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October 19, 2004

Lawrence Norton, Esq.
General Counsel
Federal Election Commission
999 E. Street, NW, 6th Floor
Washington, D.C. 20463

Via Facsimile & DHL Overnight Express

BULK FILE

Re: MUR 5537

Dear Mr. Norton:

Please accept this as the answer of the Times Publishing Co. (also known as the Anchorage Times and Voice of the Times, hereinafter referred to as the "Times"), VECO Corporation ("VECO") and Bill Allen to the complaint filed by Jean M. Paal dated September 11, 2004. VECO received a copy of the complaint through its Registered Agent on October 4, 2004. To date, neither the Times nor Bill Allen have received service of the complaint. Nevertheless, all of the Respondents to the complaint are prepared to answer the complaint. Based on the date VECO received a copy of the complaint, this answer is being filed in a timely manner.

I. INTRODUCTION

The complaint alleges that editorials published by the Times violate the Federal Election Campaign Act (the "Act"), 2 U.S.C. §§ 431 et seq. (2004). The complaint makes alternative allegations based on the identity of the party who paid for the publication of the editorials which the complainant objects to. If the Times or VECO paid for the publication of the editorials, the complaint alleges that the payment constitutes an illegal corporate contribution under 2 U.S.C. § 441(b)(a). If publication of the editorials was paid for by Bill Allen in his individual capacity, the complaint alleges that Mr. Allen violated the Act by failing to report an "independent expenditure". See 2 U.S.C. § 434(c).

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Attached hereto as Exhibit A is an Affidavit from Paul Jenkins. As set forth in the Affidavit, the Times is a wholly owned subsidiary of VECO. Bill Allen is the Publisher of the Times and Chairman and Chief Executive Officer of VECO. As will be discussed more fully below, the Times is responsible for and pays all production costs associated with the publication of the Times. At no time has Mr. Allen paid any production costs associated with the publication of the Times in his individual capacity. As a result, the complainant's alternative allegation relating to the alleged failure to report an "independent expenditure" pursuant to 2 U.S.C. § 434(c) should be dismissed.

The complainant's alternative claim is that the payment of production costs by the Times constitutes an illegal corporate contribution or expenditure. However, the Act specifically provides that "any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication" do not constitute a contribution or expenditure subject to regulation under the Act, "unless such facilities are owned or controlled by any political party, political committee or candidate." See 2 U.S.C. § 431(9)(B)(i), and § 431(8)(A)(vi). The only question in this case is whether the editorials published by the Times, which form the basis of the complaint, fall within the press exemption referenced above. For the reasons set forth below, there can be no reasonable dispute that the Times is an exempt press entity; that the Times is not owned or controlled by a political party, political committee or candidate; and that the content of editorial comments published by the Times are not subject to governmental regulation or control.

II. Background of the Anchorage Times.

The Times was founded in 1915 and has operated continuously since that time. Beginning in 1915, when Anchorage was little more than a railroad construction camp at the mouth of Ship Creek, the Times has provided a strong editorial voice for Alaska. Throughout its history, the Times has been both home-owned and home-operated. In 1935, the Times was acquired by legendary publisher Robert B. Atwood. Since that time, the Times has reported on every major event in the State, including the ratification of Alaska as the 49th State in the Union, the 1964 "Good Friday Earthquake", the discovery of oil on the North Slope, the construction of the Trans Alaska Pipeline, and the Exxon Valdez Oil Spill.

In addition to its excellent reporting, the Times has always been a strong editorial voice in Alaska. To give just a few examples, the Times led the fight for statehood; it consistently emphasized the strategic location of Anchorage and Alaska, which played an important roll in bringing the Armed Services to the Territory and State; it campaigned to

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establish Anchorage as a hub for air routes across the country, across the Pacific and across the Pole; it advocated the establishment of Anchorage as the headquarters for the oil industry in Alaska; and it has consistently advocated responsible development of the State's natural resources.

In 1989, the Times was acquired by VECO International, Inc. (now known as VECO and referred to herein as "VECO"). At the time, the Times and the Anchorage Daily News, a wholly owned subsidiary of McClatchy Newspapers, Inc. ("the Daily News") were involved in a bitter and costly competition for readership in Alaska. As a result of that competition, the Daily News purchased the principal assets of the Times in 1992.

Attached hereto as Exhibit B is a copy of the Agreement for Purchase and Sale of Assets between the Daily News and the Times (financial terms have been redacted). By mutual agreement of the parties, the portions of the Agreement relating to the publication of the Times has been extended through June 1, 2007. (See Exhibit A, Affidavit of Paul Jenkins).

Article IV of the Agreement is of critical importance to the allegations of the complaint. Article IV provides that the Times would continue to publish editorials on the top half of the Daily News op-ed page, which is the page facing the Daily News editorial page. The agreement to publish the Times' editorials opposite the Daily News editorials is unique in American Journalism and is based on the belief "that the preservation of separate, independent and high quality editorial voices is important to the citizens of Alaska." (Agreement, Article 4.1) That point is again emphasized in Article VII of the Agreement, which states in relevant part as follows:

By entering this Agreement, all parties affirm that it is in the best interests of the citizens of Alaska that the diverse editorial voice of both newspapers be preserved and that the arrangement contemplated in this Agreement is mutually beneficial. . . . It is the intent of this Agreement that all parties will continue to strive for high levels of editorial excellence as a product of this Agreement and that the Anchorage community and the State of Alaska will benefit immeasurably by the greater diversity of opinions and points of view made possible by the preservation of the voice of The Anchorage Times and the continuation of the voice of the *Anchorage Daily News*. (Emphasis added.) (Agreement Article VI.)

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Article 4.1 of the Agreement specifies that the Times may publish "editorials, opinion pieces, columns, letters to the editor, cartoons, photographs, comments on the news, comments on news coverage, syndicated features, and other content typically found on editorial op-ed pages." Contrary to the allegations in the complaint, Article 4.5 specifically prohibits the Times from using its space "for advertising of any type."

Article 4.2 sets forth the responsibility of the parties for production costs. During the first five years following the signing of the Agreement, the Daily News was responsible for the payment of all production costs for the Times op-ed page. During that time, the Times was responsible for all costs associated with "writing, acquiring or editing material" published in the op-ed page. Following year five of the Agreement, the Times became responsible for the payment of production costs. The Daily News invoices the Times for "news print, ink and prepress labor costs directly associated with the production" of the Times' op-ed page. The Times pays only actual costs, without profit or other markup. It is important to note that all costs incurred by the Times for publishing its op-ed page are incurred as general overhead expense, and they are identical to the expenses incurred by the Daily News and all other newspapers and periodicals which are published in the United States. Furthermore, there is no additional charge from the Daily News and there is no separate payment from the Times or anyone else for the editorials which the complainant found objectionable. Finally, despite the allegations in the complaint, the Times does not pay the standard advertising rates charged by the Daily News. In fact, on a monthly basis, the pro-rata charge for production costs paid by the Times to the Daily News is less than 1/30th of the rate charged to Daily News advertisers for similar space.

Attached hereto as Exhibit C are copies of the Times' op-ed pages from October 1, 2003 through October 7, 2004. You will note that the editorials cover a wide range of local, State, and national issues from road improvements important to Anchorage to the opening of the Arctic National Wildlife Refuge for exploratory oil drilling to the war in Iraq and national security. The subjects covered in the Times' editorials are no different than the editorials included in other newspapers and periodicals throughout the country. The editorial comments regarding the Tony Knowles and Lisa Murkowski campaigns, which the complainant finds objectionable, constitute only a small part of the total commentary provided by the Times over the past year, and the type of commentary and the space used for the commentary is entirely consistent with the practices of the Daily News and other newspapers and periodicals in Alaska and throughout the country. In fact, the Daily News is a strong supporter of Tony Knowles' candidacy and the Times has been critical of his candidacy. As a result, the opposing editorial views presented by the

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Daily News and the Times is working exactly as the parties intended when the Daily News/Times Purchase Agreement was executed.

A review of the qualifications of the editors of the Times also emphasizes its status as a protected publication. The Senior Editor of the Times is Bill Tobin. Mr. Tobin's resume is attached hereto as Exhibit D. Mr. Tobin has been an editor of the Times continuously since 1963. Mr. Tobin graduated with a journalism degree from Butler University in 1948. During his distinguished career, he has served as President of the Alaska Press Club for three terms, and has also served as President of the Alaska Associated Press Members Association and the Society of Professional Journalists, Alaska Chapter. Mr. Tobin has been named Alaskan of the Year in both 1998 and 2002, has been awarded the C.B. Blethen Memorial Award for excellence in journalism and has received the Butler University Journalism Alumni Award for Distinguished Service to Journalism. Aside from his administrative duties, Mr. Tobin continues to write a weekly column for the Times which has appeared without interruption for over 40 years.

Paul Jenkins is an Editor/Columnist for the Times. Mr. Jenkins' resume is attached hereto as Exhibit E. Mr. Jenkins graduated with honors with a degree in journalism and political science from the University of Central Florida in 1973. Mr. Jenkins' career in journalism spans over 30 years. During that time, he has won numerous awards and one of his articles was nominated for a Pulitzer Prize. In addition, Mr. Jenkins is a weekly panelist on "Anchorage Edition", a public television show analyzing news events that affect Alaska and he has taught in the Journalism Department at the University of Alaska. Mr. Jenkins was named as Managing Editor of the Times in 1990 and has continued to work for the Times since that time.

Tom Brennan is a Columnist for the Times. Mr. Brennan's career in journalism spans approximately 40 years. Mr. Brennan also has a tremendous amount of experience with Alaska politics and the Alaska business community. A copy of Mr. Brennan's resume is attached hereto as Exhibit F.

Together, Mr. Tobin, Mr. Jenkins and Mr. Brennan have over 100 years of combined experience in journalism. Their qualifications, ethics, and journalistic integrity are beyond reproach.

Finally the affidavit of Paul Jenkins (Exhibit A) confirms a number of important facts relevant to the complaint. First, although Bill Allen is the Publisher of the Times, he has no involvement in the day-to-day decisions regarding the content or other aspects of the Times. Mr. Allen's only role is to help establish the overall editorial viewpoint of the

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paper. In that regard, Mr. Allen has carried forward the viewpoint of his predecessor, Robert Atwood. The editorial staff of the Times determines the content of the paper on a daily basis and is also responsible for the management of the paper. Principal responsibility is vested in Senior Editor, Bill Tobin and Associate Editor, Paul Jenkins. On this point, we also note that Mr. Allen is Chairman and CEO of VECO. VECO has over twenty subsidiaries which operate worldwide and has annual revenues well in excess of \$300 million. Given his numerous other responsibilities, his schedule and his travel itinerary, Mr. Allen does not have time to have any significant involvement in determining the content of the Times.

Mr. Jenkins' Affidavit also confirms that the Times is not owned by or controlled by a political party, political group or candidate. Additionally, the Times has not received any payments, contributions, or revenues of any kind from any political party, political group or candidate. As stated above, the Times has been an independent editorial voice for Alaskans for approximately 90 years and its Publisher and Editorial Staff take their responsibilities as journalists very seriously. The complainant's allegation that the Times has engaged in an illegal effort to finance a political campaign is not only absurd but constitutes a thoughtless and unwarranted attack on the character of Mr. Tobin, Mr. Jenkins and Mr. Brennan.

III. LEGAL ANALYSIS.

The legal analysis of this matter starts, of course, with reference to the First Amendment to the U.S. Constitution. Although it is only one sentence long, it includes three of the fundamental principles upon which our country was founded.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Case law interpreting the scope of the First Amendment has established that editorial comments in newspapers may not be regulated by the government and are not subject to censorship by private parties. See, Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241, 257 (1974) ("The choice of material to go into a newspaper, and the decisions made as to the limitations on the size and content the paper, and the treatment of public issues and public officials - whether fair or unfair - constitute the exercise of editorial judgment.") It is also beyond question that the First Amendment extends to the expression of opinions regarding the qualifications of political candidates. The Supreme

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Court addressed that issue in the case of Mills v. State of Alabama, 348 U.S. 214, 218-219 (1966):

[t]here is practically universal agreement that a major purpose of [the First Amendment] was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes. The Constitution specifically selected the press, which includes not only newspapers, books and magazines, but also humble leaflets and circulars, see Lovell v. City of Griffin, 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949, to play an important role in the discussion of public affairs. Thus the press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve. Suppression of the right of the press to praise or criticize governmental agents and to clamor and contend for or against change, which is all that this editorial did, muzzles one of the very agencies the Framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free. (Emphasis added.)

The case of FEC v. Phillips Publishing, Inc., 517 F.Supp. 1308 (DDC 1981) is directly on point to the issues presented here. In that case, the FEC sought court enforcement of two FEC orders to Phillips to answer interrogatories seeking detailed information about the personnel and operations of Phillips and one of its bi-weekly newsletters, The Pink Sheet on the Left. Phillips published ten newsletters on various topics, and The Pink Sheet was a conservative anti-communist publication. The Pink Sheet had been in existence for over ten years and neither Phillips nor The Pink Sheet was owned or controlled by any political party, political committee or candidate.

In 1980, while Senator Kennedy was a candidate for the Democratic Presidential Nomination, Phillips mailed a solicitation to regular and potential Pink Sheet subscribers seeking subscriptions and donations for placing The Pink Sheet in libraries. The mailer included letters from the publisher and editor, a page of quotations endorsing the newsletter, and a one page combination subscription order form and "Teddy Kennedy Opinion Poll." The politically conservative mailer strongly emphasized The Pink Sheet's opposition to the Kennedy campaign.

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In March of 1980, the Kennedy for President Committee filed a complaint with the FEC alleging that the mailer violated the Act. Phillips responded that The Pink Sheet was a periodical, and was not controlled by any party, candidate, or committee, and therefore fell under the Act's press exemption. The FEC found reason to believe that Phillips had violated several provisions of the Act, including the prohibition against contributions by corporations and reporting requirements for individual expenditures. The basis for the FEC's decision was that the questioned communication was not a news story, commentary, or editorial, nor was it distributed through the facilities of a periodical publication. When Phillips refused to comply with the FEC's order regarding the interrogatories, the FEC brought an enforcement action against Phillips. Phillips sought dismissal of the action based on the press exemption.

Initially, the court made it clear that First Amendment considerations and the legislative history of the press exemption required a heightened level of scrutiny to determine whether the FEC had subject matter jurisdiction in cases involving the press. FEC v. Phillips Publishing, Inc., *supra* at 1312. See also, Readers Digest Association, Inc. v. FEC, 509 F.Supp. 1210, 1214 (S.D.N.Y. 1981) ("Third, this dispute involves First Amendment considerations based on a recognition that freedom of the press is substantially eroded by investigation of the press, even if legal action is not taken following the investigation. Those concerns are particularly acute where a governmental entity is investigating the press in connection with the dissemination of political matter. These factors support the interpretation of the statutory exemption as barring even investigation of press activities which fall within the exemption.")

In order to "minimize harm to First Amendment values", the Court in Phillips Publishing adopted a two-step procedure for dealing with FEC complaints against press entities. The initial inquiry is limited to (1) whether the press entity is owned or controlled by a political party, political committee, or candidate, and (2) whether the press entity was acting as a press entity with respect to the conduct in question. If the press entity is not owned or controlled by a political party, political committee, or candidate and it was acting as a press entity with respect to the conduct in question, the FEC lacks subject matter jurisdiction and is barred from investigating the subject matter of the complaint.

In the Phillips Publishing case, the court ruled that the FEC did not have subject matter jurisdiction to investigate the complaint filed by the Kennedy for President Committee. There was no question that The Pink Sheet and its publisher were not owned or controlled by a political party, political committee, or a candidate; they did not solicit or receive any political contributions; and they did not make contributions to any

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candidate. The court also ruled that soliciting subscriptions and publicizing the content and editorial positions of The Pink Sheet were normal activities for a press entity. Additionally, the Court noted that The Pink Sheet had been in existence for over ten years and had not been established for the sole purpose of supporting or opposing a political candidate. See also, FEC v. Machinist Non-Partisan Political League, 655 F.2d 380 (D.C. Cir. 1981); Readers Digest Association v. FEC, *supra*; FEC Adv. Op. 1996-48 (Dec. 6, 1996); FEC Adv. Op. 2000-13 (June 23, 2000); FEC Ad. Op. 2003-34 (Dec. 19, 2003).

The same result is required in this case. The Times has been in existence for almost 90 years and it has been published in its current format since the 1992 Agreement between the Daily News and the Times. The Times is not owned, controlled, or affiliated with any political party, political committee, or candidate and it has never solicited or received political contributions or made any contributions to a political candidate, political party or political committee. Additionally, the editorials which are the subject of the Paal complaint constitute a core function of the Times as a press entity. This case does not involve the distribution of subscriber solicitation letters, special election editions, or other similar distributions or activities. Instead, the editorials referenced in the complaint were published by the Times in the ordinary course of business and pursuant to its well established format. The Times is published seven days a week, 365 days a year and its editorials include commentary on a wide variety of issues of local, state, and national interest. Finally, the Times has been in existence for many years and it was not established for the purpose of supporting or opposing a political candidate, political party, or political committee.

IV. APOC COMPLAINT

In November of 2000, a virtually identical complaint was filed by the Alaska Democratic Party with the Alaska Public Offices Commission ("APOC"). The Alaska Democratic Party complaint was filed against the Times, VECO, and the Times' Publisher, Bill Allen. As with the Paal complaint, the Alaska Democratic Party complaint alleged that editorial comments concerning political candidates, which were included in the Times editorial space, constituted an illegal corporate contribution, or, alternatively, a contribution in excess of the individual contribution limit if the editorial space was paid for by Bill Allen, individually, rather than by the Times or VECO. Although the Alaska Democratic Party complaint was based on Alaska State law, the State statutes and regulations which applied to that complaint are essentially identical to the statutes and regulations which apply to the Paal complaint. That is, corporations are prohibited from making political contributions (AS 15.13.074 (f)); contributions include the purchase of or payment for services which are intended to influence the nomination or election or a

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candidate (AS 15.13.400(3)(A), 2 AAC 50.313(A), 2 AAC 50.313(D)); contributions were limited to \$500 annually and all individual contributions had to be reported to APOC (AS 15.13.065, AS 15.13.040); and costs incurred by a broadcasting station, newspaper, or periodical of regular publication do not constitute a contribution and are not subject to regulation by APOC (2 AAC 50.313(I)(1)). Attached hereto as Exhibit G are copies of the November 3, 2000 complaint filed by the Democratic Party of Alaska and a November 6, 2000 amendment to the complaint. Attached as Exhibit H is a copy of the applicable statutes and regulations for ease of reference. Subsequent amendments to AS 15.13.065 and AS 15.13.040 raised the contribution limit to \$1,000 annually and the reporting requirements were revised.

Pursuant to APOC procedures, the APOC staff initially considers a complaint and issues a recommended decision. Attached hereto as Exhibit I is a copy of the Staff's recommended decision regarding the Alaska Democratic party complaint. Based on its review of the relevant facts, the APOC staff recommended dismissal of the complaint. Subsequently, the Commission considered the factual and legal issues bearing on the complaint, and dismissed the complaint in its entirety. A copy of the Commission final decision is attached hereto as Exhibit J. Both the APOC staff and the Commission concluded that the Times is a newspaper of long standing and that editorial comments published in the Times regarding political candidates did not constitute an illegal campaign contribution, and, as a newspaper or periodical, the content of the Times was not subject to regulation by the Commission. Again, the allegations made in the Paal complaint, the applicable law, and the relevant facts are identical to those considered in the APOC case.

V. CONCLUSION

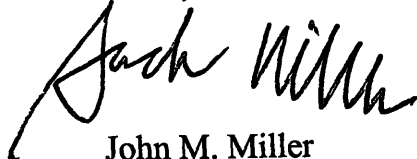
Based on the foregoing, the Times respectfully requests that the Paal complaint be dismissed in its entirety. The Times is a newspaper or periodical of long standing and it is not owned or controlled by a political party, political committee, or candidate. Additionally, the publication of editorials by the Times, including the editorials which are the basis of the Paal complaint, constitute a core function of the Times. As a result, the FEC lacks subject matter jurisdiction to investigate or consider the allegations set forth in the complaint.

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Lawrence Norton, Esq.
October 19, 2004
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Very truly yours,

EIDE, MILLER & PATE

A handwritten signature in black ink, appearing to read "John Miller", written in a cursive style.

John M. Miller
Counsel for Respondents
Times Publishing Co.,
VECO Corporation and
Bill Allen

Enclosures

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