MH002825

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

April 15, 1992

MEMORANDUM

TO: FRED EILAND
CHIEF, PRESS OFFICE

FROM: ROBERT J. COSTA RJC 4-15-92
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT
ON AMERICANS FOR ROBERTSON, INC.

Attached please find a copy of the Final Audit Report on Amercians for Robertson, Inc., which was approved by the Commission on March 26, 1992.

Informational copies of the report have been received by all parties involved and the report may be released to the public.

Attachment as stated

cc: Office of General Counsel
Office of Public Disclosure
Reports Analysis Division
FEC Library

MH002769

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 7, 1992

Mr. Fred H. Shafer, Treasurer
Americans for Robertson, Inc.
c/o Vandeventer, Black,
Meredith & Martin
500 World Trade Center
Norfolk, VA 23510

Dear Mr. Shafer:

Attached please find the Final Audit Report on Americans for Robertson, Inc. The Commission approved the report on March 26, 1992.

In accordance with 11 C.F.R. §9038.2(c)(1) and (d)(1), the Commission has made an initial determination that the Candidate is to repay to the Secretary of the Treasury $388,543.78 within 90 days after service of this report July 9, 1992. Should the Candidate dispute the Commission's determination that a repayment is required, Commission regulations at 11 C.F.R. §9038.2(c)(2) provide the Candidate with an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice May 11, 1992, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 C.F.R. §9038.2(c)(3) permits a Candidate who has submitted written materials, to request an opportunity to make an oral presentation in open session based on the legal and factual materials submitted.

The Commission will consider any written legal and factual materials submitted by the Candidate within this 30 day period in making a final repayment determination. Such materials may be submitted by counsel if the candidate so elects. If the Candidate decides to file a response to the initial repayment determination, please contact Kim L. Bright-Coleman of the Office of General Counsel at (202) 219-3690 or toll free at (800) 424-9530. If the Candidate does not dispute this initial determination within the 30 day period provided, it will be considered final.

The Commission approved copy of the Final Audit Report will be placed on the public record April 13, 1992. Should you have any questions regarding the public release of this report, please contact Fred S. Eiland of the Commission's Press Office at (202) 219-4155 or toll free at (800) 424-9530. Any questions you may

have related to matters covered during the audit or in the report should be directed to Rick Halter of the Audit Division at (202) 219-3720 or toll free at (800) 424-9530.

Sincerely,

Robert J. Costa
Assistant Staff Director
for the Audit Division

Attachments:

Final Audit Report on Americans for Robertson, Inc.

cc: Reverend M.G. "Pat" Robertson
Gordon Robertson (copy includes Schedules re: States and Overall Limitations; NOCO Statement)

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION ON AMERICANS FOR ROBERTSON, INC.

I. Background

A. Overview

This report is based on an audit of Americans for Robertson, Inc. ("the Committee") to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act) and the Presidential Primary Matching Payment Account Act. The audit was conducted pursuant to 26 U.S.C. § 9038(a) which states that, "After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under Section 9037."

In addition, 26 U.S.C. § 9039(b) and 11 C.F.R. § 9038.1(a)(2) state, in relevant part, that the Commission may conduct other examinations and audits from time to time as it deems necessary, and to require the keeping and submission of any books, records, and information which it determines to be necessary to carry out its responsibilities.

The Committee registered with the Federal Election Commission on October 15, 1987. The Committee maintains its headquarters in Chesapeake, Virginia.

The audit covered the period from July 15, 1986 through May 31, 1988.1/ In addition, data relating to the Statement of Net Outstanding Campaign Obligations (NOCO) were reviewed through December 31, 1991.2/ The Committee reported an opening cash balance of $0, total receipts of $38,597,378.18, total disbursements of $38,520,419.63, and a cash balance of $76,958.55 on May 31, 1988. Under 11 C.F.R. § 9038.1(e)(4) additional audit work may be conducted and addenda to the report issued as necessary.

1/ This report does not address the matter included in MUR 2262 concerning the Committee not filing reports and statements on a timely basis.

2/ For the period September 1, 1988 through December 31, 1991, the review of activity relating to the NOCO was based on unaudited reported activity.

This report is based upon documents and workpapers which support each of the factual statements. They form part of the record upon which the Commission based its decisions on the matters in the report and were available to Commissioners and appropriate staff for review.

B. Key Personnel

The treasurers of the Committee from its inception to present are:

Mr. Edward Whelan from November 20, 1986 to November 4, 1987,
Mr. James Patterson from November 5, 1987 to March 2, 1988,
Mrs. Carol Simpson from March 3, 1988 to March 20, 1988, and
Mr. Fred Shafer from March 21, 1988 to present.

C. Scope

The audit included such tests as verification of total reported receipts, disbursements and individual transactions; review of required supporting documentation; analysis of Committee debts and obligations; review of contribution and expenditure limitations; and such other audit procedures as deemed necessary under the circumstances; except that as a result of the unavailability of persons knowledgeable of certain events which occurred during the audit period, coupled with the absence of sufficient competent evidentiary matter with respect to disbursements, receipts, state bank account activity, certain contracts and agreements apparently entered into by the Committee as well as other matters discussed in this report, the scope of the Audit staff's examination was limited.

II. Findings and Recommendations Related to Title 2 of the United States Code

A. Documentation For Receipts

Section 432(c) of Title 2 of the United States Code states that the treasurer of a political Committee shall keep an account of all contributions received by or on behalf of such political committee.

During our review of Committee bank accounts the Audit staff attempted to identify the source of funds deposited into the Committee's state bank accounts. According to Committee officials it was the Committee's policy that all funds [including contributions, refunds/rebates, etc.] were to be deposited at National headquarters and that only funds transferred from National headquarters accounts were to be deposited into state bank accounts. However, Committee officials did state that they were aware that in some instances contributions were deposited directly into state bank accounts.

The Audit staff identified deposits into state bank accounts totaling $561,452.39. After an extensive review of documentation made available with respect to these deposits, the Audit staff was able to identify the source of funds relative to $184,811.42 of the $561,452.39; however, the source of $376,640.97 in state bank account deposits could not be determined given the limited amount of information made available.

In the interim audit report, the Audit staff recommended that within 30 days of service of that report the Committee

- obtain information with which to determine the source of funds relative to the aforementioned $377,240.97 in deposits and provided same to the Audit staff; and
- file the appropriate amendment(s) to itemize, as required, the identification of the source of funds deposited.

In addition to requesting the documents from the Committee, the Commission at the same time subpoenaed from the banks involved, copies of deposit tickets and checks deposited. The information received as a result of these actions provided the Audit staff with the identification of the source of funds for all of the deposits mentioned above. A review of the deposit slips and checks did not reveal a material number of contributions which required itemization.

Recommendation #1

The Audit Staff recommends no further action on this matter.

B. Matters Referred

Certain matters noted during the audit were referred to the Commission's Office of General Counsel.

III. Findings and Recommendations Related to Title 26 of the United States Code

A. Calculation of Repayment Ratio

Section 9038(b)(2)(A) of Title 26 of the United States Code states that if the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than to defray the qualified campaign expenses with respect to which such payment was made it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

The regulations at 11 C.F.R. §9038.2(b)(2)(iii) state that the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total amount of deposits of contributions and matching funds, as of the candidate's date of ineligibility.

The formula and the appropriate calculation with respect to the Committee's receipt activity is as follows:

Total Matching Funds Certified through the date of Ineligibility - 4/28/88

Numerator plus Private Contributions Received through 4/28/88

$$\frac{\$8,620,257.45}{\$28,250,010.16} = .305142$$

Thus, the repayment ratio for non-qualified campaign expenses is 30.5142%.

B. Apparent Non-qualified Campaign Expenses

Section 9038(b)(2) of Title 2 of the United States Code states in part that if the Commission determines that any amount of any payment made to a candidate from the matching payment amount was used for any purpose other than to defray the qualified campaign expenses with respect to which such payment was made it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

Under 11 C.F.R. §9038.2(b)(3), failure to provide adequate documentation in accordance with 11 C.F.R. §9033.11(a), may result in a Commission determination that the undocumented expenditures are non-qualified campaign expenses subject to repayment.

Sections 9034.4(b)(3) and 9034.4(a)(3) state in relevant part, that expenses incurred after the candidate's date of ineligibility, are not qualified campaign expenses except to the extent, they are costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign.

Section 9033.11(a) states in relevant part that the committee shall obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee as provided in 11 CFR 9033.11(b).

1. Payment of Penalties and Post Ineligibility Expenses

During the course of the Audit staff's review of expenditures, it was noted that the Committee and its agent made 13 expenditures totaling $88,894.29 for other than qualified campaign expenses. Nine of the expenditures involved payments for tax penalties to the Federal government and several local governments. The remaining four expenditures appear not to be valid winding down costs or payments of an expense incurred prior to the date of ineligibility. The Audit staff provided the Committee with a copy of a schedule detailing 11 of the 13 expenditures, totaling $72,078.67, at the exit conference. The Committee did not make any comments relative to the matter mentioned above.

The recommendation contained in the interim audit report advised the Committee that absent a showing to the contrary, within 30 calendar days of service of this report, the Audit staff will recommend that the Commission make an initial determination that the expenditures totaling $88,894.29 be viewed as non-qualified campaign expenses and a pro rata portion, $27,532.70 ($88,894.29 x .309724), be repaid to the United States Treasury pursuant to 26 U.S.C. §9038(b)(2).

The Committee, in its response to the interim audit report, stated that it had no choice but to pay tax penalties and interest when tax payments, due to lack of cash flow, were not paid timely. The Committee noted that the "IRS Code admits no latitude upon that ground." The response then notes that "it goes against common sense to require AFR [the Committee] to pay funds to the U.S. Treasury because AFR had to pay penalty and interest to I.R.S. If AFR had not paid these amounts, a branch of the federal government would be seeking payment. Since AFR did pay these amounts, another branch of the U.S. government is objecting."

In the opinion of the Audit staff, the Committee's argument is not persuasive. The Commission's regulations at 11 C.F.R. §9038.2(b)(2) provide that the payment of fines or penalties resulting from a violation of state or federal law is an example of a non-qualified campaign expense, the pro rata portion of which the Commission may determine is subject to repayment under 26 U.S.C. §9038(b)(2). No "credit" or "allowance" is or should be acknowledged relative to the payee receiving a payment determined to be a non-qualified campaign expense.

Finally, the Committee elected to address two payments, totaling $16,815.62, for the purchase of buttons, bumper stickers, etc., under its response to Finding III.B.2. which addresses expenses associated with the Republican National Convention. Accordingly, these items are addressed at Finding III.B.2.; the 11 items, totaling $72,078.67 ($88,894.29 less $16,815.62), are detailed at Attachment #1.

Recommendation #2

On March 26, 1992, the Commission made an initial determination that $72,078.67 in tax penalties and payments not related to winding down activities are non-qualified campaign expenses and that the Committee make a pro rata repayment to the United States Treasury of $21,994.23.

2. Expenses Paid Relative to the Republican National Convention

According to Committee officials, the candidate and staff attended the Republican National Convention in New Orleans, Louisiana during the week of August 14, 1988. The Committee maintained a file of paid expenses related to the convention. The Audit staff's review of the file disclosed expenses for air fares, hotel rooms, equipment rentals, car rentals, food purchases, phone banks and the cost of decorating and renting a hospitality center. The total amount of these expenditures was $57,666.39. Of this total, $6,738.25 was spent for travel, $1,766 for phone workers' salaries, and the remaining $49,162.14 for hotel rooms and other services.

At an interim conference on 9/1/88, the Committee's campaign director stated that these expenditures were made for Delegate maintenance. However, the Committee did not make any response to this matter, when it was presented at the exit conference.

The reference, made by the campaign director, to "delegate maintenance" is not, in the Audit staff's opinion, sufficient to transform the aforementioned convention related expenses/non-qualified campaign expenses to valid winding down costs.3/

The recommendation contained in the interim audit report advised the Committee that absent a showing to the contrary, within 30 calendar days of service of this report, the

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3/ In the previous election cycle, the Commission made repayment determinations and obtained repayments relative to convention related expenses incurred and paid by candidates who had withdrawn or had become ineligible by operation of 11 C.F.R. §9033.5.

Audit staff will recommend that the Commission make an initial determination that the expenditures totaling $57,666.39 be viewed as non-qualified campaign expenses and a pro rata portion, $17,860.66 ($57,666.39 x .309724), be repaid to the United States Treasury pursuant to 26 U.S.C. §9038(b)(2).

The Committee's response to the interim audit report, dated June 25, 1990, contained the following discussion:

> "AFR needed to have a presence at the Republican National Convention in New Orleans during the week of August 14, 1988 in order to aid its fundraising efforts to retire debt. At times during this campaign, negative press reports had a substantial impact not only on the candidate's popularity but also on contributions. Following Super Tuesday, contributions fell off dramatically. AFR contends that this fall off in contributions was not only due to the candidate's loss of Super Tuesday but also was due to extremely negative press coverage. As a result, it was critically important that the campaign have a presence in New Orleans and a hospitality center for delegates committed to Pat Robertson, in order to have demonstrations on the floor of the convention during Pat Robertson's prime time speech to the Convention. AFR has copies of the videotape of this speech which clearly shows that the efforts of AFR were successful in creating an overwhelming reception for Pat Robertson on the convention floor. The speech and the presence of the campaign staff during the Convention created positive press reports, positive relations with key members of the Republican Party and ameliorated the negative image of the campaign's candidate. These efforts had a direct impact on the Committee's ability to raise funds as shown by the success of the Response Media fundraisers. In July 1988, AFR raised $42,650 through direct mail. In contrast, August of 1988 yielded $127,347. Without the expenditures at the Convention, and attendant favorable publicity, the Response Marketing fundraising letters being mailed contemporaneously with attendance at the Convention would have failed. Accordingly, the Commission should view these expenditures as being legitimate wind down campaign expenses."

As noted above, the Committee attempts to portray the candidate's and his staff's attendance at the Convention as being instrumental with respect to the Committee's ability to

raise funds, and thus concludes that the expenses, totaling $74,482.01, should be viewed as legitimate winding down expenses. The Audit staff disagrees.

First, the Audit staff questions whether a causal relationship could exist in light of the candidate's situation at the time of the Convention. He had been out of the nominating process since at least April 28, 1988, date of ineligibility. Further, the figures provided in the response are not accurate, according to a recap of the mailings in question provided to the Audit staff by the Committee during fieldwork. Briefly, the response states that the Committee raised $42,650 in July and $127,437 in August through direct mail. According to the recap of Response Marketing mailings, the Committee raised approximately $131,000 in July as a result of a 154,700 piece mailing, dated July 18, 1988. That same mailing produced an additional $208,859 through August 17, 1988.

The second mailing, referred to as contemporaneous with the candidate's attendance at the Convention, which was a follow-up to the same 154,700 addressees and included the same letter as sent on July 18, 1988, raised $140,000 between August 18 and August 31, 1988, and approximately $55,000 during the period September 1 to September 20, 1988. Said another way, direct mailing receipts through August 17, 1988 totaled approximately 340,000 while receipts for the period August 18 through September 20, 1988 totaled $244,000, according to the recap. The increase suggested in the response, expressed in dollars raised, is threefold, whereas a decrease[4/] of about 28% occurred. Further, the actual response rate (number of pieces) was 6.63% through August 17, 1988 and 5.15% after August 18, 1988.

In summary, the figures presented above, in the Audit staff's opinion, demonstrate sufficiently that no significant relationship appears to have existed as asserted by the Committee. The dollars raised through August 17, 1988 from the July 18, 1988 mailing, when compared to the dollars raised from the August mailing, do not support the Committee's position.

Recommendation #3

On March 26, 1992, the Commission made an initial determination that $74,482.01[5/] in convention related expenses are non-qualified campaign expenses and that the Committee make a pro rata repayment to the United States Treasury of $22,727.59.

4/ The Audit staff does not know the source of the Committee's figures nor do we know the quality of the mailing list used.

5/ $57,666.39 plus $16,815.62 transferred from Finding III.B.1. (refer to Attachment #2 for a list of the expenses in question).

3. MEM & Associates, Inc.

MEM and Associates, Inc. ("MEM") is a Texas based company which received approximately $1.57 million in payments from the Committee. The Audit staff found that invoices supporting $1,341,998.15 in expenditures made to MEM were not sufficiently detailed to identify the services provided to the Committee. In addition, no invoices were made available relative to $20,766.09 in payments.

The information made available during fieldwork generally consisted of a one page, brief summary which included an explanation in very general terms concerning the work performed. None of the documentation furnished by the Committee provided any discernible information pertaining to a program(s) or project(s) performed by MEM on behalf of the Committee. According to the Committee, services performed by MEM included key punching, list preparation, and operation of phone banks. However, neither Committee officials nor the information prepared by MEM provided the identification of specific phone banks, specific lists prepared, or the extent of key punching work performed.

Also according to the Committee there were no written agreements or contracts between MEM and the Committee. However, it should be noted that the Audit staff did locate a memorandum, dated 11/7/86, which includes a reference to a written contract between MEM and the Committee. Committee officials responded at the exit conference that they could not explain the reason(s) for the reference to a written contract in the memorandum, and restated their position that no written contract existed between MEM and the Committee.

It is the Audit staff's opinion that expenditures made on behalf of the Committee by MEM should be documented in a manner sufficient to make a determination that the services provided were in connection with the candidate's campaign for nomination and thus the payments made by the Committee represent qualified campaign expenses. Therefore, the Audit staff is not in a position to state that the expenditures in question are qualified campaign expenses. In addition, a definitive assessment can not be made as to whether these expenditures require allocation to a state(s) expenditure limit at this time.

The Audit staff, in the interim audit report, recommended that within 30 calendar days of service of the interim report the Committee provide documentation with respect to the following:

- all programs and projects implemented by MEM on behalf of the Committee;
- total cost associated with each program and project;

- methods, if any, of identifying allocable expenses to a given state spending limit; and

- accounting records which document all transactions between MEM and the Committee to include but not limited to dates of incurrence of expenses on behalf of the Committee, dates on which payments were received from the Committee. This documentation is to be in sufficient detail to reference to MEM invoices submitted to the Committee.

The Audit staff also noted that further recommendations will be made after review of the information requested, which may include a recommendation(s) concerning repayment(s) pursuant to 26 U.S.C. §9038(b)(2).

In response to action taken by the Commission relative to the interim audit report, the Audit staff obtained additional records from the Committee and via subpoena from MEM. Records provided included photocopies of (1) a contract between MEM and the Committee, (2) invoices and correspondence, (3) deposit tickets prepared by MEM, and (4) samples of apparent voter lists prepared by MEM. Based on the Audit staff's review of these materials, as well as materials obtained during audit fieldwork, the disbursements noted as undocumented in the interim report are now considered documented for purposes of 11 C.F.R. §9033.11. Services provided by MEM (i.e., phone banks and mailings) which relate to the allocation of expenditures to states are discussed at Finding III.C. below.

Recommendation #4

The Audit staff recommends no further action regarding the issues presented above.

4. Undocumented Transfers of Funds from National Accounts

The Audit staff attempted to trace all National Account disbursements identified as transfers of funds to Committee bank accounts maintained by state offices. Our review identified eight of these apparent transfers totaling $18,008.00, which were not deposited to designated Committee state bank accounts.

Committee officials could not explain the discrepancy but stated that they would research the matter.

In the interim audit report, the Audit staff recommended that absent a showing to the contrary within 30 calendar days of service of the interim report, the Audit staff will recommend that the Commission make an initial determination

that the eight untraceable transfers, totaling $18,008.00, be viewed as non-qualified campaign expenses, and the pro rata portion $5,577.51 ($18,008.00 x .309724) be repaid to the United States Treasury pursuant to 26 U.S.C. §9038(b)(2).

In response to the interim report, the Treasurer stated that the Committee is requesting photocopies of the above mentioned transfers of funds from its bank. When received, the Committee will try to track down these expenditures in an effort to show that they are qualified campaign expenses. To date no additional information has been provided by the Committee.

Information obtained by the Audit staff relative to Finding II.A. was reviewed and a transfer of funds of $1,000 was noted as having been deposited into one of the Committee's state bank accounts. Thus, the amount now considered as undocumented equals $17,008.00 (see Attachment #3).

Recommendation #5

On March 26, 1992, the Commission determined that $17,008.00 in undocumented apparent transfers are non-qualified campaign expenses, the pro rata portion ($5,189.86) of which is repayable to the United States Treasury pursuant to 26 U.S.C. §9038(b)(2).

5. International Cassette Corp.

During the Audit staff's review of expenditure documentation relative to the International Cassette Corporation (ICC), it was noted that a $25,000 credit representing royalty payments due the candidate was applied towards an outstanding balance due ICC. The letter, which is signed by a "Rocky" Earl George, Jr., also states that the amount the Committee owes is $41,886.93 and as a result of applying the $25,000 credit and the Committee's payment of the balance $16,886.93, 241,000[6/] tapes would be released for shipping. The Committee disclosed the $25,000 credit as a loan from the candidate in its March 1988 monthly report and subsequently paid the candidate $25,000 on April 18, 1988 which was reported as a loan repayment.

Our review of the Committee's contributions data base indicates that the candidate did not contribute any additional funds to the Committee.

The Audit staff's review indicated that during the period, ICC billed the Committee $742,042.11 and the Committee

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6/ Annotated amounts written in letter, original typed amounts were $53,386.93, $28,386.93 and 266,000, respectively.

made $719,990.75 in payments and was credited with $25,000 from royalties due the candidate, resulting in an apparent overpayment of $2,948.34.

It is the opinion of the Audit staff that the transaction involving the $25,000 in royalty payments due the candidate, but applied towards the outstanding balance due ICC, is inadequately documented. Further, it appears that the Committee apparently overpaid ICC in the amount of $2,948.34.

In the interim audit report, it was recommended that the Committee within 30 days of service of the interim report provide the following:

- documentation which details the source of the $25,000 in royalty payments credited to the aforementioned outstanding balance. The documents should include but not be limited to all contracts between the candidate and ICC and the basis upon which the $25,000 was calculated.

- provide photocopies of all cancelled checks (front and back) issued by the Committee related to any transactions with ICC along with all invoices, bills, statements, correspondence and any other information related to all transactions between the Committee and the above named individual/firm.

In response to the interim report, the Committee made available all the documentation in its files relating to ICC along with all invoices, bills, statements, correspondence, and all cancelled checks issued to ICC. The Committee also provided an agreement, dated July 20, 1987, between the candidate and ICC in support of the $25,000 in royalty payments7/ related to the sale by ICC of a 6 audio tape set, entitled "Crisis in America."

A review of additional information obtained from ICC via subpoena indicated that there was no overpayment to ICC by the Committee.

Recommendation #6

The Audit staff recommends no further action be taken.

7/ According to the contract, the candidate was to receive $50,000 in advances which was to be offset by the first $50,000 worth of royalties, computed as follows: $0.50 per cassette on the first 100,000 copies of the programs sold, $0.60 per cassette on the next 50,000 copies, $0.70 per cassette on the next 50,000 copies, and $0.80 per cassette on all subsequent copies sold.

C. Allocation of Expenditures to States

Section 9035(a) of Title 26 of the United States Code states, in part, that no candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 441a(b)(1)(A) of Title 2.

Section 9038.2(b)(2)(i)(A) of Title 11 of the Code of Federal Regulations provides, in part, that the Commission may determine that amount(s) of any payments made to a candidate from the matching payment account were used for purposes other than to defray qualified campaign expenses. Section 9038.2(b)(2)(ii)(A) of Title 11 of the Code of Federal Regulations states that an example of a Commission repayment determination under paragraph (b)(2) of this section includes determinations that a candidate, a candidate's authorized committee(s) or agents have made expenditures in excess of the limitations set forth in 11 CFR 9035.

Section 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code provide, in part that no candidate for the office of President of the United States who is eligible under Section 9033 of Title 26 to receive payments from the Secretary of the Treasury may make expenditures in any one state aggregating in excess of the greater of 16 cents multiplied by the voting age population of the state, or $200,000.00 as adjusted by the Consumer Price Index.

Section 106.2(a)(1) states, in relevant part, that except for expenditures exempted under 11 C.F.R. 106.2(c), expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to a particular State shall be allocated to that State. An expenditure shall not necessarily be allocated to the State in which the expenditure is incurred or paid. In the event that the Commission disputes the candidate's allocation or claim of exemption for a particular expense, the candidate shall demonstrate, with the supporting documentation, that his or her proposed method of allocation or claim of exemption was reasonable.

Section 106.2(a)(2) states that disbursements made prior to the time an individual becomes a candidate for the purpose of determining whether that individual should become a candidate pursuant to 11 C.F.R. 100.7(b)(1) and 100.8(b)(1), i.e., payments for testing the waters, shall be allocable expenditures under this section if the individual becomes a candidate.

Section 106.2(b)(1) states that unless otherwise specified under 11 C.F.R. 106.2(b)(2), an expenditure incurred by a candidate's authorized committee(s) for the purpose of

influencing the nomination of that candidate in more than one State shall be allocated to each State on a reasonable and uniformly applied basis.

The Committee disclosed on FEC Form 3P, page 3, $429,669.92 in expenditures allocated to the New Hampshire limitation and $762,118.68 in expenditures allocated to the Iowa limitation as of 5/31/88. The Audit staff, based on the information provided by the Committee, was unable to determine within a material degree of certainty, the derivation of the amounts reported by the Committee as allocated to the New Hampshire and Iowa state limitations. Therefore, the Audit staff proceeded to develop its own calculation, utilizing certain amounts developed by the Committee, of expenditures allocable to the respective states' limitation. Specifically, the Audit staff determined the total amount of expenditures allocable to New Hampshire as $821,763.48 and with respect to Iowa, the amount allocable as $1,222,707.87, or $360,763.48 and $447,490.27 respectively in excess of the respective state limitation based on information provided during audit fieldwork.

The Committee did not maintain a general ledger, however a disbursement journal was available for our review. A test of the allocations contained in the disbursement journal revealed that the allocations were correct; therefore the disbursements journal was used as a base to determine expenditures allocable to Iowa and New Hampshire. To the disbursements journal total was added disbursements made from the state bank accounts maintained in Iowa and New Hampshire; allocable payroll disbursements from the Committee's payroll journal along with payroll taxes; allocable disbursements for media; allocable disbursements to a political voter contact firm; and finally allocable Committee payables.

Shown below is a recap of categories of allocable costs identified by the Audit staff which was contained in the interim audit report.

Expenditures Allocable to Iowa and New Hampshire State Limitations Audit Analysis as of 8/31/88 As Contained in Interim Audit Report.

	Category	Iowa	New Hampshire
1.	Disbursements Made from National Bank Accounts (excludes Media, payroll and Voter Contact Services, see below)	$ 79,039.68	$ 80,548.94
2.	Gross Disbursements Made from State Bank Accounts [exemption at 11 C.F.R. §106.2(c)(5) with respect to overhead not calculated.]	383,476.50	262,620.31
3.	Payroll Disbursements to Employees per Committee's Payroll Journal, [net of 11 C.F.R. §106.2(c)(5) exemption with respect to salary.]	171,437.02	113,240.44
4.	Payroll Taxes Paid to States	10,798.73	-0-
5.	Media Disbursements	514,344.93	211,565.27
6.	Voter Contact Services	-0-	133,252.47
7.	Direct Mail	50,136.62	
8.	Accounts Payable 8/31/88	13,474.39	20,536.05
	Total Allocable	$1,222,707.87	$821,763.48
	State Spending Limit	(775,217.60)	(461,000.00)
	Amount in Excess of Limit8/	$ 447,490.27	$360,763.48

8/ The figures calculated by the Audit staff were subject to adjustment due to (a) exemptions which may be claimed by the Committee, (b) identification of additional allocable amounts based on review of documentation (c) identification of liabilities not recognized by the Committee as of 8/31/88, and (d) additional information which may be submitted by the Committee in response to this Finding.

One area in which the Audit staff disagreed with the Committee's allocation calculation was the Committee's allocation of certain states' payroll and overhead expenses to regional offices. The Committee's allocation records indicated that the New Hampshire and Iowa state offices were viewed by the Committee as regional campaign offices. According to the Committee, the New Hampshire region consisted of New Hampshire, Vermont, Connecticut, the District of Columbia, Delaware, Maine, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island. The Iowa region consisted of Iowa, Illinois, Indiana, Michigan, Minnesota, Missouri, Ohio, South Dakota and Wisconsin. The Committee allocated payroll and overhead of the New Hampshire and Iowa offices to the respective states in the region based on a ratio of a given state's spending limit to the total of spending limits for all states in the region. For example the ratio used to allocate the New Hampshire region expenditures to the New Hampshire spending limit is 2.7%.

$$\frac{\$461{,}000 \text{ NH State limit}}{\$17{,}065{,}482.40 \text{ Sum of spending limits for all states in NH region}} = 2.7\%$$

The Audit staff could not find any evidence to support the Committee's assertion that the New Hampshire and Iowa offices functioned as regional offices. Committee officials could not identify any directors of the regional offices and there was no evidence that the various state offices in the region did not function independently. Except for Connecticut, Wisconsin and the District of Columbia, all of the state offices in the New Hampshire and Iowa regions maintained separate bank accounts. Also, activity in the so called New Hampshire and Iowa regional offices was minimal after February 1988 even though the primary elections relative to all of the other states in the regions were held thereafter. Committee officials had no comment regarding this matter.

Based on the review of the information made available, it was the opinion of the Audit staff that the New Hampshire and Iowa state offices did not function as regional offices; therefore the Audit staff included 100% of New Hampshire and Iowa payroll and overhead as allocable to the limits in those states.

In the interim audit report, the Audit staff recommended that within 30 calendar days of service of the report, the Committee provide information/documentation to demonstrate that the aforementioned states' expenditure limits were not exceeded, or exceeded to a lesser amount than shown and file amendments to its reports to reflect the correct amounts allocable to the New Hampshire and Iowa spending limits.

Following is a discussion of the Committee's response to the interim audit report:

1. REGIONAL OFFICES

In response to the interim audit report, the Committee provided an undated document entitled "AREAS COVERED BY REGIONAL POLITICAL DIRECTORS' which listed six different regions along with the names of the regional directors. According to this document it appears that New Hampshire was in the Northeast Region along with eleven other states and Iowa was in the Midwest Region with eight other states. Regarding the Northeast region, the Committee provided a number of memoranda authored by the regional director which indicate that he and his assistant's salaries should not be allocated 100% to New Hampshire since they spent time working in other states, including Iowa and other states outside of the Northeast region. The memoranda also mention that other staff members will be delegated to Rhode Island, Maine, and Massachusetts for a minimum of four days each month. The Committee also provided expense and month end reports which indicate that staff spent time in Rhode Island, Maine, and Massachusetts during 1987. Also provided were telephone bill pages showing itemized calls covering the period April 28, 1987 through December 27, 1987. The telephone bills reflect calls to numerous states both inside and outside the Northeast region. The Committee did not provide the summary pages of the bills, therefore it is not possible to determine where the telephones were located in New Hampshire. However, the billing account number does indicate that the bill is for service for a New Hampshire phone number.

Regarding the Midwest region, the Committee provided letters from five individuals who state that they traveled to other states to coordinate and help where necessary. Also provided were telephone bill pages showing itemized calls which covered the period December 1986, through December 1987, which, as in the Northeast region, contain calls to other states both inside and outside the region. Also, as in the Northeast region, the summary page of the bills were not provided, although the phone numbers do indicate service for an Iowa phone number.

Regarding the telephone bills provided, the Committee notes in its response that it established a national account with Sprint which was supposed to be used for interstate calls and therefore, interstate calls made at the Iowa and New Hampshire headquarters on the local carrier long distance line were against Committee policy. The Committee further states "while these calls are fortuitous for helping prove regional activity, they are necessarily sporadic due to campaign policy."

In the Audit staff's opinion, the telephone bills provided are not representative of the total calling activity of either "regional office".

The Committee's response also makes reference to Commission Audit staff workpapers which, they state, show significant activity in the regional offices after the Iowa caucus and New Hampshire primary. The workpapers referred to are schedules of disbursements from the Committee's disbursements journal which the Committee annotated in the journal as allocable to Iowa and New Hampshire. The majority of the disbursements represent payments of expense reimbursements to individuals. Although the payments were made after the dates of the Iowa caucus and New Hampshire primary, it is not known whether the expenses were incurred prior to the date of the caucus and primary.

It is the opinion of the Audit Staff that although the Committee has provided indications that some individuals' expenses which were originally allocated to the New Hampshire and Iowa limits may be inaccurate. No documentation has been provided in support of any revision. Further, the information provided by the Committee does not support the contention that the New Hampshire and Iowa offices performed the function of regional offices.

Therefore, the Audit staff has not adjusted the expenditures allocable to the New Hampshire and Iowa spending limits based on these offices being regional offices.

2. MEDIA ALLOCATION

In the response to the interim audit report, the Committee questioned an allocation of $12,840.00 for media purchased on a New Hampshire television station to the New Hampshire expenditure limitation. A review of the transaction discloses that the payment is allocable 100% to New Hampshire based on the allocation method used by the Committee's media firm.

As noted in the Committee's response the expenditures subject to the New Hampshire limit have been reduced by $7,731.00 representing the incorrect allocation of a payment on a media invoice.

3. VOTER CONTACT SERVICES

In the interim audit report the Audit staff identified additional allocations of $133,252.47 to the New Hampshire expenditure limit for voter contact services provided by MEM Associates (MEM). The amount was derived from two MEM invoices contained in the Committee's files which indicated a charge of $12,500.00 for phone deposits and $120,352.47 representing the costs of a mail drop.

In response to the interim audit report the Committee states that "The Commission has no documentation that the $120,352.47 'Budget' for voter contact services was ever paid.

MEM Associates submitted several budgets which were rejected by AFR. AFR cannot locate any payment to MEM Associates in this amount."

The Committee expended approximately $1.6 million to MEM during the period covered by the audit. Via subpoena from MEM the Commission received a detailed listing of costs incurred by MEM along with detailed invoices representing approximately $1.1 million in payments.

For the remaining approximately $.5 million in payments, invoices were provided, however, detail was not available from which the Audit staff could determine whether further allocations to Iowa or New Hampshire were necessary. Included along with the detailed invoices were two checks dated January 14, 1988, and January 19, 1988, in the amounts of $60,747.00 and $59,605.47 respectively which appear to be in payment of the $120,352.47 mail drop invoice noted above. The Audit staff also noted additional payments to MEM which represented services provided in New Hampshire which increase the amounts allocable to New Hampshire to a total of $274,229.30.

In addition, payments were identified for voter contact services provided by MEM in Iowa which represent an allocable amount of $87,291.34. The Audit staff has adjusted the expenditures allocable to Iowa and New Hampshire to reflect these amounts.

4. DIRECT MAIL

In the interim audit report the Audit staff identified an additional $50,136.62 allocable to the Iowa expenditure limit for direct mail services. The allocation was developed based on a review of incomplete documentation which was available to the Audit staff during the fieldwork.

The Committee did not provide any comments regarding this finding in its response to the interim audit report. Via subpoenas, the Commission received complete vendor documentation which included detailed invoices, cancelled checks, and contracts. Based on a review of this documentation the Audit staff determined that the amount allocable to the Iowa expenditure limit should be increased to $97,509.75. This amount represents payments for direct mail services provided within 28 days of the caucus and is chargeable the Iowa spending limitation under 11 C.F.R.§110.8(c)(2).

5. EXPENSE REIMBURSEMENTS

The Committee questions the allocation to Iowa of a $1,000.00 wire payment to an individual along with other payments which they indicate may be for activities performed in a state for less than five days. The $1,000.00 payment was a wire transfer to

an individual in Iowa for which the Committee could not provide any documentation. The remaining payments in question were payments to individuals for travel in New Hampshire and Iowa. A further review of these documents indicates that a payment totaling $741.13 which was included as allocable to New Hampshire in the interim audit report represented activity in the state for less than five days. The amount allocable to the New Hampshire expenditure limit has been reduced by this amount. The remaining payments all represent reimbursements for activity in excess of five days in a state. Since the Committee has not provided evidence that the $1,000.00 wire payment does not represent activity performed in a state for less than five days the amount remains allocable to Iowa.

In addition further documentation provided in response to the interim audit report relative to expense reimbursements disclosed an additional $27,733.05 allocable to Iowa and $3,021.77 allocable to New Hampshire.

Therefore, the Audit staff has increased the expenses allocable to those states by these amounts.

6. CASSETTE TAPES

In the interim audit report, the Committee was asked to provide documentation detailing the purchase and payment of audio cassette tapes from International Cassette Corporation. (See Finding III B.5.) In response to the interim audit report and a subpoena, the Committee and International Cassette Corporation provided respectively, along with other documents, detailed invoices relating to the purchase and shipment of the cassettes to various states. The Audit staff reviewed these invoices and identified additional costs allocable Iowa and New Hampshire. The Audit staff has increased the amounts allocable to the Iowa and New Hampshire expenditure limits by an additional $25,795.20 and $11,790.00 respectively.

Following is a revised schedule of expenditures subject to the Iowa and New Hampshire limits:

Americans for Robertson, INC
Revised Expenditures Allocable to Iowa and New Hampshire
Post Interim Report Response

DESCRIPTION	IOWA	NEW HAMPSHIRE
1. Disbursements Made From National Bank Accounts (Excludes Media, Payroll, and Voter Contact Services, See Below)	$ 79,039.68	$ 72,076.81
2. Gross Disbursements Made From State Bank Accounts (Exemption at 11 C.F.R. § 106.2 (c)(5) with respect to overhead not calculated)	383,476.50	262,620.31
3. Payroll Disbursements to Employees per Committee's Payroll Journal (Net of 11 C.F.R. §106.2 (c)(5) exemption with respect to salary)	171,437.02	113,240.44
4. Payroll Taxes Paid to States	10,798.73	-0-
5. Media Disbursements	514,344.93	211,565.27
6. Voter Contact Services (Finding III. C.3)	87,291.34	274,229.30
7. Direct Mail (Finding III. C.4)	97,509.75	-0-
8. Expense Reimbursements Not Allocated (Finding III. C.5)	27,733.05	3,021.77
9. Audio Cassette Tapes Not Allocated.(Finding III. C.6)	25,795.20	11,790.00
10.Payables at 8/31/88	13,474.39	18,564.54
Total amount chargeable	$1,410,900.59	$967,108.44

State Expend. Limit	<775,217.60>	<461,000.00>
Amt in Excess of Limit9/	$ 635,682.99	$506,108.44

As noted above, the Audit staff calculated that the Committee exceeded the expenditure limitation in Iowa by $635,682.99 and in New Hampshire by $506,108.44. The amount paid is shown below:

Amount in excess of the Iowa and New Hampshire State Expenditure Limitations	$1,141,791.43
Less: Accounts payable	(32,038.93)
Payments made in excess of state limits	$1,109,752.5010/

See Finding E. below for calculation of repayment amount.

D. Use of Funds for Non-Qualified Campaign Expenses in Excess of the Overall Limitation on Expenditures

Section 9035(a) of Title 26 of the United States Code states, in part, that no candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 441a(b)(1)(A) of Title 2.

Sections 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code, state, in part, that no candidate for the office of President of the United States who is eligible under

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9/ This amount, determined to be in excess of the Iowa and New Hampshire state limitations respectively, is subject to change. The Committee may avail itself of recent Commission determinations concerning the non-allocability of expenses (or portions thereof) relative to telemarketing programs, consultant expenses, etc. Adequate supporting documentation must be presented in response to the initial repayment itemization before any adjustments will be made to the above figures.

10/ This amount, determined in excess of the Iowa and New Hampshire state limitations, is subject to change. Any adjustments will be reflected in the Commission's Final Statement of Reasons.

Section 9033 of Title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of $10,000,000 as adjusted for increases in the Consumer Price Index.

Section 100.8(b)(15) of Title 11 of the Code of Federal Regulations, states, in relevant part, that expenditures for services solely to ensure compliance with the Act made by a candidate certified to receive Primary Matching Funds under 11 C.F.R. Part 9034 do not count against such candidate's expenditure limitations under 11 C.F.R. 9035 or 11 C.F.R. 110.8.

Section 9038.2(b)(2)(i)(A) of Title 11 of the Code of Federal Regulations provides, in part, that the Commission may determine that amount(s) of any payments made to a candidate from the matching payment account, were used for purposes other than qualified campaign expenses. Section 9038.2(b)(2)(ii)(A) of Title 11 of the Code of Federal Regulations states that an example of a Commission repayment determination under paragraph (b)(2) of this section includes determinations that a candidate, a candidate's authorized committee(s), or agents have made expenditures in excess of the limitations set forth in 11 C.F.R. §9035.

The Audit staff's review of FEC Form 3P, page 4, for the period ending December 31, 1991 revealed that the Committee had reported Total Expenditures Subject to the Limitation (Overall Limitation) of $23,079,801.35.11/ Based on the review performed as detailed below, it is the opinion of the Audit staff that the total should be increased by $994,786.52. As a result of this adjustment the Committee has exceeded the overall expenditure limitation by $1,024,587.87 [$23,079,801.35 + $994,786.52 - $23,050,000.00 (overall limitation) = $1,024,587.87].

A limited review was performed utilizing Committee disclosure reports covering the period through December 31, 1991. The accuracy of the Committee's classification of expenditures as operating, fundraising or legal/accounting was assessed and adjustments were made, as necessary, to the amount reported by the Committee as subject to the overall limitation. The Audit staff determined that expenditures totaling $38,940.77 appeared to have been classified incorrectly as legal/accounting related, and exempted from the overall limitation, when, in fact, they were of a fundraising or operating nature and should have been applied to the overall limitation.12/

In addition, a review was made of debts and obligations reported by the Committee on its 1991 Year-End report to determine

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11/ As adjusted by Audit staff for a mathematical error.

12/ The Committee had reported on its July, 1988 disclosure report that it had "Used up" the 20% fundraising exemption.

the operating, fundraising or legal/accounting nature of each debt/obligation. The Audit staff was able to determine the reported date of incurrence by utilizing the Schedules D-P filed as part of Committee disclosure reports. Further, it could be determined which debts on the 1991 Year-End report were also outstanding as of the candidate's date of ineligibility. Debts totaling $156,032.50 were identified as outstanding as of December 31, 1991.

Further adjustments to the overall limitation were made to account for:

- the Committee's activity regarding the use of an aircraft provided by CBN Continental Broadcasting Network, Inc. ("CBN Continental"). A detailed discussion of the activity is contained at Section 1 below;

- a transaction between the Committee and GB Computer Services, Inc. involving the Committee's purchase of a computer system and related equipment. A detailed discussion of this transaction is contained at Section 2 below;

- receipts received by the Committee from the Christian Coalition ($190,595.25) and the American Life League ($20,000). Although reported as offsets to operating expenditures on Committee disclosure reports, these receipts appear to represent fees for mailing list rentals, and as such are other income, thus no offset is warranted;

- a reduction of $5,835.25 representing an accounts receivable not recognized by the Committee and a reduction of $163,568.68 involving non-qualified campaign expenses included by the Committee in reported expenditures subject to the overall limitation (see Finding FAR III.B.1., 2. and 4.).

A schedule of the adjustments is included on page 57.

1. Committee Use of Aircraft

Section 441b of Title 2 of the United States Code states, in relevant part, that it is unlawful for any corporation to make a contribution or expenditure in connection with any Federal election or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any corporation to consent to any contribution or expenditure by the corporation. Section 100.7(a)(1) of Title 11 of the Code of Federal Regulations defines the term contribution to include a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

Section 100.7(a)(4) of Title 11 of the Code of Federal Regulations states that the extension of credit by any person for a length of time beyond normal business or trade practice is a contribution, unless the creditor has made commercially reasonable attempts to collect the debt. A debt owed by a political committee which is forgiven or settled for less than the amount owed is a contribution unless such debt is settled in accordance with standards set forth at 11 CFR 114.10[13]/.

Section 114.9(e)(1) of Title 11 of the Code of Federal Regulations states, in part, that a candidate who uses an airplane which is owned or leased by a corporation or labor organization other than a corporation or labor organization licensed to offer commercial services for travel, in connection with a Federal election must, in advance, reimburse the corporation or labor organization. In case of travel to a city served by regularly scheduled commercial service, the first class air fare. In the case of travel to a city not served by a regularly scheduled commercial service, the usual charter rate.

Section 114.10(c) of the Code of Federal Regulations states that a corporation may settle or forgive a debt if the creditor has treated the outstanding debt in commercially reasonable manner. A settlement will be considered commercially reasonable if:

(1) The initial extension of credit was made in accordance with regulations issued pursuant to 2 USC 451 or the extension of credit was in the corporation's ordinary course of business and the

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13/ The regulation cited is as it was written at the time the transactions discussed below occurred. Effective October 3, 1990 this section was revised and moved to 11 CFR 116.

terms are substantially similar to extensions of credit to nonpolitical debtors which are of similar risk and size of obligation.

(2) The candidate or political committee has undertaken all commercially reasonable efforts to satisfy the debt.

(3) The Corporate creditor has pursued its remedies in a manner similar in intensity to that employed by the corporation in pursuit of a non-political debtor14/.

Section 9034.6(b) of Title 11 of the Code of Federal Regulations state that reimbursements received by a committee for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service and typewriters) made available to media personnel, shall not exceed either the individuals pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the individual's pro rata share of the cost of transportation and services made available. The total amount of reimbursements received from an individual under this section shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%.

Section 9033.11(c) of Title 11 of the Code of Federal Regulations states, in part, that a candidate shall retain records, with respect to each disbursement and receipt, including bank records, vouchers, work sheets, receipts, bills and accounts, journals, ledgers, accounting system documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years.

Sections 11 CFR 9034.7(a), (b)(1), (b)(2) and (b)(3) state notwithstanding the provisions of 11 CFR Part 106, expenditures for travel relating to the campaign of a candidate seeking nomination for election to the office of President by any individual, including a candidate, shall, pursuant to the provisions of 11 CFR 9034.7(b), be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

For a trip which is entirely campaign-related, the total cost of the trip shall be qualified campaign expense and a reportable expenditure.

14/ The regulation cited is as it was written at the time of the transactions discussed below. Effective October 3, 1990, these provisions were revised and moved to 11 CFR 116.

For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from that stop through each subsequent campaign-related stop, back to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related.

For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

Further, 11 CFR 9034.7(b)(7)(i) states if the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers traveling for campaign purposes.

a. CBN Continental Aircraft Charter Billings

In the interim audit report, the Audit staff explained that records reviewed indicated that the Committee had used the corporate aircraft of CBN Continental Broadcasting Network Inc. (CBN Continental) as its primary source of air transportation. The finding went on to explain what was known about the flight schedules, billing arrangements, and Committee payments for its use of the aircraft. In the interim audit report recommendation the Committee was requested to demonstrate why all payments for use of the aircraft not made in advance should not be considered corporate contributions. Further the Committee was requested to submit substantial amounts of additional information concerning its use of the CBN Continental aircraft. (See Attachment 4 for the interim audit report finding and recommendation)

In its response to the interim audit report, the Committee explained that it did not use the corporate aircraft after March 9, 1988, that the aircraft was owned by Airplanes Inc. a subsidiary of CBN Continental, and that the Committee was billed in advance for all flights and believed that it had paid in advance. The exceptions were billings for costs incurred by CBN Continental unexpectedly after the submission of the original bill, additional billings for costs associated with flight deviations due to campaign schedule changes and weather, and a disputed bill that was the subject of a settlement. In support of its narrative response, the Committee made available copies of checks used to pay CBN Continental for usage of the aircraft, a

first class air fare analysis prepared by CBN Continental, a small number of Candidate itineraries beginning in December of 1987, a copy of the settlement agreement for the disputed bill, and other miscellaneous correspondence. (See Attachment 5 for a copy of the Committee's narrative response to the interim audit report)

In addition to the recommendation contained in the interim audit report, the Commission subpoenaed records and information concerning the use of aircraft from CBN Continental and Airplanes Inc. Both of these organizations submitted materials in response to the subpoenas that were not available at the time the interim audit report was prepared.

A review of available records indicates that an aircraft owned by Airplanes Inc., a Delaware corporation, which is a wholly owned subsidiary of CBN Continental Broadcasting Network Inc. was used for campaign travel. Airplanes Inc. was incorporated on April 18, 1985. In materials submitted to the Commission under subpoena, the principal business of Airplanes Inc. is shown as the "ownership of an aircraft". The President of Airplanes Inc. is Mr. Donald Miracle who is also listed in other documents as the pilot of the airplane used by the Committee. The aircraft is described as a BAC 1-11, which according to the Aircraft Performance Statistics chart in the Official Airline Guide is a twin engine jet with a passenger capacity of 74 to 79 persons. According to an insurance policy provided by CBN Continental15/, the aircraft used by the Committee was configured in such a way as to accommodate only 23 passengers. CBN Continental acquired the BAC 1-11 in February 1985 from a Tracinda Corporation16/. CBN Continental then transferred the aircraft to Airplanes Inc. In September of 1988, Airplanes Inc. sold the BAC 1-11 to Calcutta Aircraft Leasing, Inc. of Bloomington, Indiana. No indication of the sales price is given in the records. Calcutta Aircraft Leasing, Inc. reported that in May of 1989 the BAC 1-11 was removed from service and dismantled.

15/ According to the insurance policy, the insured was the Christian Broadcasting Network Inc. Endorsement 6 on the policy contains a list of 38 entities who are covered by the liability section of the policy while the aircraft is being operated by the insured. CBN Continental, the Committee, and Airplanes Inc. are included.

16/ According to public files of the Federal Aviation Administration, Tracinda Corporation had acquired the BAC 1-11 from an entertainer approximately 13 months earlier. The bills of sale contained in the FAA records for both transactions show $10.00 as "consideration". It appears that leaving the consideration line on the bill of sale document blank or entering a nominal amount is a common practice. It is not known whether there is any connection between CBN Continental and one or more of the former owners.

The BAC 1-11 was leased to CBN Continental by Airplanes Inc. CBN Continental is a Delaware corporation whose principal business is the ownership and operation of radio and television broadcasting properties17/. The Candidate is listed as President and Director of CBN Continental until 9/30/87 when he resigned as President but continued as a Director. He was replaced by his son as President. CBN Continental was incorporated in December of 1978 and is listed as an affiliate and/or subsidiary of the Christian Broadcasting Network Inc. (CBN)18/. The copy of the lease made available does not call for any lease payments but rather requires that CBN Continental perform all maintenance and pay all expenses related to the aircraft's operation. All billings for the Committee's use of the BAC 1-11 were from CBN Continental. A copy of the lease dated May 1, 1987, is at Attachment 6.

The Committee has provided the Audit staff with invoices received from CBN Continental for use of the BAC 1-11 and a flight log which shows flights made, flight hours, and a passenger list annotated with the organization billed for each person's travel. However, the flight log contains only those trips for which the Committee was billed for all or part of a day's flights. Invoices for some flights billed to other organizations were obtained under subpoena. A trip number was assigned to each day's travel as recorded in the flight log. If, for example, four stops were made on one day, all four are listed under one trip number. Using the information in the flight log, additional billings obtained from the Committee and other entities, and assuming that if all trip numbers were accounted for, all use of the aircraft would be identified, an analysis of the BAC 1-11's use during 1986, 1987, and January 1, to March 9, 1988, was undertaken. The following information was developed:

- Between January 1 and July 23, 1986 19/, 91 travel days (trip numbers) were identified. Of these, no record of the flight or the entity billed was found for 26 travel days. Based on the invoices obtained, it appears that CBN was charged for 58 of

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17/ Unlike the Christian Broadcasting Network, Inc., the articles of incorporation and by-laws of CBN Continental and Airplanes Inc. do not indicate that they are non-profit corporations.

18/ The Candidate is also listed as President and Director of CBN until 11/6/86 when he became Chairman of the Board and Chief Executive Officer. On 9/30/87 he resigned as Chairman of the Board and Chief Executive Officer but continued as a Director. As of 4/20/88 he again assumed the position of Chairman of the Board and Chief Executive Officer.

19/ July 24, 1986 was the date of the first flight that was billed in whole or in part to the Committee.

the remaining 65 travel days. In addition, The Freedom Council appears to have been charged for 3 travel days and Committee For Freedom for 1. The 3 remaining travel days were charged in part to CBN and in part to either The Freedom Council, The Committee For Freedom or GB Computers.

- Between July 24, and December 31, 1986, 52 travel days are shown. Eight of these are not identified in the flight log or flight invoices as to destination or entity charged for the flights. According to available documentation, the remaining 44 trips are charged as follows; 12 to CBN, 5 to The Freedom Council, 3 to The Committee For Freedom or The Michigan Committee For Freedom, 9 to the Committee, 12 to the Committee and one or more other entities and, 3 to CBN and another entity.

- Between January 1, and April 29, 1987, 47 travel days were identified. Available records do not establish the destination or the entity charged on four of those days. Of the remaining 43 trip numbers, 27 are billed entirely to the Committee20/, 5 are charged in part to the Committee, and 11 are charged entirely to CBN. The Committee was charged for 68% of the total flight hours shown for the 43 identified trips during this period.

- Between May 29, and December 31, 198721/, 81 travel days were identified. Available records do not establish the destination or the entity charged for 11 of these travel days. Of the remaining 70 trips, 66 are billed entirely to the Committee, 3 are billed entirely to CBN and 1 is split between the Committee and CBN. The Committee was charged for 96% of the flight hours associated with the 70 trips for which information is available.

- Between January 1, and March 9, 1988, the last date on which the Committee appears to have used the

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20/ This figure includes a round trip between Naples and Miami Florida on which there were no passengers. It is believed that this trip was related to aircraft maintenance. These flights were billed to CBN Continental. The remaining four stops on this four day trip are 100% campaign related.

21/ The records reviewed indicate that there were no flights between April 29, and May 29, 1987.

aircraft, 47 travel days are identified. All 47 travel days are accounted for in the available records and all relate entirely to the Committee.22/

The above analysis shows that the Committee made extensive use of the CBN Continental aircraft during the campaign. In particular, in the later part of 1987 the Committee had nearly exclusive use of the aircraft and during January 1, and March 9, 1988 the Committee appears to be the sole user of the BAC 1-11. It should be noted that no Candidate itineraries have been provided for any trip before December 8, 1987, therefore no verification of the characterization of any trip shown as non-campaign or mixed campaign/non-campaign is possible. Though the analysis presented is in terms of calendar days on which the aircraft was used, in some cases several travel days elapsed between when the aircraft left Norfolk and when it next returned. On several occasions during 1987 and 1988 the Committee had exclusive use of the BAC 1-11 for periods of a week or more, and on one occasion in February 1988 did not return the aircraft to Norfolk for 22 consecutive days.

During the period that the Committee used the BAC 1-11, the method of billing used by CBN Continental changed several times. In an affidavit, Kevin Steacy, Business Manager of CBN Continental, states that;

> "(t)hroughout 1986, a three-tier system of payment was in place for usage of the aircraft. This system, implemented on the advice of Continental's accountants, is most easily described as follows: The fixed costs of the aircraft which included depreciation, insurance, interest, property tax, salaries, and employee benefits were divided into two tiers with each tier accounting for fifty percent of the total fixed cost. The first tier was a user fee which was divided among the four primary users of the aircraft based on their priority usage of the aircraft. As an example, The Christian Broadcasting Network, Inc. was billed

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22/ One leg of one trip was not billed to the Committee. A flight from Greenville, South Carolina to Norfolk, Virginia on February 21, 1988, was charged to CBN Continental. The flight Log shows that there were no passengers on the flight suggesting that the traveling party was left in Greenville. Billings to the press for the period reference a South Carolina bus tour on February 21 and 22, 1988.

forty percent of these Tier 1 fixed costs, while Continental was responsible for twenty percent of these fixed costs.23/

"The Tier 2 costs, which consisted of the remaining 50 percent of the fixed costs outlined above, were allocated between all users of the aircraft based on hourly usage of the aircraft.

"Finally, Tier 3 costs consisted of the direct expenses of the aircraft such as maintenance, travel and auto, fuel, airport services, and other miscellaneous expenses based on actual usage. These Tier 3 direct costs were also allocated between all users of the aircraft based on hourly usage of the aircraft."

Mr. Steacy goes on to state that the Tier 2 and 3 hourly rate for the period July 15, to October 31, 1986 was $1,462.00 per hour and that beginning in November of 1986 through the end of that year it was necessary to raise the hourly rate to $2,712.00. It was the appropriate Tier 2 and 3 hourly rate that the Committee was charged for their 1986 flights. In his affidavit Mr. Steacy explains that in January 1987, it was determined that because outside entities, such as the Committee would be using the aircraft more than 10% of the time, a new fee structure was necessary. He further states that it is his understanding that the Federal Aviation Administration was contacted and advised CBN Continental not to enter into a lease with the Committee, but to bill the Committee according to 14 CFR § 91.181(d). (See Attachment 7) The affidavit describes the billing system as follows;

"Flight times were to be estimated by the aircraft's pilot and forwarded to me so that I could prepare an invoice which was to be paid before flight time. After each flight, the aircraft's pilot gave me the flight logs and all receipts for actual expenses incurred on the flight. Once I had the actual costs of a particular flight, I prepared a flight costs analysis based on the actual flight time and the following 10 items as dictated in the FAA regulation:

23/ Though the affidavit does not identify the other two "primary users of the aircraft", other documents indicate that they were CBN University and The Freedom Council, and that they were charged ten and thirty percent of Tier 1 costs respectively. Further, for the first three quarters of 1986 the Tier 1 costs appear to have been $33,055.00 per quarter.

1. Fuel, oil, lubricants, and other additives;

2. Travel expenses of the crew, including food, lodging, and ground transportation;

3. Hangar and tie-down costs away from the aircraft's base operations;

4. Insurance obtained for the specific flight;

5. Landing fees, airport taxes and similar assessments;

6. Customs, foreign permit and similar fees directly related to the flight;

7. In-flight food and beverages;

8. Passenger and ground transportation;

9. Flight planning and weather contract services;

10. An additional charge equal to 100 percent of the expenses listed in item 1 above. This item could be billed at Continental's option.

"Finally, I compared the actual costs with the invoice. If the actual costs were greater than the amount received, I prepared another invoice for the difference. If the actual costs were less than the amount received, I prepared another invoice for a credit."

No information is available to verify the calculation of any invoice, whether the the optional amount listed at item 10 above was included in the billings sent to the Committee, or if the amounts billed allowed CBN Continental to recover their full cost of operating the aircraft. It is noted that absent the inclusion of the amount shown at item 10 above, the amount billed makes no apparent contribution to the fixed cost of operating the aircraft even though for some periods of time the Committee had exclusive or near exclusive use of the aircraft.

The Committee was billed a total of $1,020,671.56[24/] for flights on the BAC 1-11. This amount includes $39,435.67 in credit invoices for flights where the final cost was less than the amount originally billed, $120,314.55 in charges for flights where

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24/ Not included is $1,315.80 for a round trip between Norfolk and Washington in September of 1986. Though the Flight Log shows this trip as a Committee trip, no evidence of the Committee having been billed has been found.

the original invoice was not enough to cover the final cost, and $260,352.3225/ first billed in March 1988 for additional costs associated with 1987 flights. Approximately 59% of the total amount invoiced was paid in advance of the flight. The amount not paid in advance is $417,364.91 and includes $36,698.04 in original flight invoices. Of this amount there is no record of payment for $9,851.80 and the remainder was paid between 26 and 202 days after the flight date. Also included in the amount not paid in advance is $120,314.55 in "additional cost" billings for earlier flights that were paid from 13 days to more than a year after the flight date and, finally the $260,352.32 disputed bill for additional costs for 1987 flights billed in March of 1988 and settled without cash payment in August of 1989.

Records provided by the Committee and other entities are not consistent concerning the nature of the March 1988 additional cost billing. In a settlement agreement between the Committee (Attachment 8), CBN Continental and Airplanes Inc., the charge is described as follows:

> "(I)n 1988 an independent fuel broker who had been supplying Airplanes with fuel for the BAC 1-11 presented a bill to Airplanes for ($130,000) for fuel surcharge for fuel used in AFR flights for the preceding eighteen months. Without conferring with AFR on this matter, Airplanes and its parent, Continental, paid the invoice of ($130,000) in full, doubled the price as permitted under F.A.R. Part 91, and presented a bill of ($260,000) to AFR for immediate payment..."

However, in a letter to the Committee from CBN Continental Business Manager, Kevin Steacy dated March 16, 1988(Attachment 9),26/ Mr. Steacy explains the billing, dated March 14,1988, as follows:

> "The BAC 1-11 was to be sold to Richard Brown of Goldcor early in 1987. The terms under which AFR was to lease the plane were that all direct flight expenses plus $25,000.00 per month for fixed costs would be paid to Goldcor.
>
> "The 1987 flight plan for AFR's use called for 40 hours per month or 480 hours per year, which would have defrayed all operating costs each month until the sale was finalized.

25/ This amount includes $2,735.04 for flights not originally billed to the Committee.

26/ This date is only two days later than the invoice involved and appears to have been the cover letter for the invoice.

"However, the sale was not finalized in 1987 and AFR flew an average of 16 hours per month for a total of 196 27/ actual hours for 1987. This is 40.8% of planned utilization which leaves Continental with a substantial amount of 1987 expenses not billed.

"Therefore, I have prepared an invoice for $260,352.32 for costs not previously billed.

"When the 1987 operating budget was prepared, the projected use of 40 hours per month was the basis upon which a billing rate was established that would cover all costs until the expected sale of the BAC 1-11 was completed."

This letter suggests that rather than an unanticipated billing from a third party, which could not have been billed to the Committee in advance of the flights since it would have been unknown to CBN Continental until after the campaign was over, the charges were the result of fixed costs which were known in advance and were to be allocated to a much larger number of flight hours than actually flown. This being the case, the hourly rate used to bill the Committee was artificially low during the campaign resulting in a $260,352.32 contribution to the Committee from CBN Continental. If it is assumed that the original estimate of 40 flight hours per month was reasonable, it became apparent early in 1987 that it required revision. In no month during the year 1987 was the Committee billed for 40 flight hours. In only two months was the Committee billed for more than 30 flight hours, March and October, in three months the billings were for between 20 and 30 hours and in three months the total hours billed were 5 or less.

The billing system described in Mr. Steacy's March 16, 1988 letter to the Committee appears to be based on an hourly rate determined by estimating total costs over the period and prorating those costs over the anticipated number of hours to be flown. Variable costs for each flight could be easily adjusted after each flight and the number of additional cost and credit invoices reviewed indicate that this was done. However the portion of the hourly rate which was meant to cover fixed costs would require adjustment or, as Mr. Steacy notes in his letter, CBN Continental could be left "a substantial amount of 1987 expenses not billed". This billing system is in conflict with that described in Mr. Steacy's April 1990 affidavit which is based on variable costs only.

27/ The Audit staff analysis shows 200.45 flight hours billed to the Committee in 1987, suggesting that this level of usage is materially correct.

In summary, if the description of the $260,352.32 in 1987 additional charges in Mr. Steacy's March 1988 letter is accurate, it is not likely that the billing system described in his affidavit was used during 1987. Further, the characterization of the $260,352.32 invoice in the settlement agreement as a "fuel surcharge" would appear to be in error. Mr. Steacy's March 1988 letter is contemporaneous with the billing and was prepared before the Commission raised any question about the use of and payment for the CBN Continental aircraft.

The Committee made no cash payment for the March 1988, additional cost invoice. In an "AGREEMENT OF SETTLEMENT" between the Committee, Airplanes Inc., and CBN Continental dated August 25, 1989 (Attachment 8), CBN Continental and Airplanes Inc. accepted the right to use the Committee's mailing list in full payment of the invoice. The agreement states:

> "In full settlement of all claims by Airplanes or Continental against it, AFR agrees to supply to Continental a magnetic tape or tapes containing the AFR list of 1,800,00028/ names, and further grants to Continental, or Continental's designee, a non-exclusive license for a five-year term beginning with the date of this agreement to mail three mailings to the complete list at any time during the term of this license."

The agreement further states that after three mailings or at the end of the license period CBN Continental agreed to return the list, that the parties valued the list at $50 to $100 dollars per thousand names for a single rental, and that if under the license CBN Continental allows any party other than its parent and subsidiary companies to use the list that only mailing labels and not a magnetic tape would be provided. This provision seems to indicate that if CBN Continental or any parent or subsidiary used the list, that a copy of the tape could be made. It is also noted that other documents obtained suggest that one source of the Committee mailing list was approximately 975,000 names obtained from CBN, CBN Continental's parent corporation.

Finally, the documentation does not indicate whether CBN Continental ever exercised it license and, if so, whether the list was made available to any party outside of the CBN corporate family. If not the license would appear to be of little value. Commission records do not indicate that the parties filed a debt settlement statement with the Commission pursuant to then 11 CFR 114.10. However, given the unique relationship

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28/ It is noted that the Committee's donor file as presented to the Audit staff under 11 CFR § 9033.1(b)(5) contained approximately 170,000 names. Therefore, it would appear that the list referred to here was not donors only.

between these organizations, the usual business of CBN Continental, and the manner in which the debt arose, it would seem unlikely that the parties would have satisfied the ordinary course of business requirement for the extension of credit or the creditors pursuit of remedies standards in that regulation.

It is apparent from the materials reviewed that neither the Committee nor CBN Continental considered the lease of the aircraft by the Committee as an arrangement that would be covered by 11 CFR 114.9(e). This point is demonstrated by the wording of the settlement agreement signed by CBN Continental and the Committee to resolve the $260,000 disputed debt (See Attachment 5). The agreement states:

> "WHEREAS, AFR desired to lease an airplane from time to time under FAA rule F.A.R. Part 91, and
>
> "WHEREAS, AFR did in fact lease the BAC 1-11 of Airplanes repeatedly during parts of 1986, 1987, and 1988, ..."

At no time was a billing for the aircraft prepared based on first class air fare as required by that regulation for candidate use of an aircraft owned by a corporation not licensed to provide commercial service. Rather the arrangement appeared to more closely resemble a lease, charter, or cost sharing system, given the description of the arrangement presented above and the close relationship of the parties29/.

However, as part of the Committee's response to the interim audit report an analysis was provided that purportedly represents a first class air fare analysis of the Committee's use of the BAC 1-11. According to Committee officials it was prepared by CBN Continental and shows, for all Committee flights, the date of the flight, the origin and destination of the flights, the number of passengers on the flight, the first class air fare, and the total amount that would be billed for each flight. The conclusion reached is that the amount actually billed to the Committee was only slightly less than the amount that would have been required under 11 CFR § 114.9(e). The billable amount is shown at $1,056,568.56, while the amount actually billed, including the additional cost billing discussed above, is shown as $1,053.850.88. The "variance" is $2,717.68.

Though the Audit staff questions whether the first class analysis is relevant to the situation at hand, the following comments are offered:

29/ The Audit staff takes no position on the Committee's or CBN Continental's compliance with Federal Aviation Administration regulations.

1) The first class analysis contains a number of errors. There are flights that are shown on the flight log that do not appear on the first class analysis, a flight listed twice on the first class analysis, a number of cases where the number of passengers is not correct when compared to the flight log and other mathematical and miscellaneous errors. The corrected amount using the fares as given is $1,023,903.72.

2) A review of the amount billed to the Committee also shows errors. The Committee did not account properly for Credit invoices in their analysis, there are two flights that were invoiced and paid that are not included in the Committee figure, one flight shown on the flight log as a 100% Committee flight was apparently never invoiced, and the Committee included in their figure amounts billed for aircraft telephone charges. After correcting these errors the billed amount is $1,021,987.36. The variance between the corrected amount billed and the corrected amount billable at first class, assuming all fares are correct as presented and all campaign trips are correctly determined, is an under billing of only $1,916.36.

3) When the Committee constructed the campaign versus non-campaign legs of mixed purpose trips, only certain legs were considered to be campaign related. The correct calculation is to calculate the cost from the point of origin through each campaign stop back to the point of origin. A stop which has both campaign and non-campaign business is to be considered campaign related. (See 11 CFR § 9034.7(b)(2)) For example, between September 11 and 13, 1987, the Candidate made a trip from Norfolk to Grand Rapids to Des Moines to Grand Rapids to Norfolk. The Grand Rapids stop is shown by the Committee as CBN business and the Des Moines stop is shown as Committee business. The Committee is charged for a round trip between Grand Rapids and Des Moines rather than a round trip between Norfolk and Des Moines.

4) The Committee has produced Candidate itineraries for some trips beginning with a December 8, 1987 trip. With one exception all mixed purpose trips and all non-campaign trips using the BAC 1-11 were made before December 8, 1987. For the mixed trip made after December 8, 1987, no itinerary is provided for the non-campaign stop. The Audit staff is unable to offer any opinion as to whether stops designated non-campaign are properly

classified. In addition, on some early stops that are shown by the Committee as non-campaign, one or more of the passengers shown on the flight log are listed as Committee passengers while all others, including the Candidate, are not. No information is available to determine the campaign duties of these passengers or whether the campaign nature of their travel affects the non-campaign nature of the stop.

5) It is noted that the fare between the same two locations during the entire 19.5 month period does not vary. Using the limited resources available to the Audit staff, it is clear that air fares varied substantially during the period. In response to an inquiry from the Audit staff, counsel for CBN Continental submitted a letter from Kevin Steacy, Vice President of KXTX, Inc. (formerly CBN Continental) that explains the source of the air fares used in the first class analysis. Mr. Steacy states that the fare information was obtained from a Chesapeake, Virginia travel agency in August of 1988 and was current at that time. He further states that the information was gathered after the Committee's transportation had been completed solely for CBN Continental's internal purposes. The air fares shown on that analysis were compared to those shown on the Committee's press billings30/. Air fares used for press billing purposes are available for some flights in late 1987 and most 1988 flights. When these available fares are substituted for those on the Committee's first class analysis, additional billings in the amount of $66,314.33 are indicated.

Conclusion

During the campaign the Committee used aircraft "chartered" from a corporation whose primary business was not chartered aircraft. Therefore, any extension of credit to the Committee related to the use of these aircraft is not in the lessor's ordinary course of business. An aircraft was chartered from a corporation for which the Candidate served as the President during part of the campaign period and was on the Board of Directors during the entire period. Given this relationship between the

30/ According to documentation submitted in response to the interim audit report and contained in the audit workpapers, the Committee billed the press at first class air fare until March 1, 1988. After March 1, the billings were done at 1.5 times first class. (See section 1.b. below)

Candidate and persons leasing the aircraft these transactions cannot, in the Audit staff's opinion, be construed to have been entered into at arm's length. Based on the billing arrangements, the aircraft was not considered to be subject to the provisions of 11 CFR § 114.9(e) by either the Committee or the Lessor. The Audit staff believes that given that no ordinary course of business, arm's length relationship is possible in this case, 11 CFR § 114.9(e) may not be applicable to this situation. Further, the owner of the BAC 1-11 made the aircraft available for the Committee's exclusive use for extended periods.

The information obtained to date does not allow a determination whether the amounts billed for either aircraft represents fair market value for the services received by the Committee. Given the close relationship between the Candidate and the persons from whom the aircraft were leased, a fair market charge cannot be assumed. However, given the BAC 1-11 is a large aircraft configured to accommodate approximately one-third of its maximum passenger load, total reimbursements which appear to be less than first class air fare are likely to be significantly below the fair market value of the services provided to the Committee. It was also noted that the BAC 1-11 was not acquired by CBN Continental until early 1985 and was sold only five months after the Candidate's date of ineligibility. It is unknown whether the acquisition and sale of the aircraft were arm's length transactions.

If it is assumed that the proper charge for the Committee's use of the BAC 1-11 was the equivalent first class air fare, information obtained to date does not permit a verification of the first class analysis submitted by CBN Continental. However, as noted above if fares used by the Committee to bill media for travel on the aircraft are used where available in place of the first class fares on the CBN Continental analysis, an underbilling is suggested. If the first class analysis is accepted with only the correction of known errors and the total is compared to amounts billed to the Committee, the result is that Committee was billed an amount which, in total, is equivalent to first class air fare. However in order to reach this conclusion, it is necessary to include in the billed amount the $260,352.32 which the Committee characterizes as a "disputed" bill. If this amount is required to reach what the records indicate is at best the minimum amount that could paid for the aircraft, it can not be considered a bona fide dispute. Rather, the amount is considered an in-kind contribution and as such applicable to the Committee's overall spending limitation. It is noted that should better information become available on first class fares, it is determined that a fair market value analysis is appropriate in this situation, or more information is obtained concerning the use of a second

aircraft31/, an adjustment to the amount applicable to spending limitation may be necessary.

Finally, an analysis of invoices and payments for the Committee's use of the BAC 1-11 indicates that due to errors in Committee records, charges totaling $7,676.09 have not been paid, are not listed as debts, and are not disputed. This amount has been added to the Committee's NOCO as an accounts payable and to expenditures subject to the overall spending limitation.

b. Media Billings

In the interim audit report the Audit staff explained that due to the lack of records it was not possible to evaluate the Committee's system for billing the media for travel on the campaign aircraft. It was further explained that the Committee provided copies of some invoices related to media billings, the flight log discussed above and some worksheets showing how the billable amounts were determined. (See Attachment 10)

The recommendation contained in the interim audit report, requested the Committee to provide additional invoices for media travel, documentation detailing amounts billed to the media and reimbursements received, and documentation to demonstrate that its billing policy for media travel conformed to 11 CFR 9034.6(b) and that the resulting offsets to the overall expenditure limitation do not exceed actual cost.

The Committees response to the recommendation contains no additional documentation. (See Attachment 11). The Committee explains that all available press billing documentation was presented at the time of the audit and that nothing additional had been located. The Committee explains that initially the billings were 100% of first class air fare. When the Committee began providing ground transportation and other services the billing rate was changed to 150% of first class.32/ The Committee states that "at this point, AFR believes that the services

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31/ It is known that a second aircraft was used by the Committee. Information obtained to date is not adequate to determine the ownership of that aircraft or if any additional amounts subject to the spending limitations resulted from its use. The billings for the second aircraft were from the President of Airplanes Inc. and show the same address as those for the BAC 1-11.

32/ The media billings and work papers provided at the time of the audit indicate the change from 100% to 150% of first class fare was not made until March 1, 1988, only 9 days before the last flight where the media was billed for travel on the BAC 1-11.

provided in obtaining convenient hotel accommodations, ground transportation for all campaign stops, and air travel cost more than the amount billed to the media." The Committee then compares some of the billings with the first class fare shown on the first class analysis discussed in the corporate aircraft section above. The conclusion reached in the response is that the Committee billed less than was permitted.33/

The Committee's comparison of amounts billed to first class air fare is not relevant to the pro rata cost analysis specified at 11 CFR 9034.6(b). The correct analysis would be the total cost of the transportation and service provided on each leg of each trip, divided by the number of passengers on each leg.

The Audit staff has attempted to perform the correct analysis using the limited records available. Using the flight log, press invoices, and billing work papers, flights where media representatives traveled were identified and the number of such persons was determined. The cost of each flight was determined by collecting all invoices relating to each flight (initial billings, credit invoices and additional billing invoices). The flight log was used to determine the number of passengers on each flight.

With this information the pro rata cost for each flight was calculated and multiplied by the number of media representatives on the flight to determine the billable cost for press travel. The billable cost was multiplied by 103%34/ to

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33/ The Committees analysis is flawed in several respects. First the fares that are used to compare first class to the amounts billed to the press are from the analysis prepared by CBN Continental in August of 1988 and cannot be assumed to be accurate for flights occurring months earlier. Further, one of the trips used as an example in the response shows seven flights. The press billing referenced by the Committee covers only four of the seven flights. Finally, the two trips used by the Committee as examples do not appear to be representative when a full comparison is made between the fares on CBN Continental's first class analysis and those used by the Committee to prepare the available press billings. As noted above, that comparison shows that the fares used to prepare the press billings were, on average, higher than those shown on the CBN Continental analysis.

34/ An amount equal to 103% of the cost of providing transportation and services to the media may, if actually collected, be offset against operating expenditures when calculating amounts applicable to the overall spending limitation. The 3% represents administrative costs absent a demonstration of a larger amount.

determine the maximum offset to operating expenditures and 110% to determine the maximum amount which could be received by the Committee. This analysis produces a billable cost of $103,432.22, a maximum offset to operating expenditures of $106,535.19; and a maximum reimbursement of $113,775.44.

The Audit staff acknowledges that the records available may not identify all media personnel who traveled on the Committee aircraft or all costs associated with providing transportation and services to the media 35/. Should better information became available in the future, adjustment to these amounts will be made.

Committee disclosure reports were reviewed to identify receipts from media representatives for travel on the campaign aircraft. Between January 1, 198736/ and December 31, 1991 the Committee reported collecting $219,410.00 from the media. This amount is $105,634.56 in excess of the maximum amount of reimbursements the Committee was entitled to receive, as determined by the Audit staff, and thus requires refunds to the press and the amount is shown as an obligation on the Committee's Statement of Net Outstanding Campaign Obligations. Further the reported receipts are $112,874.81 in excess of the amount which may be reported as offsets to operating expenditures. This amount is included as an adjustment to expenditures subject to the overall spending limitation since the Committee considered the full amount as an offset.

2. Committee Purchase of Computer Equipment and Related Items From GB Computer Services, Inc.

Section 441b of Title 2 of the United States Code states in relevant part that it is unlawful for any corporation to make a contribution or expenditure in connection with any election for federal office or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any

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35/ The Audit staff has identified an invoice for a commercial charter that appears to have accompanied the Candidate and the BAC 1-11 on his early October 1987 announcement tour. Absent a cost breakdown per flight leg and a passenger manifest, it is not possible to determine how many of the press were on the plane, or what portion, if any, of the press receipts included in the above figures relate to that airplane. Further, available records do not permit an amount of cost billable to the press to be determined for these flights.

36/ The first known media travel was on September 18, 1987 and the first reported media reimbursement was in October, 1987.

corporation to consent to any contribution or expenditure by the corporation prohibited by this section.

Section 441a(a) of Title 2 of the United States Code states in relevant part that, no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000.

Section 441a(f) of Title 2 of the United States Code states that no candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section.

In addition, 11 C.F.R. § 100.7(a)(1) states, in relevant part, that the term contribution includes a gift, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

Section 100.7(a)(1)(iii)(A) of Title 11 of the Code of Federal Regulations states that for purposes of 11 CFR 100.7(a)(1), the term "anything of value" includes all in-kind contributions. Unless specifically exempted under 11 CFR 100.7(b), the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution. Examples of such goods or services include, but are not limited to: securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists. If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee.

Further, 11 C.F.R. § 100.7(a)(1)(iii)(B) defines, in relevant part, "usual and normal charge" for goods as the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution.

On January 27, 1987 the Committee entered into an agreement to buy computer equipment from G.B. Computer Services, Inc. ("GBCSI"). According to the agreement, the equipment purchased consisted of an IBM system 38 computer and all related equipment modifications, additions and accessories, IBM agreements (maintenance and programs), mailing equipment, the leased premises at 2133 Smith Avenue, Chesapeake, Virginia, certain lists of contributors, supporters and other entities, and certain other equipment (see Attachment #12).

The aggregate purchase price paid for the equipment was $233,480. On January 27, 1987 the Committee borrowed $233,480 from Sovran Bank, for the purpose of purchasing the computer and related equipment. The Committee's current treasurer37/ stated that all of the loan proceeds were paid to Sovran Bank to buy out the Seller's lease obligations, IBM agreements and indebtedness to Sovran Bank.

According to the Virginia Secretary of State, GBCSI was incorporated on July 1, 1985. As of March 6, 1989, GBCSI is active and in good standing [GBCSI terminated operations in January, 1987]. The registration agent is J. Randy Forbes38/; the President, Secretary and Treasurer is George F. Border. George F. Border was the first treasurer of Committee for Freedom, Chesapeake, Virginia, having signed a statement of organization on May 14, 1985. He was replaced by a new treasurer, effective September 6, 1985.

GBCSI accepted a loan commitment of "$480,000 or 60% of the purchase price, [of an I.B.M. (sic) System 38 computer and related equipment] whichever is less" on October 7, 1985.

According to the Committee's campaign director, the computer and its related equipment was located in the same building where the Committee was headquartered and that the principle user of the equipment was the Christian Broadcasting Network. Eimskip Inc., a shipping company also leased 14% of the computer space.

The loan agreement (apparently dated 10/15/85) also provides for "a loan in the principal amount of the lesser of $480,000 or 60% of the purchase price as established by paid invoices presented to the Lender of equipment to be purchased by the Borrower to be an IBM System 38 Computer and related equipment." Documents provided to the Audit staff during fieldwork did not include any copies of the above referenced paid invoices or other documentation with which to establish the actual price of the IBM equipment purchased by GBCSI. If $480,000 is

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37/ References to the Committee's treasurer or to the Committee's campaign director included in this report pertain to the individuals in those positions during the period of audit fieldwork, unless otherwise noted.

38/ According to correspondence reviewed by the Audit staff, J. Randy Forbes & Associates, P.C. apparently prepared an addendum to the lease agreement, dated 8/30/85, between Louis C. Goodfarb, t/a Virby Realty Company (Lessor) and GBCSI (Lessee). A J. Randy Forbes, Esq. was the named Closing Agent on the Sovran loan, the proceeds of which were used by GBCSI to purchase the IBM System 38 computer and related equipment.

equal to 60% of the purchase price then the purchase price would have been $800,000. Without access to all documents relative to the purchase by GBCSI, an accurate valuation of the equipment purchased could not be determined.

The contract between the Committee and GBCSI included an exhibit containing IBM agreements and correspondence, dated October 1985, apparently related to the initial purchase by GBCSI. A diagram showing the system configuration and an equipment inventory (apparently for the purpose of installation) was included with the IBM agreements. The diagram indicates that equipment was to be located in the computer room, data entry (area), caging (area) with remote access provided to The Freedom Council, The National Legal Foundation, The National Perspectives Institute, ARMS, Inc., and EIMSKIP, U.S.A. Inc. According to the lease for property identified as Greenbrier Industrial Park, 2133 Smith Avenue, Chesapeake, Virginia, GBCSI leased 3,051 square feet for a term of 32 months commencing on January 1, 1986. An early occupancy provision called for interim space of approximately 1,000 square feet (rent free) during the period 9/1/85 through 12/31/85.

As mentioned previously, the Committee, in January 1987, purchased computer mailing equipment, leased premises, lists of contributors and certain other equipment from GBCSI for the sum of $233,480. With respect to this transaction, the Audit staff was not in possession during fieldwork of all records necessary to determine:

(1) the purchase price of the IBM equipment purchased originally by GBCSI;

(2) the fair market value of the IBM equipment purchased from GBCSI by the Committee;

(3) the fair market value of the mailing equipment purchased from GBCSI by the Committee;

(4) the identification, quantity, quality, and fair market value of the lists (e.g., mailing lists, lists of contributors, supporters or other persons or lists of any other persons or entities used for mailing, fund-raising, or any other purposes owned by GBCSI) purchased from GBCSI by the Committee; and

(5) the fair market value of the other equipment, generally office furniture and fixtures.

Notwithstanding the above, the Audit staff did obtain certain documents which may shed some light on the January, 1987 transaction between GBCSI and the Committee. The document entitled "Equipment Configuration and costs, GB Computer

Services, Inc.", dated 11/11/86 is a list of computer hardware, apparently IBM hardware, with associated cost figures. The grand total of each hardware item's cost is $361,057.

It was the Audit staff's opinion, based upon the limited amount of information made available, that the amount paid by the Committee relative to the purchase of the IBM System 38 computer system, equipment, and lists (as described above) appeared to have been less than the usual and normal charges for such goods. Further, given Mr. Border's past affiliation with Committee for Freedom, as well as the Christian Broadcasting Network having been the principal user (presumably principal client of GBCSI), a question arose as to whether the purchase transaction between the Committee and GBCSI was "at arm's length."

In the Interim Audit Report, the Audit staff recommended that within 30 calendar days of service of that report, the Committee provide the following:

(1) All documents pertaining to the purchase of the IBM equipment, mailing equipment, other equipment and lists to include, but not limited to: (a) the executed purchase agreement including all referenced exhibits/attachments, (b) the inventory provided to Sovran Bank under the security terms of the $233,480 loan, (c) any financial statements provided to Sovran Bank pursuant to the loan requirements, (d) any appraisal(s) related to the purchase or the loan application, (e) a complete list detailing the identification of each list, quantity of names, type of list, rental value, fair market value, and previous owner;

(2) A list of the vendors, services performed, and payments made by the Committee related to the caging, data entry and other related receipts processing for the period July, 1986 through January, 1987;

(3) Information to demonstrate that the Committee did not receive a corporate in-kind contribution from GBCSI as a result of receiving the equipment and lists at issue for less than the usual and normal charge;

(4) The purchase price of the IBM equipment purchased originally by GBCSI;

(5) The purchase contract, invoices and related correspondence related to the purchase of the IBM equipment by GBCSI as well as the above information related to the purchase/acquisition of all other items by GBCSI; and

(6) The fair market value of the IBM equipment, mailing equipment, and other equipment purchased from GBCSI; including any appraisals or other information used to arrive at the purchase price.

The Committee replied to the finding in their response dated June 25, 1990 as follows:

"2.1 Mr. George F. Border is most familiar with the original transaction by which AFR purchased from GB Computer Services an operating computer, related equipment, unrelated equipment and a leasehold interest... Mr. George F. Border has responded to the FEC subpoena.

2.2 Mr. Border's letter of May 8, 1989 to the Internal Revenue Service has been provided to the Commission and explains the original transaction with AFR.

2.3 The Interim Report Summary, pages 9 and 10 (top two paragraphs) appears to be accurate as to factual statements except that the computer and related equipment before and after purchase by AFR were located in a separate building from the AFR office - 2133 Smith Avenue, Chesapeake, Virginia. To AFR's knowledge, Christian Broadcasting Network, Inc. did not utilize the computer or related equipment either before or after the sale from GB Computer Services, Inc. to AFR... AFR further notes that the assumption of this contract was an integral part of the purchase of the computer in order to relieve GB Computer of any contractual liability and that AFR needed the computer in order to solve its problems with caging and data entry. AFR is aware of no use of the computer by any of the other entities listed on Page 10 [of the Interim Audit Report] after the sale of the computer from GB Computer Services, Inc. to AFR.

2.4 The audit report tentatively concludes that AFR appears to have paid 'less than the usual and normal charges' for the computer, related equipment, unrelated equipment and leasehold interest. The IRS audited the computer transaction and concluded that there was no tax due from GB Computer Services, Inc. for donating property to a political campaign. Contrary to the audit tentative opinion, AFR

paid fair market value for the computer, related equipment, unrelated equipment and leasehold interest, essentially taking the foregoing off GB Computer Services, Inc.'s hands. AFR assumed the payments on the lease, put past employees of GB Computer Services, Inc. on its payroll, and completely relieved GB Computer Services, Inc. of any debt. AFR could not locate competent outside computer service of the magnitude imminently needed and thus seized the GB purchase opportunity out of desperation. The problems with AFR's initial data processing and caging operations are well known to the FEC. AFR needed to bring caging and data entry in house in order to comply with Commission regulations. As Mr. Border's May 9, 1989 letter to the IRS makes obvious, the transaction in terms of dollars was to the benefit of GB Computer Services and to the detriment of AFR. GB Computer Services, Inc. made no corporate contribution.

2.5 AFR did not obtain an independent fair market valuation at the time of purchase. AFR believed it paid fair market value due to the liabilities of GB Computer which it assumed.

2.6 The mailing lists included in the transaction were lists of prospects accumulated by George Border since 1985. According to Richard Weinhold, AFR's direct mail consultant, the lists did not include any lists of the former customers of GB Computer Services, Inc. and AFR never used any of the lists. Because the computer was sold in November 1989, AFR will not be able to provide the Commission with the identification of the lists or quantity of names. These untested and undifferentiated lists were of no more value to AFR than pages from the telephone directory."

In addition, the Commission subpoenaed records relative to this finding from GB Computer Services, Inc.

GBCSI provided the following materials: a general ledger covering the period 8/01/85 - 2/28/86 and 8/01/86 - 7/31/87, financial statements from 8/01/85 to 2/28/86, contracts for the note with Sovran Bank, contracts with IBM, contract with Eimskip, contracts with The Freedom Council, National Legal Foundation, and the National Perspectives Institute. Also

provided were billings to The Freedom Council, National Legal Foundation, and National Perspectives Institute, termination agreements with The Freedom Council and National Legal Foundation, leases for the warehouse and office at 2133 Smith Avenue, Chesapeake, Virginia, an asset register, a payroll register, and other selected invoices and correspondence.

Analysis of Records Provided

In our opinion, the Committee's response does not demonstrate that the aforementioned transaction was "at arm's length" and that no impermissible contribution occurred. Below is a detailed analysis of the events which occurred from the beginning of operations for GBCSI until the transaction with the Committee. Based on our review of the records provided, we determined that the books of GBCSI were not prepared in accordance with Generally Accepted Accounting Principles.

On July 26, 1985, an agreement for services to be provided to The Freedom Council by GBCSI was signed by George Border and Robert G. Partlow, Executive Director of the Freedom Council Foundation and The Freedom Council. That agreement was then approved via a CBN contractor authorization form dated August 1, 1985. The authorization stated that the purpose of the agreement was consulting services for The Freedom Council and Pat Robertson. The authorization also states that the agreement was entered into at the request of Pat Robertson.

On August 1, 1985, a formal agreement, commencing August 1, 1985 and terminating on July 31, 1988, was reached between The Freedom Council and GBCSI. Services to be provided by GBCSI were to include general administrative services such as personnel, payroll and general accounting, administration of the promotion of The Freedom Council to the general public, administration of computer services for internal recordkeeping, and the design, creation, and writing of promotional pieces. The agreement provides for a $25,000 monthly fee to be paid to GBCSI for the period August 1, 1985 through July 31, 1986. A payment of $150,000 for the February through July 1986 monthly fees was due in advance upon execution of the agreement. In addition, the agreement provided that GBCSI be paid for expenses incurred to provide the services, plus 20% of cost for the first year of the agreement, 15% of cost for the second year, and 10% of cost for the third and final year of the agreement.

According to an article in The New York Times, 12/10/86, The Freedom Council was established in 1981 by Pat Robertson. In January, 1986, The Freedom Council changed its name to the National Freedom Institute. On the same day, a new Freedom Council was organized by the officers of the old Freedom Council. According to Richard Thompson, who was an official at the National Freedom Institute, many of the affairs of the old council were still handled by the new Freedom Council. Mr. Jerry Curry, former

president of The Freedom Council, states; "That was simply a gimmick, an administrative exercise. Its [tax] status changed, but it was the same people, same desks, same location." Mr. Curry said that inaccuracies in some Freedom Council statements to the Internal Revenue Service made him want to "cut all the ties" to CBN. He further states, "I was concerned about the legitimate public perception of a man running for President supported by a tax-exempt organization." In fact, GBCSI still referred to The Freedom Council, and not the National Freedom Institute, in records and correspondence through the closing of its operations. In addition, the termination agreement between GBCSI and The Freedom Council was signed by representatives of The Freedom Council (new) in November, 1986, at which time The Freedom Council was in the process of terminating its business. In the Audit staff's opinion, this demonstrates that the new Freedom Council continued the affairs of the old Freedom Council.

In addition to its August 1, 1985 agreement with The Freedom Council, GBCSI entered into an August 1, 1985 contract with The Freedom Council Foundation, an affiliate of The Freedom Council. GBCSI was to provide the same service to The Freedom Council Foundation which it was to provide to The Freedom Council. The agreement provided for a $5,000 monthly fee to be paid to GBCSI for the period August 1, 1985 through July 31, 1986. A payment of $25,000 for monthly fees was due in advance upon execution of the agreement. In addition, the agreement provided that GBCSI be paid for expenses incurred to provide the services, plus 20% of cost for the first year of the agreement, 15% of cost for the second year, and 10% of cost for the third and final year of the agreement. The Freedom Council Foundation was established in 1982 by Pat Robertson and headed by him until 1985. In addition, The Freedom Council Foundation shared the common officers of The Freedom Council. In 1985, the corporation was dissolved and reincorporated on the same day. In April of 1986, the name was changed to National Legal Foundation. The National Legal Foundation was financed by CBN and The Freedom Council.39/

A third agreement was also reached on August 1, 1985, and was between GBCSI and National Perspectives Institute.40/ This contract shows that GBCSI will provide the same services as provided to the previous two entities. National Perspectives Institute was founded in 1985 by Mr. Robertson and initially was financed by CBN.41/

39/ The New York Times, 12/10/86

40/ The actual agreement is not in the records provided. An amended contract dated April 1, 1986 refers to the original agreement of August 1, 1985.

41/ The New York Times, 12/10/86

The Freedom Council, National Legal Foundation, and National Perspectives Institute42/ accounted for 94.9% of all revenues recorded in the books of GBCSI during the time for which records were provided. The Committee for Freedom accounted for an additional 1.9% of total revenues. The Committee for Freedom, a multicandidate PAC, was established by Mr. Robertson in 1985.43/ Thus, three of the four organizations [The Freedom Council, National Legal Foundation, National Perspectives Institute] associated directly with Mr. Robertson and which received their funding either directly or indirectly from CBN accounted for 94.9% of all revenue of GBCSI.

On October 14, 1985, GBCSI reached an agreement to purchase the IBM System 38 computer and related items for a total price of $415,399. Three days later, Steve Davis, controller of GBCSI [identified as associated with The Freedom Council in 1986] sent a letter to George Border describing the terms of the payment agreement and that GBCSI will be approximately $33,000 short of having the cash needed to make the final payments (see Attachment #13). GBCSI was to pay $50,000 upon signing of the contract and an additional $33,079.80 at the time of delivery. An additional $83,079.80 was to be due 30 days afterwards and the rest would be financed through Sovran Bank. The letter states that Mr. Davis has told Dave Jackman about the problem and that he could possibly advance GBCSI $60,000 through the Freedom Council and Freedom Council Foundation. Also, a summary of GBCSI cash from November 1, 1985 through January 1, 1986 was furnished to Mr. Border.

One element of the cash flow states "$50,000 from FC [The Freedom Council], FF [The Freedom Council Foundation], or CBN [presumably The Christian Broadcasting Network, Inc.] advance 12/15 Billing." The letter is ended by Mr. Davis' statement to Mr. Border; "As you can see the success of our meeting IBM payments depends on FC, FF meeting our needs. They must know our problem and be willing to make adjustments in the cash flow for 60 days." As stated above, The Freedom Council and The Freedom Council Foundation/National Legal Foundation was financed by CBN.

The final payment to IBM for the computer system was recorded in the books of GBCSI on January 17, 1986. Billings of GBCSI to The Freedom Council and The Freedom Council Foundation/National Legal Foundation from August 1, 1985 until the time of the final payment total $769,384.63 (see Attachment #14). An analysis of the financial statements of GBCSI shows that from August 1, 1985 until the end of January, 1986, GBCSI reported net income of $433,115.92 which was $17,716.89 more than the cost of the computer. The month after the computer was paid for in full,

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42/ All three organizations had addresses on Greenbrier Circle, Chesapeake, Virginia.

43/ The New York Times, 12/10/86.

GBCSI expenses were more than the previous six months combined, which resulted in a net loss of $291,011.62. Attachment #15 summarizes the Profit and Loss Statements for GBCSI from August, 1985 through February, 1986.

In October 1985, the month of the purchase, revenues were $292,436.94 more than the previous month and $234,860.86 more than November. Billings and expenses appear to be planned so that GBCSI would have sufficient cash on hand to allow for the purchase and payment in full of the computer system. After IBM was paid in full in January 1986, GBCSI incurred a substantial loss in February 1986. Based on our review of records made available with respect to February 1986, the cause of these sudden losses included substantial increases to salaries for directors, payroll expenses, postage expense, and office/warehouse supplies. Also, depreciation expense was recorded for the first time. Furthermore, there were several entries to accounts with the reference as adjusting or correcting entries. GBCSI did not provide documentation to support these or other journal entries.

In October, 1986, The Freedom Council was in the process of terminating its business. A non-binding draft of settlement terms between GBCSI, George Border, and The Freedom Council (see Attachment #16) provided the following relevant items:

> "2...GB [GB Computer Services, Inc.] employees except for George Border, will be given the same termination benefits as TFC [The Freedom Council] employees plus any accrued unused vacation...
>
> b. TFC agrees to hold George Border harmless from any loss on sale of his house as follows:
>
> a) At any time up to and including January 31, 1987 TFC, will at George Border's sole option and request, reimburse George Border for all equity in house.
>
> b) In the event GB sells house on or before January 31, 1987 TFC retains the right to purchase the house by matching a purchase offer TFC deemed too low...
>
> d. TFC acknowledges that George Border has advanced $65,000 to GB as a loan to facilitate business operations.44/ TFC agrees to the

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44/ A $40,000 payment is shown in the ledger of GBCSI as being an advance by George Border in February, 1986. As of August 1, 1986, the records of GBCSI indicate a balance of $65,000. This balance was paid starting in November, 1986, and was paid in full on January 9, 1987.

reimbursement to George Border of the $65,000 loan...

e. In relationship to IBM 38 and related equipment owned by GB, GB has the option to request that TFC assume full responsibility for Sovran note and related equipment on or before December 31, 1986. TFC would then own all of the equipment covered by the note. In that event, TFC shall hold GB harmless from any and all liabilities for the computer, all related equipment, fixtures, and furniture covered by the note, as well as any other notes or obligations on said equipment which may exist."

A meeting was held on November 11, 1986 between Steve Davis of GBCSI and Harry Fagan of Coopers & Lybrand45/ at which time it was determined that $326,730 would be the cash requirement needed for close down. In the close down estimate were provisions for items noted in the settlement terms which included accounts payable, payroll through December 26, 1986, termination pay, and George Borders' loan to GBCSI. The amount specifically excluded the loan amounts to Sovran. On November 25, 1986, a termination agreement was entered into by The Freedom Council and GBCSI in which The Freedom Council agreed to pay GBCSI $327,000.

Another meeting was held on January 15, 1987 between Mr. Davis and Mr. Fagan and a determination was made that an additional $94,252 would be needed for the cessation of operations. Included in this amount is $46,168 for October, 1985 through January, 1986 payments to Sovran Bank. Apparently, GBCSI had forgone its option for The Freedom Council payments on the loan and in doing so, assumed the ownership of the IBM 38 computer as noted in the non-binding settlement terms. On January 26, 1987, an amendment to the November 25, 1985 agreement was executed wherein The Freedom Council agreed to pay an additional $82,252. On January 30, 1987 and February 6, 1987, National Legal Foundation paid the remaining $12,000.

It was at this point that the Committee reached its agreement with GBCSI to purchase GBCSI's IBM agreements (maintenance and programs), the leasehold interest in the premises

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45/ Coopers & Lybrand were also the accountants of CBN [The New York Times, 12/10/86]. Mr. Jerry Curry states that he wanted to change accountants for The Freedom Council, but CBN blocked the move.

at 2133 Smith Avenue, Chesapeake, Virginia46/, the computer system, mailing equipment, lists and other equipment. The purchase agreement, dated January 27, 1987, provided for the Committee to assume the Sovran loan, which GBCSI had incurred in order to finance the purchase of the IBM computer system.

In relation to the mailing list, George Border wrote in a letter, dated October 23, 1985, to The Committee for Freedom stating, "GB Computer Services, Inc. has acquired the use of a prominent donor list. Although we have had to pay a premium price for this list, we believe this value is exceptional. We are convinced that a mailing to this list from The Committee for Freedom (TCFF) would be an outstanding fund raiser." However, during our analysis of GBCSI's general ledger, there was no indication of the purchase of a mailing list.

The book value of total fixed assets (i.e., Computers/ Software, Furnitures and Fixtures, Office Equipment, Mail Equipment) as recorded in the general ledger of GBCSI is $543,084.87 at the date of the Committee's purchase agreement. To acquire these assets, the Committee assumed a loan for $233,480 from Sovran Bank. In our opinion, the assumption of the leases do not represent value paid for the computer system and related assets. The leases represent expenses the Committee would have incurred regardless of the computer and equipment purchase. As stated previously, the office and warehouse lease appears to be at below market value. Thus, we believe the records of GBCSI indicate a book loss to GBCSI of $309,604.87.

The above $543,084.87 valuation does not include any value assigned to the mailing list(s) which was a part of the transaction, nor does it include accumulated depreciation because GBCSI did not appear to record depreciation after February 28, 1986. Moreover, the director, supervisor, and an employee of mail operations, the director and an employee of data processing, and the supervisor and an employee of data entry all became employees of the Committee. These employees had worked with the computer system and should have possessed knowledge of its operation and applications which would be of considerable benefit to the Committee. The amount used for the original termination agreement between GBCSI and The Freedom Council contained a provision for the employees of GBCSI to receive substantial termination benefits.

46/ A letter dated July 26, 1985, [the same date GBCSI reached its agreement for services with The Freedom Council] addressed to George Border at CBN states that "the proposed rental rates for The Christian Broadcasting Network for these areas...are below market value." GBCSI was renting its office space at $.70 a square foot and the warehouse at $.27 a square foot.

In our opinion, the information reviewed indicates that GBCSI was established and funded by organizations affiliated with the candidate for the primary purpose of purchasing the IBM System 38 computer system. Adequate funding was provided by these organizations from inception (August, 1985) of GCBSI until the date of the final payment to IBM for the computer system (January, 1986) at which time GBCSI incurred a substantial loss in February, 1986.

The Committee was able to conveniently assume the liabilities of GBCSI while GBCSI at the same time was assured per agreements to receive $421,252 from organizations founded by Pat Robertson in order to terminate its business and pay all obligations other than the loan assumed by the Committee (i.e., $409,252 The Freedom Council and $12,000 National Legal Foundation (formerly Freedom Council Foundation). The aforementioned agreement allowed the Committee to obtain assets at what appears to be substantially below GBCSI's recorded net book value while GBCSI had no remaining assets or liabilities. Therefore, we believe that the transaction between GBCSI and the Committee was not "at arm's length" and represents an in-kind contribution of at least $309,604.87[47] ($543,084.87 - $233,480). It should be noted that, based upon our review of GBCSI's records made available, no depreciation expense was charged for the period March 1986 through January 1987. The amount of depreciation expense, if taken, would decrease the book value and in turn the amount ($309,604.87) of the calculated book loss to GBCSI. However, this calculated book loss does not necessarily equate to the "usual and normal charge" for the items purchased by the Committee (see 11 C.F.R. §100.7(a) and (b)). Also, no value has been calculated related to the mailing lists sold by GBCSI in this transaction.

A calculation of Expenditures Subject to the Overall Limitation appears below.

47/ It should be noted that it is possible, depending upon the circumstances and relationships of the parties involved, that GBCSI's transfer of the lease and the IBM agreements constituted value given to GBCSI since the Committee relieved GBCSI of its duties and obligations under the agreements. Similarly, GBCSI's transfer of the IBM agreements and the leasehold interest, which entitled the Committee to the IBM services and licensed programs and the right to possess and to otherwise use the leased premises, constituted value given to the Committee. However, it is questionable whether the value given by the Committee agreed to are equivalent. The fact that GBCSI and the Committee agreed to exchange these assets does not mean that they are of equal value.

AMERICANS FOR ROBERTSON, INC.
EXPENDITURES SUBJECT TO THE OVERALL EXPENDITURE LIMITATION AS CALCULATED BY THE AUDIT STAFF

Amount Reported by the Committee thru December 31, 1991 Subject to the Overall Expenditure Limit		$23,079,801.35 a/
Adjustments to Reported Total:		
Expenditures Incorrectly Classified as Exempt Compliance by the Committee - Not Included Above		38,940.77
Reported Debt Outstanding at December 31, 1991		156,032.50
Additional Debts Not Included on Report:	Response Marketing	54,596.38
	C. Ridley	9,646.18
	H. Ellingwood	3,871.28
Adjustments for Aircraft Usage:		
In-Kind Contribution-CBN Continental, INC.		260,352.32 b/
Adjustments for billing errors		7,676.09 b/
Excess offsets to operating expenditures from press billings		112,874.81 c/
In-kind Contribution - GB Computer Services Inc.		309,604.87 d/
Christian Coalition		190,595.25
American Life League		20,000.00
Accounts Receivable		< 5,835.25>
Non-Qualified Campaign Expenses		<163,568.68> e/
Adjusted Reported Expenditures Subject to the Overall Expenditure Limitation		24,074,587.87
Overall Expenditure Limitation 2 U.S.C. §441a(b)(1)(A)		<23,050,000.00>
Amount Incurred in Excess of Overall Limitation		$ 1,024,587.87

a/ Committee reported amount adjusted for mathematical error.
b/ See discussion at D.1.a. on pages 25-41.
c/ See discussion at D.1.b. on pages 41-43.
d/ See discussion at D.2. on pages 43-56.
e/ See Final Audit Report Findings III.B.1., 2. and 4.

Adjustments

Open Accounts Payable	<224,146.34>
Open Accounts Receivable	5,835.25
Payments Post 7/25/89 (LIFO date)	<146,306.99>
Reported Paid Expenditures Subject to the Overall Expenditure Limitation	$659,969.79 48/

See Finding E. below for calculation of repayment amount.

Recommendation #7

The Audit staff recommends that, absent a demonstration to the contrary, the Committee refund to the Press organizations $105,634.56 in amounts received in excess of the maximum billable amount for press travel on Committee aircraft. The Committee should submit evidence of these refunds, the calculation of the amount paid to each Press organization and photocopies of the front and back of the negotiated refund checks.

E. Calculation of the Amount Repayable for Exceeding the Iowa, New Hampshire and Overall Limitations

Based upon its deliberations with respect to the George Bush for President Committee, Inc., the Commission determined that the repayment should be calculated using the larger of expenditures in excess of the overall limitation or expenditures in excess of the state limits.

The Audit staff has determined, at Finding III.C., Allocation of Expenditures to States, that the Committee paid $1,109,752.50 in excess of the state limits. Further, Finding III.D., Use of Funds for Non-Qualified Campaign Expenses in Excess of the Overall Limitation on Expenditures, shows that the Committee paid $659,969.79 in excess of the overall limitation.

Therefore, multiplying the larger amount (expenditures in excess of the state limits) by the repayment ratio would result in the repayment amount computed below:

Amount Paid in Excess of the Iowa and New Hampshire Limitations	$1,109,752.50
Times Repayment Ratio (Finding III.A.)	.305142
Repayment Amount	$338,632.10

48/ This amount, determined in excess of the overall state limitations, is subject to change. Any adjustments will be reflected in the Commission's Final Statement of Reasons.

Recommendation #8

Based upon the Commission's decisions described above, the Audit staff recommends that the Commission make an initial determination that $338,632.10 is repayable to the United States Treasury pursuant to 11 CFR § 9038.2(b)(2).

F. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that the candidate submit a Statement of Net Outstanding Campaign Obligations which contains, among other items, the total of all outstanding obligations for qualified campaign expenses and an estimate of necessary winding down costs within 15 days of the candidate's date of ineligibility.

In addition, 11 C.F.R. §9034.1(b) states, in part, that if on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR 9034.5, the candidate may continue to receive matching payments provided that on the date of payment there are remaining net outstanding campaign obligations.

As noted in Finding III.A., the candidate's date of ineligibility was April 28, 1988. The Committee filed a Statement of Net Outstanding Campaign Obligations (NOCO) which reflected the Committee's estimated NOCO as of April 28, 1988. The Audit staff reviewed the Committee's financial activity through August 31, 1988, in order to calculate the Committee's actual financial position regarding cash, accounts receivable, capital assets, accounts payable, and estimated winding down costs. As contained in the interim audit report, the Audit staff adjusted NOCO reflected a deficit of $2,822,372.01 at the candidate's date of the ineligibility.

Subsequent to the Committee's response to the interim audit report the Audit staff calculated a revised NOCO based on a review of reported activity through December 31, 1991.49/ The major revisions to the NOCO are a result of revising both receivables and payables to reflect the reported activity through December 31, 1991. In addition payables were increased for amounts due as refunds of excessive individual contributions. Finally an adjustment was made reducing payables by the amount the Committee exceeded the spending limits. This adjustment is necessary in accordance with 11 CFR §9034.5(b). The revised NOCO appears below:

49/ Generally, adjustments were based on unaudited reported activity through December 31, 1991, the date of the last Committee reported activity at the time this report was drafted.

AMERICANS FOR ROBERTSON, INC.
Revised NOCO Statement AS OF 4/28/88 Based on
Activity Through 12/31/91

Assets		
Cash in Banks		
National Accounts	$ 213,198.47	
State Accounts	56,052.08	
Receivables		
4/29/88-8/31/88 a/	158,423.07	
9/1/88-12/31/91 b/	298,532.03	
Capital Assets	15,600.00	
Total Assets		$ 741,805.65
Liabilities		
Accounts Payable		
paid 4/29/88-8/31/88	1,940,122.04 a/	
paid 9/1/88-12/31/91	2,456,529.42 b/	
Accounts Payable at 12/31/91	590,147.12 c/	
Adjustments to Accounts Payable:		
Non-Qualified Campaign Expenses:		
4/29/88-10/21/88	<163,568.68> d/	
Paid In Excess of State Limitations		
4/29/88-10/21/88	< 24,964.62> e/	
In Excess of Overall Limitation	<454,630.68> f/	
Total Liabilities		<$4,343,634.60>
NOCO (Deficit)		<$3,601,828.95>

Footnotes to NOCO

a/ Based on actual audited activity, not adjusted for non-qualified campaign expenses (see notes d/, e/ and f/).

b/ Compiled from unaudited reported activity, not adjusted for non-qualified campaign expenses (see notes d/, e/ and f/).

c/ Includes (1) $266,130.42 reported by the Committee as outstanding, (2) $142,592.21 in contribution refunds payable as calculated by the Audit staff, (3) $105,634.56 in refunds due the Press (see Finding III.D.1.b.), (4) $75,789.93 in payables developed by the Audit staff (CBN Continental $7,676.09; Ellingwood $3,871.28; Ridley $9,646.18; Response Marketing $54,596.38).

d/ Included in figures for Accounts Payable paid 4/29/88 through 12/31/91; this adjustment removes non-qualified campaign expenses paid in accordance with 11 CFR 9034.5(b). See Findings III.B.1., 2. and 4.

e/ Included in figures for Accounts Payable paid 4/29/88 through 12/31/91; this adjustment removes non-qualified campaign expenses paid in accordance with 11 CFR 9034.5(b). See Finding III.C.

f/ Included in figures for Accounts Payable above; this adjustment removes the value non-qualified campaign expenses in accordance with 11 CFR 9034.5(b). See Finding III.D. There is no overlap relative to the adjustment explained above at note e/.

As noted above the adjusted NOCO reflects a deficit at the candidate's date of ineligibility. The Audit staff reviewed the Committee's reported financial activity through the date of the last matching fund payment (April 19, 1989) to verify that the Committee did not receive matching funds in excess of entitlement.

Net Outstanding Campaign Obligations (Deficit)	$3,601,828.95
Private Contributions 4/29/88 - 4/19/8950/	<1,478,097.49>
Matching Funds Received 4/29/88 - 4/19/8951/	<1,931,127.96>
Other income	< 166,918.84>
Remaining Entitlement at 4/19/89	$ 25,684.66

Based on the calculation above it does not appear that the Committee received matching funds in excess of its entitlement.52/

G. Repayment Recap

Shown below is a recap of repayment amounts discussed in this report.

Finding	Topic	Repayment Amount
III.B.1.	Penalties and Post-DOI expenses	$ 21,994.23
III.B.2.	Convention related expenses	22,727.59
III.B.4.	Undocumented transfers	5,189.86

50/ Actually represents reported private contribution through 4/30/89. The Audit staff was unable to calculate amounts received through 4/19/89 since the majority of the contributions received were reported as unitemized.

51/ Includes payment on 4/19/89.

52/ On March 10, 1992, an initial Debt Settlement Plan was submitted by the Committee. Subject to Commission approval, approximately $22,000 in debts could be settled. No adjustment relative to the Committee's proposal has been made. Any material changes to the above calculation will be addressed in the Commission's Final Statement of Reasons.

III.E.	Exceeding States (NH & IA) Limitations	$ 338,632.10
	TOTAL	$ 388,543.78 53/

53/ This amount is subject to change. Adjustments will be reflected in the Commission's Final Statement of Reasons, if appropriate.

AMERICANS FOR ROBERTSON, INC.
Schedule of Non-Qualified Campaign Expenses
(Penalties and Post-DOI Expenses)

Check #	Payee	Date	Amount	Purpose
1641	IRS	01/12/88	$37,320.26	Tax Penalty
4575	IRS	05/23/88	3,286.77	" "
2166	IRS	01/27/88	21,498.15	" "
115	IRS	04/05/88	833.57	" "
116	Cashier Tex Employment Comm.	04/05/88	5.00	" "
117	Florida Employment Comm.	04/05/88	10.68	" "
118	Job Service of Iowa	04/05/88	51.11	" "
131	DC Treasurer	04/05/88	55.31	" "
1002	VA Department of Treasury	04/20/88	8,699.72	" "
1201	INSTY Printers	06/03/88	143.10	Mailing to Minnesota Supporters
1202	Jerry's	06/03/88	175.00	Postage Related to Mailing
		TOTAL	$72,078.67	

AMERICANS FOR ROBERTSON, INC.
Schedule of Paid Post-DOI Convention Related Expenses

Date	Payee	Check #	Amount	Purpose	
07/26/88	Ask Mr. Foster	1024	$ 283.00	Travel to Convention	
07/26/88	" " "	1218	356.00*/	" " "	
08/01/88	" " "	1245	396.00	" " "	
08/03/88	" " "	1290	2,821.00	" " "	
08/10/88	" " "	1355	1,996.50	" " "	
08/12/88	" " "	1390	250.75	" " "	
08/16/88	" " "	1397	491.00	" " "	
08/22/88	" " "	1424	144.00	" " "	
	SUBTOTAL TRAVEL				$6,738.25
08/02/88	Jennifer Best	1257	36.00	Phone Bank	
08/02/88	Penni Boutillier	1258	98.50	" " "	
08/02/88	Nancy Boyle	1259	64.00	" " "	
08/02/88	Lucien Freeman	1260	12.00	" " "	
08/02/88	Patrice Freeman	1261	115.00	" " "	
08/02/88	Rev. Marie Galatas	1262	124.50	" " "	
08/02/88	Taja Grayson	1263	120.00	" " "	
08/02/88	Lucille Hogan	1264	24.00	" " "	
08/02/88	Sheila Jamison	1266	36.00	" " "	

*/ Check amount $589.00. $233.00 not convention related.

AMERICANS FOR ROBERTSON, INC.
Schedule of Paid Post-DOI Convention Related Expenses

Date	Payee	Check #	Amount	Purpose
08/02/88	Cindy Johnson	1267	158.00	Phone Bank
08/02/88	Susan Meyers	1268	84.00	" "
08/02/88	Tiffany Moline	1269	76.00	" "
08/02/88	Chasity Morgan	1270	69.00	" "
08/02/88	Cortney Morgan	1271	70.00	" "
08/02/88	Janice Morgan	1272	72.00	" "
08/02/88	Cynthia Noah	1273	68.00	" "
08/02/88	Schevander Parker	1274	103.00	" "
08/02/88	Aline Schevermann	1275	118.00	" "
08/02/88	Teska Washington	1277	59.00	" "
08/02/88	Gina Martin	1278	36.00	" "
08/02/88	Dveldon Higgins	1279	61.00	" "
08/02/88	Susette Sparks	1281	24.00	" "
08/02/88	Shiela Sterling	1283	95.00	" "
08/02/88	Damion Haynes	1284	12.00	" "
08/02/88	Jacqueline Haynes	1285	15.00	" "
08/10/88	Cynthia Noah	1356	16.00	" "
	SUBTOTAL PHONE BANK			$1,766.00

AMERICANS FOR ROBERTSON, INC.
Schedule of Paid Post-DOI Convention Related Expenses

Date	Payee	Check #	Amount	Purpose
08/01/88	Bowman Transportation	1247	$ 706.29	Shipping
08/11/88	General Audio Video	2247	1,450.00	Radio Rentals (Beepers, etc.)
08/12/88	Easy Rental, Inc.	2250	219.35	Furniture Rental
08/12/88	Blevins Concession Supply	2251	457.01	Equipment Rental
08/12/88	Dixi Springs Springvater	2252	127.31	Bottled Water
08/12/88	Kinkos	2253	308.47	Printing
08/15/88	American Rent All	2258	200.56	Equipment Rental
08/15/88	Sunny's Bakery	2259	50.50	Refreshments
08/16/88	Kinkos	2262	381.50	Printing
08/16/88	Lucky Dog	2266	375.00	Food Concession
08/16/88	Sounds of Mann	2264	920.00	Musicians
08/16/88	Zetz/7-Up Bottling Co.	2265	233.27	Soft Drinks
08/16/88	Bent's Maine	2267	311.04	Air Horns
08/17/88	Hotel Inter-continental	2268	1,895.75	Unknovn
08/18/88	John Rondero	2270	233.65	Food Supplies
08/18/88	La Pavillion	2272	508.06	Unknovn
08/17/88	Sullivan Transport Co.	2269	378.00	Deliver Hats

AMERICANS FOR ROBERTSON, INC.
Schedule of Paid Post-DOI Convention Related Expenses

Date	Payee	Check #	Amount	Purpose
08/18/88	Taste Rite Inc.	2271	139.10	Coffee
08/19/88	Dallas Suites	2274	6,261.38	Hotel Rooms
08/19/88	Brady Hilton	2276	300.00	Security
08/19/88	Bank of Louisiana	2283	700.00	Rent
08/02/88	Bank of Louisiana	2291	500.00	Damage Deposit
08/19/88	Fairmount Hotel	2278	390.67	Hotel Rooms
08/19/88	Marlene Elvell	2280	1,138.20	Hotel Expenses
08/19/88	Dixie Springs Spring Water	2279	26.01	Water
08/19/88	Budget Rent-a-Car	2282	1,441.24	Car Rental
08/18/88	Hotel Inter-continental	2284	1,986.06	Hotel Charges
08/20/88	Budget Rent-a-Car	2285	565.35	Car Rental
08/05/88	Spangenberg Inc.	2296	2,500.00	Redecorate Hospitality Center
08/12/88	" "	2249	3,890.00	" " "
08/05/88	Vivien Insurance	2297	1,000.00	Liability Insurance
08/05/88	Printvorks	2298	1,500.00	Convention Signs
08/15/88	" "	2261	986.00	" "
08/12/88	Hotel Inter-continental	2254	5,000.00	Hotel Charges
08/12/88	" "	2257	5,171.83	" "
08/12/88	" "	2295	3,182.88	" "

AMERICANS FOR ROBERTSON, INC.
Schedule of Paid Post-DOI Convention Related Expenses

Date	Payee	Check #	Amount	Purpose
09/16/88	Alan Sutherlin	2236	2,657.17	Phone Rental
09/19/88	Executive Business Products	2434	1,070.49	Copier Rental
06/17/88*/	Goldberg/ Marchesano Associates	--	13,022.03	Buttons, Bumper stickers for Convention
08/03/88*/	" "	--	3,793.59	Lapel Stickers, Posters for Convention
	TOTAL		$74,482.01	

*/ Invoice date, costs defrayed with funds paid to vendor prior to 4/28/88.

FINAL AUDIT REPORT
ATTACHMENT #3

AMERICANS FOR ROBERTSON, INC.
Non-Qualified Campaign Expenses
Undocumented Transfers of Funds from National Accounts

Check#/Wire	Date	Transferred From	Intended Recipient State Account	Amount
Wire	09/30/87	Signet #6520025633	NY	$ 1,570.00
2451	09/03/87	" "	PA	2,679.00
2457	09/03/87	" "	GA	5,400.00
2623	09/14/87	" "	PA	1,279.00
2705	09/18/87	" "	GA	4,040.00
3127	10/06/87	" "	PA	240.00
3374	10/22/87	" "	GA	1,800.00
	TOTAL			$17,008.00

CBN Continental, Inc. Chartered Billings

The Committee used the corporate airplane of CBN Continental as its primary source of air transportation. However, all transactions regarding the charter of the plane were conducted through CBN Continental, Inc., which according to a Committee official, was a Virginia stock corporation and a wholly owned subsidiary of CBN Airplanes, Inc. formed to handle "for profit" transactions between CBN Continental and other entities.

The Audit staff's reconciliation of invoices and payments revealed that CBN Continental, Inc. billed the Committee $1,057,749.88 and that the Committee made payments of $714,764.10 and was credited for $34,675.86, leaving a balance of $308,309.86. According to the treasurer, $260,352.32 of the ending balance is disputed gasoline surcharges.

The Audit staff reviewed the invoices and payments made available involving the Committee and CBN Continental, Inc. to determine if the Committee paid for its air travel in advance as required by 11 C.F.R. §§114.9(e)(i) and (ii). The Committee provided the Audit staff with a computer printout entitled "Continental Broadcasting Network Passenger Flight Log" covering the period 9/16/86 to 3/9/88; copies of invoices dated between the period 9/24/86 to 3/18/88; and a summary of invoices and payments covering the period 10/8/86 to 3/18/88. Passenger logs were not provided for any flights occurring after 3/9/88.

The Audit staff's review of available documentation revealed 20 invoices, totalling $150,847.37 for which payment did not occur in advance of the date of the respective trips*/. In the case of 16 invoices, totalling $116,639.27, additional costs for previous flights were billed, the amounts of which materially exceeded the costs originally invoiced and paid. In addition, the Audit staff noted that invoice records were not provided relative to 5 invoice numbers (#1050, 87-1031, 88-1006, 88-1008,

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*/ In several cases, the trip had occurred prior to the date of the invoice.

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88-1010) listed on the summary. Further, the following invoice numbers were not listed on the above mentioned summary: 1044, 1048, 1051, 1054, 1055, 1060, 1061, 1062, 1064, 1066, 87-1002, 87-1004, 87-1014, 87-1015, 87-1019, 87-1023, 87-1032, 87-1036, 87-1045, 88-1021. It is possible that these invoices were deemed to relate to entities other than the Committee.

The Audit staff reviewed the aforementioned passenger flight log which contained information regarding the date of the flight, flight itinerary, flight hours, names of passengers and the respective entity to be billed, and the purpose of trip ordered by trip number. Although the passenger flight log did not contain information on all trip numbers, our review of the log revealed several instances where the billings do not appear to be in accordance with 11 C.F.R. § 9034.6(b)(2). For example, trip #86-139, according to the log, occurred on 12/6/86 and originated in Dallas with a destination of Norfolk, including a stopover in Staunton, Virginia. Total flight time was listed as 2.7 hours; a notation in the passenger flight log stated "AFR [Americans For Robertson, Inc] paid .5 hrs for stop in Staunton. Bill CBN 2.2 hrs."

Notwithstanding the fact that the aircraft's actual point of origin was in all likelihood Norfolk, Virginia not Dallas, Texas, the flight time of 2.7 hours should have been billed to the Committee since Staunton was recognized as a campaign stop. According to 11 C.F.R. § 9034.6(b)(2) that portion of the cost of the trip allocable to campaign activity shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from that stop through each subsequent campaign-related stop, back to the point of origin.

A second trip originating in Norfolk, Virginia with intermediate stops in Tulsa, Las Vegas, Long Beach, Palm Springs, Detroit and Manchester, involved campaign related stops in California and New Hampshire, according to the passenger flight log. However, according to records made available, the Committee was billed for 2.70 hours out of a estimated 12.4 hour campaign related trip. Further, the stop in Detroit was billed (4.0 hours) to "Michigan Comm. For Freedom" and the remainder of the trip cost billed to CBN.*/

Recommendation #22

The Audit staff recommends that the Committee within 30 days of service of this report, show why the above mentioned payments, totalling $150,847.37 relative to flights not paid in advance and the additional payments made on flights that were

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*/ See Finding II.A. for additional information concerning Michigan Committee for Freedom.

undercharged, totalling $116,639.27, should not be considered corporate contributions.

It is also recommended that the Committee provide:

- A detailed accounting of all invoices received by the Committee from CBN Continental, Inc.;
- The above mentioned missing invoices plus those not listed on the summary, as well as all invoices and payment documentation for flights after 3/9/88.
- A complete and accurate passenger flight log containing trip information, as described above, for all flights during the period 7/1/86 through 12/31/88 including those flights for which the Committee was not billed in whole or in part;
- Documentation including workpapers, etc., to demonstrate the method of calculating the total costs of the flights and the method used to calculate the amounts billed to the the Committee and the other entities involved;
- Information on the ownership of the aircraft used to transport Committee personnel and documentation to show the inter-relationships of CBN, CBN Continental, CBN Continental Inc., and CBN Airplanes, Inc. Such documentation is to include but not be limited to photocopies of corporate filings, names of officers and members of the respective board of directors; and
- The Candidate's schedule for the period 7/1/86 - 12/31/88. The schedule or reconstruction thereof is to include, on a daily basis, the Candidate's itinerary, events attended and the type of event (i.e., campaign vs non-campaign). In the case of events categorized as non-campaign, provide an explanation as to why said event was not campaign-related and the name of the sponsoring entity.

Additional recommendations may be made after review of the requested documentation.

XXII. RECOMMENDATION NO. 22

22.1 The Commission has been shown all of AFR's records concerning CBN Continental, Inc., or CBN Airplanes, Inc. AFR is still trying to find some of the missing invoices.

22.2 AFR did not use the BAC 111 after March 9, 1988.

22.3 The FEC has previously been provided the only copy of the passenger flight log.

22.4 AFR does not have records relating to the method of calculating total costs. These records may be contained in the material submitted to the Commission by CBN Continental.

22.5 AFR understands that the BAC 111 was owned by Airplanes, Inc., a wholly owned subsidiary of CBN Continental Broadcasting Network, Inc. AFR believes that this information has been submitted as part of CBN Continental's response to the FEC's subpoena.

22.6 The Commission has been given the schedules for the candidate which still exist in campaign records. Other than

those schedules that have already been provided to the FEC, AFR has no other schedules and no means to recreate them.

22.7 AFR was billed in advance for all flights according to the policy established by CBN Continental and believed that it paid in advance. Under the FAA 10 point billing practice, AFR apparently received bills after flights which were for costs that CBN Continental incurred unexpectedly after the submission of a prior bill. In addition, AFR received later billings for flight deviations after take off due to campaign schedule changes, or weather. AFR paid CBN Continental in cash, in full for all nondisputed bills. One disputed bill resulted in a settlement agreement, a copy of which has been supplied to the Commission.

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LEASE

THIS LEASE is entered into by and between AIRPLANES, INC., a Delaware corporation, hereinafter called the Lessor, and CBN CONTINENTAL BROADCASTING NETWORK, INC., a Delaware corporation, hereinafter called the Lessee.

1. Lease. Lessor hereby leases to the Lessee, upon the terms and conditions herein contained, the following described aircraft:

One BAC 1-11-201 AC, Serial No. 005

2. Term. The term of this lease shall be one year, commencing on May 1, 1987. Lessee shall have exclusive usage of the aircraft during the term, without limitation as to mileage or flight hours. Lessee shall have the option to renew this Lease on the same terms and conditions (including this right of renewal) for successive one year terms, upon notice to Lessor.

3. Rental. No fixed rental shall be charged. Lessee shall as rental hereunder perform all maintenance and pay all expenses, as described hereinbelow.

4. Lessee's covenants. The Lessee covenants and agrees as follows:

(a) No lien or assignment. To keep safely, and use carefully, the aircraft, and not to sell, or attempt to sell, or assign or dispose of the aircraft, or of any interest therein, or suffer or permit any charge, lien, or encumbrance of any nature upon the aicraft.

(b) Sublease. Lessee shall have the right to sublease, rent, loan out or otherwise permit others to use the aircraft, provided, however, such is undertaken in conformance with all applicable rules and regulations of the Federal Aviation Agency pertaining to the use to which the aircraft shall be subjected.

(c) Taxes. To pay all taxes, assessments, and charges imposed by any national, state, or municipal government, or public or airport authority on the aircraft or on its use during the term this lease is in effect.

(d) Maintenance. To maintain and keep the aircraft and all components thereof in good order and repair, in accordance with the requirements of the Federal Aviation Agency or any other governmental authority, and within a reasonable time replace any and all parts, equipment, appliances, instruments, or accessories which may be worn out, lost, destroyed, or otherwise

rendered unsatisfactory, or unavailable for use in or on the aircraft. Lessee shall perform all major overhaul on the aircraft, whenever deemed necessary and as may be required by the Federal Aviation Agency or any other governmental authority during the term of this lease, and all inspection and maintenance service.

(e) Indemnification. To be responsible and liable to the Lessor for, and indemnify the Lessor against, any and all damage to the aircraft which occurs in any manner from any cause or causes during the term of this lease or until redelivery of the aircraft to the Lessor.

(f) Insurance. At its own expense, to keep the aircraft insured against hazards, including, but not limited to, hull damage and liability for personal injuries, death or property damages, arising from or in any manner occasioned by the acts or negligence of the Lessee or others in custody, operation or use of aircraft, with losses under the hull damage policies payable to the Lessor and with the Lessor named as additional insured under all policies of insurance.

(g) Licensed pilotage. To permit the aircraft to be operated only by currently certificated pilots.

(h) Delivery upon termination. To return, upon demand, at the expiration of the lease term, the aircraft to the Lessor, at such place as may be designated by the Lessor, in the same operating order, repair, and condition as when received, excepting only for reasonable wear and tear, and damage by any cause covered by insurance.

5. Assignment of warranty. The Lessor hereby assigns to the Lessee, for and during the lease term, any warranty of the manufacturer, express or implied, issued on the aircraft and the component parts, and hereby authorizes the Lessee to obtain any customary service furnished by the manufacturer in connection therewith, at Lessee's expense.

6. Risk of loss. All risks of loss or damage of the aircraft leased, from whatever cause, hereby are assumed by the Lessee during the entire lease term of the aircraft, and if the aircraft be damaged, and be capable of being repaired, the Lessee shall have the option of either repairing same or replacing same, at the Lessee's cost.

7. Cancellation. This Lease may be cancelled by Lessee at any time upon thirty (30) days prior written notice to Lessor.

8. No passage of title. This agreement is, and is intended to be a lease, and the Lessee does not acquire hereby

any right, title, or interest whatsoever, legal or equitable, in the aircraft except its interest as the Lessee hereunder.

9. Miscellaneous.

(a) The Lessor warrants that, if Lessee performs its obligations under this lease, the Lessee shall peaceably and quietly hold, possess and use the aircraft during the entire lease term, free of any interference or hindrance.

(b) The relationship between the Lessor and Lessee shall always and only be that of Lessor and Lessee. The Lessee shall never at any time during the term of this lease for any purpose whatsoever be or become the agent of the Lessor, and the Lessor shall not be responsible for the acts or omissions of the Lessee or its agents.

10. Separability. The invalidity of any portion of this lease shall not affect the remaining valid portions thereof.

11. Entire agreement. This lease constitutes the entire agreement between the parties hereto, and any change or modification to this lease must be in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have duly executed this lease on May 1, 1987.

CBN CONTINENTAL BROADCASTING NETWORK, INC.,
Lessee

By: _____

AIRPLANES, INC., Lessor

By: _____, President

[redacted] to another person in exchange for equal time, when needed, on the other person's airplane, and no charge, assessment, or fee is made, except that a charge may be made not to exceed the difference between the cost of owning, operating, and maintaining the two airplanes;

(3) A "joint ownership agreement" means an arrangement whereby one of the registered joint owners of an airplane employs and furnishes the flight crew for that airplane and each of the registered joint owners pays a share of the charges specified in the agreement.

(d) The following may be charged, as expenses of a specific flight, for transportation as authorized by paragraphs (b)(3) and (7) and (c)(1) of this section:

(1) Fuel, oil, lubricants, and other additives.
(2) Travel expenses of the crew, including food, lodging, and ground transportation.
(3) Hangar and tie-down costs away from the aircraft's base of operations.
(4) Insurance obtained for the specific flight.
(5) Landing fees, airport taxes, and similar assessments.
(6) Customs, foreign permit, and similar fees directly related to the flight.
(7) In flight food and beverages.
(8) Passenger ground transportation.
(9) Flight planning and weather contract services.
(10) An additional charge equal to 100 percent of the expenses listed in subparagraph (1) of this paragraph.

91.103 FLYING EQUIPMENT AND OPERATING INFORMATION

(a) The pilot in command of an airplane shall insure that the following flying equipment and aeronautical charts and data, in current and appropriate form, are accessible for each flight at the pilot station of the airplane:

(1) A flashlight having at least two size D cells, or the equivalent, that is in good working order.
(2) A cockpit checklist containing the procedures required by paragraph (b) of this section.
(3) Pertinent aeronautical charts.
(4) For IFR, VFR over-the-top, or night operations, each pertinent navigational en route, terminal area, and approach and letdown chart.
(5) In the case of multiengine airplanes, one-engine inoperative climb performance data.

(b) Each cockpit checklist must contain the following procedures and shall be used by the flight crewmembers when operating the airplane.

(1) Before starting engines.
(2) Before takeoff.
(3) Cruise.
(4) Before landing.
(5) After landing.
(6) Stopping engines.
(7) Emergencies.

(c) Each emergency cockpit checklist procedure required by paragraph (b)(7) of this section must contain the following procedures, as appropriate:

(1) Emergency operation of fuel, hydraulic, electrical, and mechanical systems.
(2) Emergency operation of instruments and controls.
(3) Engine inoperative procedures.
(4) Any other procedures necessary for safety.

(d) The equipment, charts, and data prescribed in this section shall be used by the pilot in command and other members of the flight crew, when pertinent.

AGREEMENT OF SETTLEMENT

THIS AGREEMENT entered into between Americans for Robertson, Inc., CBN Continental, Inc. and its wholly owned subsidiary, Airplanes, Inc., hereinafter referred to as AFR, Continental, and Airplanes.

WHEREAS, Airplanes, Inc. was the owner and operator of a BAC 1-11 aircraft operated under Federal Aviation Administration rule F.A.R. Part 91, and

WHEREAS, AFR desired to lease an airplane from time to time under FAA rule F.A.R. Part 91, and

WHEREAS, AFR did in fact lease the BAC 1-11 of Airplanes repeatedly during parts of 1986, 1987 and 1988, and

WHEREAS, on each occasion of use during this period of approximately 18 months AFR paid Airplanes in advance of every trip, calculated under the formula specified in F.A.R. Part 91. The parties agreed that if actual expenses exceeded the amount estimated in calculating the advance payment or if the advance payment exceeded the amount due that there would be adjusting payments from one party to the other at the end of each calendar month, and

WHEREAS, at the end of eighteen months of usage of the BAC 1-11, when AFR was winding down its activities prior to going out of business, the accounts of the parties for use of the aircraft was substantially in balance,and

WHEREAS, in 1988 an independent fuel broker who had been supplying Airplanes with fuel for the BAC 1-11 presented a bill to Airplanes for ($130,000) for a fuel surcharge for fuel used in AFR flights for the preceding eighteen months. Without conferring with AFR on this matter, Airplanes and its parent, Continental, paid the invoice of ($130,000) in full, doubled the price as permitted under F.A.R. Part 91, and presented a bill of ($260,000) to AFR for immediate payment, and

WHEREAS, AFR through its attorneys and its president has vigorously protested this invoice, saying that it was outside the scope of a pay as you go arrangement; would, if known, have dramatically altered AFR's usage of the BAC 1-11; and in fact was nothing more than a contrived attempt by Airplanes to charge the entire operating cost of the BAC 1-11 for the period in question to AFR. Airplanes and Continental, through its attorneys and officers, equally strongly insist that the fuel surcharge was legitimate, was actually paid, and that reimbursement is warranted under F.A.R. Part 91 and other federal regulations and required by its agreement with AFR.

NOW THEREFORE, in an attempt to settle this dispute, the parties agree as follows:

1. AFR has accumulated at substantial expense a mailing list of some 1,800,000 individuals or families who are supportive of religious, moral, and family oriented causes, magazine subscriptions, etc. The rental value of lists of this nature is set by the current marketplace at fifty dollars ($50) to one hundred dollars ($100) per thousand names per use. At $50 per thousand a one time rental of the AFR list is worth $90,000. At $100 per thousand, a one time rental would be worth $180,000.

2. In full settlement of all claims by Airplanes or Continental against it, AFR agrees to supply to Continental a magnetic tape or tapes containing the AFR list of 1,800,000 names, and further grants to Continental, or Continental's designee, a non-exclusive license for a five-year term beginning with the date of this agreement to mail three mailings to the complete list at any time during the term of this license.

3. Airplanes and Continental, by this Agreement, agrees to accept the above described license to mail three mailings to AFR's list in complete settlement of all claims which they now hold against AFR.

4. Continental further agrees that at the end of the license period or upon three mailings to the list, whichever occurs first, it will return to the list to AFR or AFR's designee. Continental also agrees that in the event its rights under this lease are sublet to any third party, other than its parent or subsidiary companies, it will only furnish to such third parties labels of the mailing list not the magnetic tape. Continental further warrants that it will protect the list, will take reasonable steps to prevent its unauthorized use, and will cooperate with AFR in any suit brought to prevent unauthorized possession or use of the list by any individual or organization that has received the list by any means from Continental or its affiliated companies.

5. Continental further agrees that it will supply documentation to AFR whenever the list is used, showing the party that used the list, for what purpose and the date or dates of use.

6. The parties acknowledge that AFR is a campaign committee regulated by the Federal Election Commission. In the event that the Federal Election Commission rules that this agreement will result in excess compensation by AFR to Airplanes and Continental for use of the BAC 1-11 and that AFR must recover any amount from Continental, then the parties agree to be bound by the Federal Election Commission ruling, and agree to modify this agreement accordingly. Provided, however, that if another

Federal Agency chooses to dispute the ruling of the Federal Election Commission, then on the advice of either of their counsel, the parties agree to seek a Declaratory Judgment on this matter from a Federal District court.

Notices under this contract may be sent for AFR to:

Gordon Robertson
VANDEVENTER, BLACK, MEREDITH & MARTIN
500 World Trade Center
Norfolk, Virginia 23510

and for Airplanes and Continental to:

James Reid, Vice President
CBN Continental
CBN Center
Virginia Beach, VA 23463

Disputes arising under this contract shall be decided according to the laws of the State of Virginia.

This writing embodies the entire agreement of the parties on this matter.

Given under our hand this 25th day of Aug, 1989.

AMERICANS FOR ROBERTSON, INC.

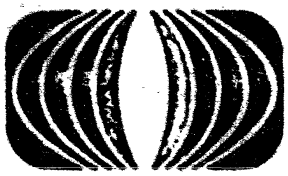
By _____

AIRPLANES, INC.

By _____

CBN CONTINENTAL, INC.

By _____



CBN CONTINENTAL

Continental Broadcasting Network, Inc. CBN Center Virginia Beach, Virginia 23463 (804) 424-7777

March 16, 1988

Marc Nuttle
Americans For Robertson
2133 Smith Ave.
Chesapeake, Va. 23320

Dear Marc,

It is the purpose of this letter to review the basis on which the BAC-111 was operated in 1987.

The BAC-111 was to be sold to Richard Brown of Goldcor early in 1987. The terms under which AFR was to lease the plane were that all direct flight expenses plus $25,000.00 per month for fixed costs would be paid to Goldcor.

The 1987 flight plan for AFR's use called for 40 hours per month or 480 hours per year, which would have defrayed all operating costs each month until the sale was finalized.

However, the sale was not finalized in 1987 and AFR flew an average of 16 hours per month for a total of 196 actual hours for 1987. This is 40.8% of planned utilization which leaves Continental with a substantial amount of 1987 expenses not billed.

Therefore, I have prepared an invoice for $260,352.32 for the 1987 costs not previously billed.

When the 1987 operating budget was prepared, the projected use of 40 hours per month was the basis upon which a billing rate was established that would cover all costs until the expected sale of the BAC-111 was completed.

The total cost incurred by AFR for the BAC-111 is $40,000.00 less than would have been paid to Goldcor which reflects the efficient manner in which the plane has been maintained and operated.

CC: Col. Patterson ✓
C. Simpson

Sincerely,

Kevin B. Steacy

Kevin B. Steacy
Business Manager

23701019006.4

Media Billings

The Audit staff was unable to review the Committee's system of billing media personnel for air transporation costs and related services because of the lack of adequate documentation. The Committee provided copies of paid invoices related to billings of media personnel, a passenger flight log covering trips billed in whole or in part to the Committee for flights between 9/16/86 and 3/9/88, and some workpapers which contained the calculation of the amount charged media personnel for flights

between 2/9/88 and 2/29/88. The Audit staff could not locate invoices apparently issued to media personnel for 32 flight legs noted in the passenger log. In addition, based on a review of available Committee documentation, it appears that media personnel were billed at a rate equal to first class airfare plus 50 percent.

Recommendation #23

The Audit staff recommends that within 30 days of service of this report, the Committee provide:

- the missing media invoices for the flight legs detailed at Attachment #20.
- documentation which details all amounts billed to media personnel and reimbursements received; and
- documentation to demonstrate that its billing policy (i.e., 150% of first class) for media personnel conforms to the regulations at 11 C.F.R. § 9034.6(b) and that deductions from the amount of expenditures subject to the overall limit of 11 C.F.R. § 9035.1(a) for media reimbursements received do not exceed the actual cost of transportation and services provided in accordance with 11 C.F.R. §§ 9034.6(d)(1) and (2).

Additional recommendations may be made after review of the requested information.

XXIII. RECOMMENDATION NO. 23

23.1 AFR has shown FEC its media billings file. AFR is still trying to locate the missing media invoices for the flight legs detailed in Attachment No. 20 but to date has been unable to do so. AFR believes that media may not have been billed for these flights. Based on a review of media invoices compared with the flight log, AFR has discovered instances where the media were not billed for flight legs.

23.2 AFR has supplied the Commission with its media

billings file.

23.3 AFR's initial policy was to bill media personnel 100% first class airfare. Attachment 23.3 to this response is a bill for media travel showing the first class billing policy. This rate is apparently less than the rate allowed by regulations. At some point in time, AFR changed its billing policy when AFR began to provide ground transportation and hotel accommodations for media personnel, essentially acting as a travel agent. AFR is attempting to contact past employees to determine exactly when the billing policy changed and exactly what services were provided to media in the way of arranging for hotel reservations and providing ground transportation to campaign stops. At this point, AFR believes that the services provided in obtaining convenient hotel accommodations, ground transportation for all campaign stops, and air travel cost more than the amount billed to the media. AFR has provided to the Commission a detailed listing of all invoices from CBN Continental showing comparable first class airfare, number of passengers on the flight, and total billed by CBN Continental. This listing shows either that most media bills were below First Class airfare, that the bills were within ten percent of First Class airfare, or that the total cost for all legs of the flight trip exceeded the amount billed to the media. For example, the September 18, 1987 bill to NBC News shows the following:

a) flight from Norfolk to Manchester - charge

$176.00 - actual First Class $293.

b) flight from New Hampshire to Pellston, MI.- charge $384 - Actual First Class - $638.

c) Pellston to Orlando charge - $591 - Actual First Class $561 (within ten percent).

The first class airfares come from the CBN Continental printout which has been provided to the Commission. While the above flight occurred when AFR was billing under a First Class airfare policy, flights in February 1988 shows the same pattern. Gary Wills of Time, Inc. went on an extended trip and was billed $1,142 on February 2, 1988. The passenger flight log shows he took the following trips:

1/28/88 Miami to Brunswick, GA., First Class $521

1/29/88 Brunswick to Asheville, First Class $441

1/29/88 Asheville to Kinston, N.C., First Class $206

1/29/88 Kinston, N.C., to Norfolk, First Class $167

1/30/88 Norfolk to Grand Rapids, First Class $452

1/30/88 Grand Rapids to Newport News, First Class $452

1/30/88 Newport News to Washington, D.C., First Class $159

The total cost of these flight legs far exceeds the amount billed. This was not an isolated event. On February 5, 1988, AFR billed the Richmond News Leader $288 for flights taken by Andy Petkofsky. Mr. Petkofsky went from Omaha to Sioux City ($218) and from Sioux City to Des Moines ($255), according to the flight log.

For some peculiar reason, the Washington Post was overbilled. Tom Reid traveled from Manchester to Greer, South Carolina (First Class $432, charged $398 in 3/1/88 invoice); Greer, S.C., to Orlando (First Class $236, charged $312); Orlando to Miami (First Class $236, charged $258). While the amount charged ($968) exceeded First Class ($904), the amount was still within FEC regulations.

The above examples are samples taken from the media billing file. AFR did not receive a copy of the flight log until Saturday, June 23, 1990 and did not have time to perform a complete review of all media billings. However, these samples show that regardless of AFR policy, AFR media transportation billings were at or below First Class airfare in the fall of 1987 and in February and March of 1988.

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT is made and entered into as of the 27th day of January, 1987, by and among AMERICANS FOR ROBERTSON, INC., a District of Columbia corporation ("Buyer"), and G.B. COMPUTER SERVICES, INC., a Virginia corporation ("Seller").

W I T N E S S E S:

WHEREAS, Seller is the owner of an IBM System 38 computer and related equipment and the leasehold interest in certain premises at 2133 Smith Avenue in Chesapeake, Virginia; and

WHEREAS, Buyer desires to purchase all of Seller's right, title and interest in and to Seller's computer and mailing equipment and the leased premises, together with certain related contracts and agreements, and certain lists of contributors, supporters and other entities, and certain other equipment, free and clear of any of Seller's liabilities or obligations not expressly assumed herein, as more fully described hereinafter.

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions. As used herein, the following terms shall have the meaning described below:

a. The term "Agreement" shall mean this Purchase Agreement between the parties hereto dated January 27, 1987;

b. The term "Assets" shall mean collectively the Computer System, Mailing Equipment, Lists, Seller's leasehold interest in the Premises, the IBM Agreements and the Other Equipment, each as hereinafter defined;

c. The term "Closing" shall mean the purchase by Buyer and sale by Seller of Seller's computer system, mailing equipment, leasehold estate, and related contract rights, as more specifically described in paragraph 2 hereof. The Closing shall take place at the offices of counsel for Buyer, Clark & Stant, P.C., 900 Sovran Bank Building, One Columbus Center, Virginia Beach, Virginia 23462, on the Closing Date;

d. The term "Closing Date" shall mean the date on which the Closing shall take place, which date shall be January 27, at 2:30 p.m., or at such other date and time as the parties hereto may mutually agree;

e. The term "Computer System" shall mean the IBM System 38 computer and all related equipment, modifications, additions and accessories thereto owned by Seller;

f. The term "Mailing Equipment" shall mean the equipment used for sorting, folding, inserting, affixing postage and other related mail handling equipment and apparatus owned by the Seller.

g. The term "IBM Agreements" shall mean the composite IBM Maintenance Agreement and Agreement for IBM Licensed Programs dated October 25, 1985 (Agreement No. G3A0769) between

Seller and International Business Machines Corporation;

h. The term "Leasehold Estate" shall mean Seller's right, title and interest in and to the Premises pursuant to the Lease, as hereinafter defined;

i. The term "Lists" shall mean any mailing lists, lists of contributors, supporters or other persons or lists of any other persons or entities used for mailing, fund raising, or any other purposes owned by the Seller.

j. The term "Other Equipment" shall mean the item of equipment more particularly described on Exhibit A attached hereto and made a part hereof.

k. The term "Premises" shall mean the leased premises located at 2133 Smith Avenue, Chesapeake, Virginia 23320.

2. Purchase and Sale. Subject to the representations, warranties and agreements of Seller and the terms and conditions herein stated, Seller shall sell, assign, transfer and convey to Buyer on the Closing Date all the Assets, free and clear of all liens, encumbrances, clouds, claims, charges, equities and perfections of any nature (except liens and encumbrarces expresssly assumed by Buyer as provided herein), as follows:

a. The Computer System and Mailing Equipment, together with all modifications, additions and accessories thereto;

b. The lease for the Premises, a copy of which is attached hereto as Exhibit B, and made a part hereof ("Lease");

c. All of Seller's right, title and interest in and to its equipment leases, the Other Equipment, equipment warranties, licenses (including, without limitation, the Lists and the IBM Agreements), listed on Exhibit C, attached hereto and made a part hereof.

3. Purchase Price.

a. The aggregate purchase price for the Assets (the "Purchase Price") shall be $233,480.00. The Purchase Price shall be paid in cash at Closing by either (i) certified check or, (ii) at Buyer's election, by Buyer's assumption of Seller's obligations under the Lease, the IBM Agreements and the indebtedness to Sovran Bank, N.A. as of the Closing Date pursuant to that certain secured equipment financing, more particularly described in Sovran Bank, N.A.'s commitment letter to Seller dated October 3, 1985 ("Sovran Loan"), and the release by Sovran Bank, N.A. of Seller from all obligations under the Sovran Loan. Copies of said commitment letter and the loan documents pursuant thereto are attached hereto as Exhibit D and made a part hereof.

Seller will pay all sales, transfer, and documentary taxes, if any, payable in connection with the sales, transfers, and deliveries to be made to Buyer hereunder.

4. Representations and Warranties of Seller. Seller makes the following representations, warranties, and covenants and enters into the following agreements, each of which are true

as of the date hereof and will be as true as of the Closing, and all of which shall survive the Closing, and any investigation made at any time by Buyer, and each of which is acknowledged by Seller to be material to and relied upon by Buyer:

a. Seller is a corporation duly organized and validly existing under the laws of the Commonwealth of Virginia and in good standing under the laws of the Commonwealth of Virginia, and all other states in which it transacts business and is required to register, with the power and authority (corporate or other) to own its properties and carry on its business as it is now being conducted, and to enter into and carry out the terms of this Agreement;

b. The execution and delivery of this Agreement and the sale contemplated hereby have been duly authorized by Seller's Board of Directors, and prior to Closing Seller will deliver to Buyer certified copies of the minutes of the meetings of its Board of Directors at which such authority was granted;

c. There has not been any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the Assets;

d. After Closing, Buyer will be entitled to occupy and use the Premises to the same extent as Seller presently occupies and uses the Premises;

e. Seller has good and marketable title to the Assets, subject to no mortgage, pledge, lien, conditional sales

agreement, encumbrance, security interest, charge, or claim (other than Seller's obligations under the Sovran Loan, the Lease and the IBM Agreements, to be assumed by Buyer hereunder), and Buyer will obtain good and marketable title thereto when they are assigned and conveyed to it pursuant to this Agreement, free and clear of any mortgages, pledges, liens, conditional sales contracts, encumbrances, security interest, or charges and claims (other than the Sovran Loan). The Sovran Loan, the Lease and the IBM Agreements are assumable and/or assignable, respectively, as provided herein, and no consent of the other parties thereto is required, except as indicated on Exhibits A, B, C and D. All required consents have been obtained by Seller, or will be obtained at least one day prior to Closing or such other date as mutually agreed upon by the parties;

f. There is no litigation or proceeding pending against or relating to Seller or the Assets, nor does Seller know or have reasonable grounds to know of any basis for any threatened action, or of any governmental investigation relative to Seller or the Assets;

g. Seller is not in default under the Sovran Loan, the Lease or the IBM Agreements and Seller will make a good faith effort to obtain any requisite consent to the transfer of the IBM Agreements;

h. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated

hereby will violate any provision of the charter or Bylaws of Seller, or any mortgage, agreement, order, judgment, decree or contract to which Seller is a party or by which it is bound;

i. Seller will execute any and all additional documents of transfer or assignment to specific assets to be conveyed hereunder upon the request of Buyer at any time either at or after the Closing;

j. No information necessary to make any of the representations and warranties herein contained not misleading has been withheld from, or has not been disclosed to, Buyer.

5. Representations and Warranties of Buyer.

a. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the District of Columbia, is qualified to do business in the Commonwealth of Virginia and has full power and authority to carry on its business, enter into this Agreement, and to consummate the transactions contemplated herein.

b. Prior to the Closing Date, the Board of Directors of Buyer and any other entity whose consent is required will have duly authorized or ratified the execution and delivery of this Agreement, the purchase and sale of the Assets and consummation of the transactions contemplated herein.

c. Neither the execution and delivery of this Agreement nor the consummation of transactions contemplated hereby will violate any provision of the charter or bylaws, as

applicable, of Buyer or any mortgage, agreement or contract to which Buyer is a party or by which it is bound.

6. Conditions to Closing. All obligations of Buyer under this Agreement are subject to the fulfillment prior to or at Closing of each of the following conditions:

a. The representations and warranties of Seller contained in this Agreement shall be true at the time of Closing as though such representations and warranties were made at such time, and Seller shall provide a certificate to that effect;

b. Seller shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing;

c. Seller shall have delivered to Buyer an opinion of its counsel, dated the Closing Date, acceptable to Buyer, regarding corporate status of Seller, and its ability to enter into and perform the transactions contemplated herein;

d. Seller shall execute and deliver Bill(s) of Sale, and Assignment(s) in form and substance satisfactory to Buyer, conveying the Assets to Buyer;

e. The Lease and IBM Agreements will be valid, subsisting and enforceable according to their terms. Seller shall have timely and fully performed and satisfied all of its obligations and liabilities (contingent or otherwise) under the Lease and the IBM Agreements and shall have paid all rent, security deposits, license fees and maintenance fees due before

Closing Date. Seller shall obtain and furnish Buyer at Closing with a written estoppel certificate in form and content reasonably satisfactory to Buyer's counsel, dated as of the Closing Date from the lessor of the Premises;

f. All required consents for Buyer's assumption of the outstanding indebtedness under the Sovran Loan and the Seller's assignment of the Lease and IBM Agreements shall have been obtained.

7. Indemnity by Seller. Seller agrees to indemnify Buyer (including its directors, officers and shareholders) and hold it harmless from all damages, losses and expenses incurred by Buyer including reasonable attorneys' fees actually incurred and based upon or arising out of:

a. any obligations, debts or liabilities of Seller not explicitly assumed by Buyer hereunder;

b. Any breach or warranty or inaccurate or erroneous representation of Seller contained in this Agreement, in any exhibits attached hereto or in any instrument of transfer or other document delivered pursuant hereto.

8. Agreements of Buyer. Buyer agrees to assume at the Closing by such appropriate agreements and instruments as may reasonably be requested by counsel for Seller and then or thereafter pay or otherwise satisfy and discharge, and hold Seller, its directors, officers and Shareholder, harmless with respect to, the following, to the extent that any such obliga-

tions or liabilities accrue on or after the Closing:

a. All obligations of Seller arising out of the Lease and the IBM Agreements from and after the Closing; and

b. The outstanding indebtedness of Seller under the Sovran Loan, in the event that Purchase Price is not paid by certified check at Closing.

9. Adjustments as of the Closing. The parties agree to prorate as of the Closing and reimburse each other as appropriate within thirty (30) days following the Closing with respect to the following items:

a. Rent payable under the Lease and monthly fees and charges under the IBM Agreements;

b. Interest payable under the Sovran Loan;

c. All ad valorem taxes on the Assets, if any, shall be adjusted on the basis of the fiscal year for which assessed. If the Closing shall occur before the tax rate is fixed, the apportionment of taxes shall be upon the basis of the tax rate for the immediately preceding year applied to the latest assessed valuation, and adjusted between the parties upon receipt of tax bills.

10. Seller's Conditions to Closing. The obligations of Seller to consummate the transactions hereby contemplated shall be subject to the fulfillment on or prior to the Closing Date of the following conditions:

a. Buyer's representations and warranties con-

tained in this Agreement shall be true at the time of Closing as though such representations and warranties were made at such time;

b. Buyer shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing, including without limitation the assumption of the indebtedness under the Sovran Loan;

c. Buyer shall have delivered to Seller an opinion of its counsel, dated the Closing Date, acceptable to Seller, regarding the corporate status of Buyer and its ability to enter into and perform the transactions contemplated herein;

d. No action or proceeding before a court or any other governmental agency or body shall have been instituted or threatened to restrain or prohibit the purchase of the Assets contemplated hereby.

e. Seller shall have received either (i) the duly cancelled note evidencing the Sovran Loan, together with duly executed releases of the liens and security interests securing the same, if the Purchase Price is paid by certified check, or (ii) a release, duly executed by Sovran Bank, N.A., releasing Seller from all liability and obligations under the Sovran Loan if the Purchase Price is paid as set forth in paragraph 3(a)(ii) hereof.

11. Indemnity by Buyer. Buyer agrees to indemnify

Seller and hold it harmless from all damages, losses and expenses incurred by it including reasonable attorney's fees actually incurred, and based upon or arising out of:

a. any obligations, debts or liabilities of Seller expressly assumed by Buyer hereunder;

b. any breach of warranty or inaccurate or erroneous representation of Buyer contained in this Agreement or in any instrument of transfer or other document delivered pursuant hereto.

12. Right to Inspection. Buyer shall at all times during reasonable business hours have the right to enter upon the Premises for the purpose of making such inspections of the Assets, and the Premises.

13. Notices. All notices which may be required or given hereunder shall be in writing addressed to the respective addresses of the parties hereto as shown below, posted in the U.S. mail by certified or registered mail, or hand delivered. Such notices shall be deemed given when received by the address thereof.

As to Seller:	G. B. Computer Services, Inc. P.O. Box 2442 Chesapeake, Virginia 23320
As to Buyer:	Americans for Robertson, Inc. P.O. Box 1988 Chesapeake, Virginia 23320
With a copy to:	Thomas R. Frantz, Esquire Clark & Stant, P.C. 900 Sovran Bank Building One Columbus Center Virginia Beach, Virginia 23462

14. Binding Effect. All the terms of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the respective legal representatives of and the successors and assigns of Seller and Buyer.

15. Prior Agreements. This Agreement supersedes all prior arrangements, understandings, letters of intent, conversations and negotiations between the parties hereto with respect to the subject matter of this Agreement and shall, together with any other agreement executed between the parties contemporaneously herewith, constitute the entire agreement between the parties with respect to the matters mentioned herein.

16. Governing Law. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the Commonwealth of Virginia.

17. Waiver of Default. Any waiver by either party hereto of a breach of any provision or covenant in this Agreement shall not operate as or be construed as a waiver of any subsequent breach or of any rights the said party may otherwise have.

18. Amendment. Neither this Agreement nor any term or provision hereof may be changed, waived, discharged, or terminated orally, or in any manner other than by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought.

19. Headings. The headings used in this Agreement are

used for convenience only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

20. Survivorship. The representations, warranties, terms, conditions and provisions of this Agreement shall survive the Closing and the execution and delivery of any document required or permitted hereunder.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and delivered by them on their behalf as of the day and year hereinabove first set forth.

SELLER: G.B. COMPUTER SERVICES, INC.

By _____
Its President

BUYER: AMERICANS FOR ROBERTSON, INC.

By Edward J. Whelan
Its Treasurer

COMMONWEALTH OF VIRGINIA
CITY OF Chesapeake, to-wit:

The foregoing Purchase Agreement was acknowledged before me by Sergei F. Boder as President of G. B. Computer Services, Inc. this 21st day of January, 1987.

Louise A. Mann
Notary Public

My Commission Expires: 3/27/89

COMMONWEALTH OF VIRGINIA
CITY OF Chesapeake, to-wit:

The foregoing Purchase Agreement was acknowledged before me by Edward J. Melen as Treasurer of American for Robertson, Inc., this 22nd day of January, 1987.

Louise A. Mann
Notary Public

My Commission Expires: 3/27/89

mbh
36061/001
pa.afr.c

EXHIBIT A

14 Computer tables
Computer file cabinets
~~12~~ Desks
2 Credenzas
Miscellaneous chairs
3 Tables
2 Storage cabinets
1 Bunn packing tying machine
1 6-tray inserter and Pitney Bowes postage meter
1 Standard register burster
1 O&M folder
1 Pitney Bowes spring scale
1 Pitney Bowes manual postage meter
1 Pitney Bowes electronic scale
1 Power postage meter with power stacker (PB)
Assorted tables, chairs, cabinets
Hand truck
Pallet truck
3 Letter openers (1 for parts only)
1 Shredder
~~2 Silver reed typewriters~~
Microwave
Vacuum cleaner
Table and 4 chairs
Pitney Bowes copier (D500)
Miscellaneous file cabinets
Miscellaneous bookcase (misc.)
~~Seat, desk~~
Telephone system (TCI):
1 Switchboard
4 Speaker phones
16 Desk sets

EXHIBIT B

(leases copies attached)

Virby Realty Company
5700 Thurston Avenue • Suite 201 • Virginia Beach, VA 23455 •
(804) 464-3533 • Peninsula (804) 877-4327
International Business Center • 601 Thimble Shoals Boulevard • Suite 200 • Newport News, VA 23606 •
(804) 873-1426 • Tidewater • (804) 627-6047

September 12, 1985

Mr. George Border
The Freedom Council
825 Greenbrier Circle
Suite 101
Chesapeake, VA 23320

Re: Greenbrier Industrial Park
2133 Smith Avenue
Chesapeake, Virginia
ADDENDUM TO LEASE Dated
August 30, 1985

Dear Mr. Border:

This letter will serve as an addendum to the Lease dated August 30, 1985, between LOUIS C. GOODFARB, T/A VIRBY REALTY COMPANY (Lessor) and G. B. COMPUTER SERVICE, INC. (Lessee), clarifying the following conditions agreed to by all parties involved.

31.0 PARKING. Lessee will be furnished fifteen (15) parking spaces for use during the term of Lease, and an additional ten (10) parking spaces in the rear of the building; such parking spaces will be allocated to the lessee but not designated.

32.0 JANITORIAL. Lessee is responsible for all janitorial for the referenced suite.

33.0 RENEWAL OPTIONS. Conditioned upon the Lessee being in full and complete compliance in the performance of all of the terms and conditions of this Agreement, Lessee is hereby granted the right to two (2) consecutive one (1) year options to renew the lease as follows: To exercise the first year option which commences September 1, 1988, subject to Lessee providing certified written notice to Lessor ninety (90) days prior to August 31, 1988; the second option year shall commence on September 1, 1989, subject to Lessee providing certified written notice to Lessor ninety (90) days prior to August 31, 1989. During each of the one year renewal periods, all terms and conditions of the Lease dated August 30, 1985 and subject to the terms stated in Paragraph 34.0 [RENT ADJUSTMENT].

37.0 ACCEPTANCE OF PREMISES. Lessee agrees to accept the leased premises as outlined in red on the attached Exhibit "A" in an "As Existing" condition except Lessor will at Lessor's cost perform the improvements noted on the attached Exhibit "A".

38.0 EARLY OCCUPANCY. Lessor agrees to provide G. B. Computer Service, Inc. with rent free occupancy at 2133 Smith Avenue, Chesapeake, Virginia from September 1, 1985 until December 31, 1985, conditioned upon the terms and conditions of this lease dated August 30, 1985 taking full effect, excepting Paragraph 4 [RENT].

Upon your review you are requested to secure the appropriate corporate signature(s) on this addendum letter and lease, filling in the party(ies) signing the Lease and their title(s), the date signed, and the location "Executed At" on page four (4) of each Lease. Please return the original and three copies of the Lease Agreement and three copies of the Exhibit "A" properly initialed, for execution by the Lessor. A fully executed copy of the lease and addendum will be provided to you for your files.

You are also requested to return two (2) checks, one in the amount of TWO THOUSAND ONE HUNDRED FORTY EIGHT DOLLARS AND 41/100 ($2,148.41) made payable to Virby Realty Company which represents the security deposit, and one in the amount of TWO THOUSAND ONE HUNDRED FORTY EIGHT DOLLARS AND 41/100 ($2,148.41) made payable to Virby Realty Company which represents your first month's rental payment (January 1, 1986).

ACKNOWLEDGED:

By: _____
Vincent A. Carpenti, Broker
ALCAM Realty Company

LESSOR: LOUIS C. GOODFARB, T/A VIRBY REALTY COMPANY

By: _____
Alan Goodfarb, Attorney-in-fact for
Louis C. Goodfarb

LESSEE: G. B. COMPUTER SERVICE, INC.

By: _____

LEASE AGREEMENT

THIS LEASE AGREEMENT, dated August 30, 19 85 by and between LOUIS C. GOODFARB, T/A VIRBY REALTY COMPANY with its principal office at 601 Thimble Shoals Boulevard, Newport News, Virginia 23606 xxxxxxxxxxxxxxxx hereinafter referred to as the LESSOR, and G. B. COMPUTER SERVICE, INC. hereinafter referred to as the LESSEE.

WITNESSETH:

The Lessor hereby leases to the Lessee and the Lessee hereby leases from the Lessor the following described property, hereinafter referred to as the "Leased Premises":

Space designated as Suite 100 (As outlined in Red on the attached Exhibit "A")

containing approximately 3,051 square feet and being located at the following address: 2133 Smith Avenue, Chesapeake, Virginia 23320

State of Virginia, together with the appurtenances including, without limitation, the right, in common with others, to use for the respective purposes for which they are intended, the lobbies, elevators, stairways, and other public and service portions of the stairways, and other public and service portions of the building which Lessee and invitees are permitted to use hereinafter collectively called "common areas."

1. TERM. This lease shall be for a term of ~~xxxxxxxx~~ Thirty-two (32) months commencing on January 1, 19 86 and terminating on August 31, 19 88 on the terms and conditions, as set forth herein.

2. USE. The leased premises are to be used for general office purposes business operations of G. B. Computer Service, Inc. and in compliance with the codes and zoning for the City of Chesapeake, allowed and for no other purpose without prior written consent of Lessor. Lessee shall not use the leased premises for any unlawful purpose or so as to constitute a nuisance.

3. POSSESSION: The Lessor covenants and agrees to have the leased premises completed and ready for possession on or before the above commencement date, barring strikes, insurrections, Acts of God and other casualties or unforeseen events beyond the control of the Lessor. Lessee agrees to accept possession of said leased premises within ten (10) days from receipt of notice by the Lessor of completion. The Lessee, at the expiration of the terms, shall deliver up the leased premises in good repair and conditions, damages beyond the control of the Lessee, reasonable use, ordinary decay, wear and tear, excepted.

4. RENT: Lessee hereby covenants and agrees to pay during the term hereof, to the Lessor, in advance and beginning on the commencement date of the lease and on the first day of each and every month thereafter a base rent of $ 2,148.41 for the first month, payable on or before January 1, 1986, and the sum of $2,148.41 payable on the first day of the next succeeding thirty-one (31) months, being a lease total of SIXTY EIGHT THOUSAND SEVEN HUNDRED FORTY NINE DOLLARS AND 18/100 ($68,749.18)

Rent shall be paid to Lessor at 601 Thimble Shoals Blvd., Newport News, Virginia 23606

If Lessee's possession commences on other than the first day of the month, Lessee shall occupy the leased premises under the terms, conditions, provisions of this Lease and the prorata portion of the monthly rent for said month shall be paid, and the term of this Lease shall commence on the first day of the month following that in which possession is given.

~~5. RENEWAL: [illegible] the end of the term hereof, or not less than ninety days prior to the end of any renewal term, [illegible] terminate the same. Failure of either of the parties to serve such [illegible] the other party shall extend the term for an additional period for one (1) year and [illegible] including the obligation to pay rent [illegible] as set forth herein.~~

SEE ADDENDUM NO. 33.0

~~6. [illegible] of this Lease or any renewal thereof shall be computed by multiplying the base rent as set forth in Paragraph Four [illegible] whose numerator shall be the Consumer Price Index (U.S. City Average - (1967 = 100) - All Items, Bureau of Labor Statistics [illegible] States Department of Labor), for the third month prior to the respective anniversary date and whose denominator [illegible] Consumer Price Index Revised Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (All items) [illegible] the commencement date of this Lease, provided that in no event shall such base rent be less than base rent stated in [illegible] The Lessor shall notify the Lessee of the adjusted monthly base rent in writing prior to the respective anniversary [illegible]~~

SEE ADDENDUM NO. 34.0

SALES AND USE TAX. The Lessee hereby covenants and agrees to pay monthly as additional rent any sales, use or other tax including State and Federal income tax now or hereafter imposed upon rents by the United States of America, the State of any political subdivisions thereof, to the Lessor, notwithstanding the fact that such statute, ordinance or enactment imposing the same may endeavor to impose the tax on the Lessor.

[illegible] date of the delivery of such notice shall be the date of the notice. The only permissible [illegible] over Mail of the U.S. Postal Service return receipt requested. [illegible] notice is refused, then in such event, the giving of the notice shall be the date of the [illegible]

SEE ADDENDUM NO. 35.0

9. WAIVER OF SUBROGATION. Lessor and Lessee hereby agree that all insurance policies which each of them shall carry to insure the demised premises and the contents therein against casualty loss and all liability policies which they shall carry pertaining to the use and occupancy of the demised premises shall contain waivers of the right of subrogation against Lessor and Lessee herein, their heirs, administrators, successors and assigns.

10. SIGNS. No sign, advertisement or notice shall be inscribed, painted or affixed by Lessee on any part of the outside or inside of the Building, except on the entrance to the premises, and such door signs shall be such size, color and style as Lessor shall approve. Lessor shall designate who shall do such work, but it shall be done at the expense of Lessee. Lessor may allow ground floor tenants signs on the exterior of the building, subject to Lessor's approval.

11. SECURITY DEPOSIT. The Lessee concurrently with the execution of this Lease has deposited the sum of $ 2,345.67, the receipt being hereby acknowledged, which sum shall be retained by the Lessor as security for the payment by the Lessee of the rent herein agreed to be paid and for the faithful performance of the covenants of this Lease. This deposit is to be held by the Lessor during the term hereof in an account separate from Lessor's funds, and shall not be used by Lessor except for the purpose herein stated. Interest at the rate of [illegible] percent per annum shall be added to and be treated in the same manner as the original security deposit. If at any time the Lessee shall be in default in any of the provisions of this Lease, the Lessor shall have the right to use said deposit, or so much thereof as may be necessary in payment of any rent in default as aforesaid and/or in payment of any expense incurred by the Lessor in and about the curing of any default by said Lessee, and/or in payment of any damage incurred by the Lessor by reason of such default of the Lessee, or at the Lessor's option, the same may be retained by the Lessor in liquidation of part of the damages suffered by the Lessor by reason of the default of the Lessee. In the event that said deposit shall not be utilized for any such purpose, then such deposit shall be returned to the Lessee not later than sixty (60) days after termination of this lease agreement.

12. DESTRUCTION OF PREMISES.

(A) If the leased premises are totally destroyed by fire or other casualties, both the Lessor and Lessee shall have the option of terminating this Lease or any renewal thereof, upon giving written notice at any time within thirty (30) days from the date of such destruction, and, if the Lease be so terminated, all rent shall cease as of the date of such destruction, and any prepaid rent shall be refunded.

(B) If such leased premises are partially damaged by fire or other casualty, or totally destroyed thereby and neither party elects to terminate this Lease within the provisions of Paragraph (A) above or (C) below, then the Lessor agrees at Lessor's sole cost and expense, to restore the leased premises to a kind and quality substantially similar to that immediately prior to such destruction or damage. Said restoration shall be commenced within a reasonable time and completed without delay on the part of the Lessor and in any event shall be accomplished within one hundred fifty (150) days from the date of the fire or other casualty. In such case, all rents paid in advance shall be proportioned as of the date of damage or destruction, and all rent thereafter accruing shall be equitably and proportionately suspended and adjusted according to the nature and extent of the destruction or damage, pending completion or rebuilding, restoration or repair, except that in the event the destruction or damage is so extensive as to make it unfeasible for the Lessee to conduct Lessee's business on the leased premises, the rent shall be completely abated until the leased premises are restored by the Lessor or until the Lessee resumes use and occupancy of the leased premise, whichever shall first occur. The Lessor shall not be liable for any inconvenience or interruption of business of the Lessee occasioned by fire or other casualty.

(C) If the Lessor undertakes to restore, rebuild or repair the premises, and such restoration, rebuilding or repair is not accomplished within one hundred fifty (150) days, and such failure does not result from causes beyond the control of Lessor, the Lessee shall have the right to terminate this Lease by written notice to the Lessor within thirty (30) days after expiration of said one hundred fifty (150)-day period.

13. SERVICES. Lessor will furnish [illegible] reasonable electricity, not to exceed 50 watt hours per day per square foot. Lessor will furnish, upon the commencement of the term hereof, electric light bulbs for the lighting fixtures installed by it in the leased premises, and thereafter able electricity, not to exceed 50 watt hours per day per square foot. Lessor will furnish, upon the commencement of the term hereof, electric light bulbs for the lighting fixtures installed by it in the leased premises, and thereafter any necessary replacement of such bulbs shall be made by and at the expense of Lessee. Lessee shall not use any method of heating or cooling the demised premises other than that provided by Lessor. Lessor reserves the right to interrupt, curtail or suspend the services required to be furnished under this paragraph when the necessity or advisability therefore arises by reason of accident, emergency, mechanical breakdown, the requirement of any authority having jurisdiction, or for any other cause beyond the control of Lessor. In the event of interruption or suspension of any such services, Lessor shall use due diligence to restore such services with reasonable dispatch, but shall not have any suspension of any such service unless such interruption or suspension is due to Lessor's own willful act and no abatement or rent shall be allowed Lessee as a result thereof, nor shall this lease or any of Lessor's obligations be in any way affected thereby.

14. ALTERATIONS: Lessee covenants that it will not make any alterations, additions or improvements to the leased premises without Lessor's prior written consent, and all such alterations, additions and improvements shall become the property of the Lessor and shall be surrendered along with the leased premises at the expiration or earlier termination of this Lease. Or, upon notice of Lessor, Lessee must remove said alterations, additions or improvements and repair any and all damages.

15. LESSOR'S RIGHT TO INSPECT AND DISPLAY: The Lessor shall have the right at reasonable times during the term of this Lease to enter the leased premises for the purpose of examining or inspecting same and of making such repairs or alterations therein as the Lessor shall deem necessary. The Lessor shall also have the right to enter the leased premises at all reasonable hours for the purpose of displaying said premises to prospective tenants within ninety (90) days prior to the termination of this Lease.

16. CONDEMNATION. If during the term of this Lease or any renewal thereof, the whole of the leased premises or such portion thereof as will make the leased premises unusable for the purpose leased, be condemned by public authority for public use, then in either event, the term hereby granted shall cease and come to an end as of the day the event last occurs. Upon such occurrence the rent shall be proportioned as of such date and any prepaid rent shall be returned to the Lessee. The Lessor shall be entitled to the entire award for such taking, except for any statutory claim of the Lessee for injury, damage or destruction of Lessee's business accomplished by such taking. If a portion of the leased premises is taken or condemned by public authority for public use as not to make the remaining portion of the leased premises unusable for the purposes leased, this Lease will not be terminated but shall continue. In such case, the rent shall be equitably and fairly reduced or abated for the remainder of the term in proportion to the amount of the leased premises taken. In no event shall the Lessor be liable to the Lessee for any business interruption, diminution in use or for the value of any unexpired term of this Lease.

premises are situated free from any such liens and shall indemnify Lessor against any such liens. Lessee notwithstanding the foregoing provisions

18. HOLDOVER: It is further covenanted and agreed that if the Lessee any assignee or sublessee shall continue to occupy the leased premises after the termination of this Lease including a termination by notice, without prior written consent of the Lessor such tenancy shall be deemed a Sufferance. Acceptance by the Lessor of rent after such termination shall not constitute a renewal of this Lease or consent to such occupancy, nor shall it waive Lessor's right or reentry or any other right contained herein. The base rent for such holdover period shall be $4,296.82 per month, or any portion of a month.

19. SUCCESSORS AND ASSIGNS: This Lease shall bind and inure to the benefit of the successors, assigns, heirs, executors, administrators and legal representatives of the parties hereto.

20. WAIVER: No waiver of any covenant or condition of this Lease by either party shall be deemed to imply or constitute a further waiver of the same covenant or condition or any other covenant or condition of this Lease.

21. SUBORDINATION: This Lease shall be subject and subordinated at all times to the liens of any mortgages or deeds of trust in any amount or amounts whatsoever now existing or hereafter encumbering the leased premises without the necessity of having further instruments executed by the Lessee to affect such subordination. Notwithstanding the foregoing Lessee covenants and agrees to execute and deliver upon demand such further instruments evidencing such subordination of this Lease to such liens of any such mortgages or deeds of trust as may be requested by Lessor. So long as the Lessee hereunder shall pay the rent reserved and comply with, abide by and discharge the terms, conditions, covenants and obligations on its part, to be kept and performed herein and shall attorn to any successor in title notwithstanding the foregoing, the peaceable possession of the Lessee in and to the leased premises for the term of this Lease, shall not be disturbed, in the event of the foreclosure of any such mortgage or deed of trust by the purchaser at such foreclosure sale or such purchaser's successor in title.

22. INDEMNIFICATION: The Lessor shall not be liable for any damage or injury to any person or property whether it be the person or property of the Lessee, the Lessee's employees, agents, guests, invitees or otherwise by reason of Lessee's occupancy of the leased premises or because of fire, flood, windstorm, Acts of God or for any other reason. The Lessee agrees to indemnify and save harmless the Lessor from and against any and all loss, damage, claim, demand, liability or expense by reason of damage to person or property which may arise or be claimed to have arisen as a result of the occupancy or use of said leased premises by the Lessee or by reason thereof or in connection therewith, or in any way arising on account of any injury or damage caused to any person or property on or in the leased premises providing, however, that Lessee shall not indemnify as to the loss or damage due to fault of Lessor.

23. CONSTRUCTION OF LANGUAGE: The terms lease, lease agreement or agreement shall be inclusive of each other, also to include renewals, extensions or modifications of the Lease. Words of any gender used in this Lease shall be held to include any other gender, and words in the singular shall be held to include the plural and the plural to include the singular, when the sense requires. The paragraph headings and titles are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

24. DEFAULT: In the event the Lessee shall default in the payment of rent or any other sums payable by the Lessee herein, and such default shall continue for a period of ten (10) days, or if the Lessee shall default in the performance of any other covenants or agreements of this Lease and such default shall continue for thirty (30) days after written notice thereof, or if the Lessee should become bankrupt or insolvent or any debtor proceedings be taken by or against the Lessee, then and in addition to any and all other legal remedies and rights, the Lessor may declare the entire balance of the rent for the remainder of the term to be due and payable and may collect the same by distress or otherwise and Lessor shall have a lien on the personal property of the Lessee which is located in the leased premises and in order to protect its security interest in the said property Lessor may, without first obtaining a distress warrant, lock up the leased premises in order to protect said interest in the secured property, or the Lessor may terminate this lease and retake possession of the lease premises, or enter the leased premises and re-let the same without termination, in which latter event the Lessee covenants and agrees to pay any deficiency after Lessee is credited with the rent thereby obtained less all repairs and expenses (including the expenses of obtaining possession), or the Lessor may resort to any two or more of such remedies or rights, and adoption of one or more such remedies or rights shall not necessarily prevent the enforcement of other concurrently or thereafter.

The Lessee also covenants and agrees to pay reasonable attorney's fees and costs and expenses of the Lessor, including court costs, if the Lessor employs an attorney to collect rent or enforce other rights of the Lessor herein in event of any breach, as aforesaid, and the same shall be payable regardless of whether collection or enforcement is affected by suit or otherwise. Lessee shall pay a late charge of fifteen ($15.00) dollars on any rent installment as additional charge when paid more than ten (10) days after due date thereof.

25. LESSEE REPAIRS: Lessee covenants that during the term it will take care of the leased premises and the fixtures and equipment therein and, at its sole cost and expense, keep the same in good condition and repair throughout the term, making such replacements as may be necessary, and at the expiration of the term remove any installations or improvements it made which Lessor wishes removed, and deliver up the leased premises in as good order and condition as the same were in at the time possession thereof was delivered to Lessee, ordinary wear and tear and damage caused by fire or other unavoidable casualty excepted. All installations, repairs, restorations and replacements shall be equal in quality to the original work.

26. LESSOR'S REPAIRS: Lessor shall, at its own cost and expense, make such repairs and alterations to and replacements of the Common Areas and structure, roof and exterior, of the Building as shall be reasonably necessary for Lessee's occupancy of, and conduct of business in, the leased premises and use of the Common Areas, unless the need for such repairs is occasioned by the negligent or willful act of Lessee, its agents, employees or invitees, in which event such repairs shall likewise be made by Lessor, but shall be charged to Lessee. Anything in the foregoing to the contrary notwithstanding Lessor shall have no liability for damage or injury to person or property as a result of its failure to make any such repair or replacement unless, within a reasonable time after being notified by Lessee of the need therefore, Lessor shall have failed to make such repair or replacement and such failure shall not have been due to any cause beyond Lessor's control including, without limitation, strikes, inability to obtain materials or equipment. Lessor, its agents, employees and contractors, shall have the right, at any time, and from time to time, to enter the leased premises for the purpose of inspection or for the purpose of making any of the aforesaid repairs or replacements. Lessee shall not be entitled to any reduction in rent, or any claim for damages, by reason of any inconveniences, annoyance, injury to business or loss of natural light or ventilation arising out of any repairs, alterations, or replacements made by Lessor pursuant to this Paragraph.

27. LANDLORD'S LIABILITY: Lessor or Agent shall not be responsible for any latent defect in, deterioration of, or change in the condition of the building, leased premises, or for any damage resulting therefrom, whether to person or property Lessor, or Agent, shall not be liable for loss of any property Lessee, (its agents, servants, employees or invitees) as a result of theft or misplacement. Lessor, or Agent, shall not be liable for any death, injury, loss, damage to persons or property however caused, whether (without limitation) caused by or resulting from falling plaster, dampness, overflow or leak upon or into the building or leased premises of water, rain, snow, steam, gas or electricity, or breakage, leakage or obstruction of pipes or other facilities, unless such death, injury, loss or damage shall be caused by the negligence or willful act of Lessor, or Agent. The enumeration, in this Paragraph, of causes for which Lessor, or Agent, shall not be liable is in no way to be construed as imposing liability on Lessor, or Agent, in respect of causes not enumerated, or an increase of any of the Lessor's, or Agent's, obligations under this Lease.

[illegible] shall be paid by Lessee to Lessor in equal monthly installments at the time and in the same manner as the rent [illegible] the leased premises is [illegible] the tenants of both [illegible] buildings then the increase in real estate taxes and other expenses mentioned herein which are [illegible] shall be equitably apportioned among the tenants of both [illegible] buildings.

29. RULES AND REGULATIONS. Lessee covenants and agrees that he will fully comply with the Rules and Regulations in regard to the building wherein the said demised premises are located, printed upon insert of this Lease and marked Schedule "A" and to comply with such alterations, additions and modifications thereof as may from time-to-time to be made by Lessor. Such alterations, additions and modifications shall be made a part of this Lease with the same effect as though written herein, and Lessee covenants and agrees that all Rules and Regulations and that all alterations, additions and modifications thereof shall be faithfully observed by the Lessee, the employees of the Lessee and all persons invited by the Lessee into said building.

30. ATTACHMENTS:

*SCHEDULE "A"—RULES AND REGULATIONS (ATTACHED)

The parties hereto have executed this Lease at the place and on the dates specified immediately adjacent to their respective signatures.

By: ______________________
Vincent A. Campana, Broker (Date)
ALCAM Realty Company

EXECUTED AT:

Bellmawr, New Jersey
(City and State)

ON:

(Date)

ADDRESS:

Eastern International
Interstate Industrial Park
Bellmawr, New Jersey 08031

LOUIS C. GOODFARB, T/A VIREY REALTY COMPANY
(Company Name)

BY:

Adam Goodfarb, Attorney-In-Fact for
Louis C. Goodfarb

"LESSOR"

EXECUTED AT:

(City and State)

ON:

(Date)

ADDRESS:

G. B. COMPUTER SERVICE, INC.
(Company Name)

BY:

BY:

"LESSEE"

rules. Any expense incurred by the management as a result of violation of these rules will be assessed against the Lessee and will be collected as rent by Lessee. Lessee shall promptly notify the management of any needed repairs to any of the equipment or fixtures.

(A) The Lessee shall comply with all the rules and regulations of the board of fire underwriters or any boards of the any county or state having jurisdiction over the leased premises and with all ordinances and regulations of governmental authorities wherein the leased premises are located at Lessee's sole cost and expense. But only insofar as any of such rules, ordinances and regulations relate to the Lessee's use of the leased premises. The obligation to comply in all cases where such rules, regulations and ordinances require repairs, alterations, changes or additions to the building including the leased premises or building equipment or any part of either, shall be the Lessor's responsibility and Lessor covenants and agrees promptly to comply with all such rules, regulations and ordinances.

(B) Lessee shall turn off all lights and close and lock all corridor doors when the premises are not in use.

(C) The exterior of all drapes installed by Lessee shall be lined with white material. All blinds and drapes are to be approved by Lessor. Blinds must be left in the fully extended position at all times.

(D) No additional locks shall be placed upon any doors of the premises without prior approval from the Lessor. Lessor shall furnish to Lessee keys to the premises and any additional keys shall be furnished at the cost and expense of Lessee. Upon the expiration or earlier termination of this lease, Lessee shall surrender to Lessor all keys to the premises. All duplicate key and lockset repairs/reset requests shall be made to the Lessor.

(E) Lessee and their employees are encouraged to park as far away from the entrances as possible. This will enable customers and clients to enter and conduct business without undue inconvenience. Certain spaces have been set aside as Visitor Parking Spaces and Handicapped Parking. These spaces will not be utilized for personal vehicles of Lessee or employees of Lessee.

(F) No antennas will be installed on the exterior of the office building by the Lessee, or their agents, without the written approval of the Lessor. If such antennas are installed, they shall be removed by Lessor at the Lessee's expense.

(G) Lessee shall not install, attach or bring into the premises any equipment, instrument, duct, refrigerator, air conditioner or other appliance which will require the use of electrical current or water without first obtaining written permission of Lessor.

(H) The sidewalks, entrances, passages, hallways, elevators, and staircases shall not be obstructed or used for any other purpose than ingress and egress.

(I) Lessee shall not enter any normally locked space. High voltages and delicate machinery are present in the spaces. The roof of the building is considered a locked space and entrance to it is not permitted.

(J) Your building will be open during normal working hours, 8:30 a.m. through 5:30 p.m., Monday through Friday. All other times, entry may be obtained by use of your suite key.

(K) Lessor shall have the right to prescribe the weight, position and manner of support of all safes. Safes, freight, furniture and other bulky matter are to be moved only at such times, by such persons, and in such manner, as shall be determined by Lessor's management agent. Lessee shall not place any safe upon any floor of the building which will cause the floor load of such floor to exceed that which was designed for such floor or which is allowed by la

(L) The property management department's office hours are 8:00 a.m. until 5:00 p.m. Monday through Friday. Please conduct your business with th department during these hours.

(M) The eating of food or the consumption of alcoholic beverages, in the hallways or common areas, is expressly prohibited.

The Lessor reserves the right to make changes in these rules from time-to-time.

(N) Lessee is required to provide evidence of insurance adequate to cover all Lessee liabilities, as stipulated in Paragraph 22. (INDEMNIFICATION) of the Lease.

LOUIS C. GOODFARB, T/A VIRGY REALTY COMPAN

BY: _____
Adam Goodfarb, LESSOR Attorney-in-fact
for Louis C. Goodfarb

G. B. COMPUTER SERVICE, INC.

BY: _____
LESSEE

J. Randy Forbes & Associates, P.C.
Attorneys and Counselors at Law
Post Office Box 6818
524 Independence Parkway
Chesapeake, Virginia 23328

J. Randy Forbes
Robert Thomas Irwin II
Richard C. Fleming

547-7177
Area Code 804

September 20, 1985

Vincent A. Campana, Broker
ALCAM Realty Company
601 Thimble Shoals Boulevard, Suite 200
Newport News, Virginia 23606

Re: Greenbrier Industrial Park
2133 Smith Avenue
Chesapeake, Virginia, Second
Addendum to Lease Dated August 30, 1985

Dear Mr. Campana:

This letter will serve as a second addendum to the lease dated August 30, 1985, between Louis C. Goodfarb, t/a Virby Realty Company (Lessor) and G. B. Computer Service, Inc. (Lessee), clarifying the following conditions agreed to by all parties involved.

40.0 OPTION. Lessor hereby grants to Lessee an option for a period of four months from the execution of the aforementioned lease on the space outlined in red in Exhibit B, attached hereto, to be rented upon the same terms and conditions as the other space rented in the aforementioned lease.

ACKNOWLEDGED:

By: _____
Vincent A. Campana, Broker
ALCAM Realty Company

LESSOR

LOUISE C. GOODFARB, T/A Virby Realty Company

By: _____
Adam Goodfarb, Attorney-In-Fact
For Louis C. Goodfarb

LESSEE

G. B. COMPUTER SERVICE, INC.

By: _____
President

Virby Realty Company
5101 Thurston Avenue • Suite 201 • Virginia Beach, VA 23455 •
(804) 464-3533 • Peninsula (804) 877-4022
International Business Center • 601 Thimble Shoals Boulevard • Suite 200 • Newport News, VA 23606 •
(804) 873-1406 • Tidewater • (804) 627-6047

September 3, 1985

Mr. George Border
The Freedom Council
825 Greenbrier Circle
Suite 101
Chesapeake, VA 23320

Re: Greenbrier Industrial Park
2133 Smith Avenue; 10,000 Square Feet
Chesapeake, Virginia
ADDENDUM TO LEASE Dated
August 30, 1985

Dear Mr. Border:

This letter will serve as an addendum to the lease dated August 30, 1985, between LOUIS C. GOODFARB, T/A VIRBY REALTY COMPANY (Lessor) and G. B. COMPUTER SERVICE, INC. (Lessee), clarifying the following conditions agreed to by all parties involved.

17.0 PARKING. Lessee will be furnished twelve (12) parking spaces in the abutting parking lot for use during the term of the lease; such parking spaces will be allocated to the Lessee but not designated.

18.0 NOTICES. All notices required to be sent by each party to the other shall be given by registered or certified mail, with return receipt requested, and the date of delivery of such notice shall be the date of such notice. The only admissible evidence that notice has been given shall be the U.S. Postal Service return receipt; excepting however, that in the event acceptance of the notice is refused, then in such event, the giving of notice shall be the date of attempted delivery, and the return of the notice to be served by the U.S. Postal Service shall be conclusive evidence that notice has been given, provided sender shall re-mail the notice by ordinary mail or hand deliver said notice. Notice upon Lessee shall be addressed and delivered as follows: Office of General Counsel, The Freedom Council, 825 Greenbrier Circle, Suite 101, Chesapeake, Virginia 23320.

19.0 RENT ADJUSTMENT. The monthly base rent for each twelve (12) month period subsequent to the first complete twelve (12) month period occurring during the term of this Lease or any renewal thereof shall be computed by multiplying the base rent, as set forth in Paragraph Four, by one-half of the fraction whose numerator shall be the Consumer Price Index (U.S. City Average - (1967 = 100)

[illegible] Lease dated August 30, 1985

- All Items, Bureau of Labor Statistics of the United States Department of Labor, for the third month prior to the respective anniversary date and whose denominator shall be said Consumer Price Index Revised Consumer Price Index for Urban Wage Earners and Clerical Workers - (CPI-W) (All Items) for the month of the commencement date of this Lease, provided that in no event shall such base rent be less than an increase of 2% or more than an increase of 5%; nor less than the rental for the previous year.

The Lessor shall notify the Lessee of the adjusted monthly base rent, in writing, prior to the respective anniversary date if such rent adjustment occurs. The Lessee agrees to pay the adjusted monthly base rent, together with any applicable taxes as set forth in Paragraph 7, on the first day of each and every month for the following twelve (12) month period or for those months remaining in said period after notification by Lessor, however, the Lessee shall not be liable for rent adjustments for any portion of any twelve (12) month period prior to notification by Lessor.

20.0 RENEWAL OPTIONS. Conditioned upon the Lessee being in full and complete compliance in the performance of all of the terms and conditions of this agreement, Lessee is hereby granted the right of two (2) consecutive one (1) year options to renew the lease as follows: To exercise the first year option which commences September 1, 1988, subject to Lessee providing certified written notice to Lessor ninety (90) days prior to August 31, 1988; the second option year shall commence on September 1, 1989, subject to Lessee providing certified written notice to Lessor ninety (90) days prior to August 31, 1989. During each of the one year periods, all terms and conditions of the Lease dated August 30, 1985 and subject to the terms stated in Paragraph 19.0 [RENT ADJUSTMENT].

21.0 ACCEPTANCE OF PREMISES. Lessee agrees to accept the leased premises as outlined in Red on the attached Exhibit "A", in an "As Existing" condition with no improvements by Lessor.

22.0 EARLY OCCUPANCY. Lessor agrees to provide G. B. Computer Service, Inc. with rent free occupancy at 2133 Smith Avenue, Chesapeake, Virginia from Sept. 1, 1985 until October 31, 1985, conditioned upon the terms and conditions of this lease dated August 30, 1985 taking full effect, excepting Paragraph 4 [RENT]. It is further conditioned upon Lessee placing all utilities in Lessee's name and/or agreeing to the pro-rata share of any utility billings received by the Lessor for the rent free period.

Upon your review you are requested to secure the appropriate corporate signature(s) on this addendum letter and lease, filling in the party(ies) signing the Lease and their title(s), the date signed, and the location "Executed At" on page four (4) of each Lease. Please return the original and three copies of the Lease Agreement and three copies of the Exhibit "A" properly initialed, for the execution by the Lessor. A fully executed copy of the Lease and addendum will be provided to you for your files.

You are also requested to return two (2) seperate checks, one in the amount of FIVE THOUSAND DOLLARS AND 00/100 ($5,000.00) made payable to Virby Realty Company, which represents the security deposit, and one in the amount of TWO THOUSAND SEVEN HUNDRED EIGHT DOLLARS AND 33/100 ($2,708.33) made payable to Virby Realty Company which represents your first month's rental payment (November 1, 1985).

ACKNOWLEDGED:

By: _____
Vincent A. Campana, Broker
ALCAM Realty Company

LESSOR

LOUIS C. GOODFARB, T/A VIRBY REALTY COMPANY

By: _____
Adam Goodfarb, Attorney-in-Fact for
Louis C. Goodfarb

LESSEE

G. B. COMPUTER SERVICE, INC.

By: _____
President

STANDARD INDUSTRIAL LEASE

VIRBY REALTY COMPANY

Parties. This Lease dated for reference purposes only August 30, 1985 is made by and between LOUIS C. GODFARB, T/A VIRBY REALTY COMPANY (hereinafter called "Lessor") and C.B. COMPUTER SERVICE, INC. (hereinafter called "Lessee")

Premises. Lessor hereby leases to Lessee and Lessee rents from Lessor for the term of the rental and upon all of the conditions set forth herein certain real property situated in the City of Chesapeake State of Virginia commonly known as 2133 Smith Avenue Chesapeake, Virginia 23320 and described as approximately 10,000 square feet (as measured in Row on the Attached Exhibit "B")

All real property including the land and all improvements thereon is herein called "the Premises"

Term.

3.1 Term. The term of this Lease shall be for thirty four (34) months commencing on November 1, 1985 and ending on August 31, 1988 unless sooner terminated pursuant to any provision hereof.

3.2 Delay in Commencement. Notwithstanding said commencement date, if for any reason Lessor cannot deliver possession of the Premises to Lessee on said date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or the obligations of Lessee hereunder or extend the term hereof, but in such case Lessee shall not be obligated to pay rent until possession of the Premises is tendered to Lessee; provided, however, that if Lessor shall not have delivered possession of the Premises within sixty (60) days from said commencement date, Lessee may, at Lessee's option, by notice in writing to Lessor within ten (10) days thereafter, cancel this Lease, in which event the parties shall be relieved from all obligations hereunder. If Lessee occupies the Premises prior to said commencement date, such occupancy shall be subject to all provisions hereof. Such occupancy shall not advance the termination date, and Lessee shall pay rent for such period at the initial monthly rate set forth below.

4. Rent. Lessee shall pay to Lessor as rent for the Premises equal monthly payments of $ 2,708.33 in advance, on the 1st day of each month of the term hereof. Lessee shall pay Lessor upon the execution hereof $ 2,708.33 as rent for November 1, 1985. Rent for any period during the term hereof which is less than one month shall be a pro rata portion of the monthly installment. Rent shall be payable in lawful money of the United States to Lessor at the address stated herein or to such other persons or at such other places as Lessor may designate in writing.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof $ 2,000.00 as security for Lessee's faithful performance of Lessee's obligations hereunder. If Lessee fails to pay rent or other charges due hereunder, or otherwise defaults with respect to any provision of this Lease, Lessor may use, apply or retain all or any portion of said deposit for the payment of any rent or other charge in default or for the payment of any other sum to which Lessor may become obligated by reason of Lessee's default, or to compensate Lessor for any loss or damage which Lessor may suffer thereby. If Lessor so uses or applies all or any portion of said deposit, Lessee shall within ten (10) days after written demand therefor deposit cash with Lessor in an amount sufficient to restore said deposit to the full amount hereinabove stated, and Lessee's failure to do so shall be a material breach of this Lease. Lessor shall not be required to keep said deposit separate from its general accounts. If Lessee performs all of Lessee's obligations hereunder, said deposit, or so much thereof as has not theretofore been applied by Lessor, shall be returned, without payment of interest, or other increment for its use, to Lessee (or, at Lessor's option, to the last assignee, if any, of Lessee's interest hereunder) at the expiration of the term hereof, and after Lessee has vacated the Premises. No trust relationship is created herein between Lessor and Lessee with respect to said Security Deposit.

6. Use.

6.1 Use. The Premises shall be used and occupied only for business operations of C.B. Computer Service, Inc and in compliance with the rules and terms set by the City of Chesapeake and for no other purpose.

6.2 Compliance with Law.

(a) Lessor warrants to Lessee that the Premises, in its existing state, but without regard to the use for which Lessee will use the Premises, does not violate any applicable building code, regulation or ordinance in effect at the time that this Lease is executed. In the event that it is determined that this warranty has been violated, then it shall be the obligation of the Lessor, after written notice to Lessor, to promptly, at Lessor's sole cost and expense, to rectify any such violation. In the event that Lessee does not give to Lessor written notice of the violation of this warranty within 1 year from the commencement of the term of this Lease, it shall be conclusively deemed that such violation did not exist and the correction of the same shall be the obligation of the Lessee.

(b) Except as provided in Paragraph 6.2(a), Lessee shall, at Lessee's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, restrictions of record, and requirements in effect during the term or any part of the term hereof, regulating the use by Lessee of the Premises. Lessee shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance or, if there shall be more than one tenant in the building containing the Premises, shall tend to disturb such other tenants.

6.3 Condition of Premises. Except as provided in Paragraph 6.2(a), Lessee hereby accepts the Premises in their condition existing as of the date of the execution hereof, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Lessee acknowledges that neither Lessor nor Lessor's agent has made any representation or warranty as to the suitability of the Premises for the conduct of Lessee's business.

7. Maintenance, Repairs and Alterations.

7.1 Lessee's Obligations. Subject to the provisions of Paragraphs 6.2(b), 8 and 9, and except for damage caused by any negligent or intentional act or omission of Lessee, Lessee's agents, employees or invitees, in which event Lessee shall repair the damage, Lessor, at Lessor's expense, shall keep in good order, condition and repair the foundations, exterior walls and the exterior roof of the Premises. Lessor shall not, however, be obligated to paint such exterior, nor shall Lessor be required to maintain the interior surface of exterior walls, windows, doors or plate glass. Lessor shall have no obligation to make repairs under this Paragraph 7.1 until a reasonable time after receipt of written notice of the need for such repairs.

7.2 Lessee's Obligations.

(a) Subject to the provisions of Paragraphs 6.2(b), 7 and 9, Lessee, at Lessee's expense, shall keep in good order, condition and repair the Premises and every part thereof (whether or not the damaged portion of the Premises or the means of repairing the same are reasonably or readily accessible to Lessee), including, without limiting the generality of the foregoing, all plumbing, heating, air conditioning, ventilating, electrical and lighting facilities and equipment within the Premises, fixtures, interior walls and interior surface of exterior walls, ceilings, windows, doors, plate glass and skylights located within the Premises and all landscaping, driveways, parking lots, fences and signs located in the Premises and all sidewalks and parkways adjacent to the Premises.

(b) If Lessee fails to perform Lessee's obligations under this Paragraph 7.2, Lessor may, at Lessor's option, enter upon the Premises after 10 days prior written notice to Lessee, and put the same in good order, condition and repair, and the cost thereof together with interest thereon at the rate of 10% per annum shall be due and payable as additional rent to Lessor together with Lessee's next rental installment.

(c) On the last day of the term hereof, or on any sooner termination, Lessee shall surrender the Premises to Lessor in the same condition as received, broom clean, ordinary wear and tear excepted. Lessee shall repair any damage to the Premises occasioned by the removal of its trade fixtures, furnishings and equipment pursuant to Paragraph 7.3(c), which repair shall include the patching and filling of holes and repair of structural damage.

7.3 Alterations and Additions.

(a) Lessee shall not, without Lessor's prior written consent, make any alterations, improvements, additions or Utility Installations in, on or about the Premises, except for nonstructural alterations not exceeding $1,000 in cost. As used in this Paragraph 7.3 of the term "Utility Installation" shall mean bus ducting, power panels, wiring, fluorescent fixtures, space heaters, conduits, air conditioning equipment and plumbing. Lessor may require that Lessee remove any or all of said alterations, improvements, additions or Utility Installations at the expiration of the term, and restore the Premises to their prior condition. Lessor may require Lessee to provide Lessor, at Lessee's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure Lessor against any liability for mechanic's and materialmen's liens and to insure completion of the work. Should Lessee make any alterations, improvements, additions or Utility Installations without the prior approval of Lessor, Lessor may require that Lessee remove any or all of such.

[illegible] the Premises that Lessee shall desire to make [illegible] in writing of the Lessor shall be presented to Lessor in written form, with proposed detailed plans. If Lessor shall give its consent, [illegible] consent shall be deemed conditioned upon Lessee acquiring a permit to do so from appropriate governmental agencies, the furnishing of a copy thereof to Lessor prior to the commencement of the work and the compliance by Lessee of all conditions of said permit in a prompt and expeditious manner.

(c) Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use in the Premises, which claims are or may be secured by any mechanics' or materialmen's lien against the Premises or any interest therein. Lessee [illegible] Lessor not less than ten (10) days' notice prior to the commencement of any work in the Premises, and Lessor shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Lessee shall, in good faith, contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend itself and Lessor against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Premises, upon the condition that if Lessor shall require, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to such contested lien, claim or demand indemnifying Lessor against liability for the same and holding the Premises free from the effect of such lien or claim. In addition, Lessor may require Lessee to pay Lessor's attorneys fees and costs in participating in such action if Lessor shall decide it is to its best interest to do so.

(d) Unless Lessor requires their removal, as set forth in Paragraph 7.3 (a), all alterations, improvements, additions and Utility Installations (whether or not such Utility Installations constitute trade fixtures of Lessee), which may be made on the Premises, shall become the property of Lessor and remain upon and be surrendered with the Premises at the expiration of the term. Notwithstanding the provisions of this Paragraph 7.3 (d), Lessee's machinery and equipment, other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises, shall remain the property of Lessee and may be removed by Lessee subject to the provisions of Paragraph 7.2 (c).

Insurance; Indemnity.

8.1 Liability Insurance. Lessee shall, at Lessee's expense obtain and keep in force during the term of this Lease a policy of Combined Single Limit Bodily Injury and Property Damage insurance insuring Lessor and Lessee against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be a combined single limit policy in an amount not less than [illegible],000. The policy shall contain cross liability endorsements and shall insure performance by Lessee of the indemnity provisions of this Paragraph 8. The limits of said insurance shall not, however, limit the liability of Lessee hereunder. In the event that the Premises constitute a part of a larger property said insurance shall have a Lessor's Protective Liability endorsement attached thereto. If Lessee shall fail to procure and maintain said insurance Lessor may, but shall not be required to, procure and maintain the same, but at the expense of Lessee. Not more frequently than each [illegible] years, if, in the reasonable opinion of Lessor, the amount of liability insurance required hereunder is not adequate, Lessee shall increase said insurance coverage as required by Lessor. Provided, however that in no event shall the amount of the liability insurance increase be more than fifty percent greater than the amount thereof during the preceding five years of the term of this lease. However, the failure of Lessor to require any additional insurance coverage shall not be deemed to relieve Lessee from any obligations under this Lease.

8.2 Property Insurance.

(a) Lessor shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the Premises, but not Lessee's fixtures, equipment or tenant improvements in the amount of the full replacement value thereof, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk) but not plate glass insurance. In addition, the Lessor shall obtain and keep in force, during the term of this Lease, a policy of rental income insurance covering a period of six months, with loss payable to Lessor which insurance shall also cover all real estate taxes and insurance costs for said period. In the event that the Premises contains sprinklers then the insurance coverage shall include sprinkler leakage insurance.

(b) Lessee shall pay to Lessor, during the term hereof, in addition to the rent, the amount of any increase in premiums for the insurance required under the Paragraph 8.2 over and above such premiums paid during the Base Period, as hereinafter defined, whether such premium increase shall be the result of the nature of Lessee's occupancy, any act or omission of Lessee, requirements of the holder of a mortgage or deed of trust covering the Premises, or increased valuation of the Premises or general rate increases. In the event that the Premises have been occupied previously the words "Base Period" shall mean the last twelve months of the prior occupancy and in the event that the Premises have never been previously occupied the words "Base Period" shall mean the lowest premium reasonably obtainable for the said insurance for the Premises assuming the most nominal use of the Premises. Provided, however, in lieu of the Base Period the parties hereto may insert a dollar amount at the end of this sentence which figure shall be considered as the insurance premium for the Base Period. $ ________________

(c) If the Premises being leased herein are part of a larger property, then Lessee shall not be responsible for paying any increase in the property insurance caused by the acts or omissions of any other tenant of the building of which the Premises are a part.

(d) Lessee shall pay any such premium increases to Lessor within 30 days after receipt by Lessee of a copy of the premium statement or other satisfactory evidence of the amount due. If the insurance policies maintained hereunder cover other improvements in addition to the Premises, Lessor shall also deliver to Lessee a statement of the amount of such increase attributable to the Premises and showing in reasonable detail the manner in which such amount was computed. If the term of this Lease shall not expire concurrently with the expiration of the period covered by such insurance, Lessee's liability for premium increases shall be prorated on an annual basis.

8.3 Insurance Policies. Insurance required hereunder shall be in companies holding a "General Policyholders Rating" of B plus or better as set forth in the most current issue of "Best Insurance Guide." Lessee shall deliver to Lessor copies of policies of liability insurance required under Paragraph 8.1 or certificates evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to Lessor. No such policy shall be cancellable or subject to reduction of coverage or other modification except after ten (10) days' prior written notice to Lessor. Lessee shall, within ten (10) days prior to the expiration of such policies, furnish Lessor with renewals or "binders" thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee upon demand. Lessee shall not do or permit to be done anything which shall invalidate the insurance policies referred to in Paragraph 8.2.

8.4 Waiver of Subrogation. Lessee and Lessor each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for loss of or damage to such waiving party or its property or the property of the others under its control, where such loss or damage is insured against under any insurance policy in force at the time of such loss or damage. Lessee and Lessor shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

8.5 Indemnity. Lessee shall indemnify and hold harmless Lessor from and against any and all claims arising from Lessee's use of the Premises, or from the conduct of Lessee's business or from any activity, work or things done, permitted or suffered by Lessee in or about the Premises and shall further indemnify and hold harmless Lessor from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any negligence of the Lessee, or any of Lessee's agents, contractors, or employees, and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Lessor by reason of any such claim, Lessee upon notice from Lessor shall defend the same at Lessee's expense by counsel satisfactory to Lessor. Lessee, as a material part of the consideration to Lessor, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Premises arising from any cause and Lessee hereby waives all claims in respect thereof against Lessor.

8.6 Exemption of Lessor from Liability. Lessee hereby agrees that Lessor shall not be liable for injury to Lessee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Lessee, Lessee's employees, invitees, customers, or any other person in or about the Premises, nor shall Lessor be liable for injury to the person of Lessee, Lessee's employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said damage or injury results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessee. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant, if any, of the building in which the Premises are located.

Damage or Destruction.

9.1 Partial Damage—Insured. Subject to the provisions of Paragraphs 9.3 and 9.4, if the Premises are damaged and such damage was caused by a casualty covered under an insurance policy required to be maintained pursuant to Paragraph 8.2, Lessor shall at Lessor's expense repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect but Lessor shall not repair or replace Lessee's fixtures, equipment or tenant improvements.

9.2 Partial Damage—Uninsured. Subject to the provisions of Paragraphs 9.3 and 9.4, if at any time during the term hereof the Premises are damaged, except by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at its expense), and such damage was caused by a casualty not covered under an insurance policy required to be maintained by Lessor pursuant to Paragraph 8.2, Lessor may at Lessor's option either (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Lessee within thirty (30) days after the date of the occurrence of such damage of Lessor's intention to cancel and terminate this Lease as of the date of the occurrence of such damage. In the event Lessor elects to give such notice of Lessor's intention to cancel and terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's intention to repair such damage at Lessee's expense, without reimbursement from Lessor, in which event this Lease shall continue in full force and effect, and Lessee shall proceed to make such repairs as soon as reasonably possible. If Lessee does not give such notice within such 10-day period this Lease shall be cancelled and terminated as of the date of the occurrence of such damage.

9.3 Total Destruction. If at any time during the term hereof the Premises are totally destroyed from any cause whether or not covered by the insurance required to be maintained by Lessor pursuant to Paragraph 8.2 (including any total destruction required by any authorized public authority) this Lease shall automatically terminate as of the date of such total destruction.

9.4 Damage Near End of Term. If the Premises are partially destroyed or damaged during the last six months of the term of this Lease, Lessor may at Lessor's option cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within 30 days after the date of occurrence of such damage.

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Paragraph 9 the rent payable hereunder for the period during which such damage repair or restoration continues shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired. Except for abatement of rent, if any, Lessee shall have no claim against Lessor for any damage suffered by reason of any such damage, destruction, repair or restoration.

9.3 Lessor's Option to Terminate. Lessor shall have the option to terminate this Lease effective as of the date of the occurrence of the damage if any of the following conditions is applicable: (a) the Premises are damaged by a casualty not covered by Lessor's insurance policies; (b) the Premises are damaged to the extent of 25% or more of the then replacement cost (as defined in Paragraph 9.4) of the Premises, whether or not insured against; (c) the Premises are damaged during the last 12 months of the term of this Lease or any extension thereof; or (d) existing laws or regulations do not permit the Premises to be restored to substantially their condition immediately prior to the damage. Lessor must exercise such option to terminate, if at all, by giving written notice of termination to Lessee within 30 days after the date of the occurrence of the damage. If Lessor does not elect to terminate this Lease by giving such notice, Lessor shall commence and proceed with reasonable diligence to restore the Premises to substantially the condition in which they were immediately prior to the occurrence of the damage, except that Lessor shall not be required to restore alterations made by Lessee, or repair any damage to Lessee's trade fixtures, furnishings or equipment. Lessee may also elect to terminate this Lease if Lessor fails to substantially complete such restoration within 90 days after the date of the occurrence of the damage, by giving Lessor written notice of Lessee's election to do so at any time prior to the commencement of such repair or restoration. In such event this Lease shall terminate as of the date of such notice.

9.4 Termination — Advanced Payments. Upon termination of this Lease pursuant to this Paragraph 9, an equitable adjustment shall be made concerning advance rent and any advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's security deposit as has not theretofore been applied by Lessor.

10. Real Property Taxes.

10.1 Payment of Tax Increase. Lessee shall pay all real property taxes applicable to the Premises, provided, however, that Lessee shall pay, as additional rent, the amount, if any, by which real property taxes applicable to the Premises increase over the fiscal tax year 19 83 - 19 84. Such payment shall be made by Lessee within thirty (30) days after receipt of Lessor's written statement setting forth the amount of such increase and the computation thereof. If the term of this Lease shall not expire concurrently with the expiration of the tax fiscal year, Lessee's liability for increased taxes for the last partial lease year shall be prorated on an annual basis.

10.2 Definition of "Real Property" Tax. As used herein, the term "real property tax" shall include any form of assessment, license fee, commercial rental tax, levy, penalty or tax (other than inheritance or estate taxes) imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement district thereof, as against any legal or equitable interest of Lessor in the Premises or in the real property of which the Premises are a part, as against Lessor's right to rent or other income therefrom, or as against Lessor's business of leasing the Premises, or any tax imposed in substitution, partially or totally, of any tax previously included within the definition of real property tax, or any additional tax the nature of which was previously included within the definition of real property tax.

10.3 Joint Assessment. If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the real property taxes for all of the land and improvements included within the tax parcel assessed. Such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.4 Personal Property Taxes.

a) Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Lessee contained in the Premises or elsewhere. When possible, Lessee shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor.

(b) If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities.

Lessee shall pay for all water, gas, heat, light, power, telephone and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered with other premises.

12. Assignment, Rent and Subletting.

12.1 Lessor's Consent Required. Lessee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Lessee's interest in this Lease or in the Premises, without Lessor's prior written consent, which consent shall not unreasonably be withheld. Any attempted assignment, transfer, mortgage, encumbrance or subletting without such consent shall be void, and shall constitute a breach of this Lease.

12.2 Lessee Affiliate. Notwithstanding the provisions of Paragraph 12.1 hereof, Lessee may assign or sublet the Premises, or any portion thereof, without Lessor's consent, to any corporation which controls, is controlled by or is under common control with Lessee, or to any corporation resulting from the merger or consolidation with Lessee, or to any person or entity which acquires all the assets of Lessee as a going concern of the business that is being conducted on the Premises, provided that said assignee assumes, in full, the obligations of Lessee under this Lease. Any such assignment shall not, in any way, affect or limit the liability of Lessee under the terms of this Lease even if after such assignment or subletting the terms of this Lease are materially changed or altered without the consent of Lessee, the consent of whom shall not be necessary.

12.3 No Release of Lessee. Regardless of Lessor's consent, no subletting or assignment shall release Lessee of Lessee's obligations or alter the primary liability of Lessee to pay the rent and to perform all other obligations to be performed by Lessee hereunder. The acceptance of rent by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Lessee or any successor of Lessee, in the performance of any of the terms hereof, Lessor may proceed directly against Lessee without the necessity of exhausting remedies against said assignee. Lessor may consent to subsequent assignments or subtenancies or amendments or modifications to this Lease with assignees of Lessee, without notifying Lessee, or any successor of Lessee, and without obtaining its or their consent thereto and such action shall not relieve Lessee of liability under this Lease.

12.4 Attorney's Fees. In the event Lessee shall assign or sublet the Premises or request the consent of Lessor to any assignment or subletting or if Lessee shall request the consent of Lessor for any act that Lessee proposes to do, then Lessee shall pay Lessor a reasonable attorney's fees incurred in connection therewith. Such attorneys fees not to exceed $250.00 for each such request.

13. Default; Remedies.

13.1 Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee.

(a) The vacating or abandonment of the Premises by Lessee.

(b) The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of five days after written notice thereof from Lessor to Lessee.

(c) The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than described in paragraph (b) above, where such failure shall continue for a period of 30 days after written notice hereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than 30 days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said 30-day period and thereafter diligently pursues such cure to completion.

(d) (i) The making by Lessee of any general arrangement for the benefit of creditors; (ii) the filing by or against Lessee of a petition to have Lessee adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days.

(e) The discovery by Lessor that any financial statement given to Lessor by Lessee, any assignee of Lessee, any subtenant of Lessee, any successor in interest of Lessee or any guarantor of Lessee's obligations hereunder, shall be materially false.

13.2 Remedies. In the event of any such material default or breach by Lessee, Lessor may at any time thereafter, with or without notice or demand and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such default or breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default including, but not limited to: the cost of recovering possession of the Premises; expenses of re-letting, including necessary renovation and alteration of the Premises, reasonable attorney's fees, and any real estate commission actually paid; the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided; that portion of the leasing commission paid by Lessor pursuant to Paragraph 15 applicable to the unexpired term of this Lease.

(b) Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

(c) Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the State.

13.3 Default by Lessor. Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor within a reasonable time, but in no event later than thirty (30) days after written notice by Lessee to Lessor and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have heretofore been furnished to Lessee in writing, specifying wherein Lessor has failed to perform such obligations; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are required for performance then Lessor shall not be in default if Lessor commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

Initials _____

[illegible] Premises. Accordingly, if any installment of rent or any other sum due from Lessee shall not be received by Lessor or Lessor's designee within [illegible] days after such amount shall be due, Lessee shall pay to Lessor a late charge equal to 6% of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder.

Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the improvements on the Premises, or more than 25% of the land area of the Premises which is not occupied by any improvements, is taken by condemnation, Lessee may, at Lessee's option, to be exercised in writing only within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the proportion that the floor area taken bears to the total floor area of the Premises. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to any award for loss of or damage to Lessee's trade fixtures and removable personal property. In the event that this Lease is not terminated by reason of such condemnation, Lessor shall, to the extent of severance damages received by Lessor in connection with such condemnation, repair any damage to the Premises caused by such condemnation, except to the extent that Lessee has been reimbursed therefor by the condemning authority. Lessee shall pay any amount in excess of such severance damages required to complete such repair.

[illegible] broker's fee as set forth in a separate agreement between Lessor and said broker, or in the event there is no separate agreement between Lessor and said broker, the sum of $ _____ for brokerage services rendered by said broker to Lessor in connection with this transaction. Lessor further agrees that, in the event Lessor or any successor in interest of Lessor shall, within the initial term of this Lease or any extension thereof, enter into any contract for the sale of the Premises or any portion thereof, or any interest in Lessor's ownership of the Premises or any portion thereof, or any similar interest, either to Lessee or any person related to Lessee, or any person who was directly or indirectly procured by Lessee to enter into such contract of sale, or if Lessee or any person related to Lessee shall acquire from Lessor any such interest, or if a sale, assignment or other transfer of Lessor's interest in this Lease is consummated with Lessee or any person related to Lessee, or any person who was directly or indirectly procured by Lessee to enter into such transaction, then Lessor shall pay said broker a fee in accordance with the schedule of said broker in effect at the time of the execution of this Lease. Lessor agrees to pay said fee not only on behalf of Lessor, but also on behalf of any person, corporation, association or other entity having any ownership interest in said Premises or any portion thereof, at the time such fee is due hereunder. Any transferee of Lessor's interest in this Lease by accepting an assignment of such interest shall be deemed to have assumed Lessor's obligation under this Paragraph 15. Said broker shall be a third party beneficiary of the provisions of this Paragraph 15.

4. General Provisions.

16.1 **Estoppel Certificate.**

(a) Lessee shall at any time upon not less than ten (10) days' prior written notice from Lessor execute, acknowledge and deliver to Lessor a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises.

(b) Lessee's failure to deliver such statement within such time shall be conclusive upon Lessee (i) that this Lease is in full force and effect, without modification except as may be represented by Lessor, (ii) that there are no uncured defaults in Lessor's performance, and (iii) that not more than one month's rent has been paid in advance or such failure may be considered by Lessor as a default by Lessee under this Lease.

(c) If Lessor desires to finance or refinance the Premises, or any part thereof, Lessee hereby agrees to deliver to any lender designated by Lessor such financial statements of Lessee as may be reasonably required by such lender. Such statements shall include the past three years' financial statements of Lessee. All such financial statements shall be received in confidence and shall be used only for the purposes herein set forth.

16.2 **Lessor's Liability.** The term "Lessor" as used herein shall mean only the owner or owners at the time in question of the fee title or a lessee's interest in a ground lease of the Premises, and except as expressly provided in Paragraph 15, in the event of any transfer of such title or interest, Lessor herein named (and in case of any subsequent transfers the then grantor) shall be relieved from and after the date of such transfer of all liability as respects Lessor's obligations thereafter to be performed, provided that any funds in the hands of Lessor or the then grantor at the time of such transfer, in which Lessee has an interest, shall be delivered to the grantee. The obligations contained in this Lease to be performed by Lessor shall, subject as aforesaid, be binding on Lessor's successors and assigns, only during their respective periods of ownership.

16.3 **Severability.** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

16.4 **Interest on Past-due Obligations.** Except as expressly herein provided, any amount due Lessor not paid when due shall bear interest at 7% per annum from the date due. Payment of such interest shall not excuse or cure any default by Lessee under this Lease; provided, however, that interest shall not be charged on late charges incurred by Lessee nor on any amounts upon which late charges are paid by Lessee.

16.5 **Time of Essence.** Time is of the essence.

16.6 **Captions.** Article and paragraph captions are not a part hereof.

16.7 **Incorporation of Prior Agreements; Amendments.** This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification. Except as otherwise stated in this Lease, Lessee hereby acknowledges that neither the real estate broker listed in Paragraph 15 hereof nor any cooperating broker on this transaction nor the Lessor or any employees or agents of any of said persons has made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of said Premises and Lessee acknowledges that Lessee assumes all responsibility regarding the Occupational Safety Health Act, the legal use of adaptability of the Premises and the compliance thereof with all applicable laws and regulations in effect during the term of this Lease except as otherwise specifically stated in this Lease.

[illegible] requested and the date of such receipt shall be deemed the date of delivery of such notice. The only address for any notice to Lessee given shall be the address of the Premises. If Lessee is not personally available to receive notice, then notice may be given by certified or registered mail addressed to Lessee at the Premises, and in such event, the date of delivery of such notice shall be the date of the attempted delivery and the return of the notice to the sender by the U.S. Postal Service Return Receipt indicating such attempted delivery. SEE ADDENDUM NO. 18.0

16.9 **Waivers.** No waiver by Lessor of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Lessee of the same or any other provision. Lessor's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to or approval of any subsequent act by Lessee. The acceptance of rent hereunder by Lessor shall not be a waiver of any preceding breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

16.10 **Recording.** Lessee shall not record this Lease without Lessor's prior written consent, and such recordation shall, at the option of Lessor, constitute a non-curable default of Lessee hereunder. Either party shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of this Lease for recording purposes.

16.11 **Holding Over.** If Lessee remains in possession of the Premises or any part thereof after the expiration of the term hereof without the express written consent of Lessor, such occupancy shall be a tenancy from month to month at a rental in the amount of the last monthly rental, plus all other charges payable hereunder, and upon all the terms hereof applicable to a month-to-month tenancy.

16.12 **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

16.13 **Covenants and Conditions.** Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition.

16.14 **Binding Effect; Choice of Law.** Subject to any provisions hereof restricting assignment or subletting by Lessee and subject to the provisions of Paragraph 15.2, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Virginia.

16.15 **Subordination.**

(a) This Lease, at Lessor's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation for security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Lessee's right to quiet possession of the Premises shall not be disturbed if Lessee is not in default and so long as Lessee shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground lessor shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Lessee, this Lease shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

(b) Lessee agrees to execute any documents required to effectuate such subordination or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be, and failing to do so within ten (10) days after written demand, does hereby make, constitute and irrevocably appoint Lessor as Lessee's attorney-in-fact and in Lessee's name, place and stead, to do so.

16.17 Lessor's Access. Lessor and Lessee's agents shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers or lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable. Lessor may at any time place on or about the Premises any ordinary "For Sale" signs and Lessee may at any time during the last 120 days of the term place on or about the Premises any ordinary "For Lease" sign. Lessor may at any time during the last 120 days of the term place on or about the Premises any ordinary "For Lease" sign. All activities of Lessor pursuant to this Paragraph 16.17 shall be without abatement of rent or liability to Lessee.

16.18 Signs and Awnings. Lessee shall not place any sign upon the Premises or affix any part thereof without Lessor's prior written consent except that Lessee shall have the right, without the prior permission of Lessor to place ordinary and usual for rent or sublet signs thereon.

16.19 Merger. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, or a termination by Lessor, shall not be a merger and shall, at the option of Lessor, terminate all or any existing subtenancies or may, at the option of Lessor, operate as an assignment to Lessor of any or all of such subtenancies.

16.20 Corporate Authority. If Lessee is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms. If Lessee is a corporation, Lessee shall, within thirty (30) days after execution of this Lease, deliver to Lessor a certified copy of a resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Lease.

16.21 Consents. Wherever in this Lease the consent of one party is required to an act of the other party such consent shall not be unreasonably withheld.

16.22 Quiet Possession. Upon Lessee paying the fixed rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet possession of the Premises for the entire term hereof subject to all of the provisions of this Lease.

16.23 Options. In the event that the Lessee under the terms of this Lease has any option to extend the term of this Lease, or any option to purchase the Premises or any right of first refusal to purchase the Premises or other property of Lessor, then each of such options and rights are personal to Lessee and may not be exercised or be assigned, voluntarily or involuntarily, by or to any one other than Lessee except that it may be exercised by or assigned to any of the entities described in Paragraph 12.2 hereof for whom Lessee does not need the consent of Lessor or assignment. In the event that Lessee hereunder has any multiple options to extend this Lease, a later option to extend the Lease cannot be exercised unless the prior option has been so exercised. No option may be exercised at a time when the Lessee is in default under its obligations under this Lease.

16.24 Multiple Tenant Building. In the event that the Premises are part of a larger building or group of buildings then Lessee agrees that it will abide by and observe all reasonable rules and regulations which Lessor may make from time to time for the management, safety, care, and cleanliness of the building and grounds, the parking of vehicles and the preservation of good order thereon as well as for the convenience of other occupants and tenants of the building. Further, Lessee will promptly pay its prorata share, as reasonably determined by Lessor, of any maintenance or repair of such portion of the Premises or such portion of the property of which the Premises are a part, which are common areas or used by Lessee and other occupants thereof. The violations of any such rules and regulations or the failure to pay such prorata share of costs, shall be deemed a material breach of this Lease by Lessee.

16.25 Additional Provisions. If there are not additional provisions draw a line from this point to the next printed word after the space left here. If there are additional provisions place the same here.

SEE ADDENDUM NO. 17.0 THROUGH 22.0

The parties hereto have executed this Lease at the place and on the dates specified immediately adjacent to their respective signatures.

If this Lease has been filled in it has been prepared for submission to your attorney for his approval. No representation or recommendation is made by the real estate broker or his agents or employees as to the legal sufficiency, legal effect, or tax consequences of this Lease or the transaction relating thereto.

Executed at: Ballmar New Jersey
On: March 12 1986
Address: Eastern International
Interstate Industrial Park
Ballmar, New Jersey 08251

By: [signature]
"LESSOR" (Corporate seal)

LOUIS C. GOODFARB, T/A VIRBY REALTY COMPANY
By: [signature]
Adam Goodfarb, Attorney-in-fact
By: for Louis C. Goodfarb

Executed at:
On:
Address:

G. B. COMPUTER SERVICE, INC.
By: [signature] PRESIDENT
By:

"LESSEE" (Corporate seal)

By: [signature]
(Real Estate Broker) Company

EXHIBIT C

Items noted on Exhibit A
(IBM agreements attached)

International Business Machines Corporation

LEGAL NAME CHANGE

_____
_____
_____
_____

(Insert 1 or 2 in the appropriate blank:)

1. _____ (Old Name)

2. _____ (New Name)

Dear _____:

We have been advised that your company _____ wishes to change the customer name under which all agreements between _____ and IBM have previously been made. You wish this change to be effective on _____. ____ is a _____ incorporated under the laws of the state of _____.

Please indicate below the reason for name change:

_ |_| Simple Name Change

|_| Purchase of Assets

|_| Change in Legal Status

|_| Transfer between/among Subsidiaries/Parent

You agree that ____ will assume all of the obligations of _____ under all of the subject agreements.

Please indicate your concurrence by signing and returning the original and two copies of this letter so that we may make the necessary changes to our records.

Very truly yours,

_____
Administration Operations Manager
South-West Marketing Division

Accepted and Agreed to:

_____

By: _____

Title: _____

Date: _____

International Business Machines Corporation — Two Commerce Place

October 14, 1985

Mr. Steve Davis, Controller
G. B. Computer Services, Inc.
2133 Smith Avenue
Chesapeake, VA 23320

Dear Mr. Davis:

This letter will confirm our telephone conversation stating the terms of our Agreement.

Upon acceptance of the order by IBM (signing of the contracts), we must receive a check in the amount of $50,000.00. Upon physical installation, one-half (½) of the balance is due. No later than 30 days from the date of installation, the entire balance will then be due.

We look forward to working with G. B. Computer Services and appreciate your business.

If you should have any questions or problems with these terms, please contact me.

Sincerely,

S. D. Haga
Marketing Manager
National Marketing Division

SDH:stb

cc: M. J. Langan

AMENDED: As agreed upon with Mr. S. D. Haga on 10/14/85 the $50,000. will apply towards the first half of the balance due.

Initial _____ Seller

Initial GHP Purchaser

I CONCUR WITH THE ABOVE TERMS:

George H. Phillips
(Signature)

10/15/85
Date

01G3A.2875.2.1

Name and Address of Customer: Agreement No: 63A 0769
C. B. Computer Services, Inc.
2133 Smith Avenue
Chesapeake, VA 23320
IBM Branch Office No.: 63A
Customer No.: 3592316

IBM Branch Office Address:
2 Commercial Place
Norfolk, VA 23510

International Business Machines Corporation (IBM) and the Customer agree that IBM will provide and the Customer will accept the products and services ordered by the Customer in accordance with the terms and conditions stated in the applicable Agreements, designated below by the Customer's initials, which the Customer agrees to include herein. The included Agreements are attached hereto and are incorporated in this Agreement.

This Composite Signature Agreement, when signed by IBM and the Customer, has the same effect as signing each of the Agreements designated by the Customer's initials, and is effective upon acceptance by IBM.

Initials	Title of Agreement or Amendment	IBM Form Number
☐	All of the following, unless selectively designated by initialing below for individual documents	
✓ BTC	Agreement for Purchase of IBM Machines	Z120-2892-00
✓ GF	IBM Maintenance Agreement	Z125-3275-00
✓ BTC	Agreement for IBM Licensed Programs	Z125-3358-00
☐	Agreement for Lease or Rental of IBM Machines	Z125-3320-00
☐	Agreement for IBM Hourly Machine Service	Z120-2826-00

THE CUSTOMER ACKNOWLEDGES THAT THE CUSTOMER HAS READ EACH OF THE AGREEMENTS DESIGNATED BY THE CUSTOMER'S INITIALS, UNDERSTANDS THEM, AND AGREES TO BE BOUND BY THEIR TERMS AND CONDITIONS.

Accepted by:
International Business Machines Corporation

By _____ (Authorized Signature)
_____ (Name (Type or Print))
10/25/85 (Date)

C. B. Computer Services, Inc. (Customer)
By _____ (Authorized Signature) President
GEORGE F. BOPOEL (Name (Type or Print))
10/23/85 (Date)

PRESS FIRMLY WITH BALL POINT PEN ON A HARD SURFACE FOR MAXIMUM LEGIBILITY.

Z125-3029-00 (10-83)
U/M 825

feature or model conversion is installed under this Agreement or under an applicable lease or rental agreement between the Customer and IBM.

machine model upgrade and feature addition, or the Effective Date of Purchase for each installed machine model upgrade and

IBM will specify in the applicable Supplement if removed parts become the property of IBM. The Customer will provide IBM access to the Machine to commence installing all such features and model conversions as soon as possible after their shipment from IBM but in no event later than one month following the date of such shipment, unless a shorter period is specified in the Supplement. Unless otherwise agreed to by IBM, in the event of failure by the Customer to provide IBM access to the Machine within the specified period, the Customer shall return the feature or model conversion to IBM with shipping charges prepaid.

If the Customer elects to delay installation of a feature or model conversion (other than one which involves the removal of parts which become the property of IBM) and installation has not commenced one month following its date of shipment from IBM, the Date of Installation of such feature or model conversion will be considered to be the day (Monday through Friday) one month following such date of shipment.

IBM will notify the Customer of the Date of Installation of each on-order machine, feature and model conversion.

Customer Set-Up

Each machine, feature and model conversion identified in the Supplement as a Customer Set-Up (CSU) Machine and all accessories and machine elements will be set up by the Customer in accordance with the instructions furnished by IBM.

A CSU machine will be considered to be installed on the last day (Monday through Friday) of the CSU allowance period stated in the Supplement for such machine. The CSU allowance period commences on the day (Monday through Friday) following the date of receipt of the machine at the Customer's premises. However, when a CSU machine is delivered in conjunction with, and for attachment to, a non-CSU machine delivered from IBM, such CSU machine will be considered to be installed on the later of 1) the installation date of such non-CSU machine, or 2) the installation date of the CSU machine as determined above. The Date of Installation will be the day (Monday through Friday) following the date the machine is considered to be installed.

A CSU feature or model conversion, or an accessory or machine element, will be considered to be installed one month following the later of its estimated date of shipment or its actual date of shipment from IBM. The Date of Installation will be the day (Monday through Friday) following the date the feature, model conversion, accessory or machine element is considered to be installed. CSU features and model conversions will be installed on the serial-numbered machine designated in the Supplement.

PURCHASE OF INSTALLED MACHINES

The prices stated in the Supplement are exclusive of any charges which are due or may become due from the Customer under any IBM lease or rental agreement relating to the Machines. The Effective Date of Purchase for installed Machines shall be the later of the first day of the Quotation Month or the day on which the Supplement, signed by the Customer, and the payment, required under the Section entitled "Prices and Payment," are received by IBM at its Branch Office address shown in the Supplement, provided that such receipt is not later than the last day of the Quotation Month. The Machines will be terminated under the applicable lease or rental agreement between IBM and the Customer as of the day immediately preceding the Effective Date of Purchase.

WARRANTIES

Machines purchased under this Agreement will be 1) newly manufactured by IBM from new and serviceable used parts which are equivalent to new in performance in these Machines, 2) assembled by IBM from serviceable used parts, 3) Machines which have been previously installed, or 4) Machines which are presently installed with the Customer.

IBM warrants that on the Date of Installation each on-order Machine will be in good working order and will conform to IBM's official published specifications which are available upon request.

The warranty period is one year for Warranty Category A Machines and three months for Warranty Category B Machines.

entitled "Travel Expense" warranty service to keep the machines, model upgrades and feature additions in or restore them to good working order. This warranty service includes scheduled preventive maintenance based upon the specific needs of individual machines, model upgrades and feature additions as determined by IBM and unscheduled on-call remedial maintenance. Such warranty service will include lubrication, adjustments and replacement of parts deemed necessary by IBM. Parts will be furnished on an exchange basis and the replaced parts become the property of IBM.

Warranty service provided under this Agreement does not assure uninterrupted operation of the Machines. IBM may, at its option, store on the Customer's premises maintenance equipment and/or parts that IBM deems necessary to fulfill this warranty.

During the warranty period, engineering changes determined applicable by IBM will be controlled and installed by IBM on the Machines. The Customer may, by providing notice subject to written confirmation by IBM, elect to have only mandatory changes, as determined by IBM, installed on Machines.

IBM shall have full and free access to the Machines to provide service thereon. The Customer shall promptly inform IBM of any change in the Machines' location during the warranty period.

If the warranty period expires on a Friday or Saturday, it will be extended by either two days or one day respectively, so that the last day of such warranty period will be on a Sunday.

WITH RESPECT TO WARRANTY CATEGORY A MACHINES WHICH HAVE BEEN INSTALLED WITH THE CUSTOMER FOR MORE THAN ONE YEAR AND WARRANTY CATEGORY B MACHINES WHICH HAVE BEEN INSTALLED WITH THE CUSTOMER FOR MORE THAN THREE MONTHS, THE CUSTOMER AGREES TO PURCHASE THE MACHINES WITHOUT WARRANTY.

Additional Provisions for Programming

IBM further warrants that programming designated by IBM for use with a Machine and for which programming services are available will conform to IBM's official published specifications (available upon request) when shipped to the Customer if properly used on such Machine. Thereafter, IBM will provide programming services, subject to the provisions stated in the Section entitled "Programming."

IBM does not warrant that the functions contained in the programming will operate in the combinations which may be selected for use by the Customer, or will meet the Customer's requirements.

ALL PROGRAMMING FOR WHICH NO PROGRAMMING SERVICES ARE AVAILABLE IS DISTRIBUTED ON AN "AS IS" BASIS WITHOUT WARRANTY.

Additional Provisions for Repair Center Service Machines

Warranty service on Machines designated in the Supplement as Repair Center Service Machines will be performed at IBM Repair Center(s) designated by IBM. IBM will not perform preventive maintenance on the Machines. The Customer will 1) determine when remedial maintenance is required utilizing the procedures furnished by IBM, 2) remove the Machines requiring remedial maintenance from their operational location, 3) ship the Machines to the designated IBM Repair Center, 4) set up the Machines in their operational location upon their return from the IBM Repair Center, and 5) check performance of the Machines while they are installed in their operational location. The Customer agrees to use shipping containers designed by IBM and in the manner prescribed by IBM. The locations of IBM Repair Centers are subject to change by IBM upon three months' prior written notice to the Customer.

Additional Provisions for Features and Model Conversions

IBM's warranty that each feature or model conversion will be in good working order on the Date of Installation requires that the machine on which it is installed is at the current engineering-change level in the specific serial-numbered machine for which the feature or model conversion was ordered and has been

Customer to ... replace or modify the same so that they become non-infringing ... may by any other party except as provided in the Section entitled "Patents and Copyrights ..." for any damages caused by per...

agrees to grant the Customer a credit for returned Machines as depreciated. The depreciation shall be an equal amount per year over the life of the Machines as established by IBM.

IBM has no liability for any claim based upon the combination, operation or use of any Machines or programming supplied hereunder with equipment or data not supplied by IBM, or based upon alteration of the Machines or modification of any programming supplied hereunder. IBM has no liability for any claim based upon the combination, operation or use of any Machines or programming supplied hereunder with any program other than or in addition to programming supplied by IBM if such claim would have been avoided by use of another program whether or not capable of achieving the same results.

The foregoing states the entire obligation of IBM with respect to infringement of patents and copyrights.

LIMITATION OF REMEDIES

IBM's entire liability and the Customer's exclusive remedy shall be as follows:

In all situations involving performance or non-performance of Machines or programming furnished under this Agreement, the Customer's remedy is (1) the adjustment or repair of the Machine or replacement of its parts by IBM or, at IBM's option, replacement of the Machine or correction of programming errors or (2) if, after repeated efforts, IBM is unable to install the Machine or a replacement Machine in good working order, or to restore it to good working order, or to make programming operate, all as warranted, the Customer shall be entitled to recover actual damages to the limits set forth in this Section. For any other claim concerning performance or non-performance by IBM pursuant to, or in any other way related to the subject matter of, this Agreement or any order under this Agreement, the Customer shall be entitled to recover actual damages to the limits set forth in this Section.

IBM's liability for damages to the Customer for any cause whatsoever, and regardless of the form of action, whether in contract or in tort including negligence, shall be limited to the greater of $100,000 or the purchase price stated in the applicable Supplement for the specific Machines that caused the damages or that are the subject matter of, or are directly related to, the cause of action. The foregoing limitation of liability will not apply to the payment of costs, damages and attorney's fees referred to in the Section entitled "Patents and Copyrights," or to claims for personal injury or damage to real property or tangible personal property caused by IBM's negligence.

with, any Machine under this Agreement.

GENERAL

This Agreement is not assignable without the prior written consent of IBM. Any attempt to assign any of the rights, duties or obligations of this Agreement without such consent is void.

IBM may, upon written notice, modify the terms and conditions of this Agreement. Any such modification will apply on the effective date specified in the notice to all Supplements which are signed by the Customer and IBM on or after the date of notice. Otherwise, this Agreement can only be modified by a written agreement duly signed by persons authorized to sign agreements on behalf of the Customer and of IBM, and variance from or addition to the terms and conditions of this Agreement in any order or other written notification from the Customer will be of no effect.

If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

IBM is not responsible for failure to fulfill its obligations under this Agreement due to causes beyond its control, or to provide any services hereunder for Machines or programming located outside the United States or Puerto Rico.

No action, regardless of form, arising out of this Agreement may be brought by either party more than two years after the cause of action has arisen or, in the case of an action for non-payment, more than two years from the date the last payment was due.

This Agreement is governed by the laws of the State of New York.

THE CUSTOMER ACKNOWLEDGES THAT THE CUSTOMER HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. FURTHER, THE CUSTOMER AGREES THAT THIS AGREEMENT, TOGETHER WITH ANY OTHER APPLICABLE IBM AGREEMENTS, CERTIFICATIONS, AMENDMENTS AND SUPPLEMENTS AND ANY EXHIBITS OR ATTACHMENTS THERETO, REFERENCING THIS AGREEMENT OR EXPRESSLY MADE A PART HEREOF THAT ARE DULY SIGNED BY THE PARTIES WILL BE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, SUPERSEDING ALL PROPOSALS OR PRIOR AGREEMENTS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

IBM Maintenance Agreement
(Z125-3275-00)

International Business Machines Corporation (IBM) and the Customer agree that the following terms and conditions will apply to any Customer order accepted by IBM to provide maintenance service for IBM Machines located within the United States and Puerto Rico. "Machine(s)" as used herein refers to machines and/or their features, model conversions and machine elements unless the context requires individual reference. This Agreement is effective from the date on which it is accepted by IBM and shall remain in force until terminated by the Customer or IBM. Specific Machines become subject to this Agreement on the Effective Date designated by the Customer, if agreed to by IBM, and such information will be shown in a Supplement to IBM Maintenance Agreement (Supplement) signed by IBM.

MAINTENANCE SERVICE

IBM agrees to provide the availability of maintenance service to keep the Machines in, or restore the Machines to, good working order. Maintenance service includes preventive maintenance based on the specific needs of individual Machines as determined by IBM and on-call remedial maintenance. Maintenance service also includes lubrication, adjustments and replacement of maintenance parts all as deemed necessary by IBM. Maintenance parts, which may be used parts, will be furnished on an exchange basis, and the replaced parts become the property of IBM. IBM may, at its option, store maintenance equipment and/or parts on the Customer's premises.

The Customer agrees to provide a suitable environment for the Machines as specified by IBM and to provide IBM full, free and safe access to the Machines to provide maintenance service. The Customer is responsible to implement appropriate safeguards for Customer's data. The Customer is responsible for removing, controlling and replacing or reloading funds contained in the Machines. IBM will service Machines containing funds only when the cash container cannot be opened prior to repair by IBM, in which case the Customer will remove the funds as soon as the container has been opened.

PERIODS OF MAINTENANCE SERVICE

The Base Period of Maintenance Service is from 7 a.m. to 6 p.m., Monday through Friday, unless otherwise designated by IBM in the Supplement. The Customer may select Optional Periods of Maintenance Service shown in the Supplement. The Optional Period for Monday through Friday must include the Base Period.

dispensed by or associated with any Machine.

IBM's liability to the Customer for damages from any cause [illegible] charges for the specific Machines under this Agreement that caused the damages or that are the subject matter of or are directly related to the cause of action. Such charges will be those in effect for the specific Machines when the cause of action arose.

The foregoing limitation of liability will not apply to claims for personal injury or damage to real property or tangible personal property caused by IBM's negligence.

GENERAL

Service provided under this Agreement does not assure uninterrupted operation of the Machines and IBM is not responsible for failure to render service due to causes beyond its control.

This Agreement is not assignable without the prior written consent of IBM. Any attempt to assign any of the rights, duties or obligations of this Agreement without such consent is void.

IBM may, upon 12 months' written notice to the Customer, modify the terms and conditions of this Agreement except that IBM may, upon three months' written notice to the Customer, [illegible] effect. [illegible] will be of no effect.

The Customer represents that the Customer is either the owner [illegible]

[illegible] may be brought by either party more than two years after the cause of action has arisen or, in the case of an action for nonpayment, more than two years from the date the last payment was due.

This Agreement will be governed by the laws of the State of New York.

THE CUSTOMER ACKNOWLEDGES THAT THE CUSTOMER HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. FURTHER, THE CUSTOMER AGREES THAT THIS AGREEMENT, AND SUPPLEMENTS REFERENCING THIS AGREEMENT, WILL BE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, SUPERSEDING ALL PROPOSALS OR PRIOR AGREEMENTS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

Agreement for IBM Licensed Programs
(Z125-3358-00)

International Business Machines Corporation (IBM) and the Customer agree that, when this Agreement is signed by the Customer and accepted by IBM, the following terms and conditions will apply to any IBM licensed program materials offered under this Agreement when ordered by the Customer and the order is accepted as provided herein. Under these terms and conditions, IBM will 1) furnish licensed programs to the Customer, 2) furnish licensed optional materials in support of such licensed programs, 3) grant the Customer a nontransferable and nonexclusive license in the United States and Puerto Rico to use the licensed program materials, and 4) provide program services, all as described herein. The Customer agrees with respect to the licensed programs to accept the responsibility for their selection to achieve the Customer's intended results, 2) their installation, 3) their use, and 4) the results obtained therefrom. The Customer also has the responsibility for the selection and use of, and results obtained from, any other programs, programming, equipment or services used with the licensed programs.

Specific licensed program materials may be ordered under this Agreement by 1) a Supplement to this Agreement (Supplement) signed by the Customer, 2) a written order, specifying the licensed program materials and the designated machine, signed by the Customer, or 3) such other ordering procedure as shall be designated by IBM for the specific licensed program materials. IBM will accept any such order under this Agreement by providing the Customer a Supplement specifying the supplemental terms applicable to such licensed program materials. Upon receipt of the Supplement by the Customer, IBM shall thereby grant a nontransferable and nonexclusive license in the United States and Puerto Rico for licensed program materials subject to the terms and conditions of this Agreement. Use of the licensed program materials or the first payment of charges due hereunder, whichever first occurs following receipt of the Supplement, will constitute the Customer's acceptance of the supplemental terms specified in the Supplement.

Any terms which this Agreement states are to be specified by IBM for a licensed program and/or related licensed optional materials will be stated in the Supplement for that licensed program.

DEFINITIONS

The term "licensed program" in this Agreement shall mean a licensed data processing program consisting of a series of instructions or statements in machine readable form and/or any licensed data base consisting of a systematized collection of data in machine readable form and any related licensed materials such as, but not limited to, flow charts, logic diagrams and listings provided for use in connection with the licensed data processing program.

The term "licensed optional materials" in this Agreement shall mean any machine readable or printed material not included in the licensed program and which is designated by IBM as available under license to Customers who have licensed the program to which such optional materials relate.

The term "licensed program materials" in this Agreement shall mean both the licensed program and the licensed optional materials as defined above.

The term "restricted materials" in this Agreement shall mean any licensed program materials which are labeled "Restricted Materials of IBM".

The term "use" in this Agreement shall mean copying any portion of the licensed program materials into a machine and/or transmitting them to a machine for processing or the machine instructions, statements or data contained in such materials.

TERM

This Agreement is effective from the date on which it is accepted by IBM and will remain in effect until terminated by the Customer upon one month's written notice, or by IBM as set forth in this section. This Agreement may be terminated by the Customer only when all licensed program materials licensed hereunder are discontinued and all licensed program materials have been returned or destroyed.

Licenses granted under this Agreement may be discontinued by the Customer upon one month's written notice except that, during the testing period, the Customer may discontinue any license at any time upon written notice effective immediately.

IBM may discontinue any license or terminate this Agreement upon written notice effective immediately if the Customer fails to comply with any of the terms and conditions of this Agreement.

Notice of discontinuance of any or all licenses shall not be considered notice of termination of this Agreement unless specifically stated.

Notice of discontinuance of any licensed program shall be notice of discontinuance of the license and of all licensed program materials obtained in connection therewith.

LICENSE

Each license granted under this Agreement authorizes the Customer to:

pursuant to the subsection entitled "Additional Licenses" and (ii) which there is no testing period, periodic charges will commence

has the right to decide whether to make any such licenses or continue use of a previous release having given due regard to the

the licensed program materials to which such charges apply and are not refundable even if the Customer discontinues the licensed program prior to or during the testing period.

Payment will be made as stated in the invoice.

installation (or location, when IBM has specified "Location License Applies"). There will be no testing period for the subsequent license.

Applicable Taxes

In addition to the charges due under this Agreement, the Customer agrees to pay amounts equal to any taxes resulting from this Agreement or any activities hereunder, exclusive of taxes based on IBM's net income.

Price Changes

Periodic charges are subject to change by IBM upon three months written notice to the Customer. Any changes in periodic charges become effective on the first day of the Period which commences on or after the effective date specified in the notice.

Initial charges, one-time charges, process or upgrade charges and charges for licensed optional materials are subject to change without prior notice except that such charges shall not be increased if, prior to the date of the notice, 1. the licensed program materials had been shipped by IBM or 2. the Customer had copied licensed program materials pursuant to the subsection entitled "Additional Licenses." In addition, if the Customer's written order was received by IBM prior to the announcement of such increase in charges, such charges shall not be increased if, within one month after the date of notice, shipment of the licensed program materials occurs or the Customer copies licensed program materials pursuant to the subsection entitled "Additional Licenses."

If charges are increased for any licensed program materials, the Customer may discontinue them in accordance with the provisions of this Agreement; otherwise, the new charges will become effective.

SHIPMENT

The Estimated Shipment Date for licensed programs will be specified by IBM. However, IBM does not represent or warrant that such shipment date will be met.

IBM will notify the Customer of the type of program storage media required for shipment. Unless returnable or disposable media are used, the program storage media must be provided by the Customer or ordered from IBM at the applicable charge. Except when otherwise specified by IBM, licensed program materials will be shipped to the Customer without shipping charge. Any special shipment requested by the Customer will be at Customer expense.

LICENSED PROGRAM TESTING

For each licensed program, IBM will specify the testing period, if any, during which the licensed program will be made available for nonproductive use. The purpose of the testing period is to permit the Customer to determine whether the licensed program functions selected by the Customer operate together and to assist the Customer in determining whether the licensed program meets the Customer's requirements. The testing period will begin 10 days after shipment of the licensed program by IBM or on the Effective Date for Additional License unless otherwise specified.

The Customer may discontinue the licensed program upon written notice effective immediately at any time during the testing period, in which event periodic charges, one-time charges, initial charges, upgrade charges and licensed optional materials charges will not be due. However, process charges will be payable. Unless such notice of discontinuance is given, the Customer will be deemed, at the end of the testing period, to have decided to retain the licensed program under the provisions of this Agreement.

In the event that the licensed program is used for productive purposes during the testing period, the Customer will notify IBM and the testing period will be deemed to have ended as of the date upon which the Customer commences productive use.

Subsequent releases, if any, of a licensed program which have the same program number will be made available to the Customer

RISK OF LOSS

If licensed program materials are lost or damaged during shipment from IBM, IBM will replace such licensed program materials and program storage media at no additional charge to the Customer.

If licensed program materials are lost or damaged while in the possession of the Customer, IBM will replace such licensed program materials at the applicable charges, if any, for processing, distribution, and/or program storage media.

EARLY SHIPMENT OF LICENSED PRINTED MATERIALS

When the Customer has received a Supplement issued by IBM for a generally available licensed program, licensed program materials which are provided by IBM in printed form will, upon Customer request, be shipped to the Customer up to six months prior to shipment of the machine readable portion of the licensed program materials. The licensed printed materials thus provided may not be copied in any form for any purpose.

If the Customer does not request that the machine readable portion of the licensed program materials be shipped within six months following the date of shipment of the licensed printed materials, the Customer will discontinue the license and return or destroy the printed materials.

The charge for early shipment of licensed printed materials will consist of any applicable process charges.

Program services, if any, will not be provided prior to shipment of the machine readable portion of the licensed program materials.

PROGRAM SERVICES

For each licensed program, IBM will specify the types and durations of program services, if any, to be provided without additional charge for a current release of the licensed program. Program services will commence at the beginning of the licensed program testing period or, if there is no testing period for that license, when periodic charges commence or other charges are due. Program services will be subject to the provisions of the section entitled "Specified Operating Environment."

Types of Service

Central Service — When Central Service is specified, one or more service locations will be designated which will accept documentation, in a format prescribed by IBM, indicating that a problem is caused by a defect in the licensed program. Central Service will respond to a defect in the unaltered portion of a current release of the licensed program by issuing defect correction information such as correction documentation, corrected code, or notice of availability of corrected code; or a restriction or a bypass. Unless Local Service is also specified for the licensed program, the Customer will be responsible for the preparation and submission of documentation to Central Service.

IBM may also establish a center (Support Center) to provide the Customer with telephone assistance in problem diagnosis and resolution. When a Support Center is established for a licensed program and a problem occurs which the Customer believes is related to the use of a licensed program, the Customer will contact the Support Center and will perform appropriate problem definition activities and remedial actions as prescribed by the Support Center prior to any dispatch of an IBM representative. IBM also offers other services through Support Centers with or without charge as applicable.

Local Service—When Local Service is specified and a problem occurs which the Customer determines is caused by the use of a licensed program and the diagnosis of the IBM representative indicates the problem is caused by a defect in the unaltered portion of a current release of the licensed program, the IBM representative will perform the following problem resolution activities.

This requirement will apply to all copies in any form of the licensed program, in whole or in part, including all modifications, translations or combinations or partial copies within modifications. [illegible] personal injury or damage to real or tangible personal property caused by IBM's sole negligence.

authorization from IBM, the Customer may retain a copy of the licensed program and documentation for archival purposes only.

The requirement to return or destroy will apply to a licensed data base. It will not apply to individual pieces of data obtained by the Customer from such data base and which constitute a minor portion of such data base.

When the Customer has licensed a new version of a licensed program, which carries a different program number, and discontinues the prior version, the Customer may retain the prior version of the licensed program for a period not to exceed three months following its date of discontinuance, to be used only if a defect in the new version prevents its use. During this period the Customer will pay only the applicable charges for the new version of the licensed program. Within one month following this three-month period, unless the requirement is waived by IBM, the Customer will furnish IBM a completed form entitled "IBM Licensed Program Certificate of Return or Destruction" for the prior version as set forth above.

PATENTS AND COPYRIGHTS

IBM will, at its expense, defend the Customer against any claim that licensed program materials supplied hereunder infringe a patent or copyright in the United States or Puerto Rico and subject to the limitation of liability set forth in the section entitled "Limitation of Remedies," IBM will pay all costs, damages and attorney's fees that a court finally awards as a result of such claim. To qualify for such defense and payment, the Customer must:

1) give IBM prompt written notice of any such claim; and
2) allow IBM to control, and fully cooperate with IBM in, the defense and all related settlement negotiations. However, if the damages attributable to a claim of infringement of a patent in the United States or Puerto Rico may exceed such limitation of liability, the Customer may elect to defend against the claim provided that: IBM may fully participate in the defense and/or agrees to any settlement of such claim.

The Customer agrees to allow IBM, at IBM's option and expense, if such claim has occurred or in IBM's judgment is likely to occur, to procure the right for the Customer to continue using the licensed program materials or to replace or to modify them so that they become non-infringing; and, if neither of the foregoing alternatives is available on terms which are reasonable in IBM's judgment, upon written request, the Customer will return the licensed program materials to IBM; and, for licensed programs whose total charges are fully paid, the Customer may receive a credit as established by IBM.

IBM shall have no obligation with respect to any such claim based upon the Customer's modification of the licensed program materials or their combination, operation or use with data or programs not furnished by IBM or in other than the Specified Operating Environment. This section states IBM's entire obligation to the Customer regarding infringement or the like.

LIMITATION OF REMEDIES

IBM's entire liability and the Customer's exclusive remedy shall be as follows:

In all situations involving performance or nonperformance of licensed programs furnished under this Agreement, the Customer's remedy is 1) the correction by IBM of licensed program defects, or 2) if, after repeated efforts, IBM is unable to make the licensed program operate as warranted, the Customer shall be entitled to recover actual damages to the limits set forth in this section.

For any other claim concerning performance or nonperformance by IBM pursuant to, or in any other way related to, the subject matter of this Agreement and any Supplement hereto, the Customer shall be entitled to recover actual damages to the limits set forth in this section.

IBM's liability for damages to the Customer for any cause whatsoever, and regardless of the form of action, whether in contract or in tort including negligence, shall be limited to the greater of $25,000 or the one-time charge paid for, or any charges the Customer's failure to perform the Customer's responsibilities, or for any lost profits, lost savings or other consequential damages even if IBM has been advised of the possibility of such damages or for any claim against the Customer by any other party, except as provided in the section entitled "Patents and Copyrights."

IBM EDUCATION COURSES

The Customer agrees that all of the terms and conditions applicable to restricted materials contained in this Agreement shall be incorporated into the Agreement between the Customer and IBM entitled "Terms and Conditions for IBM Classes and Education Materials" and apply to materials regardless of form, labeled "Restricted Materials of IBM" when distributed to the Customer in conjunction with an IBM Education Course.

ADDITIONAL PRODUCTS AND SERVICES

In addition to the licensed program materials and program services provided under this Agreement, IBM offers other products and services at separate charges under applicable written IBM agreements. IBM and the Customer agree that such products and services cannot be the subject of an oral agreement.

GENERAL

This Agreement is not assignable, none of the licenses granted hereunder nor any of the licensed program materials or copies thereof may be sublicensed, assigned or transferred by the Customer without the prior written consent of IBM. Any attempt to sublicense, assign or transfer any of the rights, duties or obligations under this Agreement is void.

Licensed program materials furnished under this Agreement are to be used only on machines located in the United States and Puerto Rico.

The terms of this Agreement may be modified by IBM upon three months' written notice to the Customer, except that any modifications of the terms and conditions which relate specifically to termination of this Agreement or discontinuance of licenses granted under this Agreement as provided in the section entitled "Term" shall be effective only as to licensed program materials designated in a Supplement issued by IBM after the date of such notice. Modifications shall become effective unless the Customer terminates this Agreement or discontinues any applicable licenses before the effective date thereof. Otherwise, this Agreement or any Supplement can only be modified by a written agreement duly signed by persons authorized to sign agreements on behalf of the Customer and IBM, and variance from or addition to the terms and conditions of this Agreement and any Supplement in any Customer purchase order or other written notification will be of no effect.

IBM is not responsible for failure to fulfill its obligations under this Agreement due to causes beyond its control.

No action, regardless of form, arising out of this Agreement may be brought by either party 1) in the case of an action arising out of breach of the provisions of the section entitled "Protection and Security of Licensed Program Materials" more than six years after such cause of action has arisen, 2) in the case of an action for nonpayment, more than two years from the date the last payment was due, or 3) in the case of any other action, more than two years after the cause of action has arisen.

The Agreement will be governed by the laws of the State of New York.

THE CUSTOMER ACKNOWLEDGES THAT THE CUSTOMER HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. FURTHER, THE CUSTOMER AGREES THAT THIS AGREEMENT AND ITS APPLICABLE SUPPLEMENTS ARE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT

tenance Service, and unlimited use of the machine in any calendar month.

The Monthly Use Charge Rate(s) for each Plan C machine may be increased by IBM in the same manner and in accordance with

ther may select or change Optional Periods of Maintenance Service upon 15 days' prior written notice to IBM.

Optional Periods of Maintenance Service are subject to an Additional Monthly Maintenance Charge based on the Machine Group and determined by multiplying the Additional Monthly Maintenance Charge Rate for the machine by the applicable Percentages for the Optional Periods of Maintenance Service shown in the Exhibit. Additional Monthly Maintenance Charges will commence upon the expiration of the Initial Period of Maintenance Service or on the effective date of the Optional Periods of Maintenance Service, whichever is later. The Initial Period of Maintenance Service commences on the day (Monday through Friday) following the day that the Plan D machine is installed, as specified in the Section entitled "Installation," and has a duration as established in writing by IBM. If the Initial Period of Maintenance Service expires on a Friday or Saturday, it will be extended by two days or one day, respectively, so that the last day of such Initial Period of Maintenance Service will be on a Sunday.

If the Customer requests maintenance service for a Plan D machine to be performed at a time outside the Periods of Maintenance Service, the service will be provided for additional charge as described in the Section entitled "Maintenance Service."

Monthly charges for each machine will begin on the Commencement Date of its Lease Contract Period or Extension or Rental Contract Period, unless otherwise specified in this Section.

Meter Readings

IBM will install and maintain its meters for Plan A and Plan C machines. For each Plan A machine, where required and for each Plan C machine, the Customer agrees to furnish a monthly report to IBM showing the meter reading as of the close of the last work day of each calendar month. The Customer agrees not to interfere with the proper operation of the meters.

Increases in Lease Contract Period Monthly Charges

For each year of a Lease Contract Period for a machine, beginning with the Commencement Date designated in the Supplement, and thereafter with each Anniversary Date, there will be a maximum Monthly Lease Charge (Upper Limit) for that year. The Upper Limit for the first year of the Lease Contract Period is calculated by increasing the initial Monthly Lease Charge in effect for a machine on the Commencement Date specified in the Supplement by an amount which is derived by multiplying the initial Monthly Lease Charge by the Upper Limit Percent specified in the Supplement. The Upper Limit for each succeeding year is calculated by increasing the Upper Limit for the preceding year by an amount which is derived by multiplying the initial Monthly Lease Charge by the Upper Limit Percent specified in the Supplement. For these calculations, when a machine becomes subject to the provisions of a Lease Contract Period on or after announcement, but before the effective date, of an increase in the Monthly Lease Charge, such increased Charge will be used as the initial Monthly Lease Charge.

For a machine not yet installed, if the Customer's written order for a machine has been received by IBM, IBM may not increase the Monthly Lease Charge or Upper Limit Percent unless written notice shall have been given to the Customer at least three months before the date of shipment. In the event of such increase, the Customer may elect to void the order for the affected machine within one month of notification of such increase by IBM.

For a machine which is installed, IBM may increase the Monthly Lease Charge upon three months' prior written notice. Such increased Monthly Lease Charge will be the lowest of: 1) the Monthly Rental Charge generally in effect for such machine on the effective date specified in the notice; 2) the Monthly Lease Charge generally in effect for such machine on the effective date specified in the notice for Customers commencing a new Lease Contract Period with the same Base Term; or 3) the Upper Limit in effect for that year, and, to the extent that any increase exceeds the applicable Upper Limit, the excess will automatically be effective on ensuing Anniversary Dates.

Service, or IBM may change the Machine Group designation or the Optional Periods of Maintenance Service at any time upon three months' prior written notice to IBM. The Customer may discontinue any Optional Periods of Maintenance Service affected by such notice on the effective date of the increase or change. Otherwise, the new Rate Percentages, Machine Group designation and Optional Periods of Maintenance Service will become effective as specified.

Except as provided in this Section and in the Section entitled "Lease Contract Period Extension," all increases in the Monthly Lease Charge, Monthly Use Charge Rate(s) and Upper Limit Percent will become effective on the date specified in the notice of such increase.

Increases in Rental Contract Period Monthly Charges

For a machine under a Rental Contract Period, IBM may increase the Monthly Rental Charge, Additional Use Charge Rate or Monthly Use Charge Rate(s) upon three months' prior written notice. The Customer may discontinue any machine included in such notice on the effective date of the increase upon one month's prior written notice. Otherwise, the new Charge and Rates will become effective as specified.

IBM may increase the Additional Monthly Maintenance Charge Rate or the Percentages for Optional Periods of Maintenance Service, or IBM may change the Machine Group designation or the Optional Periods of Maintenance Service, at any time upon three months' prior written notice to the Customer. Upon 15 days' prior written notice to IBM, the Customer may discontinue any Optional Periods of Maintenance Service affected by such notice on the effective date of the increase or change. Otherwise, the new Rate Percentages, Machine Group designation and Optional Periods of Maintenance Service will become effective as specified.

Hourly Service Charges

IBM's hourly service rates and minimum charges are subject to change by IBM without notice.

Destination Charges

All destination charges for each machine, model conversion or feature, both from and to designated IBM locations, and any rigging charges will be paid by the Customer in accordance with IBM's then current shipping and billing practices. The cost of labor for crating and uncrating is a Customer expense except when performed at an IBM location.

Applicable Taxes

In addition to the charges due under this Agreement, the Customer agrees to pay amounts equal to any taxes resulting from this Agreement, or any activities hereunder, exclusive of property taxes and taxes based on IBM's net income.

LEASE CONTRACT PERIOD EXTENSION

Unless otherwise specified in the Supplement, the Customer may extend a Lease Contract Period for a machine any number of times for one year and one time for a period of less than one year. The Commencement Date of an Extension will be the day following the Expiration Date of the Lease Contract Period or Extension then in effect.

The charges and terms and conditions for the ensuing Extension may be changed by IBM, but will not be changed by IBM from the date three months prior to the Commencement Date of such Extension through its Expiration Date, except as described in this Section and except that if such Expiration Date is adjusted as described in the Section entitled "Machine Modifications," the charges during the adjustment period may be increased by IBM in accordance with the Upper Limit provisions described in the Sections entitled "Increases in Lease Contract Period Monthly Charges" and "Purchase Option." Prior to the Expiration Date of a Lease Contract Period or one-year Extension, IBM will provide the Customer with written notice of all such charges and terms and conditions for the ensuing Extension.

During the Extension there will be an Upper Limit. The Upper Limit for the Extension is calculated by increasing the initial Monthly Lease Charge in effect for a machine on the Commence-

ment for the machine, including its model upgrades and features as-modified in accordance with this Section, less any applicable

generally in effect for the machine, including its model upgrades and features, less any applicable purchase option credits not to exceed an amount determined by multiplying such purchase price by the Maximum Purchase Accrual Percent. The Maximum Purchase Accrual Percent will be specified in the Supplement.

The purchase option credits are determined by multiplying

a) the applicable Monthly Lease Charges paid under this Agreement by the Purchase Option Percent specified in the applicable Supplement; and

b) applicable charges, if any, paid under other IBM agreements by the purchase option percents applicable under those agreements.

For purposes of this calculation, the period during which monthly charges are eligible for purchase option credits is the period during which the machine has been continuously installed. Eligible monthly charges will be applied in the order in which they are first incurred and do not include Additional Use Charges, Monthly Use Charges or Additional Monthly Maintenance Charges.

When a machine ceases to be installed under this Agreement, all purchase option credits accrued hereunder with regard to that machine shall expire.

Purchase option credits accrue individually for each machine, model upgrade and feature. Purchase option credits are not transferable to other Customers or between machines, or among a machine, its models and features.

For a machine not yet installed, if the Customer's written order for the machine has been received by IBM prior to the announcement of a Purchase Price increase or a decrease in Purchase Option Percent or Maximum Purchase Accrual Percent, IBM may not increase such Price nor decrease such Percents unless written notice shall have been given to the Customer at least three months before the date of shipment.

For a machine which is installed, IBM may increase the Purchase Price stated in the Supplement immediately upon written notice, subject to Upper Limits determined in the same manner as for Monthly Lease Charges as described in the Sections entitled "Increase in Lease Contract Period Monthly Charges" and "Lease Contract Period Extension." The Purchase Option Percent and Maximum Purchase Accrual Percent for a machine will not be decreased during a Lease Contract Period.

The Customer may elect to purchase a machine installed under a Rental Contract Period by executing a Supplement to Agreement for Purchase of IBM Machines. Upon request from the Customer, IBM will quote the then applicable purchase price for such machine, including its model upgrades and features, as of a specific month that is not more than three months from the date of the request.

SHIPMENT

IBM agrees to schedule each machine for shipment in accordance with IBM's applicable shipment sequence and will confirm in writing, and amend as necessary, the Customer's schedule. Prior to shipment, IBM will make reasonable accommodation to a delay requested by the Customer.

PROGRAMMING

The term "programming" as used in this Agreement shall mean such programming as IBM may make generally available, from time to time, without separate charge, for machines of the types ordered by the Customer under this Agreement. IBM will furnish such programming as may be requested by the Customer.

The term "programming services" shall mean such services as IBM may generally make available without separate charge in connection with programming. IBM will determine the programming services available and their duration.

The terms "programming" and "programming services" do not include IBM programs and services that are available for a separate charge or which are offered under separate written agreements.

ALTERATIONS AND ATTACHMENTS

An alteration is defined as any change to an IBM machine which deviates from IBM's physical, mechanical or electrical

notice to IBM.

The Customer agrees to accept the responsibility for making

Additional Charge. The Customer further agrees to remove any alteration or attachment and to restore the machine to its normal, unaltered condition prior to its return to IBM, or upon notice from IBM that the alteration or attachment creates a safety hazard or renders maintenance of the machine impractical.

MAINTENANCE SERVICE

IBM will provide maintenance service to keep each machine in or restore it to good working order and will make all necessary adjustments, repairs and parts replacements. The Customer agrees to provide IBM full, free and safe access to the machines to provide maintenance service. The Customer is responsible to implement appropriate safeguards for Customer's data. The Customer is responsible for removing, controlling and replacing or reloading funds contained in the machines. IBM will service machines containing funds only when the cash container cannot be opened prior to repair by IBM, in which case the Customer will remove the funds as soon as the container has been opened.

The Optional Periods of Maintenance Service for a Plan D machine on Monday through Friday must include the Base Period of Maintenance Service and must be the same consecutive hours each day, and the Optional Period on Saturday or Sunday must be the same consecutive hours on all Saturdays or Sundays.

If the Customer request maintenance service for a Plan D machine to be performed at a time outside the Periods of Maintenance Service, the service, including travel and waiting time, will be furnished under this Agreement at IBM's then applicable hourly service rates and minimum charges, and travel expense, however, there will be no additional charge for maintenance parts.

TRAVEL EXPENSE

Except as provided for Plan D machines in the Section entitled "Maintenance Service," there will be no charge for travel expense associated with maintenance service or programming service under this Agreement except that actual travel expense will be charged when the site at which the machine is located 1) is within the contiguous States and is normally inaccessible by both private automobile and scheduled public transportation, or 2) is outside the contiguous States and is normally inaccessible by private automobile.

SERVICES FOR ADDITIONAL CHARGE

The Customer agrees to pay, at IBM's then applicable hourly service rates and minimum charges, parts and material prices and travel expense, all charges for services and to pay for loss of or damage to a machine caused by 1) use of the machine for purposes other than for which designed, 2) alterations and attachments or 3) vandalism or burglary of machines designed to contain funds. The Customer also agrees to pay, at IBM's then applicable hourly service rates and minimum charges, parts and material prices and travel expense, all charges for service for accessories, and for repair of damage, replacement of parts (due to other than normal wear) or repetitive service calls caused by the use of supplies.

All services (including but not limited to services relating to pre-installation planning, inspections, relocation of machines, engineering changes and altered programming) which may be made available by IBM to the Customer with or without separate charge, in connection with any machines or programming supplied under this Agreement shall be subject to the terms and conditions of this Agreement unless such services are provided under another written agreement signed by the Customer and IBM.

ADDITIONAL PRODUCTS AND SERVICES

In addition to the machines, programming and services provided under this Agreement, IBM offers other products and services at separate charges under applicable written IBM agreements. IBM and the Customer agree that such products and services cannot be the subject of an oral agreement. The Customer may contract with IBM for any such products or services as available but only under the terms and conditions of a written agreement signed by the Customer and IBM.

...notice and is shipped within 10 days of the date of the notice and for an Extension which will commence within three ... York.

THE CUSTOMER ACKNOWLEDGES THAT THE CUSTOMER ...

...wise, the Agreement or any Supplements can only be modified by a written agreement duly signed by persons authorized to sign agreements on behalf of the Customer and IBM, and variance from the terms and conditions of this Agreement and any Supplements in any Customer order or other written notification will be of no effect.

IBM is not responsible for failure to fulfill its obligations under this Agreement due to causes beyond its control.

FURTHER, THE CUSTOMER AGREES THAT THIS AGREEMENT AND ITS APPLICABLE SUPPLEMENTS AND EXHIBITS ARE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, SUPERSEDING ALL PROPOSALS OR PRIOR AGREEMENTS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

Agreement for Hourly IBM Machine Service
(Z120-2626-00)

International Business Machines Corporation (IBM), by its acceptance of this Agreement agrees to furnish and the Customer agrees to accept on the following terms and conditions Hourly IBM Machine Service at an IBM Facility for program testing and other activities, including conversion directly related to program testing. Hourly IBM Machine Service is comprised of the availability and use of machines and programs (applicable System Control Programming and certain Licensed Program Products) as mutually agreed upon by the Customer and IBM at the IBM Facility.

TERM
This Agreement is effective from the date it is accepted by IBM and shall remain in force until terminated by the Customer upon one month's prior written notice or by IBM upon three months' prior written notice. The availability of machines and programs may be modified or terminated by IBM upon one month's notice.

USE
The service furnished under this Agreement shall be used exclusively by the Customer for program testing and other activities, including conversion, directly related to program testing. This includes testing activities associated with either IBM furnished or Customer furnished programs. The Customer represents to IBM that he is currently or prospectively a user of IBM products, and will not use the service being furnished under this Agreement except in conjunction with the Customer's use or prospective use of such IBM products.

CHARGES
The Customer agrees to pay charges for Hourly IBM Machine Service in accordance with IBM's established rates in effect when the service is rendered. All charges are subject to change upon three months' notice.

Charges accrue when the service is available for the Customer's use, as agreed upon by the Customer and IBM at the IBM Facility. Charges will be invoiced monthly for services rendered and are payable on receipt of invoice.

There shall be added to any charges under this Agreement amounts equal to any applicable taxes however designated, levied or based on such charges or on this Agreement or the services rendered hereunder or on the machines and programs or their use, including state and local privilege or excise taxes based on gross revenue, and any taxes or amounts in lieu thereof paid or payable by IBM in respect of the foregoing, exclusive of personal property taxes assessed on the machines or programs and taxes based on net income.

STORAGE MEDIA AND SUPPLIES
Except for storage media necessary for the availability and use of IBM furnished programs and incidental consumption of paper forms and cards utilized, all supplies, materials and other storage media required by the Customer to use the machines must be furnished by the Customer and must meet IBM specifications.

MAINTENANCE
IBM shall have full and free access to the machines and programs for maintenance purposes. Charges for any adjustments, component replacements or repairs due to the negligence of the Customer will be borne by the Customer.

When machines or programs are unavailable during the Customer's scheduled hours due to required maintenance, such time will be rescheduled as mutually agreed upon by the Customer and IBM.

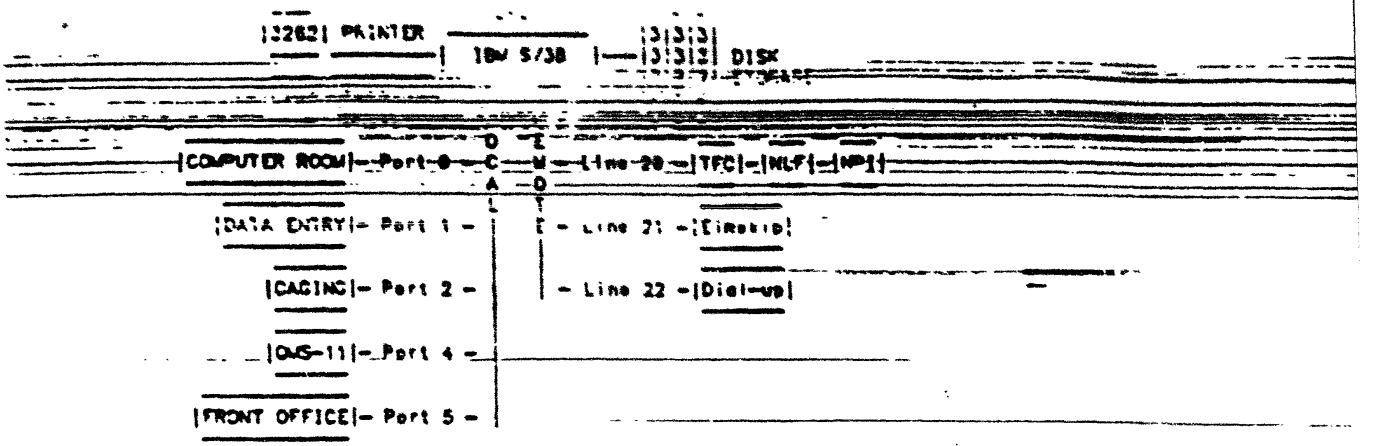
GENERAL
The Customer is solely responsible for the accuracy and adequacy of all programming used in connection with the machines, the operation of the machines when the machines are scheduled for the Customer's exclusive use, and the resultant output thereof. IBM assumes no responsibility for loss or security of Customer data or records. Programs furnished by IBM are provided for the Customer's use at the IBM Facility. The Customer agrees not to copy any such programs for use outside of the IBM Facility or remove any such programs from IBM's premises.

IBM MAKES NO WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IBM will not be liable for lost profits, for any claim against the Customer by any other party, or for consequential damages even if IBM has been advised of the possibility of such damages. IBM shall not be liable for failure to make Hourly IBM Machine Service available due to causes beyond IBM's control. No action, regardless of form, arising out of the transactions under this Agreement, may be brought by either party more than one year after the cause of action has accrued, except that an action for nonpayment may be brought within one year after the date of last payment.

The terms of this Agreement may be modified by IBM upon three months' written notice to the Customer. The Customer may exercise the Customer's right to terminate; otherwise, such modification shall become effective.

This Agreement shall be governed by the laws of the State of New York and constitutes the entire agreement between the Customer and IBM with respect to Hourly IBM Machine Service. The foregoing terms and conditions shall prevail notwithstanding the terms of any order submitted by the Customer with respect to Hourly IBM Machine Service.

THE CUSTOMER ACKNOWLEDGES THAT HE HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO ALL TERMS AND CONDITIONS STATED HEREIN.



Equipment Inventory

Computer Room

QTY		DESCRIPTION
1	-	IBM System/38 model 20 CPU...8MB Memory
3	-	IBM 3370 Disk Storage Subsystems...729MB each
1	-	IBM 3263-B1 Printer...300/600 LPM
1	-	OMS model 11 Laser Printer...8 PPM
1	-	IBM 3430 Tape Drive...1600 BPI/6250 CPI, 9 Chl
1	-	IBM 5291 CRT Workstation
3	-	IBM 3179 CRT Workstation...Color
1	-	Gandalf LDM 444 Modem...Com Line 20
1	-	Gandalf LDM 444 Modem...Spare
1	-	Decision Data 5751 Cluster Controller...Spare
1	-	Dedicated Data Circuit #52FDOA255662 Seq"A"...Com Line 20
1	-	Dedicated Data Circuit #52FDOA255707 ...Com Line 21
1	-	Dial-up Data Circuit #523-1251 ...Com Line 22

Data Entry

QTY		DESCRIPTION
4	-	IBM 5291 Workstation

Caging

QTY		DESCRIPTION
1	-	IBM 5291 Workstation...Donor Support
1	-	IBM 5291 Workstation...Data Entry Supervisor

QTY		DESCRIPTION
1	-	Gandalf LDM 444 Modem...Com Line 28
1	-	Decision Data 5751 Dual Cluster Controller...Com Line 28
5	-	IBM 5291 CRT Workstation
1	-	Decision Data 5255 Letter Quality Printer

The National Legal Foundation

QTY		DESCRIPTION
1	-	Dedicated Data Circuit #52FDDA255662 Seg"D"...Com Line 28
1	-	Gandalf LDM 444 Modem...Com Line 28
1	-	Decision Data 5751 Dual Cluster Controller...Com Line 28
1	-	IBM 5291 CRT Workstation

The National Perspectives Institute

QTY		DESCRIPTION
1	-	Dedicated Data Circuit #52FDDA255662 Seg"E"...Com Line 28

ARMS Inc.

QTY		DESCRIPTION
1	-	IBM 5291 Workstation...Serial# DA532

EXHIBIT D

(agreements attached)

October 3, 1985

Mr. George Border, President
G.B. Computer Services, Inc.
P.O. Box 2442
Chesapeake, VA 23320

Dear Mr. Border:

We are pleased to advise you that we have approved your application for a $480,000 loan subject to all of the terms and conditions which follow herein. For simplicity, Sovran Bank, N.A. will be referred to as the "Bank", you as "Borrower" and the foregoing loan as the "Loan" and the hereinafter mentioned security as the "Security Property".

Upon receipt of your acceptance of our commitment, we will then advise the closing attorney to prepare the loan instruments.

We appreciate the opportunity to serve you. If you have any questions relating to this commitment, please contact us.

TERMS

BORROWER
G.B. Computer Services, Inc.

AMOUNT OF LOAN
$480,000 or 60% of the purchase price, whichever is less

PURPOSE
Purchase an I.B.M. System 38 computer and related equipment.

ENDORSERS OR GUARANTORS
None

SECURITY
- Purchase money security interest in the I.B.M. System 38 computer and related equipment.
- 1st Security interest in all other corporate assets including but not limited to accounts receivable, inventory, furniture, fixtures, equipment, contracts, contract rights, and general intangibles.
- Assignment of lease.

AMORTIZATION
36 Monthly payments to principal of $13,334 plus accrued interest beginning 30 days from the date of the note.

MATURITY
3 Years from the date of the note.

EXTENSIONS
None without prior Bank approval.

INTEREST RATE
Sovran Bank's prime rate as it is announced from time to time plus 4%. Interest shall be charged and calculated on a 360-day year factor applied to actual days, and shall be payable monthly.

PAYEE AND PLACE OF PAYMENT
Sovran Bank, N.A., Norfolk, Virginia

CLOSING ATTORNEY
J. Randy Forbes, Esq.

REQUIREMENTS

Prior to the disbursement of any portion of the Loan proceeds, Borrower shall have satisfied completely the following documentation requirements and other conditions as listed:

NOTE
The Loan is to be evidenced by a note of the Borrower and secured by a first security interest on the Security Property, the substance of each of which is subject to approval by the Bank.

DEMAND DEPOSIT BALANCE REQUIREMENT
G.B. Computer Services, Inc., and its affiliates will maintain, in the aggregate, during the duration of the loan, average monthly net free collected balances of $25,000 in their non- interest bearing checking accounts at Sovran Bank, N.A. Any deficiency will result in the requirement of a direct payment by the Company to the Bank annually of an amount equal to 20% of the deficiency in the average net free collected balances. A monthly statement of demand deposit analysis and service charges will be provided by Sovran Bank, N.A.

October 3, 1985
Page 3

AFFIRMATIVE AND NEGATIVE COVENANTS

The Borrower shall be required to make the following covenants to the Bank in connection with the Loan:

1. The Company represents and warrants as follows:

a) The Company is duly organized and existing under the laws of the State of Virginia.

b) No litigation is now pending, or so far as known to any of the Company officers, threatened against the Company.

c) The execution of this agreement and of the note evidencing the Loan have been duly authorized by resolutions duly adopted by the Board of Directors of the Company.

d) There is no provision of the Company charter or bylaws or of any agreement entered into by the Company which will be contravened by the execution, delivery, or performance by the Company of this agreement.

e) No mortgage, pledge, lien or other encumbrance of any kind now exists against any of the assets of the Company other than as security for a loan.

f) So long as any part of the loan remains unpaid, the Company covenants and agrees that it will:

1. Furnish the Bank with financial statements within 15 days following the end of each month and within 120 days after the close of each fiscal year which shall be certified as to their accuracy by the Chief Financial Officer of the Borrower. The financial statements shall contain a balance sheet, income statement and other financial information reasonably required by the Bank.

2. Furnish to the Bank any other information respecting the business and operations of the Company as the Bank may reasonably request.

3. Maintain adequate insurance of the types customarily carried in the business of the Company, with appropriate loss payable clause in favor of the Bank; if at any time the Bank deems such insurance inadequate either as to amount or types of coverage in such respects as the Bank may require, and further upon the Bank's request, give the Bank such information or certificates as the Bank may desire in respect of any of such insurance.

4. Pay and discharge when due all taxes, charges and claims imposed upon or assessed against it or any of its property except in instances where the validity or the amount thereof is being contested in good faith by appropriate legal proceedings.

5. Maintain a positive net worth.

g) So long as any part of the loan remains unpaid, the Company covenants and agrees that they will not, without prior written consent of the Bank:

1. Purchase or redeem any of their own stock, declare or pay any dividend, or make any other distribution of property in respect of the Company stock;

2. Pledge, mortgage, encumber, lease or sell (except in the ordinary course of business and under this agreement) any of their assets without consent of the Bank, which consent shall not be unreasonably withheld;

3. Create, incur, or assume any other indebtedness except in the ordinary course of business;

4. Be a party to any merger or consolidation, or sell or transfer all, or substantially all, their property to any person, firm or corporation without the consent of the Bank, which consent shall not be unreasonably withheld;

5. Make any loan to any person, firm or corporation, except in the ordinary course of their business, or to their employees, officers, directors, or stockholders;

C.B. Computer Services, Inc.
October 3, 1985

6. Assume, guarantee, endorse, or otherwise become liable on the obligations of any person, firm or corporation; except by endorsement, for the purpose of discount or collection, of notes or other instruments received by the Company from customers in the ordinary course of their business;

7. Cause or permit any major change in the Company management;

8. Make expenditures for fixed assets purchases where profits and non-cash outlays are insufficient to service existing and projected debt.

AUTHORITY TO BORROW
Borrower shall furnish to the Bank its Corporate Borrowing Resolution (the Bank standard form or other resolution in form and substance acceptable to the Bank) and acceptable evidence that Borrower is a corporation in good standing.

CONTINGENCY
This commitment is contingent upon the Bank's receipt and approval of the form and substance of all contracts between the Borrower and any organization providing 5% or more of the projected revenue to the Company during the term of the loan. If, in its sole determination, the Bank finds any aspect of these contracts unacceptable and the unacceptable aspect is not corrected to the satisfaction of the Bank, the Bank shall have the right to terminate this commitment and shall have no further obligation hereunder.

OTHER DOCUMENTS
Borrower shall furnish such other instruments, documents, opinions and/or assurances as the Bank may reasonably require.

APPROVAL OF LOAN DOCUMENTATION AND FEES AND EXPENSES
The Loan shall be made without cost to the Bank. Borrower shall pay all costs and expenses incurred in connection with this Loan whether or not the Loan is closed, including, but not limited to legal fees. All requisite Loan documents and related instruments shall, at the option of the Bank, be submitted to the Bank's attorney for review and approval, and by the acceptance of this commitment as hereinafter set forth, Borrower shall be deemed to have expressly agreed to pay all legal fees incurred by the Bank in connection therewith.

3 1 / 0 1 9 - 9 / 4 2

October 3, 1985
Page 4

REPRESENTATIONS OF BORROWER
The validity of this commitment is subject to the accuracy of all information, representations and material submitted with, and in support of, borrower's application for the Loan. In the event the Bank determines that any information or representations contained in the Loan application are not accurate or correct, the Bank shall have the right to terminate this commitment, whereupon the Bank shall have no further obligations hereunder.

ASSIGNMENT OR MODIFICATION
Neither this commitment nor the Loan can be modified or assigned without prior written consent of the Bank.

ACCEPTANCE OF THIS COMMITMENT
In order for this commitment to remain effective, the acceptance copy of this commitment must be executed by Borrower and returned to the Bank at P.O. Box 15231, Chesapeake, Virginia 23320 on or before the expiration of ten (10) days from the date hereof. Any extension of such time for acceptance must be in writing and signed by the Bank.

EXPIRATION OF COMMITMENT
To cause this commitment to remain in effect, the Loan must be closed and the Bank must disburse Loan proceeds prior to November 30, 1985, and any extension of such date must be in writing and signed by the Bank.

TERMINATION OF COMMITMENT
The Bank may terminate this commitment if:

a) Any material adverse change shall occur with respect to the Security Property, Borrower, or with respect to any other person or entity connected with the Loan or the Security Property for the Loan or other source of repayment of the Loan at any time prior to the closing to the Loan;

October 3, 1985
Page 7

The terms and conditions of this commitment shall survive settlement and any violation of said terms and conditions will constitute default under the note and deed of trust.

Sincerely,

Frederick J. Turvercy
Vice President

FJT/pdc
Enclosure

The undersigned hereby accepts the foregoing commitment and the terms, and requirements herein set forth, and agrees to be bound thereby.

10/7/85

G.B. Computer Services, Inc.

Date

This loan agreement, made as of June ___ day of

(hereinafter called the "Borrower") and Sovran Bank, N.A., a Virginia corporation (hereinafter called the "Lender"), [illegible]

WITNESS, the Borrower is desirous of making a certain loan from the Lender and has applied to the Lender for such a loan, and

WITNESS, the Lender is agreeable to make such loan upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and of other valuable consideration, the parties hereto agree as follows:

1. The Borrower agrees to take and the Lender agrees to make, (subject among other things, to this Agreement) a loan in the principal amount of the lesser of $480,000.00 or 60% of the purchase price as established by paid invoices presented to the Lender of equipment to be purchased by the Borrower to be an IPI System II Computer and related equipment. This loan shall be hereinafter referred to as the "Loan". The Loan shall be advanced by the Lender as requested by the Borrower upon verification to the Lender by the Borrower of the paid invoices described above. The Loan shall bear interest from the date of each advance at the rate of the Borrower's prime rate plus one half percent. Interest shall be charged and calculated on the 360 day year factor applied to actual days and shall be payable monthly. The Loan shall be evidenced by a certain promissory note in the form satisfactory to the Lender payable to the Lender or order, and shall be secured by a security agreement and

and related equipment and all of the corporate assets of the Borrower, including, but not limited to, inventory, furniture, fixtures, equipment, contracts, contract rights, and general intangibles.

2. Borrower and its affiliates will maintain, in the aggregate, during the duration of the loan, average monthly net free collected balances of $15,000.00 in their non-interest bearing checking account at Sovran Bank, N.A. Any deficiency will result in the requirement of a direct payment by the Borrower to the Lender annually of an amount equal to 10% of the deficiency in the average net free collected balances. A monthly statement of demand deposit analysis and service charges will be provided by Lender.

3. The Borrower hereby makes the following covenants to the Lender and the Borrower represents and warrants as follows:

a. The Borrower is duly organized and existing under the laws of the State of Virginia.

b. No litigation is now pending or is known to any of the Borrower's officers, threatened against the Borrower.

c. The execution of this Agreement and of the note evidencing the loan have been duly authorized by resolutions duly adopted by the Board of Directors of the Borrower.

d. There is no provision of the Borrower's charter or by-laws or of any other agreement entered into by the Borrower which will be contravened by the execution, delivery, or performance by the Borrower of this Agreement.

[illegible] than as a security [illegible].

f. As long as any part of the loan remains unpaid, the Borrower covenants and agrees that it will:

i. Furnish the Borrower with financial statements within fifteen days following the end of each month and within 120 days after the close of each fiscal year which shall be certified as to their accuracy by the chief financial officer of the Borrower. The financial statement shall contain a balance sheet, income statement and other financial information reasonably required by the Lender.

ii. Furnish to the Lender any other information respecting the business and operations of the Borrower as the Lender may reasonably request.

iii. Maintain adequate insurance of the types customarily carried in the business of the Borrower, with appropriate loss payable clause in favor of the Lender. If at any time the Lender deems such insurance inadequate, either as to amount or types of coverage Borrower shall provide insurance in such respects as the Lender may reasonably require, and further upon the Lender's request, give the Lender such information or certificates as the Lender may desire of any such insurance.

iv. Pay and discharge when due all taxes, charges, and claims imposed upon or assessed against it or any of its property except in instances where the validity of the amount thereof is being contested in good faith by appropriate legal proceedings.

v. Maintain a positive net worth.

consent of the Lender;

i. Purchase or redeem any of its own stock, declare or pay any dividend, or make any other distribution of property in respect of the Borrower's Company stock without the written permission of the Lender;

ii. Pledge, mortgage, encumber, lease or sell (except in the ordinary course of business and other than agreements) any of their assets without consent of the Lender, which consent shall not be unreasonably withheld;

iii. Create, incur, or assume any other indebtedness except in the ordinary course of business;

iv. Be a party to any merger, consolidation, or sale or transfer all or substantially all, of its property, to any person, firm or corporation without the consent of the Lender, which consent shall not be unreasonably withheld;

v. Make any loan to any person, firm or corporation, except in the ordinary course of business, or to the employees, officers, directors or stockholders;

vi. Assume, guarantee, endorse, or otherwise become liable in the obligation of any person, firm, or corporation; except by endorsement, for the purpose of discount or collection of notes or other instruments received by the Borrower from customers in the ordinary course of their business.

vii. Cause or permit any major change in the Borrower's management;

where profits and borrowing outlays are insufficient to service

4.—In the event of any default by the Borrower in the performance of any of the terms and conditions of this Agreement, the Lender shall have no obligation to make any further advances to the Borrower or the amount of the loan advanced to the Borrower or shall become due and payable at the option of the Lender; Provided, however, that in the event of such default, Lender may make advances to the borrower without being obligated to make any other advances.

5. The parties expressly agree to abide by all of the terms and conditions of a certain letter of commitment dated October 3, 1985, between the Borrower and the Lender, attached hereto as Exhibit A and hereby incorporated herein by reference.

WITNESS the following signatures and seals as of the day and year first above written.

G B COMPUTER SERVICES, INC.

By _____
George Border, President

SOVRAN BANK, N.A.

By _____
Frederick J. Turvey,
Vice President

BILL OF SALE

THIS BILL OF SALE, made [illegible], by and between G. B. COMPUTER SERVICES, INC., a Virginia corporation (hereinafter referred to as the "Seller"), and AMERICANS FOR ROBERTSON, INC., a District of Columbia corporation (hereinafter referred to as the "Buyer").

W I T N E S S E T H:

THAT FOR AND IN CONSIDERATION of the sum of One Dollar ($1.00) and other good and valuable consideration paid by the Buyer to the Seller, the receipt of which is hereby acknowledged, the Seller, by these presents, does hereby bargain, sell, assign, transfer, convey and set over to the Buyer all items of personal property constituting a part of the "Computer System," "Mailing Equipment," "Lists and "Other Equipment" (hereinafter collectively referred to as the "Assets") as defined in the Purchase Agreement between the Seller and the Buyer dated as of January 27, 1987, (hereinafter referred to as the "Purchase Agreement).

TO HAVE AND TO HOLD the Assets unto the Buyer, it successors and assigns, forever.

The Seller hereby warrants and agrees that it had good and valid title to the Assets and further, that it has the right to transfer the same hereunder; the Assets are free from all claims and encumbrances; and that the Seller will warrant and defend that title to the Assets against the claims of any and all other persons, firms or corporations whatsoever.

IN WITNESS WHEREOF, the Seller has caused this Bill of Sale to be duly executed as of the day and year first above written.

G. B. COMPUTER SERVICES, INC.

By: _____
President

01285/gmd/COM

Certificate of Authority

January 25, 1987

I hereby certify that I am the President and Sole Director of G.B. Computer Services, Inc. and that as such I am authorized to execute all documents in connection with the sale of the assets of the Corporation located at 2133 Smith Avenue, Chesapeake, Virginia, to Americans For Robertson, Inc., as more fully set forth and described in that certain Purchase Agreement ("the Agreement") between Americans For Robertson, Inc. and G.B. Computer Services, Inc., dated January 27, 1987. I further certify that all the representations and warranties of the Corporation set forth in the Agreement are true and correct as of the date of this certificate.

George F. Border
President
G.B. Computer Services, Inc.

THIRD FLOOR
WASHINGTON, D.C.

JOHN S. BAKER JR.
[illegible] EDWYN HARRISON
DANIEL M. RICHMOND

CABLE [illegible]
TELEX [illegible]
FACSIMILE [illegible]

[illegible] STEIN
[illegible]

January 27, 1987

G. B. Computer Services, Inc.
Box 2442
Chesapeake, Virginia 23320

Re: GB to AFR
Purchase Agreement
Computer and Other Assets

Gentlemen:

Pursuant to that certain Purchase Agreement to be entered into as of January 27, 1987 by and between Americans For Robertson, Inc., a District of Columbia corporation ("AFR"), and G. B. Computer Services, Inc., a Virginia corporation ("GB"), and more particularly §10c thereof, the undersigned, as Counsel for AFR, offers the following opinion.

AFR is a corporation organized and existing pursuant to the laws of the District of Columbia, incorporated July 21, 1986, and in good standing in the District of Columbia upon the date hereof.

AFR has authority to enter into, and to perform, the transactions contemplated in said Purchase Agreement.

MARION EDWYN HARRISON

We have reviewed said Purchase Agreement and its attachments and find no legal impediment to the execution and implementation of said Purchase Agreement.

Sincerely,

MARION EDWYN HARRISON

/dr

cc: AFR
Thomas R. Frantz, Esquire

[redacted]

January 6, 1987

[redacted]

Dear [redacted]:

We are pleased to [redacted] and [redacted] which [redacted] as the Bank, Americans for Robertson, Inc. as the Borrower, the foregoing [redacted] and the [redacted] (the Collateral).

We appreciate the opportunity to serve you. If you have any questions relating to this commitment, please contact us.

TERMS

BORROWER: Americans for Robertson, Inc.

AMOUNT: $[redacted]

PURPOSE: Purchase IBM System 38 computer and related equipment from [redacted]

SECURITY: 1st lien security interest in all furniture, fixtures, machinery and equipment located in the facilities of the Borrower at 2138 Smith Avenue, Chesapeake, Virginia, an inventory of which shall be submitted to and approved by the Bank prior to closing.

AMORTIZATION: 24 monthly payments of $[redacted] plus accrued interest and a final monthly payment of $6,920 plus accrued interest. Payments of principal and interest shall be due on the 20th day of each month beginning February 20, 1987.

MATURITY: February 20, 1989

INTEREST RATE: [redacted] Bank's prime rate as it announced from time to time plus 2%. Interest shall be charged and calculated on a 360-day year factor applied to actual days, and shall be payable monthly. The interest spread above prime mentioned will be reviewed by the Bank in 6 months and may be

[redacted] Bank, N.A., Commercial Loan Department
[redacted]

[illegible]
Page 2

[illegible] commitment, satisfactory [illegible] commitment and the Loan in default and any funds [illegible] Borrower will be due and [illegible]

WAIVER BY THE BANK:
[illegible] the Bank reserves the right [illegible] of the conditions hereunder [illegible] Bank further reserves the right [illegible] waived subsequent to any such [illegible]

PAYMENT OF LOAN DOCUMENTATION AND [illegible] EXPENSES:
[illegible] costs and [illegible] Borrower's counsel fees, [illegible] Lender's fees, abstracting fees, [illegible] documents and related instruments shall at the option of the Bank, be submitted to the Bank's attorney for review and approval, and by the acceptance of this commitment as hereinafter set forth, Borrower shall be deemed to have expressly agreed to pay all legal fees incurred by the Bank in connection therewith.

The terms and conditions of this commitment shall survive settlement and any violation of said terms and conditions will constitute default under the note and deed of trust.

Sincerely,

[illegible]

Frederick J. Tarverev
Vice President

The undersigned hereby accepts the foregoing commitment, and the terms, and requirements herein set forth, and agrees to be bound thereto.

Americans for Robertson, Inc.

By_____ _____
Edward J. Whelan, Treasurer Date

Page 2

[redacted]

TAXES AND PLACE OF PAYMENT:

[redacted]

NOTE AND SECURITY AGREEMENT:
The loan will be evidenced by the Borrower's promissory note and will be secured by a deed of trust on the equipment to be purchased with the proceeds of the loan. The form and substance of said note and deed of trust shall be subject to the approval of the Bank.

HAZARD INSURANCE:
The Borrower shall be responsible for supplying to the Bank a standard fire insurance policy issued by a company acceptable to the Bank (request a "Paid" premium invoice) in an amount which is equal to the amount of the Loan, with extended coverage, vandalism and malicious mischief insurance. Said policy shall contain a standard loss payable clause in favor of Bank of the Bank, N. A., P. O. Box [illegible], Chesapeake, Virginia. 23320.

AUTHORITY TO BORROW:
Borrower shall furnish to the Bank its Corporate Borrowing Resolution (on Bank standard form or other similar form and substance acceptable to the Bank) and acceptable evidence that the Borrower is a corporation in good standing.

OTHER DOCUMENTS:
Borrower shall furnish such other instruments, documents, opinions and/or assurances as the Bank may require.

FINANCIAL STATEMENTS:
For as long as the Loan shall remain outstanding, Borrower, at its expense, agrees to deliver to the Bank an income statement, balance sheet and other financial information reasonably required by the Bank as soon as available but in no event more than 90 days after the end of each of its fiscal years. Any material adverse change in the financial or other conditions of the Borrower, or failure on the part of the Borrower to do all things necessary to maintain the value of the Security Property, including, but not limited to, payment of taxes and insurance premiums when due, or evidence of insolvency or the involvement of the Borrower as a debtor in any

RAVENNA

$ 232,480.00

Two hundred thirty three thousand four hundred eighty and no/100

monthly 9,440.00

20th month

February 20 87 February 20 89

All furniture, fixtures, and equipment owned by the corporation and located within the offices at 2133 South Avenue, Chesapeake, Virginia 23320

COVENANTS AND CONDITIONS ON THE REVERSE SIDE HEREOF ARE EXPRESSLY MADE A PART OF THIS NOTE. SEE ATTACH. ON REVERSE SIDE.

AMERICANS FOR ROBERTSON, INC.

[illegible]

[illegible] (SEAL)

[illegible]

[illegible] (SEAL)

[illegible]

The following notice is applicable to any person assuming liability on this Note without receiving goods, services or money in return:

NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late charges or collection costs, which increase this amount.

The bank can collect this debt from you without first trying to collect from the borrower. The bank can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this note is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

STATE CORPORATION COMMISSION

[illegible] Div., Box 1197 Richmond, Va 23209

FORM FOR ORIGINAL FINANCING STATEMENT AND SUBSEQUENT STATEMENTS

The Commission assigns the File Number on the Original Financing Statement. The secured party must place this same number on all subsequent statements.

Index numbers of subsequent statements (for office use only)

Name & mailing address of all debtors, trade styles, etc.
No other name will be indexed.

Americans for Robertson, Inc.
800 Greenbrier Circle
Chesapeake, Virginia 23320

Check the box indicating the kind of statement. Check only one.

XX ORIGINAL FINANCING STATEMENT

( ) CONTINUATION-ORIGINAL STILL EFFECTIVE

( ) AMENDMENT

( ) ASSIGNMENT

( ) PARTIAL RELEASE OF COLLATERAL

( ) TERMINATION

Name & address of Secured Party

Sovran Bank, N.A.
P.O. Box 15231
Chesapeake, Virginia 23320

Name & address of Assignee

Date of maturity if less than five years

Proceeds of collateral are covered

Products of collateral are covered

Description of collateral covered by original financing statement

All furniture, fixtures, and equipment located at the corporations offices at 2133 Smith Chesapeake, Virginia, either now owned or hereafter acquired.

Space to record an amendment, assignment, release of collateral or a statement to cover collateral brought into Virginia from another jurisdiction.

Description Real Estate if applicable:

Signature of Debtor if applicable (Date)

Americans for Robertson, Inc.

Signature of Secured Party if applicable (Date)

CERTIFICATE OF ACTION OF BOARD OF DIRECTORS

I hereby certify that I am President and Director of Americans For Robertson, Inc.; that the Board of Directors of Americans For Robertson, Inc. met on 2:00 PM on Friday, January 23, 1987 at Law Offices Marion Edwyn Harrison, 1000 Potomac Street, N.W., Third Floor, Washington, D.C. 20007, a quorum present, and authorized Herbert E. Ellingwood, Esquire, Secretary, or Mr. Edward J. Whelan, Treasurer, to execute all instruments necessary for Americans For Robertson, Inc. to borrow from Sovran Bank the sum of $233,480.00, more or less, in connection with the purchase of the assets located at 2133 Smith Avenue, Chesapeake, Virginia of G. B. Computer Services, Inc., and fully authorized Mr. Ellingwood or Mr. Whelan in the premises.

MARION EDWYN HARRISON
President
Americans For Robertson, Inc.

(3)

BILL OF SALE

THIS BILL OF SALE, dated January 27, 1987, by and between G. B. COMPUTER SERVICES, INC., a Virginia corporation (hereinafter referred to as the "Seller"), and AMERICANS FOR ROBERTSON, INC., a District of Columbia corporation (hereinafter referred to as the "Buyer").

W I T N E S S E T H:

THAT FOR AND IN CONSIDERATION of the sum of One Dollar ($1.00) and other good and valuable consideration paid by the Buyer to the Seller, the receipt of which is hereby acknowledged, the Seller, by these presents, does hereby bargain, sell, assign, transfer, convey and set over to the Buyer all items of personal property constituting a part of the "Computer System," "Mailing Equipment," "Lists and "Other Equipment" (hereinafter collectively referred to as the "Assets") as defined in the Purchase Agreement between the Seller and the Buyer dated as of January 27, 1987, (hereinafter referred to as the "Purchase Agreement).

TO HAVE AND TO HOLD the Assets unto the Buyer, it successors and assigns, forever.

The Seller hereby warrants and agrees that it had good and valid title to the Assets and further, that it has the right to transfer the same hereunder; the Assets are free from all claims and encumbrances; and that the Seller will warrant and defend that title to the Assets against the claims of any and all other persons, firms or corporations whatsoever.

IN WITNESS WHEREOF, the Seller has caused this Bill of Sale to be duly executed as of the day and year first above written.

G. B. COMPUTER SERVICES, INC.

By: George A. [illegible]
President

01285/gmd/COM

Rec'd 9/12/88 wsl

G.B. COMPUTER SERVICES, INC.
Certificate of Authority
January 28, 1987

I hereby certify that I am the President and sole Director of G.B. Computer Services, Inc. and that as such I am authorized to execute all documents in connection with the sale of the assets of the Corporation located at 2133 Smith Avenue, Chesapeake, Virginia, to Americans For Robertson, Inc., as more fully set forth and described in that certain Purchase Agreement ("the Agreement") between Americans For Robertson, Inc. and G.B. Computer Services, Inc., dated January 27, 1987. I further certify that all the representations and warranties of the Corporation set forth in the Agreement are true and correct as of the date of this certificate.

George F. Border
President
G.B. Computer Services, Inc.

(2)

LAW OFFICES

MARION EDWYN HARRISON

1000 POTOMAC STREET, N.W.
THIRD FLOOR
WASHINGTON, D.C. 20007
(202) 965-6300
CABLE MEHLAW
TELEX 89492
FACSIMILE (202) 337-4632

JOHN S. BAKER, JR.
MARION EDWYN HARRISON
DANIEL M. REDMOND

FALKENSTRASSE 14
8008 ZURICH, SWITZERLAND
TELEX (845) 815878 PVP CH

January 27, 1987

G. B. Computer Services, Inc.
Box 2442
Chesapeake, Virginia 23320

Re: GB to AFR
Purchase Agreement
Computer and Other Assets

Gentlemen:

Pursuant to that certain Purchase Agreement to be entered into as of January 27, 1987 by and between Americans For Robertson, Inc., a District of Columbia corporation ("AFR"), and G. B. Computer Services, Inc., a Virginia corporation ("GB"), and more particularly ¶10c thereof, the undersigned, as Counsel for AFR, offers the following opinion.

AFR is a corporation organized and existing pursuant to the laws of the District of Columbia, incorporated July 21, 1986, and in good standing in the District of Columbia upon the date hereof.

AFR has authority to enter into, and to perform, the transactions contemplated in said Purchase Agreement.

LAW OFFICES
MARION EDWYN HARRISON

Page 2

We have reviewed said Purchase Agreement and its attachments and find no legal impediment to the execution and implementation of said Purchase Agreement.

Sincerely,

MARION EDWYN HARRISON

/dr

cc: AFR
Thomas R. Frantz, Esquire

23-3-1994

October 17, 1985

TO: George Border

Subj: Purchase of IBM System 38

The following is a detailed agreement we have reached with IBM in purchasing the System 38.

A. COST - HARDWARE

CPU $199,598.00
Direct access storage 729.8MB $35,480.00
Two additional direct access storage $53,200.00
650 line per minute stand-a-lone printer $15,226.00
Two remote control units (1 for NPI & 1 for FC) $8,200.00
Twelve display station $20,700.00
Main tape unit and contr. $33,400.00

TOTAL HARDWARE COST $365,804.00

SOFTWARE COSTS

General Ledger $2,550.00
Accounts Payable $2,550.00
Payroll $3,250.00
System 38 Cont. Program Facility $22,000.00
System 38 RPG Package $2,800.00
System 38 COBOL $7,200.00
Office/38 Text Management $1,800.00
Language Dictionary $195.00
Interactive Data Base Unit $3,000.00
Display Info Facility $3,250.00
Perf Mes Tools $1,000.00

TOTAL SOFTWARE COST $49,595.00

The following is the agreement we have reached with IBM. Total price of $415,399.00

Upon signing of the contract we will deposit with IBM $50,000.00 of good faith money. Upon delivery, IBM will receive 50% of the $415,399.00 minus $50,000 deposit which is $182,699.50.

In order to finance with the bank, our agreement is we pay

40% down and spread the balance over three years; 40% of $207,699 = $83,079.80 minus the $50,000 deposit. Upon delivery I have to have additional cash of $33,079.80 in order for me to meet that obligation. As you know, November 1, 1985 I will receive $30,000.00 per our agreement with Freedom Council and Freedom Foundation. The $30,000.00 plus the $3,079.80 which will be taken from working capital will cover the first half payment. Thirty days from delivery I will have to come up with an additional $83,079.60 (40% of second $207,699.00) and the bank will finance the balance over three years.)

On November 15, 1985, I will invoice Freedom Council, Freedom Foundation and National Perspectives Institute for our services which will be about $100,000.00. On December 1, 1985, Freedom Council and Freedom Foundation will give me the next $30,000.00 up-front money which added to the $20,000.00 will give me $50,000 to apply toward my December 15 funds needed of $83,079.60. As you can see, I will have a short fall of approximately $33,000.00. To cover this, I have made two tentative agreements: (1) I have told Dave Jackman about my problem and he said he could possibly advance us (through Freedom Council and the Freedom Foundation directly to us) $60,000.00. (2) Fred Turvey, Vice President, Sovran Bank, has agreed to perhaps find me the short fall of $33,000.00 for 30 days. However, we still need to purchase the software from California which will be done as follows: Cost $35,000.00, $5,000.00 up front money applied to $35,000.00, leaving balance due $30,000.00. Forty percent (40%) of $35,000.00 = $14,000.00 minus the $5,000.00 front money leaves GB needing $9,000.00 additional cash which will come from operating capital (which can be done).

Summary of GB Cash from November 1, 1985 through January 1, 1986:

Balance November 1, 1985	$ 3,000.00
Funds Owed GB from 10/15 Bal. ($97,307.40 - $50,000.00 (IBM 38) $30,000.00 received 10/17/85)	17,307.40
	20,307.40
Front Money 11/1/85	30,000.00
Money available 11/1/85	50,307.40
P/R 11/1/85 & Quarterly Report	(10,000.00)
GB Billing Due to Vendor 11/15/85	(15,000.00)
	(9,000.00)
Funds Available 11/15/85	16,307.40

Billing FC, FF, NPI $100,000.00 (Need to get $50,000 when 38 arrives)	50,000.00
Funds Available 11/22/85	66,307.40
IBM Delivery	(33,079.60)
Balance After Delivery	33,227.80
Mailing For November	(20,000.00)
P/R 11/29/85	(10,000.00)
Balance 12/1/85	3,000.00
Billing 12/1/85	30,000.00
Balance Due from 11/15/85	50,000.00
Funds available 12/1/85	83,000.00
Bills GB, NPI, FC, FF	(20,000.00)
P/R 12/13	(10,000.00)
Mailing	(10,000.00)
12/20/85 $83,079.60 due IBM ($30,000.00 from GB Balance and $50,000.00 from FC, FF or CBN advance12/15 Billing)	(30,000.00)
Funds available 12/20/85	13,000.00
Miscellaneous expense	5,000.00
Funds Available 1/1/86	8,000.00
Front Money	30,000.00
Balance due from 12/15/85 Billing	50,000.00
Funds Available 12/1/85	88,000.00

The $85,000.00 should be enough to operate for the month of January and as the month passes our working capital will increase monthly by $30,000.00 plus 20% of our billing what will be approximately $20,000.00 monthly.

As you can see the success of our meeting IBM payments depends on FC, FF meeting our needs. They must know our problem and be willing to make adjustments in the cash flow for 60 days.

STEVE DAVIS

"The Full Service Company"

To: George Border cc Steve Davis

From: Steve Raiford SR

Date: October 17, 1985

The following is a list of major mailings (over 5,000 copies) that we have on the schecdule for the remainder of the year in Production Mail.

October
Freedom Report/gift card mailing, 106,000 pieces sent out via bulk rate. Postage cost - $13,350.
Va. Voters bulk mailing, 37,000 pieces. Postage cost - $4,625.
Freedom Alerts, 60,000 pieces. cost - $13,200.

November
Freedom Report/gift card mailing, 115,000 pieces. Postage cost - $14,375.
Prospect package, 60,000 pieces. cost - $13,200.

December
Freedom Report/gift card mailing, 115,000 pieces. Postage cost - $14,375.
Propect package, 10,000 pieces, cost - $1,250.

Tenative new membership premiums announcement, $140,000 pieces. postage cost $17,500.
Freedom Alerts, 60,000 pieces. cost - $13,200.

This list does not include receipt mailings, radio tape mailings, or mailings to the state coordinators; these mailings usually run under 5,000 pieces and are handled by our Mail Processing department.

Pre

15 x .875 = 13.125

Schedule of Billings from GB Computer Services to Freedom Council and Leadership Foundation prior to final payment on IBM Computer System

Billing Date [2]	Billing Amount	Charged to income of: [1] Freedom Council	Leadership Foundation
8/01/85	$ 30,000.00	$ 25,000.00	$ 5,000.00
8/16-9/15/85	15,039.99	15,039.99	
9/01/85	30,000.00	25,000.00	5,000.00
9/16-10/15/85	93,187.10	93,187.10	
Special Billing in Oct.	180,000.00	150,000.00	30,000.00
10/01/85	30,000.00	25,000.00	5,000.00
10/16-11/15/85	98,293.27	98,293.27	
11/01/85	30,000.00 [3]		
11/16-12/15/85	103,317.01	103,317.01	
12/01/85	30,000.00		
12/15/85-1/15/86	99,547.26	99,547.26	
1/01/86	30,000.00		
Total Billed	$769,384.63		

1/ Per GBCSI postings to income accounts in GBCSI general ledger unless otherwise noted.

2/ Billing Date and amounts are in records provided by GB Computer Services, Inc.

3/ Last three $30,000 payments are assumed to be the monthly $25,000 charge to Freedom Council and the monthly $5,000 charge to the National Leadership Foundation per the service agreements. A $30,000 charge to income from National Perspective Institute does appear in the books on 10/31/85. The records relative to National Perspectives Institute are not sufficient to determine the billings to them.

Income Statement Amounts for
GB Computer Services, Inc. 1/

Month	Revenues	Expenses	Profit
Aug. 1985	$ 30,000.00	$ 5,818.13	$ 24,181.87
Sept. 1985	50,147.27	25,566.93	24,580.34
Oct. 1985	342,584.21	85,870.86	256,713.35
Nov. 1985 2/	107,723.35	85,284.81	22,438.54
Dec. 1985	140,539.08	72,320.59	68,218.49
Jan. 1986	110,073.60	73,090.27	36,983.33
Feb. 1986	93,924.27	384,935.89	(291,011.62)

1/ Income Statements were only provided from the outset of business operations through the end of February, 1986.

2/ No income statement in the records for November, 1985. The amounts were derived from the year-to-date totals at the end of December less the amounts for December less the year-to-date totals at the end of October.

Non-binding Draft

Settlement terms between

The Freedom Council, George Border, and

GB Computer Services, Inc. (Parties)

1. Parties recognize that:

   a. A contract originally dated August 1, 1985 and amended as of April 1, 1986, was entered into between The Freedom Council ("TFC") and GB Computer Services, Inc. ("GB") regarding certain services to be rendered and the fee for such services based on expenses incurred for providing the services.

   b. TFC has ceased operations and desires to wrap-up and terminate its affairs, hopefully within a 90 day period.

   c. GB and TFC intend to cease contractual relationship as of August 1, 1986 pursuant to the term and conditions of this agreement.

2. TFC is to deliver a schedule of services required from GB. Upon receipt GB is to promptly provide TFC a proposed transitional plan for the termination of all personnel and the salary, severance and other costs during the transitional period. GB employees except for George Border, will be given the same termination benefits as TFC employees plus any accrued unused vacation. George Border will be compensated as set forth in paragraphs 5 and 6 of this agreement in lieu of any and all other benefits.

3. GB is to promptly list all their known or contemplated obligations, contracts, and commitments.

4. GB will cooperate promptly and provide access to all financial data of GB and TFC.

5. George Border will continue to be compensated at $84,000 per annum on a monthly basis up to June 30, 1987. GB will continue to provide services. The fees for services charged to TFC from August 1, 1985 through the end of the transitional period shall be recomputed to equal the cost incurred by GB net of any revenues received. The objective being that GB will, on a cumulative basis from August 1, 1986, have operated on a break even basis.

6. Notwithstanding the foregoing:

   a. TFC to hold George Border and GB Computer Services, Inc. harmless from any and all liability arising from GB's contract with TFC.

   b. TFC agrees to hold George Border harmless from any loss on sale of his house as follows:

      a) At any time up to and including January 31, 1987 TFC will at George Border's sole option and request, reimburse George Border for all equity in house.

      b) In the event GB sells house on or before January 31, 1987 TFC retains the right to purchase the house by matching a purchase offer TFC deemed to low.

   c. Equity is defined, for the purpose of this draft agreement as all monies expended or obligations incurred in the building of said house at the time of the proposed sale or request for reimbursement.

   d. TFC acknowledges that George Border has advanced $65,000 to

GB as a loan to facilitate business operations. TFC agrees to the reimbursement to George Border of the $65,000 loan.

e. In relationship to IBM 38 and related equipment owned by GB, GB has the option to request that TFC assume full responsibility for Sovran note and related equipment on or before December 31, 1986. TFC would then own all of the equipment covered by the note. In that event, TFC shall hold GB harmless from any and all liabilities for the computer , all related equipment, fixtures, and furniture covered by the note, as well as any other notes or obligations on said equipment which may exist.

7. GB and TFC releases each party from any and all future claims.

8. The parties to this non-binding draft agree that this agreement represents the intent of the parties to settle the contract between GB and TFC. This agreement shall not bind either party in any manner whatsoever, and the parties intend the terms hereof to become the basis for a formal agreement to be executed by the parties upon final draft.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 22, 1992

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim L. Bright-Coleman
Associate General Counsel

Carmen R. Johnson
Assistant General Counsel

Lorenzo Holloway
Attorney

SUBJECT: Americans for Robertson, Inc. -
Second Extension of Time to Respond
to the Final Audit Report (LRA #335)

The Commission approved the Final Audit Report on Americans for Robertson, Inc. ("the Committee") on March 26, 1992. Accordingly, the Committee's written response to the Final Audit Report was due on May 11, 1992. See 11 C.F.R. § 9038.2(c)(2). In a letter dated June 16, 1992, the Committee requested an additional 60 days to respond to the Final Audit Report. Attachment #1. In this second request for an extension of time, the Committee contends that the additional time is necessary because it is attempting to obtain affidavits from its regional directors and it has not been able to contact its New England regional director. Attachment #3. The Committee also argues that it needs time to review the Audit Division's workpapers. Id. On June 16, 1992, the Committee also requested certain documentation supporting the media billing calculations in the Final Audit Report. Attachment #2.

The Committee also requested an additional 45 days to respond to the Final Audit Report on April 30, 1992. Attachment #3. The Committee argued that that extension was necessary because it was attempting to obtain affidavits from its regional directors regarding the operation of its regional offices. Id. In a separate letter dated April 30, 1992, the Committee

requested supporting documentation concerning the allocation of certain expenditures to the state limitations in the Final Audit Report. Attachment #4. On May 14, 1992, the Commission approved the Committee's request for a 45 day extension until June 25, 1992. The Audit Division forwarded the supporting documentation to the Committee in two batches on May 15, 1992 and May 20, 1992.

The Office of General Counsel recommends that the Commission deny the Committee's request for an additional 60 days to respond to the Final Audit Report. We note that it is the policy of the Commission not to routinely grant extensions of time to respond to the final audit report. See 11 C.F.R. § 9038.4(a). The Committee is now asking for an additional 60 days to essentially complete the same tasks for which the original extension was granted. Both extension requests use almost identical justifications. Compare Attachment #1 with Attachment #3. In this case as well as in the first request for an extension of time, the Committee did not make an advance request for the supporting documentation. See Attachments #2 and #4. Rather, the Committee delayed until a few days prior to the due date of its response to request the supporting documentation. In fact, each request for supporting documentation was made on the same date as the request for an extension of time. Finally, we note that this request for an additional 60 days to respond to the Final Audit Report comes very late in the audit process.1/

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Deny the Committee's request for an additional 60 days to respond to the Final Audit Report; and

2. Approve the appropriate letter notifying the Committee of the Commission's decision.

Attachments

1. Letter from Americans for Robertson, Inc., Re: Request for Extension of Time to Respond to the Final Audit Report (June 16, 1992).

2. Letter from Americans for Robertson, Inc. Re: Request for Supporting Documentation (June 16, 1992)

1/ The Committee was granted 3 extensions of time totaling 150 days to respond to the Interim Audit Report.

3. Letter from Americans for Robertson, Inc. Re: Request for Extension of Time to Respond to the Final Audit Report (April 30, 1992).

4. Letter from Americans for Robertson, Inc. Re: Request for Supporting Documentation (April 30, 1992)

LAW OFFICES
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SOUTHERN SHORES LAW BLDG.
6 JUNIPER TRAIL, P.O. BOX 1048
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(919) 261-8085

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JOSEPH A. GAWITH
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JOHN M. RYAN
G. WILLIAM BERNHARD
JAMES S. MATTHEWS
GEOFFREY F. BERNHARD
NORMAN W. SERABIN, JR.*
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ROBERT L. O'DONNELL
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DANIEL E. WEINSTEIN
MARK T. CORBALY
F. NASH BELLSOLY
MICHAEL P. COTTER
R. JOHN DARENTI
PATRICK W. HERMAN
WILLIAM E. FRANCHER
THOMAS M. LUCAS
GORDON P. ROBERTSON

DEAN T. BUCKIUS
MICHAEL L. STERLING
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BRYANT C. McCANN
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THOMAS F. HERVERT
NEIL S. LOWENSTEIN
VALERIE J. HERBERT
THOMAS J. OTTO
WILLIAM T. WELANDER
EDWARD J. POWERS
R. GREGORY MCNEER

BRAXTON VANDEVENTER
OF COUNSEL

* ADMITTED TO N.C. ONLY

June 16, 1992

VIA TELEFAX 202-219-3923

Kim L. Bright-Coleman
Office of General Counsel
Washington, D.C. 20463

RE: Americans for Robertson, Inc.

Dear Ms. Bright-Coleman:

Americans for Robertson, Inc. respectfully requests a 60-day extension in order to submit a response to the final audit report of the audit division. The Committee is attempting to obtain affidavits from regional directors and has not been able to contact the New England regional director. The Committee also needs time to review the work papers of the audit division and has recently requested additional documentation regarding the calculations for media billings.

92 JUN 16 AM 9:42
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
RECEIVED

Sincerely,

VANDEVENTER, BLACK, MEREDITH & MARTIN

Gordon P. Robertson

GPR/mlt

COLEMAN.LT

ATTACHMENT 1
Page 1 of 1

LAW OFFICES
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KATHRINE A. CHERELLE
STUART G. MCCANN
JANE H. TUCKER
ROBERT V. TURNER, JR.
KIMBERLY H. TUNIS
DEBORAH L. MARCOLA
WILLIAM V. POWER
THOMAS F. HERRINGTON
NEIL S. LOW-SCHIFFER
VALERIE J. SHERRY
THOMAS J. DUFF
WILLIAM L. MCLAUGHLIN
EDWARD J. POWERS
R. GREGORY MCNIER

EMERITUS VANDEVENTER OF COUNSEL

* ADMITTED IN N.C. ONLY

June 16, 1992

VIA TELEFAX - 202-219-2880

Mr. Rick Halter
Audit Division
Federal Elections Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: Americans for Robertson, Inc.

Dear Rick:

If at all possible, I would like to review the work papers for the calculations related to the media billings. In particular, I am interested if there is a breakdown of the amount owed to each media organization.

Sincerely,

VANDEVENTER, BLACK, MEREDITH & MARTIN

Gordon P. Robertson

GPR/mlt
cc: Kim Bright-Coleman, Esq.

HALTER.LTR

ATTACHMENT 2
Page 1 of 1

Law Offices
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Norfolk, Virginia 23510
(804) 446-8600
Cable RUGBYVAN
Telex 823-671
Facsimile (804) 446-8670

North Carolina Office
Southern Shores Law Bldg.
9 Juniper Trail, P.O. Box 1049
Kitty Hawk, N.C. 27949
(919) 261-3060

April 30, 1992

Ms. Kim L. Bright-Coleman
Office of General Council
Federal Election Commission
Washington, DC 20463

VIA TELECOPIER
NO. (202) 219-3923
AND REGULAR MAIL

Re: Americans for Robertson, Inc.

Dear Ms. Bright-Coleman:

Americans for Robertson, Inc. respectively request a 45 day extension in order to submit a response to the final audit report of the Audit Division. I am attempting to obtain affidavits from the Regional Directors of Americans for Robertson, Inc. regarding the operation of the regional offices.

Sincerely,

VANDEVENTER, BLACK, MEREDITH & MARTIN

Gordon P. Robertson

GPR/tcj

maureen/coleman.ltr

ATTACHMENT 3
Page 1 of 1

LAW OFFICES
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* ADMITTED IN N.C. ONLY

April 30, 1992

92 MAY -4 PM 3:38

Ms. Kim L. Bright-Coleman
Office of General Council
Federal Election Commission
Washington, DC 20463

Re: Americans for Robertson, Inc.

Dear Ms. Bright-Coleman:

If at all possible, I would like to receive the detail pages accompanying the schedules concerning the state limitations. In particular, I would like the detail pages for the following:

1. Amounts allocated per committees disbursement journal;
2. Disbursement from state account;
3. Payroll from committee payroll journal;
4. Payroll taxes paid;
5. Payables;
6. Media;
7. Disbursements allocated incorrectly;
8. Direct mail;
9. Expense reimbursement for Waldman, Ellingwood and Elwell.

maureen/coleman2.ltr

ATTACHMENT 4
Page 1 of 2

Please let me know as soon as possible if this material can be made available.

Sincerely,

VANDEVENTER, BLACK, MEREDITH & MARTIN

Gordon P. Robertson

GPR/tcj

maureen/coleman2.ltr

ATTACHMENT 4
Page 2 of 2

Public Records

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 30, 1992

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Kim L. Bright-Coleman KBC
Associate General Counsel

SUBJECT: Withdrawal of Americans for Robertson, Inc. - Second Extension of Time to Respond to the Final Audit Report (LRA #335)

This Office is withdrawing the Second Extension of Time in LRA #335 which was circulated erroneously for tally vote on June 26, 1992. On June 25, 1992, the Committee submitted their response to the Final Audit Report via facsimile in order to comply with the deadline imposed by the Commission.

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 8, 1992

MEMORANDUM

TO: Marjorie Emmons

FROM: Fabrae Brunson FB

SUBJECT: Incorrect Circulation

The attached memorandum was inadvertently circulated on an informational basis. Please re-circulate it on a 72 hour non-sensitive basis. Thank you.

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 8, 1992

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim L. Bright-Coleman KBC
Associate General Counsel

Carmen R. Johnson
Assistant General Counsel

Lorenzo Holloway
Attorney

SUBJECT: Americans for Robertson, Inc.
Request to Postpone Oral Presentation
(LRA #335)

I. INTRODUCTION

Attached are two letters, submitted by Americans for Robertson, Inc. ("the Committee") on September 29, 1992 and October 5, 1992, requesting that the Commission postpone the Committee's oral presentation that is scheduled for October 21, 1992. Attachments 1 and 2. On March 26, 1992, the Commission approved the Final Audit Report and made an initial determination that the Committee repay $388,543.78 to the United States Treasury. The Committee submitted its written response to the Final Audit Report on June 25, 1992.1/ As a part of its written response, the Committee requested an oral presentation. On August 8, 1992, the Commission granted the Committee's request and set the date for the oral presentation as October 21, 1992.

1/ The Committee requested and was granted a 45 day extension to submit its written response to the Final Audit Report. The Commission, however, denied the Committee's second request for an extension of an additional 60 days to respond to the Final Audit Report.

The Committee contends that postponement is necessary because it has attempted to meet with the Audit Division to discuss findings in the Final Audit Report, but it has been unsuccessful in getting a date set for the meeting.2/ Attachment 1 at 1. The Committee asserts that in order to adequately prepare for the oral presentation it expected to have the meeting a month prior to the oral presentation. Id. Further, the Committee notes that it anticipates that there will be substantial follow-up work by its accountants in order to prepare its case for hearing. Attachment 2 at 1. The Committee contends that a meeting with the Audit Division just prior to the oral presentation "would substantially prejudice Americans for Robertson and impede [its] opportunity to adequately prepare for the oral presentation." Attachment 1 at 1. Therefore, the Committee requests that the oral presentation be held no earlier than November 18, 1992.

The Office of General Counsel recommends that the Commission grant the Committee's request to postpone the oral presentation and set the date as December 2, 1992. Rescheduling of the meeting would afford the Commission and the Committee the opportunity to fully discuss the findings in the Final Audit Report.

Attachments

1. Letter from Committee's Counsel Requesting Postponement of Oral Presentation. (September 29, 1992).

2. Letter from Committee's Counsel Requesting Postponement of Oral Presentation (October 5, 1992).

2/ On October 7, 1992, the Committee and the Audit Division agreed that the meeting would take place on October 13, 1992.

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BRADEN VANDEVENTER
OF COUNSEL

* ADMITTED IN N.C. ONLY

September 29, 1992

VIA TELEFAX _ 202-219-3880

Carmen Johnson, Esquire
Assistant General Counsel
Federal Elections Commission
999 E Street, N.W.
Washington, D.C. 20463

92 OCT -2 AM 8:35

Dear Ms. Johnson:

This letter is written to make a formal request that the Federal Election Commission postpone the Americans for Robertson Oral Presentation currently scheduled on October 21, 1992.

This postponement is necessitated because Americans for Robertson has sought to meet with the Audit Division regarding the findings contained in the Final Audit Report. Americans for Robertson contacted the Audit Division on September 17, 1992, in order to seek this meeting. It was our expectation that we would have a full month after this meeting, and prior to the Oral Presentation, in order to adequately prepare. However, we did not receive an affirmative response from the General Counsel's Office until September 22, and were told at that time that a meeting could not be held until September 28, 1992. After further discussions with the Audit Division regarding the precise area of our inquiry, we were informed that a meeting could not be held until October 5, 1992 due to scheduling conflicts. While the General Counsel's Office has indicated that Americans for Robertson presentation would not be held until twelve business days after the meeting, we believe this delay would substantially prejudice Americans for Robertson and impede our opportunity to adequately prepare for the Oral Presentation.

Americans for Robertson therefore respectfully requests that the Commission postpone this Oral Presentation to no earlier than November 18, or to a mutually convenient time, to account for this unexpected delay in our ability to meet with the Audit Division.

GORDON/JHNSNFEC.LTR

ATTACHMENT 1
Page 1 of 2

In addition, in the Commission's notification that the Oral Presentation was scheduled, Americans for Robertson was informed that the Commission would prepare a response to the Americans for Robertson response to the Final Audit Report. Upon inquiry, we were informed that these materials would not be available until two to three days prior to the hearing, at the same time they would be available to the public. We respectfully request that the Commission make every attempt to forward this document to Americans for Robertson prior to that time so that we have adequate opportunity to examine the document and respond to it at the Oral Presentation.

We appreciate your consideration of our request.

Sincerely,

VANDEVENTER, BLACK, MEREDITH & MARTIN

Gordon P. Robertson

GPR/mlt
cc: Joan D. Aikens, Chairman

GORDON/JHNSNFEC.LTR

ATTACHMENT 1
Page 2 of 2

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BRADEN VANDEVENTER
OF COUNSEL

*ADMITTED IN N.C. ONLY

October 5, 1992

92 OCT -5 PM 5:01

VIA TELEFAX 202-219-3923
& 202-219-2338

Carmen Johnson, Esq.
Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Ms. Johnson:

As a follow up to my letter of September 29, 1992, and in connection with recent conversations with your Office, this letter will further explain the need for a postponement of the October 21, 1992 Oral Presentation of Americans for Robertson.

Since the issuance of the Final Audit report, Americans for Robertson has retained the services of accountants in order to review its records. These individuals have been preparing for the Oral Presentation. However, they have reached a point where consultation with the Commission's Audit Staff has become necessary in order to confirm certain facts and details which will be the subject of the Oral Presentation. While Americans for Robertson expected this meeting to take place today, the meeting was canceled by the Audit staff because the individuals necessary for the meeting were not available. As of the writing of this letter, the meeting has not been rescheduled. Once the meeting does take place, however, Americans for Robertson anticipates that there will be substantial follow-up work by its accountants in order to prepare its case for hearing. It is for this reason that Americans for Robertson had requested a meeting well in advance of the Oral Presentation.

Further, your office has proposed a new hearing date of October 28, 1992 on the basis that this would be the last time that

all Commissioners would be available for a hearing date in 1992.[1] This date is unsatisfactory for the reasons set forth above. Moreover, it is our understanding that the Commission has set a hearing on December 9, 1992 with regard to a Notice of Proposed Rulemaking. Assuming that a meeting is scheduled with the Audit Division in the near future, Americans for Robertson would certainly be willing to make its Oral Presentation on that date.

In sum, Americans for Robertson is operating in complete go faith in requesting this postponement. Thus, we renew our reques that the Commission postpone this presentation to no earlier than four weeks from the date of our meeting with representatives of the Audit Division.

Thank you for your consideration of our request.

Sincerely,

VANDEVENTER, BLACK, MEREDITH & MARTIN

Gordon P. Robertson

GPR/mlt
cc: Joan D. Aikens, Chairman
Scott Thomas, Vice Chairman
Lee Ann Elliott
Danny Lee McDonald
John Warren McGarry
Trevor Potter
Carol Laham, Esq.

---

[1] We note that the Oral Presentation for the Jackson Committee scheduled for September 30, 1992 was postponed. It is our understanding that the General Counsel's Office has proposed rescheduling that hearing for October 28, four full weeks after the initial date. Americans for Robertson believes that it should be accorded the same courtesy given to the Jackson Committee regarding the rescheduling of its Oral Presentation.

GORDON/JOHNSON.LTR

ATTACHMENT 2
Page 2 of 2

Public Records

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 29, 1993

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

By: Kim Bright-Coleman KBC
Associate General Counsel

Lorenzo Holloway
Acting Assistant General Counsel L-H.

Peter G. Blumberg PGB
Attorney

SUBJECT: Americans for Robertson, Inc. --
Final Repayment Determination and
Statement of Reasons (LRA #335)

Attached for your information is the Final Repayment Determination and Statement of Reasons approved by the Commission on September 23, 1993, subject to certain amendments agreed upon pursuant to the meeting discussion. The Office of General Counsel has made the revisions to comport with the Commission's determinations. The revisions are marked in the attached copy accordingly. However, it should be noted that due to the length of the document when all attachments are included, we are only circulating the Statement of Reasons and not the attachments. This document was sent by overnight delivery service to counsel for Americans for Robertson, Inc., on September 28, 1993. A copy was also mailed to the Treasurer of Americans for Robertson, Inc.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Marion G. ("Pat") Robertson)
and Americans for Robertson, Inc.)

STATEMENT OF REASONS

On September 23, 1993, the Commission made a final determination that Marion G. ("Pat") Robertson and Americans for Robertson, Inc. ("Committee") must repay $290,793.66 to the United States Treasury. The Commission's final repayment determination was based on the Committee using public funds to defray nonqualified campaign expenses and exceeding the Iowa and New Hampshire expenditure limitations. 26 U.S.C. § 9038(b)(2); 11 C.F.R. §§ 9038.2(b)(2)(i)(A) and (ii)(A). Therefore, the Committee is ordered to repay $290,793.66 to the United States Treasury within 30 days of receipt of this determination. 11 C.F.R. § 9038.2(d)(2). The Committee is also ordered to refund $105,634.56 to press organizations. The refund order is based on the Committee receiving reimbursements from press organizations for air travel in excess of the maximum billable amount. 11 C.F.R. § 9034.6(d)(1). This Statement sets forth the legal and factual bases for the Commission's repayment determination and the refund order. 11 C.F.R. § 9038.2(c)(4)

I. BACKGROUND

Americans for Robertson, Inc. is the principal campaign committee of Pat Robertson, a candidate for the Republican presidential nomination in 1988. Mr. Robertson and the Committee received $10,410,984.83 in public financing under the Matching Payment Act for his 1988 presidential campaign.1/ The Commission determined that Mr. Robertson's date of ineligibility was April 28, 1988. Pursuant to 26 U.S.C. § 9038(a) and 11 C.F.R. § 9038.1(a)(1), the Commission conducted an audit and examination of the Committee's receipts, disbursements, and qualified campaign expenses.

The audit revealed that the Committee failed to keep certain records related to its transactions with vendors and individuals. In addition, the Committee did not maintain records on the source of $377,240.97 that were deposited into its state bank accounts.2/ Therefore, on December 19, 1989, the Commission approved subpoenas and letters requesting information and documents necessary to complete the audit.3/ These subpoenas

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1/ Throughout the Statement of Reasons, "Matching Payment Act" refers to the Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-9042, and "FECA" refers to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455.

2/ As a condition precedent to receiving public financing under the Matching Payment Act, both the candidate and the Committee agreed to "keep and furnish to the Commission all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts)...." 11 C.F.R. § 9033.1(b)(5).

3/ These records should have been made available to the Commission during the audit fieldwork. 11 C.F.R. § 9038.1(b)(2)(ii). The Committee's failure to maintain these records, which resulted in the Commission issuing subpoenas to

and letters were issued to 39 vendors and individuals and to 34 banks.

On December 19, 1989, the Commission approved the Interim Audit Report and the preliminary repayment calculation of $290,772.60. See Attachment 1. The Committee's response to the Interim Audit Report was due on January 24, 1990. 11 C.F.R. § 9038.1(c)(2). However, the Committee requested and was granted three extensions of time totaling 152 days to submit its response to the Interim Audit Report and, therefore, did not respond until June 25, 1990. See Attachment 2.

On March 26, 1992, the Commission issued the Final Audit Report and made an initial determination that the Committee must repay $388,543.78 to the United States Treasury. In addition, the Commission found that the Committee must refund $105,634.56 to the press organizations. See Attachment 3. The Committee requested and was granted 45 days to submit its written response to the Final Audit Report.4/ Therefore, the Committee responded to the Final Audit Report on June 25, 1992. See Attachment 4.

In its written response to the Final Audit Report, the Committee requested an opportunity to address the Commission in open session regarding the Final Audit Report and the initial repayment determination pursuant to 11 C.F.R. § 9038.2(c)(3).

(Footnote 3 continued from previous page)
third parties to obtain this documentation, significantly delayed the processing of this audit.

4/ The Commission denied the Committee's second request for an additional 60 days to submit its written response to the Final Audit Report.

On August 11, 1992, the Commission granted the Committee's request for an oral presentation and set October 21, 1992 as the date for the oral presentation. Attachment 5. However, the Committee requested and was granted a postponement, until December 2, 1992, to prepare for the oral presentation. See Attachment 6. The Committee submitted additional documentation on December 9, 1992 to support its arguments raised at the oral presentation.5/ See Attachment 7.

The Commission's initial determination that the Committee must repay $388,543.78 to the United States Treasury was based on the following findings included in the Final Audit Report: (1) a pro rata repayment of $338,632.10 for exceeding the Iowa and New Hampshire expenditure limitations; (2) the payment of penalties and expenses after the candidate's date of ineligibility resulting in a pro rata repayment of $21,994.23; (3) a pro rata repayment of $22,727.59 for expenses related to the Republican National Convention; (4) a repayment of $5,189.86 for undocumented transfers. The Commission's finding that the Committee must refund $105,634.56 to the press organizations was based on the Committee's reimbursements it reportedly received in excess of the maximum billable amount.

The Committee contends that it either owes no repayment or a lesser repayment because the Commission failed to comply with the requirement of notifying the Committee of any repayment it

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5/ The Committee's supplemental documentation included a video tape and an audio tape that were used for fundraising after the 1988 Republican National Convention.

owes to the United States Treasury within three years after the end of the matching payment period. Attachment 6 at 14 and Attachment 7 at 24. In addition, the Committee contests all four bases for the initial repayment determination in its written response to the Final Audit Report and incorporates by reference all prior submissions to the Commission during the course of the audit process. Attachment 7 at 2. The Committee also objects to the initial determination that it must make a refund to the press organizations. Attachment 4 at 23.

Based on a review of the Committee's written and oral responses to the Final Audit Report, the Commission has reduced the amount the Committee must repay to the United States Treasury from $388,543.78 to $290,793.66. This reduction is the result of adjustments to the amount subject to the Iowa and New Hampshire expenditure limitations.6/

6/ On March 10, 1992, the Committee filed a debt settlement plan proposing to settle $24,426.35 in debts to 24 creditors. The Commission's Reports Analysis Division discontinued its review of the debt settlement plan after the Committee indicated on June 24, 1992 that it would not respond to the second request for additional information until after the audit process was completed. However, it should be noted that a presidential committee, which later settles its debts for less than the amount originally reflected on its Statement of Net Outstanding Campaign Obligations ("NOCO Statement"), may owe an additional repayment to the United States Treasury for receiving funds in excess of its entitlement. 11 C.F.R. § 9038.2(b)(1)(v). In this case, it appears that the Committee will not owe an additional repayment. Based on the additional information submitted in response to the Final Audit Report, the Committee's NOCO Statement reveals a remaining entitlement of $37,129.66. See Attachment 8 at 25. If the Commission approves the proposed settlement of these debts, the Committee's remaining entitlement will be reduced by approximately $22,000.00. See Attachment 8 at 25.

II. THREE YEAR NOTIFICATION REQUIREMENT FOR COMMISSION DETERMINATION

Pursuant to the Matching Payment Act and the Commission's regulations, the Commission will conduct a thorough examination and audit of the qualified campaign expenses of every candidate and committee which received public funds after each presidential election and matching payment period. See 26 U.S.C. § 9038; 11 C.F.R. § 9038.2. The Commission may notify the candidate and committee of the amount of public funds that must be repaid to the United States Treasury based upon the results of the Commission's audit. See 26 U.S.C. § 9038. The Matching Payment Act specifies further that no repayment notification shall be made by the Commission more than three years after the end of the matching payment period. 26 U.S.C. § 9038(c). For candidates seeking the nomination of a party which nominates its candidate at a national convention, the matching payment period ends on the date the party nominates the candidate. 26 U.S.C. § 9032(6). Because the Republican Party nominated former President George Bush on August 18, 1988 at its national convention, the end of the three year period for repayment notification for Republican candidates was August 18, 1991.

At the oral presentation, the Committee asserted that the Commission has not complied with 26 U.S.C. § 9038(c). Attachment 6 at 14. The Committee argues that it was not notified within three years of the matching payment period because "no final determination has been issued." Attachment 7

at 25. The Committee argues that the issuance of the Interim Audit Report does not satisfy the notice requirement because the Matching Payment Act requires notice of a repayment determination. Id. The Committee asserts that if the issuance of the Interim Audit Report satisfies the notification requirement, then the repayment amount included in the Interim Audit Report, $290,772.60, is what the Committee should repay, and not $388,543.78, the initial repayment determination.7/ Id. at 25-26.

The Committee has improperly raised the issue of whether the Commission satisfied the three year period for notifying the Committee of its repayment obligation to the United States Treasury. Any objections to the amount the Commission determines must be repaid to the United States Treasury must be raised before the Commission in a timely manner. 11 C.F.R. § 9038.5(b); see Kennedy for President Comm. v. Federal Election Commission 734 F.2d 1558, 1560 n.2. (D.C. Cir. 1984).8/ The

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7/ The Committee does not state whether its argument that the Commission did not satisfy the three-year-notification requirement precludes the Commission from ordering the Committee to make a refund to the press organizations.

8/ In Kennedy for President, the court considered the Kennedy Committee's objection to the initial repayment determination, although the Kennedy Committee did not raise the objection within the 30-day period allowed for submitting written legal and factual materials in response to the initial repayment determination. 734 F.2d at 1560 n.2. The court reasoned that the procedural rules in effect for the 1980 election cycle did not expressly limit the Kennedy Committee to raising the issue within the 30-day period allowed for submitting legal and factual materials. Id. Further, the court stated that the Commission has since revised its "procedural rules to clarify that a candidate must raise a disputed issue within the 30-day period." Id. at 1561 n.2 (emphasis in original).

Commission's procedural rules state that "[t]he Commission will consider any written legal and factual materials submitted by the candidate within this 30 day period in making its final repayment determination(s)." 11 C.F.R. § 9038.2(c)(2)(emphasis added). Furthermore, any committee that submits written legal and factual materials may request an oral presentation before the Commission in open session. 11 C.F.R. § 9038.2(c)(3). If the Commission grants the committee's request for an oral presentation, the candidate or the candidate's designated representative will be allotted time to make the oral presentation to the Commission "based upon the legal and factual materials submitted under 11 C.F.R. [§] 9038.2(c)(2)." Id. However, a candidate's "failure to raise an argument in a timely fashion during the initial determination process ... shall be deemed a waiver of the candidate's right to present such arguments at any future stage of proceedings including any petition for review filed under 26 U.S.C. § 9041(a)."9/ 11 C.F.R. § 9038.5(b). Therefore, if a candidate does not raise an argument in the written response to the initial repayment determination, the candidate will be precluded from raising the

9/ Section 9041(a), Title 26 of the United States Code provides presidential committees with an opportunity to seek judicial review of the Commission's final repayment determination.

argument at the oral presentation.10/ 11 C.F.R. §§ 9038.2(c)(2) and 9038.5(b).

In the case herein, the Committee failed to raise the issue of the three year notification period in its written materials that were submitted to the Commission on June 25, 1992 in response to the initial repayment determination.11/ Rather, the Committee first raised the issue at its oral presentation before the Commission on December 2, 1992.12/ Since the three-year-notification argument was not included in its written response to the initial repayment determination, the Committee waived its right to raise this argument at the oral presentation.13/ 11 C.F.R. § 9038.5(b). Therefore, the

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10/ However, the Commission notes that it will consider additional factual information at the oral presentation, and in the supplemental documentation submitted thereafter, as long as the facts relate to issues that were raised in the candidate's written response to the initial repayment determination. See 11 C.F.R. § 9038.2(c)(3).

11/ The letter notifying the Committee that the Commission had made an initial repayment determination also informed the Committee that it could request an opportunity to make an oral presentation "based on the legal and factual materials submitted" in response to the initial repayment determination. Attachment 3 at 3.

12/ The argument is also included in its supplemental responses submitted after the oral presentation.

13/ The Committee had ample opportunity to raise this argument. The Commission's regulations provided the Committee with 30 days to submit legal and factual materials demonstrating that no repayment or a lesser repayment is due to the United States Treasury. 11 C.F.R. § 9038.2(c)(2). The Commission granted the Committee an additional 45 days to submit its written response. Therefore, the Committee had 75 days, until June 25, 1992, to raise the issue in its written response to the initial repayment determination. Since the Committee did not raise this argument until it made its oral presentation on December 2, 1992, the issue was raised 160 days after the date allowed for submitting

Commission will not consider this argument in reaching the final repayment determination.14/ Thus, based on the legal and factual reasoning set forth below, the Commission has made a final determination that Mr. Robertson and the Committee must repay $290,793.66 to the United States Treasury.

III. REPAYMENT DETERMINATION FOR EXPENSES PAID IN EXCESS OF THE OVERALL AND THE IOWA AND NEW HAMPSHIRE EXPENDITURE LIMITATIONS

Section 441a(b)(1)(A), Title 2 of the United States Code establishes the state and overall expenditure limitations for candidates seeking the presidential nomination who receive public financing. 26 U.S.C. § 9035(a). Any expenditure that is in excess of the state or overall expenditure limitations is a nonqualified campaign expense.15/ 11 C.F.R. § 9034.4(b)(2). Therefore, the Commission may seek a pro rata repayment for any

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(Footnote 13 continued from previous page)
any arguments disputing the Commission's initial repayment determination. 11 C.F.R. § 9038.5(b); see Kennedy for President 734 F.2d at 1561 n.2.

14/ In contrast, the Dukakis for President Committee and the Paul Simon for President Committee raised the issue of the three year notification period in their written responses to the Commission's initial repayment determination. In reaching the final repayment determination for those committees, the Commission considered the substantive issue. However, the Commission rejected the committees' arguments and concluded that the preliminary repayment calculation included in the interim audit report satisfies the notification requirements set forth at 26 U.S.C. § 9038(c). Dukakis for President Statement of Reasons Supporting the Final Repayment Determination at 7 (February 25, 1993); Paul Simon for President Committee, Statement of Reasons Supporting the Final Repayment Determination at 57 (March 4, 1993).

15/ Furthermore, as a condition precedent to receiving public financing, all candidates must certify that they have not and will not incur expenditures in excess of the state and overall expenditure limitations. 11 C.F.R. § 9033.2(b)(2).

amounts paid in excess of the expenditure limitations. 11 C.F.R. § 9038.2(b)(2)(i)(A) and 9038.2(b)(2)(ii)(A).

The Final Audit Report found that the Committee exceeded both the state and the overall expenditure limitations. The overall expenditure limitation for the 1988 presidential election cycle was $23,050,000. The Committee reported $23,079,801.35 as the amount subject to the overall expenditure limitation.16/ Attachment 3 at 28. The Final Audit Report found that the Committee exceeded the overall expenditure limitation by $1,024,587.87. Attachment 3 at 62. The Commission's adjustment to the amount subject to the overall expenditure limitation included: (1) the Committee's incorrect classification of expenditures as exempt compliance; (2) reported debts outstanding at December 31, 1991; (3) additional debts owed to vendors and contributors (4) aircraft usage; (5) an in-kind contribution from G.B. Computer Services, Inc.; (6) Christian Coalition receipts (7) American Life League receipts; (8) accounts receivable; and (9) nonqualified campaign expenses. Attachment 3 at 62. The amount paid in excess of the overall expenditure limitation, which excluded accounts payable and any payments made after the date the Committee's accounts no longer contained public funds, was $659,969.79. Id. at 63.

16/ The Commission adjusted the reported amount to account for mathematical error. Attachment 3 at 28.

The Iowa and New Hampshire expenditure limitations for the 1988 presidential election cycle were $775,217.60 and $461,000.00, respectively. The Final Audit Report also found that the Committee exceeded the Iowa expenditure limitation by $635,682.99 and the New Hampshire limitation by $506,108.44. Therefore, the aggregate amount paid in excess of the state expenditure limitations, which excluded accounts payable of $32,038.93, was $1,109,752.50 [($635,682.99 + $506,108.44) - $32,038.93]. Attachment 3 at 27.

In the 1988 presidential election cycle, the Commission has determined that when a presidential committee exceeds both the state and the overall expenditure limitations, the greater of the two overages will be used to calculate the pro rata repayment to the United States Treasury. Final Audit Report on George Bush for President, approved February 18, 1992; see generally Explanation and Justification of Regulations on Public Financing of the 1992 Presidential Primary, 56 Fed. Reg. 35907 (July 29, 1991). Therefore, the aggregate amount the Committee paid in excess of the Iowa and New Hampshire expenditure limitations was used as the basis for the initial repayment determination. The Committee's repayment ratio, as calculated under 11 C.F.R. § 9038.2(b)(2)(iii), is .305142. Attachment 3 at 9. Thus, the Commission made an initial determination that the Committee must repay $338,632.10 ($1,109,752.50 x .305142) to the United States Treasury for expenses paid in excess of the state expenditure limitations. Attachment 3 at 63.

The Committee's response to the initial repayment determination included arguments disputing the amounts allocable to both the overall and state expenditure limitations. Based on the Committee's response to the initial repayment determination, the Commission reduced the amount paid in excess of the overall expenditure limitation from $659,969.79 to $648,524.79. The Commission also reduced the total amount paid in excess of the Iowa and New Hampshire expenditure limitations from $1,109,752.50 to $789,409.47. Nevertheless, the amount paid in excess of the state expenditure limitations of $789,409.47 is still greater than the $648,524.70 paid in excess of the overall expenditure limitation. Therefore, the Commission's final determination that the Committee repay $240,881.98 ($789,409.47 x .305142) to the United States Treasury is based on the aggregate amount paid in excess of the Iowa and New Hampshire expenditure limitations.

The Commission's downward adjustment of $11,445 ($659,969.79 - $648,524.79) to the overall expenditure limitation is an offset that acknowledges and accounts for the Committee's claim that it sold furniture and equipment to the Christian Coalition for that amount. Attachment 7 at 23. Since the repayment is based on the amount paid in excess of the Iowa and New Hampshire expenditure limitations, the Commission concludes that it is not necessary to address the other arguments the Committee raised with respect to the overall

expenditure limitation.17/ The reasoning supporting the Commission's conclusion that the Committee paid $789,409.47 in excess of the Iowa and New Hampshire expenditure limitations is set forth in the following discussion. Attachment 8 at 32-33 (Revised Expenditures Allocable to Iowa and New Hampshire Expenditure Limitations).

IV. EXPENDITURES PAID IN EXCESS OF THE IOWA AND NEW HAMPSHIRE EXPENDITURE LIMITATIONS

The Commission's regulations, as set forth at 11 C.F.R. § 106.2, govern the method by which expenses are allocated to the state expenditure limitations. 11 C.F.R. § 9035.1(b). The regulations provide that expenses incurred for the purpose of influencing the nomination of a candidate in a particular state are allocated to that state. 11 C.F.R. § 106.2(a)(1). There are specific rules for allocating certain enumerated expenses. 11 C.F.R. § 106.2(b). For example, overhead expenses for regional offices are allocated to each state within the region on a reasonable and uniform basis. 11 C.F.R. § 106.2(b)(2)(iv)(B). In addition, the regulations enumerate specific expenses that are exempt from state allocation. 11 C.F.R. § 106.2(c). For example, a limited amount of compliance costs and fundraising expenses are exempt from state allocation. 11 C.F.R. § 106.2(c)(5).

A presidential committee is required to maintain, for Commission inspection, the records supporting all assumptions

17/ However, the Commission does not acquiesce to or agree with any other issues raised by the Committee that pertain to the overall expenditure limitation.

and calculations for the allocation of expenses to the state expenditure limitations. 11 C.F.R. § 106.2(e). If the Commission disputes a committee's method of allocation or claim to an exemption, the committee must demonstrate, with supporting documentation, that its proposed method of allocation was reasonable. 11 C.F.R. § 106.2(a)(1). The Committee's proposed method of allocation will not be applied if the Committee cannot support it with adequate documentation. See John Glenn Presidential Comm., Inc. v. Federal Election Commission, 822 F.2d 1097, 1103 (D.C. Cir. 1987).

The Committee allocated $762,118.68 to the Iowa expenditure limitation and $429,669.92 to the New Hampshire expenditure limitation. However, due to the lack of documentation, the Commission could not verify the Committee's allocations. Therefore, the Commission developed its own method of allocation based on the Committee's disbursement journal, disbursement payroll journal, media and voter contact disbursements, payables, and disbursement information from the Committee's bank accounts held in Iowa and New Hampshire. Based upon an analysis of these records, the Interim Audit Report found that the Committee exceeded the Iowa and New Hampshire expenditure limitations by $447,490.27 and $360,763.48, respectively. Attachment 1 at 15. The Interim Audit Report included adjustments in the following areas for amounts subject to the Iowa and New Hampshire expenditure limitations:

(1) disbursements from the Committee's national bank accounts;

(2) gross disbursements from the Committee's state bank

accounts; (3) payroll disbursements to employees; (4) payroll taxes paid to states; (5) media disbursements; (6) voter contact services; (7) direct mail; and (8) accounts payable. Id. at 17. The Interim Audit Report recommended that the Committee provide documentation demonstrating that the Committee did not exceed the state expenditure limitations. In addition, the Commission issued subpoenas to third parties to obtain additional documentation.

Based on the Committee's response to the Interim Audit Report and the additional information submitted by vendors in response to subpoenas, the Final Audit Report found that the Committee exceeded the Iowa expenditure limitation by $635,682.99 and the New Hampshire limitation by $506,108.44. The Final Audit Report included additional adjustments (as compared to the Interim Audit Report) to the amount allocable to the expenditure limitations in the following categories of expenses: (1) disbursements from the Committee's national bank accounts; (2) voter contact services; (3) direct mail; (4) expense reimbursements; (5) expenses for the purchase of audio cassette tapes; and (6) accounts payable. Compare Attachment 1 at 17 with Attachment 3 at 26.

The Committee objects to the allocation of expenses in the Final Audit Report. The Committee contends that in some instances the same expenses were applied to the state expenditure limitations more than once or double counted. The Committee also contends that some of the activities at issue were fundraising and, therefore, the related expenses should not

have been allocated to the Iowa and New Hampshire expenditure limitations.18/ Finally, the Committee contends that certain expenses should have been allocated on a regional office basis.

Based on the Committee's written and oral responses to the initial repayment determination and for the reasons set forth below, the Commission concludes that the Committee exceeded the Iowa and New Hampshire expenditure limitations by $460,358.75 and $360,889.65, respectively. Thus, the total amount in excess of the Iowa and New Hampshire expenditure limitations is $821,448.40 ($460,358.75 + $360,889.65). The amount paid in excess of the Iowa and New Hampshire expenditure limitations, less the accounts payable of $32,038.93, is $789,409.47. Therefore, the Commission has made a final determination that the Committee must repay the United States Treasury $240,881.98 ($789,409.47 x .305142) for exceeding the state expenditure limitations.

A. Adjustments Based on Supporting Documentation

The Commission acknowledges that certain expenses were allocated to the Iowa and New Hampshire expenditure limitations more than once. The Commission has identified the double

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18/ A question was raised in the Final Audit Report as to whether the Committee exhausted the amount it could allocate to exempt fundraising. The maximum amount any presidential committee could allocate to fundraising in the 1988 election cycle was $4,610,000 (20% of the overall expenditure limitation of $23,050,000). 2 U.S.C. § 431 9)(B)(vi). The Committee reported this amount as allocable to fundraising. The Committee contends that it is not requesting to allocate additional expenses to fundraising, but to identify as exempt fundraising certain expenses that it originally allocated to fundraising. Attachment 7 at 5.

allocations and reduced the amount allocable to the Iowa and New Hampshire expenditure limitations accordingly. Specifically, the Commission reduced the amount allocable to the New Hampshire expenditure limitation by $120,352.47 to account for expenses paid to the Committee's vendor, MEM and Associates, that were allocated twice to the New Hampshire expenditure limitation. Attachment 8 at 6. The Commission reduced the amount allocable to the Iowa expenditure limitation by $8,878.10 for the expenses paid to another vendor, International Cassette Corporation. Id. at 7. Similarly, a deposit of $20,000 for telephone service in Iowa was allocated twice to that state's expenditure limitation. Id. at 7. Therefore, the Commission reduced the expenses subject to the Iowa expenditure limitation by $20,000.

Nevertheless, the Committee also contends that it received a $14,665.50 refund from the telephone company for service in Iowa that should not be allocated to that state's expenditure limitation. Attachment 7 at 10. The telephone company's check contains a handwritten note, which states that the check is a refund for a telephone number with the area code 515, an Iowa area code. Other than the handwritten note on the refund check, there is no evidence that the refund was for telephone service in Iowa. Therefore, the Commission has not reduced the Iowa expenditure limitation by $14,665.50 to account for this refund check.

Finally, the Committee identified $17,271.02 in disbursements from its Iowa bank accounts, which it argues should not be allocated to the Iowa expenditure limitation.

Attachment 7 at 14. The Committee submitted a schedule of these expenses that includes bank, telephone, and charter services charges and shipping and printing costs. Attachment 7 at 80-81. The Commission has reviewed the Committee's schedule and the supporting documentation. The supporting documentation shows that $6,483.13 are not allocable to the Iowa expenditure limitation. These expenses include $2,973.89 in interstate travel expenses and $1,175.35 in interstate shipping cost. 11 C.F.R. § 106.2(c)(4). In addition, there were $142.88 in interstate telephone charges and $2,131.01 in fundraising expenses that are not allocable to the Iowa expenditure limitation. 11 C.F.R. §§ 106.2(b)(2)(v); 110.8(c)(2). Finally, there are $36.00 and $24.00 in expenses that are allocable to the South Dakota and Nebraska expenditure limitations, respectively. 11 C.F.R. § 106.2(a)(1). Therefore, the Commission has made a final determination that $10,787.89 ($17,271.02 - $6,483.13) in disbursements from the Iowa bank accounts are allocable to the Iowa expenditure limitation.

B. Fundraising Exemption

Generally, "any costs incurred by an authorized committee or candidate in connection with the solicitation of contributions on behalf of such candidate" are not expenditures to the extent that such costs do not exceed 20% of the committee's overall expenditure limitation. 2 U.S.C. § 431(9)(B)(vi); 11 C.F.R. § 100.8(b)(21)(i). The Commission's regulations define the term "in connection with the solicitation of contributions" to mean "any costs reasonably related to

fundraising activity...." 11 C.F.R. § 100.8(b)(21)(i)(ii). These fundraising costs are exempt from state allocation as long as they do not occur within 28 days of a state's primary election. 11 C.F.R. § 100.8(b)(21)(iii); see 11 C.F.R. § 110.8(c)(2). If a presidential committee claims that it is entitled to this exemption, it must submit documentation supporting its method of allocation. 11 C.F.R. § 106.2(a)(1).

The requirement that committees submit supporting documentation to demonstrate the fundraising component of their activities is consistent with the Commission's determinations in other audits of 1988 presidential campaigns. See Pete duPont for President, Inc., Statement of Reasons Supporting the Final Repayment Determination at 10 (December 14, 1989); Dole for President Committee Inc., Statement of Reasons Supporting the Final Repayment Determination at 8 (February 6, 1992); Dukakis for President, Statement of Reasons Supporting the Final Repayment Determination at 19 (February 25, 1993); Paul Simon for President, Statement of Reasons Supporting the Final Repayment Determination at 14 (March 4, 1993).

The duPont for President Committee, Inc. ("the duPont Committee") argued that it was entitled to a fundraising exemption for expenses incurred in connection with its telemarketing program. Pete duPont for President Inc., Statement of Reasons Supporting the Final Repayment Determination at 6 (December 14, 1989). The Commission rejected the duPont Committee's claim of a fundraising exemption because there was no evidence that the telemarketing scripts included an

explicit fundraising message. Id. at 10-11. The Commission reasoned that the lack of an overt fundraising message made the telephone calls "indistinguishable from campaign devices intended to educate voters and garner voting support." Id. at 11.

Similarly, the Dole for President Committee, Inc. ("the Dole Committee") contended that it was entitled to exempt Senator Dole's costs for travel to events which were associated with its direct mail fundraising activity. Dole for President Committee, Inc., Statement of Reasons Supporting the Final Repayment Determination at 7 (February 6, 1992). The Commission held that the Dole Committee was not entitled to the fundraising exemption because the committee did not submit any supporting documentation to demonstrate that the expenditures were exempt fundraising activity. Id. at 8. Furthermore, the Commission noted that the Dole Committee's assertion that the candidate verbally requested contributions was not sufficient to support its claim of a fundraising exemption. Id. at 9.

Furthermore, Paul Simon for President, Inc. ("the Simon Committee") claimed that although its radio and television commercials did not include explicit fundraising solicitations, the commercials were the first step in the Simon Committee's multi-tiered fundraising plan. Paul Simon for President, Inc., Statement of Reasons Supporting the Final Repayment Determination at 18-19 (March 4, 1993). According to the Simon Committee, its commercials were followed by direct mailings which solicited contributions. Id. at 19. The Commission held

that expenses for the direct mail portion of the plan were allocable to fundraising. Id. at 22. However, the Commission concluded that the expenses for the commercials were not allocable to fundraising because the committee failed to submit supporting documentation showing the commercials themselves included a fundraising component. Id.

1. Media Expenses

The Committee contends that certain media expenses should not be allocated to the Iowa and New Hampshire expenditure limitations because they were made for the purpose of fundraising. Attachment 7 at 10. The Committee claims that three categories of media expenses were fundraising in nature. Id. The first category of expenses is related to a newspaper insert called "Who Is This Man." The insert notes Mr. Robertson's experience, education and participation in international activities. Id. at 65-73. The insert also solicits contributions from the reader. Id. at 73. The Committee claims that the costs of the inserts, $42,479.21 in Iowa and $8,193.12 in New Hampshire, should be allocated to fundraising. Attachment 7 at 11. The Committee also contends that the production and shipping costs of $97,483.80 in Iowa and $35,144.10 in New Hampshire for the newspaper inserts, which were paid to its vendor Richard Quinn and Associates, are allocable to fundraising.

The Committee contends that a second category of expenses, television buys of $33,688.10 in Iowa and $39,133.68 in New Hampshire, are allocable to exempt fundraising. Attachment 7 at

11. The Committee argues that these expenses are related to the newspaper insert because "the main function of the TV support was to encourage people to read the insert." Id. Therefore, the Committee concludes that the television buys are fundraising in nature. Id.

The third category of expenses is for activity the Committee refers to as "30 Minute Program and Supporting Media." The Committee contends that it paid $41,574.20 in Iowa and $31,992.45 in New Hampshire for this media. Attachment 7 at 11. The Committee asserts that the activity qualifies for the fundraising exemption and it argues that under Advisory Opinion ("AO") 1988-6, half of the amount at issue is allocable to fundraising.19/

The Commission has made a final determination that the expenses for the "Who Is This Man" newspaper inserts of $42,479.21 in Iowa and $8,193.12 in New Hampshire are allocable to exempt fundraising. The newspaper inserts include an overt fundraising component. Further, the related production and shipping costs of $97,483.80 in Iowa and $16,673.20 in New Hampshire for the "Who Is This Man insert" are allocable to fundraising. See 11 C.F.R. § 106.2(c)(2)(media production costs are exempt from state allocation). However, the remaining $18,470.90 ($35,144.10 - $16,673.20) in expenses are related to the mailing of 165,000 other inserts. The Commission cannot

19 In AO 1988-6, the Commission held that expenditures for campaign commercials, which contain both a political and fundraising message, may be allocated 50% to fundraising and 50% to the state expenditure limitations.

determine whether these inserts are related to the "Who Is This Man" inserts. Furthermore, there is no indication that the inserts in question included a fundraising message or if the fundraising activity occurred within 28 days of the New Hampshire primary. Attachment 8 at 9. Therefore, the Commission concludes $18,470.90 in expenses are allocable to the New Hampshire expenditure limitation.

While the Committee contends that its television buys were related to the "Who Is This Man" newspaper inserts, the Committee has not demonstrated that the television commercials contained a fundraising message. Similarly the Committee has not demonstrated that the costs for the "30 Minute Program and Supporting Media" are allocable to exempt fundraising. The Committee did not submit any documentation, such as videotapes or transcripts, to support its contention that these activities included a fundraising component. Therefore, the Commission could not distinguish these activities from other "campaign devices intended to educate voters and garner voting support."20/ Pete duPont for President Inc., Statement of Reasons Supporting the Final Repayment Determination at 11 (December 14, 1989). Accordingly, the expenses for the television buys and the "30

20/ It should be noted that the Commission revised its allocation rules in 1991 to allow presidential committees to automatically allocate up to 50% of their expenditures to fundraising. Therefore, "the Commission will no longer need to examine disbursements claimed under the exemption to determine whether they are related to fundraising efforts." Explanation and Justification of the 1992 Regulations on Public Financing of the 1992 Presidential Primary, 56 Fed. Reg. 35901 (July 29, 1991).

Minute Program and Supporting Media," $75,262.30 ($33,688.10 + $41,574.20) in Iowa and $71,126.13 ($39,133.68 + $31,992.45) in New Hampshire, are allocable to the respective state expenditure limitations.

2. Voter Contact Services

The Committee argues that the costs of voter contact services paid to two vendors, MEM and Associates ("MEM") and International Cassette Corporation, should not be allocated to the New Hampshire and Iowa expenditure limitations. MEM was engaged in voter contact services on behalf of the Committee. This activity involved mailing audio cassettes to voters. The Final Audit Report allocated $274,229.30 to the New Hampshire expenditure limitation to account for these services. As noted earlier, the Commission adjusted the New Hampshire expenditure limitation by $120,352.47 to account for expenses that were allocated twice. See infra p. 18. The Committee contends that the $120,352.47 paid to MEM for mailing the audio cassettes should not have been allocated to the New Hampshire expenditure limitation at all because the activity associated with this expense was identified as fundraising. Attachment 7 at 9. The Committee contends that its records as well as the records of MEM show that the activity was fundraising. Id.

The Committee's records consist of two check request forms. One of the check requests shows a $59,605.47 payment to MEM on January 19, 1988 and it indicates that the purpose of the payment is a "New Hampshire Tape Fund Raiser." Id. at 47. The second request shows a payment of $60,747 that was approved on

January 14, 1988, but there is no description of the purpose of that payment. Id. at 48. In addition, the Committee submitted an affidavit signed by its finance director, Richard Weinhold, attesting to the fact that the activity in question was related to fundraising Id. at 50-52.

The Committee argues that $12,502 in costs for the shipping of audio cassettes from its vendor, International Cassette Corporation, are allocable to fundraising. Attachment 7 at 13. In support of this contention, the Committee submitted sample response letters from individuals whom it claims ordered the audio cassettes. Id. at 53. These letters allowed the recipient to request the audio cassette and to designate the amount he or she wished to contribute to the Committee. Id.

The Commission concludes that the Committee has not demonstrated that the expenses for the voter contact services provided by either MEM or International Cassette Corporation were fundraising costs that should be exempted from the state expenditure limitations. The Committee provided documentation indicating that the cassettes were offered in a letter that also solicited contributions. However, the Commission cannot determine when the letters and cassettes were mailed in New Hampshire and Iowa. The Committee has not submitted any documentation to demonstrate that the activity in question occurred more than 28 days prior to the primary elections in these states. 11 C.F.R. § 110.8 c)(2). Accordingly, the Commission has made a final determination that $120,352.47 paid to MEM and $12,502.10 paid to International Cassette are

allocable to the New Hampshire and Iowa expenditure limitations, respectively.

C. Post-Primary Expenditures

The Committee contends that $23,410.80 in expenses paid to its vendor, Response Marketing, for "Iowa Cassettes and Iowa Base Letters" should not be allocated to the Iowa expenditure limitation. Attachment 7 at 7. The Committee states that the material was actually sent to South Dakota. Id. In addition, the Committee submitted a memorandum from Response Marketing suggesting that the expenses were paid after the Iowa primary. Id. The memorandum, dated February 29, 1988, states that: "[e]verything is printed and ready to mail but we need the payments listed ... before the package can be mailed." Attachment 7 at 46. The Iowa caucus was held on February 8, 1988 and South Dakota's primary election was held on February 23, 1988.

The Commission has made a final determination that the $23,410.80 in expenses are allocable to the Iowa expenditure limitation. Although the Committee contends the "Iowa Cassette and "Iowa Base Letter" were mailed after the Iowa caucus, there is no documentation to support the Committee's argument. The Committee has not provided any documentation to demonstrate that the materials were shipped to South Dakota. Indeed, the memorandum from Response Marketing, dated February 29, 1988, lists several items in addition to the "Iowa Cassette" and "Iowa Base Letter," including items in other states: "S. Dakota Cassette," "S. Baptist -Texas," and "Tax on South Dakota."

Attachment 7 at 46. The invoice is not specific as to which package would be mailed after the payment was received. It appears more likely that Response Marketing had previously shipped materials designated for Iowa and was awaiting payment prior to shipping other materials. In fact, an invoice from Response Marketing, dated February 2, 1988, which shows that postage of $29,260 was due for mailing the "Iowa Base Letter," suggests that it was mailed prior to that date. Further, a check from the Committee to Response Marketing paying the same amount was dated February 3, 1988.

The fact that the Committee may have paid Response Marketing for all of the items after the Iowa caucus is not determinative. The critical inquiry is whether the expenditures were incurred "for the purpose of influencing the nomination" of Mr. Robertson in Iowa. 11 C.F.R. § 106.2(a)(1). Expenditures incurred in a state after the primary election, which relate to that primary election are allocable to that state's expenditure limitation.21/ 11 C.F.R. § 110.8(c)(1). Thus, contrary to the Committee's argument, the fact that the Committee may have paid for the materials after the Iowa caucus is not conclusive. The Committee's documentation must show that the materials were

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21 In the audit of the Gephardt for President Committee, the costs of calls made after the Iowa primary were allocable to that state's expenditure limitation. Gephardt for President Committee, Inc., Statement of Reasons Supporting the Final Repayment Determination at 12 May 21, 1992. Similarly, in the audit of the Paul Simon for President Committee, the expenses incurred for a party given the night of the New Hampshire primary were allocated to that state's expenditure limitation. Paul Simon for President, Inc., Statement of Reasons Supporting the Final Repayment Determination at 51 (March 4, 1993)

unrelated to the Iowa primary. Accordingly, the Commission concludes that $23,410.80 in expenses are allocable to the Iowa expenditure limitation.

D. Regional Campaign Offices

Pursuant to 11 C.F.R. § 106.2(b)(2)(iv)(B), the overhead expenditures of a committee's regional office with responsibilities in two or more states shall be allocated to each state on a reasonable and uniformly applied basis. In determining "whether or not an office is a bona fide regional office, the Commission will consider factors such as the geographic proximity of the states covered, the timing of the primaries involved, and the amount of effort directly focused on seeking the nomination in each state." Explanation and Justification of 11 C.F.R. § 106.2(a)(1), 52 Fed. Reg. 20864 (June 3, 1987). The committee asserting that a particular office is a regional office must submit documentation demonstrating a regional purpose or otherwise show that the expenses arising out of the office warrant classifying the office as regional for the purpose of allocating overhead expenses. Paul Simon for President, Inc., Statement of Reasons Supporting the Final Repayment Determination at 37 (March 4, 1993); Addendum to the Final Audit Report on the Cranston for President Committee, approved October 27, 1987 (the Commission rejected the Cranston Committee's contention that the Iowa office was a regional headquarters because there was insufficient evidence that the Iowa office had a regional purpose or function). In the audit of the Dole for President

Committee, the Commission recognized that certain campaign offices can serve a dual purpose as both a state and a regional office. Statement of Reasons Supporting the Final Repayment Determination at 15 (February 6, 1992). The expenses arising out of such an office will be allocated to reflect the dual nature of the office. Id. at 16.

The Committee allocated payroll and overhead expenditures related to its Iowa and New Hampshire offices to a number of states, contending that the offices were regional offices. The Committee argues that the New Hampshire office was a regional office for 12 states in the Northeast region, and the Iowa office was a regional office for 9 states in the Midwest. The Committee devised allocation percentages for the states in each region based on the ratio of a state's spending limit to the total of all spending limits for the states in the region. The Committee argues that its allocation formula was reasonable. Attachment 4 at 14.

The Committee purports to offer further evidence that its offices in Iowa and New Hampshire functioned as regional offices. Id. at 13. In support of its argument that these offices were responsible for a nationwide project to collect petition signatures, the Committee has provided the Commission with a list of the number of signatures collected per state. Id. at 14. These signatures were allegedly collected during the testing-the-waters portion of the campaign. Id. The Committee contends that, following this petition drive, the Iowa and New

Hampshire offices assisted individual state directors with special events and functions. Id. at 16.

The Committee notes that it also submitted documents in response to the Interim Audit Report which show the Iowa and New Hampshire offices' regional structures, regional budgets and a list of the campaign's regional and state directors. Attachment 4 at 14. The Committee's documents included statements from its personnel which described their responsibilities and activities in states other than in Iowa and New Hampshire. Id. In addition, the Committee's documents included telephone records which show long distance calls to other states and letters from campaign staff stating that they traveled to other states to coordinate the campaign. Finally, the Committee contends that the letter from Response Marketing indicates that the "Iowa Cassettes and Iowa Base Letters" were sent to South Dakota and this provides further evidence that the Committee operated on a regional basis. Attachment 7 at 7.

The Commission concludes that the Iowa and New Hampshire offices were not regional offices and, therefore, the payroll and overhead expenses cannot be allocated on a regional office basis. In its written response to the Final Audit Report and in support of its contention that the Iowa and New Hampshire offices were regional offices engaged in petition activity for Mr. Robertson's candidacy, the Committee submitted a list of the number of petition signatures that were collected per state. Attachment 4 at 31. However, this list, in isolation from additional documentation, is not conclusive on the issue of

whether the New Hampshire and Iowa offices were regional offices. The Committee has not submitted documentation to show that the signatures obtained actually resulted from the operation of the regional offices. While the submitted lists categorize signatures on a regional basis, there is no supporting documentation that might show, for example, regional office staff time that was spent on state activities.

Moreover, the Committee submitted an undated document in response to the Interim Audit Report, which included a description of the Committee's regional structure and budgets. This document shows that the Committee may have anticipated and planned to target activity to other states covered by the regional offices, but it does not show that the Committee in fact engaged in such activity. An anticipation or expectation to engage in regional activity is not sufficient to document the regional nature of the offices at issue. Cranston for President Committee, Inc., Addendum to the Final Audit Report, approved October 27, 1987. Similarly, the facts suggesting that some telephone calls and travel were made to locations outside of Iowa and New Hampshire and materials from Response Marketing may have been sent to South Dakota do not warrant classifying the Iowa office as a regional office for the purpose of allocating overhead expenses. Paul Simon for President, Inc., Statement of Reasons Supporting the Final Repayment Determination at 37 (March 4, 1993). There has been no showing that these activities were intended to influence any state other than Iowa and New Hampshire. Therefore, the Commission has made a final

determination that all overhead expenses from the Iowa and New Hampshire offices are allocable to those two states.

V. EXPENSES PAID AFTER DATE OF INELIGIBILITY AND EXPENSES PAID FOR TAX PENALTIES

A qualified campaign expense is, inter alia, any purchase or payment incurred by a presidential committee through the last day of the candidate's eligibility that is made in connection with his or her campaign for the presidential nomination. 11 C.F.R. § 9032.9(a)(1) and (2). However, the incurrence of the expense cannot be in violation of any federal or state law. 11 C.F.R. § 9032.9(a)(3). Testing-the-waters expenditures and winding down costs are examples of qualified campaign expenses. 11 C.F.R. § 9034.4(a)(2) and (3). Furthermore, federal income taxes paid on non-exempt function income, such as interest, dividends and the sale of property, are considered qualified campaign expenses. 11 C.F.R. § 9034.4(a)(4).

The Final Audit Report found that $318.10 in expenses incurred after Mr. Robertson's date of ineligiblility and $71,760.57 paid to the federal and local governments for tax penalties were nonqualified campaign expenses. Attachment 3 at 11 and 69. Therefore, the Commission made an initial determination that the Committee must make a pro rata repayment of $21,994.23 [($71,760.57 + $318.10) x .305142] to the United States Treasury. Id. at 11.

The Committee does not dispute the Commission's classification of expenses incurred after the date of ineligibility as nonqualified campaign expenses, but it objects

to the Commission's initial determination to seek a repayment for public funds that were used to defray tax penalties. The Committee asks that the Commission use its discretion and not treat the payment of tax penalties as nonqualified campaign expenses. Attachment 6 at 10. The Committee asserts that its "requirement to pay the penalties to state and federal tax authorities for late payment of employment taxes was incurred by the campaign during the normal course of its operation and should be viewed as a qualified campaign expense." Attachment 4 at 3. The Committee notes that if it had not paid these penalties, another branch of the federal government, the Internal Revenue Service, would be seeking a payment. Attachment 2 at 34. The Committee states that "the Commission should decline to compound the Committee's loss of funds by assigning a further 30% repayment penalty more than four years later." Attachment 4 at 3.

The Commission has made a final determination that the payment of tax penalties is a nonqualified campaign expense. While section 9034.4(a)(4) of the regulations provides that federal income tax payments are qualified campaign expenses, the Commission concludes that this provision applies only to tax payments to the United States Treasury and it does not extend to tax penalties. The payment of a penalty associated with the violation of a state or federal law is a nonqualified campaign expense. 11 C.F.R. § 9032.9(a)(3). The Commission does not accept the Committee's premise that a failure to pay taxes occurs in the normal course of a political campaign and that the

Committee should be entitled to use public funds to pay the penalties.22/ Compare 11 C.F.R. § 9032.9(a)(1) with 11 C.F.R. § 9032.9(a)(3). Therefore, the payment of tax penalties is a nonqualified campaign expense.23/ Accordingly, the Commission has made a final determination that the Committee must repay $21,994.23 to the United States Treasury for expenses incurred after the candidate's date of ineligibility and for the payment of tax penalties.

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VI. EXPENSES PAID RELATIVE TO THE REPUBLICAN NATIONAL CONVENTION

The Commission made an initial determination that the Committee must repay $22,727.59 to the United States Treasury for nonqualified campaign expenses related to the Republican National Convention ("the Convention"). Attachment 3 at 13. This repayment accounts for monies expended during the the Convention for air fares, hotel rooms, equipment rentals, car rentals, food purchases, phone banks, and the cost of decorating and renting a hospitality center. Id. at 11.

22/ The Commission makes this distinction in other areas. For example, expenses incurred to ensure compliance with the FECA are qualified campaign expenses, but any civil or criminal penalties paid as a result of a violation of the FECA are nonqualified campaign expenses. Compare 11 C.F.R. § 9032.9(a)(1) with 11 C.F.R. § 9034.4(b)(4).

23/ Furthermore, the Committee's pro rata repayment for paying tax penalties is not a "30% repayment penalty" as the Committee suggests, but a recapturing of public funds that were used to defray nonqualified campaign expense. Reagan Bush Comm. v. Federal Election Commission, 525 F. Supp. 1330, 1337 (D.D.C. 1981); accord Kennedy for President Comm. v. Federal Election Commission, 734 F.2d 1558, 1565 (D.C. Cir. 1984)

The Committee contends that these expenses should be treated as qualified campaign expenses or winding down costs because they were incurred in an effort to "assist fundraising and debt retirement efforts through a heightened public profile" and to "maintain the support and enthusiasm of delegates elected on behalf of Dr. Robertson." Attachment 4 at 4. The Committee argues that the Commission has no reason to doubt the Committee's sincerity regarding its fundraising efforts. Attachment 4 at 6. The Committee contests the Audit Division's conclusion that its post-convention direct mailing was unsuccessful compared to previous mailings, and therefore, unrelated to convention activities. Id. at 4. The Committee contends that, although the amount of contributions decreased from the first direct mail to the second, the amount of money received from the post-convention mailing was a significant accomplishment given the fact that the solicitations were sent to persons who had previously contributed to the campaign. Id. The success of this second mailing, the Committee states, is a direct result of the positive reception the candidate received during the convention. Id. The Committee further contends that the Commission's analysis should be governed by a genuine fundraising intent, and not the success of the fundraising efforts. Id.

The fundamental purpose of the Matching Payment Act is to "help defray campaign costs incurred by eligible candidates in seeking their party's nomination for the office of President." Friends of George McGovern, Statement of Reasons Supporting the

Final Repayment Determination at 13. (June 13, 1985). Therefore, once the Commission determined that on April 28, 1988 Pat Robertson was ineligible, the candidate could not receive nor spend any additional public funds for the purpose of seeking his party's nomination.24/ 11 C.F.R. §§ 9033.5 and 9034.4(b)(3). After that date, public funds could only be used for the purpose of paying expenses associated with the termination of his political activity.25/ Compare 11 C.F.R. § 9034.4(a)(3) with 11 C.F.R. § 9034.4(b)(3).

The Commission recognizes that in the course of terminating a political campaign, a candidate may be required to incur additional expenses for fundraising events designed to retire campaign debt. However, the Committee has not demonstrated how the expenses at issue, air fares, hotel rooms, equipment rentals, car rentals, food purchases, phone banks, and the cost of decorating and renting a hospitality center at the Convention, were related to raising additional funds to retire

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24/ This does not mean that the candidate is required to withdraw from the election on the date of ineligibility. Explanation and Justification of 11 C.F.R. § 9034.4(a)(3), 52 Fed. Reg. 20870 (June 3, 1987); see generally LaRouche Democratic Campaign, Statement of Reasons Supporting the Final Repayment Determination at 21 (September 17, 1992). The Commission revised its regulations in 1991 to permit candidates to use private contributions to continue to campaign after the date of ineligibility without such activity resulting in a repayment for receiving funds in excess of entitlement. Explanation and Justification of Regulations on Public Financing of the 1992 Presidential Primary, 56 Fed. Reg. 35905 (July 29, 1991).

25/ The candidate could receive additional public funds after his date of ineligibility only if the amount of outstanding campaign obligations reflected on the NOCO Statement exceeded the Committee's assets. 11 C.F.R. § 9034.5(g)(3).

campaign debt from the presidential primaries. These expenses appear to be related to the candidate's and his delegates' attendance at and participation in the Convention.26/ The Committee cannot claim these expenses as legitimate winding down costs because there has been no showing that they were incurred for the purpose of soliciting contributions intended to pay debts from the presidential primaries. Therefore, the Commission has made a final determination that the Committee must repay $22,727.59 to the United States Treasury for nonqualified campaign expenses associated with the Convention.

VII. UNDOCUMENTED TRANSFER OF FUNDS FROM NATIONAL ACCOUNT

The Commission may seek a pro rata repayment for disbursements that were not documented in accordance with 11 C.F.R. § 9033.11. 11 C.F.R. § 9038.2(b)(3). Pursuant to 11 C.F.R. § 9033.11(b)(i)(iv), presidential committees must document disbursements in excess of $200.00 with: (1) a receipted bill from the payee; (2) a canceled check negotiated by the payee with a bill or invoice; (3) a canceled check stating the purpose of the disbursement; or (4) a canceled check with collateral supporting evidence. 11 C.F.R. § 9033.11(b)(i)-(iv). Furthermore, the presidential committee

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26/ The Commission has never classified convention-related expenses incurred after the candidate's date of ineligibility as qualified campaign expenses. See e.g., Albert Gore, Jr. for President Committee, Inc., Final Audit Report, approved July 13, 1989; Friends of George McGovern, Final Addendum to the Final Audit Report, approved February 19, 1986. See generally Explanation and Justification, 11 C.F.R. Parts 9007 and 9038, 50 Fed. Reg. 9422 (March 8, 1985) (discussing convention-related expenses as an example of non-qualified campaign expenses in the context of repayment calculations).

must demonstrate that disbursements made on behalf of the candidate are qualified campaign expenses. 11 C.F.R. § 9033.11(a).

The Final Audit Report found that the Committee had $17,008.00 in undocumented transfers from its national bank account to bank accounts maintained by state offices. The Committee's repayment ratio was .305142. Therefore, the Commission made an initial determination that the Committee make a pro rata repayment of $5,189.86 ($17,008.00 x .305142) to the United States Treasury for undocumented disbursements.

The Committee contends that it cannot be held responsible for the fact that copies of bank records concerning the transfers from its national accounts to its state accounts are either illegible or inconclusive. Attachment 4 at 8. The Committee submits that the Commission's regulations require the documentation of qualified campaign expenses, but that qualified campaign expenses involve disbursements or expenditures that are made in consideration for goods or services. Id at 9. The Committee argues that the repayment cannot be based on undocumented transfers of money because it did not buy anything. Id. The Committee asserts that the transfer involves a simple movement of money from one of its accounts to another account. Id. The Committee notes that the expenditures had to be documented in order to be qualified campaign expenses when they were spent from the state accounts. Id.

There is merit to the Committee's contention that the Commission cannot seek a repayment on funds that were

transferred from one account to another because the money was not actually disbursed or spent. Kennedy for President Comm. v. Federal Election Commission, 734 F. 2d 1558, 1565 (D.C. Cir. 1984)(The court held that repayments to the United States Treasury are limited to the amount of federal funds that were spent for nonqualified campaign expenses). The Committee, however, has the burden of providing adequate documentation to support its contention that the funds were not spent. See 11 C.F.R. § 9038.2(b)(3).

The Audit Division identified legible copies of checks that were drawn on the Committee's national account, which were made payable to the state accounts. However, the auditors could not identify any documentation to show that the funds were actually deposited into the state accounts. Therefore, the Commission attempted to, but could not trace, the alleged transfer of funds into the state bank accounts. Accordingly, the Commission could not determine whether the funds were transferred between the Committee's national and state accounts or spent. The Committee did not submit any documentation in its response to the Final Audit Report showing that these funds were, in fact, transferred to the state accounts. Therefore, the Commission has made a final determination that these transfers are undocumented disbursements. Thus, the Committee must make a pro rata repayment of $5,189.86 to the United States Treasury. 11 C.F.R. § 9038.2(b)(3).

VIII. PRESS BILLINGS AND REIMBURSEMENTS

A publicly financed presidential committee may incur expenditures for transportation, including air travel and ground services for media personnel. 11 C.F.R. § 9034.6(a). Such expenditures are qualified campaign expenses subject to the overall expenditure limitation. Id. The committee may receive reimbursements from the media for such services. 11 C.F.R. § 9034.6(b). However, the reimbursements may not exceed an individual's pro rata share of the actual cost of such services or a reasonable estimate of the individual's pro rata share of the actual cost of such services. Id. The pro rata share is calculated by dividing the number of individuals to whom such transportation and services are provided into the total cost of the transportation and services. Id.

The total amount of the individual reimbursements cannot exceed the actual pro rata cost of the transportation and services by more than 10%. 11 C.F.R. § 9034.6(b). The amount of reimbursements received for the actual cost of transportation and services may be deducted from the amount of expenditures subject to the overall expenditure limitation. 11 C.F.R. § 9034.6(d)(1). The committee may deduct an additional 3% for administrative costs of providing the services. Id. However, the committee may deduct a higher administrative cost from the overall expenditure limitation if it can demonstrate with supporting documentation that it had administrative costs greater than 3%. Id.

During the course of the 1988 presidential election, the Committee provided air transportation for the press. The Interim Audit Report, however, noted that the Commission's auditors could not review the Committee's system of billings and reimbursements for air transportation because there was a lack of documentation. Although there was some information that was provided during the audit fieldwork, the Audit staff could not locate the invoices for 32 flight legs noted in the Committee's flight log. Therefore, the auditors could not determine whether the amount billed the media was consistent with the Commission's regulations at 11 C.F.R. § 9034.6(b). The Interim Audit Report recommended that the Committee submit the missing invoices and documentation which detailed the amounts billed the media to demonstrate that its billing policy was in compliance with 11 C.F.R. §§ 9034.6(b) and 9034.6(d).

The Committee did not provide any additional documentation in response to the Interim Audit Report. The Committee contended that it initially billed the media 100% of first class air fare.27/ Attachment 2 at 28. However, based on the Committee's flight logs, press invoices and the billing workpapers, the Commission found that the actual costs for the

27/ The Committee noted in its response to the Interim Audit Report that this procedure was later changed when the Committee began providing ground transportation and hotel accommodations for the media. Attachment 2 at 28.

air transportation services was $103,432.22.28/ 11 C.F.R. §§ 9034.6(b) and (d). The Final Audit Report concluded that the Committee could receive a maximum of $113,775.44 in reimbursements from the media organizations. The Committee reported that it received $219,410.00 in reimbursements from the media organizations.29/ This amount is $105,634.56 ($219,410.00 - $113,775.44) in excess of the maximum amount of reimbursements the Committee was allowed to receive. Accordingly, the Final Audit Report recommended that the Committee refund $105,634.56 to the press organizations.30/

The Committee objects to the recommendation that it make a $105,643.56 refund to the press organizations. Attachment 4 at 23. The Committee contends that the reimbursements were in compliance with the Commission's regulations. Id. The Committee asserts that section 9034.6(b) permits it to calculate the press reimbursements for air transportation services based on an individual's pro rata share or a reasonable estimate of an individual's pro rata share. Id. at 21. The Committee contends that an individual's cost for each leg of the trip need not be precise. Id. at 22. Rather, the Committee need only

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28/ The Final Audit Report noted that possibly the records did not identify all of the media personnel or all of the costs associated with providing the air transportation services. Attachment 3 at 45.

29/ The Commission's auditors reviewed the Committee's disclosure reports to identify the total amount of reimbursements from the media organizations.

30/ The Committee's NOCO Statement includes the amount to be refunded to the press as a payable.

demonstrate that the pro rata share was reasonable. Id. The Committee argues that the first class air fare, the amount it was charged and in turn what it charged the press, satisfies this reasonable estimate standard. Id. The Committee contends that this approach is consistent with the Commission's past policy. Id.

The Commission concludes that the Committee's calculation of the media personnel's air transportation costs is inaccurate and fails to comply with the requirements of 11 C.F.R. § 9034.6(b). In accordance with section 9034.6(b), the media personnel's transportation costs must be calculated by using the individuals' pro rata share of the actual cost and not first class air fare. Furthermore, the Committee's first class air fare analysis is not a reasonable estimate of an individual's pro rata share under 11 C.F.R. § 9034.6(b) since it does not account for the difference in the price of first class air fare over time. Nor does it account for all of the flights where the Committee provided air transportation to the press organizations. Moreover, the Committee, itself, was never billed on a first class basis. The amount billed to the Committee was based on various hourly rates, regardless of the number of individuals who were aboard the flights. Therefore, the Committee's proposed calculation cannot be deemed a reasonable estimate of the pro rata share. Accordingly, the Commission orders the Committee to refund $105,634.56 to certain press organizations receiving reimbursements in excess of the maximum billable amount.

The Committee may make refunds to the press organizations that are prorated on a basis equal to the media organizations' original payments to the committee. See Statement of Reasons Supporting the Final Repayment Determination, Bush-Quayle '88 and George Bush for President Committee, Inc. Compliance Committee at 16 (June 23, 1992)(The Commission was interpreting 11 C.F.R. § 9004.6(d)). A list of the entities and the amount of the refund they are owed can be found at Attachment 9.

IX. FINAL REPAYMENT DETERMINATION AND REFUND TO PRESS ORGANIZATIONS

Therefore, the Commission has made a final determination pursuant to 11 C.F.R. § 9038.2(c)(4) that for the foregoing reasons, Mr. Marion G. Robertson and Americans for Robertson must repay $290,793.66 to the United States Treasury. Furthermore, the Commission orders Mr. Robertson and the Committee to refund $105,635.56 to certain press organizations. Attachment 9.

Attachments

1. Interim Audit Report, approved December 19, 1989
2. Committee's Response to the Interim Audit Report (June 25, 1990)
3. Final Audit Report, approved March 26, 1992
4. Committee's Response to the Final Audit Report (June 25, 1992)
5. Memorandum to the Commission Re: Committee's Request for an Oral Presentation (Attachment omitted)
6. Transcript of Oral Presentation (December 2, 1992)
7. Committee's Supplemental Documentation Submitted After Oral Presentation (December 9, 1992)
8. Memorandum from Robert J. Costa to Lawrence M. Noble, Re: Americans for Robertson - Audit Analysis of Response to Final Audit Report, Oral Presentation and Supplemental Documentation Submitted After Oral Presentation (May 10, 1993)(portions redacted).
9. Reported Reimbursements From the Press and Amount Due.

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

DISSENTING STATEMENT OF REASONS

In the Matter of:)
)
Marion G. ("Pat") Robertson)
and Americans for Robertson, Inc.)

Commissioner Lee Ann Elliott

Introduction

I dissent from the Statement of Reasons issued in this audit which states the Robertson Committee is time-barred from arguing the Commission has not complied with the three year statute of limitations provision at 26 U.S.C. § 9038(c). In my opinion, Robertson's arguments were properly raised, and the Commission should have resolved their objection on the merits, as we have done in two other Presidential audits this cycle.

Statement of Facts

On March 26, 1992, the Federal Election Commission issued a Final Audit Report to the Robertson Committee.[1] This Report contained an "initial repayment determination" that the Committee may have to repay $388,543.78 to the United States Treasury. 11 C.F.R. § 9038.2(c)(1). This repayment is for federal funds the Robertson Committee incorrectly received or misspent pursuant to the Presidential Primary Matching Payment Account Act. 26 U.S.C. §§ 9031, 9038. This Act, however, specifies that the Commission may not issue a repayment notification more than three years after the close of the matching payment period.[2] 26 U.S.C. § 9038(c).

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1. See attached description of the FEC's audit process and chronology of the Robertson audit.

2. Specifically, § 9038(c) states:

> No [repayment] notification shall be made by the Commission under subsection (b) with respect to a matching payment period more than 3 years after the end of such period.

Pursuant to our regulations, the Committee submitted a written response to the Commission's Final Audit Report on June 25, 1992. 11 C.F.R. § 9038.2(c)(2). The response detailed numerous factual and legal disagreements the Committee had with the Commission's audit and legal analysis, but did not argue the Commission had not complied with § 9038(c). The Committee's response also requested an opportunity to make an oral presentation before the Commission pursuant to 11 C.F.R. § 9038.2(c)(3).

At its December 2, 1992 oral presentation, the Committee specifically stated:

> that the statute requires the Commission to notify the Campaign Committee of its final repayment within three years of receipt of the last matching payment amount. The Commission has not met this obligation in this matter.

Transcript of Oral Presentation at 14. In addition, Commissioner McDonald quizzed the Committee on this specific point, and the Committee responded pursuant to its right to "answer any questions from individual members of the Commission." 11 C.F.R. § 9038.2(c)(3). Transcript at 30-35.

Also, at the beginning and end of the hearing, then-Chairman Aikens reminded the Committee that it had 5 days to submit supplemental information to support the arguments it raised during the hearing. Transcript at 4, 77. On December 9, 1992, Robertson submitted these additional materials in a "Supplemental Response" that, among other things, thoroughly addressed the three year repayment issue. Supplemental Response at 23-25.

The Commission's Statement

Nine months after the hearing, on September 23, 1993, the Commission considered a draft "Statement of Reasons" containing a "Final Repayment Determination" that the Robertson Committee will have to repay $290,793.66 to the U.S. Treasury. The Statement accepted several of Robertson's written or oral arguments about evidence submitted before, during and after its oral presentation. See, e.g., Statement at 17. The Statement, however, said

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(Footnote 2 continued from previous page)
For Robertson, the statute of limitations expired August 18, 1991, three years after the Republican Party nominated George Bush for President. 26 U.S.C. § 9032(6).

the Commission "will not consider" the Committee's argument that the Commission has not complied with the three year statute of limitations. Statement at 9-10.

The Statement maintains the Robertson Committee "improperly raised the issue of whether the Commission satisfied the three year period for notifying the Committee of its repayment obligation to the United States Treasury." Statement at 7. The Statement bases this argument on three regulations: 11 C.F.R. § 9038.5(b) and §§ 9038.2(c)(2) and (c)(3). These regulations govern the procedures for repayment proceedings at the Commission.

Section 9038.5(b) states that a candidate's committee must raise its objections to a repayment determination in a timely manner, and that the failure to raise an argument in a timely fashion during the initial determination process shall be deemed a waiver of the right to present such arguments in the future.

Section 9038.2(c)(2) states that a candidate has 30 days to submit legal and factual materials to dispute an initial repayment determination. Subsection (c)(3) states that a candidate may also make an oral presentation to the Commission based on the legal and factual materials submitted under § 9038.2(c)(2).

The Statement concluded that since Robertson did not raise an objection about the three year statute of limitations in his written materials submitted right after the Final Audit Report's initial repayment determination, he is barred from raising it at the oral hearing or thereafter. Statement at 9-10. See also Kennedy for President Cmte. v. Federal Election Comm., 734 F.2d 1558, 1560 n.2 (D.C. Cir. 1984).

Analysis

I do not think the Commission has advanced an adequate basis for dismissing Robertson's objections. Just the opposite, I think Robertson's arguments were properly, repeatedly and timely raised before this agency, similar to other audits in this cycle. Further, I think the Commission has misapplied § 9038.5 and failed to apply subsection (4) of §9038.2(c).

A. 11 C.F.R. § 9038.5

The Statement's use of 11 C.F.R. § 9038.5 as a basis to dismiss Robertson's argument is improper. That regulation is entitled "Petitions for rehearing, stays of

repayment determination." To be clear, a Statement of Reasons is neither a petition for rehearing nor a stay of repayment. It is a Final Repayment Determination. 11 C.F.R. §9038.2(c)(4) (see attached summary of the Commission's audit procedures). So by its very title, any cite to this regulation seems inapplicable.

Even if we can get beyond the title, nothing in the text of § 9038.5(b) helps the Statement's conclusion:

1. By its very text, § 9038.5(b) only governs the failure to raise arguments during the "initial determination process or in a petition for rehearing." [3] Approving a Statement of Reasons is not part of the initial determination process nor is it part of a petition for rehearing. As previously stated, a Statement of Reasons justifies the "Final Repayment Determination." The "initial determination process" ended with the passage of the Final Audit Report on March 26, 1992. The December 2, 1992 oral hearing was designed to influence the Statement of Reasons, which is part of the "final determination" as defined in 11 C.F.R. § 9038.2(c)(4). [4]

2. Even if I construe § 9038.5(b)'s use of words "initial determination" to mean every step that could take place after the Final Audit Report - then I still can't exclude Robertson's arguments, since § 9038.5(b) only excludes arguments not made in the "initial determination process." The oral hearing is

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3. Section 9038.5(b) states in full:

Effect of failure to raise issues. The candidate's failure to raise an argument in a timely fashion during the initial determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in a future stage of proceedings including any petition for review filed under 26 U.S.C. § 9041(a). An issue is not timely raised in a petition for rehearing if it could have been raised in response to the Commission's initial determination.

4. Using 9038.5(b) as the majority suggests only means Robertson must now raise the three year repayment issue in a Petition for Rehearing under 11 C.F.R. § 9038.5(a). Requiring the Committee to jump these procedural hurdles will really only accomplish one thing: it will add another six months to this already aged audit.

specifically itemized as part of the repayment process under § 9038.2(c)(3), so Robertson's arguments can still be heard as part of the overall process.[5]

3. Next, § 9038.5(b)'s warning about the failure to raise "arguments" actually makes no distinction between written and oral arguments. It just says "arguments." Accordingly, the regulation could be read to exclude Robertson's objection only if he had not raised it in either his written comments or his oral testimony. The regulation should not be read, however, to say that the initial written response must contain every conceivable argument, and that Commissioners must limit their questions to what the Respondent's have already written.

B. 11 C.F.R. § 9038.2(c)

The Commission's Statement is correct that 11 C.F.R. §§ 9038.2(c)(2) and (3) say that before the Commission can make a final repayment determination the candidate has 30 days to submit written materials and may request an oral hearing. But, subsection (c)(4) then says:

> In making its final repayment determination, the Commission will consider any [written] submission ... and any oral presentation made ... (emphasis added)

11 C.F.R. § 9038.2(c)(4)

In my opinion, our regulations clearly state the Commission will consider what is said in an oral presentation before making a final repayment determination. This must hold true regardless of whether everything that is said has also been written in "the legal and factual materials [already] submitted under 11 C.F.R. § 9038.2(c)(2)." 11 C.F.R, § 9038.2(c)(3).

In my opinion, there is no reason for the Commission to have oral presentations if we are going to ignore what comes up in them. The Statement's restrictive reading of our regulations means that Robertson's oral presentation could only be a mere verbal recitation of what the Committee already wrote. An oral presentation should explore any subject a Commissioner or presenter wishes,

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5. Also, it is dangerous for the Commission to now construe the regulation's use of the words "initial determination" to mean every step between a Final Audit Report and a Statement of Reasons. That is not how we characterized the repayment process in the Simon and Dukakis audits, and opens the Commission to an inconsistency. (See Section E, infra.)

without fear of being ruled out-of-order. The Federal Election Commission is not an appellate court, and the sophisticated rules for briefing cases in litigation are inapplicable to our fact-finding in audits.

Further, the materials sent-in by the Committee after the oral presentation were a Supplemental written response to the Final Audit Report. This material was requested by the Commission, is written and was timely submitted. Accordingly, the Supplemental Response literally complies with § 9038.2(c)(2), which means it may be considered under (c)(4).

C. Inconsistency within this Audit

The Statement's dismissal of Robertson's arguments on this issue raises a troubling inconsistency within this audit. For example, on page 13 (regarding a different issue) the Statement says:

> The Commission's downward adjustment of $11,445 ... is an offset that acknowledges and accounts for the Committee's claim that it sold furniture ... for that amount. Attachment 7 at 23.

While I agree with this downward adjustment, Attachment 7 is the Supplemental Response Robertson submitted after the Committee's oral presentation. It is inconsistent to say, within the same audit, that an argument raised at an oral hearing is untimely, but items sent-in after it are not.[6]

In fact, the Commission reduced Robertson's repayment by almost $100,000 after the oral hearing based on the Supplemental Response. Even factual arguments that were not accepted by the Commission were at least acknowledged. Only the three year repayment section of Robertson's Supplemental Response was ignored.

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6. Some may argue that a distinction can be made between allowing evidence to be submitted late, but not arguments. I think it should be just the other way around: the failure to present evidence after the record has closed should bar its later introduction, but any argument can be made before the Statement of Reasons is approved. That way, the Commission encourages the prompt submission of materials, and recognizes that new arguments develop over the course of a audit, and during the entire presidential audit cycle.

D. Why did Robertson wait to raise this issue until the Oral Hearing ?

In its Supplemental Response, the Committee also stated it is submitting:

> additional documentation to corroborate the information in its June 25, 1992 response to the Final Audit Report ... We note for the record that the Committee offered to submit additional information after our June 25, 1992 submission but were advised by the Office of General Counsel on several occasions that the record was closed and that we were not permitted to file materials until after the oral presentation.

Attachment 7 at 2-3.

I personally find it very troubling that the Robertson Committee may have been lead down a garden path with the advice that they should not write in with any new arguments before the hearing, but that those arguments it did raise at or after the hearing would be out of order.

E. The Simon and Dukakis Audits

After Robertson submitted his Supplemental Response, and while his audit was in the General Counsel's office for 9 months, the Commission squarely addressed the merits of the three year repayment issue in two other 1988 Presidential audits.

On February 25, 1993, the Commission approved a Statement of Reasons in the Dukakis for President Audit, and on March 4, 1993, the Commission approved a Statement of Reasons in Paul Simon for President Audit. Each of these Statements addressed the merits of the committee's contention that the Commission was improperly seeking a repayment from them beyond the three year statute of limitations.[7]

The Commission decided the Commission was in compliance with the three year rule. The Commission held that a candidate's receipt of an Interim Audit Report's initial repayment determination within three years of his party's nominating convention constituted compliance with § 9038(c). Dukakis Statement of Reasons at 8; Simon Statement of Reasons at 57. Therefore, a committee's subsequent receipt of a Final Audit Report (with a revised "initial repayment determination") or a later Statement of

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7. The three year notification period for Democratic candidates expired on July 20, 1991.

Reasons (with a still-different "final repayment determination") beyond the three year period is not violative of § 9038(c), since the Interim Audit Report served as a basis for those later adjusted repayment amounts.

I voted for the Simon and Dukakis Statements in defense of the U.S. Treasury. I expected the Commission would vote that same way in the Robertson Statement. But before Robertson's audit came up for its final vote, Simon and Dukakis filed a petition for judicial review of the the Commission's judgment. Simon for President, Inc. v. Federal Election Comm., No. 93-1252 (D.C. Cir. filed April 2, 1993); Dukakis for President Cmte., Inc. v. Federal Election Comm., No. 93-1219 (D.C. Cir. filed March 19, 1993).

After those suits were filed, the General Counsel submitted the Robertson Statement of Reasons which denied Robertson's ability to make the same arguments Simon and Dukakis did. The basis for this distinction is that Simon and Dukakis raised their objections in their first response to their Final Audit Reports, while Robertson raised it in his oral hearing and Supplemental Response to the Final Audit Report.

To me, it is inequitable to say two Presidential committees can raise (and litigate) an issue, but a third committee cannot, even though that committee raised the issue before the Commission resolved the issue in the first two audits.[8]

F. Kennedy for President litigation

Lastly, I think the Statement's reliance on a footnote in Kennedy for President Cmte. v. FEC, 734 F.2d 1558, 1560 n.2 (D.C. Cir. 1984) is misplaced. Statement at 7. In fact, that footnote actually helps Robertson's case. In allowing the Kennedy Committee to make its allegedly late arguments, the court said:

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8. During the Commission's deliberation of the Robertson Statement of Reasons, the General Counsel warned the Commission that allowing Robertson to raise his objection at this stage means the Jackson and Bush committees might try to raise it as well. That is preposterous, since Jackson and Bush have already made their repayments and their audits have been closed for almost a year. Further, the General Counsel argued just the opposite in the 1984 cycle, saying the Commission should not re-open the Hollings and McGovern audits even though we changed how we calculate repayments in the later, Mondale audit.

> Moreover, the Committee raised the repayment formula issue three months before the FEC made its final determination in this case. (emphasis added).

Id.

That is what the Robertson Committee did, as well. They raised their 3 year repayment argument before the Commission's Final Repayment Determination. The only factual difference is that Robertson raised it nine months before the Final Repayment Determination, and Kennedy only three.

Conclusion

The Commission has voted that Robertson is time-barred from claiming the Commission is time-barred from seeking a repayment from him. As the Commission argues over procedures, this audit grows older and older. Robertson withdrew from the Presidential race five and one half years ago, yet we have not finished our work.

In my opinion, if you add up the facts that:

* the Committee's prepared statement and testimony at the oral hearing discussed the 3 year repayment issue;
* that a Commissioner specifically quizzed the Committee on this issue;
* that the Commission specifically requested information from the Committee after the hearing;
* that those materials were timely submitted and contained additional arguments about the statute of limitations; and
* that the Committee was told not to submit any arguments before the oral hearing

forces me to believe that Robertson's objections are properly before us. On the basis of this Commission's history, I think fairness demands it.

Lee Ann Elliott

Lee Ann Elliott
Commissioner
October 8, 1993

FEDERAL ELECTION COMMISSION AUDIT AND REPAYMENT PROCESS UNDER THE PRESIDENTIAL PRIMARY MATCHING PAYMENT ACCOUNT ACT

RIOD OR PROCESS	PROCEDURE	ROBERTSON
titlement Period 9036, 9037	• Presidential Primaries (receipt of matching funds) • National Convention (end of matching period)	August 18, 1988
amination Period 038.1	• Audit fieldwork with candidate's committee • Exit Conference between FEC auditors and committee • Optional submission of documents	July 5, 1988 - October 14, 1988 November 29, 1988
itial termination ocess 038.2(c)(1)	• FEC Interim Audit Report (preliminary repayment calculation) • Response to Interim Audit • FEC Final Audit Report (initial repayment determination)	December 19, 1989 June 25, 1990 March 26, 1992
nal Determination ocess 038.2(c)(2),(3)&(4)	• Response to Final Audit (request for oral hearing) • Oral Presentation • Supplemental response to Final Audit Report • Statement of Reasons (final repayment determination)	June 25, 1992 December 2, 1992 December 9, 1992 September 23, 1993
hearing and ppellate Rights § 9038.2(h); 9038.5	• Petition for Rehearing (optional) • Petition for Stay of Repayment (optional) • Appeal of Repayment Determination to U.S. Court of Appeals (optional)	

Cites are to the Commission's Regulations)

Dissent

FEDERAL ELECTION COMMISSION

December 15, 1993

MEMORANDUM

TO: Fred Eiland
Chief, Press Office

FROM: Kim Bright-Coleman KBC
Associate General Counsel

SUBJECT: Dissenting Statement of Reasons - Americans for Robertson, Inc.

Attached is a copy of a dissenting statement of reasons issued by Commissioner Elliott with respect ot the final repayment determination for Marion G. ("Pat") Robertson and Americans for Robertson, Inc. approved by the Commission on September 23, 1993. Informational copies have been received by all parties involved and the document may be released to the public.

Attachment as stated

cc: Audit Division
Public Disclosure
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

DISSENTING STATEMENT OF REASONS

In the Matter of:)
)
Marion G. ("Pat") Robertson)
and Americans for Robertson, Inc.)

Commissioner Lee Ann Elliott

Introduction

I dissent from the Statement of Reasons issued in this audit which states the Robertson Committee is time-barred from arguing the Commission has not complied with the three year statute of limitations provision at 26 U.S.C. § 9038(c). In my opinion, Robertson's arguments were properly raised, and the Commission should have resolved their objection on the merits, as we have done in two other Presidential audits this cycle.

Statement of Facts

On March 26, 1992, the Federal Election Commission issued a Final Audit Report to the Robertson Committee.[1] This Report contained an "initial repayment determination" that the Committee may have to repay $388,543.78 to the United States Treasury. 11 C.F.R. § 9038.2(c)(1). This repayment is for federal funds the Robertson Committee incorrectly received or misspent pursuant to the Presidential Primary Matching Payment Account Act. 26 U.S.C. §§ 9031, 9038. This Act, however, specifies that the Commission may not issue a repayment notification more than three years after the close of the matching payment period.[2] 26 U.S.C. § 9038(c).

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1. See attached description of the FEC's audit process and chronology of the Robertson audit.

2. Specifically, § 9038(c) states:

> No [repayment] notification shall be made by the Commission under subsection (b) with respect to a matching payment period more than 3 years after the end of such period.

Pursuant to our regulations, the Committee submitted a written response to the Commission's Final Audit Report on June 25, 1992. 11 C.F.R. § 9038.2(c)(2). The response detailed numerous factual and legal disagreements the Committee had with the Commission's audit and legal analysis, but did not argue the Commission had not complied with § 9038(c). The Committee's response also requested an opportunity to make an oral presentation before the Commission pursuant to 11 C.F.R. § 9038.2(c)(3).

At its December 2, 1992 oral presentation, the Committee specifically stated:

> that the statute requires the Commission to notify the Campaign Committee of its final repayment within three years of receipt of the last matching payment amount. The Commission has not met this obligation in this matter.

Transcript of Oral Presentation at 14. In addition, Commissioner McDonald quizzed the Committee on this specific point, and the Committee responded pursuant to its right to "answer any questions from individual members of the Commission." 11 C.F.R. § 9038.2(c)(3). Transcript at 30-35.

Also, at the beginning and end of the hearing, then-Chairman Aikens reminded the Committee that it had 5 days to submit supplemental information to support the arguments it raised during the hearing. Transcript at 4, 77. On December 9, 1992, Robertson submitted these additional materials in a "Supplemental Response" that, among other things, thoroughly addressed the three year repayment issue. Supplemental Response at 23-25.

The Commission's Statement

Nine months after the hearing, on September 23, 1993, the Commission considered a draft "Statement of Reasons" containing a "Final Repayment Determination" that the Robertson Committee will have to repay $290,793.66 to the U.S. Treasury. The Statement accepted several of Robertson's written or oral arguments about evidence submitted before, during and after its oral presentation. See, e.g., Statement at 17. The Statement, however, said

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(Footnote 2 continued from previous page)
For Robertson, the statute of limitations expired August 18, 1991, three years after the Republican Party nominated George Bush for President. 26 U.S.C. § 9032(6).

the Commission "will not consider" the Committee's argument that the Commission has not complied with the three year statute of limitations. Statement at 9-10.

The Statement maintains the Robertson Committee "improperly raised the issue of whether the Commission satisfied the three year period for notifying the Committee of its repayment obligation to the United States Treasury." Statement at 7. The Statement bases this argument on three regulations: 11 C.F.R. § 9038.5(b) and §§ 9038.2(c)(2) and (c)(3). These regulations govern the procedures for repayment proceedings at the Commission.

Section 9038.5(b) states that a candidate's committee must raise its objections to a repayment determination in a timely manner, and that the failure to raise an argument in a timely fashion during the initial determination process shall be deemed a waiver of the right to present such arguments in the future.

Section 9038.2(c)(2) states that a candidate has 30 days to submit legal and factual materials to dispute an initial repayment determination. Subsection (c)(3) states that a candidate may also make an oral presentation to the Commission based on the legal and factual materials submitted under § 9038.2(c)(2).

The Statement concluded that since Robertson did not raise an objection about the three year statute of limitations in his written materials submitted right after the Final Audit Report's initial repayment determination, he is barred from raising it at the oral hearing or thereafter. Statement at 9-10. See also Kennedy for President Cmte. v. Federal Election Comm., 734 F.2d 1558, 1560 n.2 (D.C. Cir. 1984).

Analysis

I do not think the Commission has advanced an adequate basis for dismissing Robertson's objections. Just the opposite, I think Robertson's arguments were properly, repeatedly and timely raised before this agency, similar to other audits in this cycle. Further, I think the Commission has misapplied § 9038.5 and failed to apply subsection (4) of §9038.2(c).

A. 11 C.F.R. § 9038.5

The Statement's use of 11 C.F.R. § 9038.5 as a basis to dismiss Robertson's argument is improper. That regulation is entitled "Petitions for rehearing, stays of

repayment determination." To be clear, a Statement of Reasons is neither a petition for rehearing nor a stay of repayment. It is a Final Repayment Determination. 11 C.F.R. §9038.2(c)(4) (see attached summary of the Commission's audit procedures). So by its very title, any cite to this regulation seems inapplicable.

Even if we can get beyond the title; nothing in the text of § 9038.5(b) helps the Statement's conclusion:

1. By its very text, § 9038.5(b) only governs the failure to raise arguments during the "initial determination process or in a petition for rehearing." [3] Approving a Statement of Reasons is not part of the initial determination process nor is it part of a petition for rehearing. As previously stated, a Statement of Reasons justifies the "Final Repayment Determination." The "initial determination process" ended with the passage of the Final Audit Report on March 26, 1992. The December 2, 1992 oral hearing was designed to influence the Statement of Reasons, which is part of the "final determination" as defined in 11 C.F.R. § 9038.2(c)(4). [4]

2. Even if I construe § 9038.5(b)'s use of words "initial determination" to mean every step that could take place after the Final Audit Report - then I still can't exclude Robertson's arguments, since § 9038.5(b) only excludes arguments not made in the "initial determination process." The oral hearing is

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3. Section 9038.5(b) states in full:

Effect of failure to raise issues. The candidate's failure to raise an argument in a timely fashion during the initial determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in a future stage of proceedings including any petition for review filed under 26 U.S.C. § 9041(a). An issue is not timely raised in a petition for rehearing if it could have been raised in response to the Commission's initial determination.

4. Using 9038.5(b) as the majority suggests only means Robertson must now raise the three year repayment issue in a Petition for Rehearing under 11 C.F.R. § 9038.5(a). Requiring the Committee to jump these procedural hurdles will really only accomplish one thing: it will add another six months to this already aged audit.

specifically itemized as part of the repayment process under § 9038.2(c)(3), so Robertson's arguments can still be heard as part of the overall process.[5]

3. Next, § 9038.5(b)'s warning about the failure to raise "arguments" actually makes no distinction between written and oral arguments. It just says "arguments." Accordingly, the regulation could be read to exclude Robertson's objection only if he had not raised it in either his written comments or his oral testimony. The regulation should not be read, however, to say that the initial written response must contain every conceivable argument, and that Commissioners must limit their questions to what the Respondent's have already written.

B. 11 C.F.R. § 9038.2(c)

The Commission's Statement is correct that 11 C.F.R. §§ 9038.2(c)(2) and (3) say that before the Commission can make a final repayment determination the candidate has 30 days to submit written materials and may request an oral hearing. But, subsection (c)(4) then says:

> In making its final repayment determination, the Commission will consider any [written] submission ... and any oral presentation made ... (emphasis added)

11 C.F.R. § 9038.2(c)(4)

In my opinion, our regulations clearly state the Commission will consider what is said in an oral presentation before making a final repayment determination. This must hold true regardless of whether everything that is said has also been written in "the legal and factual materials [already] submitted under 11 C.F.R. § 9038.2(c)(2)." 11 C.F.R, § 9038.2(c)(3).

In my opinion, there is no reason for the Commission to have oral presentations if we are going to ignore what comes up in them. The Statement's restrictive reading of our regulations means that Robertson's oral presentation could only be a mere verbal recitation of what the Committee already wrote. An oral presentation should explore any subject a Commissioner or presenter wishes,

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5. Also, it is dangerous for the Commission to now construe the regulation's use of the words "initial determination" to mean every step between a Final Audit Report and a Statement of Reasons. That is not how we characterized the repayment process in the Simon and Dukakis audits, and opens the Commission to an inconsistency. (See Section E, infra.)

without fear of being ruled out-of-order. The Federal Election Commission is not an appellate court, and the sophisticated rules for briefing cases in litigation are inapplicable to our fact-finding in audits.

Further, the materials sent-in by the Committee after the oral presentation were a Supplemental written response to the Final Audit Report. This material was requested by the Commission, is written and was timely submitted. Accordingly, the Supplemental Response literally complies with § 9038.2(c)(2), which means it may be considered under (c)(4).

C. Inconsistency within this Audit

The Statement's dismissal of Robertson's arguments on this issue raises a troubling inconsistency within this audit. For example, on page 13 (regarding a different issue) the Statement says:

> The Commission's downward adjustment of $11,445 ... is an offset that acknowledges and accounts for the Committee's claim that it sold furniture ... for that amount. Attachment 7 at 23.

While I agree with this downward adjustment, Attachment 7 is the Supplemental Response Robertson submitted after the Committee's oral presentation. It is inconsistent to say, within the same audit, that an argument raised at an oral hearing is untimely, but items sent-in after it are not.[6]

In fact, the Commission reduced Robertson's repayment by almost $100,000 after the oral hearing based on the Supplemental Response. Even factual arguments that were not accepted by the Commission were at least acknowledged. Only the three year repayment section of Robertson's Supplemental Response was ignored.

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6. Some may argue that a distinction can be made between allowing evidence to be submitted late, but not arguments. I think it should be just the other way around: the failure to present evidence after the record has closed should bar its later introduction, but any argument can be made before the Statement of Reasons is approved. That way, the Commission encourages the prompt submission of materials, and recognizes that new arguments develop over the course of a audit, and during the entire presidential audit cycle.

D. Why did Robertson wait to raise this issue until the Oral Hearing ?

In its Supplemental Response, the Committee also stated it is submitting:

> additional documentation to corroborate the information in its June 25, 1992 response to the Final Audit Report ... We note for the record that the Committee offered to submit additional information after our June 25, 1992 submission but were advised by the Office of General Counsel on several occasions that the record was closed and that we were not permitted to file materials until after the oral presentation.

Attachment 7 at 2-3.

I personally find it very troubling that the Robertson Committee may have been lead down a garden path with the advice that they should not write in with any new arguments before the hearing, but that those arguments it did raise at or after the hearing would be out of order.

E. The Simon and Dukakis Audits

After Robertson submitted his Supplemental Response, and while his audit was in the General Counsel's office for 9 months, the Commission squarely addressed the merits of the three year repayment issue in two other 1988 Presidential audits.

On February 25, 1993, the Commission approved a Statement of Reasons in the Dukakis for President Audit, and on March 4, 1993, the Commission approved a Statement of Reasons in Paul Simon for President Audit. Each of these Statements addressed the merits of the committee's contention that the Commission was improperly seeking a repayment from them beyond the three year statute of limitations.[7]

The Commission decided the Commission was in compliance with the three year rule. The Commission held that a candidate's receipt of an Interim Audit Report's initial repayment determination within three years of his party's nominating convention constituted compliance with § 9038(c). Dukakis Statement of Reasons at 8; Simon Statement of Reasons at 57. Therefore, a committee's subsequent receipt of a Final Audit Report (with a revised "initial repayment determination") or a later Statement of

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7. The three year notification period for Democratic candidates expired on July 20, 1991.

Reasons (with a still-different "final repayment determination") beyond the three year period is not violative of § 9038(c), since the Interim Audit Report served as a basis for those later adjusted repayment amounts.

I voted for the Simon and Dukakis Statements in defense of the U.S. Treasury. I expected the Commission would vote that same way in the Robertson Statement. But before Robertson's audit came up for its final vote, Simon and Dukakis filed a petition for judicial review of the the Commission's judgment. Simon for President, Inc. v. Federal Election Comm., No. 93-1252 (D.C. Cir. filed April 2, 1993); Dukakis for President Cmte., Inc. v. Federal Election Comm., No. 93-1219 (D.C. Cir. filed March 19, 1993).

After those suits were filed, the General Counsel submitted the Robertson Statement of Reasons which denied Robertson's ability to make the same arguments Simon and Dukakis did. The basis for this distinction is that Simon and Dukakis raised their objections in their first response to their Final Audit Reports, while Robertson raised it in his oral hearing and Supplemental Response to the Final Audit Report.

To me, it is inequitable to say two Presidential committees can raise (and litigate) an issue, but a third committee cannot, even though that committee raised the issue before the Commission resolved the issue in the first two audits.[8]

F. Kennedy for President litigation

Lastly, I think the Statement's reliance on a footnote in Kennedy for President Cmte. v. FEC, 734 F.2d 1558, 1560 n.2 (D.C. Cir. 1984) is misplaced. Statement at 7. In fact, that footnote actually helps Robertson's case. In allowing the Kennedy Committee to make its allegedly late arguments, the court said:

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8. During the Commission's deliberation of the Robertson Statement of Reasons, the General Counsel warned the Commission that allowing Robertson to raise his objection at this stage means the Jackson and Bush committees might try to raise it as well. That is preposterous, since Jackson and Bush have already made their repayments and their audits have been closed for almost a year. Further, the General Counsel argued just the opposite in the 1984 cycle, saying the Commission should not re-open the Hollings and McGovern audits even though we changed how we calculate repayments in the later, Mondale audit.

> Moreover, the Committee raised the repayment formula issue three months before the FEC made its final determination in this case. (emphasis added).

Id.

That is what the Robertson Committee did, as well. They raised their 3 year repayment argument before the Commission's Final Repayment Determination. The only factual difference is that Robertson raised it nine months before the Final Repayment Determination, and Kennedy only three.

Conclusion

The Commission has voted that Robertson is time-barred from claiming the Commission is time-barred from seeking a repayment from him. As the Commission argues over procedures, this audit grows older and older. Robertson withdrew from the Presidential race five and one half years ago, yet we have not finished our work.

In my opinion, if you add up the facts that:

* the Committee's prepared statement and testimony at the oral hearing discussed the 3 year repayment issue;
* that a Commissioner specifically quizzed the Committee on this issue;
* that the Commission specifically requested information from the Committee after the hearing;
* that those materials were timely submitted and contained additional arguments about the statute of limitations; and
* that the Committee was told not to submit any arguments before the oral hearing

forces me to believe that Robertson's objections are properly before us. On the basis of this Commission's history, I think fairness demands it.

Lee Ann Elliott

Lee Ann Elliott
Commissioner
October 8, 1993

FEDERAL ELECTION COMMISSION AUDIT AND REPAYMENT PROCESS UNDER THE PRESIDENTIAL PRIMARY MATCHING PAYMENT ACCOUNT ACT

IOD OR PROCESS	PROCEDURE	ROBERTSON
itlement Period 9036, 9037	• Presidential Primaries (receipt of matching funds) • National Convention (end of matching period)	August 18, 1988
mination Period 038.1	• Audit fieldwork with candidate's committee • Exit Conference between FEC auditors and committee • Optional submission of documents	July 5, 1988 - October 14, 1988 November 29, 1988
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nal Determination ocess 038.2(c)(2),(3)&(4)	• Response to Final Audit (request for oral hearing) • Oral Presentation • Supplemental response to Final Audit Report • Statement of Reasons (final repayment determination)	June 25, 1992 December 2, 1992 December 9, 1992 September 23, 1993
hearing and pellate Rights 9038.2(h); 9038.5	• Petition for Rehearing (optional) • Petition for Stay of Repayment (optional) • Appeal of Repayment Determination to U.S. Court of Appeals (optional)	

ites are to the Commission's Regulations)

Public records

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DATE & TIME TRANSMITTED: WEDNESDAY, NOVEMBER 24, 1993 4:00

BALLOT DEADLINE: TUESDAY, NOVEMBER 30, 1993 4:00

COMMISSIONER: AIKENS, ELLIOTT, McDONALD, McGARRY, POTTER, THOMAS

SUBJECT: RATIFICATION OF REPAYMENT DETERMINATIONS FOR 1988 PRESIDENTIAL CAMPAIGNS. MEMORANDUM TO THE COMMISSION FROM THE OFFICE OF THE GENERAL COUNSEL DATED NOVEMBER 24, 1993.

( ) I approve the recommendation(s)

( ) I object to the recommendation(s)

COMMENTS: _____

_____

_____

DATE: _____ SIGNATURE: _____

A definite vote is required. All ballots must be signed and dated.
Please return ONLY THE BALLOT to the Commission Secretary.
Please return ballot no later than date and time shown above.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION

RECEIVED
F.E.C.
SECRETARIAT
93 NOV 24 AM 10:43

FEDERAL ELECTION COMMISSION
WASHINGTON

November 24, 1993

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman KBC
Associate General Counsel

SUBJECT: Ratification of Repayment Determinations for 1988 Presidential Campaigns

On November 9, 1993, the Commission approved the Office of General Counsel's recommendation to ratify the repayment determinations made with respect to the 1988 presidential campaigns in light of FEC v. NRA Political Victory Fund, No. 91-5360 (D.C. Cir. Oct. 22, 1993). Accordingly, we have prepared this memorandum to effect the ratification of each preliminary repayment calculation, initial repayment determination, and final repayment determination for each publicly financed presidential campaign for the 1988 presidential election cycle in which the repayment determination is not yet finally closed and paid. The ratification would confirm the repayment determinations made with respect to Americans for Robertson, Inc., Paul Simon for President, Dukakis for President Committee, Inc., and LaRouche Democratic Campaign. Each of these committees instituted suits challenging the Commission's repayment determinations that are ongoing.

Attached for your information are copies of the certifications for the previous approval of the preliminary repayment calculation, initial repayment determination, and final repayment determination for each committee.[1]

1/ It should be noted that the preliminary repayment calculation is contained in the interim audit report and the initial repayment determination is set forth in the final audit report for each committee. The final repayment determination is supported by a statement of reasons. The certifications are for the Commission's approval of these documents.

RECOMMENDATION

The Office of General Counsel recommends that the Commission ratify the preliminary repayment calculations, initial repayment determinations, and final repayment determinations made with respect to the following 1988 publicly financed presidential candidates and committees:

Marion G. Robertson and Americans for Robertson, Inc.;
Michael S. Dukakis and Dukakis for President Committee, Inc.;
Senator Paul Simon and Paul Simon for President; and
Lyndon H. LaRouche and LaRouche Democratic Campaign.

Attachments

Certification of Commission votes on the interim audit reports, final audit reports and statements of reasons

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Document
Americans for Robertson, Inc.	)	#X89-87
Interim Audit Report	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on December 19, 1989, do hereby certify that the Commission decided by a vote of 6-0 to approve the Interim Audit Report on Americans for Robertson, Inc. as submitted in Agenda Document #X89-87, subject to amendment of recommendation 29, and certain other amendments agreed to during the meeting discussion.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

12-27-89
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Americans for Robertson, Inc. - Final Audit Report.	)	Agenda Document #92-46

CERTIFICATION

I, Delores R. Harris, recording secretary for the Federal Election Commission open meeting on Thursday, March 26, 1992, do hereby certify that the Commission took the following actions in the above-captioned matter:

1. Decided by votes of 5-0 to approve recommendations 1-8, as submitted in Agenda Document #92-46.

   Commissioners Aikens, Elliott, McDonald, McGarry and Thomas voted affirmatively for the decisions; Commissioner Potter was not present.

(continued)

Federal Election Commission
Certification for Americans
for Robertson, Inc. - Final
Audit Report
Thursday, March 26, 1992

2. Decided by a vote of 5-0 to approve the Final Audit Report - Americans for Robertson, Inc., as submitted in Agenda Document #92-46, and as amended by the Audit Division to add a footnote regarding the overall limitation.

Commissioners Aikens, Elliott, McDonald, McGarry and Thomas voted affirmatively for the decision; Commissioner Potter was not present.

Attest:

March 27, 1992
Date

Delores R. Harris
Delores R. Harris
Administrative Assistant

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Americans for Robertson, Inc. - Final Repayment Determination Proposed Statement of Reasons (LRA #335).	)	Agenda Documents #93-76 and #93-76-A

CERTIFICATION

I, Delores Hardy, recording secretary for the Federal Election Commission open meeting on Thursday, September 23, 1993, do hereby certify that the Commission took the following actions on Agenda Document #93-76:

1. Decided by a vote of 5-1 to approve Section II, as submitted in Agenda Document #93-76, subject to the addition of a footnote with language acknowledging the distinction between raising new legal issues versus factual materials in response to Commissioners inquiries on issues previously raised.

   Commissioners Aikens, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented.

(continued)

Federal Election Commission
Certification for
American for Robertson, Inc.
Final Repayment Determination and
Proposed Statement of Reasons
(LRA #335).
September 23, 1993

2. Decided by a vote of 5-1 to:

a. Determine that Marion G. Robertson and Americans for Robertson, Inc. must repay $290,793.66 to the United States Treasury;

b. Order Marion G. Robertson and Americans for Robertson, Inc. to refund $105,634.56 to certain press organizations; and

c. Approve the Statement of Reasons in support of the final repayment determination and refund order, as recommended in Agenda Document #93-76, subject to the amendments agreed upon pursuant to the meeting discussion.

Commissioners Aikens, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented and will issue a statement of reasons.

Attest:

September 24 1993
Date

Delores Hardy
Delores Hardy
Administrative Assistant

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Interim Audit Report -)
Dukakis for President)
Committee, Inc.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 14, 1990, the Commission decided by a vote of 5-1 to approve the Interim Audit Report - Dukakis for President Committee, Inc., as submitted under staff memorandum dated February 8, 1990.

Commissioners Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision; Commissioner Aikens dissented.

Attest:

2-14-90
Date

Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat:	Thursday,	Feb. 8, 1990	3:05 p.m.
Circulated to the Commission:	Friday,	Feb. 9, 1990	12:00 p.m.
Deadline for vote:	Tuesday,	Feb. 13, 1990	4:00 p.m.
Objection received:	Monday,	Feb. 12, 1990	5:17 p.m.
Placed on Agenda for:	Tuesday,	Feb. 27, 1990	
Objection withdrawn:	Wednesday,	Feb. 14, 1990	12:20 p.m.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) Agenda Document #91-99
Dukakis for President Committee, Inc.)

CERTIFICATION

I, Delores R. Harris, recording secretary for the Federal Election Commission open meeting on October 10, 1991, do hereby certify that the Commission took the following actions on Agenda Document #91-99:

1. Decided by votes of 5-0 to:

   a. approve recommendation 1, as found on page 6 (bottom pagination).

   b. approve recommendation 2, as found on page 7 (bottom pagination).

   c. approve recommendation 3, as found on page 25 (bottom pagination).

   d. approve recommendation 5, as found on page 35 (bottom pagination).

   e. approve recommendation 6, as found on page 37 (bottom pagination).

   Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decisions; Commissioner Josefiak was not present.

(continued)

2. Decided by a vote of 4-1 to approve recommendation 4, except have the Audit Division revise the calculations to back out of the surplus calculation, those contributions which the committee has indicated were transferred over to the General Election Legal and Compliance Fund within 60 days or less.

Commissioners Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens dissented; and Commissioner Josefiak was not present.

Attest:

October 11, 1991
Date

Delores R. Harris
Delores R. Harris
Administrative Assistant

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Document
Governor Michael S. Dukakis and	)	#93-14
the Dukakis for President Committee,	)	
Inc. - Proposed Final Repayment	)	
Determination and Statement of Reasons	)	
(LRA #340).	)	

CERTIFICATION

I, Delores Hardy, recording secretary for the Federal Election Commission open meeting on Thursday, February 25, 1993, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions with respect to the above-captioned matter:

1. Determine that Governor Michael S. Dukakis and the Dukakis for President Committee, Inc. must repay $491,282.31 to the United States Treasury; and

2. Approve the draft Statement of Reasons in support of the final repayment determination, as recommended in the General Counsel's report dated February 8, 1993.

(continued)

Federal Election Commission
Certification for
Governor Michael S. Dukakis and
the Dukakis for President Committee,
Inc. - Proposed Final Repayment
Determination and Statement of Reasons
Thursday, February 25, 1993

3. Direct the General Counsel's office to reopen negotiations with Governor Michael S. Dukakis and the Dukakis for President Committee, Inc.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision. Commissioner Potter was not present at the time of the vote.

Attest:

March 1 1993
Date

Delores Hardy
Delores Hardy
Administrative Assistant

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) Agenda Document
Interim Audit Report on Paul Simon) #X90-039
for President)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on June 26, 1990, do hereby certify that the Commission took the following actions with respect to the Interim Audit Report on Paul Simon for President as submitted under FEC Audit Division memorandum dated June 13, 1990:

1. Decided by a vote of 5-0 to approve recommendation #1 on pages four and five of the audit report.

   Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

2. Decided by a vote of 5-0 to approve recommendation #2 on page seven of the audit report.

   Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

(continued)

3. Decided by a vote of 5-0 to approve recommendation #3 on page eight of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

4. Decided by a vote of 5-0 to approve recommendation #4 on page ten of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

5. Decided by a vote of 5-0 to approve recommendation #5 on page eleven of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

(continued)

6. Decided by a vote of 5-0 to approve recommendation #6 on page twelve of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

7. Decided by a vote of 5-0 to approve recommendation #7 on page twelve of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

8. Decided by a vote of 5-0 to approve recommendation #8 on page thirteen of of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

(continued)

9. Decided by a vote of 5-0 to approve recommendation #10 on page forty-two of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

10. Decided by a vote of 5-0 to approve recommendation #9 on page twenty-seven of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

11. Decided by a vote of 5-0 to approve recommendation #11 on page forty-three of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

(continued)

12. Failed in a vote of 2-3 to pass a motion to approve recommendation #12 on pages forty-six and forty-seven of the audit report.

Commissioners Elliott and Josefiak voted affirmatively for the motion; Commissioners McDonald, McGarry, and Thomas dissented; Commissioner Aikens was not present.

13. Failed in a vote of 3-2 to pass a motion to approve recommendation #12 on pages forty-six and forty-seven of the audit report, subject to amendment of the last section to delete the third part, thereby reducing the recommended repayment to zero.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Elliott and Josefiak dissented; Commissioner Aikens was not present.

(continued)

14. Decided by a vote of 5-0 to direct the Audit Division to amend the audit report to show the split votes with respect to recommendation #12 on pages forty-six and forty-seven, using the language incorporated in previous audit reports.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

15. Failed in a vote of 2-3 to pass a motion to approve recommendation #13 on page fifty-one of the audit report.

Commissioners Elliott and Josefiak voted affirmatively for the motion; Commissioners McDonald, McGarry, and Thomas dissented. Commissioner Aikens was not present.

16. Failed in a vote of 3-2 to pass a motion to approve recommendation #13 on page fifty-one of the audit report, subject to amendment of the dollar amount to a figure of $56,759.89, and that the preceeding text be revised to include appropriate language in accord with this adjustment in the figures.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Elliott and Josefiak dissented. Commissioner Aikens was not present.

(continued)

17. Decided by a vote of 5-0 to direct the Audit Division to amend the audit report to reflect the split votes with respect to recommendation #13, and that the alleged double counting figure that was not agreed to would be deleted, so that the repayment figure would be $56,759.89, and that necessary language changes be made to conform with this.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

18. Failed in a vote of 2-3 to pass a motion to approve recommendation #14 on page 53 of the audit report.

Commissioners Elliott and Josefiak voted affirmatively for the motion; Commissioners McDonald, McGarry, and Thomas dissented; Commissioner Aikens was not present.

19. Failed in a vote of 3-2 to pass a motion to approve recommendation #14 on page 53 of the audit report, subject to amendment of the figures to read: $347,796.25 ($65,326.28 + $282,469.97), and that the accompanying text would be revised to include these adjustments.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Elliott and Josefiak dissented; Commissioner Aikens was not present.

(continued)

20. Decided by a vote of 5-0 to direct the Audit Division to amend the audit report to reflect the votes taken by the Commission on recommendation #14, and that the alleged double counting figure be excluded from the repayment figures, so that the repayment figure would read $347,796.25, and make the appropriate changes to the other figures and changes to the text.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not prsent.

21. Decided by a vote of 5-0 to approve recommendation #15 on page 58 of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

(continued)

22. Decided by a vote of 5-0 to approve recommendation #16 on page fifty-nine of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

23. Decided by a vote of 5-0 to direct the Audit Division to amend the report as agreed at this meeting and to circulate the amended report for Commission approval on a tally vote basis.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

Attest:

4-3-90
Date

Marjorie W. Emmons
Secretary of the Commission

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Paul Simon for President - Final Audit Report.

Agenda Document #91-82

CERTIFICATION

I, Delores Harris, recording secretary of the Federal Election Commission open meeting on August 29, 1991, do hereby certify that the Commission took the following actions with respect to Agenda Document #91-82:

1. Decided by a vote of 6-0 to:

   a. Approve recommendation #1, as found on page 9 (bottom pagination).

   b. Approve recommendation #2, as found on page 15 (bottom pagination).

Commissioners Aikens, Elliott, Josefiak, McDonald McGarry and Thomas voted affirmatively for the decision.

(continued)

2. Failed by a vote of 3-3 to pass a motion to have the Audit Division back out of Iowa and New Hampshire any cost that upon review could be identified as cost related to individuals who did not spend five days or more in Iowa or New Hampshire, and that any such provision be included in a revised audit report to be circulated to the Commission for approval on a tally vote basis.

Commissioners McDonald, McGarry and Thomas voted affirmatively for the motion; Commissioners Aikens, Elliott and Josefiak dissented.

3. Failed in a vote of 3-3 to pass a motion to approve recommendation 3, as submitted in Agenda Document #91-82.

Commissioners Aikens, Elliott and Josefiak voted affirmatively for the motion and Commissioners McDonald, McGarry and Thomas dissented.

(continued)

4. Decided in a vote of 4-2 to approve recommendation 3, as revised by backing out those expenses pertaining to salary or travel and subsistence that upon review the Audit Division finds relating to individuals who did not spend five or more days in Iowa or New Hampshire working out of the Rock Island or Boston Office, and revised to include language explaining the 3-3 split vote. The amount of repayment will be reduced accordingly.

Commissioners Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Aikens and Elliott dissented.

Attest:

September 3, 1991
Date

Delores Harris
Delores Harris
Administrative Assistant

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Paul Simon for President, Inc. Final Repayment Determination and Proposed Statement of Reasons (LRA #355).	)	Agenda Document #93-25

CERTIFICATION

I, Delores Hardy, recording secretary for the Federal Election Commission open meeting for Thursday, March 4, 1993, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions on Agenda Document #93-25:

1. Determine that Senator Paul Simon and the Paul Simon for President Committee must make a repayment to the United States Treasury, subject to the finding that the expenditures by the campaign for the Murphine Corporation be allocated as follows: 1/3 to national consulting services; 1/3 to Iowa limitations; and 1/3 to New Hampshire limitations.

2. Approve the Statement of Reasons in support of the final repayment determination, subject to the amendments agreed upon during the meeting discussion.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

March 9, 1993
Date

Delores Hardy
Delores Hardy
Administrative Assistant

23

BEFORE THE FEDERAL ELECTION COMMISSION

In the Mater of)
) Agenda Document #89-73
Interim Audit Report on)
LaRouche Democratic Campaign)

CERTIFICATION

I, Hilda Arnold, recording secretary for the Federal Election Commission executive session of September 19, 1989, do hereby certify that the Commission took the following actions with respect to the above-captioned audit:

1. Decided by a vote of 6-0 to approve recommendation 1 on page 3 of the subject audit.

   Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

2. Decided by a vote of 6-0 to approve recommendation 2 on page 4 of the subject audit.

   Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

3. Decided by a vote of 6-0 to approve recommendation 3 on page 5 of the subject audit.

   Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

4. Decided by a vote of 5-0 to approve recommendation 4 on page 6 of the subject audit.

   Commissioners Aikens, Elliott, Josefiak, McDonald and Thomas voted affirmatively for the decision; Commissioner McGarry was not present.

(continued)

5. Failed on a vote of 3-3 to pass a motion to approve recommendation 5 on page 8 of the subject audit, as recommended by the Audit Division.

Commissioners Aikens, Elliott and Josefiak voted affirmatively for the motion; Commissioners McDonald, McGarry and Thomas dissented.

6. Failed on a vote of 3-3 to pass a motion to revise recommendation 5 on page 8 of the subject audit to reduce the amount to be repaid to the U.S. Treasury to $3,658.25.

Commissioners McDonald, McGarry and Thomas voted affirmatively for the motion; Commissioners Aikens, Elliott and Josefiak dissented.

7. Decided by a vote of 5-1 to amend recommendation 5 on page 8 of the subject audit, to add certain language to be approved by the Commission.

Commissioners Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision; Commissioner Aikens dissented.

(continued)

8. Failed on a vote of 3-3 to pass a motion to approve recommendation 6 on page 10 of the subject audit, as recommended by the Audit Division.

Commissioners Aikens, Elliott and Josefiak voted affirmatively for the motion; Commissioners McDonald, McGarry and Thomas dissented.

9. Failed on a vote of 3-3 to pass a motion to approve recommendation 6 on page 10 of the subject audit to reduce the amount to be repaid to U.S. Treasury to $41,924.68.

Commissioners McDonald, McGarry and Thomas voted affirmatively for the motion; Commissioners Aikens, Elliott and Josefiak dissented.

10. Decided by a vote of 5-1 to amend recommendation 6 on page 10 of the subject audit, to add certain language to be approved by the Commission.

Commissioners Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision; Commissioner Aikens dissented.

(continued)

FEDERAL ELECTION COMMISSION
CERTIFICATION FOR INTERIM AUDIT
REPORT ON LAROUCHE DEMOCRATIC CAMPAIGN
SEPTEMBER 19, 1989

11. Decided by a vote of 6-0 to approve the Interim Audit Report on LaRouche Democratic Campaign as contained in Agenda Document #89-73, as amended at the meeting, and noted above.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

12. Decided by a vote of 6-0 to circulate to the Commission for approval, on a tally vote basis, the Interim Audit Report on LaRouche Democratic Campaign, as amended at this meeting.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

Attest:

9/21/89
Date

Hilda Arnold
Hilda Arnold
Administrative Assistant
Office of the Secretariat

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Final Audit Report on the LaRouche Democratic Campaign	)	Agenda Document #90-47

CERTIFICATION

I, Hilda Arnold, recording secretary for the Federal Election Commission meeting on May 17, 1990, do hereby certify that the Commission took the following actions with respect to Agenda Document #90-47:

Decided by a vote of 6-0 to:

1. Approve the recommendation of the Audit staff that no further action be taken with respect to Transactions Related to LaRouche Democratic Campaign Special Legal Account.

2. Make an initial determination that $1,160.95 in stale-dated checks is repayable to the United States Treasury pursuant to Section 9038.6 of Title 11 of the Code of Federal Regulations.

3. Make an initial determination that $109,148.88 in matching funds received by the Committee represents matching funds received in excess of entitlement, and that an equal amount must be repaid to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(1).

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

Decided by a vote of 5-1 to:

1. Make an initial determination that the pro rata portion of $3,634.37, concerning New Hampshire Expenditures in Excess of State Limitation, is repayable to the United States Treasury.

2. Make an initial determination that the pro rata portion of $40,949.93, concerning Apparent Non-qualified Campaign Expenses: Post-Ineligibility Campaign Expenditures, is repayable to the United States Treasury.

Commissioners Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision. Commissioner Aikens dissented.

Decided by a vote of 6-0 to:

Approve the proposed final audit report of the LaRouche Democratic Campaign as found in Agenda Document #90-47, subject to the motions already approved at this meeting.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

Attest:

May 18, 1990
Date

Hilda Arnold
Hilda Arnold
Administrative Assistant

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Document
Proposed Final Repayment Determination and Statement of Reasons -- Lyndon H. LaRouche Democratic Campaign (LRA #326).	)	#92-119

CERTIFICATION

I, Delores R. Hardy, recording secretary for the Federal Election Commission open meeting on Thursday, September 17, 1992, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions with respect to Agenda Document #92-119:

1. Determine that Lyndon H. LaRouche, Jr. and the LaRouche Democratic Campaign must repay $151,259.76 to the United States Treasury; and

2. Approve the draft Statement of Reasons in support of the final repayment determination, as recommended in the General Counsel's report dated September 3, 1992.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

September 18, 1992
Date

Delores R. Hardy
Delores R. Hardy
Administrative Assistant