



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 24, 2021

Via Electronic Mail

Caleb P. Burns
Andrew G. Woodson
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
cburns@wiley.com
awoodson@wiley.com

RE: MUR 7807
Snap Inc., *et al.*

Dear Mr. Burns and Mr. Woodson:

On October 2, 2020, the Federal Election Commission notified your clients Snap Inc. and its CEO Evan Spiegel of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the “Act”). On November 16, 2020, we received your response. On August 10, 2021, the Commission found that there is no reason to believe your clients violated the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission’s finding is enclosed.

If you have any questions, please contact me at (202) 694-1530.

Sincerely,

A handwritten signature in black ink that reads "Jin Lee".

Jin Lee
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Snap Inc. **MUR:** 7807
Evan Spiegel

I. INTRODUCTION

The Complaint in this matter alleges that Snap Inc. (“Snap”) violated the Federal Election
Campaign Act of 1971, as amended (the “Act”), by making a prohibited corporate contribution
to Biden and Biden for President during the 2020 election. According to the Complaint, in
June 2020, Snap stopped promoting Donald Trump on Snapchat’s “Discover” platform but
continued to promote Biden. The Complaint alleges that Snap’s decision was motivated by the
“ideology” of Snap CEO Evan Spiegel and that Snap’s continued promotion of Joe
Biden on Discover amounted to millions of dollars in “free advertising,” which constituted a
corporate in-kind contribution.¹

Snap acknowledges that it stopped including Trump's account on Discover but denies it did so for the purpose of influencing a federal election. Thus, Snap contends it did not make a prohibited in-kind contribution.²

The available information indicates that Snap's decision to stop promoting the Trump campaign account on Snap was done for *bona fide* commercial reasons and not for the purpose of influencing the 2020 presidential election. Further, Snap's continued inclusion of Joe Biden on Snapchat's Discover platform was neither an advertising service nor a coordinated communication. Accordingly, the Commission finds no reason to believe that Snap made a

¹ Complaint at 5 (Sept. 29, 2020).

² See Response at 1 (Nov. 16, 2020).

MUR 7807 (Snap Inc., *et al.*)

Factual and Legal Analysis

Page 2 of 14

1 corporate in-kind contribution to Biden and Biden for President in violation of 52 U.S.C.
 2 § 30118(a). The Commission also finds no reason to believe that Evan Spiegel consented to a
 3 corporate contribution in violation of 52 U.S.C. § 30118(a).

4 **II. BACKGROUND**

5 **A. The Snapchat Application**

6 Snap is a publicly traded company. It was incorporated in Delaware as Snapchat, Inc., in
 7 2012 and changed its name to Snap Inc. in 2016.³ Evan Spiegel is Snap’s Chief Executive
 8 Officer (CEO) and one of its co-founders.⁴ Snap describes itself as a camera company.⁵ Its
 9 flagship product, Snapchat, is a free camera application used primarily on mobile devices⁶ and
 10 was “created to help people communicate through short videos and images called ‘Snaps.’”⁷
 11 According to its Form 10-Q filed in October 2020, there were 249 million daily active users of
 12 the Snapchat application in the third quarter of 2020.⁸ Substantially all of Snap’s revenue is
 13 generated from third parties advertising on Snapchat.⁹

14 In 2015, Snap launched “Discover,” a free vertical video platform on the Snapchat

15 application.¹⁰ For a Snapchat user to access Discover, they swipe left from the camera (the

³ *Id.*

⁴ Resp. at 2.

⁵ <https://www.snap.com/en-US> (“Snap is a camera company. We believe that reinventing the camera represents our greatest opportunity to improve the way people live and communicate.”); Snap Inc., Quarterly Report (Form 10-Q), at 10 (Oct. 21, 2020) (“Snap 10-Q”).

⁶ Snap 10-Q at 10.

⁷ Resp. at 2 (quoting Snap 10-Q at 10).

⁸ Snap 10-Q at 24. “Daily Active User” is defined as a “registered Snapchat user who opens the Snapchat application at least once during a defined 24-hour period.” *Id.* at 25.

⁹ *Id.* at 11, 42-43.

¹⁰ Press Release, Introducing Discover, <https://newsroom.snap.com/introducing-discover>.

MUR 7807 (Snap Inc., *et al.*)

Factual and Legal Analysis

Page 3 of 14

1 Snapchat application opens to the camera) to open “Stories.”¹¹ From there, users can access the

2 Discover section. The Response describes Discover as follows:

3 In the Discover section, users see thumbnails containing news
4 headlines and associated photos. Users can then choose to click on
5 a thumbnail to open and read the story. A user can choose to
6 subscribe to a particular news source/channel, and can choose to
7 receive updates on new posts from these channels. Users also will
8 see other content that is popular or aligned with their interests even
9 if they have not subscribed to it.¹²

10 Discover includes “content from publishers and creators in the community” personalized

11 for each Snapchat user.¹³ In other words, Discover consists of select third party content that

12 *Snap* chooses to promote on the Snapchat application.¹⁴ A depiction of Discover provided by the

13 Response is below:

¹¹ Snapchat Support, How to Use Snapchat, <https://support.snapchat.com/en-US/a/how-to-use-snapchat>.

¹² Resp. at 4; *see also* Snapchat Support, Stories, <https://support.snapchat.com/en-US/a/discover> (“The Discover section has Stories from publishers, creators, Snap Stars, the community, Sponsored Stories, and more.”).

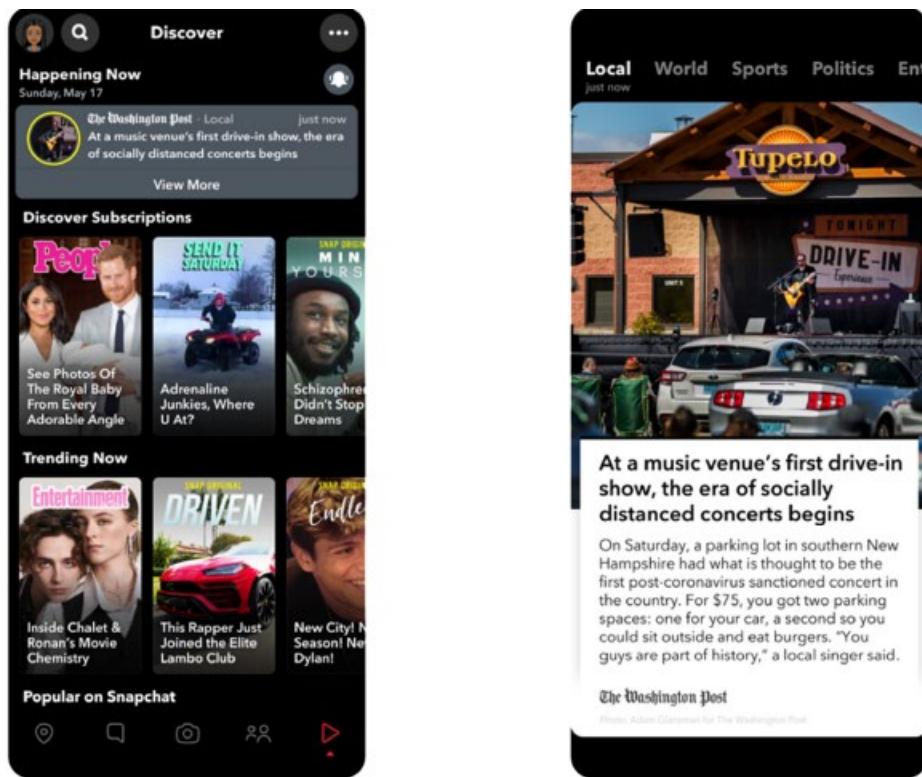
¹³ Snapchat, *The New Snapchat in 60 Seconds*, YouTube (Nov. 29, 2017), https://www.youtube.com/watch?v=nx1R-eHSkfM&feature=emb_title.

¹⁴ Resp. at 6-7.

MUR 7807 (Snap Inc., *et al.*)

Factual and Legal Analysis

Page 4 of 14



1 Snap states that it has “long promulgated and enforced” its Community Guidelines
 2 through which it seeks to ensure the Snapchat application provides a “safe and positive
 3 experience.”¹⁵ Currently, the Community Guidelines apply to “all content on Snapchat — and to
 4 all Snapchatters, equally.”¹⁶

6 **B. The Complaint and Response**

¹⁵ Snap Community Guidelines, <https://snap.com/en-US/community-guidelines>; Resp. at 6. Although Snap did not provide a date as to when the Guidelines were first promulgated, publicly available information indicates that Snap had them in place for many years. See <https://www.childnet.com/blog/reporting-on-snapchat-answering-some-frequently-asked-questions> (stating that posts containing content, such as threats and violence, harassment and bullying, and terrorism could result in “breaking” Snap Community Guidelines) (posted March 15, 2018); Letter from Chris Handman, General Counsel, Snapchat, Inc., to The Honorable Charles E. Grassley, Chairman, Committee on the Judiciary, United States Senate (June 13, 2016), <https://www.judiciary.senate.gov/imo/media/doc/2016-06-23%20Snapchat%20to%20CEG%20-%20Elder%20Exploitation%20via%20Social%20Media.pdf> (describing Snapchat Community Guidelines as applied to elder abuse and invasions of privacy).

¹⁶ Snap Community Guidelines, <https://snap.com/en-US/community-guidelines>.

1 The Complaint alleges that Snap’s decision to stop promoting Trump’s and his
 2 Campaign’s content on Discover resulted in a corporate contribution to Joe Biden and his
 3 campaign.¹⁷ The Complaint argues that Snap “pretextually” claimed the communications
 4 violated Snapchat community guidelines when “[i]n reality, Snapchat’s CEO [Evan Spiegel]
 5 disagreed with President Trump and his Campaign’s messaging . . . and sought to silence the
 6 President and his Campaign’s voice based on his own partisan ideology.”¹⁸ The Complaint states
 7 that the loss of access to Snapchat’s Discover platform increased the cost to the Trump campaign
 8 of getting its videos viewed by Snapchat users.¹⁹ By the same token, the Complaint argues that
 9 Snap’s continued promotion of Joe Biden on Discover amounted to millions of dollars in “free
 10 advertising services.”²⁰

11 The Complaint also argues that Snap’s continued inclusion of Joe Biden on Discover “is
 12 not an exempt activity under [the Act’s] ‘press’ or ‘media exemption’” because Snap is not a
 13 press entity as traditionally determined by the Commission and because Snap’s complained of
 14 actions are not within a press entity’s legitimate press function.²¹

15 Snap acknowledges that it stopped including Trump’s account on Discover but denies
 16 Snap’s actions resulted in a prohibited in-kind contribution to Biden. Snap argues that its

¹⁷ Compl. at 4.

¹⁸ *Id.*

¹⁹ *Id.* at 5 (“Using the Discover feature, the Trump campaign on average, can generate approximately 1.5 million views of a single video posted on Snapchat. Without access to Discover, the average number of views drops to approximately 215,000 users. The average cost per view on Snapchat is 9 cents — meaning that in order to make up the difference in lost viewership, the Trump Campaign would have to pay approximately \$115,000 per video to reach the same scope of audience.”).

²⁰ *Id.* at 5-6. The Complaint cites the Commission’s debate regulations requiring staging organizations to not promote or advance a particular candidate to “prove the point” that the alleged “advertising services” provided to Joe Biden amounts to a prohibited corporate contribution unless also provided to Trump. *See id.* at 7 (citing Corporate and Labor Organization Activity; Express Advocacy and Coordination With Candidates, 60 Fed. Reg. 64260, 64261 (Dec. 14, 1995)).

²¹ *Id.* at 7-9 (citing 11 C.F.R. § 100.73).

MUR 7807 (Snap Inc., *et al.*)

Factual and Legal Analysis

Page 6 of 14

1 conduct did not violate the Act because: (1) Snap’s decision to stop promoting the Trump
 2 campaign’s account was an “electorally-neutral business decision” and not for the purpose of
 3 influencing an election²² and (2) Snap’s decision is protected under the First Amendment.²³

4 Spiegel responded that he should be dismissed from this matter “at the threshold”
 5 because the Complaint did not specifically name him as a respondent and did not provide a basis
 6 for including him personally as a respondent.²⁴ Spiegel also stated that the five substantive
 7 defenses articulated by Snap apply to him too.²⁵

8 **III. LEGAL ANALYSIS**

9 **A. Snap Did Not Make a Prohibited In-Kind Contribution to the Biden**
 10 **Campaign**

11 The Act prohibits corporations from making contributions to federal candidates and bars
 12 candidates and political committees, other than independent expenditure-only political
 13 committees and committees with hybrid accounts, from knowingly accepting or receiving
 14 corporate contributions.²⁶ The Act also prohibits corporate officers and directors from
 15 consenting to such contributions.²⁷ The term “contribution” includes “any gift, subscription,

²² Resp. at 1, 14-16.

²³ *Id.* at 16 (citing *Citizens United v. FEC*, 558 U.S. 310 (2010) for proposition that “[t]he First Amendment specifically protects the right of corporations to publicly express their opinions on important issues of policy”).

²⁴ *Id.* at 13-14.

²⁵ *Id.* at 14.

²⁶ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), Note to Paragraph (b) (explaining that corporations and labor organizations may make contributions to nonconnected political committees that make only independent expenditures, or to separate accounts maintained by nonconnected political committees for making only independent expenditures).

²⁷ 52 U.S.C. § 30118(a).

MUR 7807 (Snap Inc., *et al.*)

Factual and Legal Analysis

Page 7 of 14

1 loan, advance, or deposit of money or anything of value made by any person for the purpose of
 2 influencing any election to Federal office.”²⁸

3 1. Snap’s Decision To Stop Promoting Trump on Discover Was For *Bona*
 4 *Fide* Commercial Reasons

5 The Commission has long considered activity engaged in for *bona fide* commercial
 6 reasons not to be “for the purpose of influencing an election,” and thus, not a contribution or
 7 expenditure under section 30118(a).²⁹ This is true even if a candidate benefitted from the
 8 commercial activity.³⁰

²⁸ 52 U.S.C. § 30101(8)(A). For the purposes of section 30118, the term “contribution” includes the definition provided at 52 U.S.C. § 30101(8)(A) and also includes “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section” 52 U.S.C. § 30118(b); 11 C.F.R. § 114.1(a).

²⁹ See, e.g., Factual & Legal Analysis at 4, MUR 6586 (World Wrestling Entertainment, Inc.) (WWE acted with the “sole intent to defend its business reputation” and not for the purpose of influencing the election when WWE’s Senior VP sent a letter to a newspaper seeking a retraction of a negative article about Senate candidate Linda McMahon, the founder and owner of WWE); First Gen. Counsel’s Rpt. at 13, MUR 5474 (Dog Eat Dog Films, *et al.*) (determining distributors and marketers of Fahrenheit 9/11 film did so “in connection with bona fide commercial activity and not for the purpose of influencing an election”); Certification, MUR 5474 (June 8, 2005) (Commission voted 6-0 to adopt recommendations); First Gen. Counsel’s Rpt. at 2, MUR 1051 (Les Aspin) (advertisement portraying candidate in glowing terms was made for purpose of promoting Scientific American magazine); Certification, MUR 1051 (Nov. 16, 1979) (Commission voted 6-0 to find no reason to believe); First Gen. Counsel’s Rpt. at 1-2, MUR 296 (Penthouse Magazine) (no reason to believe where corporate communication was an effort to promote a commercial venture — the selling of a magazine with a controversial article about Jimmy Carter); Certification, MUR 296 (Dec. 22, 1976) (Commission voted 5-0 to approve recommendation); Advisory Opinion 2021-04 (Pray.com) (online platform’s posting of candidate statements on matters of faith serves company’s commercial interests and is not a corporate in-kind contribution); Advisory Opinion 2018-11 (Microsoft Corporation) (commercially reasonable efforts “to protect [Microsoft] brand reputation” not an in-kind contribution when the company provided election-sensitive customers with free account security services); *cf. Orloski v. FEC*, 795 F.2d 156, 160 (D.C. Cir. 1986) (“Corporate donations made for non-political purposes are therefore permissible.”).

³⁰ See First Gen. Counsel’s Rpt. at 16, MUR 3622 (The Clinton/Gore ‘92 Committee) (“the fact that any of these candidates — Clinton/Gore, Bush, or Perot — may have received an indirect benefit (dissemination of their political positions) as a result of the sale of these tapes does not convert commercial activity into a corporate contribution.”); Certification, MUR 3622 (June 7, 1994) (no reason to believe recommendation approved 6-0); *cf. Factual & Legal Analysis* at 6, MUR 7024 (Van Hollen for Senate, *et al.*) (“[The] question under the Act is whether the legal services were provided for the purpose of influencing a federal election, not whether they provided a benefit to Van Hollen’s campaign.”); *id.* (no contribution given “absence of any objective or subjective indication” respondents acted for the purpose of influencing the election).

1 Here, Snap’s removal of Trump from the Snapchat Discover platform appears to be a
 2 decision made for *bona fide* commercial reasons and not for the purpose of influencing an
 3 election. Snap reasonably contends that the success of its flagship product Snapchat turns on its
 4 ability to retain, grow, and engage Snapchat’s daily active users.³¹ Snap states that “it has
 5 become commercially successful because it has conscientiously developed a user base of
 6 ‘informed, tolerant, active and diverse young’ people . . . not interested in hearing divisive
 7 rhetoric.”³² To promote a “safe and positive experience” for its user base, Snap states that it has
 8 long promulgated and enforced a set of Community Guidelines.³³ Snap had also warned users
 9 that the company would attempt to ensure Snapchat remained safe for users by doing what it
 10 thought “best reflects [Snap’s] values in each situation in [Snap’s] sole discretion.”³⁴

11 According to Snap, Trump’s Snapchat account repeatedly violated the Community
 12 Guidelines.³⁵ Shortly before Snap stopped including his content on Discover, Trump’s Snapchat
 13 account reposted Tweets questioning the legitimacy of mail-in ballots.³⁶ Snap determined these
 14 Tweets violated its Community Guidelines with respect to “spreading false information that causes
 15 harm or is malicious, such as . . . undermining the integrity of civic processes.”³⁷ The Response
 16 indicates that the Trump campaign continued to repost the content despite being repeatedly

³¹ Snap 10-Q at 40-41 (“Falling user retention, growth, or engagement could make Snapchat less attractive to advertisers and partners, which may seriously harm our business.”).

³² Resp. at 15 (citing Imogen Watson, *Snapchat Debuts First Brand-facing Campaign As It Looks to Reclaim Lost Ad Spend*, The Drum (Aug. 3, 2020), <https://www.thedrum.com/news/2020/08/03/snapchat-debuts-first-brand-facing-campaign-it-looks-reclaim-lost-ad-spend>) (quoting Snap Chief Marketing Officer).

³³ *Id.* at 6.

³⁴ *Wayback Machine*, Internet Archive, (last visited Mar. 2, 2021), <https://archive.org/> (search for “<https://snap.com/en-US/community-guidelines>” and select “May 27, 2020” to view Snap Community Guidelines).

³⁵ Resp. at 15.

³⁶ See *id.* at 9.

³⁷ See *id.* at 9-10.

MUR 7807 (Snap Inc., *et al.*)

Factual and Legal Analysis

Page 9 of 14

1 informed that it violated Snap's content policy.³⁸ Then, on May 28th and May 30th Trump
 2 Tweeted and posted on Facebook that "when the looting starts, the shooting starts" and that
 3 protestors would be "greeted with the most vicious dogs, and most ominous weapons, I have
 4 ever seen."³⁹ Snap viewed these communications as threatening violence and decided it had
 5 reached a "tipping point" with respect to Trump's Snapchat account and determined to cease
 6 promoting Trump's content on Discover.⁴⁰

7 In light of Snap's recent experience involving Trump's mail-in ballot posts on Snapchat, as
 8 just discussed, it appears reasonable for Snap to believe that operators of Trump's Snapchat
 9 account might attempt to repost his May 28th or May 30th Tweets and have them shared on
 10 Discover. In short, Snap determined that, in its business judgment, Trump's Tweets violated the
 11 Community Guidelines and continued promotion of Trump on Discover would have a detrimental
 12 effect on its brand and business model.⁴¹

13 The available information indicates Snap's business concerns were well-founded.
 14 According to news reports, advertisers boycotted one of Snap's competitors when it did *not*
 15 respond to Trump's Twitter and Facebook communications.⁴² Snap, on the other hand, appears

³⁸ *Id.* at 9-10 ("Snap informed the Trump campaign that its post violated the Guidelines and removed it. . . . [T]he Trump campaign reposted the same Tweet seven more times over the next three days. Each time, Snap removed the post and informed the Trump campaign of its repeated violations").

³⁹ See Resp. at 10; *see also supra* pp. 5-6.

⁴⁰ Resp. at 15.

⁴¹ See *id.* at 14-16.

⁴² See *id.* at 9; Tom Dotan, Ad Boycott of Facebook Proved to Be Boon to Snap and Pinterest, Data Shows, THE INFORMATION (Oct. 15, 2020), <https://www.theinformation.com/articles/ad-boycott-of-facebook-proved-to-be-boon-to-snap-and-pinterest-data-shows> ("Nearly 1,000 companies pledged to suspend advertising on Facebook during the month of July"); Steven Overly, Advertisers struggle for power over Facebook as boycotts surge, POLITICO (June 26, 2020), <https://www.politico.com/news/2020/06/26/advertisers-struggle-for-power-over-facebook-as-boycotts-surge-341943> ("Facebook's share price dropped 8 percent after Unilever announced its boycott, which it said will last the rest of the year. Others, ranging from Verizon to Ben & Jerry's and Eddie Bauer, are pausing ads for July.").

1 to have benefitted financially from its decision, drawing new advertisers who would not
 2 ordinarily spend money to advertise on Snapchat, including some advertisers who moved away
 3 from Facebook.⁴³ The available information thus supports Snap's position that not protecting its
 4 "values-driven business model" — which the Community Guidelines were designed to promote —
 5 risked erosion of Snapchat's ad revenue.

6 Finally, the Complaint does not provide factual support for its allegation that Snap's
 7 decision stemmed from a desire by its CEO Evan Spiegel "to silence the President and his
 8 Campaign's voice based on his own partisan ideology" and that Snap's claimed justification was
 9 pretext.⁴⁴ On the contrary, Snap's actions are best explained by the *bona fide* business
 10 justifications described above.

11 In sum, when viewed in the specific context of Snap's well-documented business model
 12 and the market in which it competes, the available information indicates that Snap's decision to
 13 no longer promote Trump on Discover was motivated by *bona fide* commercial reasons and not
 14 for the purpose of influencing the election.

15 2. Snap's Continued Inclusion of Joe Biden on Discover Is Not a Service
 16 within the meaning of 11 C.F.R. § 100.52(d)

17 The term "anything of value" includes "all in-kind contributions."⁴⁵ "In-kind
 18 contributions," include "the provision of any goods or services without charge or at a charge that

⁴³ "Advertiser 'spending on the Snapchat app more than doubled from July to September compared to the same period last year.' This included 'advertisers that paused their Facebook spending during the boycott shift[ing] their entire monthly budget to Snapchat.'" *See id.* at 9 (quoting Tom Dotan, Ad Boycott of Facebook Proved to Be Boon to Snap and Pinterest, Data Shows, THE INFORMATION (Oct. 15, 2020).

[https://www.theinformation.com/articles/ad-boycott-of-facebook-proved-to-be-boon-to-snap-and-pinterest-data-shows\).](https://www.theinformation.com/articles/ad-boycott-of-facebook-proved-to-be-boon-to-snap-and-pinterest-data-shows) .

⁴⁴ Compl. at 4.

⁴⁵ 11 C.F.R. § 100.52(d)(1).

MUR 7807 (Snap Inc., *et al.*)

Factual and Legal Analysis

Page 11 of 14

1 is less than the usual and normal charge for such goods or services is a contribution.”⁴⁶ The
 2 difference between the usual and normal charge for the goods or services at the time of the
 3 contribution and the amount actually charged is treated as an in-kind contribution.⁴⁷ The “usual
 4 and normal charge” for goods means the price of those goods in the market from which they
 5 ordinarily would have been purchased at the time of the contribution; and usual and normal
 6 charge for any services means “the hourly or piecework charge for the services at a
 7 commercially reasonable rate prevailing at the time the services were rendered.”⁴⁸

8 Snap indicates that individuals are not charged a fee to be promoted on Discover.⁴⁹

9 Instead, Snap charges advertisers to place ads directly on Discover⁵⁰ and shares ad revenue with
 10 companies that are Discover “publishing partners.”⁵¹ Because the record suggests that Snap
 11 treated candidates much like other individuals, who are not charged to be included on Discover,

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* (“Examples of such goods or services include, but are not limited to: Securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.”). For the purposes of section 30118, the term “contribution” also includes “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, political party or committee, organization, or any other person in connection with any election to any of the offices referred to in 11 CFR 114.2 (a) or (b) as applicable.” 11 C.F.R. § 114.1(a)(1).

⁴⁹ Resp. at 12 (“[A]dvertising and advertising rates are completely separate from, and have nothing to do with, the free organic user accounts that are actually at issue here.”); *see also* Compl. at 3 (quoting Sarah Frier, *Trump Embraces Snapchat as Battle for 2020 Youth Vote Heats Up*, BLOOMBERG (May 13, 2020), <https://www.bloomberg.com/news/articles/2020-05-13/trump-embraces-snapchat-as-battle-for-2020-youth-vote-heats-up>) (indicating a Snapchat user’s inclusion on Discover is based on frequency of Snapchat posts, not payment).

⁵⁰ Snapchat Business Help Center, Create Story Ads, https://businesshelp.snapchat.com/s/article/story-ads-product?language=en_US (“Story Ads allow advertisers to reach consumers by placing a branded tile in Snapchat’s Discover section that opens into a collection of 3 - 20 images or videos”).

⁵¹ *See* Kevin Tran, *Snapchat axes licensing deals with publishers amid redesign turmoil*, BUSINESS INSIDER (May 7, 2018), <https://www.businessinsider.com/snap-stops-paying-publishing-partners-upfront-licensing-fees-2018-5> (“Snap usually evenly splits ad revenue from Discover editions with publishers. Previously, Snap typically paid Discover publishers an upfront licensing fee and, in return, kept all ad revenue generated from their channels.”).

1 Snap did not provide a good or service below the usual and normal charge to the Biden campaign
 2 and thus did not make a prohibited in-kind contribution.

3 3. Snap's Inclusion of Joe Biden on Discover Was Not a Coordinated
 4 Contribution

5 An in-kind contribution can also result from a coordinated expenditure. The Act treats
 6 expenditures made “in cooperation, consultation, or concert, with or at the request or suggestion
 7 of, a candidate, his [or her] authorized political committees, or their agents” as in-kind
 8 contributions to that candidate and must be reported as expenditures made by the candidate’s
 9 authorized committee.⁵² Commission regulations set forth a three-prong test for when a
 10 communication is “coordinated” with a candidate, an authorized committee, a political party
 11 committee, or agent thereof, and treated as an in-kind contribution: (1) the communication is
 12 paid for, partly or entirely, by a person other than the candidate, authorized committee, political
 13 party committee, or agent thereof; (2) the communication satisfies at least one of the “content
 14 standards” at 11 C.F.R. § 109.21(c); and (3) the communication satisfies at least one of the
 15 “conduct standards” at 11 C.F.R. § 109.21(d).⁵³ All three prongs must be satisfied for a
 16 communication to be considered coordinated under the regulations.

17 Here, Snap’s communications promoting Joe Biden on Discover do not satisfy the
 18 content prong, and we have no information suggesting the conduct prong was met. For a

⁵² 52 U.S.C. § 30116(a)(7)(B). Authorized committees are required to report the identification of each person who contributes an aggregate amount of \$200 or more per election cycle, along with the date and amount of the contribution, including in-kind contributions. 52 U.S.C. § 30104(b)(3); 11 C.F.R. § 100.52(d)(1) (term “anything of value” in the Act’s definition of contribution includes all in-kind contributions; 11 C.F.R. §§ 109.20, 109.21 (coordinated expenditures and coordinated communications treated as in-kind contributions and must also be reported as an expenditures).

⁵³ The six types of conduct that satisfy the conduct prong are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) use of a common vendor; (5) use of a former employee or independent contractor; and (6) republication of campaign material. 11 C.F.R. § 109.21(d)(1)-(6).

MUR 7807 (Snap Inc., *et al.*)

Factual and Legal Analysis

Page 13 of 14

1 communication to satisfy the content prong it must, among other things, be either an
 2 “electioneering communication” or a “public communication.”⁵⁴ The term “broadcast, cable, or
 3 satellite communication” means a communication that is “publicly distributed by a television
 4 station, radio station, cable television system, or satellite system.”⁵⁵ The term “public
 5 communication” excludes communications over the Internet, except for communications placed
 6 for a fee on another person’s Website.⁵⁶ Here, Snap’s communications on its own platform are
 7 neither broadcast, cable, or satellite communications nor public communications.⁵⁷ Accordingly,
 8 Snap’s communications promoting Joe Biden on Discover do not satisfy the content prong and
 9 do not appear to be coordinated communications under 11 C.F.R. § 109.21.⁵⁸

10 * * *

11 Because Snap appears to have stopped promoting Trump on its Discover platform for
 12 *bona fide* commercial reasons and Snap’s continued inclusion of Joe Biden on Snapchat’s
 13 Discover platform does not appear to be either an advertising service or a coordinated
 14 communication, the Commission finds no reason to believe that Snap made a corporate in-kind
 15 contribution to the Biden campaign in violation of 52 U.S.C. § 30118(a). The Commission also

⁵⁴ See 11 C.F.R. § 109.21(c). The term “electioneering communication” excludes communications over the Internet. *Id.* § 100.29(c)(1). The term “public communication” excludes communications over the Internet, except for communications placed for a fee on another person’s Website. *Id.* § 100.26.

⁵⁵ *Id.* § 100.29(b).

⁵⁶ *Id.* § 100.26.

⁵⁷ *Id.*

⁵⁸ This conclusion is consistent with the Commission’s recent decision in Advisory Opinion 2021-04 (Pray.com), where the Commission determined online posting of candidate statements on the requestor’s free online platform would not be coordinated communications because posts would not be electioneering communications or public communications. See Advisory Opinion 2021-04 (Pray.com).

MUR 7807 (Snap Inc., *et al.*)

Factual and Legal Analysis

Page 14 of 14

- 1 finds no reason to believe that Evan Spiegel consented to a corporate contribution in violation of
- 2 52 U.S.C. § 30118(a).