BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 4961
DNC Services Corporation/Democratic National Committee and its treasurer	)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found probable cause to believe that the DNC Services Corporation/Democratic National Committee and Andrew Tobias, as treasurer, ("DNC" or "Respondents" or "Committee") violated 11 C.F.R. § 102.5(a) and 2 U.S.C. §§ 441a(f) and 434(b).

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The DNC is a political committee within the meaning of 2 U.S.C. §§ 431(4) and 431(14).

2. Robert Matsui was treasurer of the DNC from February 17, 1994 to August 19, 1995. Scott Pastrick was treasurer of the DNC from August 19, 1995 to January 21, 1997. Carol Pensky was treasurer of the DNC from January 21, 1997 to March 20, 1999. Andrew Tobias became treasurer of the DNC on March 20, 1999, a position he presently holds.

3. The Federal Election Campaign Act of 1971, as amended, ("the Act") provides that no person shall make contributions to a national party committee which in the aggregate exceed $20,000 in any calendar year. 2 U.S.C. § 441a(a)(1)(B). No committee shall knowingly accept any contribution in violation of this provision. 2 U.S.C. § 441a(f).

4. The Commission's regulations provide the conditions under which contributions may be deposited into a committee's federal account and the steps that committees must take in connection with the receipt of contributions which exceed contribution limits. See 11 C.F.R. §§ 102.5(a) and 103.3(b)(3). Political committees such as party committees which finance political activity in connection with both federal and non-federal elections may establish a separate federal account. 11 C.F.R. § 102.5(a)(1). Except as provided at 11 C.F.R. 103.3(b), only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate federal account. 11 C.F.R. § 102.5(a)(1)(i). The Commission's regulations further provide that only contributions meeting the following conditions may be deposited into a committee's federal account: (i) those designated for the federal account; (ii) those resulting from a solicitation expressly stating that the contribution will be used in connection with a

federal election; and (iii) those from contributors who are informed that all contributions are subject to the prohibitions and limitations of the Act. 11 C.F.R. § 102.5(a)(2).

5. Contributions which on their face exceed the contribution limitations, and contributions which do not appear to be excessive on their face, but which exceed the contribution limits when aggregated with other contributions from the same contributor, may be either deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If any such contribution is deposited, the treasurer may request reattribution of the contribution by the contributor in accordance with part 110 of the Commission's regulations. Id. If a reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor. Id.

6. The Commission's regulations require that committees obtaining reattributions from contributors inform contributors of the option of requesting a refund. See 11 C.F.R. § 110.1(k)(3)(ii)(A) (in obtaining a reattribution of a contribution from a contributor such that the contribution is intended to be a joint contribution by more than one person, the committee must inform the contributor that he or she may request a refund).

7. The Commission has allowed committees to transfer out excessive contributions to a nonfederal account in order to remedy excessive contributions. The Commission has advised that such transfers out should be made within 60 days and that the committee should: (1) notify the donor in writing or request written authorization and (2) offer to refund the contribution if the donor requests.

8. Section 434(b) of the Act contains a variety of reporting requirements. Section 434(b)(2) requires committees to report the total amount of receipts in several categories, including "contributions from persons other than political committees." 2 U.S.C. § 434(b)(2)(A). Committees are also required to report the amount of each contribution from a person who contributes more than $200 within the calendar year along with the identification of such contributor. 2 U.S.C. § 434(b)(3)(A). In addition to contributions and several other specific categories of receipts, the Act broadly requires the disclosure of all other receipts. See 2 U.S.C. § 434(b)(2)(J) (total amount of dividends, interest, and "other forms of receipts") and 2 U.S.C. § 434(b)(3)(G) (the identification of persons "who provide any dividend, interest, or other receipt to the reporting committee in an aggregate value or amount in excess of $200 within the calendar year, together with the date and amount of such receipt."). Finally, the Act requires committees to report various categories of disbursements including the catchall "any other disbursements." 2 U.S.C. § 434(b)(4)(H)(v).

9. In 1995-96 the Committee deposited into its federal account approximately 325 contributions which on their face, or when aggregated with other contributions from the same contributor, exceeded the individual contribution limit of $20,000 per calendar year to national party committees. See 2 U.S.C. §§ 441a(a)(1)(B) and 441a(f). Subsequent to the deposit of the contributions into the federal account, the Committee transferred excessive portions to a non-federal account.

10. Included in the approximately 325 contributions cited in the above paragraph were many large donations — some as large as $100,000. The Committee retained up to $20,000 of each of these particular donations, the annual contribution limit,

in the federal account and transferred the excessive portions to the non-federal account. For some of these donations, whether raised by written or by oral solicitations, the Committee apparently did not follow the requirements of the Commission's regulations at 11 C.F.R. § 102.5(a)(2) that govern the permissible deposit of funds into the federal account. The Commission has interpreted this section to require contributions deposited into a committee's federal account (i) to have been designated for the federal account; (ii) to have resulted from a solicitation expressly stating that the contribution will be used in connection with a federal election; or (iii) to be from contributors who have been informed that all contributions are subject to the prohibitions and limitations of the Act.

11. Certain donations raised by oral solicitations apparently did not satisfy the requirements of section 102.5(a)(2). The Committee received five such donations in 1995-96 solicited by Vice President Albert Gore. These five donors were not aware that any part of their donations would be deposited into the federal account. Thus, apparently, none of the three requirements in section 102.5(a)(2) for deposit into a federal account were met for these donations orally solicited by the Vice President. Considering only the $20,000 portions retained in the federal account, and not including the full amount of the donations initially deposited in the federal account, the result is a $100,000 misdeposit into the federal account.

12. To the extent that some of the large contributions were intended by contributors for the DNC federal account and thus were not misdeposited, the amounts above $20,000 constituted excessive contributions. See 2 U.S.C. §§ 441a(a)(1)(B) and 441a(f). For example, at least ten contributors wrote checks to "DNC Federal Account" for amounts greater than the $20,000 annual limit.

13. For the ten contributions to the "DNC Federal Account" identified above and totaling $350,000, the Committee transferred the $150,000 in excessive portions from the federal account to the non-federal account within 60 days of receipt. In some cases, the Committee neither informed contributors in writing of the transfers nor received from contributors authorizations for the transfers. The excessive portions of contributions were not fully cured and so the Committee received excessive contributions in violation of 2 U.S.C. § 441a(f). An additional factor that the Commission found to be a component of the violation is that the Committee did not provide any of the contributors with the option of receiving a refund. For excessive contributions received after the effective date of this agreement, where the contributor has not authorized the DNC to allocate a portion of his or her contribution to a non-federal account, the Committee will notify contributors that they have the option to request refunds.

14. For the approximately 325 contributions described above, the DNC reported neither the full initial receipt nor the subsequent transfer on its federal reports. For example, a $100,000 contribution deposited in the DNC's federal account, of which $80,000 was then transferred to the non-federal account, was simply reported as a $20,000 contribution to the federal account and an $80,000 contribution to the non-federal account. The DNC did not report the receipt by the federal account of the full amount of approximately 325 contributions totaling over $13 million and, in most cases, did not report the subsequent transfers of the excessive portions to the non-federal account. The Commission found probable cause to believe that the DNC's failure to report the contributions as received and transferred violated 2 U.S.C. § 434(b).

15. Although the Commission believes that the reporting requirements of 2 U.S.C. § 434(b) are clear regarding their application to the contributions at issue in this matter, the DNC contends that the requirements are not clear regarding the reporting of single-check contributions split between the federal and non-federal accounts. The DNC also contends that compliance with those requirements during the 1995-96 cycle would have been difficult due to the DNC's computer system that does not accept the input of contributions to the federal account in excess of $20,000 per contributor. For contributions received after the effective date of this agreement, the Committee will report the full amount of each check deposited into the federal account, the full amount of each transfer from the federal account to a non-federal account, and the receipt by a non-federal account of each such transfer. In connection with the Committee's contention that the requirements are not clear regarding the reporting of single-check contributions split between the federal and non-federal accounts, the Committee may request from the Commission an Advisory Opinion regarding the reporting of such single-check contributions received in the future. See 2 U.S.C. § 437f.

V. Respondents misdeposited contributions in violation of 11 C.F.R. § 102.5(a) and received excessive contributions in violation of 2 U.S.C. § 441a(f). The Commission also found probable cause to believe that the DNC failed to report the full initial receipt of the contributions and the subsequent transfers in violation of 2 U.S. C. § 434(b).

VI. 1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Seventy Thousand dollars ($70,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondents will file on the public record one miscellaneous report for 1995 and one miscellaneous report for 1996 regarding their 1995-96 disclosure reports to show the full initial receipt of the contributions into the federal account, the subsequent transfers to the non-federal account, and the receipts by the non-federal account. The miscellaneous reports will be similar in content to the list of contributions, splits, and transfers attached to the General Counsel's Brief in this matter.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either

written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lois G. Lerner
Acting General Counsel

BY: Abigail A. Shaine — 7/20/01
Abigail A. Shaine — Date
Acting Associate General Counsel

FOR THE RESPONDENTS:

[signature] — 6/26/01
(Name) Joseph E Sandler — Date
(Position) General Counsel