

1 Thus, the Nash expenses described above totaling \$373,632 (\$26,684 + \$11,735+
2 \$46,773 + \$73,748 + \$138,442 + \$70,000 + \$6,250) were permissible host committee
3 expenditures. As such, they do not represent in-kind contributions that are subject to the
4 Convention Committee's expenditure limitation. Consequently, they are not included in
5 the Repayment Determination upon Administrative Review.

6 **2. Impermissible Host Committee Expenditures**

7 The Commission determines that \$482,111 of Nash's expenses were not
8 permissible host committee expenditures and, therefore, are in-kind contributions that are
9 subject to the Convention Committee's expenditure limit. Given the Convention
10 Committee's role in supervising Nash, and because the Convention Committee received
11 public funds equal to its expenditure limit, the Commission determines that the
12 Convention Committee exceeded its expenditure limit and must therefore repay these in-
13 kind contributions to the United States Treasury.²² The impermissible host committee
14 expenditures at issue can be categorized as belonging to two groups: the first group
15 consists of expenditures to vendors who produced or directed the convention proceedings,
16 and the second group consists of expenditures to vendors who provided content that was
17 used as a portion of the convention proceedings.

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

19 While 11 C.F.R. § 9008.52(c) lists examples of permissible host committee
20 expenditures, the Commission's regulations do not list impermissible host committee
21 expenditures. The purposes listed in section 9008.52(c)(1) and the principal objectives of

²² In addition to the following discussion, the appended chart shows the amounts associated with each of the repayable expenditures. Appendix 1.

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

9 These expenditures include \$40,000 for the Co-Producer. According to Nash, the
10 Co-Producer was "responsible for all operational aspects for production and show
11 elements in the Main Venue and the Sail Area," and was paid a total of \$60,000. *See*
12 Nash Line Item Descriptions, Attachment 7, at 3. Given the Co-Producer's
13 responsibilities, the Commission concludes that the expenditures related to the Co-
14 Producer were to create or enhance a portion of the convention proceedings and were
15 impermissible host committee expenditures.²³ Therefore, the \$40,000 payment to the Co-
16 Producer is included in the Repayment Determination upon Administrative Review.

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

19 [d]irected television coverage of the convention that was
20 distributed as a basic feed via satellite throughout the United States, as
21 well as to monitors throughout the convention center. Also directed the

²³ The Host Committee paid the Co-Producer a total of \$60,000. One-third, or \$20,000, was not included in the Audit Report Repayment Determination to recognize that some of the Co-Producer's services were related to the Sail Area. The Convention Committee allocated the Co-Producer's fee with \$40,000 for closed circuit television and \$20,000 for the Sail Area. *See* Bing affidavit, Attachment 3, at A74-76.

1 video mix of the program material that was displayed on the giant
2 projection screens in the Main Venue and the sail area.

3
4 Attachment 7, at 3. Directing the television coverage of the Convention that was
5 distributed for broadcast throughout the United States is a necessary part of creating and
6 enhancing the convention proceedings. Expenditures for directors are not a permissible
7 host committee expenditure.²⁴ Consequently, the entire amount paid to the Directors is
8 included in the Repayment Determination upon Administrative Review.

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

²⁴ Although the Nash Line Item Descriptions mentions the Directors' duties in connection with the Sail Area, the Convention Committee did not allocate any of the Directors' fees to the Sail Area category of expenses. Instead, the Convention Committee allocated the entire fee paid to the Directors to closed circuit television. *See* Bing affidavit, Attachment 3, at A74-75; Attachment 7, at 3. Such an allocation is unreasonable in that it fails to recognize the most significant aspect of the Directors' duties, namely directing the television coverage that was distributed throughout the United States. The Convention Committee admits that a Convention Committee function was to "facilitate[] media coverage, especially television coverage." Attachment 3, at 11. Other Convention Committee affiants emphasized the importance of this coverage to the success of the convention. *See* Greener affidavit, Attachment 3, at A106-08, ¶¶ 10-16; *see also* Geraghty affidavit, Attachment 3, at A87-88, ¶ 5, and Nash supplemental affidavit, Attachment 3, at A744-45, ¶ 3. The Convention Committee did not provide the Commission with documentation to support a more refined allocation of these costs.

1 Producer's fee is not included in the Repayment Determination upon Administrative
2 Review. The remaining \$43,750 (\$50,000 - \$6,250) paid to the Television Producer is
3 included in the Repayment Determination upon Administrative Review.

4 Fees associated with additional production staff have also been included in the
5 Repayment Determination upon Administrative Review because their purpose was to
6 create or enhance the convention proceedings. The job titles and related fees are as
7 follows: Technical Director (\$10,008);²⁵ Production Coordinator (\$5,570); Stage
8 Manager (\$8,438); Script Supervisor (\$6,442); Production Assistant (\$6,163); Make up
9 (\$3,000); Tape stock (\$200); Sound Operations (\$5,250); Tape Coordinator (\$7,806);
10 Continuity Writer (\$10,000); and Stand-ins (\$2,691).²⁶ None of these expenses was a
11 permissible host committee expenditure, so these amounts have been included in the
12 Repayment Determination upon Administrative Review.

13 The Convention Committee argues that many of these expenditures were
14 necessary television production services and that such services were permissible host
15 committee expenditures. *See* Attachment 3, at 26-33.²⁷ The Convention Committee

²⁵ *See* Attachment 6, at 3 (specifying that the Technical Director was paid \$10,008 as part of \$56,781 for Video Crew Labor).

²⁶ In addition to the production staff listed above, Nash also expended \$38,500 for the Staging (or Production) Supervisor and \$22,790 for the Production Manager. The Convention Committee categorized these expenses as part of the lighting and rigging expenses that were necessary to prepare the Convention Center. *See* Bing affidavit, Attachment 3, at A74. The Commission did not include any of these amounts in the Audit Report Repayment Determination.

²⁷ Specifically, the Convention Committee initially placed the Continuity Writer and the Stand-ins in the miscellaneous category, *see* Bing affidavit, Attachment 3, at A76, but later categorized them as television production services, *id.*, at 26. The Convention Committee assigned the Production Coordinator to the overhead category. *Id.*, at 25-26 and Bing affidavit, A75. All of the remaining production staff—Co-producer, Directors, Television Producer, Video Crew Labor, Stage Manager, Script Supervisor, Production Assistant, Make-up, Tape Stock, Sound Operations, Tape Coordinator—were in the category initially called closed circuit television and later deemed television production services. *See* Attachment 3, at 25-26 and Bing affidavit, A74-75; *see also* Attachment 1, at 63-64.

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

7 In particular, the Convention Committee identifies certain expenditures made by
8 the City of Chicago or the Chicago Host Committee that the Commission determined
9 were permissible host committee expenditures and argues that the television production
10 services provided by the San Diego Host Committee should be treated the same way.²⁸
11 The Convention Committee points to the Chicago Host Committee's payment of
12 \$615,083 to Chicago Scenic Studios and argues that Nash's Stage Manager and Video
13 Crew Labor were for the same purposes. See Attachment 3, at 27. With respect to the
14 Video Crew Labor, the Commission has already determined that \$46,773 of the \$56,781
15 is a permissible host committee expenditure, which leaves the Technical Director's fee,
16 \$10,008, in dispute.

17 The payments to Chicago Scenic Studios were for broadcast engineers, stagehands
18 and riggers for the lighting, sound, Teleprompter, and Scenic systems, teamsters,
19 cameramen and projectionists. Attachment 8, at 3. Such services are closely linked to
20 the infrastructure of the convention center. Additionally, section 9008.52(c)(1)(v)

²⁸ Among these arguments was the Convention Committee's argument that the expenditures for the Moving Light Operator (\$11,735) had a purpose similar to the payments to Chicago Scenic Studios. The Commission determined that provision of the Moving Light Operator is a permissible host committee expenditure, as discussed above.

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

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

1 attendees to the city, which is listed as an example in 11 C.F.R. § 9008.52(c)(1)(ii).
2 Thus, the cited Chicago Host Committee expenditures were fundamentally different from
3 the Nash expenditures that are included in the Convention Committee's Repayment
4 Determination.

5 The Convention Committee cites the audio system and related services provided
6 by the City of Chicago to DNCC as another example of an inconsistency between the
7 DNCC audit and the Convention Committee audit. Attachment 3, at 27-28. It argues that
8 the \$5,250 for Sound Operations is the same as Sound Operations in the DNCC's audit,
9 which were not included in the DNCC's Repayment Determination. *Id.* However,
10 Nash's Sound Operations were described as closed captioning for Convention Committee
11 television programming on Nash's general ledger, while the Sound Operations in the
12 DNCC audit were for an audio system and the services of audio consultants and an audio
13 designer to operate the system. *Id.*²⁹ Thus, although the expenditures bear a similar label,
14 the functions served were quite different. *See* Attachment 8, at 3-4.
15 Section 9008.52(c)(1)(v) specifically lists loudspeaker systems as an example of
16 permitted host committee expenditures. Consequently, despite the Convention
17 Committee's suggestion to the contrary, the Sound Operations included in its repayment
18 determination are not similar to the audio system operations addressed in the DNCC
19 audit. Thus, the Audit Reports for the DNCC and the Convention Committee are
20 consistent in this regard as well.

²⁹ Both the Chicago Host Committee and the San Diego Host Committee made substantial payments to the same vendor for such services. *See* Attachment 8, at 3.

1 The Convention Committee's final example of inconsistency is the City of
2 Chicago's provision of grips, chyron operators,³⁰ and a property master. See
3 Attachment 3, at 28. The Convention Committee claims that Nash's stand-ins, script
4 supervisors and a production accountant should be treated the same as the cited services
5 for the Chicago convention. According to Nash's Line Item Descriptions, the purposes
6 served by the stand-ins, script supervisors, and production accountant were just as their
7 titles suggest. See Attachment 7, at 3, 4 and 7. The Commission does not have a
8 description of the services provided by the grips, chyron operators, and property masters.
9 However, the Convention Committee has not shown any basis to conclude that grips,
10 chyron operators, and property masters are equivalent to stand-ins, script supervisors and
11 a production accountant. Consequently, this aspect of the Convention Committee's
12 argument of inconsistent treatment fails for a lack of supporting information.

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

³⁰ The Convention Committee included script supervisors, instead of chyron operators, in the text of its Administrative Review Request, citing the DNCC Audit Report at 6 (Attachment 3, at A1143). Attachment 3, at 28. However, that page of the DNCC Audit Report does not refer to script supervisors. Convention Committee counsel stated that the reference should have been to chyron operators, as reflected in the text above. Attachment 8, at 4.

1 section 9008.52(c). Thus, some of the expenditures that fall under the Convention
2 Committee's broad category of television production were permissible host committee
3 expenditures; this does not mean, however, that all of the expenditures in the same broad
4 category were permissible.

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

17 **b. Vendors Who Provided Content**

18 The Host Committee made expenditures to vendors who provided content that
19 was used as a portion of the convention proceedings.³¹ None of these expenditures is
20 similar to the purposes listed in 11 C.F.R. § 9008.52(c), nor is any consistent with a host

³¹ With such a purpose, these expenditures fail even the Convention Committee's simplified test for distinguishing permissible host committee expenditures from impermissible. They are not for the "microphone," or the permitted host committee expenditures, but rather are for the "message," which the host committee may not provide. *See* Attachment 4, at 48.

1 committee's principle purpose of promoting its city. Consequently, the following
2 expenditures are impermissible host committee expenditures and in-kind contributions to
3 the Convention Committee.

4 Some of Nash's expenses are designated as entertainment, including \$18,935 for
5 Sail Area entertainment and related amounts for the Sail Area entertainment coordinator
6 (\$3,481),³² and entertainment incidentals (\$213). Section 9008.52(c) does not list
7 entertainment as an example of a permissible host committee expenditure. Pursuant to
8 section 9008.52(c)(1)(ii), host committees are permitted to provide "information booths,
9 receptions, and tours" as part of "welcoming the convention attendees to the city," and
10 entertainment could be provided at such receptions. The principal objective of host
11 committees and the context of the regulation makes clear that receptions must be to
12 welcome attendees to the city and as such must be events that are clearly separate from
13 the convention itself. The regulation's reference to "receptions" for this expressed and
14 particular purpose cannot be fairly read to permit host committees to provide
15 entertainment that is part of the convention's proceedings.³³

16 The Convention Committee defends all of the entertainment expenses listed above
17 as necessary parts of the Sail Area. However, given that host committees are not

³² The Sail Area entertainment coordinator could also be considered a "producer" or "director" of that portion of the convention proceedings, but is considered here to reflect the Convention Committee's argument that the Sail Area entertainment coordinator was part of the Sail Area.

³³ In Advisory Opinion 1980-21, the Commission permitted the New York Yankee Baseball Club to provide tickets for one of its games to a host committee for the 1980 Democratic National Convention. The Commission stated that pursuant to 11 C.F.R. § 9008.7(d)(2)(iii)(B) (1980), which was the predecessor to 11 C.F.R. § 9008.52(c)(1)(ii), "[t]he gift of these tickets to the host committee for free distribution to the delegates will assist the host committee in welcoming convention delegates to New York." The Commission explained the regulation as "allow[ing] the host committee to use funds donated to it for welcoming convention attendees to the city through such means as providing receptions or tours of the city." Thus, the Commission's position in Advisory Opinion 1980-21 is consistent with the limitation of section 9008.52(c)(1)(ii) to welcoming events that are distinct from the convention proceedings.

1 permitted to provide entertainment to the convention attendees in the main hall of the
2 convention, neither are they permitted to provide that entertainment in auxiliary seating
3 areas of the convention center.

4 The travel expense for the Convention Announcer (\$986) is similarly part of the
5 expenses necessary to create the content of convention proceedings, based on the
6 Announcer's apparent function. As such, it is not a permissible host committee
7 expenditure. The Convention Committee notes that the announcer may have welcomed
8 speakers to the podium; however, section 9008.52(c)(1)(ii) use of welcoming is expressly
9 limited to welcoming attendees *to the city*, which reflects the permitted role of host
10 committees, rather than assisting the creation of convention proceedings.

11 Similarly, \$49,032 were spent to bring an orchestra to perform before and during
12 the convention. While a host committee might be permitted to provide an orchestra at a
13 welcoming reception pursuant to 11 C.F.R. § 9008.52(c)(1)(ii), or even to provide tickets
14 to an orchestra concert analogous to the baseball game tickets in Advisory Opinion 1980-
15 21, providing entertainment as part of the convention's proceedings is not a permissible
16 host committee expenditure.

17 Nash spent \$77,595 on Special Effects, which consisted of indoor fireworks for
18 the San Diego Convention Center, a confetti cannon, and a balloon drop. The
19 Convention Committee contends these services are permitted by section 9008.52(c)(1)(v),
20 which permits decorations. However, the services provided are not decorations as
21 contemplated by section 9008.52(c)(1)(v). Rather, they are events that are part of the
22 convention proceedings. As Mr. Nash explained in his affidavit, "the moment of the
23 candidate's nomination is one of the climactic moments of the Convention. It is

1 traditionally accompanied by huge balloon drops, confetti, music, and fireworks.” Nash
2 affidavit, Attachment 3, at A584, ¶ 12. Mr. Nash describes a moment of the convention,
3 indeed, the climactic moment, and as such the balloon drops, confetti cannon, and
4 fireworks are explained as accompanying that moment; thus, even Mr. Nash’s description
5 of the services portrays them as events, not as a decorative backdrop that would be
6 permitted. As events that occur at particular points in the convention proceedings, the
7 balloon drops, confetti cannon, and fireworks are more analogous to entertainment than to
8 decorations, and as stated above, expenditures for entertainment are permissible host
9 committee expenditures only to the extent they are part of efforts to welcome convention
10 attendees to the city pursuant to section 9008.52(c)(1)(ii).³⁴ Therefore, the \$77,595
11 expenditures were not permissible host committee expenditures and are included in the
12 Repayment Determination upon Administrative Review.

13 The Convention Committee referred to a number of expenditures reported by the
14 Chicago Host Committee that were not included in the DNCC Audit Report Repayment
15 Determination and argued that the Commission must exclude certain expenditures from
16 the Convention Committee’s repayment determination on this basis. Specifically, the
17 Convention Committee refers to expenditures for production labor, fireworks, an air
18 show, and entertainment. Attachment 3, at 27, 37, 38, and 39. The Commission has
19 reviewed documentation related to these disbursements and concluded that all of the
20 disbursements referenced by the Convention Committee were associated with events held

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

1 by the Chicago Host Committee that were to welcome convention attendees to the City of
2 Chicago and were therefore consistent with 11 C.F.R. § 9008.52(c)(1)(ii). All of these
3 events were held at locations away from the location of the Chicago convention, and all
4 but one of these events occurred prior to the first day of the convention. Attachment 8,
5 at 5-6, and Audit Division, Schedule of Payments for "Entertainment" as Reported on the
6 DNC Host FEC Disclosure Reports, Attachment 10. It is therefore clear that the events
7 were similar to the baseball game in Advisory Opinion 1980-21 and were not part of the
8 convention proceedings. Consequently, the referenced expenditures are not similar to any
9 of the expenditures included in the Convention Committee's repayment determination.

10 Thus, the Commission determines that \$482,111 of the Nash expenses were not
11 permissible host committee expenditures and as such represent in-kind contributions to
12 the Convention Committee.

13 **3. Overhead and Indirect Expenses**

14 In the Audit Report Repayment Determination, Nash's indirect expenses were
15 attributed between Nash's functions that were permissible host committee expenditures
16 and those that were not in order to reflect the Commission determinations related to the
17 other Nash expenditures.³⁵ See Attachment 1, at 35-36 (describing attribution process).
18 The Nash indirect and overhead expenses must be reattributed to reflect the
19 Commission's other determinations in this Statement of Reasons.

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

1 First, the pool of expenses subject to this attribution must be adjusted. In the
2 Audit Report, a total of \$346,559 was considered subject to attribution. The Commission
3 has determined that the Production Accountant (\$15,000) should be subject to attribution,
4 so those expenditures have been added to the pool of attributable expenses.³⁶ Thus, the
5 total amount of attributable expenses revised to reflect the Commission determinations is
6 \$361,559 (\$346,559 + \$15,000).

7 The Convention Committee also argues that hotel expenses of \$105,603.94 should
8 not be subject to attribution as 11 C.F.R. § 9008.52(c)(1)(ix) permits host committees to
9 incur expenses “to provide hotel rooms at no charge or a reduced rate on the basis of the
10 number of rooms actually booked [for the conventions].” Attachment 4, at 42. The
11 Convention Committee is incorrectly attempting to extend the regulation to include not
12 only the complimentary rooms the Host Committee properly provided in accordance with
13 section 9008.52(c)(1)(ix), but also the underlying rooms that the Host Committee would
14 have been required to book in order to receive the complimentary rooms.
15 Section 9008.52(c)(1)(ix) is not so broad, but is instead limited to any rooms received by
16 a host committee from hotels at a reduced rate or no charge in return for a specified
17 number of other rooms booked. Therefore, the \$105,603.94 remain subject to attribution.
18 The Convention Committee also argues that transportation expenses of \$10,643.49
19 should not be subject to attribution as 11 C.F.R. § 9008.52(c)(1)(vi) permits local
20 transportation. *Id.* However, the Convention Committee has not shown those expenses
21 to have been exclusively local, so they remain subject to attribution.

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

1 Once the pool of Overhead and Indirect Expenses subject to attribution was
2 identified, that pool was attributed between those related to impermissible host committee
3 expenditures and those related to permissible host committee expenditures.³⁷ This
4 resulted in an attribution of \$143,535 of Overhead and Indirect Expenses related to
5 Nash's expenses that were impermissible host committee expenditures, and \$218,025 to
6 Nash's expenses that were permissible host committee expenditures.³⁸ Thus, the
7 Commission determines that \$143,535 of Overhead and Indirect Expenses related to
8 Nash's expenses that were impermissible host committee expenditures plus \$338,576 of
9 the other Nash expenses that were impermissible host committee expenditures for a total
10 in-kind contribution of \$482,111 to the Convention Committee.

11

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

³⁸ In the Audit Report, the Commission approved a two-step process for attribution of Nash's indirect expenses. First, indirect expenses that could be associated with other particular Nash expenditures were attributed based on whether the associated Nash expense was determined to be an impermissible host committee expenditure. These indirect expenses were primarily travel and living expenses that could be associated with particular persons. Of the \$346,559 total Indirect Expenses, \$107,785 were attributed to the Convention Committee, \$102,695 were attributed to the Host Committee, and \$136,078 could not be associated with other Nash expenses, so this \$136,078 of indirect expenses were subject to the second step of the attribution process. (Included in the permitted \$102,695 were \$23,633 for equipment rental cited by the Convention Committee. Attachment 3, at 41.) In the context of the Audit Report, the \$136,078 was divided into three groups: Travel and Living Expense—Producers and Directors (\$9,702); Travel and Living Expenses—Others (\$32,886); and Overhead (\$93,491). The two travel and living expense groups were attributed to either the Convention Committee or the Host Committee based on the distribution of associated direct costs. The overhead expenses were attributed based on the distribution of all non-overhead expenses. See Attachment 1, at 36. Of the \$136,078 subject to the second step of the attribution, \$57,496 was attributed to the Convention Committee, and \$78,583 was attributed to the Host Committee.

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

In the context of the administrative review, the Commission determined that expenditures totaling \$19,984 related to the Production Accountant that were classified as Convention expenses, are more appropriately considered an overhead expense for allocation purposes, making the total for overhead \$113,475 (\$93,491 + \$19,984 = \$113,475).

1 4. Recoupment and Offset

2 The Commission concludes that the Convention Committee may not offset the in-
3 kind contributions it received from the Host Committee by the amount of the permissible
4 host committee expenses incurred by the Convention Committee.

5 The Convention Committee defines its proposal as a recoupment. A recoupment
6 is not applicable in this situation. Recoupment is appropriate when the defendant in a suit
7 has a monetary claim against the plaintiff. *See 6 Charles Alan Wright & Arthur R. Miller,*
8 *Federal Practice and Procedure, Civil* § 1401 (2d ed. 1990). The purpose of a
9 recoupment is to prevent the unjust enrichment of a party to a lawsuit and to avoid
10 wasteful multiplicity of litigation. *Estate of Mueller v. Commissioner of Internal*
11 *Revenue*, 101 T.C. 551, 551-552 (1993). This matter does not involve an unjust
12 enrichment of a party involved in litigation nor does it involve any economies of
13 litigation. Rather, this matter involves the Convention Committee's proposal to
14 restructure expenses that it claims could have been spent by the Host Committee without
15 counting towards the Convention Committee's expenditure limitation. In order for the
16 recoupment to be appropriate in this context, the government would have to owe the
17 Convention Committee monetary relief for actions arising out of its contract with the
18 Convention Committee. *See United States v. Consumer Health Services of America, Inc.*,
19 108 F.3d 390, 395 (D.C. Cir. 1997)(stating that recoupment requires both debts to arise
20 out of a single integrated transaction so that it would be inequitable for the debtor to
21 enjoy the benefits of that transaction without also meeting its obligations).

22 Whether to grant the Convention Committee's proposed recoupment is a question
23 of convention financing law. Convention financing law provides a political party's

1 national and convention committees with public funds (wholly or partially) for the
2 purpose of conducting the national nominating convention. See 26 U.S.C. § 9008(c).
3 Public funds may be used to defray convention expenses. 11 C.F.R. § 9008.7(a)(1). In
4 this case, the Committee used its public funds to pay for expenses that it now claims
5 could have been paid by the Host Committee. However, there is no provision to allow
6 the Convention Committee to create an after-the-fact examination of its finances to
7 combine and restructure expenses defrayed with public funds with expenses paid from
8 private sources through a host committee.

9 The Convention Committee's proposal to restructure the expenses that it and the
10 Host Committee paid involves a bilateral reimbursement for expenses that one committee
11 paid of the other committee. Any reimbursement from the Host Committee would be for
12 expenses that could have been paid by the Host Committee. However, the reimbursement
13 from the Convention Committee to the Host Committee is necessary because the Host
14 Committee has used its funds to defray convention expenses that were not permissible
15 host committee expenditures and so should have been paid with the Convention
16 Committee's public funds. See 11 C.F.R. § 9008.7(a)(4). As permitted by 11 C.F.R.
17 § 9008.52, the Host Committee received its financing from private sources. Therefore,
18 private funds have been used to defray convention expenses.

19 The remedy for the situation where private funds have been used to defray
20 convention expenses is not to reward the Convention Committee with an opportunity to
21 restructure its finances with the Host Committee years after the convention.³⁹ The

³⁹ If a convention committee plans to finance the convention with public and private funds it must follow the dictates of 11 C.F.R. § 9008.6(a)(3).

1 Presidential Election Campaign Fund Act requires the Commission to seek a repayment
2 based on the receipt of private contributions. 26 U.S.C. §§ 9007(b)(3) and 9008(h). A
3 portion of the public funds (equal to the amount of the private contributions) must be
4 returned to the United States Treasury because the Convention Committee received and
5 spent the full amount of public funds that were available for the convention. 11 C.F.R.
6 §§ 9008.8(a) and 9008.12(b)(3). With the addition of private contributions, less public
7 funds are allowed for convention expenses. 11 C.F.R. § 9008.5(b).⁴⁰ Therefore, the
8 Commission cannot, as a matter of convention financing law, allow the Convention
9 Committee to restructure its finances with the Host Committee to avoid a repayment to
10 the United States Treasury.⁴¹

11 A general election candidate committee may receive a reimbursement from its
12 legal and accounting compliance fund for expenses that could have been paid by the legal
13 and accounting compliance fund pursuant to 11 C.F.R. § 9003.3(a)(2)(ii)(A), (D),
14 and (G). However, this case is distinguishable from that situation because there is no
15 regulation applicable in this situation that is the equivalent of 11 C.F.R.

⁴⁰ A host committee's expenses will not be considered private contributions if they were for the purposes set forth at 11 C.F.R. § 9008.52. 11 C.F.R. § 9008.5(b). However, in order for the Host Committee to owe any amount to the Convention Committee as a reimbursement the Host Committee must have incurred convention expenses in accordance with 11 C.F.R. § 9008.7(a)(4).

⁴¹ The examples of "retroactive reallocations" that the Convention Committee claims the Commission has allowed in past in Advisory Opinions 1991-15 and 1992-12 involve interpretations of the Federal Election Campaign Act and they do not involve questions concerning the receipt and use of public funds for a national nominating convention. The Committee further implies that it would have structured its finances differently if it had known about the Commission's interpretations of the regulations in advance. This is not a justification for an after-the-fact restructuring of the Convention Committee's finances. If the Convention Committee had any questions about the Commission's interpretations of the regulations it should have requested an advisory opinion. 11 C.F.R. § 112.1(a). The Convention Committee also argues that the Commission allowed a recoupment or offset for the Democratic National Convention Committee. However, that matter involved the recapturing of unspent public funds under 11 C.F.R. § 9008.12(b)(5). It did not involve the use of private contributions to pay convention expenses.

1 § 9003.3(a)(2)(ii)(A), (D), and (G). Moreover, the close relationship of a primary,
2 general, and general election legal and accounting compliance fund further distinguishes
3 transactions between those entities from the Convention Committee's proposed
4 recoupment. Therefore, the Commission has determined that the Convention Committee
5 will not be permitted to use its proposed recoupment to reduce the amount of the in-kind
6 contribution it received from the Host Committee.

7 **IV. IN-KIND CONTRIBUTION FROM REPUBLICAN NATIONAL**
8 **COMMITTEE**

9 **A. AUDIT REPORT REPAYMENT DETERMINATION**

10 The Convention Committee and the RNC contracted with Creative Broadcast
11 Techniques ("CBT") for 25 cameras, supporting personnel, and production equipment
12 that was to be used by the RNC and the Convention Committee. The purpose of the
13 contract was to provide cameras and supporting personnel to produce the televised
14 images of the convention proceedings. These images were provided to all the networks,
15 the closed circuit television program viewed by convention attendees, and to the RNC
16 and the Convention Committee for their respective television broadcasts.⁴²
17 Attachment 3, at 51. The Commission identified payments in a net total of \$1,819,824
18 from the Convention Committee and the RNC to Creative Broadcast Techniques ("CBT")
19 that were for 25 television cameras, crews, and some of the related television production
20 and editing expenses. Attachment 1, at 49. According to the Convention Committee, the
21 cameras were used for two major purposes: (1) producing the basic feed; and (2)
22 producing the television programs broadcast by the Convention Committee and the RNC.

⁴² In 1993 GOP-TV was formed to produce media for the RNC, including a television show called "Rising Tide" that was broadcast live every Thursday night on several cable channels. Attachment 3, at 51.

1 Of the 25 cameras, 14 were used to produce the images for the basic feed. Attachment 1,
2 at 47.⁴³ Following audit fieldwork, the RNC submitted two documents to the
3 Commission dated March 10, 1997 and September 16, 1997 in which the RNC stated that
4 the revised figure for the cost of the CBT contract that was related to the 14 cameras used
5 for the basic feed was \$833,345. See RNC GOP-TV Memorandum (Mar. 10, 1997) and
6 Invoice (Sept. 16, 1997), Attachment 12. The RNC and the Convention Committee
7 agreed to allocate these costs equally between the RNC and the Convention Committee.⁴⁴
8 *Id.*

9 While the Convention Committee determined the cost of the 14 basic feed
10 cameras by calculating 14/25 of the 25 camera contract price, the Commission utilized
11 the actual price of \$833,345 provided by the RNC to establish the cost of the basic feed.
12 Attachment 1, at 49. The Commission determined that because the RNC has provided an
13 actual cost for the basic feed in the amount of \$833,345, that amount represents the cost
14 of the 14 cameras that were used for the basic feed.

15 The remaining 11 cameras were used to create television programs broadcast by
16 the Convention Committee and other programs broadcast by the RNC. Because the
17 cameras were used for only two major purposes, the Commission determined in the Audit
18 Report Repayment Determination that the remaining amounts in the CBT contract,
19 \$986,479 (\$1,819,824 - \$833,345), were related to the other 11 cameras. In the absence
20 of a precise allocation of the production expenses between RNC and Convention

⁴³ Production and editing of these images were provided by Nash and were not part of the CBT contract. Attachment 1, at 47.

⁴⁴ The Commission did not approve a motion recommending that the RNC's portion of these expenses were a contribution to the Convention Committee by a vote of 3 to 2. Attachment 1, at 49-50.

1 Committee programs, the Commission determined in the Audit Report Repayment
2 Determination that the basis for allocating these production costs should be broadcast
3 hours, which results in an allocation of 74% of the costs to the Convention Committee
4 and 26% to the RNC. On that basis, the Commission determined that the RNC made an
5 in-kind contribution of \$729,994 ($\$986,479 \times 0.74$) and that this amount is subject to the
6 Convention Committee's expenditure limitation. Attachment 1, at 50. *See also*
7 Memorandum from Audit Division to Office of General Counsel (Feb. 6, 1999)
8 (diagrams of CBT Contract purposes), Attachment 11, at 2.

9 **B. REQUEST FOR ADMINISTRATIVE REVIEW**

10 According to the Convention Committee, CBT provided 25 cameras and related
11 equipment and services under a single contract to both the Convention Committee and the
12 RNC in exchange for payments totaling \$1,819,824.⁴⁵ Attachment 3, at 49-50. The
13 Convention Committee argues that the RNC and the Convention Committee did not share
14 equally in all of the equipment and services provided by CBT. The Convention
15 Committee claims that of the 25 cameras provided by CBT, the Convention Committee
16 and the RNC only shared 14. *Id.*, at 51. With respect to the 14 cameras used to produce
17 the basic feed, the Convention Committee admittedly shared with the RNC, the
18 Convention Committee acknowledges that the expenditures related to those cameras
19 should be split between the Convention Committee and the RNC. Attachment 11, at 3.

⁴⁵ The net amount paid to CBT by the RNC and the Convention Committee is apparently \$1,819,824. However, the Convention Committee lists the contract price as \$1,758,297.64. The difference between the amounts relates to charges that the RNC disputes. The Convention Committee's response does not contain documentation to show a resolution of the dispute, therefore, the Commission has adopted the amount billed and apparently paid, or \$1,819,824, as the amount of the CBT contract due from the RNC and the Convention Committee. It does not include \$22,000 that the RNC was reimbursed by a San Diego television station for use of CBT facilities that were paid for by the RNC.

1 The Convention Committee argues that because it only used 14 of the 25 cameras
2 contracted for, 14/25 (56%) of the cost of the CBT contract should be allocated between
3 the Convention Committee and the RNC. Attachment 3, at 54-56. The Convention
4 Committee further states that the 14/25 should then be split equally between the RNC and
5 the Convention Committee because both were using the direct feed that came from those
6 14 cameras. *Id.* The cost of half of the 14 cameras is equal to 7/25 (28%) of the cost of
7 the entire CBT contract. Using the Convention Committee's total contract price of
8 \$1,758,298, the Convention Committee claims it was obligated to pay \$492,323
9 $[(\$1,758,298 \times 14/25) \div 2]$ on the CBT contract. Because the Convention Committee
10 paid \$482,645⁴⁶ and the RNC paid \$492,323 for the use of the 14 cameras, the
11 Convention Committee contends that the RNC did not make a contribution to the
12 Convention Committee.

13 The Convention Committee disputes that the remaining 11 cameras were used to
14 broadcast GOP-TV and Convention Committee programming. The Convention
15 Committee further asserts that the RNC alone used the remaining 11 cameras for GOP-
16 TV broadcasts and that the Convention Committee should not be required to help pay for
17 them. Attachment 11, at 3. The Convention Committee acknowledges that it paid the
18 airtime costs associated with the programs created with the 11 cameras; however, the
19 Convention Committee asserts that it was not required to pay the airtime costs so it
20 should not be required to pay the related production costs. Attachment 3, at 58.

⁴⁶ The Convention Committee acknowledges that this amount is \$9,678 (\$492,323 - \$482,645) less than what it believes to be its portion of the CBT contract. Attachment 3, at 55.

1 The Convention Committee claims that the RNC used the remaining 11 cameras
2 to broadcast five, half-hour morning shows during the Convention week, four evening
3 shows of live Convention coverage, and one evening recap show. *Id.*, at 52.

4 The Convention Committee argues that because the 11 cameras were “exclusively under
5 the [control of the] RNC,” and the Convention Committee did not use the feed from those
6 eleven cameras, “the Convention Committee should not use taxpayer funds to pay any of
7 [the cost of the 11 cameras].” Attachment 4, at 21.

8 The Convention Committee further contends that its method of allocating the
9 CBT contract based on camera usage is reasonable and based on industry practice.
10 Attachment 3, at 54-56. According to affidavits of various industry officials submitted by
11 the Convention Committee, it is unreasonable to assume that production costs are
12 proportional to the amount of airtime a show uses. Furthermore, the officials state that a
13 Commission determination to allocate the cost of the CBT contract based on airtime
14 “would not have been reasonable,” and contrary to industry practice. *Id.*, Geraghty
15 affidavit, at A93.

16 **C. REPAYMENT DETERMINATION UPON ADMINISTRATIVE**
17 **REVIEW**

18 The Commission determines that the RNC made an in-kind contribution to the
19 Convention Committee totaling \$292,747 and that this amount is subject to the
20 Convention Committee’s expenditure limitation. The Commission agrees with the
21 Convention Committee’s and the RNC’s division of the airtime costs associated with the
22 various television programs. The Commission will also utilize the same manner of
23 allocation in its consideration of the related production costs.

1 The RNC paid for the airtime for the morning programs that were similar in
2 format to GOP-TV's regular program, "Rising Tide." These programs included an
3 anchor person in a booth at the Convention Center and presented the previous night's
4 convention highlights (not a comprehensive summary); interviews of convention
5 speakers; and other articles and "human-interest" segments, according to an affidavit
6 submitted by Patrice Geraghty, the Director of Broadcast and the Executive Producer for
7 GOP-TV. See Geraghty affidavit, Attachment 3, at A93-94 and A92. The interviews
8 were conducted backstage at the Convention Center and at a separate location known as
9 the Marina Set. *Id.*, at A92. The segments were "on such topics as community efforts to
10 move welfare recipients into the workforce and the impact of tax relief on ordinary
11 American families." The "human-interest segments" were about "events in San Diego
12 apart from the Convention such as a visit by Convention attendees to Sea World, work
13 performed by several Convention attendees with Habitat for Humanity in San Diego, and
14 a carnival hosted by Mr. & Mrs. Barbour for San Diego foster children." *Id.*, at A89. The
15 programs were broadcast from 7:00 to 7:30 AM EST on Monday, August 12 through
16 Friday, August 16, 1996. Additionally, the RNC paid the airtime costs for a one-hour
17 evening program that aired the day after the conclusion of the convention. These
18 programs will be referred to as the GOP-TV programs.

19 The Convention Committee paid the airtime costs associated with the evening
20 programs that carried "live, prime-time coverage of the Convention proceedings." *Id.*,
21 A89. These programs were broadcast from 9:00 to 11:00 PM EST from Monday,
22 August 12 through Wednesday, August 14, 1996, and from 8:00 PM to Midnight EST on

1 Thursday, August 15, 1996, the last night of the convention. These programs will be
2 referred to as the COA-TV programs.

3 To determine which expenditures were subject to the Convention Committee's
4 expenditure limitation and which expenditures the RNC could incur without being
5 subject to the Convention Committee's expenditure limitation, the Commission must
6 consider the scope of the definition of "convention expenses."

7 Section 9008.7(a)(4) of the Commission's regulations defines "convention
8 expenses" to include "all expenses incurred by or on behalf of a political party's national
9 committee or convention committee with respect to and for the purpose of conducting a
10 presidential nominating convention or convention-related activities." The Explanation
11 and Justification for 11 C.F.R. § 9008.7 recognizes that "[g]iven that the convention not
12 only serves as the vehicle for nominating the party's Presidential candidate, but is also
13 used to conduct ongoing party business, the line between convention expenses and party
14 expenses can be a fine one." *Explanation and Justification for 11 C.F.R. § 9008.7*,
15 59 Fed. Reg. 33, 608 (1994). Nonetheless, convention-related activity includes "all
16 national committee activity in the convention city except for events *clearly separate from*
17 *the convention*, such as fund raising events for the party committees, and meetings of the
18 national committee *unrelated to the convention*." *Id.* (emphasis added).

19 In the Audit Report, the Commission determined that the division of airtime
20 expenses for the evening programs did not result in a contribution to the Convention
21 Committee. Attachment 1, at 46. By permitting the RNC to pay for the airtime for the
22 morning programs without such a payment counting toward the Convention Committee's
23 expenditure limitation, the Commission concluded that the GOP-TV programs were

1 "clearly separate" from the convention. The Commission determined that the morning
2 programs were clearly separate from the convention based on the program's similarity to
3 the regular GOP-TV program, "Rising Tide," the absence of live coverage of convention
4 proceedings in the GOP-TV programs, and the presence of other articles and "human
5 interest" segments that were only tangentially related to the convention at most.

6 Similarly, this allocation also permitted the Convention Committee to pay for the
7 airtime for the evening programs that included live coverage of the convention
8 proceedings. It is therefore clear that the Commission concluded that the payments for
9 airtime for the COA-TV programs were convention expenses because the COA-TV
10 programs were not "clearly separate" from or "unrelated" to the convention itself.

11 These same considerations require that the production costs associated with these
12 television programs be paid for by the same entity that paid for the airtime. Therefore,
13 any RNC payments for the production costs associated with the COA-TV programs were
14 in-kind contributions to the Convention Committee; and any Convention Committee
15 payments for the production costs associated with the GOP-TV programs were an
16 impermissible use of public funding contrary to 11 C.F.R. § 9008.7(a). Thus, the
17 production costs associated with the 11 cameras must be allocated between COA-TV
18 programs and GOP-TV programs.

19 In order to properly allocate the expenses related to all 25 of the cameras under
20 the CBT contract, the production costs of the basic feed which used the 14 cameras must
21 be separated from the production costs of the COA-TV and GOP-TV programs which
22 used the 11 cameras. These expenses must be separated to determine if the RNC paid
23 expenses related to COA-TV programs.

1 Although the Convention Committee allocates the expenses between the two
2 categories based solely on the numbers of cameras used for each purpose, the RNC has
3 provided an actual cost of \$833,345 for the basic feed's 14 cameras. The Convention
4 Committee agrees that the RNC stated the cost of the basic feed as \$833,345; however,
5 the Convention Committee asserts that the amount was merely an interim figure and was
6 stated before all of the charges related to the basic feed were fully assimilated.
7 Attachment 4, at 92-93. However, the RNC submitted documents to the Commission
8 dated March 10, 1997, and September 16, 1997 which lists the actual price for the 14
9 cameras as \$833,345. Attachment 12. Although the Convention Committee claims that
10 it is unable to reconstruct the exact cost, the Commission has adopted the figure provided
11 by the RNC to represent the cost of the basic feed, instead of using an allocation. Such an
12 approach is consistent with a sworn statement submitted by Michael Simon on behalf of
13 the Convention Committee, in which he states that before an expense is "allocated using
14 assumptions, an effort should be made to reduce the amount of expenses that must be
15 allocated;" this is done by first identifying any actual costs and only allocating the
16 remaining unascertainable amounts. See Michael Simon affidavit, Attachment 3,
17 at A682. Thus, the Commission determines that the Convention Committee and the RNC
18 should have each paid \$416,672 ($\$833,345 \div 2$) of the basic feed costs.

19 The total cost associated with the COA-TV and GOP-TV programs' 11 cameras is
20 \$986,479 ($\$1,819,824 - \$833,345$). This amount includes the cost of editing and
21 producing both the COA-TV and GOP-TV broadcasts. Of the 11 cameras, three were
22 used only by GOP-TV. According to the Geraghty affidavit, three cameras were placed at
23 the Marina and were used only in the GOP-TV morning shows. Geraghty affidavit,

1 Attachment 3, at A86. Based on this sworn statement, as well as a review of available
2 GOP-TV and COA-TV convention footage, the Commission concludes that the three
3 cameras that filmed from the marina were used exclusively for GOP-TV programming.
4 There is no evidence that the three marina cameras were used to create any of the
5 Convention Committee's television programs. Therefore, the cost associated with those
6 three cameras should be born exclusively by the RNC. The remaining eight cameras
7 must be allocated between the RNC and the Convention Committee.

8 The Commission reviewed sworn statements from television broadcast officials
9 stating that standard industry practice is to divide the cost of shared equipment equally
10 among the entities sharing it rather than basing the cost on how much of the programming
11 produced the entities ultimately broadcast. *See id.*, at A93. The Commission's
12 regulations state, in part, that a contribution is the provision of any goods or services
13 which is less than the "usual and normal" charge for such goods or services. 11 C.F.R.
14 § 100.7(a)(1)(iii)(A). The usual and normal charge for services is a commercially
15 reasonable rate prevailing at the time the services were rendered. 11 C.F.R.
16 § 100.7(a)(1)(iii)(B). The Commission concludes that the Convention Committee and
17 the RNC must allocate the cost of the remaining eight cameras based on the industry's
18 usual and normal procedure, and at a commercially reasonable rate.

19 The Commission did not receive any information that showed that the usual and
20 normal allocation of the contract was contrary to the standard stated in the affidavits
21 submitted by television broadcast officials on behalf of the Convention Committee. *See*
22 *generally, Robertson v. Federal Election Commission*, 45 F.3d 486, 493 (D.C. Cir. 1995)
23 (stating that although the recipients of public funds bear the burden of accounting for,

1 allocation, and documentation of campaign expenses, the Commission cannot reject
2 uncontroverted documentation). The Commission therefore concludes that the
3 production costs related to the eight cameras must be allocated evenly between the
4 Convention Committee and the RNC rather than its earlier allocation based on airtime.

5 Based on these conclusions, the cost associated with the three marina cameras is
6 \$269,040 $[(\$986,479 \div 11) \times 3]$;⁴⁷ this expense should be paid exclusively by the RNC
7 and is not subject to the Convention Committee's expenditure limitation. The cost of the
8 remaining eight cameras is \$717,439 $(\$986,479 - \$269,040)$ and should be allocated
9 equally between the RNC and the Convention Committee. Despite the Convention
10 Committee's claim that all of CBT's services related to the 11 cameras were used solely
11 by GOP-TV, the RNC submitted documentation to the Commission stating that CBT
12 provided technical support to the Convention Committee for its convention related
13 programming and noting specifically that some items under the CBT contract were shared
14 by the RNC and the Convention Committee. *See* RNC Counsel's Office, 1996
15 Republican Convention Broadcast Vendors Descriptions (Mar. 25, 1997), Attachment 13;
16 *see also* Attachment 1, at 47-48. The RNC and the Convention Committee must both pay
17 \$358,720 $(\$717,439 \div 2)$ for the production related to the eight cameras. Thus, of the
18 \$986,479 associated with the 11 cameras, the Convention Committee's share is \$358,719
19 and the RNC's share is \$627,760 $(\$269,040 + \$358,720)$.

⁴⁷ The Convention Committee asserts that because the marina set had to be constructed around the three marina cameras, the costs associated with each of those three cameras is not equal to the cost of one of the remaining eight cameras. Attachment 4, at 94. The Convention Committee has not submitted any documentation identifying the actual costs associated with the three marina cameras. Since the Commission is unable to ascertain the exact cost associated with the three marina cameras, the Commission determines that 3/11 of the cost associated with the 11 cameras will represent the cost associated with the three marina cameras.

1 Under the CBT contract, the Commission determines that the Convention
2 Committee should have paid \$416,672 for the basic feed's 14 cameras and \$358,719 for
3 the COA-TV's use of eight of the other 11 cameras, or a total of \$775,391 (\$416,672 +
4 \$358,719).⁴⁸ The Convention Committee paid CBT only \$482,645, and the RNC paid the
5 rest of the CBT contract price. See Attachment 3, at 55. Therefore, the Convention
6 Committee accepted an in-kind contribution from the RNC in the amount of \$292,747
7 (\$775,391 - \$482,645) and this amount is subject to the Convention Committee's
8 expenditure limitation. See 11 C.F.R. § 9008.6.

9 V. CONCLUSION

10 For the foregoing reasons, the Commission determines that the 1996 Committee
11 on Arrangements for the Republican National Convention received in-kind contributions
12 from the San Diego Host Committee in the amount of \$482,111 and from the Republican
13 National Committee in the amount of \$292,747, which, when added to the Convention
14 Committee's receipt of a full public grant, resulted in the Convention Committee
15 exceeding the expenditure limitation for presidential nominating conventions by a total of
16 \$774,858 (\$482,111 + \$292,747). 26 U.S.C. § 9008(d). Therefore, the Commission
17 determines that the 1996 Committee on Arrangements for the Republican National
18 Convention and the Republican National Committee must repay \$774,858 to the United
19 States Treasury. 26 U.S.C. § 9008(h).

⁴⁸ The RNC's share was \$416,672 for the basic feed plus \$627,760 for the GOP-TV programs, or a total of \$1,044,432. Thus, the Commission determined that the Convention Committee should have paid \$775,391 and the RNC should have paid \$1,044,432 for the goods provided and services rendered under the CBT contract. This accounts for \$1,819,824, or the total cost billed under the CBT contract.

1 **Attachments**

- 2 1. Report of the Audit Division on the 1996 Committee on Arrangements for the
3 Republican National Convention (June 25, 1998).
- 4 2. Statement of Net Outstanding Committee Expenses.
- 5 3. Request of the 1996 Committee on Arrangements for the Republican National
6 Convention for an Administrative Review of the Repayment Determination
7 (Sept. 24, 1998) (including Appendix).
- 8 4. Transcript of the 1996 Committee on Arrangements for the Republican National
9 Convention Oral Hearing before the Federal Election Commission on
10 February 24, 1999.
- 11 5. Supplemental Submission of the 1996 Committee on Arrangements for the
12 Republican National Convention (Mar. 3, 1999).
- 13 6. Nash Contracts with Convention and Host Committees.
- 14 7. David J. Nash Associates, Inc., Republican National Convention Host Committee
15 Statement, Line Item Descriptions (Feb. 14, 1997).
- 16 8. Memorandum from Audit Division to Office of General Counsel (Apr. 22, 1999)
17 (analysis of the Administrative Review Request).
- 18 9. Audit Division, Schedule of Payments for "Stagehands" and "Stage Tech Crew
19 Member."
- 20 10. Audit Division, Schedule of Payments for "Entertainment" as Reported on the
21 DNC Host FEC Disclosure Reports.
- 22 11. Memorandum from Audit Division to Office of General Counsel (Feb. 16, 1999)
23 (diagrams of CBT Contract purposes).
- 24 12. RNC GOP-TV Memorandum (Mar. 10, 1997) and Invoice (Sept. 16, 1997).
- 25 13. RNC Counsel's Office, 1996 Republican Convention Broadcast Vendors
26 Descriptions.
- 27 14. Chart of Host Committee's In-Kind Contribution to the Convention Committee
28 (Appendix 1)
- 29 15. Allocation Chart Host Committee and Convention Committee Expenses
30 (Appendix 2)