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October 15, 2021

Mr. Roy Q. Luckett
Acting Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street, N.E.
Washington, D.C. 20463

Re: MUR 7919

Dear Mr. Luckett:

We are writing on behalf of MSNBC and NBCUniversal News Group, the operator of MSNBC, the named respondents in a complaint filed by James V. Lacy, dated July 22, 2021 (the "Complaint"), alleging that MSNBC's coverage of the 2020 presidential election constituted impermissible corporate contributions and expenditures under the Federal Election Campaign Act ("FECA") and Federal Election Commission (the "Commission" or "FEC") regulations. These allegations are not only factually, but also legally, baseless and should be dismissed.

The Law

FECA prohibits corporations from making contributions and requires disclosure of independent expenditures on certain express advocacy communications made in connection with a federal election. *See* 52 U.S.C. § 30118(a). FECA and Commission regulations define the term "contribution" to include "anything of value" provided to a candidate or campaign committee in connection with a federal election, including the use of corporate resources. *See* 52 U.S.C. § 30118(b). However, there are numerous exemptions from FECA's prohibition on the use of corporate resources, including but not limited to an exemption permitting bona fide media organizations to incur costs associated with producing and distributing news stories, commentary, or editorials (the "press exemption"). *See* 11 C.F.R. §§ 100.73, 100.132.

In numerous advisory opinions, the Commission has applied the press exemption using a two-step analysis that considers (1) whether the person engaging in the activity is a press entity and (2) whether such person is owned or controlled by a political party, political committee, or candidate, and whether the activity is part of such person's legitimate press function. *See, e.g.*, Advisory Opinion 2016-

01 (Ethiq), Advisory Opinion 2005-16 (Fired Up!), Advisory Opinion 2004-07 (MTV). If the activity in question is a legitimate press function conducted by a press entity that is not controlled by a political party, political committee, or candidate, the press exemption applies and the costs of that activity are neither a contribution nor an independent expenditure under FECA.

The Complaint Mischaracterizes and Misapplies the Press Exemption

The Complaint is replete with faulty arguments and mischaracterizations as it contorts the law and the facts in an attempt to conjure a legal violation by MSNBC. For example, the Complaint begins by citing and discussing a regulation that does not even apply to MSNBC given that it is not controlled by a political party, candidate, or committee. Complaint at p. 2 (citing 11 CFR § 100.73(b)). Subsequently, the Complaint appears to argue that MSNBC loses the benefit of the press exemption if it engages in the very editorial commentary to which the exemption expressly refers by claiming it is express advocacy. Complaint at p. 1. Not only does the Complaint fail to offer a specific example of a communication that would qualify for such novel carve-out from the press exemption; it fails to recognize that the press exemption clearly permits news organizations such as MSNBC, CNN, Fox News, and others to provide commentary, analysis, and editorials even if such content were to otherwise constitute express advocacy. *See* 11 C.F.R. §§ 100.73 and 100.132. In fact, the Commission has repeatedly affirmed that "an entity otherwise eligible for the press exemption would not lose its eligibility merely because of...a news story, commentary, or editorial, even if the news story, commentary, or editorial *expressly advocates* the election or defeat of a clearly identified candidate" (emphasis added). Advisory Opinion 2005-16 (Fired Up!) (citing First General Counsel's Report, MUR 5440 (CBS Broadcasting, Inc.)).

Additionally, although it does not merit a response, we note that the Complaint falsely alleges that MSNBC does not qualify as a bona fide press entity because it is controlled by the Democratic Party. Complaint at p. 6. The Complaint does not even attempt to support this claim with any facts, but, rather, bases it on the Complainant's baseless conspiracy theory and asks the Commission to launch an investigation into the matter. This request is unwarranted on its face as it provides zero evidence. Moreover, while it should not even need to be said, MSNBC is not controlled by the Democratic Party or any other political party, committee, or candidate, and the network maintains complete operational and editorial control over its programming.

MSNBC's Election Coverage Is Covered by the Press Exemption

The legal analysis under the Commission's two-pronged standard is quite simple and is the same analysis that applies to the myriad other news organizations across the country as they cover and comment on politics and elections.

As an initial matter, MSNBC is an internationally recognized, bona fide news organization that is owned by a publicly traded company and not by a candidate or political organization. Simply put, there is no legitimate question as to MSNBC's status as an independent news organization. Since its launch in 1996, it has been one of the top-rated cable news networks, with millions of viewers in the U.S. and around the globe. Over the years, the network has won countless awards for its in-depth news and analysis, incisive political commentary, and innovative documentary programming. The network is home to many of the most prominent and respected reporters and commentators in the news profession. A world-class news organization, MSNBC meets the highest standards of journalistic integrity and excellence.

Moreover, covering, commenting on, and editorializing about the 2020 presidential election is entirely consistent with the Commission's interpretation of a legitimate press function. Accordingly, it is

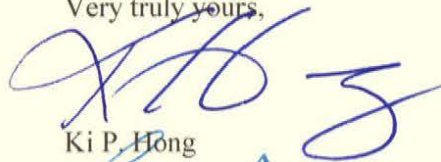
clear that any costs associated with such coverage incurred by MSNBC fit squarely within the press exemption discussed above and do not result in a prohibited contribution or expenditure.

Narrowing the Press Exemption Would Undermine the Freedom of the Press

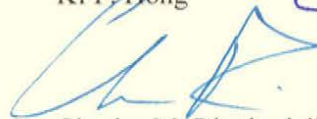
Finally, the Complainant requests that the Commission narrow the scope of the press exemption. Complaint at p. 7. Not only is this request antithetical to the First Amendment, the press exemption as it currently stands is essential to the functioning of a free press and, therefore, the health of our nation's democracy. As the FEC has recognized before, "the legislative history of the press exemption indicates that Congress did not intend to 'limit or burden in any way the First Amendment freedoms of the press and of association.'" Advisory Opinion 2008-14 (Melothe, Inc.) (citing H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. at 4 (1974)). Narrowing the exemption would do serious harm to our nation's discourse and raise grave First Amendment concerns. Any suggestion to do so should not be entertained.

Given the facts and analysis above, we respectfully request that the Commission dismiss the Complaint with no further action and resist its call to reconsider the press exemption. Please do not hesitate to contact us with any questions or requests for additional information.

Very truly yours,



Ki P. Hong



Charles M. Ricciardelli