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January 15, 2004

25044110131

Mr. Jeff S. Jordan
Federal Election Commission
Office of General Counsel
Complaints Examination &
Legal Administration
999 E Street NW
Washington, DC 20463

Re: Response to Complaint in Matter Under Review (MUR) 5395

Dear Mr. Jordan:

We are submitting this letter on behalf of WMUR-TV in response to a Complaint filed with the Federal Election Commission ("FEC") by Lenora B. Fulani ("Dr. Fulani") and the Committee for a Unified and Independent Party ("CUIP").

Background

On November 3, 2003, Dr. Fulani and CUIP filed a Complaint against Dow Jones & Co., Fox News Channel, MSNBC, ABC, Inc., CNN, and CBC Political Educational Leadership Institute ("Respondents") challenging the criteria used to determine the participants in a series of debates among candidates for the Democratic Party presidential nomination. The debates referenced in the Complaint include the following:

May 4, 2003	Columbia, SC
September 4, 2003	Albuquerque, NM
September 9, 2003	Baltimore, MD
September 25, 2003	New York, NY
October 9, 2003	Phoenix, AZ
October 26, 2003	Detroit, MI

Dr. Fulani appears to allege that Respondents violated the prohibition on corporate contribution and expenditures in connection with a federal election by failing to disclose to her the criteria used to select the candidates for the debates. Dr. Fulani acknowledges she is not a Democratic candidate for President but alleges she is "considering" joining the contest and needed to understand the criteria for the debates to help her "plan and implement her campaign so as to qualify for inclusion in the debates." (Compl. at 1-2.) She claims she requested the criteria from Respondents but received either no response or an unsatisfactory one. (*Id.* at 2.)

Dr. Fulani does not make any specific allegations regarding any actions of WMUR-TV in her Complaint. She does not allege she sought any information from WMUR-TV regarding the criteria for inclusion in a debate nor does she allege that she sought inclusion in a debate staged by WMUR-TV. Indeed, the only mention of WMUR-TV occurs in a November 20, 2003, letter that Dr. Fulani's attorney sent to the FEC, referencing a debate in Manchester, New Hampshire to be staged by WMUR-TV, ABC-TV, and C-SPAN on December 9, 2003 ("Manchester debate") and arguing that the FEC's intervention "is urgently requested to ensure full compliance with 11 C.F.R. § 110.13." While we do not believe this letter alleges any specific violations of Federal election law against WMUR-TV, nor any specific injury to Dr. Fulani, we, nonetheless, address the merits of the underlying Complaint below as requested by the Commission.

Argument

Corporations are prohibited by federal law from making any contribution or expenditure in connection with a Federal election. 2 U.S.C. § 441b. This prohibition does not extend to funds used to defray the costs in staging candidate debates in accordance with 11 C.F.R. § 110.13. *See* 11 C.F.R. §§ 100.92, 100.154; 11 C.F.R. § 114.4(f)(2). Section 110.13 expressly permits broadcasters, bona fide newspapers, magazines and other periodical publications to stage debates provided that the staging organization is not owned or controlled by a political party, political committee or candidate, that the debates include at least two candidates, and that the debate is not structured to promote or advance one candidate over another. 11 C.F.R. § 110.13(a), (b).

WMUR-TV staged its debate wholly in accordance with these requirements. WMUR-TV is owned by Hearst-Argyle Properties, Inc. and is not owned or controlled by a political party, political committee or candidate. The Manchester debate included nine Democratic presidential candidates and was not structured to promote or advance any of the candidates over another.

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Dr. Fulani notes that 11 C.F.R. § 110.13(c) requires that staging organizations “must use pre-determined objective criteria to determine which candidates may participate in a debate.” She fails to point out, however, that for debates held prior to a primary election, caucus or convention, staging organizations “may restrict candidate participation to candidates seeking the nomination of one party, and need not stage a debate for candidates seeking the nomination of any other political party or independent candidates.” 11 C.F.R. § 110.13(c).

The most fundamental “objective criteria” to determine participation in the Manchester debate was to restrict candidate participation to those seeking the Democratic presidential nomination.¹ Dr. Fulani is not a registered candidate in the 2004 New Hampshire Democratic presidential primary.² Indeed, she holds herself out publicly as a leader of an independent political movement. As a result, neither WMUR-TV nor any other staging organization had any obligation to include her in a Democratic presidential primary debate under 11 C.F.R. § 110.13(c).

Dr. Fulani’s naked and conclusory allegation (Compl. at 1-2) that she is “considering commencing another effort to the seek the Democratic party nomination,” is undermined by her failure to register as a Democratic candidate (a simple, ministerial act performed by more than 23 Democratic candidates in New Hampshire) and is directly contradicted by her role as Chairwoman and co-Founder of CUIP, an independent political organization that bills itself as a “political center that develops strategies and provides leadership training for America’s growing independent movement.”³ Because there is no evidence that Dr. Fulani is a candidate seeking the nomination of the Democratic party, she cannot satisfy the most fundamental objective criteria for inclusion in any of the Democratic presidential debates. 11 C.F.R. § 110.13(c).

Because Dr. Fulani failed to allege any facts to show that WMUR-TV’s staging of the Manchester debate did not fully comply with 11 CFR § 110.13, there is no reason to believe that WMUR-TV violated the prohibition on contributions and expenditures in connection with a Federal election under 2 U.S.C. § 441b.

¹ Of course, not every citizen registered as a Democratic candidate for President was entitled to participate in the Manchester debate. The participants included the 9 major national Democratic presidential candidates on the ballot in New Hampshire that had demonstrated an ability to attract public support for a national presidential campaign—evidenced by objective factors including status in public opinion polls and ability to generate national media coverage.

² A list of candidates registered for the New Hampshire presidential primary may be found on the website for the New Hampshire State board of elections: <http://www.state.nh.us/sos/presprim%202004/list%20with%20photos.htm>.

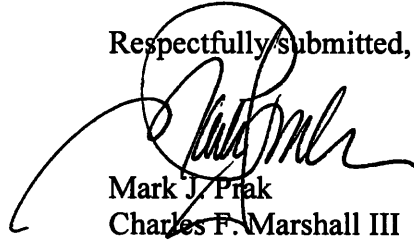
³ Information about CUIP is available on its website: <http://www.cuip.org/about.html>.

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If you have any questions or need any additional information, please do not hesitate to contact either of the undersigned at (919) 839-0300.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Marshall III", is written over the typed name. The signature is fluid and cursive, with a large loop at the end.

Mark J. Prak
Charles F. Marshall III

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