



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

OCT 27 2006

Andrew Tobias, Treasurer  
DNC Services Corporation/Democratic National Committee  
430 South Capitol Street, S.E.  
Washington, DC 20003

RE: MUR 5851

Dear Mr. Tobias:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission ("the Commission") became aware of information suggesting that the DNC Services Corporation/Democratic National Committee ("the Committee") and you, in your official capacity as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). On October 18, 2006, the Commission found reason to believe that the Committee and you, in your official capacity as treasurer, violated 2 U.S.C. §§ 434(g)(1)(A) and (2)(A), provisions of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

2704A160367

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

We look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "M. E. Toner", written in a cursive style.

Michael E. Toner  
Chairman

Enclosures  
Factual and Legal Analysis  
Procedures  
Designation of Counsel Form

27044160368

**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** DNC Services Corporation/Democratic National  
Committee and Andrew Tobias, in his official  
capacity as Treasurer

**MUR: 5851**

**I. INTRODUCTION**

This matter originated with information ascertained by the Commission in the ordinary course of its supervisory responsibilities. For the reasons set forth below, there is reason to believe that the DNC Services Corporation/Democratic National Committee and Andrew Tobias, in his official capacity as Treasurer ("the Committee"), violated 2 U.S.C. § 434(g)(2)(A) and 11 C.F.R. § 104.4(b)(2) by failing to file five 48 Hour Notices relating to nine independent expenditures totaling \$165,190.98 and 2 U.S.C. § 434(g)(1)(A) and 11 C.F.R. § 104.4(c) by failing to file four 24 Hour Notices relating to nine independent expenditures totaling \$1,196,239.07.

**II. FACTUAL AND LEGAL ANALYSIS**

Under 2 U.S.C. § 434(g)(2)(A), a political committee that makes an independent expenditure "aggregating \$10,000 or more at any time up to and including the 20th day before the date of an election shall file a report describing the expenditures within 48 hours." *See also* 11 C.F.R. § 104.4(b)(2). As set forth in Attachment A, the Committee made two independent expenditures in August 2004, which it disclosed on Schedule E of its Amended September Monthly Report, and seven independent expenditures on or before October 13, 2004, which it disclosed in its Amended 12 Day Pre-General Report. The Committee did not, however, file 48 Hour Notices, even though its aggregated expenditures exceeded \$10,000 and fell within the notice period. Thus, there is reason to believe that the Committee violated 2 U.S.C. § 434(g)(2)(A) and 11 C.F.R. § 104.4(b)(2) by failing to file five 48 Hour Notices relating to nine independent expenditures.

27044160371

1 Similarly, under 2 U.S.C. § 434(g)(1)(A), a political committee that makes an independent  
2 expenditure “aggregating \$1,000 or more after the 20th day, but more than 24 hours, before the date  
3 of an election shall file a report describing the expenditures within 24 hours.” *See also* 11 C.F.R.  
4 § 104.4(c). For the 2004 general election, the 24 Hour Notice period for independent expenditures  
5 ran from October 14 to October 31, 2004. According to disclosure reports, the Committee made  
6 nine independent expenditures totaling \$1,196,239.07 for media production costs between these  
7 dates, which it disclosed on Schedule E of its 30 Day Post-General Report, but did not file 24 Hour  
8 Notices. *See* Attachment A. As a result, there is reason to believe that the Committee violated  
9 2 U.S.C. § 434(g)(1)(A) and 11 C.F.R. § 104.4(c) by failing to file four 24 Hour Notices relating to  
10 nine independent expenditures.<sup>1</sup>

11 In response to several Requests for Additional Information (“RFAI”) noting discrepancies  
12 between the independent expenditures disclosed in the Committee’s 48 and 24 Hour Notices and  
13 Schedule E of its September, 12 Day Pre-General and 30 Day Post-General Reports, the Committee  
14 stated that it engaged in a large amount of independent expenditure activity during the 2004 cycle  
15 but tried to ensure that the proper notices were filed despite the large volume of activity. Counsel  
16 for the Committee also filed a series of charts summarizing the Committee’s independent

---

<sup>1</sup> The total amount of these independent expenditures is \$165,190.98. This includes a payment by the Committee to the U.S. Postmaster in the amount of \$58,220.89, which the Committee reported on Schedule E of its 12 Day Post-General Report. The Committee asserts that this expenditure was properly disclosed in a 48 Hour Notice filed on October 9, 2004, which included a \$58,220.89 payment to Western Litho, one of the Committee’s vendors. During a telephone conversation in response to an RFAI, the Committee explained that the expenditure was a “pass through” from the Committee to Western Litho to the U.S. Postmaster and was disclosed in its 48 Hour Notice and Schedule E under different names. In addition, the Committee submitted a spreadsheet listing all of its independent expenditures, which noted that \$58,220.89 of its disbursements to the U.S. Postmaster went to Western Litho, but did not provide supporting documents or otherwise disclose on the public record that the payments reported in its 48 Hour Notice and on its Schedule E were the same transaction. *See* Letter from Neil Reiff to Christopher Morse (May 12, 2005) (FEC Image 25038811949-69).

1 expenditures, which reconciled some, but not all, of the discrepancies between the Committee's 48  
2 and 24 Hour Reports and its Schedules E.<sup>2</sup>

3 **III. CONCLUSION**

4 Accordingly, the Commission finds reason to believe that DNC Services Corporation/  
5 Democratic National Committee and Andrew Tobias, in his official capacity as Treasurer, violated  
6 2 U.S.C. § 434(g)(2)(A) and 11 C.F.R. § 104.4(b)(2) by failing to file five 48 Hour Notices relating  
7 to nine independent expenditures totaling \$165,190.98 and 2 U.S.C. § 434(g)(1)(A) and 11 C.F.R.  
8 § 104.4(c) by failing to file four 24 Hour Notices relating to nine independent expenditures totaling  
9 \$1,196,239.07.

---

<sup>2</sup> See Letter from Neil Reiff to Christopher Morse (May 12, 2005) (FEC Image 25038811949-69).

## Overview of Missing 48 and 24 Hour Notices

## Failure to File 48 Hour Notices

Payee	Date	Report	Schedule E	Total
AKP Message & Media	08/11/04	September Monthly	\$9,139.91	
(1) Murphy, Putnam, Shorr	08/17/04	September Monthly	\$20,115.03	\$29,254.94
(2) Murphy, Putnam, Shorr	10/04/04	12 Day Pre-General	\$8,800.00	
Murphy, Putnam, Shorr	10/04/04	12 Day Pre-General	\$8,800.00	
Murphy, Putnam, Shorr	10/04/04	12 Day Pre-General	\$8,800.00	
Murphy, Putnam, Shorr	10/04/04	12 Day Pre-General	\$8,800.00	\$35,200.00
(3) U.S. Postmaster*	10/07/04	12 Day Pre-General	\$58,220.89	\$58,220.89
(4) Message Audience & Presentation	10/11/04	12 Day Pre-General	\$13,729.71	\$13,729.71
(5) Murphy, Putnam, Shorr	10/13/04	12 Day Pre-General	\$28,785.44	\$28,785.44
<b>TOTAL</b>			<b>\$165,190.98</b>	<b>\$165,190.98</b>

\* The Committee asserts this expenditure was a "pass through" to a vendor, Western Litho, and was disclosed using the vendor's name in a 48 Hour Notice filed on 10/09/04.

## Failure to File 24 Hour Notices

Payee	Date	Report	Schedule E	Total
(1) AKP Message & Media	10/15/04	30 Day Post-General	\$37,291.26	\$37,291.26
(2) The E&T Group	10/21/04	30 Day Post-General	\$120,870.64	\$120,870.64
(3) Active Calls LLC	10/26/04	30 Day Post-General	\$89,800.00	\$741,752.17
The E&T Group	10/26/04	30 Day Post-General	\$28,074.00	
Envoy Worldwide	10/26/04	30 Day Post-General	\$108,000.00	
Landmark Strategies, Inc.	10/26/04	30 Day Post-General	\$258,750.00	
LSG Voter Contact Services	10/26/04	30 Day Post-General	\$5,566.17	
Winning Connections, Inc.	10/26/04	30 Day Post-General	\$251,562.00	
(4) National Telecommunications Services*	10/27/04	30 Day Post-General	\$296,325.00	\$296,325.00
<b>TOTAL</b>			<b>\$1,196,239.07</b>	<b>\$1,196,239.07</b>

\* \$54,664.30 in 24 Hour Notices filed on 10/18/04 (Image 24971752791) may be related to this payment, resulting in a remaining discrepancy of \$241,660.70