § 9008.52(c)(1)(xi), a catchall provision which allows host committees "to provide other similar convention-related facilities and services." The Host Committee is expressly authorized to provide for infrastructure costs under 11 C.F.R. § 9008.52(c)(v) and "other similar convention-related facilities and services." The fact that a class of expenditures is not specifically listed does not mean it is prohibited.

The [Host] Committee asked the COA to review all of the expenditures under the Nash Contract in light of the COA's role in supervising such expenditures. The [Host] Committee has been advised by the COA that the \$70,000 expended in connection with the "Russell Shoot" may have been an oversight and outside the scope of its contract with Nash. On July 29, 1997, the [Host] Committee asked the COA to reimburse it for the costs associated with the Russell Shoot. The [Host] Committee notes that the film, a documentary about small town America, was never shown at the convention and understands that the ownership of the film rests with New Century Media Group which produced it. The [Host] Committee believes that the film was never released to or used by anyone.

Finally, it is the [Host] Committee's understanding that Nash is holding about \$88,000 (less certain audit expenses) of unexpended [Host] Committee funds which the [Host] Committee has asked Nash to refund.

The Host Committee provided an analysis prepared by Nash's production accountant to identify the payments it included in the totals for the first two categories above. The Audit staff reviewed the Host Committee's classifications and noted that included in the \$1,644,505 are items such as a Graphic Package (\$26,684), Co-Producer (\$40,000), TV Producer (\$18,750), Directors (\$39,016), Moving Light Operator (\$11,735), Video Crew Labor (\$56,781), Screen Control Mobile (\$90,511), and TelePrompTer (\$56,651). Smaller items in the total include Stage Manager, Script Supervisor, Tape Coordinator, and Makeup Supervisor. Line items included in the Miscellaneous total are Satellite costs (\$73,748), Remote Productions for the live television transmissions (\$138,442), Film/Video segments (\$174,749), Russell Film Shoot (\$70,000), and a Continuity Writer (\$10,000). Smaller items included Editing, Stand-ins, Announcer, and Video Crew Labor.

As thoroughly discussed previously, the staff does not believe that the categorization of expenses is at issue in this case. In our opinion, all of these expenses are primarily related to, and for the purpose of, preparing for and presenting the television image of the convention to the attendees and to the American public. In the opinion of the staff these expenses, as well as the associated equipment set up, are expenses of Nash's work to present and enhance the Republican message at the convention. The staff concluded that contrary to the suggestion of the Host Committee, these expenses are not costs of welcoming the attendees to the city, convention hall construction, or things similar thereto, but are and instead partisan in nature and are expenses of conducting the convention.

With respect to the disposition of the film footage, the Host Committee provided a copy of the contract with the media company that produced the Russell shoot. According to that contract, the "entire right, title and interest throughout the world, including the copyright, in and to the film 'Tour of Russell, Kansas'" would remain with the media company. The Host Committee stated that it believes that the film was never released to anyone. No documentation was provided from the media company which states whether or not these rights were ever subsequently sold or given to another entity. Thus, we still are unable to verify the final distribution of this film.

As stated several times in this discussion, the staff concluded that the payments to Nash, with the exception of the Sail Area costs, do not represent legitimate host committee expenses pursuant to 11 CFR §9008.52(c) and thus, should have been paid by the Committee. In the ECMs it was determined that the Committee should have paid a total of \$2,081,286 that was paid to Nash by the Host Committee. In the documentation provided by Nash's production accountant, it appeared that an additional \$31,798 in expenditures were related to the Sail Area. However, entertainment costs of \$22,416 associated with the Sail Area were mistakenly excluded from the total. In addition, on July 31, 1997, Nash refunded the \$82,436 that had not been spent. Thus, the staff calculated the amount in question to be \$1,989,468 (\$2,081,286--\$31,798 + \$22,416 - \$82,436). Also, if the Host Committee receives a \$70,000 reimbursement from the Committee for the Russell shoot, the amount will be reduced accordingly.

In a series of meetings between December 4, 1997 and April 23, 1998, the Commission considered the staff recommendation with respect to the Nash contract, along with the Committee's and Host Committee's responses to the Exit Conference Memoranda. A motion to approve the staff's recommendation that \$1,989,468 be considered a Host Committee contribution and hence repayable to the U.S. Treasury failed by a 3-2 vote. See Attachment 1, page 2, item 2. In Exhibit A of the Committee's response to the Exit Conference Memorandum, it had distributed all of the Nash expenses into six categories: Lighting and Rigging - \$689,535; Decorations and Music - \$156,399; Labor and Equipment for Convention Closed Circuit TV - \$423,762; Sail Area - \$196,032; Overhead - \$184,796; and, Miscellaneous - \$512,560. Using these categories as a basis the Commission discussed and voted on individual expense categories and line items<sup>1</sup>. Not included in the Commission's determinations were a number of indirect expense line items, primarily travel and living expenses and overhead items. These expenses were left to be distributed based on the votes on the direct cost line items. Using the guidance provided, the Audit staff distributed the indirect costs in a two step process. First, using information in the general ledger printout provided by Nash, the Committee's response to the Exit Conference Memorandum, and the Commission's

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<sup>1</sup> Attachment 1, page 3, items 3 and 4, and pages 6 through 8, items 1 through 6, contain the Certifications of the Commission's votes on these matters.

determinations, some costs were specifically associated with persons and expense categories that were covered by Commission votes. These were primarily travel and living expenses that could be associated with particular persons<sup>9</sup>. Second, the remaining indirect costs, those that could not be associated with particular persons or functions, were divided into three groups: Travel and Living Expenses-Producers and Directors (\$9,702); Travel and Living Expenses-Others (\$32,886), and, Overhead (\$93,491). The two travel and living expense groups were allocated between the Committee and the Host Committee based on the distribution of associated direct costs. The overhead expenses were allocated based on the distribution of all non-overhead expenses.

Following the above procedure, \$892,489 is attributable to the Committee and \$1,270,595 is attributable to the Host Committee. Attachment 2 is a chart that presents the amounts by category and line item. On Attachment 2 all line items that include indirect costs that require allocation, in whole or in part, are shown in the "Indirect Cost" category. The Committee's response to the Exit Conference Memorandum showed these expense items distributed to the various other categories.

Under 11 CFR §9008.12(b)(7) the Commission may seek a repayment from the Committee if it knowingly helps, assists, or participates in the making of a convention expenditure by the host committee, government agency or municipal corporation. As the discussion above establishes, the Committee played a significant role in the Host Committee's actions since Nash's services were rendered to the specifications and requirements established by the Committee.

The Commission therefore determined that the Host Committee made contributions in the amount of \$892,489, and that this amount is repayable to the United States Treasury. In addition, the Committee is required to file an amended disclosure report and itemize the in-kind contribution.

d. Additional Expenses to Consider

The Committee raised an additional issue that was not addressed in the ECM. If the Commission concludes that certain expenses should not have been paid by Host Committee, the Committee requests the Commission take into consideration approximately \$1.6 million of expenses paid by the Committee that could have also been payable by the Host Committee under the regulations. The Committee submitted a list of disbursements with the purpose of the disbursements and a list of the vendors that received the money. They did not supply any additional information on how specifically these disbursements would have qualified as Host expenditures under 11 CFR §9008.52.

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<sup>9</sup> For example, Directors were determined to be attributable to the Committee. If travel and living expenses for a person identified as a Director were noted, those expenses would be attributed to the Committee.



As part of this total, the Committee is claiming \$749,254 for hotel rooms for volunteers and convention staff. Under 11 CFR §9008.52(c)(ix) the host committee can provide hotel rooms at no charge or at a reduced rate based on the number of rooms actually booked at the convention. As previously noted, the list of expenses that the Host Committee may pay was meant to be a "very narrow exception" to the limit on convention expenses. Clearly, this regulation was to include a small number of rooms not the entire cost of the hotel rooms for the volunteers and convention staff. Also, the Committee included \$186,407 for two way radios that were used by people working for Nash which we previously stated were not expenditures permissible by the Host Committee. There was also \$399,393 in disputed debts between the Host Committee and the Committee. These debts were paid by the Committee after the Host Committee said it was not liable for them. As previously stated, the Committee has provided no additional information on how the remaining \$271,084 would specifically qualify as permissible Host Committee expenditures under the Regulations.

e. City of San Diego Convention & Visitors Bureau

The Host Committee received payments totaling \$850,000 from the San Diego Convention & Visitors Bureau (Convis). Convis is a nonprofit corporation that is not a fund of the City of San Diego. The Audit staff does not know if Convis receives any of its funding from outside the Metropolitan Area of San Diego because the Commission has not audited Convis. However, Convis apparently receives its funding in part from entities such as the City of San Diego, the local hotel and motel association, the Port Authority and businesses.

A letter registering Convis as a 'Host Committee' was filed with the Commission on September 4, 1996. The letter described the activities it conducted in connection with the convention. One of the activities was "coordinated contributions and expenditures for program providing for youths to participate in convention activities." In addition, a separate letter filed with the Commission on January 14, 1997, stated that "pursuant to the agreement between Convis and COA, Convis administered a 'Youth Fund Account' on behalf of the COA. The account received \$368,000 from approximately 1,500 students and sponsors, which were distributed to a variety of vendors." These youths attended the Convention to serve as convention pages and delegation aides. Convis did not disclose on their reports the source of these funds, nor did they disclose any expenditure made with this money. The Audit staff requested a copy of the agreement between Convis and the Committee. The Committee had not supplied this agreement.

At the time of the ECM, it was the opinion of the Audit staff, that absent the production of the agreement between Convis and the Committee, funds totaling \$368,000 should be considered convention expenses. Section 9008.7(a)(4)(ii) of Title 11 of the Code of Federal Regulation states, the salaries and expenses of convention committee employees, volunteers and similar personnel, whose

responsibilities involve planning, management or otherwise conducting the convention are convention expenses. As noted above, the \$368,000 was used for youths to attend the Convention to serve as convention pages and delegation aides. Therefore, these funds were considered an in-kind contribution from Convis.

The Audit staff recommended in the ECM that the Committee provide evidence documenting that the above expenditures were not convention expenses and were permissibly paid by Convis. This evidence was to include, but not be limited to, a copy of any agreement between the Committee and Convis, copies of any checks issued by Convis in connection with the "Youth Fund Account," copies of the invoices from the vendors and deposit slips with copies of deposit items and credit memos. Absent such information, the Audit staff stated that it would recommend that the Commission determine \$368,000 is repayable to the United States Treasury. In addition, the Committee would be required to itemize this in-kind contribution on an amended disclosure report.

In response to the ECM, the Committee did not supply any of the requested information. According to the Committee, there was no written agreement between Convis and the Committee. The Committee did submit an affidavit from Jack Saniga, the Chief Financial Officer of Convis. He supported the Committee's response that there was no formal written agreement between Convis and the Committee. The affidavit also explained the purpose of Convis.

Convis is a nonprofit mutual benefit corporation organized to advance, promote, encourage, and foster the growth and development of the tourist and convention industries of the County of San Diego. To fulfill that purpose with respect to the 1996 Republican National Convention San Diego ("the Convention"), Convis served as a registered host committee to the Convention. As a host committee Convis agreed to establish a checking account on behalf of the Convention's Youth Program built and equipped a "Youth Pavilion" in Embarcadero South that served as a gathering place, auditorium, and entertainment center for youths participating in the Convention. The youths gathered at the Pavilion for entertainment events ranging from speeches by party luminaries to music.

According to Mr. Saniga, contributions totaling \$366,730 came from individual youths, their parents and businesses. The affidavit also gave a breakdown of how the \$366,730 was disbursed.

Of the \$366,730 in total Youth Program contributions, \$260,445.97 was spent on the construction, equipping, decorating, supplying, and tear down of the Youth Pavilion.

The Youth Fund account disbursed a total of \$162,266.40 to Kleege Industries to construct and tear down the Pavilion. Another \$53,136.63 was disbursed for Youth Pavilion decorations and graphics. \$3,690 was spent on security for the Pavilion. \$13,686.40 was spent on entertainment, including local San Diego bands and a videotape of President Nixon certifying the 26th Amendment to the Constitution. \$6,466.45 was spent on seating. The account also disbursed \$31,032.46 for catering services for the Youth Pavilion. In addition, the account disbursed \$51,369.86 to Laidlaw Transit for local transportation services.

Mr. Saniga continued that Convis paid \$15,104 for program staff hotel rooms; bank costs and fees totaling \$2,627; reimbursements of \$3,341 for key deposits and program fees for youths not attending all or part of the program; \$860 for a tour of the Steven Birch Aquarium; \$923 for office expenses, and \$445 for an electric cart for staff transportation between the Pavilion and the Convention. According to the Committee these "functions were perfectly appropriate for a government agency pursuant to 11 C.F.R. § 9008.53(b)(1), or as a host committee pursuant to § 9008.52(c)(1)(i). (ii). (iii), (vi), (vii), (viii), (ix), and (xi)." The Committee concludes that this type of activity should not be counted against the overall expenditure limitation.

Convis registered as a host committee and filed reports that did not comply with 11 CFR §9008.51. The Committee also failed to provide the records requested in the ECM, such as copies of any checks issued by Convis in connection with the "Youth Fund Account," copies of the invoices from the vendors and deposit slips with copies of deposit items and credit memos. Also, an audit of Convis as required by 11 CFR §9008.54 has not been performed. The Audit staff cannot state an opinion on the accuracy of the information supplied by the Committee until the completion of this audit. After the audit, additional recommendations may be appropriate.

## 2. In-kind Contributions from the Republican National Committee

### GOP-TV – Background

According to a RNC memorandum provided to the Audit staff, GOP-TV is the entertainment television network arm of the RNC, which produces and broadcasts programs "of interest to Republicans" via satellite, cable systems and television stations nationwide.<sup>10</sup> The RNC paid National Media, Inc. for air time for convention programs on The Family Channel (August 16, 1996), NewsTalk Television (August 16, 1996), WWOR and USA Network (August 12, through August 16, 1996). In addition, the

<sup>10</sup> Some of this information was obtained from the RNC's Website: (<http://www.rnc.org/movie/what.html>).

RNC contracted with Creative Broadcast Techniques (CBT) to use their facilities and personnel for the production of television shows in conjunction with the 1996 Republican National Convention. The Committee paid for broadcasts on the Family Channel and NewsTalk Television from August 12, to August 15, 1996.

a. National Media, Inc.

On August 16, 1996, the Committee wired funds to National Media, Inc. totaling \$1,188,000 for shows aired on The Family Channel and NewsTalk Television. These shows broadcast coverage of the convention on August 12 through August 15, 1996. The shows were aired for three (2) hour periods and one (4) hour period. On March 31, 1997, the Committee was refunded \$18,000, which leaves a net payment of \$1,170,000.

On July 18, 1996, and August 1, 1996, the RNC wired funds to National Media, Inc. totaling \$230,130. Later, the RNC sent the vendor an additional \$18,000, for a total of \$248,130. These amounts represented payments for air time on USA Network, WWOR, NewsTalk Television and The Family Channel. The broadcasts on NewsTalk Television and The Family Channel were on Friday, August 16, 1996, the day after the convention ended and are considered an RNC expense. The WWOR broadcast was aired August 18, 1996, and is also considered an RNC expense.

The USA Network program cost \$112,500 and aired from 7:00 a.m. to 7:30 a.m., Monday, August 12, 1996, through Friday, August 16, 1996. The RNC provided the Audit staff copies of these programs on videotape. After viewing all USA Network programs, it is the opinion of the Audit staff that, except for the August 16 broadcast, the costs of these broadcasts are convention expenses under 11.CFR §9008.7(a)(4). Each program covered convention highlights as well as segments about individuals appearing at the Convention. The programs aired on USA Network used the same title ("The Unconventional Convention") and the same format as those programs paid for by the Committee. The August 16th program was aired after the convention ended and is considered to be an RNC expense. The staff concluded that the payments to National Media, Inc. for the air time on USA Network from Monday, August 12, 1996 through Thursday, August 15, 1996, represent an in-kind contribution from the RNC of \$90,000 ( $\$112,500 \times 4/5$ ).

The Audit staff recommended in the ECM that the Committee demonstrate that payments for the USA Network broadcasts between August 12 and 15, 1996, were not convention expenses. Absent such a demonstration, the Audit staff noted that it would recommend that the Commission determine \$90,000 is repayable to the United States Treasury and the Committee would be required to itemize this in-kind contribution on an amended disclosure report.

In response to the ECM, the Committee did not agree that the Committee should have paid for the morning shows on the USA network. The

Committee submitted an affidavit from Patrice Geraghty, the Director of Broadcast and Executive Producer for GOP-TV. The affidavit explains how GOP-TV was formed in 1993 as part of the RNC's communications division to provide news and editorials in weekly television broadcasts. GOP-TV began broadcasting Rising Tide in January, 1994. Up until the time of the convention this program was broadcast every Thursday night on several cable channels and on Sunday night on WWOR. The show was produced in a magazine format and hosted by Haley Barbour, the RNC Chairman. The RNC decided that GOP-TV would broadcast from San Diego during a three week period before the Convention and expand the broadcast format during the 1996 Convention.

Because GOP-TV broadcast live coverage of the convention proceedings during the Convention week, GOP-TV did not broadcast its regularly scheduled, regularly formatted show on Thursday, August 15, 1996. Instead, GOP-TV opted to broadcast five half-hour programs beginning at 7:00 a.m. E.S.T. from Monday August 12, 1996 through August 16, 1996.

The programs included material from the previous night's convention proceedings but also included coverage of other topics such as how delegates were spending their free time, human interest segments on community efforts to move welfare recipients to the work force, work performed by several Convention attendees for Habitat for Humanity, and a delegation's trip to Sea World. They retained the news magazine format but were hosted by Laurie Clowers rather than Mr. Barbour. The Committee goes on to note that because these shows were broadcast in the early morning, they did not provide live coverage of the convention, nor did they concentrate on summarizing the events of the convention.

The Committee response continued,

COA reimbursed the RNC for air time that was purchased through National Media, Inc. on The Family Channel and NewsTalk Television for each of the four nights of the convention<sup>11</sup>. Unlike the news magazine format of the GOP-TV morning shows, these evening broadcasts were live broadcasts from the convention. Thus, for the broadcasts that occurred during and provided live coverage of the convention, COA paid the air time. For broadcasts that did not provide live coverage of the convention, RNC paid the air time.

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<sup>11</sup> Committee records indicate that rather than reimbursing the RNC for the broadcast costs, the Committee paid the Family Channel and NewsTalk Television directly through National Media, Inc.

In the opinion of the staff, the fact that the USA Network broadcasts were in the morning and not live coverage is not a material distinction. The broadcasts were paid coverage during the convention and are therefore a convention expense. The Committee also argues that the Friday August 16, 1996 broadcast was no different in format than those of August 12th to the 15th. Since there is no difference, the Committee concludes that the Friday broadcast is no more or less a convention expense than the other days broadcasts. The ECM allowed the RNC to pay for the Friday broadcast. However, allowing the Friday broadcast to be paid for by the RNC is consistent with the way the broadcasts on the other networks were allocated. The Friday, August 16, 1996 broadcasts on the Family Channel and NewsTalk Television, and the August 18, 1996 WWOR broadcast were also paid for by the RNC and not challenged in the ECM. The staff concluded that the Committee has not demonstrated that the cost of the USA Network broadcasts between Monday August 12, and Thursday August 15, 1996 are not convention expenses.

The Audit staff and Office of General Counsel recommended that the Commission determine that the costs (\$90,000) of the August 12th to August 15th broadcasts on the USA Network are convention expenses and are in-kind contributions to the Committee by the RNC. Further, it was recommended that the Commission determine that an equal amount is repayable to the U.S. Treasury pursuant to 11 CFR §9008.12(b)(3).

The Commission considered the staff recommendation and the Committee's response to the Exit Conference Memorandum and decided the costs (\$90,000) of the August 12th to August 15th broadcasts on the USA Network were permissible RNC expenses. (See Attachment 1, page 3, item 5, for a copy of the certification of the Commission's vote)

b. Creative Broadcast Techniques (CBT)

On January 10, 1996, CBT entered into an agreement with the RNC, on behalf of GOP-TV, to design, engineer, manufacture, install and operate a customized television broadcast system. As noted above, this system was to be used for television production in conjunction with the Republican National Convention. The amount billed under the contract, including change orders and revised change orders, was \$1,841,824.

On April 25, 1996, the Committee entered into an agreement with CBT that provided for an allocation of the RNC contract services and costs between the Committee and the RNC. According to the Committee, they felt it would be redundant to obtain a separate contract, since it would be using the same equipment and services as the RNC. Under the contracts CBT was to provide: infrastructure; cameras, camera control and personnel; labor; videotape; and support systems. An invoice dated October 16, 1996, for \$408,875 represented the Committee's portion of the cost. The amount was a "50/50" split with GOP-TV, of charges totaling \$817,750. According to the Committee,

the split was based on charges for equipment and personnel used by Nash, in cooperation with the Committee, to produce, edit and air the Convention Within the Convention, and to supply local feeds accessible to news services covering the convention. The Committee wired CBT \$408,875, on October 18, 1996. The RNC paid the remaining amount between January 9, 1996, and September 29, 1996. The Committee could not provide the Audit staff with information to demonstrate why the remaining \$1,024,074 (\$1,841,824-\$817,750) did not require allocation between the Committee and the RNC. Rather, the Committee referred us to Counsel for the RNC.

On March 10, 1997, the Audit staff received documentation from the RNC containing a revised cost analysis for the \$817,750 that was allocated. This revised cost analysis itemized an additional \$8,101 in services and equipment allocated to the Committee but paid by the RNC. Counsel from the RNC stated they were billing the Committee for this additional amount. To date, the Committee's FEC reports have not acknowledged this liability to the RNC.

In addition, Counsel from the RNC supplied documentation for \$88,456 of the unallocated \$1,024,074 showing that the costs had been incurred by Nash. These costs included such items as: COA Speaker Rehearsals, COA Parliamentary Session, Fiber Optic Cable for COA, and COA Youth Rehearsal. As stated above, CBT has been paid in full, and therefore the RNC is currently seeking reimbursement from Nash through the Host Committee.(Finding II.A.1.c.) Finally, KUSI, a local San Diego television station, reimbursed the RNC \$22,000 for utilization of CBT broadcast facilities and personnel. In the opinion of the Audit staff, this amount represents a reduction in the unallocated costs. According to Counsel from the RNC, the remaining CBT amount, \$913,618 (\$1,024,074 - (\$88,456+ \$22,000)) represents the editing and production costs associated with programs aired during the convention. These programs included those paid for by the Committee. No documentation to support that contention has been provided.

In summary, with the exception of the costs allocated to Nash, the RNC paid all the production and editing costs associated with the convention television programs. As noted above, however, the Committee paid for the air time to broadcast most of these programs. It is the opinion of the Audit staff that the total cost of these programs includes not only the air time cost, but the associated production and editing costs as well. Under the Commission's regulations, a convention expense is any expense incurred by or on behalf of a convention committee with respect to and for the purpose of conducting a convention (11 CFR §9008.7(a)(4)). Since the programs at issue were about the convention and its related activities, and in large part broadcast by the Committee, the associated editing and production costs for the programs are convention expenses. Thus, the Committee should have paid for a portion of the production and editing costs for the convention television programs. The Audit staff notes that the actual costs for producing and editing each of the convention related segments is not ascertainable from the records reviewed. Absent such information, the Audit staff believes that a reasonable allocation may be based upon the air time costs allocated to the RNC and

the Committee. This allocation formula reflects not only the fact that there were production and editing costs associated with each of the shows, but it is also reflective of the potential impact that the RNC and the Committee hoped to gain from their respective programs. Using this method of allocation, the ECM concluded that the Committee should have paid 89% of the production and editing costs at issue, or \$1,169,809 (\$1,314,392 x 89%), and that the amount was a in-kind contribution from the RNC. This allocation assumed the broadcast on the USA Network should have been paid by the Committee.

The Audit staff recommended in the ECM that the Committee demonstrate that payments to Creative Broadcast Techniques, Inc. by the RNC were not convention expenses. Absent such a demonstration, the Audit staff stated that it would recommend that the Commission determine \$1,177,910 (\$1,169,809+\$8,101<sup>12</sup>) is repayable to the United States Treasury and that the Committee would be required to itemize this in-kind contribution on an amended disclosure report.

In response to the ECM, the Committee did not agree with the Audit staff's allocation of production costs.

The Committee submitted an affidavit from Patrice Geraghty, the Director of Broadcast and Executive Producer for GOP-TV. The affidavit details how it was determined that the Committee would need 14 cameras and crews to televise the basic feed for the convention. These cameras and crews were used by Nash to provide the "basic feed" on a take it or leave it basis to GOP-TV as well as other commercial and cable television networks. Nash provided the necessary technical personnel to produce the images captured by the 14 cameras and crews (see finding II.A.1.c. above). Ms. Geraghty also states that it was estimated that GOP-TV would need 25 cameras to produce the same feed as well as other segments, interviews, and coverage in its anchor booth, similar to other television networks.

With respect to the allocation of the cost of the CBT contract, Ms. Geraghty states that:

It is standard in the industry to allocate equally the production costs of jointly used services and facilities. In a situation such as the 1996 Republican National Convention in which GOP-TV and COA were sharing some, but not all, cameras, it is acceptable to allocate costs based on camera usage. Because only 14 of the 25 cameras and crews provided by CBT were shared with the COA, the COA was allocated 50% of the costs of the 14 cameras and crews.

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<sup>12</sup> The ECM noted that if the \$8,101 was paid to the RNC, the amount would not be considered an in-kind contribution. The Committee's response to the ECM makes no mention of this transaction.



That is COA was allocated 50% of 14/25ths -- or 28% -- of the total cost of the CBT contract.

As at prior conventions, COA was responsible for providing the live basic feed of events happening on the podium. Using 14 cameras stationed around the Convention Center, COA provided continuous sound and picture to all the networks covering the convention.. Unlike any network, however, COA exercised no editorial judgments about which of the 14 cameras would be used for a particular shot; nor did it exercise any discretion to interrupt the continuous coverage at the podium. In short, COA provided the continuous picture and sound feed from 14 cameras operating in the convention hall to the networks on a take it or leave it basis. It was up to each network to determine which events from the podium it wanted to cover, which camera angles it would use, and when to interrupt the basic feed for interviews, editorial commentary, or commercial messages.

When the 28% allocation ratio is applied to the Committee's \$1.758 million cost figure,<sup>13</sup> the resulting allocation is only \$73,770 less than the amount that the Committee paid. The Committee concedes that \$73,770 is owed to the RNC.

The Audit staff does not dispute that under the CBT contract, that 25 cameras and crews were provided or that 14 of those 25 were used to provide the take it or leave it feed to all broadcasters that were airing convention coverage, including GOP-TV. However, the Committee's allocation of all production costs using those cameras as the allocator is seriously flawed.

First, Ms. Geraghty's statement that this is a standard industry practice is not supported with any example of a situation where the practice was followed. Rather, she states that she has been involved with projects where joint production costs have been allocated but not how the specific allocation was done. Further, the 25 cameras fall into two distinct groups. First, the 14 used to produce the unedited basic feed that consisted of continuous images from some or all of the cameras. The production and direction of the images covered by those cameras was provided by Nash. Second, the remaining 11 cameras that were used to produce the finished programs aired by the Committee and the RNC. The production costs of those programs included

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<sup>13</sup> This total cost figure appears in the Committee's response but differs from the \$1.841 million amount provided by the Committee at the time of the ECM. The response indicates that the difference is charges which GOP-TV disputes. The response does not contain enough information to evaluate the disputed amounts.

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the services of producers, directors, editors and other paid professionals. Therefore, it is not reasonable to allocate the CBT contract equally over the 25 cameras.

Second, there is no explanation why it is reasonable to allocate the cost that the Committee has associated with the 14 basic feed cameras between the Committee and the RNC, but not any of the other users of the feed. Ms. Geraghty notes that "COA used the 14 cameras that it shared with GOP-TV to produce a 'basic feed' of convention coverage. This basic feed was made available to the networks, and to GOP-TV, on a 'take it or leave it basis.' This basic feed consisted of continuous images generated from up to all fourteen of the cameras COA used. It is my understanding that COA made available all fourteen camera feeds for the networks' own editorial decision making." Therefore, GOP-TV was just one of many users of the basic feed, but the only one to pay for a portion of the cost. Naturally if the Committee had not provided the basic feed, GOP-TV would have needed to place its own cameras, but so would each of the networks that covered the convention. This was apparently not acceptable to the Committee so, as it has done in the past, the basic feed was provided. The staff concluded that the cost of the basic feed is a convention expense to be borne by the Committee, not the Committee and only one of the many users. In a memorandum from Toni Tury, Managing Director of GOP-TV, to RNC counsel, dated March 10, 1997, the cost of the basic feed is shown at \$833,345. The Committee paid \$408,875. In the opinion of the staff the remaining \$424,470 is a contribution from the RNC to the Committee.

Third, the Committee has not established why none of the cost of the remaining 11 cameras was a convention expense. The main purpose of using the 11 remaining cameras was to televise 11 hours of convention activity over the Family Channel. During the fieldwork the Committee provided one two hour videotape of what was broadcast on the Family Channel on August 12, 1996. For this one program, the Committee appeared to be using the basic feed and all 11 of the other cameras. A large majority of the convention coverage the Committee associates with the cost of the 11 cameras was broadcast by the Committee. This is true whether viewed in terms of air time cost or in terms of broadcast hours. The most significant project in both cost and total hours of coverage was the 11 hours of coverage on the Family Channel. Of those hours, 10 were paid for by the Committee as a convention expense, yet the Committee does not recognize any of the production costs as a convention expense. If the Committee's allocation method were to be used to divide the production cost between the two entities, it would be done on a 50/50 bases since the cameras were shared. The result would be to allocate the same cost to the one hour broadcast by the RNC as to the 10 hours broadcast by the Committee. This would clearly not be a reasonable allocation.

Finally, there were a number of items that would have required additional cameras and crews that are not in the Committee's allocation or in the Audit cost figure. For example, there were tapes of the Austin Street Shelter in Dallas, Texas, tapes of delegates Rosario Marin and Frank Taylor, and Governor Bush with school children, apparently filmed in Texas. On the August 13 Sunrise program there was

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a report on welfare reform in Flint, Michigan and Youth Crime in Harrisburg, Pennsylvania and Rural Retreat, Virginia. On the August 14 Sunrise program there was a segment on tax reform from Dotterweich, New Jersey. The Committee did not present any information on who paid for the production of these reports. However, it would have involved more then the 25 cameras used in San Diego.

The Committee's calculation, although supporting the amount of the CBT contract it paid, is not a reasonable allocation. Further, information to allow the Audit staff to perform a more precise allocation has not been provided. The calculation shown below was recommended by the staff to determine the Committee's share of the CBT contract cost. First, the cost of the basic feed produced by Nash using 14 of the CBT cameras and crews was considered to be a Committee expense. That cost is \$833,345, of which the Committee paid \$408,875. The remaining amount (\$986,479) is the cost of producing the programs aired by the Committee and the RNC, and was allocated by the staff based on the air time cost as was done in the ECM. In our opinion, this reflects that not all broadcast outlets are similarly priced and that prices for time on the same outlet vary depending upon the time of day. This pricing structure, in turn, presumably is reflective of the anticipated audience to be reached. The calculation is as follows:

Total Amount Billed By CBT	\$1,841,824
Less:	
Reimbursement from KUSI-TV	22,000
Cost of the "Basic Feed"	<u>833,345</u>
Net Contract Price	986,479
Times Cost Ratio	<u>89%</u>
Committee Cost Allocation	877,966
Plus:	
Amount for "Basic Feed" Paid by the RNC	<u>424,470</u>
In-Kind Contribution From RNC as as recommended by staff	<u>\$1,302,436</u>

The staff recommended that the Commission determine \$1,302,436 was repayable to the United States Treasury and that the Committee was required to itemize this in-kind contribution on an amended disclosure report.

The Commission considered this recommendation on April 16, 1998. A motion to determine that \$1,154,464 was repayable (the staff recommendation adjusted to use a 74% cost ratio instead of 89%) failed 3-2. Similarly, a motion to determine that \$424,470 representing a portion of the cost of providing the

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**"basic feed" was an impermissible RNC expense failed 3-2. See Attachment 1, page 4, items 6 and 7. Further, the Commission determined that the basis for allocating the remaining production costs should be broadcast hours rather than air time costs. That ratio is 74% allocable to the Committee and 26% allocable to the RNC after considering the determination on the USA Network in section II.A.2. above<sup>14</sup>. Applying this allocation ratio to the Net Contract Price shown above produces an in-kind contribution amount of \$729,994. The Commission determined that the Committee is required to repay that amount to the United States Treasury. (See Attachment 1 page 4, items 6 through 8. for a copy of the certification of the Commission's votes)**

3. **In-Kind Contribution-Promotional Considerations**  
**Mitsubishi Consumer Electronics America, Inc.**

Sections 9008.9 (b)(1) and (4) of Title 11 of the Code of Federal Regulations state, in part, a commercial vendor may provide goods or services in exchange for promotional consideration provided that doing so is in the ordinary course of business. Also the convention committee shall maintain documentation showing: the goods or services provided; the date(s) on which the goods or services were provided. the terms and conditions of the arrangement; and what promotional consideration was provided.

On July 10, 1996, Mitsubishi Consumer Electronics America, Inc.(MCEA) entered an agreement with the Committee to provide services and equipment worth \$660,000 in exchange for being designated the "Official Supplier of Video Monitors." MCEA provided the Committee with electronic viewing screens , projection televisions, tube televisions, video cassette recorders and laser disk players. According to the agreement, these services are consistent standard practices for MCEA and are provided in the ordinary course of business pursuant to Section 9008.9.

On December 17, 1996, the Audit staff requested information pertaining to any lost or stolen equipment associated with MCEA. After repeated requests, on February 7, 1997, the Committee supplied a letter from MCEA itemizing \$35,192 of unaccounted for equipment. The Committee stated MCEA was not pursuing reimbursement for the lost equipment. The Audit staff requested the Committee to obtain a letter from MCEA explaining that the waiver of claims for lost equipment was in the normal course of business. A similar letter was supplied by another vendor with lost equipment.

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<sup>14</sup> Had the Commission accepted the staff recommendation concerning the USA Network broadcasts, both the air time dollar allocation method recommended by the staff and the broadcast hours method adopted by the Commission would have produced the same 89% Committee/11% RNC ratio. However, after the Commission's decision on the USA Network, the air time dollar ratio would have been 83% Committee/17% RNC, as opposed to the 74% Committee/26% RNC ratio for the broadcast hours method.

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Committee officials stated MCEA had complete control over the equipment, therefore were responsible for the security of the equipment. However, according to the agreement signed by both parties, the Committee was to "use its best efforts to provide for the reasonable security of the above referenced equipment."

Based on this agreement, the \$35,192 of lost equipment was the Committee's responsibility. Therefore, it was the opinion of the Audit staff, that absent the requested letter from MCEA, the amount was an in-kind contribution.

The Audit staff recommended in the ECM that the Committee provide a letter from MCEA demonstrating the \$35,192 of lost equipment, was part of the promotional consideration provided.

In response to the ECM, the Committee submitted an affidavit from Jack Osborn who was the President of MCEA at the time MCEA entered into an agreement with the 1996 Republican National Convention to provide television equipment in exchange for a promotional consideration. He states that he expected some damage, loss, or theft of equipment associated with that large of an amount of equipment either at a political or non-political event. The losses of approximately \$35,000 would not be unexpected.

The staff recommended no further action on this matter and the Commission concurred. (See Attachment 1, page 5 for a copy of the certification of the Commission's vote)

#### Summary of In-kind Contributions

Host Committee (II.A.1.c.)	\$892,489
Republican National Committee (II.A.2.b.)	<u>729,994</u>
Total	<u>\$1,622,483</u>

#### **B. DETERMINATION OF NET OUTSTANDING CONVENTION EXPENSES AND AMOUNTS SUBJECT TO THE SPENDING LIMITATION**

Section 9008(b)(1) of Title 26 of the United States Codes states, subject to the provisions of this section, the national committee of a major party shall be entitled to payments under paragraph (3), with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed \$4,000,000.

Section 9008.5(b) of Title 11 of the Code of Federal Regulations, states the entitlements established by 11 CFR §9008.4 shall be adjusted so as not to exceed the difference between the expenditure limitations of 11 CFR §9008.8(a) and the amount of

private contributions received under 11 CFR §9008.6(a) by the national committee of a political party. Except as provided in 11 CFR §9008.12(b)(7), in calculating these adjustments, amounts expended by Government and municipal corporations in accordance with 11 CFR §9008.53, in-kind donations by businesses to the national committee or convention committee in accordance with 11 CFR §9008.9; expenditures by host committees in accordance with 11 CFR §9008.52; expenditures to participate in or attend the convention under 11 CFR §9008.8(b)(2); and legal and accounting services rendered in accordance with 11 CFR §9008.8(b)(4) will not be considered private contributions or expenditures counting against the limitation.

Section 9008.8(a)(1) of Title 11 of the Code of Federal Regulations, in part, states the national party committee of a major party may not incur convention expenses with respect to a Presidential nominating convention which, in the aggregate, exceed the amount to which such committee is entitled under 11 CFR §§9008.4 and 9008.5.

Section 9008.8(b)(1) of Title 11 of the Code of Federal Regulations states expenditures made by the Host Committee shall not be considered expenditures by the national committee and shall not count against the expenditure limitations of this section provided the funds are spent in accordance with 11 CFR §9008.52.

In addition, 11 CFR §9008.8(b)(2) states expenditures made by government agencies and municipal corporations shall not be considered expenditures by the national committee and shall not count against the expenditure limitations of this section if the funds are spent in accordance with the requirements of 11 CFR §9008.53.

Section 9008.10(g) of Title 11 of the Code of Federal Regulations states, in part, a convention committee shall file, no later than sixty days after the last day of the convention, a statement of that committee's net outstanding convention expenses.

Section 9008.12(c) of the Title 11 of the Code of Federal Regulation states the Commission will follow the same repayment determination procedures, and the committee has the same rights and obligations as are provided for repayment determinations involving publicly funded candidates under 11 CFR §9007.2(c) through (h).

The 1996 Republican Convention ended on August 15, 1996. The Committee filed a Statement of Net Outstanding Convention Expenses (NOCE), as of September 30, 1996. The Audit staff reviewed the Committee's financial activity through April 31, 1998, analyzed winding down costs, and prepared the statement shown below.

**1996 COMMITTEE ON ARRANGEMENTS  
FOR  
THE REPUBLICAN NATIONAL CONVENTION**

**STATEMENT OF NET OUTSTANDING COMMITTEE EXPENSES**

As of September 30, 1996

As Dated at August 26, 1997

**ASSETS**

Cash on Hand	\$3,919	
Cash in Bank	1,736,881	
Accounts Receivable:	93,750	
Capital Assets	<u>0</u>	
<b>Total Assets</b>		<b>\$1,834,550</b>

**OBLIGATIONS**

Accounts Payable for Convention Expenses	\$1,054,655	
Winding Down Costs		
8/16/96-3/31/98: Actual	417,226	
4/1/98 and later: Estimated	512,829 (a)	
In-Kind Contributions	<u>\$1,622,483</u>	
<b>Total Obligations</b>		<b><u>\$3,607,193</u></b>

**NET OUTSTANDING CONVENTION EXPENSES** **(\$1,772,643)**

**FOOTNOTES TO NOCE**

- (a) Estimates were used in computing this amount. The Audit staff will review the Committee's disclosure reports and records to compare the actual figures with the estimated figures and prepare adjustments as necessary.

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The Net Outstanding Convention Expenses amount of (\$1,772,643) represents convention expenses incurred in excess of the spending limitation. The majority of this amount consists of the in-kind contributions discussed in Section II.A. above (\$1,622,483). The remaining \$150,160 is convention expenses and estimated winding down costs incurred in excess of the limitation. The winding down cost estimate was provided by the Committee. The Committee asserts that if the winding down costs exceed the Federal grant, it will raise funds for the 1996 Committee on Arrangements For The Republican National Convention Compliance Fund (Compliance Fund). Sections 9008.8(b)(4)(i) and 9008.8(b)(4)(ii)(B) of Title 11 of the Code of Federal Regulations state, in part, that the payment of compensation for legal and accounting services rendered to or on behalf of the national committee shall not be considered an expenditure and shall not count against the expenditure limitation. Contributions may be raised to pay for the legal and accounting services, however they must comply with the limitation and prohibitions of 11 CFR Parts 110, 114, and 115 and are subject to the national party's annual \$20,000 contribution limitation from individuals and \$15,000 limitation from multi-candidate political committees. As of May 1, 1997, the Compliance Fund, had reported no receipts, or disbursements. Until such time as funds are raised and the Committee is reimbursed for compliance costs, those costs are included among convention expenses and subject to the spending limitation.

On April 23, 1998, the Commission determined that \$150,160 is repayable to the United States Treasury. (See Attachment 1, page 8, item 7, for a copy of the certification of the Commission's vote)

**C. SUMMARY OF AMOUNTS DUE TO THE U.S. TREASURY<sup>15</sup>**

**Expenditures In Excess of the Spending Limitation**

Finding II.A. In-kind Contributions	\$1,622,483
Finding II.B. Estimated Winding Down Costs	<u>150,160</u>
<b>Total</b>	<b><u>\$1,772,643</u></b>

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<sup>15</sup> In the Audit Report on the Host Committee there was a finding that included a discussion as to whether the City of San Diego's City Events Fund engaged in transactions that did not comply with the Commission's regulation at 11 CFR §9008.53. The Audit Division does not have any information that shows that the Committee knowingly participated or assisted the City of San Diego's City Events Fund in these transactions such that the Committee would owe a repayment to the United States Treasury. 11 CFR. §9008.12(b)(7).



BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
San Diego Host Committee/Sail ) Agenda Document #97-83  
to Victory San Diego '96. )

CERTIFICATION

I, Mary W. Dove, recording secretary for the Federal Election Commission open meeting on Thursday, January 22, 1998, do hereby certify that the Commission decided by a vote of 5-0 to take the following action on the above-captioned matter:

Allow the amount of \$44,067, under the category of II. B. AT&T, as set forth on pages 9 and 10 of Agenda Document #97-83, as an expense of the San Diego Host Committee/Sail to Victory San Diego '96.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

January 23, 1998  
Date

Mary W. Dove  
Mary W. Dove  
Administrative Assistant

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) Agenda Documents No. 97-84  
 Committee on Arrangements for ) and No. 97-84-A  
 the 1996 Republican National )  
 Convention. )

AMENDED CERTIFICATION

I, Mary W. Dove, recording secretary for the Federal Election Commission open meeting on Thursday, April 16, 1998, do hereby certify that the Commission took the following actions on the above-captioned matter:

1. Decided by a vote of 4-1 to allow the amount of \$133,225 for security access badges and that this amount be deducted from the total repayment to the United States Treasury by the Committee on Arrangements, as set forth in Recommendation #1 of Agenda Document No. 97-84.

Commissioners Aikens, Elliott, McDonald, and McGarry voted affirmatively for the decision; Commissioner Thomas dissented.

2. Failed in a vote of 3-2 to pass a motion to approve Recommendation #1, as set forth in Agenda Document No. 97-84, as amended.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Aikens and Elliott dissented.

(continued)

CONFIDENTIAL

Federal Election Commission  
Certification for Committee on  
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Page 2

3. Decided by a vote of 5-0 to determine that the amount of \$70,000 for the Russell Film Shoot was an in-kind contribution by the Host Committee to the Committee on Arrangements and is repayable to the United States Treasury. In addition, the Committee should file an amended disclosure report and itemize this in-kind contribution.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

4. Decided by a vote of 5-0 to determine that the amount of \$138,442 for remote shoots was an in-kind contribution by the Host Committee to the Committee on Arrangements and is repayable to the United States Treasury. In addition, the Committee should file an amended disclosure report and itemize this in-kind contribution.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

5. Decided by a vote of 5-0 to reject Recommendation #2, as set forth in Agenda Document No. 97-84.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

(continued)

SHANNON LINDSAY

Federal Election Commission  
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Page 3

6. Failed in a vote of 3-2 to pass a motion to approve Recommendation #3, as set forth in Agenda Document No. 97-84, as amended to reflect the amount of \$1,154,464 is repayable to the United States Treasury.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Aikens and Elliott dissented.

7. Failed in a vote of 3-2 to pass a motion to determine that \$424,470 (amount for "Basic Feed" Paid by the RNC) is repayable to the United States Treasury, and that the Committee should file an amended disclosure report to itemize this as an in-kind contribution.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for this motion; Commissioners Aikens and Elliott dissented.

8. Decided by a vote of 4-1 to pass a motion to approve a repayment determination by the Committee on Arrangements of \$729,994, based on a 74% cost ratio, for production costs.

Commissioners Elliott, McDonald, McGarry, and Thomas voted affirmatively for this decision; Commissioner Aikens dissented.

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Page 4

9. Decided by a vote of 5-0 to pass a motion to approve Recommendation #4, as set forth in Agenda Document No. 97-84.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for this decision.

Attest:

April 30, 1998  
Date

Mary W. Dove  
Mary W. Dove  
Administrative Assistant

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Documents No. 97-84,
Committee on Arrangements for	)	No. 97-84-A, No. 97-84-C,
the 1996 Republican National	)	and No. 97-84-D.
Convention.	)	

AMENDED CERTIFICATION

I, Mary W. Dove, recording secretary for the Federal Election Commission open meeting on Thursday, April 23, 1998 do hereby certify that the Commission took the following actions on the above-captioned matter:

1. Decided by a vote of 5-0 to determine that the amount of \$156,399, categorized as "Decorations/Music", was an in-kind contribution by the Host Committee to the Committee on Arrangements and is repayable to the United States Treasury. In addition, the Committee should file an amended disclosure report and itemize this in-kind contribution.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

2. Failed by a vote of 3-2 to pass a motion to determine that the amount of \$528,610 for lighting and rigging was an in-kind contribution by the Host Committee to the Committee on Arrangements and is repayable to the United States Treasury. In addition, the Committee should file an amended disclosure report and itemize this in-kind contribution.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Aikens and Elliott dissented.

(continued)

WILSON'S UNIFORMS

Federal Election Commission  
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Page 2

3. Decided by a vote of 4-1 to determine that the amount of \$141,907 for closed circuit television expenses was an in-kind contribution by the Host Committee to the Committee on Arrangements and is repayable to the United States Treasury. In addition, the Committee should file an amended disclosure report and itemize this in-kind contribution.

Commissioners Aikens, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented.

4. Decided by a vote of 4-1 to determine that the amount of \$22,416 relating to entertainment expenses in the Sail Area was an in-kind contribution by the Host Committee to the Committee on Arrangements and is repayable to the United States Treasury. In addition, the Committee should file an amended disclosure report and itemize this in-kind contribution.

Commissioners Aikens, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented.

5. Decided by a vote of 4-1 to determine that the amount of \$177,732 representing payments to producers, directors, and production staff was an in-kind contribution by the Host Committee to the Committee on Arrangements and is repayable to the United States Treasury. In addition, the Committee should file an amended disclosure report and itemize this in-kind contribution.

Commissioners Aikens, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented.

(continued)

EXHIBIT 1000-1000-1000

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Page 3

- 6. Decided by a vote of 4-1 to determine that the amount of \$87,638 for miscellaneous expenses associated with television production was an in-kind contribution by the Host Committee to the Committee on Arrangements and is repayable to the United States Treasury. In addition, the Committee should file an amended disclosure report and itemize this in-kind contribution.

Commissioners Aikens, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented.

- 7. Decided by a vote of 4-1 to approve Recommendation #5, as set forth on Page 47 of Agenda Document No. 97-84.

Commissioners Aikens, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented.

Attest:

April 30, 1998  
Date

Mary W. Dove  
Mary W. Dove  
Administrative Assistant

97-84-99-99



**ALLOCATION OF NASH CONTRACT**

Based On Commission Votes of April 16 and 23, 1998

Acct No	Nash Line Item Descriptions	Nash Total	Lighting/Rigging		Decorations/Music		Labor/Equipment Closed Circuit TV		Set Area		Overhead		Miscellaneous		Indirect Cost	
			Host	COA	Host	COA	Host	COA	Host	COA	Host	COA	Host	COA	Host	COA
2002	Co-Producer	\$60,000						\$40,000 7/	\$20,000							
2003	TV Producer	\$50,000						\$18,750 7/			\$25,000 7/		\$6,250 7/			
2100	Directors	\$39,016						\$39,016 7/								
2300	Travel And Living Production Staff	\$34,888													\$5,112	\$29,855
3001	Prod. Coord.	\$5,570									\$5,570 7/					
3002	Prod. Acct.	\$15,000									\$15,000 7/					
3003	Stage Mngr	\$8,438						\$8,438 7/								
3004	Staging Super.	\$38,500	\$38,500													
3005	Prod. Mngr	\$22,790	\$22,790													
3006	Script Super.	\$8,442						\$8,442 7/								
3007	Prod. Asst.	\$8,163						\$8,163 7/								
3100	Music/Orchestra	\$49,032				\$49,032 3/										
3200	Rigging/Staging Labor	\$540,345	\$528,610 4/					\$11,735 5/								
3600	Special Effects	\$77,595				\$77,595 3/										
4000	Makeup/Hairdressing	\$3,000						\$3,000 5/								
4201	Video Crew Labor	\$62,102						\$56,781 5/				\$5,321				
4208	Tape Stock	\$200						\$200 5/								
4209	Scrn. Cont. Mbl.	\$90,511						\$90,511								
4210	Satellite	\$73,748											\$73,748 8/			
4211	Remote Prod.*	\$138,442											\$138,442 2/			
4215	Teleprompter	\$56,651						\$56,651								
4308	Sound Operations	\$5,250						\$5,250 5/								
4400	Transportation Location	\$10,844													\$5,084	\$5,559
4501	Trans. Fares	\$21,788													\$6,858	\$14,831
4502	Hotels/Motels	\$73,864													\$39,204	\$34,659
4503	Catering	\$23,810													\$14,174	\$9,436
4508	Office Exp.	\$8,819													\$4,504	\$4,315
4507	Tele./Telegraph	\$2,241													\$902	\$1,339
4511	Per Diems	\$61,055													\$31,833	\$29,422
4800	Video Segment	\$174,749											\$174,749			
4800	Editing	\$5,885											\$5,885			
5300	Main & End Titles	\$28,684				\$28,684 3/										
7500	Fees	\$3,709													\$2,183	\$1,546
8001	Entertainer Exp.	\$213													\$213 8/	

**ALLOCATION OF NASH CONTRACT**  
Based On Commission Votes of April 16 and 23, 1998

Accl No	Nash Line Item Descriptions	Nash Total	Lighting/Rigging		Decorations/Music		Labor/Equipment Closed Circuit TV		Sell Area		Overhead		Miscellaneous		Indirect Cost		
			Host	COA	Host	COA	Host	COA	Host	COA	Host	COA	Host	COA	Host	COA	
8002	Operations	\$56,354														\$42,773	\$13,981
8003	Runners	\$8,667														\$5,054	\$3,613
8004	Sell Area	\$145,299							\$145,299								
8009	Sell Entertainment	\$18,935								\$18,935 6/							
8010	Entertain. Coord.	\$3,481								\$3,481 6/							
8011	Continuity Writer	\$10,000												\$10,000 8/			
8005	Announcer	\$988												\$988 8/			
8006	Conv. Mng. Shoot	\$1,220											\$1,220				
8007	Russel Shoot	\$70,000												\$70,000 1/			
8008	Tape Coordinator	\$7,808						\$7,808 5/									
8012	Stand Ins	\$2,691												\$2,691 8/			
8999	WindDown & Audit	\$40,842														\$23,017	\$17,029
	<b>Total</b>	<b>\$2,163,084</b>	<b>\$589,900</b>	<b>\$0</b>	<b>\$0</b>	<b>\$153,311</b>	<b>\$147,162</b>	<b>\$203,581</b>	<b>\$165,299</b>	<b>\$22,416</b>	<b>\$0</b>	<b>\$45,570</b>	<b>\$106,955</b>	<b>\$302,330</b>	<b>\$181,278</b>	<b>\$185,281</b>	

Total COA **\$852,489**  
Total Host **\$1,270,595**  
Grand Total **\$2,163,084**

\* Also includes #9000-Russel, #10000-Sacramento, #11000-San Diego, #12000-Dole Live, #13000-Fon Du Lac, and #14000-Miami.

- 1/ April 16, 1998 Vote Item 3 on the Vote Certification
- 2/ April 16, 1998 Vote Item 4 on the Vote Certification
- 3/ April 23, 1998 Vote The sum of these amounts (\$153,311) plus \$3,088 in the Indirect Cost column (\$2,795 Trans. Fares, and \$293 Hotels/Motels) equal \$156,399. Item 1. on the Vote Certification.
- 4/ April 23, 1998 Vote Item 2. on the Vote Certification
- 5/ April 23, 1998 Vote The sum of these amounts (\$84,772) plus \$57,136 in the Indirect Cost column (\$2,652 in Transportation, \$7,969 in Trans. Fares, \$29,644 in Hotels/Motels, and \$16,851 in Per Diems) equal \$141,908. Item 3 on the Vote Certification
- 6/ April 23, 1998 Vote The sum of these amounts is \$22,416 Item 4 on the Vote Certification.
- 7/ April 23, 1998 Vote The sum of these figures is \$170,629 This amount is \$177,732 less a correction documented by the Committee after the Commission's vote. This vote is Item 5. on the Vote Certification.
- 8/ April 23, 1998 Vote The sum of these amounts is \$87,638 Item 6 on the Vote Certification



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Nov 19 10 57 AM '97

November 19, 1997

**MEMORANDUM**

TO: Robert J. Costa  
Assistant Staff Director  
Audit Division

THROUGH: John C. Surina  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

Kim L. Bright-Coleman  
Associate General Counsel

Lorenzo Holloway  
Assistant General Counsel

J. Duane Pugh Jr.  
Attorney

SUBJECT: Proposed Audit Report on the Committee on Arrangements for  
the 1996 Republican National Convention (LRA 472)

The Office of General Counsel has reviewed the proposed Audit Report on the Committee on Arrangements for the 1996 Republican National Convention (the "Committee on Arrangements"), which was submitted to this Office on October 17, 1997 on an expedited basis.<sup>1</sup> This memorandum presents our comments on the proposed Audit Report.<sup>2</sup> Some of the issues discussed in the proposed Audit Report and herein overlap with issues in the proposed Audit Report on the San Diego Host Committee/Sail to

<sup>1</sup> The proposed Audit Report provided is an unreferenced report. As the Audit Division noted, changes may be made as the proposed Audit Report is referenced.

<sup>2</sup> Because the proposed Audit Report concerns the audit of a convention committee, we recommend that the Commission consider this document in open session in accordance with 11 C.F.R. §§ 9008.11, 9007.1(e)(1) and 9038.1(e)(1).

Victory San Diego '96 (the "Host Committee").<sup>3</sup> Some of our comments on the Host Committee proposed Audit Report have an impact on the Committee on Arrangements proposed Audit Report, but those comments will not be repeated here.<sup>4</sup> Nonetheless, the Committee on Arrangements proposed Audit Report should be changed to reflect the applicable comments on the Host Committee proposed Audit Report.

We concur with the findings in the proposed Audit Report that are not addressed in this memorandum. If you have any questions concerning our comments, please contact Duane Pugh, the attorney assigned to this review.

**I. IN-KIND CONTRIBUTIONS FROM THE HOST COMMITTEE AND THE CITY OF SAN DIEGO (II, A, 1, a through c)<sup>5</sup>**

The proposed Audit Report concludes that the Host Committee expended a total of \$2,226,700 for purposes not permitted under 11 C.F.R. § 9008.52(c).<sup>6</sup> Except as noted in Part I of this Office's comments on the Host Committee proposed Audit Report, this Office concurs with the conclusion that the Host Committee expenditures at issue were not among those permitted by 11 C.F.R. § 9008.52(c)(1).

Pursuant to 11 C.F.R. § 9008.8(b)(1), host committee expenditures that are made in accordance with 11 C.F.R. § 9008.52 shall not be considered convention committee expenditures and shall not count against the convention committee's expenditure limit of 11 C.F.R. § 9008.8(a)(1). Conversely, host committee expenditures that are not permitted by 11 C.F.R. § 9008.52 may be considered convention committee expenditures subject to the expenditure limitation in 11 C.F.R. § 9008.8(a)(1). Pursuant to 11 C.F.R. § 9008.12(b)(3), the Commission may seek a repayment from a convention committee if it determines that the convention committee accepted contributions to defray convention expenses which, when added to the amount of payments received, exceeds its expenditure limitation. However, the Commission may seek a repayment only if the convention committee knowingly helped or participated in the host committee's expenditure that is not in accordance with 11 C.F.R. § 9008.52 or its acceptance of a contribution from an impermissible source. See 11 C.F.R. § 9008.12(b)(7). The *Explanation and Justification* for 11 C.F.R. § 9008.12(b)(7) confirms that a convention committee must be shown to

<sup>3</sup> Because of this overlap and because the resolution of some of the issues in the audit of the Host Committee may result in repayments from Committee on Arrangements pursuant to 11 C.F.R. § 9008.12, the responses of both Committees are considered herein.

<sup>4</sup> The proposed Audit Report for the Host Committee was submitted to this Office on September 30, 1997 and is also being reviewed on an expedited basis.

<sup>5</sup> Parenthetical references are to the relevant section of the proposed Audit Report.

<sup>6</sup> The \$2,226,700 total comprises three major expenditures: \$133,225 for badges, \$44,067 for a voter tabulation system and \$2,049,408 for television production services.

have played a significant role in the host committee or municipal fund's actions before a repayment from the convention committee may be sought, by stating:

In response to the concerns raised, the Commission notes that neither the current nor the revised rules in § 9008.12(b)(7) impose strict or vicarious liability on convention committees for the actions taken by cities or host committees. Instead, convention committees are accountable for the actions of cities or host committees when they knowingly help or assist or participate in conducting impermissible activities, including initiating or instigating the activity.

59 Fed. Reg. 33,613 (June 29, 1994).<sup>7</sup> Thus, convention committees are subject to neither strict nor vicarious liability for host committee or municipal fund actions, but must have knowingly participated in the actions in order for the Commission to seek a repayment from the convention committee.

The proposed Audit Report indicates that evidence exists to show that the Committee on Arrangements knowingly participated in the Host Committee's actions, so we concur in the proposed Audit Report's conclusion that the Committee on Arrangements owes a repayment of these amounts, as modified by our comments on the Host Committee proposed Audit Report. Therefore, this Office recommends that the proposed Audit Report be revised to include a discussion of 11 C.F.R. § 9008.12(b)(7), stating briefly the basis for the conclusion that the Committee on Arrangements knowingly helped, assisted or participated in each of the Host Committee's expenditures that was not in compliance with 11 C.F.R. § 9008.52.<sup>8</sup> The proposed Audit Report on the Committee on Arrangements includes many of the elements for such a showing. For example, the proposed Audit Report states: that the badges were procured pursuant to a contract between the Committee on Arrangements and Weldon, Williams & Lick, Inc. (p. 5); that the Committee on Arrangements assured the Host Committee of the voter tabulation system expenditure's legality (p. 9); and that the services rendered by David J. Nash and Associates, Inc. ("Nash") were pursuant to a contract between the Host Committee and Nash that provided the services would be rendered to the specifications and requirements established by the Committee on Arrangements (p. 11). Additionally, the Audit Division should review available materials for additional information related to the Committee on Arrangements' role in the Host Committees expenditures.

<sup>7</sup> One of the "concerns raised" is described as: "it would be unfair to impose accountability on convention committees when they are unaware of, or do not consent to, the unlawful actions of a host committee or city." 59 Fed. Reg. 33,613 (June 29, 1994).

<sup>8</sup> Since the Host Committee does not owe a repayment, a similar discussion in that Audit Report is not necessary.

## II. ADDITIONAL EXPENSES TO CONSIDER (II, A, 1, d)

The Committee on Arrangements argues that the Commission should offset any impermissible Host Committee expenditures by the approximately \$1.6 million that the Committee on Arrangements expended for purposes that 11 C.F.R. § 9008.52(c) permits the Host Committee to expend funds. The proposed Audit Report rejects this argument, citing the Committee on Arrangements' failure to establish that the expenditures comply with 11 C.F.R. § 9008.52(c).

The Committee on Arrangements' argument raises the question of whether it may be reimbursed by the Host Committee for expenses permitted under 11 C.F.R. § 9008.52(c). Section 9008.8(b)(1) states that "[e]xpenditures made by the host committee" in accordance with 11 C.F.R. § 9008.52 shall not count against the convention committee's expenditure limit. Thus, the regulation clearly exempts expenditures both permitted by 11 C.F.R. § 9008.52 and paid, in fact, by the host committee. However, no regulatory basis exists for exempting expenditures paid by the convention committee from the expenditure limitation in 11 C.F.R. § 9008.8(a)(1), other than expenditures for legal and accounting services pursuant to 11 C.F.R. § 9008.8(b)(4) and for certain computerized information pursuant to 11 C.F.R. § 9008.8(b)(5). The regulations are silent on whether a convention committee may offset its expenditures for expenses a host committee could properly pay for if it receives a reimbursement. Thus, the Committee on Arrangements may not be able to offset the amount subject to the expenditure limitation by the amount of its expenditures for purposes set forth in 11 C.F.R. § 9008.52(c).

## III. SAN DIEGO CONVENTION & VISITORS BUREAU (II, A, 1, e)

The San Diego Convention & Visitors Bureau ("ConVis"), which registered as a host committee,<sup>9</sup> provided the Host Committee with payments totaling \$850,000, and appears to have expended more than \$360,000 in connection with the convention's Young Voter Program. The proposed Audit Report states that the Audit Division has not yet audited ConVis, and the Committee on Arrangements has not provided documents related to ConVis that were requested in its Exit Conference Memorandum. On this basis, the proposed Audit Report declines to state an opinion on the accuracy of the information supplied by the Committee on Arrangements related to ConVis and reserves the right to make "additional recommendations" after ConVis has been audited.

Although ConVis appears to satisfy the criteria for being a "host committee," as defined at 11 C.F.R. § 9008.52(a), it may be that ConVis is actually a government agency

<sup>9</sup> The fact that ConVis stated that it was registering and reporting with the Commission as a Host Committee is not controlling in determining the actual role that ConVis may have had in the 1996 Republican National Convention.

or a municipal corporation that is subject to the provisions of 11 C.F.R. § 9008.53. The available information shows that ConVis was founded in 1954 and is funded, in part, by city and county taxes for the limited purpose of promoting the city of San Diego as a convention and tourist center. In addition to its receipt of tax funds, ConVis's prior and continued existence is a characteristic that is closer to a municipal fund than a host committee. *See* 11 C.F.R. § 9008.53(b)(1) (prohibiting municipal funds from being restricted to provide services for a particular convention and prohibiting donations to the municipal fund that are restricted for use with a particular convention, event or activity); *see also* 59 Fed. Reg. 33,614 (June 29, 1994). *Cf.* 11 C.F.R. § 9008.52 (the absence of such a requirement reflects the single-purpose nature of host committees). Accordingly, if ConVis is a municipal fund, it is not automatically subject to an audit conducted pursuant to 11 C.F.R. § 9008.54 (authorizing audits of host committees only). In any event, this Office recommends that the Audit Division seek the Commission's authorization to review ConVis's receipt and use of funds. Such a review of ConVis may also provide evidence to determine whether it was actually a municipal fund or a host committee.<sup>10</sup>

#### IV. IN-KIND CONTRIBUTIONS FROM THE REPUBLICAN NATIONAL COMMITTEE (II, A, 2, a and b)

The proposed Audit Report concludes that expenses paid by the Republican National Committee (the "RNC") for GOP-TV television programs aired on the USA Network during the convention<sup>11</sup> constitute in-kind contributions to the Committee on Arrangements. This conclusion is based on the proposed Audit Report's analysis that the broadcasts were paid coverage during the convention consisting of convention highlights and segments about individuals appearing at the convention and therefore were convention expenses pursuant to 11 C.F.R. § 9008.7(a)(4).<sup>12</sup>

<sup>10</sup> In the event the Audit Division concludes that any of ConVis's expenditures or acceptance of contributions is not in accordance with 11 C.F.R. § 9008.52 or 11 C.F.R. § 9008.53 and that the Committee on Arrangements participated in ConVis's actions, then the Audit Division may make any appropriate additional recommendations seeking repayment from the Committee on Arrangements pursuant to 11 C.F.R. §§ 9008.12(c) and 9007.2(f).

Based on the explanation of expenditures provided by Mr. Jack Saniga, the Chief Financial Officer of ConVis, which has not been verified by the Audit Division, it appears that some of ConVis's expenditures are for purposes outside those authorized by 11 C.F.R. § 9008.52(c)(1). For example, Mr. Saniga states that ConVis spent \$13,686 for entertainment, \$31,032 for catering services and \$860 for a tour of the Steven Birch Aquarium, none of which appear to comply with 11 C.F.R. § 9008.52(c)(1).

<sup>11</sup> The proposed Audit Report allocates four-fifths of the RNC's \$12,500 expenditure to the four programs that were broadcast during the convention of the five total programs, or \$90,000.

<sup>12</sup> Similarly, the proposed Audit Report concludes that the \$1,418,130 spent by the Committee on Arrangements for television coverage is a convention expense within 11 C.F.R. § 9008.7(a)(4).

The Office of General Counsel concurs with the proposed Audit Report's conclusion. The *Explanation and Justification* for 11 C.F.R. § 9008.7 recognizes that "[g]iven that the convention not only serves as the vehicle for nominating the party's Presidential candidate, but is also used to conduct ongoing party business, the line between convention expenses and party expenses can be a fine one." 59 Fed. Reg. 33,608 (June 29, 1994). Nonetheless, convention-related activity "includes all national committee activity in the convention city except for events clearly separate from the convention, such as fund raising events for the party committees, and meetings of the national committee unrelated to the convention." *Id.* Thus, because the television broadcasts are neither "clearly separate from the convention" nor are they "unrelated to the convention," the broadcasts are convention-related activity under 11 C.F.R. § 9008.7(a)(4).

Furthermore, the Committee on Arrangements describes the television programs with terms associated with news programs. However, the GOP-TV programs do not qualify for the news coverage exemption from the definition of contribution established in 11 C.F.R. § 100.7(b)(2). Section 100.7(b)(2) requires that for news coverage provided by a cable television programmer or producer that is owned or controlled by a political party, the coverage must be, *inter alia*, part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates. Because GOP-TV has not been shown to have given reasonably equal coverage to the 1996 Democratic National Convention, its coverage of the 1996 Republican National Convention constitutes a contribution to the Committee on Arrangements.<sup>13</sup> Therefore, pursuant to 11 C.F.R. § 9008.12(b)(3), the Commission may seek a repayment from the Committee on Arrangements.

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<sup>13</sup> The proposed Audit Report should also note because the GOP-TV coverage failed 11 C.F.R. § 100.7(b)(2)(ii), the proposed Audit Report has not considered whether the GOP-TV coverage complies with 11 C.F.R. § 100.7(b)(2)(i).





FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

June 26, 1998

Mr. Alec Poitevint, Treasurer  
1996 Committee on Arrangements for  
the Republican National Convention  
228 South Washington Street  
Suite 200  
Alexandria, VA 22314

Dear Mr. Poitevint:

Attached please find the Audit Report on the 1996 Committee on Arrangements for the Republican National Convention. The Commission approved this report on June 25, 1998. As noted on page 3 of this report, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR 9008.12(a)(1) and (c), the Commission has made a determination that a repayment to the Secretary of the Treasury in the amount of \$1,772,643 is required within 90 calendar days after service of this report (September 28, 1998).

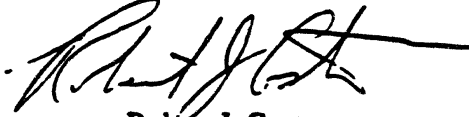
Should the Committee dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9008.12(c) provide the Committee with an opportunity to submit in writing, within 60 calendar days after service of the Commission's notice (August 28, 1998), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. In addition to the submission of written materials the Committee may request an opportunity to address the Commission in open session. The request for an oral hearing should identify the repayment matters that will be addressed and the Committee's presentation must be based on the legal and factual materials submitted.

The Commission will consider any written legal and factual materials submitted within the 60 day period when deciding whether to revise the repayment determination. Such materials may be submitted by counsel. If the Committee decides to file a response to the repayment determination, please contact Kim L. Bright-Coleman of the Office of General Counsel at (202) 219-3690 or toll free at (800) 424-9530. If the Committee does not dispute this determination within the 60 day period provided, it will be considered final.

The Commission approved Audit Report will be placed on the public record on July 6, 1998. Should you have any questions regarding the public release of this report, please contact Ron Harris of the Commission's Press Office at (202) 694-1220.

Any questions you may have related to matters covered during the audit or in the audit report should be directed to Joe Stoltz or Russ Bruner of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,



Robert J. Costa  
Assistant Staff Director  
Audit Division

cc: Bobby R. Burchfield  
Attachment as stated

05-05-98 11:51 AM

**CHRONOLOGY**

**1996 COMMITTEE ON ARRANGEMENTS  
FOR THE REPUBLICAN NATIONAL CONVENTION**

<b>Audit Fieldwork</b>	<b>12/09/96 — 06/25/97</b>
<b>Exit Conference Memorandum to the Committee</b>	<b>06/25/97</b>
<b>Response Received to the Exit Conference Memorandum</b>	<b>09/09/97</b>
<b>Audit Report Approved</b>	<b>6/25/98</b>

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