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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

AUDIT REFERRAL: 99-23
AUDIT REFERRAL DATE: December 21, 1999
DATE ACTIVATED: May 17, 2000

EXPIRATION OF STATUTE
OF LIMITATIONS: March 3, 1999 - August 20, 2004¹

STAFF MEMBERS: Delanie DeWitt Painter
Angela Whitehead Quigley

SOURCE:

AUDIT REFERRAL

RESPONDENTS:

Republicans for Choice Political Action Committee
and Ann E. W. Stone, as treasurer
Direct Marketing Finance & Escrow, Inc.
Ann E. W. Stone & Associates, Inc.
Saturn Corporation
Valley Press, Inc.
Palmer Technical Services, Inc.
Direct Approach, Inc.
The Widmeyer-Baker Group, Inc.
Diversified Data Processing & Consulting, Inc.
dba Diversified Data & Communications, Inc.
Touch Tone Telemarketing, Inc.
Chicago Telemarketing, Inc.
McCarthy, Marcus, Hennings, Ltd.
Larry McCarthy

¹ These are the earliest dates the statute of limitations will expire for the following findings: (1) 1995 and 1996 monthly reports reporting violations (February 21, 2000 through January 31, 2002); (2) 1995 and 1996 comprehensive amendments reporting violations (August 16, 2004 and August 20, 2004); (3) misuse of federal and non-federal allocation ratios (January 1, 2000 through December 31, 2001); (4) loans and loan re-negotiations (March 3, 1999 through May 26, 2002); and (5) vendor debt forgiveness (2001 through August 20, 2004). With respect to the loans, while DMFE first loaned funds to the Committee beginning in 1991, this Office believes that the statute of limitations for this violation will not expire until, at the earliest, May 26, 2002. The most recent re-negotiation by DMFE and the Committee on May 26, 1997 changed the repayment terms and interest rate of the outstanding loan amounts to provide more favorable repayment terms to the Committee including a longer repayment period and a lower interest rate. Finally, with respect to the vendor debt forgiveness, the precise dates of the adjustments are unclear. The adjustments are reflected on 1996 amendments filed August 20, 1999; thus, the statute of limitations expires on August 20, 2004 at the latest but may expire in 2001.

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**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(8)(A)
2 U.S.C. § 431(8)(B)(vii)
2 U.S.C. § 434(b)
2 U.S.C. § 434(b)(3)(A)
2 U.S.C. § 434(b)(8)
2 U.S.C. §§ 437g(a)(5)(B) and (6)(C)
2 U.S.C. § 437g(d)(1).
2 U.S.C. § 438(b)
2 U.S.C. § 441a(a)(1)(C)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b
2 U.S.C. § 441b(a)
2 U.S.C. § 441b(b)(2)
11 C.F.R. § 100.7(a)(1)(i)
11 C.F.R. § 100.7(a)(1)(i)(B)
11 C.F.R. § 100.7(a)(1)(iii)
11 C.F.R. § 100.7(a)(4)
11 C.F.R. § 100.7(b)(11)
11 C.F.R. § 102.5(a)
11 C.F.R. § 102.5(a)(1)
11 C.F.R. § 102.5(a)(1)(i)
11 C.F.R. § 102.5(a)(1)(ii)
11 C.F.R. § 102.5(a)(2)
11 C.F.R. § 103
11 C.F.R. § 104.3(d)
11 C.F.R. § 104.3(d)(3)
11 C.F.R. § 104.3(d)(1)
11 C.F.R. § 104.11
11 C.F.R. § 106.5(g)
11 C.F.R. § 106.6
11 C.F.R. § 106.6(e)
11 C.F.R. § 114.2
11 C.F.R. § 114.2(b)
11 C.F.R. § 116.1(a)
11 C.F.R. § 116.1(b)
11 C.F.R. § 116.1(c)
11 C.F.R. § 116.1(d)
11 C.F.R. § 116.1(e)
11 C.F.R. § 116.2
11 C.F.R. § 116.2(b)
11 C.F.R. § 116.3
11 C.F.R. § 116.3(a)
11 C.F.R. § 116.3(b)
11 C.F.R. § 116.3(c)
11 C.F.R. § 116.4(b)

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11 C.F.R. § 116.4(c)
11 C.F.R. § 116.4(d)
11 C.F.R. § 116.5
11 C.F.R. § 116.8
11 C.F.R. § 116.8(a)
11 C.F.R. § 116.8(b)
11 C.F.R. § 116.9
11 C.F.R. § 116.9(a)
11 C.F.R. § 116.9(b)
11 C.F.R. § 116.9(c)
11 C.F.R. § 116.10

INTERNAL REPORTS CHECKED: Audit Documents; Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

Audit Referral 99-23 was generated by an audit of Republicans for Choice Political Action Committee (the "Committee") undertaken in accordance with 2 U.S.C. § 438(b). The audit covered the period from January 1, 1995 through December 31, 1996. The Commission approved the Final Audit Report on December 2, 1999, and the Audit Division referred this matter to the Office of General Counsel on December 21, 1999. Attachment 1.

The treasurer of the Committee is Ann E. W. Stone. The Committee is a non-connected organization and a multi-candidate committee which maintains its headquarters in Alexandria, Virginia.

II. FACTUAL AND LEGAL ANALYSIS

A. LAW

1. Contributions

The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455 ("the Act") provides that a contribution includes any gift, subscription, loan, advance, deposit of money or anything of value made by any person for the purpose of influencing any election for federal

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office. 2 U.S.C. § 431(8)(A); 11 C.F.R. § 100.7(a)(1). "Anything of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii).

A loan includes a guarantee, endorsement, and any other form of security. 11 C.F.R. § 100.7(a)(1)(i). A loan which exceeds the contribution limitations shall be unlawful whether or not it is repaid. *Id.* A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. 11 C.F.R. § 100.7(a)(1)(i)(B). However, loans from a State bank, a federally chartered depository institution, a depository institution where the accounts are insured by the Federal Deposit Insurance Corporation, or the National Credit Union Association and made in the ordinary course of business are not considered contributions. 2 U.S.C. § 431(8)(B)(vii); 11 C.F.R. § 100.7(b)(11).

The extension of credit by any person is a contribution unless the credit is extended in the ordinary course of the person's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. 11 C.F.R. § 100.7(a)(4). If a creditor fails to make a commercially reasonable attempt to collect the debt, a contribution will result. *Id.*; *see* 11 C.F.R. §§ 116.3 and 116.4. If a debt owed by a political committee is forgiven or settled for less than the amount owed, a contribution results unless such debt is settled in accordance with the standards set forth at 11 C.F.R. §§ 116.3 and 116.4. *Id.*

No person shall make contributions to any political committee in any calendar year which, in the aggregate, exceed \$5,000. 2 U.S.C. § 441a(a)(1)(C). No political committee shall knowingly accept any contribution that violates the contribution limitations. 2 U.S.C. § 441a(f).

Corporations are prohibited from making contributions in connection with a federal election. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b). No candidate, political committee or other person shall knowingly accept or receive a prohibited contribution. *Id.* A prohibited contribution

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includes "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services or anything of value." 2 U.S.C. § 441b(b)(2).

2. Extension of Credit and Debt Settlement

A corporation in its capacity as commercial vendor² may extend credit to a political committee or another person on behalf of a political committee provided the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.³

11 C.F.R. § 116.3(b). To determine if credit was extended in the ordinary course of the vendor's business, the Commission will consider (1) whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit; (2) whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and (3) whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry. 11 C.F.R. § 116.3(c).

The Commission's regulations provide procedures for debt settlement. *See* 11 C.F.R. part 116. Specifically, the regulations permit debt settlement between a political committee and a commercial vendor if the vendor has treated the debt in a commercially reasonable manner, namely, if the initial extension of credit was made in accordance with 11 C.F.R. § 116.3; the

² Commercial vendors are "any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services." 11 C.F.R. § 116.1(c). Extensions of credit by non-corporate commercial vendors are not contributions if credit is extended in the ordinary course of business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. 11 C.F.R. § 116.3(a).

³ Extension of credit may include, but is not limited to: (1) any agreement between the creditor and political committee that the full payment is not due until after the creditor provides goods or services to the political committee; (2) any agreement between the creditor and the political committee that the political committee will have additional time to pay the creditor beyond the previously agreed to due date; and (3) the failure of the political committee to make full payment to the creditor by a previously agreed to due date. 11 C.F.R. § 116.1(e).

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candidate or political committee has undertaken all reasonable efforts to satisfy the outstanding debt, including but not limited to, engaging in fundraising efforts, reducing overhead and administrative costs and liquidating assets; and the commercial vendor has pursued its remedies as vigorously as it would pursue its remedies against a nonpolitical debtor in similar circumstances.⁴ 11 C.F.R. § 116.4(d), *see* 11 C.F.R. §§ 116.4(b) and (c). In addition, the requirements of 11 C.F.R. §§ 116.7 or 116.8, as appropriate, including submission of information and Commission review of the debt settlement, must be satisfied. 11 C.F.R. §§ 116.4(b) and (c).

An ongoing political committee⁵ shall not settle any outstanding debts for less than the entire amount owed, but may request a Commission determination that such debts are not payable under 11 C.F.R. § 116.9 and may resolve disputed debts under 11 C.F.R. § 116.10.⁶ 11 C.F.R. § 116.2(b). A creditor may forgive the outstanding balance of a debt owed by an ongoing committee if the creditor and the ongoing committee have satisfied the requirements of 11 C.F.R. § 116.3 regarding extensions of credit by commercial vendors, the debt has been outstanding for at least 24 months, and either the creditor has exercised reasonable diligence in attempting to locate the ongoing committee and has been unable to do so; or the ongoing committee 1) does not have sufficient cash-on-hand to pay the creditor; 2) has receipts of less than \$1,000 during the previous 24 months; 3) has disbursements of less than \$1,000 during the previous 24 months; and 4) owes debts to other creditors of such magnitude that the creditor could reasonably conclude

⁴ Such remedies may include, but are not limited to: oral and written requests for payment; withholding delivery of additional goods or services until overdue debts are satisfied; imposition of additional charges or penalties for late payment; referral to a commercial debt collection service; and litigation. 11 C.F.R. § 116.4(d).

⁵ An "ongoing committee" is any political committee that has not terminated and does not qualify as a terminating committee. 11 C.F.R. § 116.1(b). *See* 11 C.F.R. § 116.1(a) (definition of terminating committee).

⁶ A disputed debt is an actual or potential debt or obligation owed by a political committee where there is a bona fide disagreement between the creditor and the political committee as to the existence or amount of the obligation owed by the political committee. 11 C.F.R. § 116.1(d); *see* 11 C.F.R. § 116.10.

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that the ongoing committee will not pay this particular debt. 11 C.F.R. § 116.8(a). A creditor that intends to forgive a debt owed by an ongoing committee shall notify the Commission by letter of its intent.⁷ 11 C.F.R. § 116.8(b).

A political committee may request that the Commission determine that a debt owed to a creditor is not payable for purposes of the Act if the debt has been outstanding for at least 24 months, the requirements of 11 C.F.R. § 116.9(b) or (c), as appropriate, have been satisfied and the creditor has gone out of business and no other entity has a right to be paid the amount owed; or the political committee has exercised reasonable diligence in attempting to locate the creditor and has been unable to do so.⁸ 11 C.F.R. § 116.9(a). An ongoing political committee shall make this request in writing and demonstrate that the requirements of 11 C.F.R. §§ 116.3, and 116.9(a) are satisfied.⁹ 11 C.F.R. § 116.9(c).

3. Allocation of Federal and Non-Federal Activity

Each political committee which finances political activity in connection with both federal and non-federal elections shall either establish a political committee which shall receive only contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with federal or non-federal elections, or establish a

⁷ The letter shall demonstrate that the requirements of 11 C.F.R. § 116.8(a) are satisfied, provide the terms of the initial extension of credit, describe the terms of the creditor's extensions of credit to nonpolitical debtors of similar risk and size of obligation; describe efforts by the candidate or ongoing committee to satisfy the debt; describe the remedies pursued by the creditor to obtain payment and compare them to remedies customarily pursued by the creditor in similar circumstances involving nonpolitical debtors; and indicate that the creditor has forgiven other debts involving nonpolitical debtors in similar circumstances, if any. 11 C.F.R. § 116.8(b).

⁸ "Reasonable diligence in attempting to locate the creditor" means the political committee has attempted to ascertain the creditor's current address and telephone number, and has attempted to contact the creditor by registered or certified mail, in person or by telephone. *Id.*

⁹ The ongoing committee shall continue to disclose the debt until the Commission has reviewed the request and determined that the debt is not payable for purposes of the Act. 11 C.F.R. § 116.9(d).

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separate federal account in a depository in accordance with 11 C.F.R. part 103.¹⁰ 11 C.F.R.

§ 102.5(a)(1). If the political committee establishes a separate federal account, the account shall be treated as a separate federal political committee which shall comply with the requirements of the Act including the registration and reporting requirements of 11 C.F.R. parts 102 and 104.

11 C.F.R. § 102.5(a)(1)(i). Only funds subject to the prohibitions and limitations of the Act shall be deposited in the separate federal account. *Id.* All disbursements, contributions, expenditures and transfers by the committee in connection with any federal election shall be made from its federal account. *Id.* No transfers may be made to such federal account from any other account(s) maintained by the political committee for the purpose of financing activity in connection with non-federal elections, except as provided in 11 C.F.R. §§ 106.5(g) and 106.6(e). *Id.* Administrative expenses shall be allocated between the federal account and any other account maintained by the committee for the purpose of financing activity in connection with non-federal elections. *Id.*

4. Reporting of Debts and Obligations

Committees are required to report the amount and nature of outstanding debts and obligations owed by or to the committee. 2 U.S.C. § 434(b)(8); 11 C.F.R. § 104.3(d). When a committee obtains a loan or establishes a line of credit it must report the date of the loan, the loan amount, the interest rate and repayment schedule, and certification from the lending institution that the loan or extension of credit was made on terms and conditions no more favorable than for other customers with similar credit worthiness. 11 C.F.R. § 104.3(d)(1). Committees must also

¹⁰ Only contributions that are designated for the federal account, result from a solicitation which expressly states that the contribution will be used in connection with a federal election and are from contributors who are informed that all contributions are subject to the prohibitions and limitations of the Act may be deposited in a federal account established under 11 C.F.R. § 102.5(a)(1)(i) or may be received by a political committee established under 11 C.F.R. § 102.5(a)(1)(ii). 11 C.F.R. § 102.5(a)(2).

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report each time a loan or line of credit is restructured to change the terms of repayment.

11 C.F.R. § 104.3(d)(3).

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F. VENDOR ADJUSTMENTS - APPARENT DEBT FORGIVENESS

1. Facts

The Audit staff's review of the Committee's amended debt schedules for 1995 and 1996 indicated that debts to 11 vendors were reduced by a total of \$223,590.²⁴ Attachment 1 at 16-17; Attachment 4. The Audit staff noted that the Committee annotated these itemized entries as "adjusted by vendor" without providing supporting documentation, nor did the creditors notify the Commission of their intention to forgive the debts. *See* 11 C.F.R. §§ 116.2, 116.3, 116.8. Nine vendors were corporate entities: Ann E. W. Stone and Associates, Inc. ("ASA"),²⁵ Saturn

²⁴ The Audit staff discovered that the Committee had disclosed only the federal portion of debts. Attachment 1 at 16-17. The Interim Audit Report included a recommendation that the Committee file amended Schedules D (Debts and Obligations Excluding Loans) for 1995 and 1996 to disclose both the federal and non-federal portion of debts and obligations. *Id.* This recommendation did not include the DMFE loans which should have been disclosed on Schedule C (Loans). *See supra* at 15-16. The Committee filed amended reports for 1995 and 1996 on August 16, 1999 (1995) and August 20, 1999 (1996), which materially disclosed the debts. Attachment 4; *see* Attachment 1 at 16-17. Thus, except for the "adjustments" by the 11 vendors and the reporting of the DMFE loan, the Audit staff has not referred the debt disclosure problem to this Office for enforcement action.

²⁵ Ann E. W. Stone, the treasurer of the Committee, is also the founder, President and Treasurer of ASA. Dun & Bradstreet Report (July 20, 2000). Although the Virginia State Commerce Commission lists ASA as

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Corporation ("Saturn"),²⁶ The Widmeyer-Baker Group, Inc. ("Widmeyer"),²⁷ Valley Press, Inc. ("Valley"), Diversified Data Processing & Consulting, Inc. dba Diversified Data & Communications, Inc. ("Diversified"),²⁸ Palmer Technical Services, Inc. ("Palmer"), Direct Approach, Inc. ("Direct Approach"), Touch Tone Telemarketing, Inc. ("Touch Tone") and Chicago Telemarketing, Inc. ("Chicago").²⁹

The Committee's amended debt schedules and subsequent reports disclosed the following information concerning debts owed³⁰ to the corporate vendors:

terminated as of September 1, 1997, this entity may still be in business and ASA's registered agent is the Committee's treasurer, Ms. Stone, who can be located. *See id.* In a previous matter, MUR 3152, the Commission found reason to believe on October 24, 1991, that the Committee and ASA violated 2 U.S.C. § 441(b)(a) for extensions of credit outside the ordinary course of business related to delayed payment for \$14,000 in goods and services. The Commission took no further action against both respondents on December 10, 1993.

²⁶ Saturn was incorporated in Maryland in 1981. Dun & Bradstreet Report (July 20, 2000). According to Audit staff, Committee staff told the auditors during fieldwork that Saturn maintained the Committee's contributor file until 1997 but there was no contract between the Committee and Saturn; rather, the Committee sent Saturn purchase orders. Committee staff also told the auditors that the Committee has a disputed debt of approximately \$30,000 with Saturn. The Committee's 1999 and 2000 reports disclose a debt owed to Saturn of \$28,203.38 but do not state that the debt is disputed.

²⁷ It appears that Widmeyer was called the Widmeyer Group at the time the Committee incurred a debt to Widmeyer. *See* Dun & Bradstreet Report (July 20, 2000). Widmeyer was incorporated in Virginia in 1988. *Id.*

²⁸ Valley incorporated in Maryland in 1989, and Diversified is a Michigan corporation. *See* Dun & Bradstreet Reports (July 20, 2000).

²⁹ It appears that several of the vendors may be out of business. The Virginia State Corporation Commission has no current records on Palmer; the records were purged on September 30, 1999 because Palmer had not filed annual reports or paid fees for the previous five years. Palmer filed a voluntary petition in bankruptcy on March 3, 1994 and is no longer active at its listed address. Dun & Bradstreet Report (July 20, 2000). Direct Approach also appears to be out of business; the telephone number has been disconnected and the company no longer is operating from its former location. Dun & Bradstreet Report (July 20, 2000); Dun & Bradstreet Business Information Report (July 22, 2000). According to the Virginia Commerce Commission, Direct Approach voluntarily withdrew from corporate status in Virginia on December 11, 1996. Touch Tone was incorporated in Virginia in 1995. Dun & Bradstreet Report (July 20, 2000). According to the Virginia Commerce Commission, Touch Tone terminated on November 30, 1999. Chicago was incorporated in Illinois in 1991 but may be out of business; its telephone number is out of service and it is no longer operating from its previous addresses. Dun & Bradstreet Report (July 20, 2000).

³⁰ The purposes disclosed for the debts were goods and services including printing, direct mail, creative fees and expenses (rent and telephone), computer work, media relations, consulting and telemarketing, caging services and personalization. "Caging services" relate to the processing of receipts. "Personalization" services customize direct mail pieces for specific individual recipients.

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<i>Vendor</i>	<i>Balance owed by RFC - beginning of 1995</i>	<i>Balance owed by RFC - beginning of 1996</i>	<i>Amount reported as "Adjusted by Vendor" - 1996</i>	<i>Payments to vendor - 1996</i>	<i>Closing balance owed - 1996</i>	<i>Amount owed to vendor - April 2000 report</i>
ASA	\$18,439.63	\$103,192.20	\$92,393.60	\$2,971.88	\$7,826.72	No listing
Saturn	\$15,902.04	\$96,493.50	\$40,910.58	\$20,537.38	\$35,045.54	\$28,203.38
Diversified	\$6,800	\$23,000	\$18,400	\$4,600	-0-	No listing
Valley	\$24,570.78	\$101,121	\$53,866.85	\$13,734.09	\$33,520.06	\$96,052.76
Palmer	\$1,480.55	\$7,402.75	\$4,441.65	-0-	\$2,961.10	\$7,402.76 - non-payable
Direct Approach	\$3,082.68	\$13,013.35	\$5,828.01	\$3,300	\$3,885.34	\$7,313.36
Widmeyer	\$1,447.50	\$6,237.50	\$3,082.50	\$1,100	\$2,055	\$4,837.48
Touch Tone	\$292.10	\$1,460	\$876.30	-0-	\$584.20	\$1,460.50
Chicago	\$303.34	\$1,516.70	\$910.02	-0-	\$606.68	\$1,516.70 - non-payable

The Committee's reports disclose debts still owed to seven of the corporate vendors as of April 2000 and to five of the vendors as of the 2000 Post-General Report filed December 10, 2000.³¹

Despite the reported adjustments disclosed in the 1996 Comprehensive Amendment Schedule D, the Committee's reports covering 1997 through 2000 suggest that six of the corporate vendors (Chicago, Direct Approach, Palmer, Touch Tone, Valley, and Widmeyer) did not in fact forgive the amounts owed to them. The Committee's 1997 Mid-year Report amendments, filed in 1998, and subsequent reports covering 1997 through 2000, disclose approximately the same balances owed to these vendors as the pre-adjustment amounts or disclose gradually reduced balances that reflect payments but are higher than the post-adjustment

³¹ The Committees' April 2000 report disclosed adjustments to the amounts owed to two of these vendors, Palmer and Chicago, and closing balances of \$0. In a letter to the Commission dated April 12, 2000, the Committee's treasurer stated that the Committee had attempted to contact Palmer and Chicago "through certified letter and through the Secretary of State over the last twenty-four months as required by 11 CFR 116.9c. All attempts have been unsuccessful. Therefore we are removing them from our FEC report." Attachment 2. The audit workpapers included envelopes sent to Palmer and Chicago in 1998 which were returned by the United States Postal Service as undeliverable.

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amounts.³² Other than the 1996 Comprehensive Amendment, none of the reported balances for these vendors reflect the reported adjustments. Although the accuracy of the Committee's reports is questionable, the similarity in the amounts owed before and after the purported adjustments suggests that these six vendors did not forgive the Committee's debts. Therefore, it appears that in 1999 the Committee incorrectly reported adjustments by these six vendors which did not actually occur.

Only limited information is available concerning the amounts and circumstances of the extensions of credit and possible debt forgiveness by the corporate vendors. In addition to the Committee's disclosure reports, the Committee provided to the auditors schedules of accounts payable and a small number of documents related to vendor transactions prior to 1995. According to audit workpapers, the auditors noted during fieldwork that although many debts were not paid in a timely manner, there was no indication of any debt settlement proceedings in

³² Although the Committee reported in the 1996 Comprehensive Amendment that Palmer reduced the Committee's debt of \$7,402.75 by \$4,441.65, the Committee's subsequent reports through April 2000 disclosed \$7,402.76 still owed to Palmer, the same amount as in the 1992 and 1993 Palmer invoices in the Committee's files reviewed by the auditors and one cent more than the beginning balance on the Committee's 1996 Amended Schedule D. Similarly, the Committee's 2000 Post-General Report discloses \$1,460.50 still owed to Touch Tone, the same amount as the beginning balance disclosed on the 1996 Comprehensive Amendment prior to the reported reduction of \$876.30. Likewise, the 1996 Comprehensive Amendment discloses a beginning balance owed to Chicago of \$1,516.70 and a reduction of \$910.02, yet the April 2000 report again discloses a beginning balance of \$1,516.70.

Moreover, for Direct Approach, the Committee's 1996 Comprehensive Amendment disclosed an adjustment of \$5,828.01 of the total of \$13,013.35, with payments of \$3,300 and a remaining balance owed of \$3,885.34, but the 1997 Mid-year amendments disclosed an amount owed to Direct Approach of \$9,713.36, the amount owed prior to the adjustment (\$13,013.35) minus the payment of \$3,300. Similarly, the 1996 Comprehensive Amendment discloses that Widmeyer adjusted the Committee's debt of \$6,237.50 by \$3,082.50, the Committee paid \$1,100 and the remaining balance was \$2,055. However, the 1997 Mid-year amendments disclose the Committee still owed \$5,137.48 to Widmeyer, the pre-adjustment balance (\$6,237.50) minus the payment of \$1,100. Finally, the 1996 Comprehensive Amendment disclosed that Valley adjusted \$53,866.85 of the total of \$101,121, but the 1997 Mid-year amendments report \$100,807.76 owed to Valley, nearly the pre-adjustment amount.

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the Committee's files. Moreover, the accounts payable schedules and vendor documents do not provide information concerning the circumstances of the adjustments reported by the Committee.

Specifically, the Committee provided to the auditors schedules of accounts payable as of December 23, 1994 and January 1, 1997 which list invoice dates, amounts and, in some cases, the purported federal and non-federal share of expenditures. Attachment 3. The Committee's accounts payable schedules list the following amounts owed to the vendors:

<i>Vendor</i>	<i>Accounts Payable as of 12/23/94 Amount</i>	<i>Number and date range of invoices listed on 12/23/94 schedule</i>	<i>Accounts Payable as of 1/1/97 Amount</i>	<i>Date range of invoices listed on 1/1/97 schedule</i>	<i>Federal (F) Non-federal (NF) amounts listed on 1/1/97 schedule</i>
ASA	\$107,397.46	74 invoices 6/9/92-12/16/94	\$47,761.46	54 invoices 1/31/94-5/31/96	\$3,913.36 F \$43,848.10 NF
Saturn	\$34,969.71	150 invoices 6/12/92-12/20/94	\$32,703.38	156 invoices 9/2/92-11/10/95	\$17,522.77 F \$15,180.61 NF
Diversified	\$6,800 F	10/26/92	N/A	N/A	N/A
Valley	\$131,653.90	26 invoices 5/11/92 - 8/2/93	\$100,807.76	25 invoices 5/29/92-8/2/93	\$16,760.03 F \$84,047.73 NF
Palmer	\$7,402.76	19 invoices 12/17/92-9/2/93	\$7,402.76	19 invoices 12/17/92-9/2/93	\$1,480.55 F \$5,922.21 NF
Direct Approach	\$15,413.36	7 invoices 5/10/93-6/2/93	\$9,713.36	4 invoices 5/7/93-6/2/93	\$1,942.68 F \$7,770.68 NF
Widmeyer	\$7,237.48	3 invoices 9/4/92-11/9/92	\$5,137.48	3 invoices 9/4/92-11/9/92	\$1,027.50 F \$5,137.48 NF
Touch Tone	\$1,460.50	11/9/92	\$1,460.50	11/9/92	\$292.10 F \$1,168.40 NF
Chicago	\$1,516.70	10/23/92	\$1,516.70	10/23/92	\$303.34 F \$1,213.36 NF

Attachment 3. The accounts payable schedule as of December 23, 1994 lists substantially different amounts owed to all but three of the vendors than are listed in the Committee's 1996 Comprehensive Amendment. However, the amounts listed on the accounts payable schedule as of

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January 1, 1997 are the same for seven of the nine vendors as the amounts disclosed as owed to these vendors on the Committee's 1997 Mid-year amendments.³³

In addition, the Committee's vendor documents included some invoices, appeals from some vendors for payment, letters to some vendors from the Committee requesting extended payments, and several contracts.³⁴ These documents reveal some information concerning the vendors' extensions of credit and collection efforts, but the documents are not comprehensive and are insufficient to clarify whether the extensions of credit were in the ordinary course of business or whether the vendors' actions were commercially reasonable. *See* 11 C.F.R. §§ 116.3 and 116.4.

Moreover, some of the available documents are inconsistent. For example, the Committee reported on its 1996 Comprehensive Amendment that amounts owed to some vendors were incurred in 1995, but the Committee's schedules of accounts payable and vendor documents

³³ However, the amount listed for ASA on the accounts payable schedule as of January 1, 1997, \$47,761.46, is much larger than the amount listed on the 1997 Mid-Year amendments, \$8,724. In addition, no amount is listed as owed to Diversified on either the accounts payable schedule as of January 1, 1997 or on any Committee report covering the period after 1996.

³⁴ Specifically, the Committee's files included a March 23, 1993 letter from the Committee to Diversified proposing monthly payments of between \$300 and \$700 on the outstanding invoice of \$9,908.34. Attachment 14. The Committee's files also included Committee letters to Direct Approach dated June 2, 1993, stating the Committee would pay approximately \$500 per month toward five outstanding invoices totaling \$16,733.50, and October 12, 1993, stating that the Committee missed payments and planned to resume payments within 30-60 days. Attachment 12. In addition, a letter dated March 13, 1995 from a law firm representing Widmeyer to the Committee requested payment of \$7,137.48, and had a handwritten notation by a Committee staffer that she spoke with Widmeyer's attorney on March 28, 1995 and agreed to pay \$100 a month. Attachment 13. Moreover, a letter from the Committee to Touch Tone dated February 1, 1993 suggested monthly payments on the balance of \$14,624.50. Attachment 15. Several invoices in the files state general payment terms for some vendors, such as a May 25, 1993 Valley invoice stating that a 1 ½% charge will be charged on unpaid past due amounts. Further, the Committee's files contained a contract between ASA and the Committee dated May 21, 1990 providing for "direct response consultation, market research and the creation and production of housefile and prospect mail packages, telemarketing and media scripts, space ads, and public relations support." Attachment 17. The files also contained a "Breakeven Agreement" between the Committee and Chicago dated October 9, 1992, which provided that all telemarketing expenses would be paid first out of the proceeds of the telemarketing program, and the Committee would receive all funds in excess of the expenses. Attachment 16.

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indicate that amounts owed to some of these vendors were incurred before 1995. For some of these vendors, the most recent document was dated 1992. In addition, some of the available vendor documents did not reconcile with the Committee's schedules of accounts payable; for example, the amounts due listed for a specific invoice on the accounts payable schedules differ from the amount on the actual invoice.

Similarly, it is not clear whether an agreement to rent a Committee mailing list and provide payments to Valley from the proceeds was connected to any adjustment of the amount of the Committee's debt to Valley. The Committee made an agreement on March 3, 1994 to rent a mailing list, "Republican National PAC Donors" through a third party, Packer Lists, and provide net income from rental of the list to Valley in addition to making monthly payments on its debt.³⁵

³⁵ The June 24, 1996 transmittal page on a copy of the agreement that Valley sent to the Committee asked, "Do you have any money for us? Do you think you will be sending any in the near future?" Attachment 18 at 1.

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Attachment 18 at 2. Committee staff told the auditors that the Committee received checks for the list rentals from Packer Lists, and in turn made payments from its federal and non-federal accounts to Valley, which reduced the amount owed to Valley by the corresponding amounts.

2. Analysis

This Office acknowledges that the available information raises a number of questions and does not clarify all of the facts concerning the vendor adjustments.³⁶ Nevertheless, this Office believes that sufficient information exists to support findings of reason to believe that

Diversified violated 2 U.S.C. § 441b(a). Conversely, this Office believes that the available information supports findings of no reason to believe that the remaining eight vendors violated the Act.

It appears that Diversified made, and the Committee accepted, prohibited corporate contributions in the form of adjustments to the amount of debts the Committee owed the vendors. 2 U.S.C. § 441b(a); 11 C.F.R. § 100.7(a)(4). Although the adjustments appear to be forgiveness of Committee debts, the Committee and the vendors failed to follow the Commission's debt settlement procedures. *See* 11 C.F.R. §§ 116.2, 116.3, 116.4, 116.8, 116.9, 116.10. Thus, the debt forgiveness constituted prohibited contributions from these three vendors to the Committee. 2 U.S.C. § 441b(a); 11 C.F.R. § 100.7(a)(4).

Because the Committee is an ongoing committee under the Commission's regulations, it may not settle any outstanding debts for less than the entire amount owed, but may request a

³⁶ For example, it is unclear why the Committee reported adjustments by six vendors that apparently did not occur. It is also unclear whether the adjustments that did occur happened in 1996, as they are disclosed on amendments for that year, in 1999 when the Committee filed the amended debt schedules or at some point between 1996 and 1999. Moreover, it is unknown whether the majority of the debts were incurred in 1995 as disclosed on the Committee's reports, or prior to that date, as the available vendor documents and the Committee's schedules of accounts payable suggest. Further, the precise amounts of the adjustments and any reasons for the adjustments such as billing errors or disputes over the balance owed are not known.

Commission determination that debts are not payable under 11 C.F.R. § 116.9 and may resolve disputed debts under 11 C.F.R. § 116.10. However, the Committee did not properly request a Commission determination that the debts owed to Diversified were not payable either in 1996 or in 1999, when it filed its amended debt schedules. Nor is there any evidence that the adjustments were made because the Committee disputed these debts.

Moreover, the limited circumstances delineated in 11 C.F.R. § 116.8 under which creditors may forgive debts owed by ongoing committees do not appear to be present here. Specifically, Diversified did not inform the Commission by letter, as required, of their intent to forgive any debt owed by the Committee.³⁸ See 11 C.F.R. § 116.8(b). It also appears that debts forgiven by these vendors were not outstanding at least 24 months, as required. See 11 C.F.R. § 116.8(a). The Committee's 1995 Comprehensive Amendment discloses that most of the amounts owed to all of the vendors were incurred in 1995, within 24 months of the apparent adjustments, but the available documents indicate that some of the debts were incurred prior to 1995.³⁹ The Committee's accounts payable schedules list invoices dated between 1992 and 1996 and dated between 1992 and 1995, but list only one invoice for

³⁸ Although required by the regulations, these vendors have not provided information concerning the terms of their initial extensions of credit to the Committee; their terms for extending credit to nonpolitical debtors of similar risk and size of obligation; the efforts made by the Committee to satisfy the debts; the remedies pursued by the vendors to obtain payment; remedies customarily pursued by the vendors in similar circumstances involving nonpolitical debtors; and forgiveness of any debts involving nonpolitical debtors in similar circumstances. 11 C.F.R. § 116.8(b); *see also* 11 C.F.R. §§ 116.3(b) and (c), 116.4(d)(3).

³⁹ The Committee's 1995 amended debt schedules disclose the following amounts incurred during 1995 for these three vendors: Diversified -- \$25,120.44.

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Diversified, from 1992.⁴⁰ In addition, the Committee's receipts and disbursements for 1996 were well in excess of \$1,000: the reported receipts for 1996 were \$891,939.94 and disbursements were \$1,068,813.29. *See id.* Further, while the Committee reported cash-on-hand as of January 1, 1996 of \$4,275.31, substantial debts, and a negative cash-on-hand of \$172,598.04 at the end of 1996, the large amount of its ongoing activity makes it questionable that the vendors reasonably concluded that the Committee would not pay the debts because of the magnitude of its other debts. *See id.*

Furthermore, it appears that the extensions of credit by Diversified may not have been in the ordinary course of business and the debt forgiveness may not have been commercially reasonable. *See* 11 C.F.R. §§ 116.3 and 116.4. It is not clear whether these vendors pursued collection remedies against the Committee such as oral and written requests for payment, withholding additional goods or services, late charges or penalties, referral to a debt collection service and litigation, as vigorously as they would have pursued remedies against a non-political debtor in similar circumstances. *See* 11 C.F.R. §§ 116.4(d)(3), 116.8(b)(3). It also appears that the Committee may not have made all reasonable efforts to pay the outstanding debts to these vendors by fundraising, reducing overhead and administrative costs or liquidating assets to make payments. *See* 11 C.F.R. § 116.4(d)(2).

Therefore, it appears that the adjustments by

⁴⁰ A March 23, 1993 letter from the Committee to Diversified refers to an outstanding invoice for \$9,908.34. *See* Attachment 14. However, schedules of 1995 and 1996 disbursements prepared by the Audit staff based on Committee records list 15 disbursements to Diversified in 1995 totaling \$18,507.60, and 8 disbursements in 1996 totaling \$5,600. Thus, it appears that the debt owed to Diversified was larger than \$9,908.34 and that some amount of the debt may have been incurred after 1992.

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Diversified were prohibited contributions to the Committee. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 100.7(a)(4). However, given the relatively small monetary amount of the adjustment by Diversified in comparison with the adjustments by this Office believes that no further action against Diversified with respect to this violation is appropriate.

Based on the available information, it does not appear that the remaining six corporate vendors violated the Act. The Committee's reports and the schedule of accounts payable as of January 1, 1997 suggest that Chicago, Direct Approach, Palmer, Touch Tone, Valley and Widmeyer did not actually forgive the Committee's debts.⁴¹ Rather, it appears that the Committee's 1996 Comprehensive Amendment erroneously reported adjustments by these six vendors that did not occur. This conclusion is supported by the similarity in the reported amounts owed for the periods before and after the purported adjustments and the congruence between these amounts and the Committee's schedule of accounts payable as of January 1, 1997. In addition, it appears that at least one of these vendors, Widmeyer, made commercially reasonable efforts to collect the debt by engaging a law firm to try to collect the amount owed by the Committee.⁴² *See* 11 C.F.R. § 116.8(b)(3); 11 C.F.R. § 116.4(d)(3). Moreover, although the Committee's April 12, 2000 letter to the Commission concerning the Palmer and Chicago debts does not appear to follow proper debt settlement procedures under 11 C.F.R. § 116.9, it appears

⁴¹ Although the available information raises questions, it is unlikely that an investigation would significantly clarify the facts or justify the extensive use of resources that would be necessary. The amounts of the debts owed to most of these vendors are relatively small and it appears that several of the corporations, including Chicago, Palmer and Direct Approach, may be out of business. Further, since many of the debts were apparently incurred in 1995 or earlier, documents concerning the extensions of credit and collection efforts by these vendors may no longer exist.

⁴² The available evidence also indicates that Valley made efforts to collect payment from the Committee. Valley was apparently involved in the Committee's agreement to rent a mailing list through Packer Lists, with net income from the rental going to Valley in addition to the Committee's monthly payments on its debt. *See* Attachment 18.

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that these debts are not payable.⁴³ See Attachment 3. It appears that the Committee has been unable to contact Palmer and Chicago as it avers in its April 12, 2000 letter; both entities appear to be out of business based on Dun & Bradstreet Reports and state corporate filings.

Finally, the two remaining vendors, Larry McCarthy, who made an adjustment of \$1,820, and McCarthy, Marcus, Hennings, Ltd., which made an adjustment of \$1,060, appear to be persons who could permissibly contribute \$5,000 to the Committee.⁴⁴ See 2 U.S.C. § 441a(a)(1)(C).

Moreover, this Office recommends that the Commission find reason to believe that Diversified Data Processing & Consulting, Inc. dba Diversified Data & Communications, Inc., violated 2 U.S.C. § 441b(a) by making prohibited contributions in the

⁴³ The Committee's April 12, 2000 letter states that the Committee will no longer report the debts, but 11 C.F.R. § 116.9 provides that committees must continue to report debts while the Commission reviews their request to consider the debt non-payable.

⁴⁴ Larry McCarthy appears to be an individual who, according to the Committee's reports, provided "TV Ad Production" and did not make any other contributions to the Committee in 1995 and 1996. As of its May 2000 report, the Committee continues to report a debt of \$1,900 owed to Larry McCarthy. The other vendor was a partnership formerly called Gannon, McCarthy, Mason Ltd., now McCarthy, Marcus, Hennings, Ltd. It appears that Mr. McCarthy is one of the partners in this partnership. The Committee disclosed in its 1995 amendment that this partnership provided "TV Ad Production."

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form of forgiveness of debts owed by the Republicans for Choice Political Action Committee, but take no further action.

Further, this Office recommends that the Commission find no reason to believe that Valley Press, Inc., Palmer Technical Services, Inc., Direct Approach, Inc., The Widmeyer-Baker Group, Inc., Touch Tone Telemarketing, Inc., or Chicago Telemarketing, Inc. violated 2 U.S.C.

§ 441b(a) by making prohibited contributions in the form of forgiveness of debts owed by the Republicans for Choice Political Action Committee, and close the file with respect to those respondents. Finally, this Office recommends that the Commission find no reason to believe that Larry McCarthy or McCarthy, Marcus, Hennings, Ltd. violated 2 U.S.C. § 441a(a)(1)(C) and close the file with respect to those respondents.⁴⁵

⁴⁵ Although the Committee did not properly report the adjustments by non-corporate vendors as contributions received, *see* 2 U.S.C. §§ 434(b)(2)(A) and (3)(A), and appears to have incorrectly reported adjustments that did not actually occur, the Audit staff have informed staff of this Office that the amounts involved would not have been material for referral of these apparent violations and that the Committee materially corrected its reporting of debts and obligations in its 1995 and 1996 Comprehensive Amendments. Therefore, this Office does not recommend that the Commission take any action on the reporting of the apparent contributions from Mr. McCarthy and McCarthy, Marcus, Hennings, Ltd. or the inaccurate reporting of the purported adjustments.

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IV. RECOMMENDATIONS

1. Open a MUR;

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11. Find reason to believe that Diversified Data Processing & Consulting, Inc. dba Diversified Data & Communications, Inc. violated 2 U.S.C. § 441b(a) by making prohibited contributions in the form of forgiveness of debts owed by Republicans for Choice Political Action Committee, but take no further action;
12. Find no reason to believe that Valley Press, Inc. violated 2 U.S.C. § 441b(a) by making prohibited contributions in the form of forgiveness of debts owed by Republicans for Choice Political Action Committee and close the file with respect to Valley Press, Inc.;
13. Find no reason to believe that Palmer Technical Services, Inc. violated 2 U.S.C. § 441b(a) by making prohibited contributions in the form of forgiveness of debts owed by Republicans for Choice Political Action Committee and close the file with respect to Palmer Technical Services, Inc.;
14. Find no reason to believe that Direct Approach, Inc. violated 2 U.S.C. § 441b(a) by making prohibited contributions in the form of forgiveness of debts owed by Republicans for Choice Political Action Committee and close the file with respect to Direct Approach, Inc.;
15. Find no reason to believe that The Widmeyer-Baker Group, Inc. violated 2 U.S.C. § 441b(a) by making prohibited contributions in the form of forgiveness of debts owed by Republicans for Choice Political Action Committee and close the file with respect to The Widmeyer-Baker Group, Inc.;
16. Find no reason to believe that Touch Tone Telemarketing, Inc. violated 2 U.S.C. § 441b(a) by making prohibited contributions in the form of forgiveness of debts owed by Republicans for Choice Political Action Committee and close the file with respect to Touch Tone Telemarketing, Inc.;
17. Find no reason to believe that Chicago Telemarketing, Inc. violated 2 U.S.C. § 441b(a) by making prohibited contributions in the form of forgiveness of debts owed by Republicans for Choice Political Action Committee and close the file with respect to Chicago Telemarketing, Inc.;
18. Find no reason to believe that Larry McCarthy violated 2 U.S.C. § 441a(a)(1)(C) and close the file with respect to Larry McCarthy;
19. Find no reason to believe that McCarthy, Marcus, Hennings, Ltd. violated 2 U.S.C. § 441a(a)(1)(C), and close the file with respect to McCarthy, Marcus, Hennings, Ltd.;
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26. Approve the appropriate letters.

Date

1/28/01


Lois G. Lerner
Acting General Counsel

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