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February 19, 2021

Mr. Jeff S. Jordan
Assistant General Counsel
ATTN: Christal Dennis, Paralegal
Office of Complaints Examination
and Legal Administration
Federal Election Commission
1050 First Street, N.E.
Washington, D.C. 20463

BY EMAIL TO: CELA@FEC.GOV

Re: MURs 7865, 7866 on behalf of Respondents – Target Platform Media, LLC and Buying Time, LLC

Dear Mr. Jordan:

I am writing on behalf of Buying Time, LLC (“BT”) and Target Platform Media, LLC (“TPM” collectively, the “Respondents”) in response to the Commission’s notification that it received complaints (the “Complaints”) alleging that the Respondents had violated the Federal Election Campaign Act (the “Act”) and Federal Election Commission (the “Commission”) regulations.

As a threshold matter, BT and TPM should not have been listed as Respondents in this Matter. It is rare for a vendor to be listed as a respondent in an alleged violation of the coordination regulations. In a number of prior matters involving common vendor allegations, the only respondents were the committees involved, not the vendors.¹ To be sure, the complaint does not allege any illegal conduct undertaken by Respondents but merely that their use as a common vendor creates potential illegal conduct by those who retained their services. Respondents should be dismissed on that basis alone. Nevertheless, as demonstrated below, neither Respondents nor any of their clients engaged in any activity that could be deemed to violate the Act.

¹ See, e.g., MURs 7403 and 7441 (Dr. John Joyce for Congress, *et al.*); MUR 6984 (Right to Rise USA, *et al.*); MUR 6120 (Darren White for Congress, *et al.*); MUR 6050 (Boswell for Congress, *et al.*); MUR 5823 (Walberg for Congress, *et al.*). But see MUR 6916 (Democratic National Committee, *et al.*); MUR 6888 (Republican National Committee, *et al.*); MUR 6077 (Norm Coleman, *et al.*).

COMPLAINT

Complainants allege that Ditch Fund and March On PAC (collectively, the “Committees”), two independent expenditure-only committees, made “illegal, unreported, and excessive in-kind contributions” to the Amy McGrath and Mike Espy Campaigns (collectively, the “Campaigns”), respectively, through the use of BT (hired by the Campaigns) and TPM (hired by the Committees) as a common vendor. But as discussed below, the Respondents had established and implemented a firewall consistent with 11 C.F.R. § 109.21(h). As a result, no information flowed between the Committees and the Campaigns through the Respondents and, therefore, no coordination or in-kind contributions occurred.

Because there was no violation of the Act or of the Commission’s regulations, the Commission should find “no reason to believe” that any Respondent had violated the Act and close this matter.

Background

Buying Time, LLC was established by Catherine Herrick on April 30, 1999. For nearly 32 years, Buying Time has provided “media planning and buying services to political campaigns, political organizations, and non-profit organizations.”² In 2014, Ms. Herrick “created TPM as a subsidiary to BT” as a way to delineate between work done for candidates and work done for other independent clients.³

To that end, the Respondents did not share a common office space during the 2020 election cycle, nor were there any overlap between the employees involved with strategic decisions with respect to any given election.⁴ In addition, the Respondents have a firewall policy that prevents any flow of information by prohibiting the discussion or sharing of “non-public strategic information” between the two companies.⁵ Furthermore, this policy requires a separation of documents (both access and storage) and of internal lists.⁶ A copy of the Respondent’s Firewall Policy is attached as Exhibit B.

Being the sole member of each entity, Ms. Herrick is responsible for affixing her signature onto certain media buyer documents required by the Federal Communications Commission. Ms. Herrick’s assistant is in charge of performing this administrative act using a pre-signed stamp, and as such, Ms. Herrick does not review each form. Thus, her signature on the forms for both BT and TPM does not provide any proof that she was playing the role of intermediary between the Campaigns and the Committees. Nor does it prove that she had any knowledge of the purchases made by BT or TPM for their clients.⁷

² Herrick Decl. at para. 2. Attached as Exhibit A.

³ *Id.* at para. 3.

⁴ *Id.* at para. 4. “[I]t should be noted that TPM and BT do share employees that provide administrative and ministerial functions.” *Id.* at para. 3. But such a sharing of “administrative personnel does not defeat the use of a firewall.” Explanation & Justification, 71 Fed. Reg. 33,190, 33,207 (June 8, 2006)

⁵ *Id.* at para. 5.

⁶ *Id.*; see also Welsh Decl. at para. 4-5.

⁷ Herrick Decl. at para. 6-7.

In compliance with the firewall policy, Ms. Herrick remained firmly on the candidate side of the firewall with regards to the United States Senate work in Kentucky and Mississippi, working solely with Campaigns on behalf of BT to provide strategic planning and advice. In this role, she and her strategic employees at BT were all completely segregated from TPM's work with the Committees. At no time did "any non-public strategic information [or] strategic advice regarding the plans, projects, or needs of any candidate committee" breach the firewall between BT and TPM.⁸

On the other side of the firewall for these two elections, Ms. Kathryn Welsh provided the strategic and media placement advice to the Committees through TPM. She was the only person at either BT or TPM who did so for the Committees.⁹ Under the implemented firewall policy, Ms. Welsh "was strictly limited to providing services to organizations that were independent of any candidate."¹⁰ To reiterate, as a result of the firewall, Ms. Welsh received no information about BT's candidate clients, could not access any documents with such information, and could not have any discussions with BT employees regarding the candidates they represented.¹¹ Ms. Welsh's strategic decisions were guided by the Committees and by her own expertise, "not by any non-public materials provided by a candidate."¹²

Discussion

Where a firewall policy is established in accordance with 11 C.F.R. § 109.21(h), the Commission traditionally dismisses the Complaint because the conduct prong of the coordination test is unmet.¹³ Indeed, such dismissal has even occurred where the firewall regulation's technical specifications were not met.¹⁴ As described above and in the attached declarations, BT and TPM had "an effective firewall between different employees [and] different units within its organization that prevent[ed] information obtained from one client from being used on behalf of another, and thereby prevent[ed] its staff from conveying information from one client to another."¹⁵

More specifically, when the standard in 109.21(h) is met, the conduct prong of 11 C.F.R. § 109.21 is not, unless the Complaint provides: "specific information indicat[ing] that information about the candidate's . . . campaign plans, projects, activities, or needs that is material to the creation, production, or distribution of the communication was used or conveyed to the person paying for the communication."¹⁶ That type of "specific information" has not been provided here by the Complainant.

⁸ *Id.* at para. 8.

⁹ Welsh Decl. at para. 2. Attached as Exhibit C.

¹⁰ *Id.* at para. 4.

¹¹ *Id.* at 4-5.

¹² *Id.* at 6.

¹³ See, e.g., MURs 7403 and 7441 (Dr. John Joyce for Congress, *et al.*); MUR 6984 (Right to Rise USA, *et al.*); MUR 6120 (Darren White for Congress, *et al.*); MUR 6077 (Norm Coleman, *et al.*); MUR 6050 (Boswell for Congress, *et al.*).

¹⁴ MUR 5823 (Walberg for Congress, *et al.*), First General Counsel's Report at 12-13.

¹⁵ Explanation & Justification, 71 Fed. Reg. 33,190, 33,206 (June 8, 2006).

¹⁶ 11 C.F.R. § 109.21(h); see also Explanation & Justification, 71 Fed. Reg. 33,190, 33,206 (June 8, 2006).

The Complaints here only rely on the fact that Ms. Herrick's signature appears on the forms submitted to the Federal Communications Commission. However, as explained above and in Ms. Herrick's declaration, her signature was affixed by her assistant as a ministerial matter and, therefore, does not provide any support to the Complaint's allegations of coordination. The fact that Ms. Herrick's signature appears on these forms is not "specific information" that any "information about [the Campaigns'] plans projects, activities, or needs . . . [were] used [by] or conveyed" to her, to Ms. Welsh, or to any strategic employee at BT or TPM. Thus, absent any "information to indicate that the vendor conveyed non-public information" between the Campaigns and the Committees, the conduct prong is not met.¹⁷

The Complainants assert that the Commission may find reason to believe where two of the three prongs of the common vendor test are met. To do so, they rely on MURs 5546, 5502, and 5403/5466. However, these proceedings largely took place before the Commission's firewall safe harbor for common vendors was put in place.¹⁸ As such, the MURs should hold no bearing here. And in fact, such a finding of reason to believe would go against Commission precedent since the regulation's implementation in 2006.¹⁹

Time and again, the Commission has found no reason to believe where a firewall policy exists. In MUR 6120, the complainants alleged that the Republican Campaign Committee of New Mexico ("RCCNM") coordinated with Freedom's Watch ("FW") through the use of a common vendor, the media firm Stevens, Reed, Curcio & Potholm ("SRCP"). This allegation was based on the use of identical images in separate advertisements run by RCCNM and FW. However, SRCP adhered to its strict firewall policy, and because of this, "the firewall . . . would have further prevented information sharing," "[e]ven if the common vendor elements were met." Thus, the Office of General Counsel recommended a finding of no reason to believe because the conduct prong was not satisfied and would have done so "[e]ven if the common vendor elements [had been] met."²⁰

Even without access to a vendor's firewall policy and based solely upon sworn affidavits, the Commission has found no reason to believe under the common vendor test.²¹ For example, in MUR 7403/7441, the complainants alleged illegal coordination due to the use of a common vendor and that due to the vendor's small size, it likely lacked a firewall policy. Based solely on the company's affidavits "detailing its efforts to prevent the flow of information," the Office of General Counsel found that "[the vendor] appears to have availed itself of the Commission's safe harbor provisions. . . . Therefore, we recommend that the Commission dismiss the allegation," which it did by a vote of 3-1.²²

¹⁷ MURs 7403 and 7441 (Dr. John Joyce for Congress, *et al.*), First General Counsel's Report at 6-8.

¹⁸ See generally Explanation & Justification, 71 Fed. Reg. 33,190 (June 8, 2006).

¹⁹ See, e.g., MURs 7403 and 7441 (Dr. John Joyce for Congress, *et al.*); MUR 6984 (Right to Rise USA, *et al.*); MUR 6120 (Darren White for Congress, *et al.*); MUR 6077 (Norm Coleman, *et al.*); MUR 6050 (Boswell for Congress, *et al.*); MUR 5823 (Walberg for Congress, *et al.*).

²⁰ MUR 6120 (Darren White for Congress, *et al.*), First General Counsel's Report at 9.

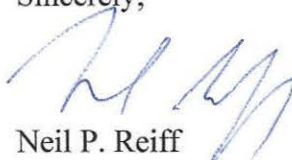
²¹ See, e.g., MURs 7403 and 7441 (Dr. John Joyce for Congress, *et al.*); MUR 6077 (Norm Coleman, *et al.*); MUR 6050 (Boswell for Congress, *et al.*).

²² MURs 7403 and 7441 (Dr. John Joyce for Congress, *et al.*), First General Counsel's Report at 6-8.

The facts described above show that BT and TPM followed their firewall policy, which was created pursuant to 11 C.F.R. § 109.21(h). In addition, Ms. Welsh, the sole strategic advisor of the Committees has provided a sworn declaration that she did not receive, nor rely upon, any non-public information that may have been in the possession of BT or TPM in providing any strategic advice to the Committees.

The Complainants do not provide any “specific information” to the contrary, and therefore, the conduct prong of the coordination standard has not been met. Because of the clear existence of and adherence to a firewall policy, the absence of specific information indicating it was not followed, and the clear refutation of any such allegation, the Commission should find no reason to believe a violation of the Act occurred and dismiss this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Neil P. Reiff', is positioned above the printed name.

Neil P. Reiff
Counsel to Buying Time, LLC and
Target Platform Media, LLC

EXHIBIT A

**BEFORE THE
FEDERAL ELECTION COMMISSION**

IN RE)	
)	
)	MURs 7865, 7866
Ditch Fund)	
March On PAC)	

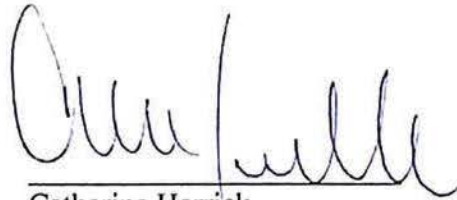
Declaration of Catherine Herrick

1. My name is Catherine Herrick. I am the sole owner of Buying Time, LLC ("BT") and Targeted Platform Media, LLC ("TPM"). BT and TPM are for profit, single member limited liability companies. I am the sole member of each LLC.
2. BT was established on April 30, 1999 and provides media planning and buying services to political campaigns, political committees, and non-profit organizations.
3. On February 1, 2014, I created TPM as a subsidiary to BT, to establish a clear division between my candidate clientele and other clients who wished to operate independently of candidates. It should be noted that TPM and BT do share employees that provide administrative and ministerial functions to its clients and companies.
4. BT and TPM have separate office space for their strategic staff and do not have overlapping employees that work on strategic services for its clients.
5. In addition, BT and TPM operate under a strict firewall, in accordance with 11 C.F.R. § 109.21(h), that ensures that neither company's employees discuss or otherwise share any non-public strategic information regarding the other's clients. In addition, the firewall policy provides for separation of document access and storage, as well as internal lists.
6. As sole owner of BT and its subsidiaries, I am the President and chief executive officer of both BT and TPM.
7. As a general matter, a media buyer is required to provide a standard form created by the Federal Communications Commission to any television or radio station for which a purchase of political advertising is made. As President of BT and TPM, my signature is affixed to these forms. As a general matter, this signature is

stamped onto the form by my assistant. I do not review each form that is provided to a station and such signature does not provide any proof that I had specific knowledge of any specific purchase of time made by BT or TPM on behalf of their clients.

8. For purposes of providing strategic advice to clients during the 2020 cycle, my role for strategic planning and advice to clients in the 2020 Senate elections in Kentucky and Mississippi, I was restricted to clients who were candidates for office in accordance with the BT firewall policy. Therefore, under the policy, neither I, nor to my knowledge any other employee of BT, provided any non-public strategic information, or otherwise provided any strategic advice regarding the plans, projects, or needs of any candidate committee to Ditch Fund or March On PAC during the 2020 cycle.

I declare under penalties of perjury that the foregoing is true and correct to the best of my present knowledge, information, and belief. Dated this 18th day of February 2021.



Catherine Herrick

EXHIBIT B



Buying Time

650 Massachusetts Ave. NW, Suite 210
Washington, DC 20001
202.965.5060
202.965.5066 fax
www.buying-time.com

MEMORANDUM

To: Buying Time Employees

From: Cathie Herrick

Date: March 9th, 2016

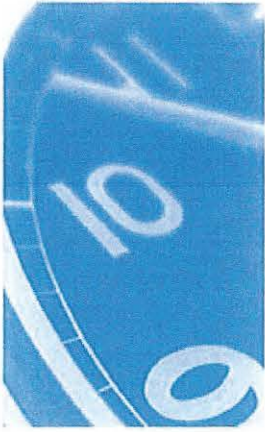
RE: FEC Compliance

Consistent with the Federal Election Commission's rules governing "coordinated communications," Buying Time LLC and its subsidiaries, Targeted Platform Media have adopted the following policies and procedures designed to prevent improper coordination.

As an overview, in order to avoid excessive or prohibited contributions to federal candidates or party committees, the Federal Election Commission's rules restrict certain coordination between candidates seeking federal office and outside spending organizations such as ****EMILY's LIST or the LEAGUE OF CONSERVATIVE VOTERS.**** The rules also restrict certain coordination between political party committees such as the **DNC or the DCCC** and outside spending organizations. And the rules also restrict certain coordination between candidates and the IE-arm of the party committees. The rules are designed to prevent the exchange of non-public information regarding strategy and messaging.

In general, the coordination restrictions apply –

- (1) If the advertisement expressly advocates the election or defeat of a clearly identified federal candidate or contains the functional equivalent of express advocacy;
- (2) If the advertisement is an electioneering communication;
- (3) If the advertisement republishes campaign materials prepared by the candidate or the candidate's committee;
- (4) If the advertisement refers to a Congressional candidate and is broadcast within 90 days before a Congressional primary or general election;
- (5) If the advertisement refers to a Presidential or Vice Presidential candidate and is broadcast in a jurisdiction between 120 days before a presidential primary or caucus in that jurisdictions and the general election;



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- (6) if the advertisement refers to a political party (but does not refer to a clearly identified federal candidate), is coordinated with a federal candidate's campaign, and is broadcast either within 90 days before a Congressional primary or general election (if the coordination is with a Congressional candidate's campaign) or between 120 days before a presidential primary or caucus and the general election (if the coordination is with a Presidential candidate's campaign); or
- (7) if the advertisement refers to a political party (but does not refer to a clearly identified federal candidate), is coordinated with a political party committee, and is broadcast between 120 days before a presidential primary or caucus and the general election.

Importantly, the coordination restriction encompasses all non-public communications regarding the content of television and radio Advertisements, as well as the timing, placement and frequency of Such advertising.

In order to prevent improper coordination, Targeted Platform Media and its subsidiaries are implementing the following procedures:

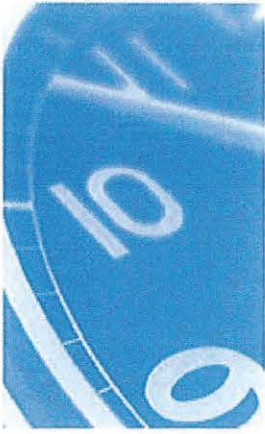
(1) Division of Client Work Under Separate Entities

To facilitate separation of personnel and client activities, the following details areas of specialization for Targeted Platform Media LLC and its subsidiaries:

- Targeted Platform Media LLC to handle all federal candidate activity.
- Waterfront Strategies to handle all account work on behalf of SuperPACs and other 527 and 501© outside spending organizations.
- Great American Media to handle all party committee accounts.

(2) Division of Labor

Should Targeted Platform Media LLC and its subsidiaries take on as clients both a candidate and an outside spending organization or party committee likely to make public communications expressly advocating for the candidate (or merely refereeing a candidate if the advertisement will be broadcast within the relevant time periods), different personnel shall be assigned responsibility for day-to-day management of these clients. Those individuals should provide services to these clients on the clear understanding that they may not communicate with each other – that is, those representing the candidate may not communicate with those representing the outside spending organization – about their work for their particular assigned clients. In addition, those representing a party committee may not communicate with those representing outside spending organizations about their work for their particular assigned clients with respect to the same candidate or election.



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(3) Document Access and Storage

Client specific information, including, but not limited to, scripts, Polls, focus groups and records of media buys should not be available through shared libraries or files. To effectuate this policy, when a document or other work product is received or generated, Targeted Platform Media and its subsidiaries will identify the client and segregate the document or product accordingly. This identification should determine who in the firm has access to the item. Computer files should be password protected, enabling only authorized employees to have access. Printed documents and work product should be maintained in a manner that guarantees their security. Targeted Platform Media and its subsidiaries shall inform every client which individuals in the firm are authorized to discuss their account and to receive documents.

(4) Team E-mail Lists

Targeted Platform Media and its subsidiaries shall establish internal client team e-mail lists to help prevent improper correspondence between staff representing different candidates, party committees, and outside spending organizations.

(5) Confidentiality

Targeted Platform Media and its subsidiaries shall inform their clients of their confidentiality policies. The importance of these policies to both the client and the firm should be stressed. The firm shall send each client a separate letter confirming their confidentiality policy and advising clients not to circumvent the policy by disclosing proprietary information to unauthorized firm personnel.

(6) Contact

In the event that an employee has questions about these procedures, he or she should contact Cathie Herrick, owner.

I have read and understood the above and agree to abide by these guidelines:

(Name—please print)

(Sign & Date)

EXHIBIT C

**BEFORE THE
FEDERAL ELECTION COMMISSION**

IN RE

Ditch Fund

March On PAC

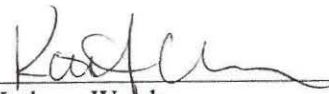
)
)
) MURs 7865, 7866
)
)
)

Declaration of Kathryn Welsh

1. My name is Kathryn Welsh. I am currently and have been the Media Director for Buying Time, LLC ("BT") and Targeted Platform Media, LLC ("TPM") since 2019. From 2015 through 2019 I was a Senior Media Buyer for BT and TPM.
2. During the 2020 election cycle I provided strategic and media placement advice to two independent expenditure only committees, Ditch Mitch and March On PAC. During the 2020 cycle, I was the only person at BT or TPM that provided any strategic or media placement advice to Ditch Mitch or March On PAC. These PACs disseminated advertisements in connection with United States Senate races in Kentucky and Mississippi, respectively. These clients were serviced exclusively by TPM during the 2020 calendar year.
3. It is also my understanding that BT was retained by Amy McGrath and Mike Espy, who were candidates for office in each of these elections, to provide similar media placement services.
4. During the 2020 cycle, both BT and TPM operated under a strict internal firewall policy that was developed by BT in 2016. Under the policy that was in effect during 2020, I was strictly limited to providing services to organizations that were engaged in activities that were independent of any candidate or party committee in the Senate races in Mississippi and Kentucky.
5. Under the firewall policy I was not privy to, nor did I use, any non-public information about the plans, projects, activities or needs of any candidate or candidate's committee in Mississippi or Kentucky. Furthermore, under the firm firewall policy, I did not have any access to any files or documents that BT would have had in its possession that contained such information. In addition, I did not engage in any substantive discussions with any BT employee that provided any strategic services to any candidate for United States Senate in Kentucky or Mississippi regarding those candidate's plans, projects, activities, or needs.

6. Any strategic decision-making services that I would have provided in connection with these elections to our PAC clients would have been guided by information provided to me by the PAC client or my own background and expertise in media placement and not by any non-public materials provided by a candidate or used by BT or TPM to provide services to a candidate.

I declare under penalties of perjury that the foregoing is true and correct to the best of my present knowledge, information, and belief. Dated this 18th day of February 2021.


Kathryn Welsh