



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MUR 4675

September 26, 1997

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PETE WILSON FOR PRESIDENT COMMITTEE, INC. - REFERRAL MATTER

Attached for your consideration is the only finding from the Pete Wilson for President Committee, Inc. audit report that meets the criteria for referral for a possible compliance action.

The finding, Apparent Excessive Contributions Resulting from Staff Advance and Extension of Credit by a Commercial Vendor, addresses a staff advance by Craig Fuller which constituted a \$28,193 excessive contribution and whether an extension of credit by a commercial vendor (AT&T) constituted a \$213,365 prohibited contribution. In response, the Primary Committee argued that the staff advance should be considered an ordinary course extension of credit by a vendor rather than as a staff advance. The report concludes that a contribution occurred under either analysis. With respect to the commercial vendor, the Primary Committee contends that no extraordinary extension of credit occurred. After considering the information and explanations provided, the report concludes that the contribution did occur.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Joe Stoltz or Alex Boniewicz at 219-3720.

**III. PETE WILSON FOR PRESIDENT COMMITTEE, INC.
(PRIMARY COMMITTEE)**

**A. AUDIT FINDINGS AND RECOMMENDATIONS: NON-REPAYMENT
MATTERS**

**1. Apparent Excessive Contributions Resulting from Staff Advance
and Extension of Credit by a Commercial Vendor**

Section 441a (a)(1)(A) of Title 2 of the United States Code states, that no person shall make contributions to any candidate and his authorized political committee with respect to any election for Federal office which, in the aggregate, exceed \$1,000.

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any corporation to make a contribution in connection with any election to any political office.

Section 116.5(b) of Title 11 of the Code of Federal Regulations states, in part, that the payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or a political committee is a contribution unless the payment is exempted from the definition of a contribution under 11 CFR §100.7(b)(8).

Further, if the payment is not exempted, it shall be considered a contribution by the individual unless it is for the individual's transportation expenses or for usual and normal subsistence expenses incurred by an individual, other than a volunteer, while traveling on behalf of a candidate; and, the individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first

appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used. "Subsistence expenses" include only expenditures for personal living expenses related to a particular individual traveling on committee business, such as food or lodging.

Sections 116.3(a) and (b) of Title 11 of the Code of Federal Regulations state, in relevant part, that a commercial vendor that is not a corporation, and a corporation in its capacity as a commercial vendor may extend credit to a candidate, or political committee. An extension of credit will not be considered a contribution to the candidate or political committee provided that the credit is extended in the ordinary course of the commercial vendor's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

Finally, 11 CFR §116.3(c) states that in determining whether credit was extended in the ordinary course of business, the Commission will consider:

- Whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit;
- whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee, and
- whether the extension of credit conformed to the usual and normal practice in the commercial vendor's industry or trade.

a. Staff Advance

During our review of the Primary Committee's reported debt at May 31, 1996, the Audit staff noted an outstanding debt of \$51,185 owed to Craig Fuller. On May 1, 1995, the Primary Committee contracted with The Fuller Company, which, according to the contract, is a corporation whose sole representative is Craig Fuller.⁴ The contract specified that Craig Fuller was to serve as the Primary Committee's Campaign Chairman and that the Primary Committee was to pay a monthly retainer fee of \$22,000 beginning May 1, 1995. The contract also contained the following clause:

"Vendor agrees to obtain prior approval from the Committee for all travel and other expenses incurred in the performance of this Agreement. The Committee will reimburse Vendor for all travel and

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The contract stated that The Fuller Company's principal place of business was McLean, Virginia. Committee records also revealed that the business address for the Fuller Company was the same as Craig Fuller's personal address.

other expenses incurred under this agreement. The Committee will not reimburse Vendor for first class or business class air travel.

Authorized expenses shall be invoiced at cost and without markup to the Committee. All expenses incurred by Vendor will be reimbursed within thirty (30) days of receipt by the Committee".

Although the contract was with The Fuller Company, the Primary Committee disclosed all its transactions and wrote all but one of its checks payable to Craig Fuller. Since the contract specified that The Fuller Company was a corporation, the Audit staff attempted to verify its corporate status. The Audit staff was unable to locate a Fuller Company incorporated in either California, Washington D.C., or Virginia. A representative from the Corporate Division for the State of Virginia also stated that regardless whether a business was incorporated in Virginia, if its principal place of business was Virginia, the Corporate Division would have a record of its existence. Finally, the Audit staff located a professional biography for Craig Fuller on the Internet which made no mention of a Fuller Company. It stated that he had worked for Philip Morris until he was invited to be the chairman for Governor Wilson's Presidential campaign. Therefore, the Audit staff considered this matter under 11 CFR §116.5 rather than 11 CFR §116.3.

The Audit staff's review confirmed that the Primary Committee paid the specified monthly retainer fees from May 1995 through July 1995. The Primary Committee also maintained a record in its accounts payable file detailing that as of May 1996, the Primary Committee still owed Craig Fuller his August 1995 retainer fee (\$22,000).

The Primary Committee reimbursed Craig Fuller \$6,555 for various expenses incurred through June 1. The Primary Committee also maintained in its accounts payable file expense reimbursement requests from Mr. Fuller submitted on October 31, 1995 for expenses incurred and paid by him between May 4, 1995 and September 28, 1995. The expense reimbursement requests were signed by Mr. Fuller and submitted with supporting documentation for expenditures such as taxi fares, and meals and hotel lodging paid for on his personal credit card. The Audit staff determined the total amount of unreimbursed expenses submitted was \$29,193. This amount, plus the August retainer fee, comprise the \$51,185 reported as owed by the Primary Committee to Craig Fuller at May 31, 1996.⁵

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The \$8 difference between the \$51,185 reported by the Primary Committee and the sum of the \$22,000 retainer fee and \$29,193 in unreimbursed expenses is immaterial.

As a result of these unreimbursed expenses, the Audit staff determined that Mr. Fuller had made an excessive contribution totaling \$28,193. The Audit staff's analysis considered Mr. Fuller's \$1,000 contribution limitation; a \$1,000 contribution made by him to the Primary Committee on September 1, 1995 and, the \$1,000 that an individual is permitted to incur for transportation pursuant to 11 CFR §100.7(b)(8).

This matter was discussed with Primary Committee officials at a conference held at the end of fieldwork. At that time, a copy of a schedule was also provided detailing the Audit staff's determination of the excessive amount. A Primary Committee representative expressed surprise that such an exorbitant amount of expenses had been submitted to the Primary Committee for reimbursement, and stated that he doubted the Primary Committee would be inclined to pay it. He added that there may have been a dispute between Mr. Fuller and the Primary Committee concerning the expenses claimed. He also stated that the Primary Committee would provide the Audit staff with more information; however, no additional information or documentation addressing this matter was submitted.

In the Exit Conference Memorandum (the Memorandum), the Audit staff recommended that the Primary Committee demonstrate that Craig Fuller did not exceed the contribution limitation of 2 U.S.C. §441a(a)(1)(A), or was reimbursed in a timely manner as defined under 11 CFR §116.5(b)(2), or submit any other comments or documentation it felt may be relevant.

In its response to the Audit staff's recommendation, the Primary Committee contended that the money owed to Craig Fuller is subject to the provisions of 11 CFR §116.3, which addresses extensions of credit by commercial vendors, rather than the Audit staff's treatment of the issue under 11 CFR §116.5(b). The Primary Committee argued that, as a commercial vendor, Craig Fuller was extending credit in the usual and normal course of his business. Considered under this regulation, the Primary Committee asserted, there was no excessive contribution. The Primary Committee concludes by stating that Mr. Fuller is not the only vendor still owed funds and it treated Mr. Fuller the same as every other commercial vendor to whom it owes money.

The response included an affidavit from Craig Fuller supporting the Primary Committee's statements. In addition, the Primary Committee's response states:

"The Memorandum recognizes that 11 CFR §116.3 permits commercial vendors, whether or not incorporated, to extend credit to a candidate as long as the credit is extended in the ordinary course of the commercial vendor's business and the terms are not established especially for the candidate or political committee".

"Craig Fuller, through The Fuller Company, a sole proprietorship established in 1989, was a vendor to the Primary Committee. As such, any monies still owed Mr. Fuller for his monthly fee and expenses under his contract are subject to 11 CFR §116.3. For unexplained reasons, the Memorandum incorrectly characterizes him as an employee subject to 11 CFR §116.5."

"Indeed, the only indicia the Memorandum can site [sic] in arguing Mr. Fuller was an employee of the Primary Committee is that The Fuller Company is not incorporated. However, for a variety of business reasons and based on the recommendation of his financial advisor, Mr. Fuller opted not to incorporate the Fuller Company, and instead operate it as a sole proprietorship".

"As the Commission is well aware, Mr. Fuller is not the only vendor still owed funds.... There is simply no money to pay in full Mr. Fuller or 56 other vendors. By contrast, the Primary Committee has paid all its employees and staff. Regrettably, slow payment is the Committee's normal course of business towards vendors to whom it still owes money, including The Fuller Company.⁶ Likewise, the Fuller Company recognizes that in the normal course of business, clients may not be able to pay bills and, in such cases, credit has to be extended. The Fuller Company has extended payments and carried debt in other instances".⁷

The Primary Committee's response, and Craig Fuller's affidavit, also mentioned that as a sole proprietor, he reported the income received from the Primary Committee to the Internal Revenue Service (IRS) on an IRS Form 1040C (Schedule C), and received an IRS Form 1099 from the Primary Committee rather than an IRS Form W-2. This tax treatment of his income, the Primary Committee concluded, supports the contention that he was not an employee of the Primary Committee, rather he was an independent contractor, subject to the provisions of a commercial vendor under 11 CFR §116.3.⁸

⁶ The Audit staff notes that money paid (Schedule B-P) and owed (Schedule D-P) for Mr. Fuller's services was consistently disclosed to "Craig Fuller", not "The Fuller Company".

⁷ Both the Primary Committee and Craig Fuller failed to provide examples of situations where The Fuller Company had extended credit to nonpolitical clients of similar size and risk. (See 11 CFR §116.3(a)).

⁸ The response notes the Primary Committee intends to pay "the monies owed for Mr. Fuller's services and expenses as soon as possible". In his affidavit, Craig Fuller stated that he had "made periodic inquiries about when the Committee expected to have sufficient funds to pay (t)he Fuller Company".

The affidavit from Craig Fuller further stated "I am president of the Fuller Company, a sole proprietorship I began in 1989 when I left government service. I was advised by my financial advisor to establish this business as a sole proprietorship for tax reasons". The affidavit continued by stating that "From May to September, 1995, I was retained through the Fuller Company by the Pete Wilson for President Committee, Inc.. Through my company, I served as Campaign Chairman".

i. Mr. Fuller as a Commercial Vendor

Section 116.1(c) of Title 11 of the Code of Federal Regulations defines commercial vendors as any person(s) providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services. The crux of the Primary Committee's argument is that Craig Fuller is a commercial vendor. However, neither the Audit staff's independent queries, the Primary Committee's response, nor Mr. Fuller's affidavit provide any explanation as to what constitutes the "usual and normal business" of The Fuller Company. Craig Fuller states only that the company was established upon the suggestion of a business advisor for his personal tax purposes.

Furthermore, Mr. Fuller states in his affidavit "[t]hrough my company, I served as Campaign Chairman". The Audit staff was able to locate two professional biographies on the Internet featuring Craig Fuller.⁹ According to these biographies, Craig Fuller worked as senior vice president for corporate affairs at Philip Morris Companies, Inc. before joining the Primary Committee. Previously, Mr. Fuller had worked in the Reagan and Bush White Houses until 1989, after which he became an executive at a lobbying firm. After leaving the Primary Committee, he worked at the public relations firm of Burson-Marsteller as vice-chairman. In mid-1996, Mr. Fuller accepted the position of managing director at the Washington D.C. office of Korn/Ferry International, an executive search firm. The biographies make no mention of The Fuller Company nor of any other political consulting work done by Mr. Fuller since leaving the White House. Thus, absent an adequate explanation of The Fuller Company's business, and, because of the consistency in Mr. Fuller's career as a business executive, the Audit staff is unable to conclude that providing campaign chairman services to political committees is the usual and normal business of The Fuller Company, or that The Fuller Company consists of anything more than a name.

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Internet sites located at: 1) <http://www.register.com/prcentral/iprjun24fuller.htm>, and 2) <http://www.ac2000.org/syndicate/fuller.html>.

ii. Mr. Fuller as a Primary Committee Employee

The Primary Committee response contends that the Audit staff, in applying 11 CFR §116.5, erroneously concludes that Mr. Fuller is an employee of the Primary Committee. The Primary Committee fails to realize that the application of 11 CFR §116.5 is not limited to committee staff. Indeed, the title of the regulation itself reads "Advances by committee staff and other individuals". Subsection (a) of the regulation, which clearly defines its application, makes no reference to "employees". Rather, it states its scope is "to individuals who are not acting as commercial vendors". Since the Primary Committee is unable to provide conclusive evidence that Mr. Fuller meets the definition of a commercial vendor under 11 CFR §116.3, its argument that he was not an employee of the Primary Committee and, by default, not subject to 11 CFR §116.5, is misplaced.

iii. Personal Credit Card

Section 116.5 (b)(2) of Title 11 of the Code of Federal Regulations reads as follows:

"The payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or a political committee is a contribution unless the payment is exempted from the definition of contribution under 11 CFR 100.7(b)(8). If the payment is not exempted under 11 CFR 100.7(b)(8), it shall be considered a contribution by the individual unless - (2) The individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used."

Based on the Audit staff's review of the expense documentation submitted to the Primary Committee by Craig Fuller, those expenditures which were not paid in cash were paid with his personal credit cards.¹⁰ Even if the Audit staff accepted The Fuller Company as a commercial vendor under 11 CFR §116.3, since

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Documentation reviewed by the Audit staff indicates that at least two personal credit cards were used by Craig Fuller to pay for his expenses while serving as Campaign Chairman. The documentation included credit card statements which Craig Fuller had submitted to the Primary Committee to document his expenditures. Many of the charges itemized on the statements, and not submitted for reimbursement, appeared to be personal in nature, i.e., charges to retail jewelry stores, major department stores, and other businesses trading in consumer goods.

Mr. Fuller used his personal credit cards to pay for Primary Committee related travel, lodging, and meals, and because the expense billings did not appear to involve The Fuller Company, the contribution occurred.

The Primary Committee has failed to provide sufficient evidence to substantiate its argument that 11 CFR §116.5 was incorrectly applied in this matter. Even if consideration of this matter under 11 CFR §116.3 was contemplated, the Primary Committee failed to provide documentation demonstrating the credit extended was in the normal course of business for the Fuller Company and examples of other clients of similar size and risk for which similar services had been provided under similar billing arrangements. Additionally, consideration under 11 CFR §116.3 would preclude application of the exemption for personal travel and subsistence expenses provided under 11 CFR §100.7(b)(8) ; resulting in a prohibited contribution of \$29,193. Therefore, the Audit staff's conclusion that Craig Fuller made an excessive contribution, as defined under 11 CFR §116.5, in the amount of \$28,193, remains unchanged.

b. Extension of Credit by a Commercial Vendor

During the course of fieldwork, the Audit staff reviewed documentation associated with an arrangement between the Primary Committee and American Telephone and Telegraph Credit Corporation (ATT Credit). A document, titled "Master Equipment Lease Agreement Schedule" (Master Schedule) was dated June 1, 1995, and set the value of equipment to be leased, a PBX telephone system, at \$213,365.¹¹ This document specified that the Primary Committee was responsible for payment of advance rent of \$12,352, to be applied to the first month's rental payment, and monthly payments of \$12,352 thereafter. Other documents submitted after the Primary Committee's response to the Exit Conference Memorandum make it clear the Primary Committee was to provide a letter of credit to secure the lease. However, the only payment to ATT Credit ultimately made by the Primary Committee was on February 9, 1996 in the amount of \$213,365.

The Primary Committee records indicated it had also issued the following checks to "AT&T Credit Corp": check number 1328 dated May 28, 1995; check number 1509 dated June 27, 1995; and check number 1587 dated July 10, 1995. Each was in the amount of \$12,352. The checks dated May 28 and June 27 were reported on the Primary Committee's Schedules B-P for the July Quarterly 1995 reporting period. During the same reporting period, the Primary Committee also disclosed an outstanding debt to "AT&T Credit Corporation" on its Schedules D-P in the amount of \$201,013

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The value of the telephone equipment, per the Master Equipment Lease Agreement Schedule, was \$165,580. The difference between this amount and the \$213,365 is comprised of sales tax (\$12,832), installation (\$34,000), and shipping (\$952).

(\$225,716 less two \$12,352 payments).¹² In the October Quarterly 1995 reporting period, the Primary Committee reported the May and June checks as negative entries on its Schedules B-P. On its Schedules D-P, the Primary Committee reported a beginning period debt total of \$201,013, debt incurred during the period of \$12,352, and an outstanding balance at the end of the period of \$213,365. The Primary Committee reported this amount as a debt until the April 1996 Monthly (March 1 to March 31, 1996) reporting period.

The Audit staff located all three checks, un-negotiated, in the Primary Committee's void check file. According to available records, the checks had been voided on October 6, 1995. Each voided check was accompanied by a copy of a brief letter from Robert P. Wright of ATT Credit in Parsippany, New Jersey. The letter was addressed to a Primary Committee attorney, A. Peter Kezirian, Jr., and dated October 10, 1995. The letter read as follows:

"Dear Peter: Enclosed are three checks each in the amount of \$12,351.68 held in anticipation of a Letter of Credit ¹³ to support funding of your lease of telecommunications equipment from AT&T. Sincerely, Robert P. Wright"

Documentation submitted by the Primary Committee on July 17, 1997, included an internal memorandum from A. Peter Kezirian, Jr. [Counsel for the Primary Committee] to Mark G. Hogland [Director of Administration for the Primary Committee]. According to this memorandum, dated August 21, 1995, discussions with an ATT Credit representative indicated that the letter of credit was an essential part of the lease and ATT Credit could not process any of the Primary Committee's payments until all the lease prerequisites were completed. The same memorandum stated that ATT Credit had been requested to consider "some variation of the letter of credit" so that the lease agreement could be executed between the parties, but had refused because it felt compelled to treat all campaigns equally.

On February 9, 1996, the Primary Committee issued check number 0101732 in the amount of \$213,365 to ATT Credit, approximately nine months after the Committee had signed the Master Schedule. Prior to February 9, 1996, the Primary Committee began negotiating for the sale of the telephone equipment to VariLease Corporation of Farmington Hills, Michigan. Based on the "Agreement of

¹² The Audit staff believes that the \$225,716 reported as the amount of debt incurred for the July Quarterly reporting period was derived by the Primary Committee to ensure that the outstanding debt reported on the October Quarterly Schedule D-P would balance to the actual value outlined in the Master Schedule (\$213,365).

¹³ Although no documentation with respect to a letter of credit was made available to the Audit staff, during November, 1995, the Primary Committee received a line of credit (\$500,000) which was used to make payments to various vendors other than AT&T.

Purchase" between VariLease Corporation and the Primary Committee, dated January 4, 1996 and signed February 1, 1996, VariLease Corporation purchased the equipment and had it shipped to Otisco Valley Telecom in Liverpool, New York. The sale price of the equipment to VariLease Corporation was \$50,000 (\$55,000 original sale price less \$5,000 deduction for parts not received). On March 7, 1996, the Primary Committee deposited a \$50,000 check, dated March 1, 1996, from VariLease Corporation.

It is the Audit staff's opinion that, based on the available documentation regarding the lease being negotiated between the Primary Committee and ATT Credit, the Primary Committee received an extension of credit from ATT Credit outside the ordinary course of business. AT&T delivered and installed the telecommunications equipment prior to all documents related to this transaction being completed. Further, the Primary Committee had possession of the telecommunications equipment owned by AT&T for nine months at no cost. All of the documentation available to the Audit staff stands in direct contrast to the (unexecuted) lease document, which although signed by a Primary Committee representative was apparently never executed by ATT Credit. The Master Schedule specifically details the value of the equipment to be leased and the amount and manner in which lease payments were to be due. The Primary Committee never made a fully negotiated payment relative to the (unexecuted) lease for the telephone equipment nor provided the necessary letter of credit to secure the (unexecuted) lease. The Audit staff concludes that the Primary Committee received a contribution from ATT Credit from May 1995 through February 1996 of \$213,365, the amount of the eventual purchase price of the telephone system.

The Audit staff discussed this matter with Primary Committee representatives at a conference held at the end of fieldwork and requested that more documentation, specifically a copy of the lease with ATT Credit, be provided. Primary Committee officials had no direct comment, but indicated that they were confident they would be able to clear the matter.

The Primary Committee did not provide the documentation requested prior to the issuance of the Exit Conference Memorandum. Rather, it provided either documentation already obtained by the Audit staff or internally generated letters from Primary Committee officials addressed to various ATT Credit representatives. The letters provided little information, with the exception of one letter from A. Peter Kezirian, Jr., to Christine Myers of ATT Credit dated June 27, 1995. This letter was apparently the cover letter to an overnight package delivered from the Primary Committee to ATT Credit. In relevant part, the letter read as follows:

"Enclosed please find the following documents related to AT&T Master Equipment Lease Agreement, dated as of May 17, 1995 (the "Agreement"): (i) an executed copy of the Agreement; (ii) an executed Master Equipment Lease Agreement Schedule; (iii) an executed Financing Statement on a Form UCC-1; (iv) an executed

Billing Information Sheet and (v) two checks, each in the amount of \$12,351.68 which reflects our May and June payments under the Agreement.

In light of my discussions with Phil Lozzano and Bob Wright, I am in the process of establishing a line of credit¹⁴ for the remaining payments due and owing [sic] under the Agreement. As I discussed earlier with Messers. Lozzano and Wright, the Committee is in its early stages of development and our bank will not issue a line of credit at this time. Once the Committee has qualified for federal matching funds, which will occur on June 30 and is contingent on the completion of our initial filing with the Federal Election Commission, the Committee will become immediately eligible for a line of credit. As soon as I have received such a financial instrument from our bank, I will provide AT&T with the necessary documents to complete our obligations under the Agreement."¹⁵

The Audit staff already had all the documents itemized in paragraph 1 of Mr. Kezirian's letter discussed above except for the "AT&T Master Equipment Lease Agreement, dated as of May 17, 1995".

In the Memorandum submitted to the Primary Committee, the Audit staff recommended that it provide an executed copy of the AT&T Master Equipment Lease Agreement dated May 17, 1995, as well as any other documentation from ATT Credit and/or Franklin National Bank, or any other source it deemed relevant, to demonstrate that the credit extended by ATT Credit was in the normal course of business and did not represent a contribution. The recommendation stressed that the information provided should include examples of other customers or clients of similar size and risk for which similar services have been provided and similar billing arrangements have been used. Information concerning billing policies for similar clients and work, advance payment policies, debt collection policies, and billing cycles was also requested.

In response to the Memorandum, the Primary Committee asserted that it had not "received some sort of sweetheart deal" from ATT Credit, and that "... the facts, the business reasons for ATT's actions as understood by the Primary Committee, and ATT's normal business practices in similar situations debunk the

¹⁴ All other references have been to a letter of credit.

¹⁵ Based on its threshold submission received August 11, 1995, the candidate established eligibility on August 30, 1995.

Memorandum's argument". The response stated that there were "three allegations" contained in the Memorandum, each of which was "factually untrue". The response also included ATT Credit documents already obtained by the Audit staff, an affidavit from A. Peter Kezirian, Jr., and documents regarding a "buy back" arrangement between AT&T¹⁶ and the Bush/Quayle '92 Presidential campaign. On July 17, 1997, the Primary Committee submitted additional documentation including internal Committee memoranda; letters and other documents from AT&T; and copies of telephone bills paid by the Primary Committee. The Primary Committee's arguments concerning each of the three allegations, and the Audit staff's conclusion about those arguments and the supporting evidence provided, are discussed below.

i. "Improper Extension of Credit"

The first issue addressed by the Primary Committee was the Audit staff's conclusion that "the Primary Committee received 'an extension of credit from ATT [Credit] outside the ordinary course of business'". The Primary Committee began by describing the basis on which ATT Credit forms customer relationships. While the affidavit from A. Peter Kezirian, Jr. supports these statements, no documentation from ATT or ATT Credit characterizing its business policies was provided.

"ATT Credit ... regularly provides leasing and credit services to facilitate the sale of equipment for ATT since, as the Primary Committee has come to learn, equipment sales are considered the best means of securing a business' overall telephone service. Therefore, while the equipment costs about which the Memorandum is concerned is a significant component, it is also a relatively small part of the entire business relationship between ATT and a customer... The Memorandum fails to recognize that in this context, it is the normal course of business for a telephone company to install a telecommunications system and secure the service contracts before finalizing all of the credit and contract terms of such a sale or lease... The monthly ATT billings to the Primary Committee for telephone service were often five or six times the equipment lease payments. The potential billings to ATT would continue to grow exponentially as the campaign moved closer to the primary elections. The total dollars flowing to ATT from the Primary Committee demonstrate conclusively that the service agreements are of significantly greater value to a telephone company than the equipment sales about which the Memorandum

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The Audit staff notes that this arrangement did not involve ATT Credit. The parties involved were the Bush/Quayle 92 campaign and AT&T, the parent company of ATT Credit.

focuses. In other words, in order to obtain the lucrative business of providing the service itself, a telephone company may, as happened here, offer 'deals' and flexibility on payment for the equipment".

The Audit staff cannot rely on the Primary Committee's statements regarding what elements AT&T considers when evaluating its business relationships with its customers. All information about AT&T's business practices is provided by an attorney employed by the Primary Committee. No information from AT&T is supplied.¹⁷ Furthermore, the Audit staff has thoroughly examined a copy of the (unexecuted) lease agreement and nowhere does it require that AT&T be the telephone service provider for any period of time as a condition of the lease, nor does it contain a clause which offers "flexibility" to the lessee if it utilizes ATT's telephone service. Finally, the Audit staff finds no evidence to support the contention that it is an established business practice of ATT to install telecommunications equipment based on "potential billings", and "before finalizing all of the credit and contract terms of such a sale or lease".

The Primary Committee's response continued by describing how ATT Credit generates revenue for itself by discounting its leases and selling them in financial markets. It was this common practice, the response contends, that resulted in the Primary Committee's checks not being deposited by ATT Credit. However, the response fails to address how such a practice subsequently resulted in ATT Credit returning to the Primary Committee all three payments it had sent relative to the (unexecuted) lease.

"ATT Credit provides credit to the customers of ATT to help them afford more telephone service."¹⁸ However, ATT Credit cannot survive financially if it holds onto each of the loans extended to ATT customers. Therefore ... ATT Credit will 'bundle' these loans and sell them in the financial markets at a discount.... The Primary Committee did not understand why ATT Credit had not deposited the Primary Committee's lease payments until it learned the decision was based on ATT Credit's standard practice of bundling and reselling loans. Mr. Wright told Mr. Kezirian that any deposit without the closure of any element of the Master Lease Agreement

¹⁷ Materials submitted on July 17, 1997, by the Primary Committee indicate a letter of explanation has been requested from AT&T and is expected to be received soon. To date, no such letter has been provided.

¹⁸ The statement that "ATT Credit provides credit to customers of AT&T to help them afford more telephone services" is not clear. ATT Credit finances telecommunications equipment, not telephone services.

would have disqualified the loan for sale. ATT Credit was willing to hold deposits to maintain the option of reselling the loan ...Therefore, ATT Credit held payments until all steps were completed. The Committee believed this was a normal business decision by ATT Credit that had nothing to do with the operations of the Primary Committee."

This section concludes by stating that ATT Credit never did sell the Primary Committee's loan, "but [it] did receive full payment for the equipment in February 1996". The response then argues that as a result of the Primary Committee's purchase of the equipment at its full value, it "meant that ATT was certainly made whole and that the Primary Committee did not secure a benefit outside ATT's normal business practices".¹⁹

Given that no fully executed lease has been produced and that ATT Credit "could not process any of the payments" until the lease requirements were completed, which included a letter of credit, it appears that no lease contract existed. Without a completed (lease) contract, the sale of the instrument would seem to be impossible.

Further, the Primary Committee fails to address how ATT Credit is able to "survive financially" by returning the payments it receives relative to its leases. In the Primary Committee's case, ATT Credit never sold the (unexecuted) lease, but, after the (unexecuted) lease was in arrears, and absent the requisite letter of credit, sent the undeposited checks back to the Primary Committee. The Primary Committee does not explain why it believes that it was a "normal business decision by ATT Credit" to not only return to it \$37,056 in payments made relative to the (unexecuted) lease, but to do so in October of 1995. By this time the candidate had dropped from the race, the campaign was publicly reported as bankrupt, and, under the terms of the (unexecuted) lease, was two payments in arrears.

Finally, the Audit staff notes with interest Mr. Wright's explanation to Mr. Kezirian about why the Primary Committee checks were never deposited. As quoted previously in this report, the letter from Mr. Wright to Mr. Kezirian dated October 10, 1995, which accompanied the return of the un-negotiated checks, states that the checks were returned because they were "held in anticipation of a Letter of Credit to support funding of your lease...". It is the Audit staff's opinion that these checks were never cashed by ATT Credit to avoid any appearance of consummating the (unexecuted) lease prior to receiving a letter of credit.

¹⁹ Whether ATT Credit was or wasn't "made whole" is not the thrust of 11 CFR §116.3. This regulation deals with extensions of credit made by commercial vendors.

ii. "Free Equipment" for the Primary Committee

The second issue presented by the Primary Committee was that "[t]he Primary Committee used the telecommunications equipment owned by ATT [Credit] 'for nine months at no cost'". In this portion of its response, the Primary Committee asserts that ATT Credit actually received more money than it was entitled because the Primary Committee bought the equipment at its full value in February 1996, rather than paying for the equipment over the "17 month[s]" term specified in the lease.²⁰ Indeed, the Primary Committee states in its response, "By selling the system outright in February 1996, ATT Credit received its funds sooner than anticipated, and therefore, received an economic benefit".

The Audit staff, in applying 11 CFR §116.3, is concerned only with the nine month period which ATT Credit allowed the Primary Committee possession and use of equipment without requiring any compensation. Further, the assertion that ATT Credit received more money than entitled by foregoing its monthly lease payments due under the (unexecuted) lease agreement in lieu of a lump sum at the end of nine months, is untrue. If the telephone system had been purchased when installed in May 1995, the price would have been \$213,365. If the (unexecuted) lease had been paid to its conclusion, 19 months at \$12,352 per month, ATT Credit would have received \$234,688. The Audit staff fails to see how AT&T's receipt of \$213,365 nine months after the system was installed provides a financial benefit over either the timely collection of payments throughout the specified term, or the outright purchase of the system when installed.

Additionally, the Primary Committee claims it was "... penalized by ATT for withdrawing from the election" because "By mid-October, ATT had terminated its service arrangements with the Primary Committee". The Primary Committee states that it had to stop using the equipment and store it "until a financial solution was found". No explanation is provided as to why the service was disconnected and why the equipment had to be stored rather than used during the wind-down period. Further, the Audit staff finds these statements incompatible with previous assertions made in the Primary Committee's response. In part i. above, the Primary Committee explained at length that AT&T's usual course of business is to first, secure profitable service agreements, and second, tie them to flexible equipment leases. Based on this scenario, it would seem that once the service was disconnected, AT&T would cease to be flexible with its leased equipment, demand it be returned, and continue collection efforts for the outstanding lease payments. Indeed, it would seem that AT&T lost money in its dealings with the Primary Committee. AT&T failed to realize all of the

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The Primary Committee states in its response that "The lease required 17 months to pay the complete purchase price" resulting in total payments of \$213,682. According to the Master Lease Agreement its term was for 19 months.

"potential billings" it had supposedly anticipated from its service agreements, failed to collect the \$12,352 due in monthly payments for nine months under the (unexecuted) lease, and failed to regain control and possession of its equipment for four months after it had "penalized" the Primary Committee by terminating its telephone service in October 1995.

iii. "No Lease Payment"

The Primary Committee's discussion in the third subsection of its response argued that the Audit staff's conclusion that "the Primary Committee 'never made a fully negotiated lease payment on the telephone equipment' is patently incorrect". The response continues as follows:

"Three lease payments of \$12,351.68, each as required by the Master Lease Agreement, were made in a timely manner in May, June and July. The Primary Committee failed to make lease payments in August and September due to financial difficulties".

The difference between the Primary Committee's position on this issue and the Audit staff's position is merely semantic. The Primary Committee argues that, from its perspective, the payments were fully negotiated because the Primary Committee issued the checks and recorded the payments in its records. It is argued that since these payments were so recorded, the funds were unavailable for other uses. The fact that ATT Credit never cashed the checks causing the funds to be removed from the Primary Committee's accounts is not relevant to its position. In the Audit staff's view of these same facts, ATT Credit's failure to collect the funds represented by the checks, to return those checks after the (unexecuted) lease was in arrears, and not to pursue these delinquent payments represents an extension of credit beyond its ordinary course of business.

The Audit staff concludes that the Primary Committee has failed to demonstrate that ATT Credit did not extend credit outside of its normal course of business, as defined under 11 CFR §116.3, or that the Primary Committee did not receive a contribution from ATT Credit during the period from May 1995 through February 1996 in the amount of \$213,365.