

would be preferable to Alternative A because it would mandate the charter rate in some cases. These commenters, however, were skeptical that a standard dependent upon whether a flight was "scheduled specifically for the use of a campaign traveler" could be enforced effectively. A different commenter, however, urged the Commission to adopt Alternative B as an effective compromise between the approaches in A and C.

In contrast, the other five commenters specifically advocated the implementation of Alternative A. These commenters stressed the simplicity of the rate structure and some expressed support for the reasons in the NPRM for Alternative A. 68 FR at 50,484. One commenter stated that Alternative A would eliminate an "arbitrary focus on the destination city" and the need to refer to the FAA's classification of whether an airport offers "commercial air service." The same commenter criticized the previous rule at 11 CFR 114.9(e) for failing to address geographic realities and benefiting "well-entrenched incumbents to the detriment of candidates running in either an open seat or challenging a well-entrenched incumbent" because the higher cost of travel would impair the ability of challengers to attract a "high ranking leader" and "other luminaries" to events in their State or district. Three of these five commenters criticized Alternatives B and C as furthering the inequities of the previous rule and causing campaign travel to be more complicated and expensive. Several commenters specifically advocated the replacement of the advance payment requirement with the seven-day post-travel repayment period.

### 3. Selection of a Combination of First-Class Airfare, Coach Airfare, and Charter Rates in the Final Rules

After considering the written comments and hearing testimony, the Commission concludes that a combination of first-class airfare, coach airfare, and charter rates presents the most workable and accurate approach to the valuation of campaign travel. Accordingly, new 11 CFR 100.93(c) reflects the basic structure of the previous 11 CFR 114.9(e)(1), with the addition of several clarifications described below.

The new rules continue to focus on travel between cities, rather than between particular airports, to account for the various geographic considerations discussed in Advisory

Opinion ("AO") 1999-13,<sup>6</sup> which remains in effect. One commenter recommended a supplementary approach incorporating the standard metropolitan statistical areas ("SMSAs"), a unit of population measurement administered by the Office of Management and Budget. While the Commission views the SMSA approach as overly complicated and unnecessary, it offers the following explanation of the new valuation rule for clarification.

New 11 CFR 100.93(c) provides three valuation methods that apply in different situations: (1) The lowest unrestricted and non-discounted *first-class* airfare available for the dates traveled or within seven calendar days thereof; (2) the lowest unrestricted and non-discounted *coach* airfare available for the dates traveled or within seven calendar days thereof; or (3) the charter rate for a comparable commercial airplane of sufficient size to accommodate all of the campaign travelers, including members of the news media, and security personnel, if applicable.

(i) *Paragraph (c)(1)—Travel between cities served by regularly scheduled first-class commercial airline service.*

New 11 CFR 100.93(c)(1) requires payment of at least the lowest unrestricted and non-discounted first-class rate for travel between two cities with regularly scheduled first-class airline service. As qualified by new paragraph 100.93(f), discussed below, the rate must be available to the general public for the dates traveled or within seven calendar days thereof. For travel between two cities that each have regularly scheduled first-class airline service, but no regularly scheduled direct flight between the two cities, the required rate is the lowest unrestricted and non-discounted first-class rate for an indirect flight with the same departure city and final destination city.

(ii) *Paragraph (c)(2)—Travel between cities served by regularly scheduled coach, but not first-class, commercial airline service.*

<sup>6</sup>In AO 1999-13, the Commission recognized that particular destination cities might be served by several airports in the surrounding region. In that advisory opinion, the Commission determined that an airport need not be within the corporate limits of a city in order for that city to be considered "served by regularly scheduled commercial air service." The Commission further agreed that it was reasonable for the requestor to determine whether a city is served by a particular airport through reference to published sources such as an FAA directory or a corporate directory regarded at the time as the charter industry's standard reference for airports. To the extent that the advisory opinion contemplates advance payment for air travel and does not recognize that commercial coach rates may be appropriate in other situations, the opinion is superseded.

The final rules also provide a limited allowance for commercial coach service rates to reflect airline industry trends. Paragraph (c)(2) permits the use of the lower coach rate for travel between cities served by regularly scheduled coach airline service but not regularly scheduled first-class airline service. 11 CFR 100.93(c)(2). This rate is based on the previous rules governing publicly-funded presidential candidates' payments for the use of government aircraft. *See* former 11 CFR 9004.7(b)(5)(i)(B) and former 9034.7(b)(5)(i)(B). Paragraph (c)(2) also permits the use of the coach rate where the travel is between one city served by coach commercial airline service, but not first-class commercial airline service, and a second city served by coach commercial airline service, regardless of whether or not the second city is also served by first-class commercial airline service.

(iii) *Paragraph (c)(3)—Travel to or from a city not served by regularly scheduled commercial airline service.*

Paragraph (c)(3), like paragraph (e)(1) of current section 114.9, requires payment at the normal and usual charter rate for all other flights except certain flights on government planes (*see* discussion of paragraph (e), below.) Thus, the charter rate must be used for travel between two cities not served by regularly scheduled first-class or coach airline service, or between such a city and a different city with regularly scheduled first-class or coach commercial airline service. The charter rate must be calculated at the rate for a charter flight between the same departure and destination cities used for the actual travel. 11 CFR 100.93(c)(3). This rate must also be equivalent to the publicly available rate for a comparable commercial airplane capable of accommodating the same number of campaign travelers, including members of the news media, plus the Secret Service and other security personnel accompanying a candidate. *Id.* This rate is consistent with the previous rules governing publicly funded presidential candidates' payments for the use of government aircraft. *See* 11 CFR 9004.7(b)(5)(i)(B) and 9034.7(b)(5)(i)(B). To the extent that the candidate in Advisory Opinion 1984-48 was not required to include security personnel or news media in the calculation of the sufficient size of the comparable aircraft, that advisory opinion is hereby superseded to promote uniformity in the treatment of all candidate travel.

A "comparable commercial airplane" means an airplane of similar make and model as the airplane that actually makes the trip, and with the same