



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 19, 2008

**BY FACSIMILE AND FIRST CLASS MAIL**

Senator John McCain  
John McCain 2008, Inc.  
Post Office Box 16118  
Arlington, Virginia 22215

Re: John McCain 2008, Inc. (LRA 731)

Dear Senator McCain:

This is in response to your letter dated February 6, 2008, received by the Commission late February 8, advising that you are withdrawing from the Presidential Primary Matching Payment Program.

As you may be aware, in Advisory Opinion 2003-35 (Gephardt), the Commission balanced the voluntary nature of participating in the Matching Payment Program with the contractual obligations a candidate commits to once he seeks and receives Commission certification of eligibility to receive payments under the Matching Payment Program. The Commission made clear that a candidate enters into a binding contract with the Commission when he executes the Candidate Agreements and Certifications. AO 2003-35. The Commission stated that it would withdraw a candidate's certification upon written request, thus agreeing to rescind the contract, so long as the candidate: 1) had not received Matching Payment Program funds, and 2) had not pledged the certification of Matching Payment Program funds "as security for private financing." *Id.*

Accordingly, we consider your letter as a request that the Commission withdraw its previous certifications. Just as 2 U.S.C. § 437c(c) required an affirmative vote of four Commissioners to make these certifications, it requires an affirmative vote of four Commissioners to withdraw them. Therefore, the Commission will consider your request at such time as it has a quorum.

We note that in your letter, you state that neither you nor your committee has pledged the certification of Matching Payment funds as security for private financing. In preparation for Commission consideration of your request upon establishment of a quorum, we invite you to expand on the rationale for that conclusion, including but not limited to addressing the following

provisions of the loan agreement executed between John McCain 2008, Inc., and Fidelity and Trust Bank of Bethesda, Maryland on November 14, 2007, as modified on December 17, 2007:

The paragraph entitled "Additional Requirements" set forth in the Affirmative Covenants section of the November 14 agreement (page 2), as well as the December 17 modification to that paragraph (page 2 of the modification).

The references to matching funds in the paragraph entitled "Collateral Description" set forth in the November 14 "Commercial Security Agreement" (page 1 of that agreement). (The paragraph contains no reference to certifications of matching fund eligibility or related rights obtained after January 1, 2008, thus apparently bringing any such certifications that might occur within the paragraph's more general description of the collateral for the line of credit.)

The December 17 modification to the paragraph just mentioned (page 3 of the modification), which removed the reference to certifications and related rights "currently possessed by grantor or obtained before January 1, 2008" and replaced it with a reference to certifications or rights "now held by Grantor[.]"

We would appreciate receiving any response you choose to make by not later than March 7, 2008. If you have any questions, please contact Lawrence L. Calvert, Associate General Counsel, or Lorenzo Holloway, Assistant General Counsel, at (202) 694-1650.

Sincerely,



David M. Mason  
Chairman

cc: The Honorable Judith Tillman, Commissioner,  
Financial Management Service, Department of the Treasury