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**MEMORANDUM**

**AGENDA ITEM**

To: The Commission

Through: *AP* Alec Palmer *AP*  
Staff Director

For Meeting of 11-15-12

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Chief Compliance Officer

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Assistant Staff Director  
Audit Division

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Audit Manager

By: Rickida Morcomb *RM by MK*  
Lead Auditor

Subject: Audit Division Recommendation Memorandum on McCain-Palin 2008, Inc. and McCain-Palin Compliance Fund, Inc.

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presents its recommendation(s) below and discusses the finding(s) in the attached Draft Final Audit Report. The Office of General Counsel has reviewed this memorandum and concurs with the recommendation(s).

**Proposed Finding on Campaign Travel Billing for Press**

In response to the Preliminary Audit Report and the Draft Final Audit Report, McCain-Palin 2008, Inc. (the General Committee) stated that the excess Press reimbursement collected in the general period for travel was a misallocation of billing proceeds, requiring a transfer to John McCain 2008, Inc. (the Primary Committee). The General Committee stated it used a reasonable process for Press billing between the primary and general campaigns that was consistent with Commission precedent as well as Generally Accepted Accounting Principles (GAAP).

At the audit hearing held on August 23, 2012, the General Committee representatives made the following points to support that the billing method utilized by the campaign was reasonable and did not necessitate the need to refund the Press.

- The General Committee explained there was no overbilling of Press if the entire contractual period covering the entire campaign were considered. It

was stated that the structure of the Swift Air contract at issue was not unusual when compared with previous campaigns.

- The General Committee acknowledged that a misallocation of Press reimbursements collected in the general period may have resulted due to the unanticipated travel requirements during the campaign.
- The General Committee noted it used the same contract structure and calculations it used in past presidential elections and was not previously informed that the methodology could be considered unreasonable by the Commission.
- The General Committee explained that the regulations only require a reasonable method to determine the pro rata share of costs related to travel and the General Committee stated it did all it could to use a reasonable method. The General Committee asserted that the regulations do not allow substitution of the Audit staff's calculation for the General Committee's calculation unless the Commission can prove its methodology was unreasonable or adopted in bad faith.
- The General Committee explained that they were aware of an imbalance and intended on making the transfer to the Primary Committee. The transfer was not made because they were awaiting further instruction as a result of the audit.
- The General Committee explained that there was no overall harm to the traveling Press for the entire campaign period.
- The General Committee recommended that the Commission should take no further action with regard to this matter. However, the General Committee would be amenable should the Commission mandate that the General Committee go back and "square-up" the accounts by transferring \$344,892 to the Primary Committee.

The Audit staff offers the following for the Commission to consider with respect to this matter.

First, the focus of the audit was the General Committee and the travel that took place during the general period. The Primary and General Committees are two separate entities, the latter being publicly funded. The bright line as laid out at 11 CFR §9034.4(e)(7) distinguishes between primary and general travel expenses. This regulation defines travel occurring on or before the date of the candidate's nomination as a primary election expense.

Second, a review of work papers from past presidential audits found key differences between the previous campaigns and the General Committee's calculation method and contract. The Audit staff notes Press was billed for weekly flights within an average of 12 days; the vast majority (approximately 80%) of the billings occurring prior to the end of the campaign.

Third, the Audit staff's review of the travel in the primary and general periods indicated, that contrary to the General Committee's contention, there were Press organizations that flew with the campaign only during either the primary or general periods. This leaves open the possibility that some Press organizations may have subsidized the General Committee as a result of its billing method.

Finally, the Audit staff believes the issue is not the reasonableness of the method, but the impermissible result. The General Committee believes the billing amounted to nothing more than an imbalance in collections from Press between the primary and general periods which could easily be resolved, if required, by a transfer to the Primary Committee. The Audit staff maintains the General Committee's billing calculations resulted in collecting more than was allowable for the general period which was the subject of the audit. As a result, the regulations prescribe that the over collection be refunded pro rata to the Press representatives.

Although the factors outlined by the Audit staff above support its methodology as appropriately applied to the general period, in consultation with the Office of General Counsel, it was concluded that further consideration should be given to different billing methods. It was determined that while the General Committee and the Audit Division may have had different methods for calculating the billing to the Press, it appears no material harm was caused by the General Committee's method in terms of 1) the Press materially subsidizing the campaign, 2) the General Committee exceeding the expenditure limitation, or 3) the Primary Committee financing the General Committee.

According to the General Committee, the billing imbalance between the primary and the general for press travel resulted from the inherent complexity created by having a single air charter contract that spanned the primary and general election periods. Lacking prior guidance, the General Committee chose an accounting method for the calculation of travel costs that evolved over time. This evolution of their methodology contrasted with the Audit staff belief that the assignment of cost for air charters, even in the case of a single contract over two periods, need not be burdensome or confusing. Only those costs, paid in the respective election period, should be applicable to the calculation of amounts attributable to and billable to the traveling press in the same election period. In instances where a credit originating from the prior period is applied in a latter period, a corrective adjustment may be required. However, in view of the fact that the regulations do not specify a particular methodology and only require that no more than 110 percent be collected for reimbursed travel, the Audit staff concedes that General Committee may have employed what it believed to be a reasonable methodology. *See* 11 C.F.R. § 9004.6(b). It follows that the reimbursements collected may not have exceeded the allowable limit.

The Audit staff recommends that the Commission find the method of billing the Press during the campaign did not result in material harm.

#### **Proposed Finding on Failure to File 48-Hour Notices**

In response to both the Preliminary Audit Report and the Draft Final Audit Report, the McCain-Palin Compliance Fund, Inc. stated the failure to file 48-hour notices was due to an outside vendor's error. During the audit hearing, the McCain-Palin Compliance Fund, Inc. stated there was no factual dispute with the Audit staff and that the outside vendor miscoded the contributions. Therefore, the contributions were not included in the 48-hour reports filed by the McCain-Palin Compliance Fund, Inc. The McCain-Palin Compliance Fund, Inc. requested the Commission take no further action on this matter.

The Audit staff recommends that the Commission find that McCain-Palin Compliance Fund, Inc. failed to file 48-hour notices for contributions totaling \$240,700 that were received prior to the general election.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote.

In case of an objection, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Rickida Morcomb or Marty Kuest at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on McCain-Palin 2008, Inc. and McCain-Palin Compliance Fund, Inc.

cc: Office of General Counsel



# Draft Final Audit Report of the Audit Division on McCain-Palin 2008 Inc. and McCain-Palin Compliance Fund, Inc.

March 24, 2008 - December 31, 2008

## Why the Audit Was Done

Federal law requires the Commission to audit every political committee established by a Presidential candidate who receives general funds for the general campaign.<sup>1</sup> The audit determines whether the candidate was entitled to all of the general funds received, whether the campaign used the general funds in accordance with the law, and whether the campaign otherwise complied with the limitations, prohibitions, and disclosure requirements of the election law.

## Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

## About the General Committee

McCain-Palin 2008 Inc. (General Committee) is the principal campaign committee for Senator John S. McCain, the Republican Party's nominee for the office of President of the United States. The General Committee is currently headquartered in Washington, DC. For more information, see the chart on Campaign Organization, p. 2.

## Financial Activity of the General Committee

• Receipts	
○ Federal Funds Received	\$ 84,103,800
○ Offsets to Operating Expenditures	9,318,570
○ Loans Received	17,076,880
○ Other Receipts	1,154,733
○ Total Receipts	\$ 111,653,983
• Disbursements	
○ Operating Expenditures	\$ 92,083,836
○ Loan Repayments	17,076,880
○ Other Disbursements	1,491,107
○ Total Disbursements	\$ 110,651,823

## Finding and Recommendation for the General Committee (p. 5)

- Campaign Travel Billing for Press

<sup>1</sup> 26 U.S.C. §9007(a).

## About the Compliance Fund

The McCain-Palin Compliance Fund, Inc. (Compliance Fund) was established pursuant to 11 CFR §9003.3(a)(1)(i). The Compliance Fund accepts contributions to be used solely for legal and accounting services to ensure compliance with the Federal Election Campaign Act (the Act). These contributions include the Compliance Fund's share of contributions from affiliated joint fundraising committees. The Compliance Fund is currently headquartered in Washington, DC. An overview of financial activity for the Compliance Fund is presented below.

## Financial Activity of the Compliance Fund

- **Receipts**

○ Contributions	\$ 9,679,490
○ From Other Authorized Committees	25,046,453
○ Offsets to Operating Expenditures	1,131,139
○ Other Receipts	12,471,782
○ <b>Total Receipts</b>	<b>\$ 48,328,864</b>

- **Disbursements**

○ Operating Expenditures	\$ 11,675,642
○ All Other Disbursements	13,112,237
○ <b>Total Disbursements</b>	<b>\$ 24,787,879</b>

## Finding and Recommendation for the Compliance Fund (p. 5)

- Failure to File 48-Hour Notices

## About Joint Fundraising Committees

This audit included seven joint fundraising committees. Each of the joint fundraising committees is headquartered in Alexandria, Virginia and was an authorized committee of the candidates, John McCain and Sarah Palin. The combined financial activity of these joint fundraising committees is presented below and the financial activity of each of these committees is presented on page 4.

## Financial Activity of the Joint Fundraising Committees

• <b>Receipts</b>	
○ Contributions	\$ 207,620,125
○ From Other Authorized Committees	812,325
○ Offsets to Operating Expenditures	159,926
○ <b>Total Receipts</b>	<b>\$ 208,592,376</b>
• <b>Disbursements</b>	
○ Operating Expenditures	\$ 30,374,903
○ All Other Disbursements	167,116,292
○ <b>Total Disbursements</b>	<b>\$ 197,491,195</b>

## Finding and Recommendation for the Joint Fundraising Committees (p. 5)

Based on the limited examination of the reports and statements filed and the records presented by the seven joint fundraising committees, the Audit staff did not discover any material non-compliance.

**Draft Final Audit Report of the  
Audit Division on  
McCain-Palin 2008 Inc. and  
McCain-Palin Compliance Fund,  
Inc.**

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March 24, 2008 – December 31, 2008

**DRAFT**



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# Part I

## Background

### Authority for Audit

This report is based on audits of McCain-Palin 2008 Inc. (General Committee), McCain-Palin Compliance Fund, Inc. (Compliance Fund), and seven joint fundraising committees affiliated with the Compliance Fund, undertaken by the Audit Division of the Federal Election Commission (the Commission) as mandated by Section 9007(a) of Title 26 of the United States Code. That section states that “after each presidential election, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of the candidates of each political party for President and Vice President.” This includes joint fundraising committees authorized by the candidates. Also, Section 9009(b) of Title 26 of the United States Code states, in part, that the Commission may conduct other examinations and audits as it deems necessary.

### Scope of Audit

The audits of the General Committee and Compliance Fund examined:

1. the receipt of excessive contributions and loans;
2. the receipt of contributions from prohibited sources;
3. the receipt of transfers from other authorized committees;
4. the disclosure of contributions and transfers received;
5. the disclosure of disbursements, debts and obligations;
6. the recordkeeping process and completeness of records;
7. the consistency between reported figures and bank records;
8. the accuracy of the Statement of Net Outstanding Qualified Campaign Expenses;
9. the campaigns’ compliance with spending limitations; and
10. other campaign operations necessary to the review.

The audits of the seven joint fundraising committees affiliated with the Compliance Fund examined:

1. the receipt of excessive contributions and loans;
2. the proper allocation of contributions among joint fundraising participants;
3. the proper allocation of expenses and net amounts transferred to the Compliance Fund; and
4. the consistency between reported figures and bank records.

### Inventory of Records

The Audit staff routinely conducts an inventory of campaign records before it begins the audit fieldwork. The records for each of the audited committees were complete and the fieldwork began immediately.

## Part II

### Overview of Campaign

#### Campaign Organization

	General Committee	Compliance Fund
<b>Important Dates</b>		
• Date of Registration	08/12/08	02/25/08
• Audit Coverage Dates	09/01/08 thru 12/31/08	03/24/08 thru 12/31/08
<b>Headquarters</b>	Washington, DC	Washington, DC
<b>Bank Information</b>		
• Bank Depositories	Three	Four
• Bank Accounts	Eight Bank Accounts	Eight Bank Accounts
<b>Treasurer</b>	Salvatore A. Pupura (08/12/08 – 08/18/08); Joseph Schmuckler (08/19/08 – Present)	Salvatore A. Pupura (02/25/08 – 03/20/08); Joseph Schmuckler (03/21/08 – Present)

#### Joint Fundraising Committees

Of the seven joint fundraising committees, four registered with the Federal Election Commission in April 2008 and three registered in August 2008. These committees are headquartered in Alexandria, Virginia and Lisa Eisker is the Treasurer for each committee. Each of six joint fundraising committees maintained a single bank account, and the seventh joint fundraising committee maintained two bank accounts.

## Overview of Financial Activity

(Audited Amounts)

	General Committee	Compliance Fund
<b>Opening Cash Balance-</b>	\$0	\$0
<b>Receipts</b>		
• Contributions		\$9,679,490
• Federal Funds Received	\$84,103,800	
• From Other Authorized Committees		25,046,453
• Offsets to Operating Expenditures	9,318,570	1,131,139
• Loans Received	17,076,880	
• Other Receipts	1,154,733	12,471,782
<b>Total Receipts</b>	<b>\$111,653,983</b>	<b>\$48,328,864</b>
<b>Disbursements</b>		
• Operating Expenditures	\$92,083,836	\$11,675,642
• Transfers to Other Authorized Committees		222,502
• Loan Repayments	17,076,880	
• Refunds to Contributors		551,599
• Other Disbursements	1,491,107	12,338,136
<b>Total Disbursements</b>	<b>\$110,651,823</b>	<b>\$24,787,879</b>
<b>Closing Cash Balance @12/31/2008</b>	<b>\$1,002,160</b>	<b>\$23,540,985</b>

## Overview of Financial Activity

(Audited Amounts)

	McCain Victory 2008	McCain- Palin Victory 2008	McCain Victory Ohio	McCain- Palin Victory Ohio	McCain Victory California	McCain- Palin Victory California	McCain Victory Florida
	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	\$76,290,438	\$100,038,158	\$4,462,440	\$1,790,913	\$15,194,747	\$5,175,926	\$3,128,210
	\$603,884	\$529,183	\$82,850	\$42,000	\$200,795	\$49,581	\$31,000
	\$366,165	\$301,310	\$4,300	\$0	\$77,350	\$40,800	\$22,400
	\$14,402	\$102,077	\$100	\$0	\$41,983	\$270	\$1,094
	<b>\$77,274,889</b>	<b>\$100,970,729</b>	<b>\$4,549,690</b>	<b>\$1,832,913</b>	<b>\$15,514,875</b>	<b>\$5,266,576</b>	<b>\$3,182,704</b>
	\$7,400,078	\$18,988,527	\$499,768	\$283,642	\$1,705,448	\$895,640	\$606,800
1	\$66,642,154	\$74,097,252	\$3,597,748	\$1,418,627	\$13,154,796	\$3,871,179	\$2,326,750
	\$403,974	\$611,376	\$91,285	\$21,200	\$350,951	\$379,600	\$120,900
	\$28,500	\$0	\$0	\$0	\$0	\$0	\$0
	<b>\$74,474,706</b>	<b>\$93,692,155</b>	<b>\$4,188,801</b>	<b>\$1,723,469</b>	<b>\$15,211,195</b>	<b>\$5,146,419</b>	<b>\$3,054,450</b>
	<b>\$2,800,183</b>	<b>\$7,278,574</b>	<b>\$360,889</b>	<b>\$109,444</b>	<b>\$303,680</b>	<b>\$120,157</b>	<b>\$128,255</b>

## **Part III**

### **Summaries**

#### **General Committee**

##### **Campaign Travel Billing for Press**

The General Committee received reimbursements totaling \$344,892 from the Press for campaign travel, which was above the maximum amount billable to the Press. The Commission's regulations provide that a 10 percent markup on the actual cost of transportation and services may be billed to the Press. The General Committee stated that the excess reimbursement from the Press for travel was a misallocation of billing proceeds, requiring the General Committee to pay John McCain 2008, Inc. (the Primary Committee) for the excess funds collected.

In response to the Preliminary Audit Report, the General Committee maintained that it used a reasonable process for the allocation of Press reimbursements between the two committees that is consistent with Commission precedent as well as Generally Accepted Accounting Principles (GAAP). The General Committee also explained its contention that any apparent excess of Press reimbursements collected during the term of the contract could be corrected by making a payment to the Primary Committee. The General Committee requested that the Commission permit a transfer from the General Committee to the Primary Committee to resolve the matter. In the event that the Commission does not permit the transfer, the General Committee requests that it be allowed to disgorge the excessive Press reimbursements to the U.S. Treasury. The General Committee believes that the Commission should find that the Press reimbursements were correctly calculated resulting in no violation of the Act, and that the General Committee may terminate immediately. (For more detail, see p. 6.)

#### **Compliance Fund**

##### **Failure to File 48-Hour Notices**

The Compliance Fund failed to file 48-hour notices for 169 contributions totaling \$240,700 that were received prior to the general election. In response to the Preliminary Audit Report, the Compliance Fund explained that it had experienced a one-time data-management error with an outside vendor relating to the 48-hour notice requirement. The Compliance Fund has taken measures to ensure that this unintentional oversight was corrected. The Compliance Fund believes that the Commission should find there was no violation of the 48-hour notice requirement and that the Compliance Fund should be able to terminate immediately. (For more detail, see p. 19.)

#### **Joint Fundraising Committees**

Based upon the limited examination of the reports and statements filed, and the records presented by seven joint fundraising committees, the Audit staff discovered no material non-compliance. (For more detail, see p. 21.)

## Part IV

# Finding and Recommendation for the General Committee

### Campaign Travel Billing for Press

#### Summary

The General Committee received reimbursements totaling \$344,892 from the Press for campaign travel, which was above the maximum amount billable to the Press. The Commission's regulations provide that a 10 percent markup on the actual cost of transportation and services may be billed to the Press. The General Committee stated that the excess reimbursement from the Press for travel was a misallocation of billing proceeds, requiring the General Committee to pay John McCain 2008, Inc. (the Primary Committee) for the excess funds collected.

In response to the Preliminary Audit Report, the General Committee maintained that it used a reasonable process for the allocation of Press reimbursements between the two committees that is consistent with Commission precedent as well as Generally Accepted Accounting Principles (GAAP). The General Committee also explained its contention that any apparent excess of Press reimbursements collected during the term of the contract could be corrected by making a payment to the Primary Committee. The General Committee requested that the Commission permit a transfer from the General Committee to the Primary Committee to resolve the matter. In the event that the Commission does not permit the transfer, the General Committee requests that it be allowed to disgorge the excessive Press reimbursements to the U.S. Treasury. The General Committee believes that the Commission should find that the Press reimbursements were correctly calculated resulting in no violation of the Act, and that the General Committee may terminate immediately.

#### Legal Standard

**A. Expenditures for Transportation and Services Made Available to Media Personnel and Secret Service.** Expenditures by an authorized committee for transportation, ground services or facilities (including air travel, ground transportation, housing, meals, telephone service and computers) provided to media personnel, Secret Service personnel or national security staff will be considered qualified campaign expenses, and, except for costs relating to Secret Service personnel or national security staff, will be subject to the overall expenditure limitations of 11 CFR 9003.2(a)(1) and (b)(1). 11 CFR §9004.6.

**B. Billing Media Personnel for Transportation and Services.** The committee shall provide each media representative, no later than 60 days from the campaign travel or event, an itemized bill that specifies the amounts charged for air and ground transportation for each segment of the trip, meals and other billable items specified in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office. 11 CFR §9004.6(b)(3).

**C. Reimbursement Limits for Transportation and Services of Media Personnel.**

The amount of reimbursement sought from media personnel shall not exceed 110 percent of the media representative pro rata share (or a reasonable estimate of the media representative's pro rata share) of the actual cost of transportation and services made available. Any reimbursement received in excess of this amount shall be returned to the media representative. 11 CFR §9004.6(b) and (d)(1).

**D. Pro Rata Share Definition.** A media representative's pro rata share shall be calculated by dividing the total actual cost of the transportation and services provided by the total number of individuals to whom transportation and services were made available (to include committee staff, media personnel, Secret Service staff) 11 CFR §9004.6(b)(2).

**E. Administrative Costs for Transportation and Services of Media Personnel.** The committee may deduct from the amount of expenditures subject to the overall limitation the reimbursements paid by media representatives for transportation and services, up to the actual cost of the transportation and services provided to the media representatives. The committee may deduct an additional amount of the reimbursements received from media representatives, representing the incurred administrative costs of 3 percent. The committee may deduct an amount in excess of 3 percent representing the administrative costs actually incurred by the committee in providing services to the media, provided that the committee is able to document the total amount of administrative costs actually incurred.

For the purposes of the above paragraph, administrative costs include all costs incurred by the committee in making travel arrangements and seeking reimbursement, whether these services are performed by committee staff or independent contractors. 11 CFR §9004.6(c).

**F. Attribution of Travel Costs.** Expenditures for campaign-related transportation, food and lodging by any individual, including a candidate, shall be attributed according to when the travel occurs. If the travel occurs on or before the date of the candidate's nomination, the cost is a primary election expense. Travel to and from the conventions shall be attributed to the primary election. Travel by a person who is working exclusively on general election campaign preparations shall be considered a general election expense, even if the travel occurs before the candidate's nomination. 11 CFR §9034.4(e)(7).

**G. Travel Support Documentation.** For each trip, an itinerary shall be prepared and made available by the committee for Commission inspection. The itinerary shall show the time of arrival and departure and the type of events held.

For trips by government conveyance or by charter, a list of all passengers, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection. When required to be created, a copy of the government's or charter company's official manifest shall also be maintained and made available by the committee. 11 CFR §9004.7(b)(3) and (4).

**H. Assets Purchased from the Primary Election Committee.** If capital assets are obtained from the candidate's primary election committee, the purchase price shall be considered to be 60 percent of the original cost of such assets to the candidate's primary election committee. 11 CFR §9004.9(d)(1)(ii).

## **Facts and Analysis**

### **A. Facts**

In 2008, the Press covering the campaign of the Presidential candidate (John McCain) and the Vice Presidential candidate (Sarah Palin) travelled predominately on two aircraft chartered by the campaign. The aircraft for the Presidential candidate was the same aircraft used by John McCain 2008, Inc. (the Primary Committee) and was chartered through Swift Air, LLC (Swift Air). The aircraft for the Vice Presidential candidate was chartered through JetBlue Airways Corporation shortly before the Republican National Convention. The Press also occasionally travelled on aircraft chartered by the General Committee through CSI Aviation Services (CSI) and via ground transportation throughout the campaign.

As cited above, the amount of reimbursement sought from media personnel shall not exceed 110 percent of the media representative's pro rata share (or a reasonable estimate of the media representative's pro rata share) of the actual cost of transportation and services made available. Any reimbursement received in excess of this amount shall be returned to the media representative. 11 CFR §9004.6(b) and (d)(1).

The General Committee contends that it did not receive Press travel reimbursement above the 110 percent allowed by the regulations. The General Committee calculated total transportation costs for the Press to be \$4,509,658, equaling 106 percent of the cost calculated by the General Committee. The General Committee actually received \$4,476,728 from the Press as reimbursement for travel.

During fieldwork, the Audit staff calculated that the General Committee received Press travel reimbursement in excess of the 110 percent allowed by the regulations. The Audit staff calculated the total pro rata transportation cost for the Press to be \$3,756,215 and a maximum amount billable to the Press (110 percent of cost) of \$4,131,836.<sup>2</sup> Based on the Audit staff's calculation of transportation costs, the General Committee is required to refund to the Press \$344,892 (\$4,476,728 - \$4,131,836).

The main difference between the General Committee's figure and the Audit staff's figure is the calculation for total transportation costs. The General Committee disagreed with the Audit staff's cost calculation methods with respect to charter flights associated with the aircraft used by the Presidential candidate. The General Committee also did not agree with the Audit staff's initial application of aircraft reconfiguration costs.

<sup>2</sup> The General Committee billed at 106 percent, but was able to document administrative costs to allow billing up to 110 percent for all modes of transportation. In determining the amount billable to the Press, the Audit staff credited the General Committee for any under billing of the Press associated with any one aircraft or mode of transportation. In other words, any under billing of the Press for travel on the aircraft for the Vice Presidential candidate, CSI chartered aircraft, and ground transportation was applied to any overbilling of the Press that may have occurred for travel on the Presidential aircraft.

The Audit staff calculated transportation costs based on actual hours used only by the General Committee during the general campaign. The General Committee, in contrast, calculated transportation costs based on the life of the charter contract, which covered both the primary and general campaign periods.

#### ***Applying Cost on Aircraft for Presidential Candidate***

The Primary Committee and the General Committee chartered a Boeing 737-400 from Swift Air for use by the Presidential candidate. The Swift Air contract covered the period from June 30, 2008 through November 15, 2008. The contract stipulated payments totaling \$6,384,000 to be paid in 19 weekly installments of \$336,000. The contract covered nine weeks for the Primary Committee and ten weeks for the General Committee. The contract also required the General Committee and Primary Committee to pay costs for fuel, catering, passenger taxes, and ground handling fees. There was also an aircraft reconfiguration cost of \$650,000 that was paid initially by the Primary Committee. The General Committee correctly reimbursed the Primary Committee \$390,000 (\$650,000 less 40 percent depreciation) for these aircraft reconfiguration costs.

The contract allowed 22.4 flight hours per week, or a total of 425.6 flight hours for the life of the contract. If the full flight hours per week were not flown, the hours rolled over to subsequent week(s). If the contracted 22.4 flight hours per week were exceeded and no accumulated unused hours were available, there was a charge of \$15,000 per additional hour. Neither the Primary nor General Committee ever exceeded the 22.4 flight hours in a week. The General Committee used 140.3 flight hours and the Primary Committee used 111.8 flight hours during the contract.

The General Committee made its first weekly installment payment of \$336,000 on August 29, 2008, and made total payments of \$4,047,402 to Swift Air. This amount included charges for fuel, catering, passenger taxes, and ground handling fees.

For the first week of the campaign, the General Committee used the total cost of the contract (primary and general) and divided it by the remaining number of hours available under the contract, including unused hours paid for by the Primary Committee. Later weeks were calculated using the amount yet to be paid on the contract and dividing it by the estimated flight hours that would be used in the future, based on weekly averages. The calculation included reconfiguration costs. This method caused a fluctuation of the hourly charter rate calculated from as low as \$11,569 to as high as \$39,715. Using this rate, the segment cost was calculated and divided by the number of passengers.

The Audit staff calculated the charter rate per flight hour for Swift Air by taking the contract weekly installment (\$336,000) and dividing that by the actual weekly hours flown. The costs of fuel, catering, passenger taxes, ground handling, and certain reconfiguration costs were then added to determine the total segment cost. The cost per passenger was then calculated by dividing the total segment cost by the total number of passengers on the segment.

#### ***Applying Reconfiguration Costs***

The Audit staff and the General Committee did not initially agree on the amount of aircraft reconfiguration costs billable to the Press. Historically, the Commission has allowed the Press to be billed only for the aircraft reconfiguration costs that could

reasonably considered as having benefited the Press. The General Committee believes all costs for reconfiguring an aircraft at the beginning and at the end of the campaign should be considered when calculating the billable amount for the Press. The General Committee also stated that part of the aircraft reconfiguration cost was to bring the aircraft into compliance with Federal Aviation Administration safety standards that ultimately benefited the safety of all passengers including the Press.

### **B. Preliminary Audit Report & Audit Division Recommendation**

The issue of press travel reimbursement was presented at the exit conference. In response, the General Committee submitted the following points for the Commission's consideration.

#### ***Cost Calculation***

The General Committee made a comparison between the Swift Air contract, which spanned both the primary and general election periods, and similar aircraft contracts that were analyzed during previous presidential audits: Dole-Kemp in 1996, Bush-Cheney in 2000, and Kerry-Edwards in 2004. The General Committee specifically referenced the Audit staff's calculation of the hourly rate for each aircraft from the 1996 Dole-Kemp audit, which accumulated all operating costs and divided that total by the actual number of hours flown by each aircraft. By applying the same calculation to the entire amount of the Swift Air contract (\$6,384,000 divided by 252.1 hours flown), the General Committee contends that its cost calculations used for billing the Press were accurate.

The Audit staff agrees that if the General Committee was using the *total* Swift Air contract amount for both, the primary and general election periods, as well as the full aircraft reconfiguration costs, it did not receive travel reimbursement from the Press that exceeded the maximum allowed by the regulations. However, as in Dole-Kemp only those costs attributable to the General Committee should be used in determining the travel cost that the General Committee may bill to the Press. This conclusion is consistent with travel cost calculations in past presidential audits and is supported by 11 CFR §9034.4(e)(7), which states, in part, that expenditures for campaign-related transportation shall be attributed according to when the travel occurs. As in Dole-Kemp, the Audit staff used only the general election operating cost (\$4,047,402) and the actual weekly hours flown by the General Committee when calculating the billable cost to the Press. This is a more appropriate method when calculating costs and billing for campaign travel during the general election period.

The General Committee provided a spreadsheet that spanned the primary and general election periods and relied on adjusting the per-hour billing rates on a segment-by-segment basis due to using fewer flight hours than available in the Swift Air contract. The General Committee made the spreadsheet available to demonstrate that the Primary and General Committees' billing allocation was based on total costs (\$6,354,859) that were lower than the contract amount (\$6,384,000). The General Committee contends that no overbilling of the Press could have occurred since the difference (\$29,141) was never billed to the Press by the Primary committee during week eight. However, it appears that the General Committee did bill this difference to the Press<sup>3</sup>. Therefore, the

<sup>3</sup> During the second week of the general campaign, the General Committee calculated Press billing by using the total cost of the contract (\$6,384,000) and subtracting the amount of the contract already billed (\$2,140,752) to arrive at the remaining balance of the contract. The helicopter cost (\$29,141) was included

General Committee included the total contract amount in calculating the billing allocation.

The Audit staff used the weekly \$336,000 installment divided by the actual hours flown weekly during the general election period for billing calculations (plus the fuel, catering, taxes, and ground handling fees). The General Committee explained that the Audit staff's calculations had the benefit of hindsight because, due to the fast pace of the election campaign, the actual flying hours were unknown at the time of billing. Therefore, estimates of pro rata share had to be used in order to be in compliance with the regulations to bill media representatives within 60 days of travel. The General Committee believes that the Audit staff's methodology would be in conflict with 11 CFR §9004.6(b)(3), which says, in part, that media representatives should be given a bill that specifies amounts charged for air and ground for each segment.

The Audit staff's methodology does not conflict with 11 CFR §9004.6(b)(3), given that the actual flight hours are known soon after flights occur and thereby fall within the required 60 days to provide the Press with an itemized bill that specifies the amounts charged for air transportation for each segment of the trip. It appears the General Committee invoiced the Press on average 12 days after completion of each travel week, allowing time to use the actual flight hours for the week. Other billable travel costs known at the time of billing also could have been added to determine the cost per passenger. This method would incorporate adjusting for weekly flight hours.

The General Committee also referenced the 2000 Bush-Cheney audit and explained that it used the same billing methodology and personnel in that audit, which did not include an adverse audit finding or any informal advice from the Audit staff suggesting that a correction to the accounting methods was necessary. The Audit staff acknowledges that the same billing methodology was used in 2000 Bush-Cheney; however, the amount of the overbilling of the Press was not material. Furthermore, there is no indication that the 2000 Bush-Cheney General Committee included costs associated with the Bush Primary Committee in the calculation of travel costs.

#### ***Generally Accepted Accounting Principles (GAAP)***

The General Committee explained several accounting principles and standards under GAAP to support its methodology for billing the Press. The General Committee believes that the Audit staff did not apply the appropriate accounting basis in its analysis. Specifically, the General Committee believes that the Audit staff incorrectly applied a cash-basis of accounting instead of an accrual-basis in its analysis of Press billing. Under cash-basis accounting, revenue is recorded when cash is received and an expense is recorded when cash is paid. In accrual-basis accounting, revenue is recognized when it is earned (or when services are performed) and expenses are recognized when they are incurred.<sup>4</sup> The General Committee contends that under accrual-basis accounting, the objective is to ensure that events that change an entity's financial statements are recorded in the periods in which the events occur, rather than only in the periods during which the entity receives or pays cash. The General Committee also contends that the matching

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in the \$2,140,752 already billed. The remaining balance of the contract was then divided by the average estimated flight hours remaining on the contract to determine the adjusted charter rate for the week.

<sup>4</sup> "Accounting Principles 7<sup>th</sup> Edition", Jerry J. Weygandt PhD, CPA, Donald E. Kieso PhD, CPA, Paul D. Kimmel PhD, CPA, page 90.

principle under GAAP dictates that expenses are recognized when the revenue is recognized, and therefore that the entire cost of the contract should be used when calculating billing for travel.

The Audit staff agrees that the matching principle dictates that expenses be recognized when the revenue is recognized. In turn, the revenue recognition principle recognizes revenue in the *period* in which it is earned. Since the *period* and activity audited was the general election period, the Audit staff correctly applied the \$4,047,402 cost for the general election portion of the Swift Air contract and related expenses.

The issue is not whether the cash or accrual-basis of accounting is applied to the transportation costs and revenue generated from billing the Press for travel; nor is there a question of the matching principle under GAAP. At issue is whether the activity of a separate reporting and corporate entity (the Primary Committee) should be recognized by the General Committee and by this audit. An underlying assumption in GAAP is that every entity is separate and, therefore, the revenues and expenses of each entity should be recognized as such. As previously noted, recognizing the activity of the two entities separately is further supported by 11 CFR §9034.4(e)(7), which states in part that expenditures for campaign-related transportation shall be attributed according to when the travel occurs. Therefore, the General Committee should recognize only those transportation costs from September 1, 2008, through November 4, 2008, in the calculation for billing the Press.

### ***Reconfiguration***

The General Committee believes that aircraft reconfiguration costs are a part of placing the asset in service and that the reconfiguration costs were included in the value of the asset when it was purchased from the Primary Committee. Therefore, the General Committee contends that all reconfiguration costs could be billed to the Press pro rata since the Press used the asset.

In response to the Exit Conference and after discussions with the Audit staff, the General Committee stated that all reconfiguration costs incurred, with the exception of decals and any item that benefited only campaign staff, such as divider-curtain expenses, should be included in the billable amount. After considering the General Committee's response, the Audit staff revised its calculation of aircraft reconfiguration costs billable to the Press. The Audit staff did not include costs for painting and applying logos totaling \$161,386 or the cost for a divider-curtain totaling \$1,167 in the calculation for billable reconfiguration costs since the General Committee indicated that these items benefited only the campaign. As a result, the Audit staff calculated \$487,447 (\$650,000 – \$161,386 – \$1,167) in reconfiguration costs billable to all travelers for both the primary and general periods. After subtracting 60 percent of the accepted reconfiguration cost because the asset was purchased from the Primary Committee, the Audit staff calculated \$292,468 (\$487,447 x 60%) of aircraft reconfiguration costs as billable during the general period. The Audit staff divided this amount by the total 140.3 flight hours flown by the General Committee to determine the amount of aircraft reconfiguration costs attributed to each segment.

### ***Other Considerations***

The General Committee stated that the Audit staff and the Commission have allowed for transfers and repayments between primary and general election presidential committees with respect to other types of vendors. The General Committee believes that any excess funds from the Press for travel are no different than deposits related to other vendors such as those for telephone contracts, media placement refunds, or lease agreements, for which repayments sometimes are necessary to ensure that a primary committee does not subsidize a general committee.

The General Committee also contends that it would not be reasonable to force campaigns to renegotiate and redraft every legal contract that exists to separate primary and general activity. To refund the Press would involve more than 700 separate billing transactions and it would “go against many of the internal ethics policies of the various news organizations...who are not allowed to receive passage at discounted rates on campaign transportation so as to not unduly influence their coverage of the candidates.”

The Audit staff acknowledges the administrative burden that may be involved with refunding the Press. Historically, the Commission has allowed refunds to the Press to be made on a pro rata basis, such as in the 1996 Dole-Kemp audit, rather than recalculating each billing to the Press. The General Committee’s alternative suggestion, refunding the Primary Committee, would be considered a non-qualified campaign expense subject to repayment. The regulations state that a general election committee cannot incur primary-related expenses because these expenses are not in furtherance of the general election. 11 CFR §9002.11(a).

The General Committee received reimbursements from the Press for campaign travel that were above the maximum amount billable to the Press. The Primary Committee appears to have billed an amount that was less than its cost. The Primary and General Committee each paid its share of the contract and billed the Press and Secret Service accordingly. Although the regulation limits how much can be billed, there is no requirement that any billing be made. Thus, the travel could be provided at no cost.

The General Committee is correct that there are transactions between the Primary and General Committees in many Presidential campaigns in which either the primary or general election is publicly funded. Assets, ranging from office equipment to service deposits to, as in this case, aircraft configuration, often are purchased. In each case, value is transferred between the two committees. For example, if the General Committee purchases security deposits, it gives cash for the right to continue the service and recover the deposit after the campaign. No such exchange is involved in the proposed transfer to the Primary Committee in this case.

The General Committee does not dispute that it received more reimbursements from the Press during the general election period, but the General Committee believes a more appropriate term is misallocation of Press travel reimbursement received between the General Committee and the Primary Committee. The General Committee’s methodology may accurately reflect the comparative actual use of the aircraft between the Primary (111.8 flight hours) and General Committees (140.3 flight hours), but it does not reflect the comparative actual costs paid by each committee. The General Committee did not

exceed the overall expenditure limitation, even with the excessive Press reimbursements. However, the purpose is to match the cost of the campaign to the proper election and spending limit. For these reasons and those noted above, the reimbursements totaling \$344,892 that the General Committee received from the press were above the maximum amount billable under the regulations.

The Preliminary Audit Report recommended that the General Committee demonstrate it did not receive reimbursements from the Press for campaign travel that were above the maximum amount billable. Absent such evidence, the General Committee was to return, on a pro rata basis, \$344,892 to Press representatives and provide documentation to support the refunds.

### **C. Committee Response to Preliminary Audit Report**

The General Committee submitted a response to the Preliminary Audit Report on December 20, 2011, which addressed the finding concerning Press reimbursement for travel. The General Committee argued that there was no "overbilling" because "the Primary Committee and the General Committee used a reasonable process to predict the allocation of Press reimbursements between the committees" that is "consistent with the Commission precedent as well as Generally Accepted Accounting Principles". The General Committee also argued that if there was a misallocation of Press reimbursement between the two committees, a payment to the Primary Committee can correct it.

The General Committee discussed the validity of its approach to press billing. The General Committee maintained that because the contract with Swift Air for air travel spanned nine weeks of the Primary and ten weeks of the General campaigns, it was necessary to bill based on the entire cost of the contract. The General Committee also asserted that the Primary Committee and the General Committee "used a reasonable process to predict the eventual, proper allocation of press reimbursements between the General Committee and the Primary Committee." The General Committee described in some detail the difficulty encountered in the billing process due to the fact that while they knew what the total costs were for the combined period, they would not know how to apply the fixed costs until the contract was completed and the actual number of hours flown was known. Accordingly, the Primary Committee began billing at the rate of \$15,000 per flight hour, which would have been the actual contract price per hour had it flown all the hours provided for in the contract. By the time the billing began in the general election period, the General Committee had to face the fact that the total price of the contract less the total for flight hours billed to date required that the remaining hours to be flown would have to be valued at a higher rate in order to account for the remaining outstanding balance of the contract.

The General Committee stated the following:

"The Audit Division acknowledges that the Committees' method for predicting the proper allocation of Press reimbursements between the General Committee and the Primary Committee 'reflect[s] the comparative actual use of the aircraft between the Primary and General Committees...' The Audit Division nonetheless advocates a new, never-before-announced technique for calculating a travel segment's hourly rate, and by extension, the proper allocation of Press reimbursements: divide each weekly installment of the

\$6,384,000 Swift Air payment ‘divided by the actual weekly hours flown during the general election period...’”

“The Audit Division’s method is conveniently simple. But this simplicity is wrought by ignoring important realities about the Swift Air contract. For one, the Swift Air contract was jointly held by the Primary Committee and the General Committee. It spanned four months, straddling the divide between primary and general-election periods. The Committees and Swift Air intended this exact structure. A four-month contract held by two entities is manifestly different than a two-month contract held by one. The Audit Division, however, wants to now artificially bisect the Swift Air contract without even considering whether the parties would have structured two separate two-month contracts another way. For instance, the amount and frequency of the weekly installment payments might have been different, and the costs certainly would have been greater since a key factor in the cost of securing a dedicated aircraft is the lease’s duration. The Audit Division cannot disregard a contract’s fundamental elements without its analysis spinning into the realm of fiction.”

“The Audit Division also ignores that the Swift Air transaction was a fixed \$6,384,000 fee in exchange for up to 425.6 flight hours. The payment and the hours were divided into equal weekly installments, but a particular week’s fixed installment payment was *not* in exchange for that week’s flight hours. Dividing a week’s installment payment by the week’s actual flight hours therefore does not reflect what a travel segment’s hourly rate and “total actual cost” were. Yet the Audit Division does that very thing, presumably to simplify the hourly rate calculations since one uses only a week’s actual flight hours rather than waiting until the end of the contract to determine how many actual flight hours over which to spread the \$6,384,000 fixed fee. Simplicity is indeed attractive. It interferes with accurately calculating each travel segment’s “total actual cost” here, though.”

“The Committees’ calculation method for a travel segment’s hourly rate, on the other hand, does not rely on counterfactuals. It recognizes the Swift Air contract as it is, and in doing so, is more consistent with Commission precedent and with Generally Accepted Accounting Principles. The Primary Committee and the General Committee therefore used a reasonable process to predict the eventual proper allocation of Press reimbursements between the Committees.”

The General Committee then asserted that the calculation method used by the Committees is more consistent with Commission precedent. It defined Commission precedent by citing the methods used by three other campaigns, Dole – Kemp 1996, Kerry – Edwards 2004, and Bush – Cheney 2000, and maintaining that its method coincided closely with those of the campaigns cited. The General Committee contends that the Kerry-Edwards 2004 charter “straddled the primary- and general-election periods,” like the Swift Air contract. The General Committee also maintains that its methodology is more consistent with GAAP.

Further, the General Committee states that the Audit staff “relied on non-GAAP cash-basis accounting to estimate the fixed-expense share of each travel segment’s total actual

cost of the transportation” and points out, “The Commission has endorsed GAAP’s use in presidential campaign audits and cited GAAP to make an adverse audit finding against the Kerry-Edwards Campaign.”

The General Committee goes on to state:

“The Primary Committee and the General Committee used GAAP-compliant accrual-basis accounting to calculate the fixed-expense share of each travel segment’s “total actual cost of the transportation.” Accrual-basis accounting required that the Swift Air contract expenses (and offsets to those expenses in the form of Press reimbursements) were recognized as actual flight hours were used. A portion of the Swift Air contract’s fixed cost was assigned to each travel segment using a depreciation technique called the “units of production” method, which is expressed as  $\text{Cost} / \text{Estimated Units} = \text{Depreciation Per Unit Produced}$  (i.e.  $\$6,384,000 / \text{Estimated Flight Hours} = \text{Aircraft Hourly Rate}$ ). The “units of production” method was most appropriate here because the actual flight hours, and thus the actual contract costs, were not incurred ratably over the individual weeks of the contract.”

“By contrast, the Audit Division relied on non-GAAP cash-basis accounting to estimate the fixed-expense share of each travel segment’s “total actual cost of the transportation. The Audit staff used the weekly \$336,000 installment as the trigger for recording expenses (and offsets to those expenses in the form of Press reimbursements). Like all cash-basis accounting, this simplifies the hourly rate calculations since one uses only a week’s actual flight hours rather than waiting until the end of the contract to determine how many actual flight hours over which to spread the \$6,384,000 fixed fee. But again, like all cash-basis accounting, this does not offer a fully accurate picture of the transaction here because a week’s installment payment was *not* paid to Swift Air in exchange for that week’s installment of flight hours.”

The General Committee summarized its position on GAAP by stating, “...the calculation method used by the Primary Committee and the General Committee is more consistent with GAAP. The two Committees therefore used a reasonable process to predict the eventual proper allocation of Press reimbursements between the Committees.”

In the conclusion of its response, the General Committee offered its rationale in opposing the Audit staff’s position that a payment to the Primary Committee to correct the imbalance would constitute an impermissible use of public funding resulting in a non-qualified campaign expense subject to repayment. The General Committee makes four arguments.

1. Funds received under circumstances outside Part 9005 (concerning the general election public grant), such as Press reimbursements, are not similarly restricted and therefore their use is not restricted.
2. Because the primary campaign is long over, the General Committee will not actually incur any primary-related expenses. The transfer is simply to correct what the Audit Division views as the original “misdeposit”(sic) of Press reimbursements.

3. The transfer would not be a “non-qualified expense” because in the past, the Commission has repeatedly permitted transfers from publicly funded general-election committees to their affiliated primary-election committees to correct misallocation and similar issues.
4. Finally, a General-to-Primary Committee transfer should not be prevented under the Audit Division’s “non-qualified expense” rationale because the only reason for this misallocation issue is the Commission’s failure to provide guidance on how to prospectively calculate the fixed-cost portion of a particular travel segment’s “total actual cost of ... transportation.” The Primary Committee and the General Committee had no notice that they were not using the Commission’s preferred calculation method.

The Audit staff notes that the General Committee’s response to the Preliminary Audit Report concedes that an imbalance existed between the reimbursements it sought from the Press during the primary portion of the Swift Air contract and that sought during the period attributable to general portion. The imbalance resulted from the Primary Committee billing the Press for reimbursements at a lower hourly rate than actual cost would have suggested during the primary period. The Audit staff maintains that the amount represented by what the General Committee calls an “imbalance” actually represents the amount the General Committee overcharged the traveling Press during the general election period.

The Audit staff concedes that the General Committee’s explanation of the origin of the imbalance is accurate. It explains how the Primary Committee billed significantly less in the primary period, and the General Committee billed at a higher rate in the general period; this is essentially the problem. The General Committee over billed the Press during the general election by exceeding 110 percent of the actual reimbursable cost incurred for transportation.

The General Committee described the contract as a “fixed \$6,384,000 fee in exchange for up to 425.6 flight hours.” The duration of the contract was 19 weeks with nine weeks falling in the primary period and the last ten weeks in the general period. There were additional terms in the contract. The General Committee could fly up to 22.4 hours of flight time per week. Any additional hours flown would be billed at \$15,000 per hour. Should the General Committee use the entire allotment of 22.4 hours in a given week, it would be entitled to draw on any hours not used in a successive week. This issue never arose because neither campaign ever exceeded the weekly allotment of 22.4 hours.

The General Committee objected to the Audit staff’s calculation of fixed costs based only on the portion of the contract that applied solely to the general election period. The Audit staff notes that the only portion of the Swift Air contract for which the General Committee was responsible was the final ten weeks. The General Committee seemed to have understood that it was liable for the portion of the contract beginning in the contract’s tenth week because that is how the contract obligation was paid. The Primary Committee was not permitted to pay for any of the contract beyond its obligation because, in so doing, the Primary Committee would have made a contribution to the General Committee. This would not have helped the General Committee since it was

limited to the federal grant. The Audit staff necessarily focused on the fixed cost incurred and paid during the general election period.

The General Committee also objected to the Audit staff calculation of weekly fixed costs based on payments each week divided by the hours flown that week. The General Committee contention that “the payment and the hours were divided into equal weekly installments, but a particular week’s fixed installment payment was *not* in exchange for that week’s flight hours” does not square with the facts. Swift Air did intend that it be paid weekly for services provided under the contract, and it limited the services to be provided on a weekly basis to a maximum of 22.4 of flight hours. Swift Air charged the General Committee weekly for its services and monitored total use weekly to determine whether it had provided services beyond the number of hours prescribed in the contract. As a consequence, the Audit staff believes that its method of dividing the fixed payment by the number of hours flown provides a reasonable calculation of fixed weekly costs. Moreover, this method will associate the correct weekly hourly costs based on the campaign’s use each week.

The General Committee makes a case for its methodology being consistent with the past campaigns of Dole-Kemp 1996, Bush-Cheney 2000 and Kerry-Edwards 2004. The Audit staff notes that Dole-Kemp 1996 had a distinct contract for the general election and is not comparable to the problems of a contract spanning two elections as laid out by the General Committee. The audit of Bush-Cheney 2000 indicates that this committee did not materially overcharge the Press for campaign related travel. Finally, the General Committee cited the audit of Kerry-Edwards 2004<sup>5</sup> which found that the general campaign had received bankable flight hours that had been earned by the primary campaign. In this instance, the Commission determined that the general campaign should reimburse the primary campaign for these flight hours. The reimbursement was required to avoid a prohibited contribution from the primary campaign to the general campaign. Further, the Audit staff notes that the issue is not of methodology but of results. Committees are limited in the amount they may seek as reimbursement for travel provided to the Press. Once they establish administrative costs of ten percent of the total, they may receive reimbursement for no more than 110 percent of actual costs. The General Committee received reimbursements in total that exceeded 110 percent.

The General Committee objected to the Audit staff calculations based on the period of the contract that coincided with the general election. It maintained that by using these calculations, the Audit staff is resorting to (non-GAAP) cash-basis accounting. As outlined above, the focus of the review was necessarily the general election period. Within the general election period, the Audit staff matched, on a weekly basis, the services received with the contract cost paid. In summary, the amount the Press was overcharged is the difference between the maximum amount the Audit staff calculated as

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<sup>5</sup> The audit of Kerry-Edwards 2004 found no material non-compliance with press billing. Apart from the fact that the Kerry-Edwards 2004 charter contract spanned the primary and general election, there is little similarity between the two campaigns. The repayment of banked hours was unrelated to press billing in Kerry-Edwards 2004. Indeed, Kerry-Edwards 2004 recognized that the banked hours were appropriately an asset of the primary campaign and had calculated a repayment equal to 99 percent of the amount identified in the audit; this amount eventually was repaid.

appropriately billable and the reimbursements actually received in the general election period.

The General Committee made arguments for allowing a transfer to the Primary Committee to correct the imbalance. The Audit staff acknowledges that transfers were sometimes permitted between the primary and general committees in Presidential campaigns when it has been shown in the course of an audit that funds or obligations belonging to a primary or general committee were in the possession of the other. This is not the case in this instance.

The General Committee believes that the Commission should find that the Press reimbursements were calculated correctly, resulting in no violation of the Act, and that the General Committee may terminate immediately.

In the final analysis, the focus of the audit is the General Committee. As such, the Audit staff maintains that the General Committee received Press reimbursements during the general election campaign period, which in the aggregate exceeded the maximum allowed, and that the General Committee should return, on a pro rata basis, \$344,892 to Press representatives and provide documentation to support the refunds. Disbursement to the U.S. Treasury, however, may be acceptable if the General Committee is unable to reconstruct the precise amounts owed to Press representatives.

## **Part V**

# **Finding and Recommendation for the Compliance Fund**

### **Failure to File 48-Hour Notices**

#### **Summary**

The Compliance Fund failed to file 48-hour notices for 169 contributions totaling \$240,700 that were received prior to the general election. In response to the Preliminary Audit Report, the Compliance Fund explained that it had experienced a one-time data-management error with an outside vendor relating to the 48-hour notice requirement. The Compliance Fund has taken measures to ensure that this unintentional oversight was corrected. The Compliance Fund believes that the Commission should find there was no violation of the 48-hour notice requirement and that the Compliance Fund should be able to terminate immediately.

#### **Legal Standard**

**48-Hour Notification of Contributions.** An authorized committee of a candidate must file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate. 11 CFR §104.5(f).

## **Facts and Analysis**

### **A. Facts**

The general election was held on November 4, 2008. Contributions of \$1,000 or more received by the Compliance Fund between October 16, 2008, and November 1, 2008, required the filing of 48-hour notices (FEC Form 6 – 48-Hour Notice of Contributions/Loans Received). The Audit staff isolated 589 contributions, totaling \$871,260, which required the filing of these 48-hour notices. A review of these records identified 169 contributions, totaling \$240,700, for which the Compliance Fund failed to file the 48-hour notices.

### **B. Preliminary Audit Report & Audit Division Recommendation**

The Audit staff discussed this matter with Compliance Fund representatives at the exit conference and provided a schedule of the contributions requiring 48-hour notice filings. In response, Compliance Fund representatives stated that the matter had been addressed previously in a letter to the Reports Analysis Division and reiterated that “48-hour notices were not required for many of the identified contributions, as they were merely redesignations or reattributions that took place during the 48-hour notice reporting period.” Compliance Fund representatives also stated that “the Compliance Fund’s normal practice of filing a 48-hour notice was not followed for a remaining group of contributions, due to data-management errors made by its outside vendor. To elaborate, the Compliance Fund’s outside data-management vendor ‘tagged’ this group of contributions with an incorrect date in its database and consequently failed to locate the group in a subsequent, computerized search for contributions requiring a 48-Hour Notice. The Compliance Fund has now taken measures with this outside vendor to ensure that this unintentional oversight is corrected, and Compliance Fund staff believes that this was a one-time occurrence.”

Additionally, Compliance Fund representatives emphasized that “48-Hour Notices are intended to bring to light any last-minute contributions that a candidate might deploy for campaign-related activities, such as advertising and get-out-the-vote efforts, during an election’s final days. Donations to the Compliance Fund, however, may not be used for any candidate’s election and may only support legal and accounting services to ensure compliance with Federal law. It should also be noted that the Compliance Fund today maintains a balance of over \$20 million, meaning that these funds received shortly before the 2008 general election still have not been spent for any purpose. The Compliance Fund was therefore not in material violation of the 48-hour notice requirement when its reliance on an outside vendor caused it to delay disclosure of donations that would only fund lawyers’ and accountants’ legal compliance activities. For these same reasons, the Compliance Fund should not be fined for this vendor failure even if the Commission somehow finds that a technical infringement of the 48-hour notice requirement occurred.”

The Preliminary Audit Report recommended that the Compliance Fund provide:

- documentation to demonstrate that the contributions in question were included properly in 48-hour notices; or
- documentation establishing that the contributions were not subject to 48-hour notification; and/or
- any further written comments it considered relevant.

### **C. Committee Response to the Preliminary Audit Report**

In response to the Preliminary Audit Report, the Compliance Fund reiterated the arguments mentioned above concerning the filing of 48-hour notices. Specifically, the Compliance Fund maintained that the Commission incorrectly identified contributions that were redesignated during the 48-hour notice reporting period or refunded immediately following receipt. For other contributions, the Compliance Fund stated that it did not follow the normal practice of filing 48-hour notices due to data-management errors by its outside vendor. Furthermore, the Compliance Fund again stated that the funds received shortly before the 2008 general election still have not been spent for any purpose, and it reiterated its belief that 48-hour notices are intended to disclose any last-minute contributions that can be used for campaign-related activities and not for donations to the legal and accounting activities of the Compliance Fund.

The Audit staff acknowledges that the majority of 48-hour notices not filed were the result of a data management error as indicated by the Compliance Fund. It also noted, however, that none of the contributions it had identified were redesignated contributions.<sup>6</sup> Also, the contributions that the Compliance Fund identified in its response to the Preliminary Audit Report, at footnote 56, actually were received during the 48-hour notice period but refunded after the notice period (after November 1, 2008). As such, these contributions required a 48-hour notice.

## **Part VI Finding and Recommendation for the Joint Fundraising Committees**

Based upon the limited examination of the reports and statements filed and the records presented by the seven joint fundraising committees, the Audit staff discovered no material non-compliance.

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<sup>6</sup> The Compliance Fund's response to the Preliminary Audit Report mistakenly includes the example, at footnote 55, of a redesignated contribution from Eileen Kamerick on 10/23/08. This contribution, totaling \$1,500, was reported as a memo entry redesignation from the primary on the Compliance Fund's Post-General 2008 disclosure report and not included in the Audit staff's review of 48-hour notices. A subsequent credit card contribution made on the committee's website from Eileen Kamerick totaling \$1,000 on 10/29/08 was also reported on the Compliance Fund's Post-General 2008 disclosure report and was included in this review.

## Part VII Attachment

**McCain-Palin 2008 Inc.**  
**Statement of Net Outstanding Qualified Campaign Expenses**  
**As of December 4, 2008**  
**As Determined on December 31, 2011**

**Assets**

Cash in Bank		\$3,693,508	
Accounts Receivable:			
Due from the Compliance Fund	\$2,661,115		(a)
Due from the Primary Committee	\$339,056		
Due from Other Vendors	\$4,234,755		(b)
		\$7,234,926	
<b>TOTAL ASSETS</b>			<b>\$10,928,434</b>

**Obligations**

Accounts Payable:			
For Qualified Campaign Expenses		\$8,448,103	
Due to the Compliance Fund		\$100,107	
Due to the Primary Committee		\$167,828	
Payment to Press for Campaign Travel		\$344,892	(c)
Amount Due U.S. Treasury:			
Disgorgement of Interest Earned		\$58,319	(d)
Disgorgement of Stale-Dated Checks		\$2,882	(e)
Winding Down Costs:			
Actual: December 5, 2008 to December 31, 2011		\$1,806,303	(f)
<b>TOTAL OBLIGATIONS</b>			<b>\$10,928,434</b>
<b>NET OUTSTANDING QUALIFIED CAMPAIGN EXPENSES (DEFICIT)</b>			<b>(\$0)</b>

- (a) This amount represents repayments for expenditures paid by General, \$87,217 for Secret Service shortfall for campaign travel, \$76,841 for transfers, and \$2,399,908 for 5 percent allocable portion of media costs. A receivable for \$97,149 is due for compliance-related winding-down costs.
- (b) This amount represents Press and Secret Service receipts, media refunds through June 30, 2011, interest earned, capital assets sold, and capital assets in-house to be sold.
- (c) This amount represents payment due to Press as discussed in the Campaign Travel Billing for Press finding on page 7.
- (d) This amount represents a disgorgement made on Jan. 2, 2009 for interest.
- (e) This amount represents a disgorgement made on Jan. 2, 2010 for stale-dated checks.
- (f) The General Committee has not exceeded the winding-down cost limitation at 11 CFR §9004.11(b).