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April 27, 2000

**MEMORANDUM**

**TO:** The Commission

**THROUGH:** James A. Pehrkon *[Signature]*  
Staff Director

**FROM:** Lawrence M. Noble *[Signature]*  
General Counsel

Kim Leslie Bright *[Signature]*  
Associate General Counsel

Lorenzo Holloway *[Signature]*  
Assistant General Counsel

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Attorney

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Attorney

**SUBJECT:** 1996 Committee on Arrangements for the Republican National Convention – Alternative Draft Statement of Reasons (LRA 472)

On April 13, 2000, the Commission determined that the 1996 Committee on Arrangements for the Republican National Convention (the "Convention Committee") and the Republican National Committee (the "RNC") do not owe a repayment to the United States Treasury for the in-kind contribution from the San Diego Host Committee. This was designated Alternative B in the Office of General Counsel's memorandum of April 7, 2000. The Commission also determined that the Convention Committee and the RNC do not owe a repayment to the United States Treasury for payments by the RNC to Creative Broadcast Techniques, Inc. This was designated Alternative C in this Office's memorandum of April 7, 2000. This Office has prepared the attached Statement of Reasons which compiles the analysis from the alternatives approved by the Commission. Our April 7, 2000 memorandum indicated that we would circulate the Statement of Reasons for the Commission's approval on a tally vote; however, the Commission has made all the necessary determinations, so the attached Statement of Reasons is being

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circulated on an informational basis. Due to the length of the attachments, we have not included them with this circulation.

Attachment

1. Draft Statement of Reasons

## BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	LRA 472
1996 Committee on Arrangements for	)	
The Republican National Convention	)	

### STATEMENT OF REASONS

On April 13, 2000, the Federal Election Commission (the "Commission") determined that the 1996 Committee on Arrangements for the Republican National Convention (the "Convention Committee") and the Republican National Committee (the "RNC") do not owe a repayment to the United States Treasury in connection with the 1996 Republican National Convention. This Statement of Reasons sets forth the legal and factual basis for this determination.

#### I. FACTS

The Republican National Committee established the 1996 Committee on Arrangements for the Republican National Convention to conduct the operations of the Republican national nominating convention. The convention was held at the San Diego Convention Center in San Diego, California from Monday, August 12, 1996 through Thursday, August 15, 1996.

The Convention Committee and the RNC received \$12,364,000 in public funds for the purpose of conducting the national nominating convention. *See* Report of the Audit Division on the 1996 Committee on Arrangements for the Republican National Convention, Attachment 1, at 6. This amount represented the Convention Committee's full entitlement to public funds and its expenditure limitation for the convention. The Convention Committee expended its full public grant plus the contributions it received in

conducting the national nominating convention, according to a revised Statement of Net Outstanding Committee Expenses. Attachment 2.

The Convention Committee was audited pursuant to 11 C.F.R. § 9008.11. On June 23, 1997, the Commission's Audit staff held an exit conference with the Convention Committee to discuss preliminary findings and recommendations that the Audit staff anticipated presenting to the Commission for its approval. 11 C.F.R. §§ 9008.11, 9007.1(b)(2)(iii), and 9038.1(b)(2)(iii). The Audit Division's preliminary findings and recommendations were contained in an Exit Conference Memorandum ("ECM"). *Id.* On September 9, 1997, the Convention Committee filed its written response to the ECM, which is included in its exhibits to its Administrative Review Request. *See* Attachment 3, at A1 through A644.

On June 25, 1998, the Commission approved the Audit Report and determined that the RNC and the Convention Committee exceeded the expenditure limitation by \$1,772,643 and therefore must repay that amount to the United States Treasury. The repayment amount included in-kind contributions from the San Diego Host Committee ("Host Committee") in the amount of \$892,489 and from the RNC in the amount of \$729,994. Attachment 1, at 54.

The Host Committee was established to serve as a host committee for the Republican National Convention pursuant to 11 C.F.R. §§ 9008.50 to 9008.54. The Host Committee did not receive any public funds pursuant to Title 26 of the United States

Code. The Host Committee received \$23,080,276 from other sources, and it spent \$22,923,061 in connection with the 1996 Republican National Convention.<sup>1</sup>

On September 24, 1998, the Convention Committee submitted legal and factual materials disputing the repayment determination.<sup>2</sup> Attachment 3. On February 24, 1999, the Convention Committee and the RNC appeared before the Commission at an oral hearing on the repayment determination. Transcript, Attachment 4. As a part of their opening statement at the oral hearing, the Convention Committee and the RNC presented the Commission with additional documents in support of their arguments.<sup>3</sup> Attachment 5.

## II. LAW

In order to be eligible to receive public funds to finance the presidential nominating convention, a national party committee must establish a convention committee, which is responsible for conducting the day-to-day arrangements and operations of that party's presidential nominating convention and must register with and report to the Commission as a political committee. 11 C.F.R. § 9008.3(a)(1), (a)(2) and (b). A national party committee and its convention committee must also file a written agreement with the Commission agreeing to conditions set forth in 11 C.F.R.

§ 9008.3(a)(4)(i) through (viii) to be eligible for public funding. 11 C.F.R.

§ 9008.3(a)(4). As part of this agreement, the national party committee and its

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<sup>1</sup> Pursuant to 11 C.F.R. § 9008.54, the Commission audited the Host Committee, and the receipts and expenditures stated above are as of October 10, 1996, the effective date of the Host Committee's Audit Report. The Commission approved that Audit Report on April 23, 1998.

<sup>2</sup> The Convention Committee's legal and factual materials were due on August 25, 1998. However, the Commission granted the Committee an extension until September 24, 1998 to submit the materials.

<sup>3</sup> Thus, the documents were submitted within the five day period customarily allowed by the Commission for the submission of additional documentation following an oral hearing. *See generally* 11 C.F.R. § 9007.2(c)(3). An additional copy of these documents was also submitted after the oral hearing.

convention committee must agree to comply with 2 U.S.C. §§ 431 through 451, 26 U.S.C. § 9008, and applicable Commission regulations. 11 C.F.R. § 9008.3(a)(4)(vii). Thus, the committees must agree to abide by 2 U.S.C. § 441b, which prohibits, *inter alia*, corporate and labor organization contributions or expenditures in connection with conventions, and they must agree to comply with the applicable expenditure limitation set forth at 26 U.S.C. § 9008(d) and 11 C.F.R. § 9008.8. 11 C.F.R. § 9008.3(a)(4)(vii) and (i), respectively. The national committee of a major party may not make expenditures with respect to a publicly-financed presidential nominating convention which, in the aggregate, exceed the amount of payments to which such committee is entitled under 26 U.S.C. § 9008(b)(1). 26 U.S.C. § 9008(d)(1). Thus, the expenditure limitation is equal to the convention committee's entitlement to public funds. 26 U.S.C. § 9008(d).

A host committee may be created to represent a city hosting a nominating convention in matters involving a presidential nominating convention. 11 C.F.R. § 9008.51. Any local organization that is not organized for profit, whose net earnings do not inure to the benefit of any private shareholder or individual and whose principal objective is the encouragement of commerce in the convention city, as well as the projection of a favorable image of the city to convention attendees, may serve as a host committee. 11 C.F.R. § 9008.52(a).<sup>4</sup>

Host committees may receive funds or in-kind donations from local businesses (excluding banks), local labor organizations, and other local organizations and

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<sup>4</sup> Section 9008.52(a) gives the following examples of local organizations that may serve as host committees: a local civic association, business league, chamber of commerce, real estate board, board of trade, or convention bureau.

individuals.<sup>5</sup> 11 C.F.R. § 9008.52(c)(1). The purposes for which a host committee may uses funds in connection with a nominating convention are specified in 11 C.F.R.

§ 9008.52(c)(1)(i) through (xi) and include: (i) “promoting the suitability of the city as a convention site;” (ii) “welcoming the convention attendees to the city;” (iii) “facilitating commerce;” (vi) “local transportation services;” (vii) “law enforcement;” (viii) “convention bureau personnel to provide central housing and reservation services;” (ix) “hotel rooms at no charge or at a reduced rate on the basis of the number of rooms actually booked for the convention;” and (x) “accommodations and hospitality for committees of the parties responsible for choosing the site of the conventions.”

See 11 C.F.R. § 9008.52(c)(1)(i)-(iii) and (vi)-(x). Host committees may also provide “use of an auditorium or convention center” and “construction and convention related services,” such as “construction of podiums, press tables, false floors, camera platforms, additional seating, lighting, electrical, air conditioning and loud speaker systems, offices, office equipment, and decorations.” 11 C.F.R. § 9008.52(c)(1)(v). Finally, in addition to those facilities and services specifically enumerated in 11 C.F.R. § 9008.52(c)(1)(i) through (x), a host committee or a municipal fund is permitted to provide “other similar convention-related facilities services” under 11 C.F.R. § 9008.52(c)(1)(xi).

A convention committee may use its public funds only for the purposes set forth at 11 C.F.R. § 9008.7. See 26 U.S.C. § 9008(c). Convention expenses include all expenses incurred by or on behalf of a political party’s national committee or convention committee with respect to and for the purpose of conducting a presidential nominating

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<sup>5</sup> Host committees may also accept goods or services from commercial vendors under the terms and conditions set forth at 11 C.F.R. § 9008.9, which also apply to convention committees. 11 C.F.R. § 9008.52(b).

convention or convention-related activities. 11 C.F.R. § 9008.7(a)(4). Some examples of convention expenses include administrative and office expenses for conducting the convention including stationery, office supplies, office machines, and telephone charges, but exclude the cost of any services supplied by the national committee at its headquarters or principal office if such services are incidental to the convention and not utilized primarily for the convention. 11 C.F.R. § 9008.7(a)(4)(x). Generally, convention expenses incurred with respect to a presidential nominating convention are subject to the expenditure limitation. *See* 11 C.F.R. § 9008.8(a). Nevertheless, certain expenditures related to a convention are not subject to the expenditure limitation. For example, permissible host committee expenditures like those examples listed in 11 C.F.R. § 9008.52 shall not be considered convention committee expenditures and shall not count against the convention committee's expenditure limit. 11 C.F.R. § 9008.8(b)(1).<sup>6</sup> Host committee expenditures that are not in accordance with section 9008.52 are in-kind contributions to the convention committee that may be considered convention committee expenditures and count against its expenditure limit. *See id.*

If the Commission determines that a national party committee accepted contributions to defray convention expenses which, when added to the amount of payments received, exceeds the expenditure limitation, it shall notify the national committee of the amount of contributions so accepted, and the national committee shall

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<sup>6</sup> Additionally, host committee expenditures that are permitted under section 9008.52 are exempt from the prohibition of corporate and labor organization contributions or expenditures. 11 C.F.R. § 114.1(a)(2)(viii).



pay the amount specified to the United States Treasury. 11 C.F.R. § 9008.12(b)(3); *see also* 26 U.S.C. §§ 9007(b)(3), 9008(h); and 11 C.F.R. § 9008.12(a).<sup>7</sup> A convention committee's entitlement to public funds shall be adjusted so as not to exceed the difference between the expenditure limitation and the amount of private contributions received to defray convention expenses. 11 C.F.R. § 9008.5(b). If the Commission determines that any portion of the payments to the national committee or convention committee was in excess of the aggregate payments to which the national committee was entitled under 11 C.F.R. §§ 9008.4 and 9008.5, it shall so notify the national committee and the national committee shall pay an amount equal to such portion to the United States Treasury. 11 C.F.R. § 9008.12(b)(1); *see also* 26 U.S.C. § 9007(b)(1). If the Commission determines that the national committee or convention committee incurred convention expenses in excess of the limitation, it shall so notify the national committee and the national committee shall pay an amount equal to such excessive expenditures to the United States Treasury. 11 C.F.R. § 9008.12(b)(2); *see also* 26 U.S.C. § 9007(b)(2). In the case of in-kind contributions from a host committee that cause the convention committee to exceed the expenditure limitation, the Commission may seek repayment if a convention committee knowingly helps, assists or participates in the making of a convention expenditure by a host committee that is not in accordance with 11 C.F.R. § 9008.52. 11 C.F.R. § 9008.12(b)(7).

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<sup>7</sup> The statute authorizes the Commission to require repayment of public funds equal to any contributions, 26 U.S.C. § 9007(b)(3), while the regulation requires a repayment equal to those contributions that, when added to the amount of public funds received, exceed the expenditure limit, 11 C.F.R. § 9008.12(b)(3). In these circumstances, the full amount of any contributions is subject to repayment under either the statute or the regulation because the Convention Committee received public funds equal to its expenditure limit.

### III. IN-KIND CONTRIBUTION FROM SAN DIEGO HOST COMMITTEE

#### A. AUDIT REPORT REPAYMENT DETERMINATION

The Convention Committee contracted with David J. Nash and Associates, Inc. ("Nash") for Nash's services. According to its contract with the Convention Committee, Nash's duties included producing the television broadcast and the "theatrical production" of the convention and supervising production consultants and vendors. Nash Contracts with Convention and Host Committees, Attachment 6, at 1. Subsequently, Nash also agreed to a separate contract with the Host Committee, which required Nash to "render such television production and related services consistent with the specifications and requirements for the Convention established by the [Convention Committee.]" *Id.*, at 11. Mr. Nash states that "the design, installation, operation and maintenance of the Convention's closed circuit television system" were among Nash's responsibilities under these contracts.<sup>8</sup> Nash affidavit, Attachment 3, at A583, ¶ 10. The closed circuit television system broadcast the Convention proceedings within the Convention Center to the following areas: (1) the Sail Area, which was an overflow seating area on the Convention Center's roof;<sup>9</sup> (2) the media areas; (3) areas within the Convention Center that had obstructed or limited views of the podium; and (4) the large television screens located behind the podium. *Id.* Pursuant to these two contracts, Nash was paid net

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<sup>8</sup> Although Mr. Nash states that these responsibilities were "[f]oremost" among Nash's responsibilities under the contracts, neither contract mentions closed circuit television system *per se*. See Attachment 6.

<sup>9</sup> Expenditures of \$164,234 related to the construction of the Sail Area were not included in the Audit Report Repayment Determination. See Attachment 1, at 64. Host committees may provide use of a convention center and construction and convention related services for that location. 11 C.F.R. § 9008.52(c)(1)(v).

amounts of \$117,500 from the Convention Committee and \$2,245,520 from the Host Committee. Attachment 1, at 15-16.

In its Audit Report Repayment Determination, the Commission determined that \$892,489 of the Host Committee's \$2,245,520 payments to Nash were not expended for purposes in accordance with 11 C.F.R. § 9008.52. Pursuant to 11 C.F.R. § 9008.12(b)(7), the Commission also determined that the Convention Committee knowingly helped, assisted or participated in these Host Committee's expenditures based on the Convention Committee's control over Nash's performance. As a result, \$892,489 of the Nash expenditures were not subject to the exemption in 11 C.F.R. § 9008.8(b)(1) and were therefore expenditures that must count toward the Convention Committee's expenditure limitation. As provided in 11 C.F.R. § 9008.12(b)(3), the Commission determined that the Convention Committee accepted contributions of \$892,489 that, when added to the amount of public funds the Convention Committee received, results in the Convention Committee's exceeding its expenditure limitation; the Commission therefore determined that the amount in excess of the expenditure limitation is repayable to the United States Treasury. *See* Attachment 1, at 37-38.

#### **B. REQUEST FOR ADMINISTRATIVE REVIEW**

The Convention Committee maintains that all of the funds provided to Nash by the Host Committee were expended for purposes permitted by 11 C.F.R. § 9008.52(c) and therefore the \$892,489 at issue should not be subject to a repayment determination. Attachment 3, at 23. The Convention Committee disputes the repayment determination with two primary arguments: (1) some of the expenditures were for purposes that are expressly listed in section 9008.52(c); and (2) some of the expenditures are

indistinguishable from other host committee expenditures previously permitted by the Commission, either in its consideration of the Convention Committee's Audit Report, in its issuance of Advisory Opinion 1980-21, or in its consideration of the Audit Report related to the 1996 Democratic National Convention Committee ("DNCC").<sup>10</sup> Finally, the Convention Committee argues in the alternative that it should be permitted to offset any Host Committee expenditures that were not in accordance with section 9008.52(c) by expenditures the Convention Committee made that the Host Committee could have made in accordance with section 9008.52(c).

The Convention Committee argues that many of the Nash expenditures were for purposes expressly listed in 11 C.F.R. § 9008.52(c). For example, section 9008.52(c)(1)(ii) permits expenses incurred welcoming the convention attendees to the city, and the Convention Committee claims that expenditures of \$49,032 for an orchestra, \$22,416 for Sail Area entertainment and \$1,199 for an announcer should be permitted as welcoming expenses. Attachment 3, at 38-40. Section 9008.52(c)(1)(v) lists decorations as a permitted expenditure purpose, and the Convention Committee maintains that the live video remote productions constitute decorations so that the \$138,442 related expenditures should be permitted. *Id.*, at 34-35. The Convention Committee also argues that the \$104,279 spent for a balloon drop, a confetti cannon, fireworks and video graphics should also be permitted as decorations. *Id.*, at 36-38. With respect to approximately one-half of the \$73,748 satellite time expenditures, the Convention

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<sup>10</sup> The Audit Reports for the DNCC and the related Chicago Host Committee were approved on June 25, 1998 and are included in the Convention Committee's Exhibits at Attachment 3, at A1136 and A1117, respectively. In the DNCC Audit Report, the Commission determined that the DNCC must repay \$695,270 to the United States Treasury. Attachment 3, at A1159. On April 13, 2000, the Commission

Committee argues that because the satellite time was used to deliver the television signal known as the “basic feed” to various broadcasters, it was the functional equivalent of a cable delivering the same signal to the broadcasters at the convention site. *See id.*, at 36, and Nash affidavit, Attachment 3, at A586, ¶ 18c. The Convention Committee apparently maintains that such a cable would be in accordance with section 9008.52(c)(1)(v) as construction services. Finally, the Convention Committee argues that the reference to offices in section 9008.52(c)(1)(v) provides authority for the Host Committee to provide the Convention Committee with overhead expenses of \$210,851. Attachment 3, at 40-42.

The Convention Committee argues that some of the expenditures at issue are indistinguishable from other Host Committee expenditures that the Commission did not include in the repayment determination. With respect to the \$222,522 spent for closed circuit television services, the Convention Committee maintains that the Commission has not stated a sufficient reason to distinguish the expenditures included in the repayment determination from those that were not. *Id.*, at 26-33. The Convention Committee also states that the live remote video productions are indistinguishable from the taped remote video productions that the Commission did not include in its repayment determination. Thus, the Convention Committee argues that the \$138,442 related to live remote video productions should not be included in any repayment determination. *Id.*, at 34-35.<sup>11</sup> The Convention Committee again cites the expenditures for taped remote video productions and claims those expenditures are indistinguishable from the \$70,000 expended to

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issued a Statement of Reasons for this audit which determined that the DNCC did not receive any contribution and therefore no repayment was due.

<sup>11</sup> The Convention Committee also maintains that approximately one-half of the \$73,748 spent for satellite time was related to the live remote video productions and should be permitted in connection with the remote video productions. Attachment 3, at 36.

produce a documentary about Russell, Kansas. *Id.*, at 40. Finally on this point, Nash incurred \$210,851 of overhead and indirect costs, and the Convention Committee argues that because the Commission determined that over \$1.2 million in Nash expenditures were consistent with section 9008.52, some associated overhead expenditures must also be permitted. *Id.*, at 40-42.

In Advisory Opinion ("AO") 1980-21, the Commission permitted a host committee to expend funds to provide convention attendees with tickets to a professional baseball game. The Convention Committee contends that the Host Committee's expenditures of \$49,032 for an orchestra and \$22,416 for entertainment in the Sail Area are indistinguishable from the expenditures permitted in AO 1980-21. Attachment 3, at 39-40.

Finally, with respect to some expenditures, the Convention Committee argues that the Chicago Host Committee made similar expenditures in connection with the DNCC that were not included in the DNCC's repayment determination. The Convention Committee maintains that the DNCC was permitted to receive services provided by the Chicago Host Committee that were similar to the \$222,522 spent by Nash for television production services. Attachment 3, at 26-33. Additionally, the Convention Committee argues that the Commission determined that the Chicago Host Committee's expenditures for fireworks, entertainment and stage hands and technicians were in accordance with 11 C.F.R. § 9008.52(c) in the DNCC's Audit Report. *Id.*, at 27 n.5 and 37-38.

The Convention Committee also argues in the alternative that if the Commission determines that the Host Committee made a contribution to the Convention Committee, the Commission should take into consideration approximately \$1.3 million of expenses

paid by the Convention Committee that it maintains could have been paid by the Host Committee in accordance with 11 C.F.R. § 9008.52. *Id.*, at 47-54. The Convention Committee uses the common law equitable theory of recoupment to support its argument that the Commission should permit the Convention Committee to offset the contribution by expenditures that the Convention Committee paid, but that could have been paid by the Host Committee.<sup>12</sup> *Id.*, at 42

The Convention Committee presents three primary arguments in support of allowing a recoupment. First, the Convention Committee asserts that recoupment claims have been allowed in a broad range of legal and administrative contexts and the Commission has allowed similar post hoc reallocations in other contexts.<sup>13</sup> Attachment 3, at 44. Second, the Convention Committee argues that permitting a recoupment is appropriate because there is a substantial overlap between expenses that a convention committee may pay and those that may be paid by a host committee without counting toward the convention committee's expenditure limitation. Attachment 4, at 38.

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<sup>12</sup> Recoupment is a common law, equitable doctrine that permits a defendant to have a plaintiff's monetary claim reduced by reason of some claim that the defendant has against the plaintiff arising out of the same transaction or occurrence giving rise to the plaintiff's claim. 6 *Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure, Civil* § 1401 (2d ed. 1990). A recoupment against the government must meet three criteria: (1) it must arise from the same transaction or occurrence that is the subject of the government's suit; (2) it must seek relief of the same kind or nature as that sought by the government; and (3) it must be purely a defensive setoff, and not seek affirmative recovery from the government. *United States v. M/V Santa Clara I*, 819 F. Supp. 507, 513 (D.S.C. 1993); *see also Reiter v. Cooper*, 507 U.S. 258, 264 (1993); *United States v. Dalm*, 494 U.S. 596, 611 (1990).

<sup>13</sup> At the Oral Hearing, the Convention Committee utilized a section of the Office of General Counsel's Briefing Memorandum arguing that Commission's Counsel agreed that offset should be permitted. However, the Briefing Memorandum did not take a definitive position on the issue, stating instead, "[i]t is unclear whether the Convention Committee should be allowed to offset a portion of its expenditures by an amount that represents expenditures the Convention Committee paid but that the Host Committee could have paid in accordance with 11 C.F.R. § 9008.52." Office of General Counsel Briefing Memorandum, at 10. The Memorandum also stated: "[i]f the Commission allows the offset, the Convention Committee must be able to demonstrate that the expenditures offered in the offset are host committee expenditures in accordance with 11 C.F.R. § 9008.52 in fact and law." *Id.* Furthermore, staff memoranda

Finally, the Convention Committee states that the Commission allowed the Democratic National Convention Committee ("DNCC") to exercise the right of recoupment.

Attachment 3, at 45.

According to the Convention Committee, it has documented numerous expenses totaling \$1,355,071 that were paid by the Convention Committee but that could have been paid by the Host Committee in accordance with section 9008.52(c). Attachment 3, at 46-49. The Convention Committee divides these expenses into three major categories: (1) \$441,185 of office equipment and other convention infrastructure-related expenses; (2) \$110,387 of local transportation and security expenses; and (3) \$803,499 of hotel rooms for volunteers, speakers and convention staff. *Id.*<sup>14</sup>

### **C. REPAYMENT DETERMINATION UPON ADMINISTRATIVE REVIEW**

The Convention Committee's administrative review request presents the Commission with several issues related to whether certain Nash expenses were permissible host committee expenditures. Because permissible host committee expenditures that are made in accordance with 11 C.F.R. § 9008.52 are not subject to the convention committee's expenditure limitation, these issues require an interpretation of the breadth of host committee activity permitted under section 9008.52(c). The

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do not set forth the Commission's position. See *Fulani v. Federal Election Commission*, 147 F.3d 924, 928 (D.C. Cir. 1998).

<sup>14</sup> The Convention Committee asserts that its first category of expenses are in accordance with section 9008.52 because the regulations expressly state that host committees may pay for office expenses, office equipment, and local transportation services. Attachment 3, at 47. With respect to the second category of expenses, the Convention Committee contends that uniforms worn by security volunteers and local transportation staff were not only decorative tee-shirts, but also uniforms that were a necessary component of the Convention Committee's security system, and therefore, a permissible host committee expense in accordance with section 9008.52(c)(1)(vii). *Id.*, at 48. Finally, the Convention Committee cites section 9008.52(c)(1)(ix) of the Commission's regulations as a basis for permitting \$803,499 in hotel costs for volunteers, speakers, and convention staff. *Id.*, at 48-49.



Commission's recognition of an exception to the convention committee expenditure limitation for host committee activity is in the context of public funds that are provided to convention committees only upon the recipients' agreement to an expenditure limitation. As the Commission previously noted, "the national committee of a political party is entitled to receive public money to pay for its convention and is in turn limited in the amount which it may spend on that convention." 44 Fed. Reg. 63038 (1979).

Section 9008.52(c) is based on previous 11 C.F.R. § 9008.7(b) and (d), which permitted government agencies to make certain expenditures for facilities and services with respect to a convention without the value of the facilities and services counting toward the party's expenditure limitation, 11 C.F.R. § 9008.7(b) (1994), permitted host committees to promote the convention city and its commerce, 11 C.F.R. § 9008.7(d)(2) (1994), and permitted host committees to make expenditures similar to government agencies, 11 C.F.R. § 9008.7(d)(3) (1994). *See* 11 C.F.R. § 9008.7(b), (d) (1994); *Explanation and Justification for* 11 C.F.R. § 9008.52, 59 Fed. Reg. 33614 (1994) and *Explanation and Justification for* 11 C.F.R. § 9008.7, 44 Fed. Reg. 63037 (1979). While the provisions related to host committees permitted unlimited donations from individuals, local businesses, local government agencies, and union locals to the host committee for use in promoting the city and its commerce, "far greater restrictions [were] placed on funds received and expended to defray convention expenses." 44 Fed. Reg. 63037 (1979). Specifically, only local retail businesses were permitted to donate funds to defray convention expenses and such donations were "limited to an amount proportionate to the commercial return reasonably expected during the life of the convention by the particular business." 44 Fed. Reg. 63037 (1979). This provision for the host committee to defray

convention expenses under these limited circumstances, i.e., 11 C.F.R. § 9008.7(d)(3) (1994), was “intended to be a narrow exception to the statutory limitation on convention expenses.” 44 Fed. Reg. 63038 (1979).

In 1994, the Commission revised its regulation to the current structure, but the regulation permitting host committees to make expenditures in connection with conventions continues to be an exception to convention committees’ expenditure limits. 11 C.F.R. § 9008.8(b)(1). Therefore, it still must be narrowly construed in order to preserve the statutory expenditure limit. Similarly, because host committees may accept funds from local corporations and local labor organizations that would otherwise be prohibited from use in connection with conventions, the regulatory exception must be construed narrowly. 2 U.S.C. § 441b. Host committee expenditures are not, however, limited in amount.<sup>15</sup> Instead, host committee expenditures are limited in purpose, which reflects the Commission’s determination that expenditures for purposes such as those listed in 11 C.F.R. § 9008.52(c)(1)(i) through (xi) are consistent with the host committees’ principal objectives: the encouragement of commerce in the convention city and the projection of a favorable image of the city to convention attendees, 11 C.F.R. § 9008.52(a), rather than election-influencing purposes.

As a threshold matter, the Commission determines that the Convention Committee knowingly helped, assisted, and participated in Nash’s activities. As required

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<sup>15</sup> The focus on permissible purposes, instead of amounts, permits a wider variety of cities to compete to host conventions as host committees are permitted to provide construction services in order to provide a suitable convention center or auditorium. 11 C.F.R. § 9008.52(c)(1)(v). The Convention Committee points to the amounts of expenditures in connection with previous conventions, arguing they indicate the Commission has interpreted section 9008.52(c) as “a very broad exception.” Attachment 3, at 21; see Attachment 5, at 4. However, the breadth of permitted host committee purposes cannot be evaluated by an examination of expenditure amounts.

under Nash's contracts with the Convention Committee and the Host Committee, Nash performed his services to the Convention Committee's specifications and under the direction of the Convention Manager, a Convention Committee employee. Attachment 6, at 1 and 11. Consequently, to the extent that any of Nash's expenses were not permissible host committee expenditures, the Commission may seek a repayment for such disbursements from the Convention Committee pursuant to 11 C.F.R. § 9008.12(b)(7).

**1. Permissible Host Committee Expenditures**

The Commission concludes that the Convention Committee has demonstrated that a number of the Nash expenses that compose the \$892,489 Audit Report Repayment Determination were, in fact, permissible host committee expenditures. The Host Committee may expend funds for decorations, which are listed as an example of permissible host committee expenditures in 11 C.F.R. § 9008.52(c)(1)(v). Nash spent \$26,684 on "main and end titles" that were computer-generated graphics projected onto the television screens that were part of the podium; as such, the graphics were decorations. *See* Attachment 1, at 63, and Attachment 3, at 36-37. Similarly, still photographs displayed in the same locations would be within decorations as listed in section 9008.52(c)(1)(v). The additional technology in the computer-generated graphics does not deprive those graphics of their decorative character. Therefore, the Commission determines that the main and end titles were decorations of the Convention Center and as such were permissible host committee expenditures.

Section 9008.52(c)(1)(v) specifically lists lighting among the examples of infrastructure-related permissible host committees expenditures. Nash paid \$11,735 for a Moving Light Operator, as part of \$540,345 spent on lighting Rigging and Staging

Labor.<sup>16</sup> Because lighting is listed as an example of permissible host committee expenditures in section 9008.52(c)(1)(v), the \$11,735 expenditures for a Moving Light Operator are permissible host committee expenditures.<sup>17</sup> Similarly, Nash spent \$56,781 designated as video crew labor.<sup>18</sup> Of this amount, \$10,008 was paid to the technical director and is discussed below. According to Nash, the remaining \$46,773 (\$56,781 - \$10,008) was for "a cadre of engineers and video utility persons" who operated several of the technical systems that were part of the Convention Center's infrastructure. Nash Line Item Descriptions, Attachment 7, at 8. As such, the Commission determines that payments for their services are permissible host committee expenditures.<sup>19</sup>

Nash also spent \$73,748 for satellite expenses, which served two purposes, one of which was to provide the basic feed to news organizations that did not have facilities at the San Diego Convention Center. *See* Nash affidavit, Attachment 3, at A591, ¶ 32b. This purpose served by the satellite expenses was the functional equivalent of laying a

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<sup>16</sup> The Convention Committee allocated most of this amount, \$526,610, to lighting and rigging expenses necessary to prepare the Convention Center to host the convention, and the Commission did not include any of that category in its Audit Report Repayment Determination. Attachment 1, at 63. However, in its response to its Exit Conference Memorandum, the Convention Committee separated the expenses for the Moving Light Operator and categorized those expenses as related entirely to the closed circuit television production. *See* Bing affidavit, Attachment 3, at A74.

<sup>17</sup> This determination is consistent with the Commission's evaluation of apparently similar expenditures in the DNCC Audit Report, in which the Commission determined that host committee expenditures for, *inter alia*, "lighting instruments, . . . follow spotlights, floodlights, special effects lighting, spotlights, etc." and related operator staff were permissible host committee expenditures. *See* Attachment 3, at A1144 and A1147.

<sup>18</sup> Also included in Video Crew Labor was an additional \$5,321 which was not included in the Audit Report Repayment Determination. It was not allocated to the closed circuit television category, but was assigned to the miscellaneous category by the Convention Committee. *See* Attachment 1, at 63; Bing affidavit, Attachment 3, at A70, 74 and 76. These expenditures were related to the satellite links for the live video remote productions. *See* Nash affidavit, Attachment 3, at A591.

<sup>19</sup> This determination is consistent with the Commission's evaluation of apparently similar expenditures in the DNCC Audit Report, in which the Commission determined that host committee expenditures for, *inter alia*, broadcast engineers, cameramen, and projectionists were permissible host committee expenditures. *See* Memorandum from Audit Division to Office of General Counsel, Attachment 8, at 3.

cable to the press room at the Convention Center to provide the same material to the news organizations that did have facilities at the San Diego Convention Center. Such a function is consistent with the examples of permissible host committee expenditures related to construction for the convention center that are listed in 11 C.F.R. § 9008.52(c)(1)(v). On this basis, the Commission determines that the expenditures for satellite expenses that were the functional equivalent of a cable at the Convention Center were permissible host committee expenditures.<sup>20</sup>

Nash spent \$138,442 on live video productions at six sites away from the Convention Center: two in San Diego, California; and one each in Sacramento, California; Miami, Florida; Fond du Lac, Wisconsin; and Russell, Kansas. *See Greener affidavit, Attachment 3, at A107 and A109-12, ¶¶ 15 and 19-27; Nash affidavit, Attachment 3, at A584 and A588-89, ¶¶ 12 and 25; see also Attachment 7, at 4.* One of the functions served by the \$73,748 satellite costs that are also discussed above was related to transmitting the signal from the site of the live videos back to the Convention Center. Nash also spent \$70,000 on another taped video of a tour of Russell, Kansas. *Attachment 3, at 40.* Additionally, \$6,250 of the Television Producer's fee was related to the remote videos. *See Bing affidavit, Attachment 3, at A76.* The Convention Committee argues that the determination that these amounts are repayable is inconsistent

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<sup>20</sup> Although the Convention Committee argued that one-half of the satellite costs should be allocated to each function, Attachment 3, at 36, documentation available to the Commission supports a more refined allocation. However, such an allocation is unnecessary because the Commission determines the other purpose served by the satellite costs is also permissible host committee activity so the entire \$73,748 has been excluded from the Repayment Determination upon Administrative Review. The satellite time's other purpose was to send the signal from the sites of the live remote video productions to the convention center. The remaining one-half of the expenditures for satellite time is discussed in this section in connection with the live remote video productions.

with the Commission's treatment of certain taped remote video productions.<sup>21</sup> The Commission has concluded that the taped and live videos at issue should be treated consistently; consequently, the Nash expenditures for the live videos, related satellite costs and the Russell tour have been excluded from the Repayment Determination upon Administrative Review.

Nash provided entertainment in the Sail Area, which was the overflow seating area on the roof of the Convention Center. The expenses related to the sail area include Sail Area entertainment (\$18,935), Sail Area entertainment coordinator (\$3,481),<sup>22</sup> and entertainment incidentals (\$213). The Convention Committee defends all of the expenses listed above as necessary parts of the Sail Area. *See* Attachment 3, at 39-40.

Specifically, the Convention Committee explains that "the Host Committee was concerned that attendees relegated to the Sail Area would not be happy. It therefore strove to make the Sail Area as pleasant as possible by providing, among other things, entertainment." *Id.*, at 39. On this basis, the Commission has concluded the expenses identified above that total \$22,629 (\$18,935 + \$3,481 + \$213) were sufficiently related to the use of the Sail Area as an auxiliary area to the Convention Center that incurring these expenses was part of the Host Committee's provision of the "use of an auditorium or convention center and . . . convention related services for that location." 11 C.F.R. § 9008.52(c)(1)(v). Therefore, pursuant to 11 C.F.R. § 9008.52(c)(1)(v) and (xi), the

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<sup>21</sup> The taped videos consisted of "video clips highlighting profiles of delegates . . . [and] Maury Taylor, Joe Paterno, Mrs. Laura Bush (never used), Connie Mack, and Steve McDonald." *See* Attachment 7, at 5.

<sup>22</sup> The Sail Area entertainment coordinator could also be considered a "producer" or "director" of that portion of the convention proceedings, but is considered here to reflect the Convention Committee's argument that the Sail Area entertainment coordinator was part of the Sail Area.

Host Committee's \$22,629 expenditures for entertainment in the Sail Area were permissible host committee expenditures and have been removed from the Repayment Determination upon Administrative Review.<sup>23</sup>

Thus, the Nash expenses described above totaling \$396,261 (\$26,684 + \$11,735 + \$46,773 + \$73,748 + \$138,442 + \$70,000 + \$6,250 + \$18,935 + \$3,481 + \$213) were permissible host committee expenditures. As such, they do not represent in-kind contributions that are subject to the Convention Committee's expenditure limitation. Consequently, they are not included in the Repayment Determination upon Administrative Review.

## 2. **Impermissible Host Committee Expenditures**

The Commission determines that \$456,957 of Nash's expenses were not permissible host committee expenditures and, therefore, are in-kind contributions that are subject to the Convention Committee's expenditure limit. Given the Convention Committee's role in supervising Nash, and because the Convention Committee received public funds equal to its expenditure limit, the Commission determines that the Convention Committee exceeded its expenditure limit and must therefore repay these in-kind contributions to the United States Treasury.<sup>24</sup> The impermissible host committee

<sup>23</sup> The Convention Committee also argued that these expenditures were permissible as entertainment expenditures. *See* Attachment 3, at 39. However, 11 C.F.R. § 9008.52(c) does not list entertainment as an example of a permissible host committee expenditure. Pursuant to section 9008.52(c)(1)(ii), host committees are permitted to provide "information booths, receptions, and tours" as part of "welcoming the convention attendees to the city," and entertainment could be provided at such receptions. The principal objective of host committees and the context of the regulation makes clear that receptions must be to welcome attendees to the city and as such must be events that are clearly separate from the convention itself. The regulation's reference to "receptions" for this expressed and particular purpose cannot be fairly read to permit host committees to provide entertainment that is part of the convention's proceedings.

<sup>24</sup> In addition to the following discussion, the attached chart shows the amounts associated with each of the repayable expenditures. Attachment 9.

expenditures at issue can be categorized as belonging to two groups: the first group consists of expenditures to vendors who produced or directed the convention proceedings, and the second group consists of expenditures to vendors who provided content that was used as a portion of the convention proceedings.

**a. Vendors Who Produced or Directed Proceedings**

While 11 C.F.R. § 9008.52(c) lists examples of permissible host committee expenditures, the Commission's regulations do not list impermissible host committee expenditures. The purposes listed in section 9008.52(c)(1) and the principal objectives of host committees of encouraging commerce and projecting a favorable image of the convention city establish the criteria for permissible host committee expenditures. The Commission has determined that Nash's payments to vendors who produced or directed the convention proceedings are not consistent with the purposes listed in section 9008.52(c)(1) nor are they consistent with a host committee's principal objectives. Consequently, the Commission concludes that expenditures to vendors who produced or directed the convention proceedings are impermissible host committee expenditures and in-kind contributions to the Convention Committee.

These expenditures include \$40,000 for the Co-Producer. According to Nash, the Co-Producer was "responsible for all operational aspects for production and show elements in the Main Venue and the Sail Area," and was paid a total of \$60,000. *See* Attachment 7, at 3. Given the Co-Producer's responsibilities, the Commission concludes that the expenditures related to the Co-Producer were to create or enhance a portion of the



convention proceedings and were impermissible host committee expenditures.<sup>25</sup>

Therefore, the \$40,000 payment to the Co-Producer is included in the Repayment Determination upon Administrative Review.

The Directors were paid \$39,016. Nash's description of the Directors' functions stated that they:

[d]irected television coverage of the convention that was distributed as a basic feed via satellite throughout the United States, as well as to monitors throughout the convention center. Also directed the video mix of the program material that was displayed on the giant projection screens in the Main Venue and the sail area.

Attachment 7, at 3. Directing the television coverage of the Convention that was distributed for broadcast throughout the United States is a necessary part of creating and enhancing the convention proceedings. Expenditures for directors are not a permissible host committee expenditure.<sup>26</sup> Consequently, the entire amount paid to the Directors is included in the Repayment Determination upon Administrative Review.

Nash paid \$50,000 to the Television Producer. Nash's description of the Television Producer's functions stated that the Producer was "[r]esponsible for television

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<sup>25</sup> The Host Committee paid the Co-Producer a total of \$60,000. One-third, or \$20,000, was not included in the Audit Report Repayment Determination to recognize that some of the Co-Producer's services were related to the Sail Area. The Convention Committee allocated the Co-Producer's fee with \$40,000 for closed circuit television and \$20,000 for the Sail Area. *See* Bing affidavit, Attachment 3, at A74-76.

<sup>26</sup> Although the Nash Line Item Descriptions mentions the Directors' duties in connection with the Sail Area, the Convention Committee did not allocate any of the Directors' fees to the Sail Area category of expenses. Instead, the Convention Committee allocated the entire fee paid to the Directors to closed circuit television. *See* Bing affidavit, Attachment 3, at A74-75; Attachment 7, at 3. Such an allocation is unreasonable in that it fails to recognize the most significant aspect of the Directors' duties, namely directing the television coverage that was distributed throughout the United States. The Convention Committee admits that a Convention Committee function was to "facilitate[] media coverage, especially television coverage." Attachment 3, at 11. Other Convention Committee affiants emphasized the importance of this coverage to the success of the convention. *See* Greener affidavit, Attachment 3, at A106-08, ¶¶ 10-16; *see also* Geraghty affidavit, Attachment 3, at A87-88, ¶ 5, and Nash supplemental affidavit, Attachment 3, at A744-45, ¶ 3. The Convention Committee did not provide the Commission with documentation to support a more refined allocation of these costs.

coverage, including live remotes and creation of video segments for the big screens. Also responsible for supervision of entire production budget.” Attachment 7, at 3. Like the Directors, the Television Producer created or enhanced the convention’s proceedings. Therefore, the Producer’s fee is not a permissible host committee expenditure. The Convention Committee allocated \$6,250 of the \$50,000 fee paid to the Television Producer to the remote video productions. *See* Bing affidavit, Attachment 3, at A74-76. Because the Commission has determined that expenditures related to the remote video productions are permissible host committee expenditures, the \$6,250 of the Television Producer’s fee is not included in the Repayment Determination upon Administrative Review. The remaining \$43,750 (\$50,000 - \$6,250) paid to the Television Producer is included in the Repayment Determination upon Administrative Review.

Fees associated with additional production staff have also been included in the Repayment Determination upon Administrative Review because their purpose was to create or enhance the convention proceedings. The job titles and related fees are as follows: Technical Director (\$10,008);<sup>27</sup> Production Coordinator (\$5,570); Stage Manager (\$8,438); Script Supervisor (\$6,442); Production Assistant (\$6,163); Make up (\$3,000); Tape stock (\$200); Sound Operations (\$5,250); Tape Coordinator (\$7,806); Continuity Writer (\$10,000); and Stand-ins (\$2,691).<sup>28</sup> None of these expenses was a

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<sup>27</sup> *See* Attachment 8, at 3 (specifying that the Technical Director was paid \$10,008 as part of \$56,781 for Video Crew Labor).

<sup>28</sup> In addition to the production staff listed above, Nash also expended \$38,500 for the Staging (or Production) Supervisor and \$22,790 for the Production Manager. The Convention Committee categorized these expenses as part of the lighting and rigging expenses that were necessary to prepare the Convention Center. *See* Bing affidavit, Attachment 3, at A74. The Commission did not include any of these amounts in the Audit Report Repayment Determination.

permissible host committee expenditure, so these amounts have been included in the Repayment Determination upon Administrative Review.

The Convention Committee argues that many of these expenditures were necessary television production services and that such services were permissible host committee expenditures. *See* Attachment 3, at 26-33.<sup>29</sup> The Convention Committee argues that the expenditures were similar to expenditures that the Chicago Host Committee was permitted to provide to the DNCC. *Id.*, at 27-31. However, the Commission has reviewed documentation related to the Chicago Host Committee payments and determined that the cited payments are not similar to those included in this Repayment Determination. *See* Attachment 8. Thus, the two audits are consistent.

In particular, the Convention Committee identifies certain expenditures made by the City of Chicago or the Chicago Host Committee that the Commission determined were permissible host committee expenditures and argues that the television production services provided by the San Diego Host Committee should be treated the same way.<sup>30</sup> The Convention Committee points to the Chicago Host Committee's payment of \$615,083 to Chicago Scenic Studios and argues that Nash's Stage Manager and Video Crew Labor were for the same purposes. *See* Attachment 3, at 27. With respect to the

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<sup>29</sup> Specifically, the Convention Committee initially placed the Continuity Writer and the Stand-ins in the miscellaneous category, *see* Bing affidavit, Attachment 3, at A76, but later categorized them as television production services, *id.*, at 26. The Convention Committee assigned the Production Coordinator to the overhead category. *Id.*, at 25-26 and Bing affidavit, A75. All of the remaining production staff—Co-producer, Directors, Television Producer, Video Crew Labor, Stage Manager, Script Supervisor, Production Assistant, Make-up, Tape Stock, Sound Operations, Tape Coordinator—were in the category initially called closed circuit television and later deemed television production services. *See* Attachment 3, at 25-26 and Bing affidavit, A74-75; *see also* Attachment 1, at 63-64.

<sup>30</sup> Among these arguments was the Convention Committee's argument that the expenditures for the Moving Light Operator (\$11,735) had a purpose similar to the payments to Chicago Scenic Studios. The Commission determined that provision of the Moving Light Operator is a permissible host committee expenditure, as discussed above.

Video Crew Labor, the Commission has already determined that \$46,773 of the \$56,781 is a permissible host committee expenditure, which leaves the Technical Director's fee, \$10,008, in dispute.

The payments to Chicago Scenic Studios were for broadcast engineers, stagehands and riggers for the lighting, sound, Teleprompter, and Scenic systems, teamsters, cameramen and projectionists. Attachment 8, at 3. Such services are closely linked to the infrastructure of the convention center. Additionally, section 9008.52(c)(1)(v) specifically lists decorations, lighting and loudspeaker systems. In contrast, the remaining challenged payments to Nash were for vendors who produced or directed the convention proceedings. According to Nash, the Stage Manager was: "Responsible for running the operation of the podium during the convention, including cueing the talent (speakers) and stage effects. Coordinates podium activities with the executive producer . . . , and the television director . . . ." See Attachment 7, at 3. As described by Nash, the Technical Director's "overall responsibility . . . was the coordination of all aspects of the video engineering." *Id.*, at 8. Thus, because the services provided by Chicago Scenic Studios are different from the services provided by Nash's Stage Manager and Technical Director, the Convention Committee's claim of inconsistent treatment fails.

The Convention Committee also states that the Chicago Host Committee reported "spending over \$12,000 on various 'stage hands' and 'stage technicians,'" and it cites a few examples of such reporting entries, claiming that this is another inconsistency between the DNCC audit report and the Convention Committee's audit report. Attachment 3, at n.5, 27. Although the Convention Committee does not precisely identify the disbursements that make up the "over \$12,000," the attached schedule displays 35

Chicago Host Committee disbursements that were reported for stagehands or stage tech crew and total \$13,930. *See* Audit Division, Schedule of Payments for “Stagehands” and “Stage Tech Crew Member,” Attachment 10. (The particular disbursements cited as examples by the Convention Committee are included on Attachment 10.) As shown on that schedule, all of the disbursements were in connection with events that were held outside of the convention hall and occurred prior to the convention. *Id.* As such, they were permissible host committee expenditures for receptions welcoming the convention attendees to the city, which is listed as an example in 11 C.F.R. § 9008.52(c)(1)(ii). Thus, the cited Chicago Host Committee expenditures were fundamentally different from the Nash expenditures that are included in the Convention Committee’s Repayment Determination.

The Convention Committee cites the audio system and related services provided by the City of Chicago to DNCC as another example of an inconsistency between the DNCC audit and the Convention Committee audit. Attachment 3, at 27-28. It argues that the \$5,250 for Sound Operations is the same as Sound Operations in the DNCC’s audit, which were not included in the DNCC’s Repayment Determination. *Id.* However, Nash’s Sound Operations were described as closed captioning for Convention Committee television programming on Nash’s general ledger, Attachment 8, at 3-4, while the Sound Operations in the DNCC audit were for an audio system and the services of audio consultants and an audio designer to operate the system, Attachment 3, at 27-28.<sup>31</sup> Thus, although the expenditures bear a similar label, the functions served were quite different.

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<sup>31</sup> Both the Chicago Host Committee and the San Diego Host Committee made substantial payments to the same vendor for such services. *See* Attachment 8, at 3.

See Attachment 8, at 3-4. Section 9008.52(c)(1)(v) specifically lists loudspeaker systems as an example of permitted host committee expenditures. Consequently, despite the Convention Committee's suggestion to the contrary, the Sound Operations included in its repayment determination are not similar to the audio system operations addressed in the DNCC audit. Thus, the Audit Reports for the DNCC and the Convention Committee are consistent in this regard as well.

The Convention Committee's final example of inconsistency is the City of Chicago's provision of grips, chyon operators,<sup>32</sup> and a property master. See Attachment 3, at 28. The Convention Committee claims that Nash's stand-ins, script supervisors and a production accountant should be treated the same as the cited services for the Chicago convention. According to Nash's Line Item Descriptions, the purposes served by the stand-ins, script supervisors, and production accountant were just as their titles suggest. See Attachment 7, at 3, 4 and 7. The Commission does not have a description of the services provided by the grips, chyon operators, and property masters. However, the Convention Committee has not shown any basis to conclude that grips, chyon operators, and property masters are equivalent to stand-ins, script supervisors and a production accountant. Consequently, this aspect of the Convention Committee's argument of inconsistent treatment fails for a lack of supporting information.

The Convention Committee argues that the Commission has not stated a reason for treating some television production expenditures differently from others.

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<sup>32</sup> The Convention Committee included script supervisors, instead of chyon operators, in the text of its Administrative Review Request, citing the DNCC Audit Report at 6 (Attachment 3, at A1143). Attachment 3, at 28. However, that page of the DNCC Audit Report does not refer to script supervisors. Convention Committee counsel stated that the reference should have been to chyon operators, as reflected in the text above. Attachment 8, at 4.

Attachment 3, at 31-33. However, the television production expenditures that are repayable are those with specific purposes that were not for permissible host committee expenditures such as the examples listed in 11 C.F.R. § 9008.52(c), but were instead to create or enhance the convention proceedings. The specific purpose of the expenditures, rather than a broad, categorical purpose such as television production, determines whether the expenditures are permissible host committee expenditures similar to those listed in section 9008.52(c). Thus, some of the expenditures that fall under the Convention Committee's broad category of television production were permissible host committee expenditures; this does not mean, however, that all of the expenditures in the same broad category were permissible.

Finally, the Convention Committee claims that all of the television production expenses were required in order to provide the closed circuit television system with programming. *Id.*, at 33. As the Convention Committee's own affiants clearly state, facilitating nationwide television coverage of the convention is a significant focus of the convention's efforts, yet allocating all of television production expenses to the closed circuit television system makes that significant effort merely a by-product of the closed circuit system. *See* Greener affidavit, Attachment 3, at A106-09, ¶¶ 10-16, and 18; *see also* Geraghty affidavit, Attachment 3, at A87-88, ¶ 5, and Nash supplemental affidavit, Attachment 3, at A744-45, ¶ 3. The Convention Committee's affiants make clear that its efforts to facilitate the nationwide television broadcast cannot be ignored. Thus, the Commission concludes that allocation of all the television production expenditures to the closed circuit television system is clearly unreasonable.

**b. Vendors Who Provided Content**

The Host Committee made expenditures to vendors who provided content that was used as a portion of the convention proceedings.<sup>33</sup> None of these expenditures is similar to the purposes listed in 11 C.F.R. § 9008.52(c), nor is any consistent with a host committee's principal purpose of promoting its city. Consequently, the following expenditures are impermissible host committee expenditures and in-kind contributions to the Convention Committee.

The travel expense for the Convention Announcer (\$986) is part of the expenses necessary to create the content of convention proceedings, based on the Announcer's apparent function. As such, it is not a permissible host committee expenditure. The Convention Committee notes that the announcer may have welcomed speakers to the podium; however, section 9008.52(c)(1)(ii) use of welcoming is expressly limited to welcoming attendees *to the city*, which reflects the permitted role of host committees, rather than assisting the creation of convention proceedings.

Similarly, \$49,032 were spent to bring an orchestra to perform before and during the convention. While a host committee might be permitted to provide an orchestra at a welcoming reception pursuant to 11 C.F.R. § 9008.52(c)(1)(ii), or even to provide tickets to an orchestra concert analogous to the baseball game tickets in Advisory Opinion 1980-21, providing entertainment as part of the convention's proceedings is not a permissible host committee expenditure.

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<sup>33</sup> With such a purpose, these expenditures fail even the Convention Committee's simplified test for distinguishing permissible host committee expenditures from impermissible. They are not for the "microphone," or the permitted host committee expenditures, but rather are for the "message," which the host committee may not provide. See Attachment 4, at 48.



Nash spent \$77,595 on Special Effects, which consisted of indoor fireworks for the San Diego Convention Center, a confetti cannon, and a balloon drop. The Convention Committee contends these services are permitted by section 9008.52(c)(1)(v), which permits decorations. However, the services provided are not decorations as contemplated by section 9008.52(c)(1)(v). Rather, they are events that are part of the convention proceedings. As Mr. Nash explained in his affidavit, “the moment of the candidate’s nomination is one of the climactic moments of the Convention. It is traditionally accompanied by huge balloon drops, confetti, music, and fireworks.” Nash affidavit, Attachment 3, at A584, ¶ 12. Mr. Nash describes a moment of the convention, indeed, the climactic moment, and as such the balloon drops, confetti cannon, and fireworks are explained as accompanying that moment; thus, even Mr. Nash’s description of the services portrays them as events, not as a decorative backdrop that would be permitted. As events that occur at particular points in the convention proceedings, the balloon drops, confetti cannon, and fireworks are more analogous to entertainment than to decorations, and as stated above, expenditures for entertainment are permissible host committee expenditures only to the extent they are part of efforts to welcome convention attendees to the city pursuant to section 9008.52(c)(1)(ii).<sup>34</sup> Therefore, the \$77,595 expenditures were not permissible host committee expenditures and are included in the Repayment Determination upon Administrative Review.

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<sup>34</sup> The Commission’s inclusion of “decorations” in section 9008.52(c)(1)(v) requires that the Commission determine the scope of that term. While the Commission has determined that decorations as used in the regulation may include the use of newer technologies, the Commission has also determined that decorations as used in the regulation does not include events merely because the events have a visual element.

The Convention Committee referred to a number of expenditures reported by the Chicago Host Committee that were not included in the DNCC Audit Report Repayment Determination and argued that the Commission must exclude certain expenditures from the Convention Committee's repayment determination on this basis. Specifically, the Convention Committee refers to expenditures for production labor, fireworks, an air show, and entertainment. Attachment 3, at 27, 37, 38, and 39. The Commission has reviewed documentation related to these disbursements and concluded that all of the disbursements referenced by the Convention Committee were associated with events held by the Chicago Host Committee that were to welcome convention attendees to the City of Chicago and were therefore consistent with 11 C.F.R. § 9008.52(c)(1)(ii). All of these events were held at locations away from the location of the Chicago convention, and all but one of these events occurred prior to the first day of the convention. Attachment 8, at 5-6, and Audit Division, Schedule of Payments for "Entertainment" as Reported on the DNC Host FEC Disclosure Reports, Attachment 11. It is therefore clear that the events were similar to the baseball game in Advisory Opinion 1980-21 and were not part of the convention proceedings. Consequently, the referenced expenditures are not similar to any of the expenditures included in the Convention Committee's repayment determination.

Thus, the Commission determines that \$315,947 of the Nash expenses were not permissible host committee expenditures and as such represent in-kind contributions to the Convention Committee.

### **3. Overhead and Indirect Expenses**

In the Audit Report Repayment Determination, Nash's indirect expenses were attributed between Nash's functions that were permissible host committee expenditures

and those that were not in order to reflect the Commission determinations related to the other Nash expenditures.<sup>35</sup> *See* Attachment 1, at 37-38 (describing attribution process). The Nash indirect and overhead expenses must be reattributed to reflect the Commission's other determinations in this Statement of Reasons.

First, the pool of expenses subject to this attribution must be adjusted. In the Audit Report, a total of \$346,559 was considered subject to attribution. The Commission has determined that the Production Accountant (\$19,984) should be subject to attribution, so those expenditures have been added to the pool of attributable expenses.<sup>36</sup> Thus, the total amount of attributable expenses revised to reflect the Commission determinations is \$366,543 (\$346,559 + \$19,984).

The Convention Committee also argues that hotel expenses of \$105,603.94 should not be subject to attribution as 11 C.F.R. § 9008.52(c)(1)(ix) permits host committees to incur expenses "to provide hotel rooms at no charge or a reduced rate on the basis of the number of rooms actually booked for the convention." 11 C.F.R. § 9008.52(c)(1)(ix). *See* Attachment 3, at 41 and Attachment 4, at 42. The Convention Committee is incorrectly attempting to extend the regulation to include not only the complimentary rooms the Host Committee properly provided in accordance with section 9008.52(c)(1)(ix), but also some of the underlying rooms that the Host Committee

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<sup>35</sup> In its Administrative Review Request, the Convention Committee combined the Overhead and Indirect Expense categories. *See* Attachment 3, at 26. Two types of expenses included in Overhead -- \$25,000 of the Television Producer's fee and \$5,570 for a Production Coordinator -- are discussed above. The remaining expense in the Overhead category, \$15,000 for a Production Accountant, was not subject to allocation in the Audit Report Repayment Determination, but is considered with the indirect expenses in this Statement of Reasons. Attachment 8, at 4.

<sup>36</sup> Because the Accountant's fee related to all of Nash's activities, the Commission determines that the fee should be attributed to calculate an amount related to Nash's activities that were impermissible host committee expenditures, rather than allowing the entire fee as a compliance cost. *See* Attachment 3, at 41.

would have been required to book in order to receive the complimentary rooms.

Section 9008.52(c)(1)(ix) is not so broad, but is instead limited to any rooms received by a host committee from hotels at a reduced rate or no charge in return for a specified number of other rooms booked. Therefore, the \$105,603.94 remain subject to attribution.

The Convention Committee also argues that transportation expenses of \$10,643.49 should not be subject to attribution as 11 C.F.R. § 9008.52(c)(1)(vi) permits local transportation. Attachment 3, at 41. However, the Convention Committee has not shown those expenses to have been exclusively local, so they remain subject to attribution.

Once the pool of Overhead and Indirect Expenses subject to attribution was identified, that pool was attributed between those related to impermissible host committee expenditures and those related to permissible host committee expenditures.<sup>37</sup> This resulted in an attribution of \$141,010 of Overhead and Indirect Expenses related to Nash's expenses that were impermissible host committee expenditures, and \$225,533 to Nash's expenses that were permissible host committee expenditures.<sup>38</sup> Thus, the

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<sup>37</sup> In addition to the following discussion, the attached chart identifies the allocation pools and the amount by which each pool was allocated. Attachment 12.

<sup>38</sup> In the Audit Report, the Commission approved a two-step process for attribution of Nash's indirect expenses. First, indirect expenses that could be associated with other particular Nash expenditures were attributed based on whether the associated Nash expense was determined to be an impermissible host committee expenditure. These indirect expenses were primarily travel and living expenses that could be associated with particular persons. Of the \$346,559 total Indirect Expenses, \$107,785 were attributed to the Convention Committee, \$102,695 were attributed to the Host Committee, and \$136,078 could not be associated with other Nash expenses, so this \$136,078 of indirect expenses were subject to the second step of the attribution process. (Included in the permitted \$102,695 were \$23,633 for equipment rental cited by the Convention Committee. Attachment 3, at 41.) In the context of the Audit Report, the \$136,078 was divided into three groups: Travel and Living Expense—Producers and Directors (\$9,702); Travel and Living Expenses—Others (\$32,886); and Overhead (\$93,491). The two travel and living expense groups were attributed to either the Convention Committee or the Host Committee based on the distribution of associated direct costs. The overhead expenses were attributed based on the distribution of all non-overhead expenses. See Attachment 1, at 38. Of the \$136,078 subject to the second step of the attribution, \$57,496 was attributed to the Convention Committee, and \$78,583 was attributed to the Host Committee.

Commission determines that \$141,010 of Overhead and Indirect Expenses related to Nash's expenses that were impermissible host committee expenditures plus \$315,947 of the other Nash expenses that were impermissible host committee expenditures for a total in-kind contribution of \$456,957 to the Convention Committee.

#### 4. Offset

Once the Commission has determined the amount of the in-kind contribution from the Host Committee, the Commission must address the Convention Committee's proposed offset.<sup>39</sup> A convention committee must agree to an expenditure limitation as well as established parameters on how the public funds can be used as conditions to receiving public funds. In addition, a convention committee's entitlement to those public funds is equal to the expenditure limitation. Exceeding the expenditure limitation, the improper use of public funds and the receipt of excessive public funds are all bases for repayment. 11 C.F.R. § 9008.12(b)(1), (2) and (4). Therefore, the Commission must

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As a final result of this attribution process in the Audit Report, the Commission determined that a total of \$165,281 (\$107,785 + \$57,496) of Nash's Indirect Costs were related to the Nash expenses that were impermissible host committee expenditures. As such, that portion of the indirect expenses was part of the in-kind contributions from the Host Committee to the Convention Committee and therefore subject to the latter's expenditure limitation.

<sup>39</sup> The Convention Committee defines its proposal as a recoupment. A recoupment is not applicable in this situation. Recoupment is appropriate when the defendant in a suit has a monetary claim against the plaintiff. See 6 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure*, Civil § 1401 (2d ed. 1990). The purpose of a recoupment is to prevent the unjust enrichment of a party to a lawsuit and to avoid wasteful multiplicity of litigation. *Estate of Mueller v. Commissioner of Internal Revenue*, 101 T.C. 551, 551-552 (1993). This matter does not involve an unjust enrichment of a party involved in litigation nor does it involve any economies of litigation. Rather, this matter involves the Convention Committee's proposal to restructure expenses that it claims could have been spent by the Host Committee without counting towards the Convention Committee's expenditure limitation. In order for the recoupment to be appropriate in this context, the government would have to owe the Convention Committee monetary relief for actions arising out of its contract with the Convention Committee. See *United States v. Consumer Health Services of America, Inc.*, 108 F.3d 390, 395 (D.C. Cir. 1997)(stating that recoupment requires both debts to arise out of a single integrated transaction so that it would be inequitable for the debtor to enjoy the benefits of that transaction without also meeting its obligations).

examine the impact of the offset transaction on the expenditure limitation, the use of public funds, and the Convention Committee's entitlement.

Allowing the Convention Committee to offset the in-kind contribution received from the Host Committee by its expenses that could have been paid by the Host Committee does not have an impact on the Convention Committee's expenditure limitation. If the expenditures at issue were permissible host committee expenditures and are ultimately paid for with Host Committee funds, they can not be subject to the Convention Committee's expenditure limitation. 11 C.F.R. § 9008.8(b)(1). There is no requirement in section 9008.52(c)(1) that the funds must be initially expended from the Host Committee's accounts, nor is there a prohibition against the initial use of the Convention Committee's public funds for the purposes set forth in section 9008.52(c). *See* 11 C.F.R. § 9008.7(b)(1).

The proposed offset does not have an impact on the Convention Committee's entitlement to public funds. Private funds can be used for the purpose of paying convention expenses. 11 C.F.R. § 9008.6(a)(1). However, if private funds are spent on convention expenses, the convention committee's entitlement to public funds may be reduced by the same amount. *See* 26 U.S.C. § 9008(b)(3). The sum of a convention committee's entitlement and the private contributions cannot exceed a convention committee's expenditure limitation. 11 C.F.R. § 9008.5(b). However, if the Host Committee expenses were permissible host committee expenditures, they are not contributions to the Convention Committee. 11 C.F.R. §§ 114.1(a)(2)(viii) and 9008.8(b)(1). Therefore, there are no additional private contributions provided to the

Convention Committee when the Host Committee reimbursement is for permissible host committee expenditures.<sup>40</sup>

Therefore, the Commission concludes that the Convention Committee may offset the \$456,957 in-kind contribution it received from the Host Committee by expenses that were incurred by the Convention Committee, but that were also permissible host committee expenditures. Of such expenses put forth by the Convention Committee, the Commission determines that expenses totaling \$722,817 would have been permissible host committee expenditures had the Host Committee incurred those expenses. *See* Attachment 13.<sup>41</sup> The Commission will take administrative notice of a reimbursement from the Convention Committee to the Host Committee of the Nash expenses that were impermissible host committee expenditures, which eliminates the contribution for repayment purposes. In exchange, a reimbursement in the same amount from the Host Committee to the Convention Committee for Convention Committee expenditures that were permissible host committee expenditures will also be noted. Because the reimbursements are equal, they result in a net exchange of zero; therefore, the Convention

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<sup>40</sup> The Commission permits such offsets in other similar circumstances where there is no adverse effect on the expenditure limitation or the entitlement. In the context of general election financing, a general election candidate committee may receive a reimbursement from its legal and accounting compliance fund for expenses that could have been paid by the legal and accounting compliance fund. 11 C.F.R. § 9003.3(a)(2)(ii)(A), (D) and (G). Such reimbursed expenditures are not subject to the general election expenditure limitation. 11 C.F.R. § 9003.3(a)(2)(iii). Unlike convention committees, general election committees are usually not permitted to accept private contributions. However, in the limited situation where the general election committee can accept private contributions (*i.e.* when there is a shortage in the Presidential Election Campaign Fund), the general election committee's entitlement will be adjusted to reflect these additional funds. 11 C.F.R. § 9004.3(b)(2). The adjustment of the general election committee's entitlement is similar to convention committee financing. *See Explanation and Justification for 11 C.F.R. § 9008.3*, 44 Fed. Reg. 63036 (Nov. 1, 1979); *see also* 11 C.F.R. § 9008.5.

<sup>41</sup> The Audit Division's analysis states that the Convention Committee paid permissible host committee expenses of \$718,334. The Commission concludes that an additional \$4,433 paid to Red Sun Custom Screening was also a permissible host committee expense, for a total of \$722,817 (\$718,334 + \$4,433). *See* Attachment 13, at 6.

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reimbursements are equal, they result in a net exchange of zero; therefore, the Convention Committee and Host Committees are not required to transfer funds. However, both the Convention Committee and the Host Committee must amend their reports accordingly to reflect the transaction. Similarly, the Commission has appropriately noted the adjustments on the Convention Committee's Net Outstanding Convention Expenses Statement.<sup>42</sup> Attachment 2.

The Commission examined documentation relating to \$1,606,138 in expenditures that the Convention Committee made that it argued could have been paid by the Host Committee. The Commission has divided the expenditures into five categories: (1) office equipment and construction of \$611,800; (2) local transportation and security of \$111,017; (3) hotels of \$743,924; (4) caucus and platform meeting of \$25,651; and (5) undocumented of \$113,746.

With respect to the office equipment and construction expenses of \$611,800, the Commission concludes that the Convention Committee has presented documentation to demonstrate that these expenses were permissible host committee expenditures. Host committees may provide offices, office equipment, and construction services for the convention center location, as well as similar convention-related facilities and services. 11 C.F.R. § 9008.52(c)(1)(v) and (xi). The \$611,800 of expenses include photocopying machines and copies, computer equipment, and repaving certain roads and walkways near the convention center. Attachment 13, at 4.

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<sup>42</sup> The revised Net Outstanding Committee Expenditure statement is dated as of September 30, 1996 with the final amount determined as of December 31, 1998. See 11 C.F.R. § 9008.10(g).

The Convention Committee also presented documentation demonstrating that local transportation and security expenses totaling \$111,017 were permissible host committee expenses. The expenditures relate to parking lot rentals and uniforms used for security purposes. Attachment 13, at 4. The Commission's regulations state that host committees may defray the costs of various local transportation services, including the provision of buses, automobiles, and the cost of law enforcement services. 11 C.F.R. § 9008.52(c)(1)(vi) and (vii).

The Convention Committee's \$743,924 payment for hotel rooms is not a permissible host committee expense, and therefore, a reimbursement of these expenses is not included in the offset. Section 9008.52(c)(1)(ix) states that a host committee can incur expenses "to provide hotel rooms at no charge or a reduced rate on the basis of the number of rooms actually booked for the convention." Thus, section 9008.52(c)(1)(ix) permits host committees to provide convention committees with any rooms the host committee receives at no charge or at a reduced rate based on the number of rooms actually booked for the convention.

Contracts obtained from the San Diego Convention & Visitors Bureau ("ConVis") between the Convention Committee and hotel vendors demonstrate that the Convention Committee received one free room for every 40 rooms booked by the Host Committee. See Attachment 8, at 8. The contracts reviewed by the Commission demonstrate that after the hotels received full payment, the hotels gave a 5% commission to ConVis, and ConVis forwarded this 5% commission to the Host Committee. *Id.*, at 8.

In attempting to use the \$743,924 paid for the rooms as a host committee expense pursuant to section 9008.52(c)(1)(ix), the Convention Committee is incorrectly

attempting to extend the regulation to include not just the complimentary rooms the Host Committee properly provided in accordance with section 9008.52(c)(1)(ix), but also some of the underlying 40 rooms the Host Committee would have been required to book in order to receive the complimentary rooms. Section 9008.52(c)(1)(ix) is not so broad because it is limited to any rooms received by a host committee from hotels at a reduced rate or no charge, in return for a specified number of other rooms booked. Therefore, the \$743,924 would not be a permissible host committee expenditure pursuant to section 9008.52(c)(1)(ix).<sup>43</sup>

The fourth category, caucus and platform meeting, relates to payments totaling \$25,651 made to a single vendor. According to documents reviewed by the Commission, the purpose of the payments was to provide facilities, sound, and lighting for Caucus and Platform Committee meetings on August 5, 1996 through August 9, 1996, before the start of the convention. *See* Attachment 3, at 47 and Attachment 13, at 5. The Commission concludes that this meeting was for the purpose of conducting national party business, and is therefore not a permissible host committee expense.

The last category of expenses labeled undocumented totals \$113,746. No documentation was submitted to determine the nature of these expenses. Attachment 13, at 5. Therefore the Commission does not include these expenses among those that have been determined to be permissible host committee expenses.

The Commission determines that \$722,817 in expenses paid by the Convention Committee are permissible Host Committee expenses. This amount is more than

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<sup>43</sup> The Convention Committee made a similar argument related to \$105,603.94 of hotel expenses in the overhead and indirect costs category. Attachment 3, at 41. For the same reasons cited above, that argument is rejected and the costs remain subject to attribution.

sufficient to offset the \$456,957 in-kind contribution from the Host Committee to the Convention Committee. Therefore, the Commission concludes that the Convention Committee does not owe a repayment for exceeding the expenditure limit.

#### **IV. IN-KIND CONTRIBUTION FROM REPUBLICAN NATIONAL COMMITTEE**

##### **A. AUDIT REPORT REPAYMENT DETERMINATION**

The Convention Committee and the RNC contracted with Creative Broadcast Techniques ("CBT") for 25 cameras, supporting personnel, and production equipment that was to be used by the RNC and the Convention Committee. The purpose of the contract was to provide cameras and supporting personnel to produce the televised images of the convention proceedings. These images were provided to all the networks, to the closed circuit television program viewed by convention attendees, and to the RNC and the Convention Committee for their television broadcasts.<sup>44</sup> Attachment 3, at 51. The Commission identified payments in a net total of \$1,819,824 from the Convention Committee and the RNC to Creative Broadcast Techniques ("CBT") that were for 25 television cameras, crews, and some of the related television production and editing expenses. Attachment 1, at 49. According to the Convention Committee, the cameras were used for two major purposes: (1) producing the basic feed; and (2) producing the television programs broadcast by the Convention Committee and the RNC. Of the 25 cameras, 14 were used to produce the images for the basic feed. Attachment 1, at 47.<sup>45</sup>

Following audit fieldwork, the RNC submitted two documents to the Commission dated

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<sup>44</sup> In 1993 GOP-TV was formed to produce media for the RNC, including a television show called "Rising Tide" that was broadcast live every Thursday night on several cable channels. Attachment 3, at 51.

<sup>45</sup> Production and editing of these images were provided by Nash and were not part of the CBT contract. Attachment 1, at 47.

March 10, 1997 and September 16, 1997 in which the RNC stated that the revised figure for the cost of the CBT contract that was related to the 14 cameras used for the basic feed was \$833,345. *See* RNC GOP-TV Memorandum (Mar. 10, 1997) and Invoice (Sept. 16, 1997), Attachment 14. The RNC and the Convention Committee agreed to allocate these costs equally between the RNC and the Convention Committee.<sup>46</sup> *Id.*

While the Convention Committee determined the cost of the 14 basic feed cameras by calculating 14/25 of the 25 camera contract price, the Commission utilized the actual price of \$833,345 provided by the RNC to establish the cost of the basic feed. Attachment 1, at 49. The Commission determined that because the RNC has provided an actual cost for the basic feed in the amount of \$833,345, that amount represents the cost of the 14 cameras that were used for the basic feed.

The remaining 11 cameras were used to create television programs broadcast by the Convention Committee and other programs broadcast by the RNC. Because the cameras were used for only two major purposes, the Commission determined in the Audit Report Repayment Determination that the remaining amounts in the CBT contract, \$986,479 (\$1,819,824 - \$833,345), were related to the other 11 cameras. In the absence of a precise allocation of the production expenses between RNC and Convention Committee programs, the Commission determined in the Audit Report Repayment Determination that the basis for allocating these production costs should be broadcast hours, which results in an allocation of 74% of the costs to the Convention Committee and 26% to the RNC. On that basis, the Commission determined that the RNC made an

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<sup>46</sup> The Commission did not approve a motion recommending that the RNC's portion of these expenses were a contribution to the Convention Committee by a vote of 3 to 2. Attachment 1, at 49-50.

in-kind contribution of \$729,994 ( $\$986,479 \times 0.74$ ) and that this amount is subject to the Convention Committee's expenditure limitation. Attachment 1, at 50. *See also* Memorandum from Audit Division to Office of General Counsel (Feb. 16, 1999) (diagrams of CBT Contract purposes), Attachment 15, at 2.

## **B. REQUEST FOR ADMINISTRATIVE REVIEW**

According to the Convention Committee, CBT provided 25 cameras and related equipment and services under a single contract to both the Convention Committee and the RNC in exchange for payments totaling \$1,819,824.<sup>47</sup> Attachment 3, at 49-50. The Convention Committee argues that the RNC and the Convention Committee did not share equally in all of the equipment and services provided by CBT. The Convention Committee claims that of the 25 cameras provided by CBT, the Convention Committee and the RNC only shared 14. *Id.*, at 51. With respect to the 14 cameras used to produce the basic feed, the Convention Committee admittedly shared with the RNC, the Convention Committee acknowledges that the expenditures related to those cameras should be split between the Convention Committee and the RNC. Attachment 15, at 3.

The Convention Committee argues that because it only used 14 of the 25 cameras contracted for, 14/25 (or 56%) of the cost of the CBT contract should be allocated between the Convention Committee and the RNC. Attachment 3, at 54-56. The Convention Committee further states that the 14/25 should then be split equally between

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<sup>47</sup> The net amount paid to CBT by the RNC and the Convention Committee is apparently \$1,819,824. However, the Convention Committee lists the contract price as \$1,758,297.64. The difference between the amounts relates to charges that the RNC disputes. The Convention Committee's response does not contain documentation to show a resolution of the dispute, therefore, the Commission has adopted the amount billed and apparently paid, or \$1,819,824, as the amount of the CBT contract due from the RNC and the Convention Committee. It does not include \$22,000 that the RNC was reimbursed by a San Diego television station for use of CBT facilities that were paid for by the RNC.

the RNC and the Convention Committee because both were using the direct feed that came from those 14 cameras. *Id.* The cost of half of the 14 cameras is equal to 7/25 (or 28%) of the cost of the entire CBT contract. Using the Convention Committee's total contract price of \$1,758,298, the Convention Committee claims it was obligated to pay \$492,323 ( $\$1,758,298 \times 7/25$ ) on the CBT contract. Because the Convention Committee paid \$482,645<sup>48</sup> and the RNC paid \$492,323 for the use of the 14 cameras, the Convention Committee contends that the RNC did not make a contribution to the Convention Committee.

The Convention Committee disputes that the remaining 11 cameras were used to broadcast GOP-TV and Convention Committee programming. The Convention Committee further asserts that the RNC alone used the remaining 11 cameras for GOP-TV broadcasts and that the Convention Committee should not be required to help pay for them. Attachment 15, at 3. The Convention Committee acknowledges that it paid the airtime costs associated with the programs created with the 11 cameras; however, the Convention Committee asserts that it was not required to pay the airtime costs so it should not be required to pay the related production costs. Attachment 3, at 58.

The Convention Committee claims that the RNC used the remaining 11 cameras to broadcast five, half-hour morning shows during the Convention week, four evening shows of live Convention coverage, and one evening recap show. *Id.*, at 52.

The Convention Committee argues that because the 11 cameras were "exclusively under the [control of the] RNC," and the Convention Committee did not use the feed from

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<sup>48</sup> The Convention Committee acknowledges that this amount is \$9,678 ( $\$492,323 - \$482,645$ ) less than what it believes to be its portion of the CBT contract. Attachment 3, at 55.

those 11 cameras, "the Convention Committee should not use taxpayer funds to pay any of [the cost of the 11 cameras]." Attachment 4, at 21.

The Convention Committee further contends that its method of allocating the CBT contract based on camera usage is reasonable and based on industry practice. Attachment 3, at 54-56. According to affidavits of various industry officials submitted by the Convention Committee, it is unreasonable to assume that production costs are proportional to the amount of airtime a show uses. Furthermore, the officials state that a Commission determination to allocate the cost of the CBT contract based on airtime "would not have been reasonable," and contrary to industry practice. *Id.*, Geraghty affidavit, at A93.

### **C. REPAYMENT DETERMINATION UPON ADMINISTRATIVE REVIEW**

The Commission determines that the RNC did not make an in-kind contribution to the Convention Committee when it paid the production costs for various television programs. The Commission concludes that the costs associated with producing and airing the programs relate to party building and are therefore a national party committee expense, rather than a convention expense. Therefore the production and airtime costs of the convention programming should have been paid by the RNC.

#### **1. Airtime Costs**

The RNC paid for the airtime for the morning programs that were similar in format to GOP-TV's regular program, "Rising Tide." These programs included an anchor person in a booth at the Convention Center and presented the previous night's convention highlights (not a comprehensive summary); interviews of convention



speakers; and other articles and “human-interest” segments, according to an affidavit submitted by Patrice Geraghty, the Director of Broadcast and the Executive Producer for GOP-TV. *See* Geraghty affidavit, Attachment 3, at A93-94 and A92. The interviews were conducted backstage at the Convention Center and at a separate location known as the Marina Set. *Id.*, at A92. The segments were “on such topics as community efforts to move welfare recipients into the workforce and the impact of tax relief on ordinary American families.” The “human-interest segments” were about “events in San Diego apart from the Convention such as a visit by Convention attendees to Sea World, work performed by several Convention attendees with Habitat for Humanity in San Diego, and a carnival hosted by Mr. & Mrs. Barbour for San Diego foster children.” *Id.*, at A89. The programs were broadcast from 7:00 to 7:30 AM EST on Monday, August 12 through Friday, August 16, 1996. Additionally, the RNC paid the airtime costs for a one-hour evening program that aired the day after the conclusion of the convention. The Commission determines that the airtime costs were not a contribution to the Convention Committee because the costs of distributing this programming is a national party expense, not a convention expense.

The Convention Committee paid National Media, Inc. \$1,170,000 in airtime costs associated with evening programs that were aired on the Family Channel and NewsTalk Television.<sup>49</sup> Attachment 1, at 42. The programs carried “live, prime-time coverage of the Convention proceedings.” *Id.*, A89. These programs were broadcast from 9:00 to 11:00 PM EST from Monday, August 12 through Wednesday, August 14, 1996, and from

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<sup>49</sup> On August 16, 1996 the Convention Committee wired \$1,188,000 to National Media, Inc. On March 31, 1997, the Convention Committee was refunded \$18,000, which leaves a net payment of \$1,170,000 to National Media, Inc. for the airtime costs. Attachment 1, at 42.

8:00 PM to Midnight EST on Thursday, August 15, 1996, the last night of the convention.

In the Audit Report Repayment Determination, the Commission did not challenge the Convention Committee's payment of the airtime costs associated with the evening programs as a convention expense in accordance with 11 C.F.R. § 9008.7(a)(4). However, after further consideration of the facts, the Commission concludes that payment of the distribution costs of this programming does not qualify as a convention expense because it is a national party expense. Section 9008.7(a)(4) of the Commission's regulations defines "convention expenses" to include "all expenses incurred by or on behalf of a political party's national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities." The *Explanation and Justification* for 11 C.F.R. § 9008.7 recognizes that "[g]iven that the convention not only serves as the vehicle for nominating the party's Presidential candidate, but is also used to conduct ongoing party business, the line between convention expenses and party expenses can be a fine one." *Explanation and Justification* for 11 C.F.R. § 9008.7, 59 Fed. Reg. 33,608 (1994). The Commission determines that the costs related to airing or producing the television programming were not for the purpose of conducting a presidential nominating convention, but were instead to promote the party. As such, they were for national party committee activities. Consequently, the Convention Committee was not required to pay any of those costs, and the RNC's payment of those costs is not a contribution to the Convention Committee.<sup>50</sup>

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<sup>50</sup> The Commission further determines that the Convention Committee's \$1,170,000 payment to National Media, Inc. for costs associated with airing the convention proceedings on the Family Channel and NewsTalk Television is an impermissible convention committee expense. Although the Convention

## 2. Production Costs

In order to properly allocate the expenses related to all 25 of the cameras under the CBT contract, the cost of the basic feed which used the 14 cameras must be separated from the production costs related to the television programs which used the 11 cameras.

Although the Convention Committee allocates the expenses between the two categories based solely on the numbers of cameras used for each purpose, the RNC has provided an actual cost of \$833,345 for the basic feed's 14 cameras. The Convention Committee agrees that the RNC stated the cost of the basic feed as \$833,345; however, the Convention Committee asserts that the amount was merely an interim figure and was stated before all of the charges related to the basic feed were fully assimilated.

Attachment 4, at 92-93. However, the RNC submitted documents to the Commission dated as late as March 10, 1997, and September 16, 1997 which lists the actual price for the 14 cameras as \$833,345. Attachment 14. Although the Convention Committee claims that it is unable to reconstruct the exact cost, the Commission has adopted the figure provided by the RNC to represent the cost of the basic feed, instead of using an allocation. Such an approach is consistent with a sworn statement submitted by Michael Simon on behalf of the Convention Committee, in which he states that before an expense is "allocated using assumptions, an effort should be made to reduce the amount of expenses that must be allocated;" this is done by first identifying any actual costs and only allocating the remaining unascertainable amounts. *See* Michael Simon affidavit, Attachment 3, at A682.

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Committee improperly used convention funds of \$1,170,000, because the Commission is required to notify the Convention Committee of all repayment determinations by August 15, 1999, or 3 years after the last day of the convention, the Commission cannot seek a repayment of those funds. 11 C.F.R. § 9008.12(a)(2).

The Commission determines that the cost of the 14 cameras that were used to produce images for the basic feed that was provided to all of the networks, and viewed on closed circuit television by convention attendees was properly divided evenly between the Convention Committee and the RNC. The cost of the basic feed is \$833,345, therefore, the RNC and the Convention Committee should have each paid \$416,672 (\$833,345 ÷ 2).<sup>51</sup>

With respect to the 11 cameras, the Commission has determined that the cost of airing the programs are party building in nature and should be paid by the RNC rather than the Convention Committee. The Commission determines that the related production costs should be an RNC expense instead of a Convention Committee expense. Although there is admittedly a fine line between convention expenses and expenses that should be paid by the national party, the Commission concludes that the purpose of producing and broadcasting the convention-related television programming is to promote the national party, thus they should have been incurred by the RNC.

The Commission determines that the RNC should have paid the entire amount under the CBT contract related to the 11 cameras, which represent the production costs of the television programs. Therefore, in connection with the CBT contract, the Convention Committee was only required to pay for its share of the basic feed. Because it paid more than that amount, the Commission concludes that the RNC did not make an in-kind contribution to the Convention Committee in connection with the CBT contract.

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<sup>51</sup> The Convention Committee paid \$482,645 or \$65,973 more than its share of the cost for the basic feed. (\$482,645 - \$416,672 = \$65,973). The \$65,973 overpayment went toward the remainder of the CBT contract which covered television program production costs. The Commission determines that the production costs are not a Convention Committee expense, but rather, an expense that should be paid by the

## V. CONCLUSION

For the foregoing reasons, the Commission determines that the 1996 Committee on Arrangements for the Republican National Convention received in-kind contributions from the San Diego Host Committee in the amount of \$456,957. The Commission further determines that the 1996 Committee on Arrangements for the Republican National Convention may offset this contribution with expenditures it made that were permissible host committee expenditures. The Commission also determines that the 1996 Committee on Arrangements for the Republican National Convention did not receive an in-kind contribution from the Republican National Committee in connection with its payments to Creative Broadcast Techniques, Inc. Therefore, the Commission determines that the 1996 Committee on Arrangements for the Republican National Convention and the Republican National Committee do not owe a repayment to the United States Treasury.

### Attachments

1. Report of the Audit Division on the 1996 Committee on Arrangements for the Republican National Convention (June 25, 1998).
2. Statement of Net Outstanding Committee Expenses.
3. Request of the 1996 Committee on Arrangements for the Republican National Convention for an Administrative Review of the Repayment Determination (Sept. 24, 1998) (including Appendix).
4. Transcript of the 1996 Committee on Arrangements for the Republican National Convention Oral Hearing before the Federal Election Commission on February 24, 1999.

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RNC. Therefore, the \$65,973 overpayment by the Convention Committee represents improperly used convention funds.

5. Supplemental Submission of the 1996 Committee on Arrangements for the Republican National Convention (Mar. 3, 1999).
6. Nash Contracts with Convention and Host Committees.
7. David J. Nash Associates, Inc., Republican National Convention Host Committee Statement, Line Item Descriptions (Feb. 14, 1997).
8. Memorandum from Audit Division to Office of General Counsel (Apr. 22, 1999) (analysis of the Administrative Review Request).
9. Chart of Host Committee's In-Kind Contribution to the Convention Committee.
10. Audit Division, Schedule of Payments for "Stagehands" and "Stage Tech Crew Member."
11. Audit Division, Schedule of Payments for "Entertainment" as Reported on the DNC Host FEC Disclosure Reports.
12. Allocation Chart Host Committee and Convention Committee Expenses.
13. Audit Division's Analysis of Potentially Permissible Host Committee Expenses (Feb. 2, 2000).
14. RNC GOP-TV Memorandum (Mar. 10, 1997) and Invoice (Sept. 16, 1997).
15. Memorandum from Audit Division to Office of General Counsel (Feb. 16, 1999) (diagrams of CBT Contract purposes).