



December 23, 2003

Via Facsimile and U.S. Mail

Jeff S. Jordan  
Supervisory Attorney  
Central Enforcement Docket  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MUR 5395

Dear Mr. Jordan:

This letter is written in response to the complaint submitted to the Federal Election Commission by Lenora B. Fulani and the Committee for a Unified Independent Party on November 7, 2003 (supplemented by filings dated November 20, 2003 and December 3, 2003). This response is submitted on behalf of National Broadcasting Company, Inc. ("NBC"); Dow-Jones & Company, Inc. ("Dow Jones") and cable networks CNBC and MSNBC, relating to debates televised on September 25, 2003 (on CNBC and MSNBC) and November 24, 2003 (on MSNBC) (together, the "NBC debates").

The complaint charges that the staging and broadcast of the NBC debates may have violated the Federal Election Commission's rules concerning candidate debates and federal law prohibiting campaign contributions. These charges have no merit, and we urge the Commission to dismiss the complaint.

The NBC debates were aired in order to help educate and inform viewers and about candidates vying for the 2004 Democratic Party nomination for President of the United States. In consultation with the Democratic National Committee, a diverse group of candidates was invited to each event. The following ten candidates appeared in the September 25<sup>th</sup> debate, held at Pace University in New York City: Gen. Wesley Clark, Gov. Howard Dean, Sen. John Edwards, Rep. Dick Gephardt, Sen. Bob Graham, Sen. John Kerry, Rep. Dennis Kucinich, Sen. Joseph Lieberman, Sen. Carol Moseley-Braun, and Rev. Al Sharpton. The November 24<sup>th</sup> debate included candidates Clark, Dean, Edwards, Gephardt, Kerry, Kucinich, Moseley-Braun, and Sharpton. In the case of each debate, the selection of those invited was based on sound editorial judgment, and included candidates considered to be the major candidates for the Democratic Party nomination. These determinations were based on a variety of factors, including: whether the candidates were actively campaigning on a national basis for the Democratic Presidential

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nomination, whether they had national reputations as significant candidates among objective political and journalistic organizations across the country, whether the candidates had demonstrated the potential to fundraise successfully, how the candidates stood in public opinion polls. No favoritism was shown among the candidates and no aspect of the debates could reasonably be considered to be a political donation to any of the candidates.

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Furthermore, neither Ms. Fulani nor any other candidate was wrongfully excluded from the NBC debates. As the pending complaint acknowledges, Ms. Fulani was not at the time of the debates (and is not now) a candidate for the 2004 Democratic Party nomination. (For the record, we add that neither NBC, CNBC, Dow Jones nor MSNBC has any record of receiving a letter of complaint or inquiry from either of the complainants prior to the filing of the pending complaint.) Nor has any other candidate claimed to have been wrongfully excluded from these debates.

Both the CNBC and MSNBC debates were conducted entirely in compliance with Federal Election Commission rules concerning the staging of candidate debates. As a result, we request that FEC dismiss the complaint and that no further action be taken. We reserve all rights, defenses and arguments, including those under the First Amendment to the Constitution of the United States. Please feel free to contact me if you have any further questions.

Sincerely,

Andrea Maya Windholz