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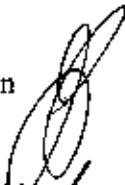
August 18, 2000


AGENDA ITEM


For Meeting of: 9-14-00

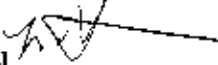
MEMORANDUM


TO: The Commission


THROUGH: James A. Pehrkon
Staff Director 

FROM: Lawrence M. Noble
General Counsel 

Kim Leslie Bright 
Associate General Counsel

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Assistant General Counsel

Peter G. Blumberg 
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SUBJECT: Dole/Kemp '96, Inc. - Statement of Reasons
(LRA #506)

1. INTRODUCTION

The Office of General Counsel has prepared the attached draft Statement of Reasons concluding that Senator Robert J. Dole, Secretary Jack Kemp, and Dole/Kemp '96, Inc. (collectively, "the General Committee") must repay a total of \$2,624,507.99 to the United States Treasury pursuant to 26 U.S.C. § 9007(b)(2)-(3) and 11 C.F.R. § 9007.2(b)(4). This amount consists of: 1) \$574,158 for the use of public funds to defray non-qualified campaign expenses; 2) \$46,510 for earned income from the use of public funds; and 3) \$2,003,839.99 for funds spent in excess of the expenditure limitation.

On June 3, 1999, the Commission approved the Audit Report on the General Committee and determined that the General Committee must repay a total of \$3,186,097 to the United States Treasury. The Commission determined that the General Committee must repay: 1) \$574,158 for the use of public funds to defray non-qualified campaign expenses; 2) \$46,510 for earned income from the use of public funds; and 3) \$2,547,429 for expenses incurred in excess of the expenditure limitation.

On August 31, 1999, the General Committee submitted legal and factual materials in an effort to demonstrate that a lesser repayment is required to be paid to the United States Treasury. 11 C.F.R. § 9007.2(c)(2)(i).¹ The General Committee also requested the opportunity to address the Commission in open session. 11 C.F.R. § 9007.2(c)(2)(ii). On October 21, 1999, the Commission granted the General Committee's request for an oral hearing and held a hearing on December 15, 1999. Following the oral hearing, the General Committee submitted additional documentation on December 22, 1999.²

The Office of General Counsel reviewed the Committee's written responses and the arguments presented at the oral hearing. Additionally, the Audit Division assisted in the review of the General Committee's submissions and submitted analyses on December 8, 1999, March 31, 2000, and April 19, 2000. Based on this Office's review, this Office recommends that the Commission determine that the General Committee must repay \$574,158 for the use of public funds to defray non-qualified campaign expenses, \$46,510 for earned income for the use of public funds, and \$2,003,839.99 for expenses incurred in excess of the expenditure limitation, making \$2,624,507.99 the total repayment due to the United States Treasury.

The finding on the non-qualified campaign expenses relates to certain disbursements that the General Committee made on behalf of Dole for President, Inc. ("the Primary Committee"). The Audit Report recommended that the General Committee reimburse the Primary Committee, and if it failed to do so, to repay the amounts to the United States Treasury as non-qualified campaign expenses. The General Committee asserted that it made the transfer to the Primary Committee, but the transaction could not be verified since the General Committee has not reported this receipt. The Statement of Reasons, therefore, supports a repayment determination related to these expenses.

¹ On July 30, 1999, the Commission granted the General Committee a fifteen-day extension of time to respond to the Commission's repayment determination. The General Committee's response contained a substantial amount of attachments which are not being circulated with the Statement of Reasons, but are available in the Commission Secretary's office for review. However, these documents will be part of the official record of this matter.

² The Commission allows a committee five business days from the date of the oral hearing to submit additional documentation to the Commission. The General Committee submitted documentation on December 22, 1999, five business days following the hearing.

Additionally, a central issue in the Statement of Reasons relates to press reimbursements collected by the General Committee and whether these reimbursements can be deducted from the expenditure limitation. The Commission disallowed approximately \$1,200,000 in press reimbursements in the Audit Report. The Statement of Reasons addresses the various expenses that the Audit Report disallowed, and based on the new information provided, concludes that some of the expenses were permissibly billed to the press.³ Additionally, the Statement considers certain previously unbilled expenses and permits the General Committee to deduct a portion of those expenses from the expenditure limitation. The Statement permits the General Committee to apply the unbilled, legitimate invoices against press reimbursements collected by the General Committee based on the disallowed invoices.

Finally, two other categories of expenses and their attribution to the expenditure limitation are challenged by the General Committee and addressed in this Statement of Reasons. The first category deals with reimbursements received by the General Committee from the Dole/Kemp '96 Compliance Committee, Inc. ("GELAC"). The Statement concludes that the GELAC excessively reimbursed the General Committee for certain costs. The second category addresses accounts payable, which the Statement concludes are attributable to the expenditure limitation.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Determine that Senator Robert J. Dole, Secretary Jack Kemp, and Dole/Kemp '96, Inc. must repay \$574,158 within 30 days to the United States Treasury pursuant to 26 U.S.C. § 9007(b)(4);
2. Determine that Senator Robert J. Dole, Secretary Jack Kemp, and Dole/Kemp '96, Inc. must repay \$46,510 within 30 days to the United States Treasury pursuant to 11 C.F.R. §§ 9004.5, 9007.2(b)(4) and 26 U.S.C. § 9007(b)(3);

³ The Office of General Counsel performed an invoice-by-invoice review of all press reimbursements that had been disallowed in the Audit Report. The results of this review are set forth in tables attached to the Statement of Reasons. The invoices discussed in the tables will not be circulated due to the quantity of invoices involved. However, the invoices will be available for review in the Commission Secretary's office and will be part of the official record of this matter.

3. Determine that Senator Robert J. Dole, Secretary Jack Kemp, and Dole/Kemp '96, Inc. must repay \$2,003,839.99 within 30 days to the United States Treasury pursuant to 26 U.S.C. § 9007(b)(2);
4. Approve the attached Statement of Reasons; and
5. Approve the appropriate letters.

Attachment

Draft Statement of Reasons (with attachments 1-22)

1
2 **BEFORE THE FEDERAL ELECTION COMMISSION**

3 In the Matter of)
4)
5 Senator Robert J. Dole,)
6 Secretary Jack Kemp, and)
7 Dole/Kemp '96, Inc.) LRA #506
8

9
10 **STATEMENT OF REASONS**
11

12
13 On _____, 2000, the Federal Election Commission (the
14 "Commission") determined that Senator Robert J. Dole and Secretary Jack Kemp (the
15 "candidates") and Dole/Kemp '96, Inc. (the "General Committee") must repay a total of
16 \$2,624,507.99 to the United States Treasury. The Commission determines that the
17 General Committee must repay: 1) \$574,158 in public funds to defray non-qualified
18 campaign expenses; 2) \$46,510 for earned income from the use of public funds; and
19 3) \$2,003,839.99 for expenses incurred in excess of the expenditure limitation. The
20 General Committee is ordered to repay these amounts to the United States Treasury
21 within thirty (30) calendar days after service of this determination. *See* 11 C.F.R.
22 § 9007.2(d)(2), *see also* 26 U.S.C. § 9007(b)(2). This Statement of Reasons sets forth
23 the factual and legal basis for this Post Administrative Review Repayment Determination.
24 *See* 11 C.F.R. § 9007.2(c)(3).

25 **I. INTRODUCTION**

26 The General Committee registered with the Commission on May 3, 1996 and
27 served as the principal campaign committee for Senator Robert J. Dole, a candidate for
28 the office of President of the United States, and Secretary Jack Kemp, a candidate for the

1 office of Vice President of the United States.¹ Attachment 1 at 2. On August 15, 1996,
2 the candidates were certified to receive public funding for the general election. *Id.* The
3 General Committee received \$61,820,000 from the United States Treasury for the purpose
4 of seeking election to the offices of President and Vice President. *Id.*

5 The Commission conducted an audit of the General Committee's qualified
6 campaign expenses pursuant to 26 U.S.C. § 9007(a). On June 3, 1999, the Commission
7 approved the Audit Report for the General Committee and determined that the General
8 Committee and the candidates must repay a total of \$3,168,097 to the United States
9 Treasury. Attachment 1. Specifically, the Commission determined that the General
10 Committee must repay: 1) \$574,158 for the use of public funds to defray non-qualified
11 campaign expenses; 2) \$46,510 for earned income from the use of public funds; and
12 3) \$2,547,429 for expenses incurred in excess of the expenditure limitation.

13 On August 31, 1999, the General Committee submitted legal and factual materials
14 in an effort to demonstrate that no repayment or a lesser repayment is required to be paid
15 to the United States Treasury. *See* 11 C.F.R. § 9007.2(c)(2)(i); Attachment 2.² The
16 General Committee also requested an oral hearing. *See* 11 C.F.R. § 9007.2(c)(2)(ii). On
17 October 21, 1999, the Commission granted the General Committee's request for an oral
18 hearing. The hearing was held on December 15, 1999. Attachment 4.

¹ The General Committee originally registered as Dole for President - General, Inc. and renamed itself Dole/Kemp '96, Inc. when it filed an amended Statement of Organization with the Commission on August 28, 1996. This name change coincided with Secretary Kemp's nomination for the office of Vice President of the United States from the Republican Party.

² On July 30, 1999, the Commission granted the General Committee a fifteen-day extension of time to respond to the Commission's repayment determination.

1 Following the oral hearing, the General Committee submitted additional documentation on
2 December 22, 1999.³ Attachment 5.

3 **II. AUDIT REPORT REPAYMENT DETERMINATION**

4 On June 3, 1999, the Commission determined that the General Committee must
5 repay a total of \$3,168,097 to the United States Treasury. Attachment 1. The
6 Commission ordered the General Committee to repay: 1) \$574,158 for the use of public
7 funds to defray non-qualified campaign expenses; 2) \$46,510 for earned income from the
8 use of public funds; and 3) \$2,547,429 for expenses incurred in excess of the expenditure
9 limitation.

10 The repayment determination for non-qualified campaign expenses related to
11 expenditures the General Committee incurred on behalf of Dole for President, Inc. ("the
12 Primary Committee"). Attachment 1 at 34-46, 53. The determination on earned income
13 was based on the General Committee's receipt of interest payments on bank notes and
14 security deposits. Attachment 1 at 53-55.

15 In the Audit Report, the Commission concluded that the General Committee
16 incurred expenditures in excess of the \$61,820,000 expenditure limitation for the 1996
17 presidential general election. See 2 U.S.C. § 441a(b)(1)(A). After examining the General
18 Committee's expenditures and making all necessary adjustments, the Commission
19 determined that the General Committee incurred expenses totaling \$64,367,429.
20 Attachment 1 at 50. Therefore, the Commission made a determination that the General
21 Committee must repay \$2,547,429 (\$64,367,429 - \$61,820,000) for expenditures incurred

³ As a matter of policy, the Commission allows a committee five business days from the date of the oral hearing to submit additional documentation to the Commission.

1 in excess of the expenditure limitation. Certain adjustments to the expenditure limitation
2 sought by the General Committee that would have lowered the amount by which the
3 General Committee exceeded the expenditure limitation were disallowed in the Audit
4 Report.

5 The first category of adjustments that were disallowed were reimbursements
6 collected from the press and Secret Service in the amount of \$1,219,281 for air travel and
7 related services. During the general election campaign, the General Committee operated
8 three chartered aircraft to transport the candidates, campaign staff, the press, and Secret
9 Service personnel. The costs incurred for campaign travel and ground services and
10 facilities are qualified campaign expenses attributable to the expenditure limitation. *See*
11 11 C.F.R. § 9004.6(a)(1) (1999). However, the General Committee is permitted to seek
12 reimbursements from the press for amounts representing the pro rata share of their actual
13 cost of travel and ground costs and offset these amounts against the expenditure
14 limitation. *See* 11 C.F.R. § 9004.6(a)(2) (1999). Pursuant to this framework, the press
15 and Secret Service were billed by the General Committee for the cost of the flights.
16 Similarly, costs for ground services made available to the press such as catering and
17 ground transportation were also charged to the press and Secret Service. Finally, portions
18 of certain other ground costs, generally related to staging campaign events, such as
19 lighting and sound equipment rentals, were charged to the press.

20 The Audit Report concluded that the General Committee received reimbursements
21 from the press and Secret Service for certain travel services in excess of the pro rata share
22 of the actual cost of the goods and services. Attachment 1 at 31. The Audit Report

1 concluded that the expenditures for these amounts are attributable to the General
2 Committee's expenditure limitation. *Id.*⁴

3 The press reimbursements were deemed excessive for three general reasons. First,
4 the General Committee sought reimbursements for the actual air travel in amounts
5 exceeding the press and Secret Service's pro rata share. Attachment 1 at 23. Secondly,
6 the press was charged for various ground services such as food and ground transportation
7 in amounts deemed to be excessive in the Audit Report. *Id.* at 23-29. Finally, the Audit
8 Report disallowed in their entirety charges to the press for other ground items such as
9 lighting. *Id.* at 25-29.

10 The second category of expenses attributed to the expenditure limitation that is at
11 issue in this Statement of Reasons relates to reimbursements collected from the
12 Dole/Kemp '96 Compliance Committee, Inc. ("GELAC"), totaling \$564,432 for shared
13 office space that exceeded the amount representing GELAC's share of expenses. In the
14 Audit Report, the Commission concluded that these expenditures incurred on behalf of the
15 General Committee by the GELAC should be attributed to the General Committee's
16 expenditure limitation. Generally, the General Committee and the GELAC may share
17 offices and employees and, therefore, incur shared overhead expenses. *See* 11 C.F.R.
18 § 9003.3(a)(2)(ii). However, the expenses must be shared in a manner conforming to
19 Commission's regulations. *Id.* The Audit Report concluded that the GELAC had paid
20 the General Committee an excessive share of the shared costs. Attachment 1 at 48.

⁴ The Audit Report also concluded that the General Committee should refund the excessive reimbursements to the press and Secret Service. Attachment 1 at 31.

1 The final category of expenses attributable to the expenditure limitation that are at
2 issue in this Statement of Reasons are accounts payable totaling \$830,496. These
3 payables related to expenses incurred by the General Committee during the course of the
4 campaign. While the General Committee never paid the expenses, they were included in
5 the calculation of the expenditure limitation since they were incurred by the General
6 Committee. *See* 26 U.S.C. § 9007(b)(2).

7 **III. GENERAL COMMITTEE'S RESPONSE TO AUDIT REPORT**
8 **REPAYMENT DETERMINATION**

9
10 **A. Repayment Notification**

11 At the oral hearing, the General Committee argued that it was not timely notified
12 of the Commission's repayment determination. Attachment 4 at 7-8. The General
13 Committee challenged the timeliness of notification of the Commission's repayment
14 determination as follows:

15 ... we preserved our procedural and due process defenses,
16 and we are preserving or making the argument herein that
17 the notices for repayment are not timely at this point
18 because we don't believe that the notices that had been
19 provided to us in the form of the exit conference
20 memorandum is sufficient to fulfill the three-year
21 requirement under the statute.

22
23 That was not ripe at the time of our response to the exit
24 conference memorandum because we responded in August.
25 The three-year period ran in November after that at that
26 time, but we did preserve that right for both the
27 committees...

28
29 Attachment 4 at 8-9. The written response contains a "catchall" statement, wherein the
30 General Committee claims that it "preserves all constitutional, procedural and
31 jurisdictional claims that may be available to it." Attachment 2 at 1. However, the

1 General Committee's written response to the Audit Report does not assert that the
2 Commission's notification was deficient for three-year notification purposes.

3 **B. Press Reimbursements**

4 The General Committee disputes the Commission findings on press
5 reimbursements, generally asserting that it did not overbill the press and that the
6 reimbursements that it collected from the press should be deducted from the expenditure
7 limitation. With respect to the overall billing for aircraft service, the General Committee
8 states that the calculation of the cost of air travel was difficult because of its billing
9 arrangement with the air charter firm. Under the contract with the firm, the General
10 Committee agreed to pay a flat fee for a certain amount of hours of flight time for the
11 entire campaign. Attachment 2 at 2. This arrangement, according to the General
12 Committee, did not provide for a set price for each individual flight. Consequently, the
13 amounts billed to the press were estimated based on prorating the flat fee across several
14 flights. Moreover, according to the General Committee, estimating flight costs became
15 increasingly difficult due to changing air travel plans and due to a "last minute decision to
16 do a whirl-wind tour of the United States during the last four days of the campaign." *Id.*

17 The General Committee also argues that \$267,861 in costs related to air travel
18 were improperly disallowed during the audit. Attachment 2 at 3-4. These costs were
19 incurred for aircraft electrical work, telephone installation, and fuel. According to the
20 General Committee, these costs were properly charged to the press since they "were
21 necessary for the working of the aircraft and thus necessary for the press" *Id.* at 4.
22 Thus, the General Committee concludes, "given the flat rate lease arrangement ... [the

1 General Committee] took all reasonable steps to properly bill the press its share of the
2 aircraft cost." *Id.* at 2.

3 The General Committee also challenges the Audit Report finding that ground costs
4 associated with the press billings, totaling \$918,740, were not reimbursable.

5 Attachment 2 at 4. According to the General Committee, these costs include ground
6 transportation, facilities, filing centers, catering, press risers, pipe and drape, telephones,
7 and sound and lighting. *See id.* The General Committee asserts that these expenditures
8 were incurred for items that "were [obtained] exclusively for use by the press." *Id.* at 4.

9 The General Committee further argues that the costs of providing security for the press
10 were erroneously disallowed in the Audit Report. Attachment 4 at 20-21. The General
11 Committee avers that all of the disputed costs were sufficiently documented, and that it
12 submitted detailed invoices and related memoranda for the billings. Two statements
13 claiming that these were legitimate press-related charges were also provided in the
14 response. Attachments 6 and 7.

15 The General Committee suggests that the Audit Report findings on press
16 reimbursements constitute an improper "efficiency audit" and that it is not the role of the
17 Commission to subjectively determine whether funds could have been better spent by
18 "ordering less food or buses." Attachment 2 at 6. According to the General Committee,
19 disallowed expenditures were rejected "by second guessing, on a *post-hoc* and subjective
20 basis, the campaign staff's decisions, which were made during the intensity of conducting
21 a campaign" *Id.* at 5-6.

1 Finally, with respect to ground costs, the General Committee asserts that it did not
2 bill the press for certain other ground costs incurred by the General Committee on behalf
3 of the press. Attachment 2 at 8. The General Committee seeks to receive a credit against
4 the expenditure limitation of \$571,690 in what it contends are unbilled, but legitimate,
5 press expenses. According to the General Committee, this is the total of lighting costs
6 (\$340,114); telephone expenses (\$45,263); and filing center and ground costs (\$186,313).
7 Attachment 2 at 8.

8 **C. GELAC Reimbursement**

9 The General Committee also contests the finding on excessive reimbursements
10 from the GELAC. Attachment 2 at 12. The General Committee claims that its allocation
11 of expenses with the GELAC was reasonable since it was based on a periodic review of
12 the square footage of office space and the payroll size of the respective entities to devise a
13 formula to split expenses. *Id.* The Audit Report's formula for sharing expenses, the
14 General Committee asserts amounts to a "*post hoc* reallocation [that] does not recognize
15 the realities of a campaign .. [which] cannot reallocate ... overhead expenses every day."
16 *Id.* At the oral hearing, the General Committee elaborated that it made "painstaking
17 efforts" to allocate costs between the committee with "monthly adjustments" based on the
18 "realities of the campaign" and that this "contemporaneous" allocation was more accurate
19 than the Commission's "after-the-fact allocation methodology." Attachment 4 at 32-33.
20 The General Committee acknowledged that it was "tricky" to allocate costs based on
21 "moving targets," and did not represent that it had documentation to support the changing
22 allocations. *Id.* at 33. However, it did point to the final payroll of the campaign as "the
23 most representative one," and argued that the number of compliance staff on the final

1 payroll supported the campaign-long allocation. *Id.* at 34. In its post-oral hearing
2 submission, the General Committee submitted a payroll that it stated supports the
3 allocation. Attachment 5 at 29-46. Finally, at the oral hearing, the General Committee
4 posited that the costs associated with “accounting/compliance [personnel] presence on the
5 campaign airplanes” should also be included into compliance fund costs, and that these
6 costs total \$263,000. Attachment 4 at 34.

7 **D. Accounts Payable**

8 Finally, the General Committee contends that \$124,405 in accounts payable are
9 not “actually owed.” Attachment 2 at 11. At the oral hearing, the General Committee
10 explained that the debts were not settled or forgiven, but that they were originally
11 “misstated.” Attachment 4 at 31. According to the General Committee, after receiving
12 the Audit Report, it contacted the vendors to whom it owed debts and inquired whether
13 the vendors’ records supported the Audit Report amount. *Id.* Based on this survey, the
14 General Committee states that it identified \$124,000 in debts that are no longer owed.
15 Additionally, in its written response, the General Committee maintains that accounts
16 payable in general should not be counted towards the expenditure limitation since these
17 amounts in fact have not been spent. Attachment 2 at 11.

18 **IV. POST-ADMINSTRATIVE REVIEW REPAYMENT DETERMINATION**

19 **A. Repayment Notification**

20 The Commission concludes that the General Committee failed to raise the issue of
21 repayment notification in a timely fashion. The Commission’s regulations provide that a
22 candidate who disputes the repayment determinations shall submit in writing, within 60
23 calendar days after service of the Commission’s notice, legal and factual materials

1 demonstrating that no repayment, or a lesser repayment, is required. *See* 11 C.F.R.
2 § 9007.2(c)(2)(i). A candidate's failure to timely raise an issue in the written materials
3 will be deemed a waiver of the candidate's right to raise the issue at any future stage of
4 proceedings, including any petition for review filed under 26 U.S.C. § 9011(a). *Id.*

5 The General Committee did not raise the issue of any deficiencies in the
6 Commission's repayment notification in its written response to the Commission's
7 repayment determination. Attachment 2. Rather, the General Committee raised the issue
8 for the first time at the oral hearing. Thus, the Commission concludes that the General
9 Committee failed to raise the issue of repayment notification in a timely fashion.
10 Therefore, the Commission concludes that the General Committee waived the right to
11 present this challenge at the oral hearing pursuant to section 9007.2(c)(2)(1). *See*
12 11 C.F.R. § 9007.2(c)(2)(i); *Robertson v. Federal Election Commission*, 45 F.3d 486,
13 491 (D.C. Cir. 1995); *see also Explanation and Justification for § 9007.2(c)(2)(i)*, 60
14 Fed. Reg. 31864 (June 16, 1995) (Candidate's failure to timely raise an issue in the written
15 materials presented pursuant to paragraph (c)(2)(i) will be deemed a waiver of the
16 candidate's right to raise the issue at any future stage of the proceedings).

17 The General Committee claims that it raised the repayment notification issue in its
18 written response when it stated that it "preserves all constitutional, procedural and
19 jurisdictional claims that may be available to it." Attachment 2 at 1. This catchall
20 statement provides the Commission with no notice of the nature of the General
21 Committee's challenges to the repayment determination as it brings within its ambit an
22 endless array of possible arguments. Simply including such a broad and vague
23 prescription in the written response cannot be construed as having raised or preserved any

1 particular issue inasmuch as this does not give the Commission timely notice of the nature
2 of the challenges to its repayment determination as required by section 9007.2(c)(2)(i).

3 The Commission does not require a perfect pleading in a written response to a
4 repayment determination. Nonetheless, the response must be sufficient to place the
5 Commission on timely notice as to the nature of the committee's challenges. *See Fulani v.*
6 *Federal Election Commission*, 147 F.3d 924, 927 n.5 (D.C. Cir. 1998) (court denied
7 committee's petition for rehearing for not setting forth clear and convincing grounds why
8 new questions of fact and law were not and could not have been presented during the
9 earlier determination process, and the court noted that the committee may have been
10 barred from raising the new theory at oral hearing pursuant to 11 C.F.R. § 9007.2(c)(2)(i)
11 where the issue had been generally, but not specifically, raised by the committee in its
12 written submissions).⁵

13 The General Committee's written response to the Audit Report contained some
14 general complaints concerning the specificity of findings related to certain campaign event
15 and aircraft costs which the Commission disallowed the General Committee to bill to the
16 press. The General Committee's written response, however, does not assert that these
17 alleged deficiencies amounted to a failure on the Commission's part to satisfy the
18 repayment notification statute. The General Committee claimed that it was unable to
19 interpret certain spreadsheets relating to the Dole aircraft that the Commission had

⁵ At the oral hearing, the General Committee stated that it did not believe that notice "in the form of the Exit Conference Memorandum" was sufficient, and that it responded to the Exit Conference Memorandum in August. The Commission presumes that the General Committee is referring to the Audit Report, not the Exit Conference Memorandum, with regard to its notification claim because it is the Audit Report, approved by the Commission on June 3, 1999, to which the General Committee responded in August 1999. It is also the Commission's issuance of the Audit Report, not the Exit Conference Memorandum, that constitutes notification for purposes of the 3-year notification requirement. *See* 11 C.F.R. § 9007.2(a)(2).

1 produced during the course of the audit.⁶ Attachment 2 at 3. Additionally, it claimed that
2 certain disallowed press reimbursements related to event costs were labeled “egregious”
3 or “not allowed” and that this was an insufficient reason to reject the claimed
4 reimbursements. *Id.* at 5.

5 In order to satisfy the repayment notification requirement, the notification must be
6 more than a “progress report of a continuing audit.” *Simon v. Federal Election*
7 *Commission*, 53 F.3d 356, 359 (D.C. Cir. 1995). The notification must be based on a
8 legitimate repayment amount that relies on a thorough examination and audit. *Fulani v.*
9 *Federal Election Commission*, 147 F.3d 924, 926-27 (D.C. Cir. 1998). The Audit
10 Report was the result of a thorough examination of the Committee’s records.⁷ The text
11 of the Audit Report set forth the standards applied by the Commission. Attachment 1
12 at 23. The Audit Report explains that sound and lighting equipment, spotlights, port-a-
13 johns, security personnel, barricades and other event-related equipment was not billable to
14 the press since it related to campaign events, and therefore, should have been paid by the
15 General Committee, not the press. Similarly, the Audit Report rejected certain catering
16 and ground transportation invoices where the press was billed for amounts “in excess of

⁶ The Audit Report’s finding on press reimbursements addressed aircraft devoted to Senator Dole’s and Congressman Kemp’s travel itineraries separately. The General Committee agreed that the Kemp spreadsheets were adequate. Attachment 2 at 4.

⁷ As noted, the General Committee’s criticisms of the Audit Report relate to the press reimbursements finding. However, much of the confusion may relate to the General Committee’s failure to maintain adequate records relating to their aircraft expenditures. The General Committee’s general ledgers for the aircraft were “replete with errors and correcting entries” and included “no check numbers making it very difficult to match up the various parts of a payment that may be charged to more than one expense category.” Attachment 3A at 2. Consequently, the General Committee’s “cost calculations” had “little apparent relationship to the amounts billed for travel on the various aircraft.” *Id.* at 3. Thus, the Commission had to develop an independent aircraft cost figure for each aircraft. *Id.* at 2.

1 their needs (for example, 20 traveling press billed for 40 dinners) or which may have been
2 for an event.” *Id.* at 23. Thus, the General Committee was on notice as to the basis of the
3 repayment determination.

4 **B. Unchallenged Repayment Determinations – Non-Qualified Campaign**
5 **Expenses and Earned Income**

6 The Commission determined that the General Committee must repay \$574,158 for
7 non-qualified campaign expenses incurred on behalf of Dole for President, Inc. (“the
8 Primary Committee”). Attachment 1 at 34-46, 53. The Audit Report noted that if a
9 reimbursement is received from the Primary Committee, then the General Committee’s
10 expenses will no longer be considered non-qualified and no repayment for the
11 expenditures will be required. Attachment 1 at 53.

12 In response to the Audit Report, the General Committee states that it “has
13 demonstrated in prior submissions and still asserts that these expenditures are not non-
14 qualified expenditures.” Attachment 2 at 9. Nevertheless, the General Committee states
15 that rather than “reiterating” its earlier arguments, the Primary Committee “will be
16 transferring” the amounts to the General Committee. Attachment 2 at 10. At the oral
17 hearing, counsel to the General Committee asserted that the transfer did occur.
18 Attachment 4 at 29. However, aside from counsel’s assertions, no other evidence was
19 provided to demonstrate that the transfer occurred. A General Committee disclosure
20 report for the period July 1, 1999 through September 30, 1999 does not report a receipt
21 from the Primary Committee even though this disclosure report covers the period when
22 the General Committee’s response to the Audit Report was submitted. The General
23 Committee submitted its 1999 year-end report and April 2000 Quarterly report late in July

1 2000 along with its July 2000 Quarterly report, but these reports do not report a transfer
2 from the Primary Committee either. In the absence of a confirmation that the transfer was
3 made, the Commission determines that the General Committee has incurred non-qualified
4 campaign expenses totaling \$574,158 and that this amount is repayable pursuant to
5 26 U.S.C. § 9007(b)(4)(A).⁸

6 The General Committee did not submit a response with respect to the
7 Commission's determination that the General Committee must repay \$46,510 for earned
8 income from interest payments on bank notes and security deposits. Therefore, the
9 Commission determines that this income is repayable pursuant to 11 C.F.R. §§ 9004.5,
10 9007.2(b)(4) and 26 U.S.C. § 9007(b)(3).

11 **C. Expenditures in Excess of Expenditure Limitation**

12 No candidate for the office of President of the United States who is eligible under
13 26 U.S.C. § 9003 to receive payments from the Secretary of the Treasury may make
14 expenditures in excess of \$20,000,000 in the case of a campaign for election to such office
15 as adjusted by inflation. *See* 2 U.S.C. § 441a(b)(1)(B) and (C). In 1996, the inflation-
16 adjusted overall expenditure limitation was \$61,820,000. In order to be eligible to receive
17 payments, the candidates of a major party in a presidential election shall certify to the
18 Commission, under penalty of perjury, that such candidates and their authorized
19 committees will not incur qualified campaign expenses in excess of the aggregate
20 payments to which they will be entitled to receive. *See* 26 U.S.C. § 9003(b)(1).

⁸ The General Committee is entitled to file a petition for rehearing on this or any Commission repayment determination provided that the filing is timely, raises new questions of law or fact that would materially alter a repayment determination, and sets forth clear and convincing grounds why such questions were not and could not have been presented during the original determination process. 11 C.F.R. § 9007.5(a)(1).

1 If the Commission determines that the eligible candidates of a political party and
2 their authorized committees incurred qualified campaign expenses in excess of the
3 aggregate payments to which the eligible candidates of a major party were entitled, it shall
4 notify such candidates of the amount of such excess and such candidates shall pay to the
5 Secretary of the Treasury an amount equal to such amount. *See* 26 U.S.C. § 9007(b)(2).

6 **1. Summary of Expenditures Attributable to the Expenditure Limitation**

7 In calculating the expenditures incurred by the General Committee and allowing
8 for all permissible deductions, the Commission determines that the General Committee has
9 incurred expenses totaling \$63,823,839.99. Attachment 19. The amount is based on a
10 calculation of the General Committee's operating expenditures which total
11 \$62,224,769.20, and several adjustments. *Id.* at 1. The adjustments include the addition
12 to the expenditure limitation calculation of \$861,416.83 in press and Secret Service
13 reimbursements collected in excess of actual press and Secret Service travel costs,
14 \$564,432 in excess reimbursements collected from the GELAC, and \$830,496 in accounts
15 payable. *Id.* at 2.

16 The amount attributable to the expenditure limitation exceeds the \$61,820,000
17 expenditure limitation for publicly-financed candidates for the office of President and Vice
18 President in the 1996 presidential election. 2 U.S.C. § 441a(b)(1)(A). Therefore, the
19 Commission determines that Senator Dole, Secretary Kemp, and the General Committee
20 must repay \$2,003,839.99 (\$63,823,839.99 - \$61,820,000) for expenses incurred in
21 excess of expenditure limitation. 26 U.S.C. § 9007(b)(2).

2. Press Reimbursements

1 Commission regulations provide that “[e]xpenditures by an authorized committee
2 for transportation, ground services or facilities (including air travel, ground transportation,
3 housing, meals, telephone service and typewriters) made available to media personnel . . .
4 will be considered qualified campaign expenses, and . . . will be subject to the overall
5 expenditure limitations.” *See* 11 C.F.R. § 9004.6(a)(1) (1999).⁹ Commission regulations
6 further provide that “committees may seek reimbursement for these expenses, and may
7 deduct reimbursements received from media representatives from the amount of
8 expenditures subject to the overall expenditure limitations.” *See* 11 C.F.R. § 9004.6(a)(2)
9 (1999). The amount of reimbursement is limited to 110% of the media representative’s
10 pro rata share of the services provided. *See* 11 C.F.R. § 9004.6(b)(1) (1999). This share
11 is calculated by dividing the total actual cost of the transportation, ground services and
12 facilities provided by the total number of individuals to whom they were made available.
13 *See* 11 C.F.R. § 9004.6(b)(2) (1999). For purposes of this calculation, the total number of
14 individuals includes committee staff, media personnel, Secret Service personnel, national
15 security staff and any other individuals to whom the transportation, services and facilities
16 are made available. *See id.* The purpose of this regulation is to eliminate the possibility
17

⁹ The Commission recently revised section 9004.6 in its rulemaking process for the 2000 presidential elections. *See Explanation and Justification for 11 C.F.R. § 9004.6*, 64 Fed. Reg. 42581 (Aug. 5, 1999). The new regulation provides that “[c]ommittees may seek reimbursement from the media only for the billable items specified in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office.” 11 C.F.R. § 9004.6(a)(3) (2000). The White House Press Corps Travel Policies and Procedures in effect in 1996 provide that “[s]ite expenses such as lighting, press risers, pipe and drape” may not be billed to the press unless the item is specifically ordered by a news organization. *See* Attachment 9 at 10. This document further provides that if an item is specifically ordered by a news organization, only “the specific organization (e.g. TV pool) will be billed.” *Id.* The new regulation further requires the committee to submit an itemized bill to the media representative on whose behalf the committee incurred the cost within 60 days. *See* 11 C.F.R. § 9004.6(b)(3) (2000).

1 that a committee could be subsidized by the media or other individuals by the committee
2 charging higher than pro rata shares for the use of candidate-supplied transportation,
3 services, or facilities. *See Explanation and Justification for 11 C.F.R. § 9004.6, 45 Fed.*
4 *Reg. 43376 (Sept. 5, 1980).*

5 To receive a deduction from the expenditure limitation corresponding to the costs
6 of transportation, ground services, and facilities made available to media personnel, a
7 committee must show that it received a reimbursement from the press for those costs. *See*
8 *11 C.F.R. § 9004.6(a) (1999); see also 11 C.F.R. § 9003.5(a) (1999)* (each candidate has
9 the burden of proving that committee expenditures are qualified campaign expenses);
10 *11 C.F.R. § 9003.5(b) (1999)* (indicating the documentation required to satisfy this
11 burden). The committee's burden does not, however, consist solely of showing that it
12 received a reimbursement from the press. The committee must also demonstrate that it
13 made the transportation, ground services or facilities available to the press. *See 11 C.F.R.*
14 *§ 9004.6(a) (1999).* Because the regulations limit the amount of reimbursement that a
15 committee may seek from the press to the individual traveling press member's pro rata
16 share of the actual costs that the committee incurred, the committee must document the
17 total number of persons to whom the transportation, services or facilities were made
18 available. *See 11 C.F.R. § 9004.6(b) (1999).*

19 Moreover, where the committee seeks a deduction from the expenditure limitation
20 for a service or facility that is not expressly provided for in the regulation, the committee
21 must demonstrate that the cost it incurred in providing the service or facility was a
22 legitimate press expense. The examples of ground services or facilities provided in the
23 regulation is not an exhaustive list. However, the types of services included -- air travel,

1 housing, meals, telephone service, typewriters -- indicate that the regulation encompasses
2 only services and facilities that involve transporting the press, or that enable or assist the
3 press to perform its work obligations. *See* 11 C.F.R. § 9004.6(a) (1999). If a member of
4 the press requested that a particular service or facility be provided, this would entitle the
5 committee to a reimbursement for expenses incurred in providing that service. To receive
6 a corresponding deduction from the expenditure limitation, the committee would need to
7 show that the press requested that particular service or facility. *See id.* Consequently, the
8 committee must explain how or why the service or facility enabled or assisted the press in
9 performing its work obligations. This demonstrates that the service or facility is press-
10 related rather than campaign-related, thereby eliminating the possibility of subsidization by
11 the media. *See Explanation and Justification for 11 C.F.R. § 9004.6, 45 Fed. Reg. 43376*
12 (Sept. 5, 1980)

13 **a. Previously Unbilled Press Expenses**

14 The General Committee seeks to have a variety of costs which it has not billed to
15 the press, but which it contends are legitimate press expenditures, be deducted from the
16 expenditure limitation. In particular, the General Committee seeks a deduction of
17 \$571,690 (\$340,111 (lighting costs) + \$45,263 (telephone costs) + \$186,313
18 (miscellaneous filing center and grounds costs)) from the expenditure limitation.
19 Commission regulations do not require a committee to seek reimbursements from media
20 representatives for expenditures made for services or facilities made available to them.
21 *See* 11 C.F.R. § 9004.6(a)(2) (1999). Where a committee receives reimbursements,
22 however, reimbursements received may be deducted from the amount of expenditures
23 subject to the overall expenditure limitation. *See id.*

1 The General Committee has not received reimbursements for the particular
2 expenditures it now seeks to have deducted from the expenditure limitation. In the Audit
3 Report, the Commission determined that the General Committee received excessive
4 reimbursements from the press and Secret Service in the amount of \$1,219,281 because
5 the General Committee had billed the press for services and facilities that were not
6 legitimately related to the press. The Commission concludes that because the General
7 Committee received these excessive reimbursements from the press, the General
8 Committee may deduct legitimate, but unbilled, expenditures from the excessive
9 reimbursement figure. In effect, the Commission will allow the General Committee to
10 substitute legitimate expenditures it could have billed to the press for the improper
11 expenditures on which it received reimbursements. This will result in a corresponding
12 reduction in the General Committee's repayment amount. The legitimacy of these billings
13 will be examined in the following sections of this Statement in the subparts devoted to the
14 specific type of expense.

15 **b. Travel Costs**

16 In the Audit Report, the Commission determined that the General Committee had
17 collected \$1,219,281 in excess travel reimbursements from the press and Secret Service,
18 and concluded that the General Committee could not deduct this amount from the
19 expenditure limitation. Attachment 1 at 22-31. In light of the fact that reimbursements
20 will reduce the amount of expenditures that are subject to the expenditure limitation and
21 the possibility that reimbursements can be used as a mechanism to subsidize a campaign,
22 the Commission examines publicly-financed committees' receipts to ensure that the
23 reimbursements from the press and Secret Service conform to the regulatory standards.

1 See 11 C.F.R. § 9004.6(a)(2) (1999), *Explanation and Justification for 11 C.F.R.*
2 § 9004.6, 45 Fed. Reg. 43376 (Sept. 5, 1980). Depending on the good or service, the
3 Audit Report did not permit the General Committee to seek reimbursement from the press
4 or Secret Service for one of four reasons: (1) the good or service is not covered under the
5 regulations as transportation, ground services or facilities; (2) the amount of goods or
6 services was provided in excessive amounts raising the issue of whether the items were
7 made available to the press (e.g. catering and ground transportation);¹⁰ (3) the amounts
8 charged were not documented at all or the documents presented did not establish that
9 goods or services were made available to the press; (4) the amounts collected exceeded
10 even what the General Committee's records state to be the reimbursement amount.¹¹

11 In order to calculate press and Secret Service reimbursements, the Commission
12 first aggregated the total amount of expenses incurred for travel and ground services made

¹⁰ The press was billed for sound and lighting equipment, which the Audit Report disallowed. The Commission determines that there are instances where invoices demonstrate that sound and lighting equipment may have been made available to the press. However, event-related lighting and sound is not allowed in general since it appears to have been made available to the General Committee, and not necessarily to the press. It should be noted that theoretically, everything related to an event is "made available" to the press, including the candidate himself, the podium he speaks from, and the consultants who may have helped write the speech and design the themes being presented from the podium. However, these types of costs should not be borne by the press since these costs are campaign-related and the payment of them by the press would result in a subsidization of the campaign.

¹¹ Tables setting forth in greater detail the precise charges that were disallowed are attached. Attachment 3A at 31-32. The tables at Attachments 14 and 15 break down the event-related costs in greater detail. Catering and ground transportation costs disallowed in the Audit Report are broken down in greater detail in Attachments 21 and 22.

With respect to press filing center telephone costs, the Commission credited the General Committee in the Audit Report for unbilled costs that were considered reimbursable. The General Committee was forced to estimate telephone bills for the press filing centers at its various events at the time it billed the press because telephone vendors, unlike, for instance, catering or sound equipment vendors, could not invoice the General Committee immediately. The Commission determined that the amounts eventually billed by the vendors exceeded the estimated amounts billed to the press by the General Committee. Therefore, a corresponding credit was given to the General Committee's press billings.

1 available to the press and Secret Service, and then divided the amount by the number of
2 persons utilizing the service.¹² See 11 C.F.R. § 9004.6(b)(1) (1999). The calculation,
3 therefore, did not include those items that were not press expenses, or were not made
4 available to the press, or that were not documented with invoices.

5 As part of its review, the Commission reviewed costs directly related to chartering
6 and operating the aircraft that transported the General Committee personnel, the press,
7 and the Secret Service. The General Committee contracted with two aircraft vendors to
8 lease three separate aircraft. The fixed cost of the three leases was \$4,491,560.
9 Attachment 20. Additionally, the General Committee incurred variable costs related to
10 operating the aircraft such as expenses for fuel and airport landing fees. These variable
11 costs totaled \$1,834,424 over the course of the campaign. Combining the fixed costs of
12 the lease and the variable operating costs renders the total cost of the flights, \$6,325,984
13 (\$4,491,560 + \$1,834,424). Using this figure, the Commission divided the total cost of
14 the flights by the amount of passengers to develop the pro rata cost. After performing this
15 calculation, the Audit Report concluded that the costs for the leasing and operation of the
16 aircraft were billed to the press at an amount in excess of the pro rata amount of the costs
17 to each individual member of the press.¹³

¹² For individual trips, the Commission reviewed the invoices supporting the General Committee's charges. For instance, for an event in a certain city, the Commission would total up the costs of catering, ground transportation, and press filing center costs to determine the total ground services costs. A separate analysis was performed for the aircraft costs, using the fixed contract price for the aircraft and the variable operating charges.

¹³ Several costs associated with operating the aircraft were considered by the Commission and set forth in Attachment 3A at 15-27.

1 The General Committee's response to the Audit Report does not challenge the
2 calculations made by the Commission with respect to the contract costs of the aircraft.¹⁴
3 Instead, the General Committee explains why it was difficult to determine the appropriate
4 hourly rate to charge the press personnel using the airplanes. Specifically, the General
5 Committee points to its flat fee payment arrangement with the aircraft charter company
6 and changing travel plans of the campaign, both of which made estimating the amount to
7 bill difficult. Notwithstanding the General Committee's aircraft billing arrangements, the
8 regulation only permits the collection of reimbursements for the actual pro rata share. *See*
9 11 C.F.R. § 9004.6(a)(1) (1999). Therefore, any excess collection would constitute an
10 impermissible subsidization of the campaign by the media. *See Explanation and*
11 *Justification for* § 9004.6, 45 Fed. Reg. 43372, 43376 (June 27, 1980). In this case, the
12 General Committee's cost to transport its candidate and staff was subsidized with the
13 excess amounts billed to the press.

14 **c. Catering and Ground Transportation**

15 In the Audit Report, the Commission determined that \$71,291.53 in catering costs
16 provided on the ground were not reimbursable by the press and could not be deducted
17 from the expenditure limitation. *See Attachment 1 at 23.* The catering costs at issue were
18 incurred by the General Committee on 37 separate trips from August 22, 1996 to

¹⁴ The costs of the aircraft as calculated by the General Committee and as calculated by the Commission are materially the same. The Audit Report response states that \$267,861 in variable costs related to the aircraft were incorrectly disallowed. Many of these expenses are addressed at attachment 3A and have been credited to the General Committee. For instance, a fuel bill from Exxon corporation was credited since it has been established that the charge was, in fact, incurred by a campaign airplane. Additionally, various charges related to the installation of airphones were not considered billable in the Audit Report, but the General Committee submitted information indicating that the airphones were made available to the press. However, other charges are still disallowed, primarily because no documentation was submitted to support the charge. Attachment 3A at 15-27.

1 November 5, 1996. The Commission also determined that \$60,998.56 in ground
2 transportation costs were not reimbursable by the press, and that the General Committee
3 could not offset the amounts against the expenditure limitation. See Attachment 1 at 23.
4 The ground transportation expenses at issue were incurred by the General Committee on
5 35 separate trips from August 17, 1996 to November 5, 1996.

6 The Commission's regulations limit the amount of reimbursement that may be
7 sought from the press for catering and ground transportation to the press' pro rata share
8 of the actual costs of the food and transportation made available. See 11 C.F.R.
9 § 9004.6(b) (1999). However, the record contains instances in which catering costs that
10 the General Committee charged to the press covered a greater number of meals than the
11 number of press.¹⁵ Similarly, with respect to ground transportation, the record reflects
12 that transportation costs that the General Committee charged to the press covered more
13 transportation than may have been necessary to transport the number of press traveling
14 with the candidates. This raises questions as to whether catering and ground
15 transportation was made available to individuals who were not included in the calculation
16 of the pro rata share that the General Committee charged the press. Hence, the evidence
17 raises the issue of whether the General Committee charged the press greater than its pro
18 rata share and thereby received a subsidization.

19 The General Committee asserts that its decisions with respect to ground services
20 "were made during the intensity of conducting a campaign," and that "those decisions

¹⁵ A review of invoices from the catering orders on the aircraft indicates that, in general, the catering costs on the aircraft covered one meal per the number of press aboard the aircraft. By contrast, for the meals served on the ground which are addressed in the Audit Report, the General Committee's catering costs covered from 1 ½ to three meals per the number of press.

1 were made by highly experienced campaign staff in the exigency of the moment and in
2 response to the contemporaneous requests and suggestions of the members of the press as
3 to what they needed.” Attachment 2 at 5-6. In addition, the General Committee asserts
4 that such decisions were “based on trip logistics, the anticipated number of traveling press,
5 press feedback and other first-hand knowledge of the actual situation.” Attachment 2 at 7.
6 The General Committee also indicated that it had previously received complaints from the
7 press about inadequate services and inadequate quantities of food. *Id.* The General
8 Committee explained that in making decisions regarding the amount of transportation
9 needed, it took into account contingencies for press traveling to different locations at
10 approximately the same time. Attachment 2 at 6; Attachment 4 at 17-18.

11 While the costs that the General Committee passed on to the press covered a
12 greater amount of meals and ground transportation than may have been necessary to
13 accommodate the number of press traveling with Senator Dole, the issue before the
14 Commission is not whether the General Committee made too much food or too many
15 buses available to the press. Rather, the factual determination for Commission resolution
16 is whether the General Committee received reimbursement from the press in an amount
17 that exceeded the press’ pro rata share of the meals and transportation provided. *See*
18 11 C.F.R. § 9004.6(b) (1999). The record does not conclusively establish that the General
19 Committee made meals or transportation available to individuals who were not members
20 of the traveling press and billed the press greater than its pro rata share of the costs.
21 Indeed, the General Committee has provided plausible explanations for the disparity in the
22 amount of food and transportation made available and the number of traveling press, such
23 as having previously received complaints from the press about inadequate quantities of

1 food and inadequate services. *See* discussion, *supra*. Thus, the Commission concludes
2 that the disparity between the amount of food or transportation made available and the
3 number of traveling press, alone, does not establish that the General Committee subsidized
4 the campaign by overcharging the press. *See Explanation and Justification for § 9004.6,*
5 *45 Fed. Reg. 43372, 43376 (June 27, 1980).*

6 However, the record contains evidence that some press reimbursements subsidized
7 the general election campaign. Specifically, the General Committee was improperly
8 reimbursed: \$4,554.17 and \$212.46 for the costs of campaign staff hotel rooms that were
9 charged as press catering; \$2,610.59 for a double-billing to the press of telephone charges;
10 \$2,963.20 for the costs of catering associated with meetings, and \$1,001.79 for other
11 catering, for which no documentation exists that establishes that the catering was made
12 available to the press; \$1,355.24 for buffet breakfasts billed to the traveling press who,
13 according to itineraries, were not scheduled to arrive until 7:30 that evening; \$8,183.70 in
14 catering costs, which represents the difference between the amount that the traveling press
15 was charged and the amount that campaign staff was charged for identically described
16 catering services (campaign staff was charged \$45 per person; the traveling press was
17 charged \$135 per person); and \$1,802.66 for the costs of a "BBQ" for 500 attendees,
18 which the General Committee acknowledged to be a campaign event and billed to the
19 press in error.

20 Additionally, the record contains evidence that the General Committee improperly
21 received traveling press reimbursements for the following transportation costs: \$4,048.00,
22 \$1,200.00, and \$1,597.87 for transportation costs for which no invoices establishing that
23 the transportation was made available to the traveling press exist; \$623.91 for a duplicate

1 payment for the cost of van services; \$1,838.20 for the cost of transportation provided to
 2 campaign staff and the local press; \$1,792 for the cost of transportation provided to
 3 campaign supporters (rally buses); \$2,762.00 for the cost of bus transportation that the
 4 bus vendor refunded to the General Committee as an overpayment; and \$1,959.75,
 5 \$892.00, and \$3,232.00 for transportation costs for destinations that did not appear on the
 6 itinerary of the traveling press. Based on these press reimbursements, the Commission
 7 concludes that \$46,892.49 (\$24,952.19 in catering costs and \$21,940.30 in ground
 8 transportation costs (includes a 10% administrative fee that the General Committee had
 9 charged the press)) were not reimbursable by the press and could not be offset against the
 10 General Committee's expenditure limitation.

11 *Improper Reimbursements for Catering*

\$4,554.17 - (leg 50631008)	For the cost of campaign staff hotel rooms
\$ 212.46 - (50671011)	charged as press catering
\$2,610.59 - (30660926)	For a double-billing to the press of telephone
	charges
\$2,963.20 - (31151028)	For the cost of catering associated with
	meetings
\$1,001.79 - (50400919)	For catering for which no documentation exists
	establishing that the catering was made
	available to the press
\$1,802.66 - (131008 Bus CA Day 2)	"BBQ" for 500 people, General Committee
	acknowledges billed to press in error
\$1,355.24 - (30620924)	For buffet breakfasts billed to the traveling
	press who, according to itineraries, were not
	scheduled to arrive until 7:30 that evening
\$8,183.70 - (131008 Bus NJ Day 2)	For the cost of catering, which represents the
	difference between the amount that the
	traveling press was charged and the amount
	that campaign staff was charged for identically
	described catering services

12 \$22,683.81 - Total

13 x 10%

14 \$24,952.19

15

1 The difference between the amount disallowed in the Audit Report (\$71,291.53)
2 and the amount disallowed in this Statement (\$24,952.19) is \$46,339.34.

3
4 *Improper Reimbursements for Ground Transportation*
5

\$4,048.00 (leg 131021 Bus MI Day 1) \$1,200.00 (50601003) \$1,597.87 (50721014)	For transportation cost for which no invoices were provided establishing that the transportation was made available to the traveling press
\$ 623.91 (50671011)	For a duplicate payment for the cost of van services
\$1,838.20 (50971028) \$1792.00 (50671011)	For the cost of transportation provided to campaign staff and supporters and the local press
\$2,762.00 (30170825)	For the cost of bus transportation that the bus vendor refunded to the General Committee as an overpayment
\$1,959.75 (51201104) \$ 892.00 (30170825) \$3,232.00 (31151028)	For transportation cost for destinations that did not appear on the itinerary of the traveling press

6 \$19,945.73 - Total
7 + 10% (admin.)
8 \$21,940.30
9

10 The difference between the amount disallowed in the Audit Report (\$60,998.56)
11 and the amount disallowed in this Statement (\$21,940.30) is \$39,058.26.

12
13 **d. Event-related costs**

14 In the Audit Report, the Commission disallowed \$487,781 as not being
15 reimbursable by the press on the grounds that these costs were event-related expenditures
16 for which the campaign was responsible, rather than press-related expenditures. See
17 Attachment 3A at 31-32 (this figure includes all amounts set forth in the tables, excluding
18 catering and ground transportation costs). Nevertheless, the Commission recognized that
19 some costs associated with an event may be billed to the press. These costs primarily

1 related to press filing centers and press risers which fall into the category of facilities. *See*
2 11 C.F.R. § 9004.6(a)(1) (1999). Consequently, the Commission allowed the following
3 costs to be billed to the press: (1) press risers and camera platforms; steps to the risers
4 and platforms; related carpet, pipe or railings; drape, skirts, or bunting; and related labor,
5 transportation and delivery; (2) multiboxes; power distribution to the platform; associated
6 equipment (power strips, extension cords, quad boxes); and related labor, transportation
7 and delivery; (3) pro rated press filing center costs including tents; chairs; tables;
8 tablecloths; barricades (snow fences, bicycle racks); telephone service; power distribution
9 to filing area; press cable bridges; and related labor, transportation and delivery.
10 Attachment 1 at 22-29; Attachment 3A at 6.

11 However, other costs were not allowed as billable to the press because they were
12 event-related campaign costs. The Audit Report disallowed lighting costs, sound costs,
13 related generator and technician costs, and other expenses which did not appear to be
14 related to the press, but rather, appeared to relate to the staging of campaign events.
15 Attachment 1 at 22-29. In other circumstances, certain event costs were billed to the
16 press twice or invoices supporting billings to the press were lost or lacked sufficient
17 information to establish that the good or service was made available to the press. In those
18 instances, the General Committee could not sufficiently document the reimbursement
19 request for it to be permitted.

20 The General Committee challenges the Commission's conclusion that these costs
21 were not billable to the press. In addition, the General Committee argues that lighting
22 invoices totaling \$340,114 and press filing center costs totaling \$186,313 for which it has
23 not yet sought reimbursement from the media should be allowed as services made

1 available to media personnel, and that this amount should be deducted from the amount of
2 expenditures subject to the expenditure limitation.

3 The General Committee argues that pursuant to 11 C.F.R. § 9004.6(a)(2), its
4 burden is to demonstrate that an expenditure for which it seeks reimbursement was made
5 available to the press, and that once it satisfies this burden, it is entitled to receive the
6 deduction from the expenditure limitation corresponding to that reimbursement.

7 Attachment 4 at 66, 110-111. The General Committee states that the services were
8 provided because the press needed them. In support of this argument, the General
9 Committee submitted the statement of Sandra Pack, who as the General Committee's
10 Deputy Director of Treasury, was in charge of press billing. According to Ms. Pack,
11 "[t]hese expenses [ground transportation, facilities, filing centers, catering, phones, press
12 risers, pipe and drape, and sound and lighting] would not have been billed unless they
13 were directly related to the press." Attachment 6. The General Committee also submitted
14 the statement of Kim Fuller, who served as Director of Press Advance for the Primary and
15 General Committees. Ms. Fuller states that she has done press advance work for nine
16 years, including work at the White House during the Bush administration. According to
17 Ms. Fuller:

18 I based my procedures at the campaign on operations at the White House, with
19 adjustments made to account for the differences at the campaign. The amount and
20 type of facilities and transportation which were provided were adjusted over time
21 in response to daily interaction with the press corps and continuing efforts to meet
22 logistical needs.

23
24 Attachment 7.¹⁶

¹⁶ Notwithstanding Ms. Fuller's claim that the General Committee's billing practices conformed with past campaign operations, other evidence points to the contrary. Contradicting Ms. Fuller's statement is testimony provided recently in a Commission rulemaking regarding what costs may be billed

1 The General Committee further argues that it does not seek reimbursement for
2 event-related services; only for services required by the press. Attachment 4 at 22, 61-62.
3 In addition, the General Committee asserts that the lighting, sound and generator systems
4 costs it billed to the press is a “standard campaign operation.” Attachment 4 at 109.
5 According to the General Committee, the invoices submitted by the vendors who supplied
6 these services separated event-related costs from press-related costs. Attachment 4 at 64.
7 The General Committee stated that it does not have the technical information regarding
8 how these costs were divided. Attachment 4 at 65. The General Committee maintains,
9 however, that the press was only charged for press-related costs because the press
10 invoices only had press charges on them. The press-related costs included costs for HMI
11 lighting,¹⁷ which according to the campaign, was provided only because the press needed
12 it to ensure clear pictures of the candidate. The General Committee further explained that
13 it divided lighting costs between itself and the press according to whether the event was
14 held during the day or night, and whether it was held indoors or outdoors. Attachment 4
15 at 61. Under this allocation, if it was an indoor event or an outdoor event at night, the
16 costs were divided evenly between the campaign and the press. *Id.* If it was an outdoor

to the press. At the public hearing, representatives of 29 news organizations that cover presidential campaigns asserted that in the past, the press has not been billed for lighting and sound systems. Attachment 8 at 7. According to one of the witnesses, “[s]ince the FEC came into existence there have been approximately 100 major presidential candidates and with 98 of those 100 there has been absolutely no problem because they have followed basically what is set out in the White House guidelines.” *Id.* The White House guideline in 1996 did not permit billings for sound or light equipment as a general rule, although press entities with special needs could request to be accommodated. Attachment 9.

¹⁷ HMI (Hydrargyrum Medium Arc-length Iodide) lighting is type of lighting element that emits the same color temperature as sunlight. See R. Whitaker, *Lighting Instruments* (visited March 2, 2000), <<http://www.cybercollege.com/typ030.html>> and <http://www.cybercollege.com/gloss_h.html> (Attachment 13). For that reason, HMI lighting is often used for on-location television production to fill in the shadows caused by sunlight. See *id.* HMI lighting may also be preferable when shooting in a confined space because it generates less heat than the more commonly-used tungsten-halogen lamps. See *id.* However, HMI lighting requires a large and expensive power source. See *id.*

1 event during the daytime, the General Committee charged the entire cost to the press. *Id.*
2 Finally, the General Committee stated that there was constant interaction between the
3 campaign and the press regarding what the press needed and what would be provided to
4 them. Attachment 4 at 25, 65.

5 Costs for lighting, sound, generators, and for technicians to install and run the
6 equipment are not specifically included in the Commission's regulations as examples of
7 ground services a committee may make available to the press and for which a committee
8 can receive reimbursement and a corresponding deduction from the expenditure limitation.
9 *See* 11 C.F.R. § 9004.6(a)(1) (1999). However, a committee may demonstrate that
10 services not specifically included as examples fall within the regulation if the committee is
11 able to show that services made available to media personnel enabled them to perform
12 their work obligations or assisted them in performing their work obligations and therefore
13 were press-related rather than event-related costs. *See id.*

14 The Commission concludes that certain costs related to events may legitimately be
15 billed to the press because they enable the press to perform their work obligations or assist
16 the press in performing their work obligations. In particular, if a member of the press
17 requested that a particular service or facility be provided, this would entitle the committee
18 to a reimbursement for expenses incurred in providing that service.¹⁸ Press filing centers
19 are needed to provide the press with a place to set up their computers and write and file
20 their stories. Consequently, room rental or tents, tables, linens, chairs, and fencing or

¹⁸ The White House Press Corps Travel Policies & Procedure Manual does not allow for the billing of "site expenses such as lighting, press risers, pipe and drape, unless the item is ordered by a news organization itself." Attachment 9 at 11.

1 barriers may legitimately be billed to the press.¹⁹ Multiboxes are needed for the press to
2 record what is being said into the microphones.²⁰ Consequently, the cost of multiboxes
3 and related equipment, labor, delivery and taxes may legitimately be billed to the press.
4 Electricity is necessary to power multiboxes and in the press filing centers. Consequently,
5 the Commission concludes that generator costs which are related to supplying electrical
6 power to multiboxes, risers, platforms, and press filing centers may legitimately be billed to
7 the press.²¹ Similarly, power distribution costs, technical labor and delivery costs may also
8 legitimately be billed to the press. From time to time, a committee may determine that it
9 needs to provide security to the press. Consequently, costs for security made available to
10 the press may legitimately be billed to the press. Finally, press risers provide a place for
11 the press to stand during an event. Consequently, press risers, and the costs related to
12 them for pipe and drape, labor, delivery, and taxes may legitimately be billed to the press.²²

¹⁹ The General Committee billed the press for the cost of photocopiers in the press filing centers. In the Audit Report, the Commission disallowed the cost of copiers. The General Committee has not explained why the photocopiers were related to the needs of the press, therefore, the costs are not billable to the press.

²⁰ Multiboxes connect the microphone on the podium or stage to recording devices that permit the press to record events, eliminating the need for each individual press member to place her own microphone on the podium. Attachment 4 at 14. The Commission's Audit Report allowed the General Committee to bill the press for the costs of multiboxes, however it disallowed bills where sound costs to the press were not itemized at all or where they were insufficiently itemized (e.g. reference multiboxes as part of an overall larger, generic sound charge). This Statement also disallows sound costs that are not sufficiently itemized to document what may have been made available to the press.

²¹ The Audit Report disallowed generator costs across the board. The Commission determines that the press, however, did have certain needs for power, for instance, to power their laptop computers. Therefore, the Commission will allow the press to pay generator costs. However, in several instances, it appears that the General Committee has billed the press for all generator costs related to an event. Since the General Committee and press both shared the need for generators, these costs should be allocated.

²² The Commission's Audit Report allowed the General Committee to bill the press for press risers and related pipe and drape. However, pursuant to the White House Rules that will be in effect for the next presidential election cycle, these expenses will not be billable to the press unless a request is made for the items.

1 Although a variety of expenses may be billed to the press, the General Committee
2 must submit invoices or other documentation demonstrating that the services were made
3 available to the press. An analysis of submitted invoices demonstrates that the General
4 Committee did not always meet this burden. The submitted invoices raise a series of
5 problems that are addressed in the accompanying tables, addressing costs by travel leg.
6 Attachments 14-16. While some invoices do not state that the expense is for the press,
7 others state that the costs are press-related but contain no itemization or details on what
8 was provided. Additionally, in several cases, invoices do not demonstrate that services
9 were provided exclusively to the press, but suggest that the press and the General
10 Committee both made use of the services (for instance, generators). In these cases, an
11 allocation of costs is appropriate, although often, the press was exclusively billed for the
12 item.

13 For a few travel expenses, the Commission has ruled out reimbursement by the
14 press. In some cases, the costs relate to items such as teleprompters or microphones,
15 which appear to be campaign-related expenses. Significant reimbursements are also
16 sought from the press for lighting and sound at the events. The Commission concludes
17 that the General Committee has failed to show that the lighting and sound services
18 provided enabled media personnel to perform their work obligations or assisted them in
19 performing their work obligations and therefore were press-related rather than event-
20 related costs. Ms. Pack asserts that the costs billed to the press were "directly related to
21 the press." Attachment 6. This assertion fails to explain how or why these services
22 enabled media personnel to perform their work obligations. Ms. Fuller asserts that she
23 was in charge of press advance, and based her procedures on "operations at the White

1 House, with adjustments made to account for differences at the campaign.” However, this
2 general statement similarly fails to explain how or why these particular services enabled
3 media personnel to perform their work obligations. Moreover, the White House
4 guidelines, in fact, do not permit billing of lighting equipment absent a request, in which
5 case, the requester is billed for the equipment.²³ Attachment 9. The General Committee
6 submitted no documentation on requests for lighting and sound or separate billing
7 schedules for those media entities that may have requested the equipment.

8 The General Committee asserts that its vendors divided press-related costs from
9 event-related costs according to a technical standard.²⁴ However, the General Committee
10 does not know what standard was used by the vendors. Since the General Committee has
11 failed to provide the Commission with this standard, the Commission is unable to evaluate
12 whether these services indeed enabled the press to perform its work obligations, or
13 whether these services were event-related costs. Furthermore, the invoices submitted by
14 the General Committee supporting its claim that it is entitled to a deduction from the
15 expenditure limitation for previously unbilled expenses vary greatly in regard to whether
16 the vendor itself divided costs between the campaign and the press, whether the campaign

²³ The White House guidelines do not specifically mention sound costs in any context. If they are considered site expenses, then they would also not be billable to the press absent a request.

²⁴ While it is not entirely clear, the General Committee appears to be advancing two contradictory standards in explaining how costs were divided between the campaign and the press. The General Committee asserts that the vendors divided the costs between the campaign and the press according to an unknown technical standard. At the same time, the General Committee asserts that it divided the costs between itself and the press depending upon the time of day the event was held, and whether the event was held indoors or outdoors. Thus, while asserting that it does not seek to bill the press for event-related costs, the General Committee has failed to explain how either method of allocating costs between itself and the press prevented this from occurring.

1 divided costs between itself and the press, and which costs the vendor and or campaign
2 determined were press-related costs and which costs were event-related costs.
3 Consequently, these invoices do not appear to support the General Committee's claim that
4 the vendors, rather than the committee, divided costs between the campaign and the press
5 according to a technical standard.

6 Consequently, sound and lighting costs for which the General Committee received
7 reimbursement by the press may not be deducted from the expenditure limitation.
8 Similarly, the General Committee may not deduct \$340,114 in lighting costs for which it
9 has not yet billed the press from the expenditure limitation. Additional costs, relating to,
10 *inter alia*, generators, security services, pipe and drape, and miscellaneous items such as
11 microphones, flags, podiums, and stages are set forth in attached tables, and are
12 considered on an invoice-by-invoice basis. Attachments 14-15. Additionally, the tables
13 set forth information concerning disallowed billings which represent inadvertent double
14 billings of the press. *Id.* Finally, the tables set forth instances where the General
15 Committee failed to produce invoices or other documentation to sufficiently support its
16 billings to the press. *Id.*

17 In response to the Exit Conference Memorandum, the General Committee further
18 sought an offset against the expenditure limitation of \$121,496 in "Additional Press
19 Costs," which it had not billed to the press, but maintained were legitimate press costs.
20 The Commission reviewed the General Committee's request, and in the Audit Report
21 allowed an additional \$11,879.60 to be deducted from the excessive press reimbursement
22 figure. In response to the Audit Report, the General Committee resubmitted this request.
23 Because the Commission had allowed \$11,879.60, the actual amount at issue is

1 \$109,617.74. In response to the General Committee's second request regarding these
2 item, the Commission has thoroughly analyzed these invoices, and concludes that
3 \$2,352.50 will be deducted from the excessive press reimbursement figure for the reasons
4 set forth in the table. Attachment 16. The Commission disallows the remaining amount
5 requested by the General Committee.²⁵

6 e. Ground Telephone Expenses

7 In response to the Audit Report, the General Committee argued that an additional
8 \$45,263 should be allowed as expenditures for telephone services made available to media
9 personnel, and should be deducted from the amount of expenditures subject to the
10 expenditure limitation. This total consists of \$23,658.06 in telephone costs for the press
11 traveling with Senator Dole, and \$21,604.60 in telephone costs for the press traveling with
12 Secretary Kemp ($\$23,658.06 + \$21,604.60 = \$45,263.66$). For the reasons explained in
13 the table, the Commission concludes that of this amount, an additional \$23,201.50 will be
14 allowed as expenditures for telephone services made available to media personnel and has
15 deducted this amount from the excessive press reimbursement total. See Attachment 17.

16 f. Post-Nomination Expenses

17 The General Committee seeks to have \$24,911.85 in costs incurred on August 16,
18 1996 in San Diego, California for press costs offset against the expenditure limitation. In
19 the Audit Report, the Commission disallowed \$22,647.14 in filing center and ground costs

²⁵ Included in this amount is the \$33,413.50 for photocopier rental and supplies the General Committee requested be deducted from the excessive press reimbursement total. As the Commission indicated, *supra*, the General Committee did not explain how photocopiers enabled the press to perform its work obligations at the press filing centers.

1 incurred in San Diego, California,²⁶ on August 16, 1996. This amount was disallowed
2 because the Commission believed that these costs should have been billed by the Primary
3 Committee rather than the General Committee. Commission regulations provide that
4 travel from the convention city following the nomination is a primary, rather than general
5 election expense. *See* 11 C.F.R. § 9034.4(e)(7). However, costs incurred the day after
6 the nomination are general election expenses. *See id.* Costs at issue were incurred the day
7 after the nomination, but before Senator Dole left San Diego. Consequently, the
8 Commission concludes that \$24,911.85 ($22,647.14 \times 1.1 = \$24,911.85$) in filing center
9 and ground costs incurred the day after the nomination were general election expenses,
10 and has deducted them from the excessive press reimbursement amount. 11 C.F.R.
11 § 9004.6(a) (1999).

12 The General Committee seeks to have \$33,321.31 in filing center and ground costs
13 incurred the same day in Denver, Colorado be allowed as a deduction from the
14 expenditure limitation. In the Audit Report, the Commission allowed \$12,421.53 of this
15 amount. Of the remaining amount, \$20,899.80 ($\$33,321.31 - \$12,421.53 = \$20,899.80$)
16 \$9,817.01 represents catering and banquet room costs, and \$11,082.79 represents
17 lighting, sound and generator costs. The documentation the General Committee submitted
18 to the Commission fails to indicate the number of people to whom the catering was
19 provided. Despite this lack of documentation, the Commission concludes that this
20 expenditure was for catering made available to media personnel, and has deducted this
21 amount from the excessive press reimbursement figure. *See* 11 C.F.R.

²⁶ The 1996 Republican National Convention was held in San Diego, California. Senator Robert J. Dole received the Republican nomination on August 15, 1996.

1 § 9004.6(a) (1999). However, for the reasons set forth in the table, the Commission
2 concludes that \$2,494.07 of the lighting and related sound and generator costs may be
3 billed to the press, and consequently has deducted this amount from the excessive press
4 reimbursement amount. *See* Attachment 18. Further, an additional \$819.75 was credited
5 to the General Committee based on recalculations of certain billings. *See id.*

6 **3. Reimbursement from GELAC**

7 Expenses can be paid from a compliance fund if they are for the costs of legal and
8 accounting compliance or associated payroll, overhead and computer services. *See*
9 11 C.F.R. § 9003.3(a)(2)(i). Generally, a compliance fund may reimburse up to 10% of
10 the overhead and payroll costs and 50% of computer services costs to a general election
11 committee. *See* 11 C.F.R. § 9003.3(a)(2)(ii)(A) & (D). However, if a higher
12 reimbursement percentage is sought, the candidate must be able to document the
13 alternative allocation. *See* 11 C.F.R. § 9003.3(a)(2)(ii)(C). The Commission's Financial
14 Control and Compliance Manual for Presidential Primary Candidates Receiving Public
15 Financing ("Compliance Manual") sets forth potential alternative allocations.
16 *See* Financial Control and Compliance Manual for Presidential Primary Candidates
17 Receiving Public Financing, 1996, p. 31-32 (the Compliance Manual for General Election
18 Candidates does not contain a specific discussion on allocation methods, but instead,
19 incorporates the Primary Election Manual by reference). The Compliance Manual
20 suggests that committees can base an alternative allocation on the relative amount of
21 office square footage used by compliance staff, the relative payroll dollars for the
22 compliance staff, or by any other reasonable method. *Id.*

1 The General Committee established the GELAC for certain compliance-related
2 expenses. The Audit Report concluded that the GELAC had reimbursed the General
3 Committee for its share of overhead and payroll expenses in an amount exceeding the
4 prescribed 10% limitation. The Audit Report noted that the Commission could not
5 determine what alternative allocation method, if any, was used by the General Committee
6 to allocate compliance costs with the GELAC. Consequently, the Commission utilized an
7 allocation based on the relative payroll dollars of the GELAC staff since this allocation
8 method could be calculated based on the available information.²⁷ The total amount in
9 excessive reimbursements was determined to be \$564,432. The Commission determined
10 that the General Committee must pay the GELAC the excess amount and attributed this
11 amount to the General Committee's expenditure limitation. *See* 11 C.F.R. § 100.8(g)(1).

12 In response to the Audit Report, the General Committee challenged the
13 Commission's allocation and argued that its own allocation was acceptable. The General
14 Committee submitted materials that it asserted supported its alternative allocation.²⁸
15 However, the materials submitted consisted of a list of names of individuals who were on
16 the GELAC payroll at one undefined point during the campaign.²⁹ This payroll was not

²⁷ This calculation permitted the General Committee to obtain a larger reimbursement from the GELAC than the 10% rule permitted. No other allocation method was feasible because of the limited records maintained by the General Committee related to this calculation.

²⁸ The written response did not explain or justify the General Committee's allocation. At the oral hearing, General Committee representatives addressed the issue and promised informational materials on its allocation in a supplemental response. Attachment 4 at 31-34. The General Committee representatives suggested at the oral hearing that its allocation was based on the amount of compliance staff on the overall payroll. *Id.* at 32-33. However, the supplemental materials do not explain the allocation.

²⁹ In addition to the payroll, the General Committee also submitted materials supporting its claim that air travel costs totaling \$263,313 for personnel traveling with the candidates for the purpose of maintaining flight manifests and handling traveling press billings should be included as part of the costs of compliance. However, these activities appear to be "accounting functions [that] generally must be

1 dated and does not match up to the final General Committee payroll obtained by the
2 Commission during audit fieldwork. Attachment 3B at 6; attachment 5. Because the
3 payroll size changed over the course of the campaign, this material does not produce
4 accurate information upon which to base an allocation. Even if the Commission were to
5 use this one payroll the General Committee submitted, it cannot determine what payroll
6 the General Committee submitted since the submitted information is inconsistent with
7 payroll ledgers obtained during the Commission's audit. Attachment 3B at 6.³⁰

8 The General Committee has the burden to justify the reasonableness of an allocation
9 of compliance expenses if it does not use the 10% allocation set forth in the Commission's
10 regulations. See 11 C.F.R. § 9003.3(a)(2)(ii)(A). By not producing a justification or an
11 explanation of its allocation, the General Committee has not met its burden. Therefore,
12 the Commission determines that \$546,432, related to the reimbursement the General
13 Committee owes the GELAC, is attributable to the General Committee's expenditure
14 limitation.

15 4. Accounts Payable

16 In calculating the amounts subject to the expenditure limitation, the Commission
17 included accounts payable totaling \$830,496 that the General Committee owed various
18 vendors. Thus, these amounts contributed to the repayment for making expenditures in

performed irrespective" of the FECA and therefore cannot be attributed completely to the GELAC. Compliance Manual at 30-31; Attachment 3B at 4. The Commission is unable to allocate these costs between the GELAC and the General Committee because no materials to support an allocation were provided.

³⁰ The General Committee's proposed "payroll numbers" standard is similar to the Compliance Manual's "payroll dollars" standard. The "payroll dollars" standard was the allocation method used by the Commission in the Audit Report. The payroll dollars standard is more accurate in assessing the net contribution of the staff since staff earning higher salaries are considered to incur more overhead costs.

1 excess of the expenditure limitation. The General Committee argues that “a repayment
2 figure should not be based on unspent funds.” Attachment 2 at 11. Moreover, the
3 General Committee contends that six debts totaling \$124,405 are not “actually owed.” *Id.*
4 The General Committee states that it contacted several of its vendors and confirmed that
5 some of its “alleged” debts are not owed. *Id.* at 10-11.

6 As a threshold matter, the Commission rejects the General Committee’s argument
7 that unpaid expenses cannot be part of a repayment determination. In effect, the General
8 Committee argues that these expenses are not attributable to the expenditure limitation.
9 When discussing the amounts that are attributable to the candidate’s expenditure
10 limitation, the Presidential Election Campaign Fund Act provides that qualified campaign
11 expenses that are “incurred” will be included in the repayment calculation. 26 U.S.C.
12 § 9007(b)(2). Thus, the incurring of an obligation subjects it to the expenditure limitation,
13 not the payment of an expenditure. In addition to the plain language of the statute, the
14 construction of section 9007(b)(2) to not require an actual payment is consistent with the
15 language of section 9007(b)(3) which requires fully funded committees to repay any
16 private contributions that they may receive. If a repayment resulted from section
17 9007(b)(2) only when a committee actually made expenditures in excess of the limitation,
18 then this statute would have operation only when a committee received private
19 contributions to supplement their full public grant. In that case, section 9007(b)(2) would
20 be superfluous because the private contributions used to make the excess expenditure
21 would be repayable as a private contribution under section 9007(b)(3).³¹

³¹ The Commission notes that the General Committee’s argument here is inconsistent with its argument, *supra*, that an account payable of \$3,135.97 to GTE - North be allowed as a reimbursable expense for telephone services made available to media personnel, to be deducted from the expenditure

1 The Commission also rejects the General Committee's argument that the six debts
2 totaling \$124,405 represent accounts payable that are not "actually owed." The accounts
3 in question were reported as debts by the General Committee and the General Committee
4 has not documented the current account balances that would support their proposed
5 recalculation. In its response, the General Committee produced a revised invoice for only
6 one of the six challenged debts. Attachment 12.³² However, this invoice is not persuasive
7 on the issue of whether an expense was incurred by the General Committee or whether the
8 General Committee had already paid the debt since invoice contains two credit entries
9 stating "close out." *Id.* Therefore, the Commission determines that \$830,496 in unpaid
10 accounts payable are attributable to the General Committee's expenditure limitation.

11 **V. CONCLUSION**

12
13 For the foregoing reasons, the Commission determines that Senator Robert J.
14 Dole, Secretary Jack Kemp, and Dole/Kemp '96, Inc. must repay a total of \$2,624,507.99
15 to the United States Treasury pursuant to 26 U.S.C. § 9007(b)(2). The Commission
16 determines that the General Committee must repay: 1) \$574,158 for the use of public
17 funds to defray non-qualified campaign expenses; 2) \$46,510 for earned income received

limitation. In regard to that account payable, the Commission has concluded that the account payable was incurred for telephone services made available to media personnel, and has deducted it from the excessive press reimbursement total.

³² The General Committee has stated that these debt recalculations are not disputed debts or debt settlements. In the primary election context, disputed debts will not be applied to a primary committee's expenditure limitation in certain circumstances. *See* 11 C.F.R. § 9035.1(a)(2). In order to have the disputed debt not count toward the limitation a primary committee must demonstrate that the "lower amount paid reflects a reasonable amount paid of a bona fide dispute with the creditor." *Id.* Otherwise, the "full amounts originally charged" are attributable to the expenditure limitation. *Id.* A similar regulation does not exist for the general election. However, even if such a regulation was available to the General Committee, the information provided on the six vendor billings at issue fails to demonstrate that these were reasonable settlements of bona fide disputes since the only documentation submitted were revised invoices.

1 from the use of public funds; and 3) \$2,003,839.99 for expenses incurred in excess of the
2 expenditure limitation.

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Attachments

1. Report of the Audit Division on Dole/Kemp '96, Inc., dated June 3, 1999.
2. Response of Dole/Kemp '96, Inc. to Audit Report, dated August 30, 1999.
- 3A. Audit Division Analysis of Dole/Kemp '96, Inc. Response to Audit Report, dated December 8, 1999.
- 3B. Audit Division Analysis of Dole/Kemp '96, Inc. Supplemental Response to Audit Report, dated March 31, 2000.
- 3C. Audit Division Analysis of Dole/Kemp '96, Inc. Supplemental Response to Audit Report, dated April 19, 2000.
4. Transcript of the Dole/Kemp '96, Inc. Oral Hearing before the Federal Election Commission on December 15, 1999.
5. Supplemental Submissions of Dole/Kemp '96, Inc., dated December 22, 1999.
6. Statement of Sandy Pack, Deputy Director of Treasury for Dole/Kemp '96, Inc., undated.
7. Statement of Kim Fuller, Director of Press Advance for the Dole for President and Dole-Kemp '96 campaigns.
8. Transcript of the Public Hearing on Proposed Revisions to the Commission's regulations Governing the Public Financing of Presidential Primary and General Election Candidates before the Federal Election Commission on March 24, 1999.
9. White House Press Corps Travel Policies and Procedures.
10. Comments Submitted on Behalf of Major News Organizations that cover Presidential Campaigns dated December 17, 1998.
11. Letters received by the Federal Election Commission in regard to Dole/Kemp '96, Inc. billing practices and procedures.

- 1 12. Invoice submitted by Dole/Kemp related to accounts payable.
- 2 13. R. Whitaker, *Lighting Instruments* (visited March 2, 2000),
3 <<http://www.cybercollege.com/tvp030.html>> and
4 <http://www.cybercollege.com/gloss_h.html>
5
- 6 14. Table of Dole event-related expenses.
7
- 8 15. Table of Kemp event-related expenses.
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- 10 16. Table of miscellaneous unbilled event expenses.
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- 12 17. Table of telephone expenses.
13
- 14 18. Table of post-nomination costs.
15
- 16 19. Calculation of Expenditures Subject to Expenditure Limitation, calculated as of
17 7/31/00.
18
- 19 20. Dole/Kemp '96 Aircraft Charter Cost Analysis (February 1999).
20
- 21 21. Tables of Catering Costs Disallowed in the Audit Report.
22
- 23 22. Tables of Ground Transportation Costs Disallowed in the Audit Report.