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February 24, 2010

VIA E-MAIL

Lynn M. Fraser
Director
Alternative Disputes Resolution Office
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: ADR 528 - DNC Services Corporation/Democratic National Committee and Andrew Tobias, as Treasurer

Dear Ms Fraser:

This letter and attachment constitutes the response of the above entities ("the Committee") to the notice of issues referred by the Reports Analysis Division to your office for resolution. We appreciate the opportunity to provide you with this information and look forward to finding a mutually acceptable method for addressing the concerns that have been brought to your attention.

RAD Referrals

Your initial letter describes the referral from RAD as involving "a series of reporting errors and other FECA violations during the 2008 election cycle." While we dispute the characterization of these matters as "errors" and "violations," in the spirit of trying to find a satisfactory resolution, we offer the following comments.

The matters referred by RAD, while spanning seven separate reports, fall into three basic categories of inquiries, each of which are discussed in more detail below:

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1. Questions about Offsets to Operating Expenditures

In the majority of the referrals, RAD cites the Committee for failing to provide supporting schedules by questioning a series of offsets to operating expenditure received by the Committee from sources which, it appears to RAD, were never paid by the Committee in the first place. In response to each inquiry, the Committee is able to explain the reason that the offset reported did not match up with the original operating expenditure payment. For example, in some cases, the offset involved employee payments for COBRA. The original operating expense reported was a payment to the health insurance company. Others involved cost sharing arrangements where the Committee paid for the original service in full, reporting a payment to the relevant vendor, but later received payment from other entities with whom the Committee shared the cost. (Many of these expenses were related to the national nominating convention, a unique aspect of the Committee's reporting.)

The reported offsets were not violations of the law, nor were they misreported. It is, however, understandable that RAD would not be able to trace the offsets back to the original operating expenditure without further information. These types of offsets are common for the Committee and will occur again and again. It is in the Committee's interest to find a way to report these transactions so that it is clear to RAD what they are and to avoid receiving repeated RFAs for what is a lawfully reported transaction.

To this end, I believe it would be helpful to arrange a meeting with the RAD staff and the Committee compliance staff to work out a solution to the reporting issue that will meet the needs of both. While it seems there should be a simple solution – perhaps a cross-reference to the original expenditure when the offset is reported – a meeting would allow both sides to agree on the method before it is actually used.

2. Questions about Itemization of Travel Reimbursements

In three of the referrals, RAD cites the Committee for "failure to properly itemize disbursements." Each of these referrals involves a "failure to provide the name and address of original vendors" for travel and subsistence advances or for reimbursement for other goods and services. It is my understanding that the Committee has since filed amendments to address these concerns, but the request itself raised a more important issue.

The RFAs state that when reimbursements for travel and subsistence exceed \$500 or reimbursements for other goods and services exceed \$200, the payments that make up the reimbursement must be itemized as memo entries if the aggregate amount paid to a single vendor exceeds \$200 in a calendar year. As authority, the RFAI cites 11 CFR § 104.9 and Advisory Opinions 1992-1 and 1996.20, footnote 3. Section 104.9 is the section of the regulations requiring uniform reporting of expenditures, but it does not address in any way the issue of

memo entry itemization of reimbursements. Advisory Opinion 1992-1 was issued to a Congressional candidate and addressed the need to report in-kind contributions that the candidate made to his campaign in the form of expenses paid from personal funds. Advisory Opinion 1996-20 was also issued to a Member of Congress and addressed, among other issues, reimbursement of expenses of the Member's Chief of Staff to attend a national nominating convention. Footnote 3 could be read to state a memo entry disclosure rule, but the authorities cited in the footnote – 11 CFR §§ 102.9(b)(2)(i) and 116.5(c) – do not address in any way this method of disclosure. Section 102.9 deals with records required to be kept, and Section 116.5 deals with whether reimbursed expenses must be disclosed as a contribution.

It is hard to see from this authority, how the Committee could or should have known how RAD was expecting reimbursements to be reported. More importantly, given the authority cited, there is a significant question whether that expectation was correct. Reliance on a footnote in a 24-year old Advisory Opinion that was directed to a Congressional candidate does not seem to provide much notice to the Committee of the requirements of the Act. It if further undercut because there does not seem to be any authority in the statute or regulations for the requirements stated in the footnote.

The Committee is willing to discuss this issue to see if there is a way to find a non-burdensome disclosure alternative that will address the needs of both RAD and the Committee. This may, however, be an issue on which further clarification from the Commission is required.

3. Question about Public Communications/Candidate Fundraising Expenses

In four of the referrals, RAD cites the Committee for failing to "clarify public communication expenses and possible candidate fundraising expenses." To this end, RAD refers to a series of expenditures by the Committee totaling millions of dollars in categories such as "Catering, Food & Beverage," "Design/Printing," "Events-Meetings Venue Rental Fees," "Media Production," "Photography," and the like. In response to each of the inquiries, the Committee noted that all of the expenditures cited by RAD were Committee administrative expenses, not related to any candidate.

Again, these expenses are on-going for the Committee and will be disclosed on every report. The expenses are lawful operating expenses of the Committee and are properly reported. Further, the descriptions of the purposes of the disbursements are accurately reported. Again, it is in the Committee's interest to find a non-burdensome way of disclosing these expenses without continually drawing an RFAI. Perhaps there is some particularized language that would indicate to RAD that these are operating expenses rather than candidate expenses. If we have the meeting suggested in #1 above, this should also be on the agenda for discussion.

Additional Comments

Before 2009, the Committee's responses to RFAs were not handled in-house. We are aware that some of the responses were not filed timely.¹ During 2009, the responsibility for responding to FEC RFAs and other notices was brought in-house. The Committee's staff, working with outside counsel as required, now prepares all responses to RFAs and other inquiries on the reports.

As part of this new process, the Committee staff have created a tracking system to ensure all responses are complete and filed in a timely fashion. An example of this tracking system is attached for your information. We believe this will improve the Committee's ability to respond to all inquiries from RAD (which, we hope, as a result of this process, will be fewer than in the past).

In the meeting between RAD and the Committee staff proposed above, it would also be useful to discuss other ways to reduce the number of RFAs received by the Committee. It seems that the issues noted by RAD are often repeated on many reports, and if a single RFA or even a conversation can resolve the issue on the first occurrence, it will avoid needless and repetitive responses. I have asked the Committee staff to compile a list of those RFA issues that seem to come up most frequently and I would hope that we may be able to find a solution to at least some of them at this, or a future meeting.


¹ Although, in truth, looking at the seven RFAs at issue in this ADR as an example, three were filed either early or by the deadline, and of the other four, the "latest" was filed only nine days after the deadline. It is clear the Committee was very conscientious in responding to the RFAs in all circumstances. This is not a case of the Committee ignoring or inadequately responding to RFAs.

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I hope this information has been helpful for your analysis of the situation and look forward to hearing from you on how best to proceed to a resolution in this matter. Should you have any questions or need additional information, please do not hesitate to contact the undersigned.

Very truly yours,



Judith L. Corley
Counsel to DNC Services Corporation/
Democratic National Committee