



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

VIA EMAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

mayala@chalmersadams.com

Moses K. Ayala
Chalmers, Adams, Backer & Kaufman LLC
1032 15th Street, N.W., #374
Washington, D.C. 20005

June 3, 2024

RE: MUR 8132
ActBlue, *et al.*

Dear Mr. Ayala:

The Federal Election Commission reviewed the allegations in your complaint dated May 1, 2023. On May 1, 2024, on the basis of the information provided in your complaint and information provided by the respondents, the Commission voted to dismiss: (1) the allegation that ActBlue and George Gilmer in his official capacity as treasurer violated 52 U.S.C. §§ 30104(b)(6)(B)(i) and 30116(a)(1)(A) by making, and failing to report making, excessive in-kind contributions in the form of email addresses and telephone numbers of contributors; (2) the allegation that Warnock for Georgia and Christopher Koob in his official capacity as treasurer; Fetterman for PA and Jay Petterson in his official capacity as treasurer; Biden for President and Keana Spencer in her official capacity as treasurer; and Bernie 2020 and Lora Haggard in her official capacity as treasurer violated 52 U.S.C. §§ 30104(b)(2)(D), (b)(3)(B) and 30116(f) by knowingly accepting and failing to report receiving excessive in-kind contributions in the form of email addresses and telephone numbers of contributors; and (3) the allegation that Raphael Warnock, John Karl Fetterman, Joseph Biden, and Bernard Sanders violated 52 U.S.C. § 30116(f) by knowingly accepting in-kind contributions in the form of email addresses and telephone numbers of contributors. Accordingly, the Commission voted to close the file in this matter, effective June 3, 2024.

Documents related to the case will be placed on the public record today. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). Any applicable Factual and Legal Analyses or Statements of Reasons available at the time of this letter's transmittal are enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action within 60 days of the dismissal,

which became effective today. *See* 52 U.S.C. § 30109(a)(8). If you have any questions, please contact Joshua Blume, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

Ana J. Peña-Wallace
BY: Ana Peña-Wallace
Assistant General Counsel

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: ActBlue and George Gilmer in his official capacity as treasurer
 Warnock for Georgia and Christopher Koob in his official capacity as treasurer
 Senator Raphael Warnock
 Fetterman for PA and Jay Petterson in his official capacity as treasurer
 Senator John Karl Fetterman
 Biden for President and Keana Spencer in her official capacity as treasurer
 President Joseph R. Biden
 Bernie 2020 and Lora Haggard in her official capacity as treasurer
 Senator Bernard Sanders

MUR: 8132

I. INTRODUCTION

The Complaint in this matter alleges that ActBlue violated the Federal Election Campaign Act of 1971, as amended (the “Act”), during the 2020 and 2022 election cycles by making, and failing to report, excessive in-kind contributions in violation of 52 U.S.C. §§ 30104(b) and 30116(a) to the following candidates and committees: (1) Raphael Warnock and Warnock for Georgia and Christopher Koob in his official capacity as treasurer (“Warnock for Georgia”); (2) John Karl Fetterman and Fetterman for PA and Jay Petterson in his official capacity as treasurer¹ (“Fetterman for PA”); (3) Joseph R. Biden and Biden for President and Keana Spencer in her official capacity as treasurer (“Biden for President”); and (4) Bernie Sanders and Bernie 2020 and Lora Haggard in her official capacity as treasurer (“Bernie 2020”), (collectively, the “Candidates and Committees”). The Complaint also alleges that the Candidates

¹ See Fetterman for PA, Statement of Organization (Aug. 30, 2023), <https://docquery.fec.gov/pdf/188/202308309596859188/202308309596859188.pdf>. At the time of the Complaint, Fetterman for PA’s treasurer was Victoria Perrone.

1 and Committees violated 52 U.S.C. §§ 30104(b) and 30116(f) by accepting and failing to report
2 excessive in-kind contributions from ActBlue.

3 According to the Complaint, the in-kind contributions in question consist of the email
4 addresses and telephone numbers of persons who contributed to each of the Candidates and
5 Committees through ActBlue. The Complaint observes that the Act does not require a conduit to
6 transmit or a recipient committee to report email addresses or telephone numbers and that
7 therefore the value of this additional information, which the Complaint estimates ranges between
8 five cents and one dollar per item, constitutes a separate, excessive, unreported contribution by
9 ActBlue to the Candidates and Committees valued at hundreds of thousands of dollars. The
10 Complaint relies upon Advisory Opinion 2022-12 (Ready for Ron) (“AO 2022-12”)² to support
11 the claim. that doing so would constitute an in-kind contribution.

12 The Respondents assert that ActBlue does not provide the additional contact information
13 without charge, because the standard fee charged by ActBlue includes the cost of transmitting
14 the additional information. They therefore assert that the Commission should either dismiss the
15 allegation or find no reason to believe that a violation of the Act occurred.

16 For reasons discussed below, the Commission dismisses the allegations that ActBlue’s
17 transmission of contributors’ email addresses and telephone numbers to the Candidates and
18 Committees resulted in excessive in-kind contributions in violation of 52 U.S.C.
19 § 30116(a)(1)(A) and (f), or that ActBlue and the Committees failed to report the making and

² Ready for Ron is now known as “Ready to Win.” See Ready to Win, Statement of Organization at 5 (May 23, 2023), <https://docquery.fec.gov/pdf/465/202305239581652465/202305239581652465.pdf> (“Ready to Win has changed its name from Ready for Ron. Ready to Win will operate a special project under the name, Ready for Ron.”).

receipt of those in-kind contributions, in violation of 52 U.S.C. § 30104(b)(6)(B)(i), (b)(2)(D), and (b)(3)(B).

II. FACTUAL BACKGROUND

A. ActBlue and the Political Committees

ActBlue is a registered, nonconnected political committee that functions as a conduit, as that term is defined in 11 C.F.R. § 110.6, on behalf of political committees, including authorized committees, that retain its services.³ Committees using ActBlue’s services may design customized solicitation messages and donation pages on ActBlue’s website and, for a fee, ActBlue will process and forward the contribution.⁴ In describing its transaction costs, ActBlue’s website states that it charges a flat rate of 3.95 percent on each contribution to cover the cost of processing the contribution, but other than that, access to all the tools on its website and customer service is free.⁵ ActBlue explains to potential customers that it is legally required to pass along processing costs to the campaign to avoid making in-kind contributions.⁶

³ See ActBlue, Amended Statement of Organization at 2 (Feb. 17, 2023), <https://docquery.fec.gov/pdf/445/202302179578667445/202302179578667445.pdf>. See also 11 C.F.R. § 110.6(b)(2) (conduit or intermediary defined, in pertinent part, as “any person who receives and forwards an earmarked contribution to a candidate or a candidate’s authorized committee”).

⁴ See *How Much Does It Cost Campaigns and Organizations to Use Your Tools?*, ACTBLUE SUPPORT, <https://support.actblue.com/donors/about-actblue/how-much-does-it-cost-campaigns-and-organizations-to-use-your-tools/> (last visited Mar. 7, 2024); *Does ActBlue Share My Personal Information, Including Email Address and Phone Number?*, ACTBLUE SUPPORT, <https://support.actblue.com/donors/about-actblue/does-actblue-share-my-personal-information-including-email-address-and-phone-number/> (last visited Mar. 7, 2024).

⁵ See *Pricing*, ACTBLUE, <https://secure.actblue.com/pricing> (last visited Mar. 7, 2024).

⁶ See *How Much Does It Cost Campaigns and Organizations to Use Your Tools?*, ACTBLUE SUPPORT, <https://support.actblue.com/donors/about-actblue/how-much-does-it-cost-campaigns-and-organizations-to-use-your-tools/> (last visited Mar. 7, 2024). ActBlue also explains that because it is a non-profit entity, it relies upon the voluntary provision of “tips” from contributors, which may amount to 10 percent or 20 percent of the value of the contribution, to help it conduct its operations. See *What Are ActBlue Tips For?*, ACTBLUE SUPPORT, <https://support.actblue.com/donors/about-actblue/what-are-actblue-tips-for/> (last visited Mar. 7, 2024); *I Don’t Remember Adding a Tip to My Contribution*, ACTBLUE SUPPORT, <https://support.actblue.com/donors/contributions/i-dont-remember-adding-a-tip-to-my-contribution/> (last visited Mar. 7, 2024).

ActBlue allows campaigns to customize the contribution forms that appear on the ActBlue website, and campaigns may use these tools to add information that they would like customers to provide; however, the standard versions of the forms already require contributors to provide contact information, including their email address.⁷ ActBlue typically collects and forwards to the committees the contributors' email addresses and telephone numbers (if contributors agree to provide telephone numbers) "so [recipients] can stay in touch."⁸ Former candidates Joseph Biden, Bernie Sanders, Raphael Warnock, and John Fetterman were candidates for election to the offices of President and Senate, respectively, during the 2020 and 2022 election cycles, as applicable.⁹ Biden for President, Bernie 2020, Warnock for Georgia, and Fetterman for PA are their registered principal campaign committees.¹⁰ All the candidates and committees named in the Complaint retained ActBlue for contribution receipt and forwarding services and received substantial amounts in donations through ActBlue during the

⁷ See *Custom Inputs*, ACTBLUE SUPPORT, <https://support.actblue.com/campaigns/contribution-form-features/custom-inputs/> (last visited Mar. 7, 2024).

⁸ See *Does ActBlue Share My Personal Information, Including Email Address and Phone Number?*, ACTBLUE SUPPORT, <https://support.actblue.com/donors/about-actblue/does-actblue-share-my-personal-information-including-email-address-and-phone-number/> (last visited Mar. 7, 2024). Natalie DeRoche, *Why Campaigns Are Emailing You*, ACTBLUE BLOG (Jan. 8, 2020), <https://blog.actblue.com/2020/01/08/why-campaigns-are-emailing-you/>.

⁹ See Joseph R. Biden, Jr. and Kamala Harris, Statement of Candidacy at 1, (Nov. 6, 2020), <https://docquery.fec.gov/pdf/260/202011069336972260/202011069336972260.pdf>; Bernard Sanders, Statement of Candidacy at 1, (Feb. 19, 2019), <https://docquery.fec.gov/pdf/558/201902199145527558/201902199145527558.pdf>; Raphael Warnock, Statement of Candidacy at 1, (Dec. 29, 2020), <https://docquery.fec.gov/pdf/387/202012299394415387/202012299394415387.pdf>; Raphael Warnock, Statement of Candidacy at 1, (Oct. 15, 2022), <https://docquery.fec.gov/pdf/826/202210159536740826/202210159536740826.pdf>; John Karl Fetterman, Statement of Candidacy at 1, (Nov. 17, 2022), <https://docquery.fec.gov/pdf/297/202211179546827297/202211179546827297.pdf>.

¹⁰ See Biden for President, Amended Statement of Organization (Sept. 5, 2023), <https://docquery.fec.gov/pdf/444/202309059596987444/202309059596987444.pdf>; Bernie 2020, Amended Statement of Organization (Feb. 19, 2019) <https://docquery.fec.gov/pdf/792/201912199166426792/201912199166426792.pdf>; Warnock for Georgia, Amended Statement of Organization (Oct. 15, 2023), <https://docquery.fec.gov/pdf/974/202310159597827974/202310159597827974.pdf>; Fetterman for PA, Amended Statement of Organization (Aug. 30, 2023), <https://docquery.fec.gov/pdf/188/202308309596859188/202308309596859188.pdf>.

1 2020 and 2022 election cycles.

2 **B. Summary of Complaint and Responses**

3 The Complaint in this matter alleges that ActBlue's forwarding of contributors' email
 4 addresses and telephone numbers to the above-named candidates and their committees resulted
 5 in the making of excessive in-kind contributions to them, which ActBlue and the recipient
 6 committees failed to report.¹¹ The Complaint notes that, in advisory opinions previously
 7 provided to ActBlue, the Commission summarized what information ActBlue was required to
 8 provide to contribution recipients when forwarding the contributions and this information did not
 9 include emails or telephone numbers.¹² In support of its allegations, the Complaint alleges that
 10 ActBlue acted in the same manner as the committee subject of AO 2022-12, noting that the Act
 11 does not require either committees or conduits to report contributors' email addresses or
 12 telephone numbers.¹³ ActBlue states that, while the transmitted information is not required, it
 13 facilitates the committees' ability to comply with their obligations under the Act and the
 14 Commission contemplates the use of this information to do so.¹⁴ Because the recipient
 15 committees pay for the information they choose to gather, ActBlue argues that Advisory Opinion

¹¹ Compl. at 10, 18-22 (May 1, 2023). The Complaint alleges that the individual candidates both accepted illegal excessive contributions and failed to report them. *Id.* at 21 (Count III). However, reporting violations of the Act apply only to the political committee and its treasurer and not on the authorizing candidates. 52 U.S.C. § 30104(a), (b); *see* F&LA at 9, MUR 7963 (Salem for Congress) (concluding that a candidate who is not also the treasurer is not liable for reporting or disclaimer violations); F&LA at 2, MUR 6556 (Broun) (concluding that the candidate had no personal liability for reporting violations).

¹² Advisory Opinion 2006-30 at 6-7 (ActBlue); Advisory Opinion 2007-27 at 7 (ActBlue).

¹³ Compl. at 10.

¹⁴ ActBlue Resp. at 2. More specifically, ActBlue argues that the information facilitates the committees' communication with contributors for redesignation or reattribution purposes, for determining the legality of contributions, and for complying with their "best efforts" obligations. ActBlue notes that Commission regulations allow for the emailing of redesignation notices and that the Commission has approved the use of emailing to fulfill "best efforts" obligations in advisory opinions. *Id.* at 5-7.

2010-21 (ReCellular) (“AO 2010-21”) applies.¹⁵

Raphael Warnock, John Fetterman, and their respective committees filed a joint response essentially adducing the same points as ActBlue.¹⁶ They also assert that they had no reason to believe that the 3.95 percent fee ActBlue charged, which resulted in millions of dollars of fees, did not represent the usual and normal charge for all ActBlue’s contribution processing services, including the transmission of the additional contact information, and cite authorities for the proposition that the Commission has historically relied upon vendors to provide an accurate valuation of the services they provide, since the vendor is in the best position to do so.¹⁷ Warnock, Fetterman and their Committees argue that the Commission is not in a position to second guess a vendor’s valuation and notes that the Commission has dismissed matters, exercising its prosecutorial discretion, in cases presenting similar difficulties in assessing the value of services.¹⁸ Similarly, President Biden and Biden for President state that they paid ActBlue the commercially reasonable value of its services, which included the provision of contributor contact information, and discuss Commission authorities, including particularly AO 2010-21 and 2022-03 (Democracy Engine) (“AO 2022-03”), which, they contend, approved contribution processing plans presented by vendors which were similar to the instant case.¹⁹ Senator Bernard Sanders and Bernie 2020 assert that they paid ActBlue the usual and normal charge for its services.²⁰

¹⁵ ActBlue Resp. at 4-5.

¹⁶ Fetterman, Fetterman for PA, Warnock & Warnock Resp., *passim*. (June 20, 2023).

¹⁷ *Id.* at 3-4.

¹⁸ *Id.* at 4.

¹⁹ Biden & Biden for President Resp. at 2-3 (June 20, 2023).

²⁰ Sanders & Bernie 2020 Resp. at 1-2 (June 20, 2023).

1 **III. LEGAL ANALYSIS**

2
 3 The Act defines the term “contribution” to include “any gift, subscription, loan, advance,
 4 or deposit, or anything of value made by any person for the purpose of influencing any election
 5 for Federal office.”²¹ “[A]nything of value” includes all in-kind contributions, such as “the
 6 provision of goods or services without charge or at a charge that is less than the usual and normal
 7 charge for the goods or services.”²² Examples of such goods or services include, among other
 8 things, “mailing lists.”²³ The amount of the in-kind contribution is “the difference between the
 9 usual and normal charge for the goods or services at the time of the contribution and the amount
 10 charged the political committee.”²⁴ Commission regulations define “usual and normal charge”
 11 as “the price of those goods in the market from which they ordinarily would have been purchased
 12 at the time of the contribution,” or the charge for services “at a commercially reasonable rate
 13 prevailing at the time the services were rendered.”²⁵ If a committee pays fair market value for a
 14 good or service, then the transaction is not considered a contribution.²⁶ These in-kind
 15 contributions must comply with contribution limitations established by the Act and Commission
 16 regulations.²⁷

17 Political committees must report their financial activity, including their receipts and

²¹ 52 U.S.C. § 30101(8)(A)(i); *see also* 11 C.F.R. § 100.52(a).

²² 11 C.F.R. § 100.52(d)(1).

²³ *Id.* *See also, e.g.*, Advisory Opinions 2022-12 (Ready for Ron); Advisory Opinion 1979-18 (FEC’s Former Employee Committee).

²⁴ 11 C.F.R. § 100.52(d)(1).

²⁵ *Id.* § 100.52(d)(2). *See also* MUR 7628, 7636, and 7992 (Kris Kobach and Kobach for Senate), Factual and Legal Analysis, at 7 n.37; MUR 8027 (Schmitt for Senate), Factual and Legal Analysis, at 8 n.19.

²⁶ *See id.* § 100.52(d)(1).

²⁷ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b).

disbursements, in accordance with the provisions of the Act and Commission regulations.²⁸ The Act and Commission regulations require political committees to report total contributions received, including in-kind contributions and contributions from other political committees.²⁹ Each political committee must also report the full name and address of any political committee that contributes to the political committee, along with the amount and date of the contributions; if an unauthorized committee makes a contribution to another political committee, it must report the name and address of the recipient committee, together with the date and amount of the contribution.³⁰

Certain political committees may act as conduits for the transmission of “earmarked” contributions to candidates.³¹ A “person who receives and forwards an earmarked contribution to a candidate or a candidate’s authorized committee” is a “conduit or intermediary.”³² The intermediary must report information about the original source and the intended recipient of an earmarked contribution to both the Commission and the intended recipient; the recipient of the earmarked contribution must report it as well.³³ These required disclosures include, in pertinent part, the name and mailing address of each contributor and, for each earmarked contribution exceeding \$200, the contributor’s occupation and name of employer.³⁴

²⁸ 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

²⁹ 52 U.S.C. § 30104(b)(2)(D); 11 C.F.R. §§ 104.3(a), 104.13(a)(1).

³⁰ 52 U.S.C. § 30104(b)(3)(B) and (b)(6)(B)(i); 11 C.F.R. § 104.3(a)(4)(ii) and (b)(3)(v).

³¹ 11 C.F.R. § 110.6. “Earmarked” means “a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution . . . being made to . . . a clearly identified candidate or a candidate’s authorized committee.” *Id.* § 110.6(b)(1).

³² *Id.* § 110.6(b)(2).

³³ *See* 52 U.S.C. § 30116(a)(8); 11 C.F.R. § 110.6(c).

³⁴ 11 C.F.R. § 110.6(c).

1 In the present case, the Complaint seeks to draw an analogy between ActBlue's actions in
2 transmitting the additional contact information as part of its overall contribution processing
3 services and the planned activity of Ready to Win.³⁵ Such an analogy depends, in significant
4 part, on the assumption that ActBlue did not charge committees for obtaining that information.
5 But that analogy is misplaced. While Ready to Win invested considerable effort and expense in
6 compiling a *de facto* mailing list by constructing the petition and assembling both signatures and
7 contact information, ActBlue simply transmits the additional contact information provided by
8 individual contributors piecemeal with each contribution and does not otherwise exercise any
9 effort to construct a mailing list. The issue at hand is the narrower question of whether ActBlue
10 actually provided the additional contact information to the Candidates and Committees without
11 charge, as the Complaint alleges and the Respondents dispute. The Complaint does not provide
12 any evidence that ActBlue provides the contributors' email addresses and phone numbers
13 without charge. The Complaint appears to presuppose that ActBlue's contribution processing
14 fee must relate strictly to the transmission of information that the Act requires conduits to
15 transmit, but there is no information to support that supposition.

16 Finally, the Complaint relies on the fact that the Act does not require the reporting of the
17 additional information to infer that the expense of providing the additional information is not
18 included in the processing fee. In support of this argument, the Complaint cites previous
19 Commission advisory opinions involving ActBlue that recite the information that ActBlue is
20 required to transmit to the recipient committees.³⁶ In particular, the Complaint focuses upon

³⁵ Compl. at 2.

³⁶ Compl. at 13-15 (citing and discussing advisory opinions involving ActBlue). *See, e.g.*, Advisory Opinion 2006-30 (ActBlue) at 6-7 (responding to question about what information ActBlue should provide committees, stating for each earmarked contribution, ActBlue "would have to provide," among other things, the contributor's name, mailing address, the amount and date of the contribution, and the contributor's occupation and

language in Advisory Opinions 2006-30 (ActBlue) and 2007-27 (ActBlue) that the Complaint appears to interpret as the Commission effectively foreclosing the transmission of additional information not required by the Act and regulations and thus, “not authorized.”³⁷ However, advisory opinions address only the questions asked and cannot be read on their face to prohibit, *sub silentio*, activity not raised or discussed.³⁸ Accordingly, it does not follow that ActBlue, in its role as a conduit, is forbidden from transmitting other information agreed upon by ActBlue and its committee and candidate clients.

Based on the available information, there is no indication that the Respondents’ assertion that ActBlue is paid the “usual and normal charge” for the cost of collecting and transmitting the additional contact information is false. The Commission has previously concluded that entities may establish the “usual and normal charge” of goods or services by reference to the “fair market price” of goods or services,³⁹ “commercial considerations”,⁴⁰ or the fee provided to “similarly

name of employer); Advisory Opinion 2007-20 (ActBlue) at 7 (concluding ActBlue’s plan to forward “all contributions and the information required by the Act and Commission regulations,” was consistent with the Act and regulations, and stating that under § 102.8(b) persons forwarding contributions need to forward, among other things, the name and address of the contributor, the contribution receipt date, and the contributor’s occupation and name of employer).

³⁷ Compl. at 13 (“ActBlue’s Illegal Scheme Was Not Authorized by FEC Advisory Opinions”).

³⁸ Because the subject advisory opinions did not address a specific proposal to transmit the additional information, they would not necessarily shield ActBlue from liability under the Act and Commission regulations if transmission of the additional information is unlawful. 52 U.S.C. § 30108(c); 11 C.F.R. § 112.5(a) (person may rely on advisory opinion if engaging in specific transaction or activity addressed in advisory opinion or in activity “indistinguishable in all its material aspects” from activity addressed in advisory opinion). It does not necessarily follow, however, simply from the fact that ActBlue may not rely on the *advisory opinions* to authorize the transmission of the additional information that the transmission of the information is unlawful.

³⁹ See FGCR at 5-6, MUR 5682 (Bachmann for Congress) (recommending the Commission find that respondent assigned an appropriate valuation to a mailing list where the respondent had consulted with a “reputable list broker” regarding the “proper fair market value” of the list); Certification (Nov. 3, 2006), MUR 5682 (approving FGCR’s recommendations); see also AO 2010-30 at 3 (“Because the ‘fair market price’ is the price in the market in which lists are ordinarily rented at the time of the rental, the ‘fair market price’ is the usual and normal charge for renting the list [of email contacts].”).

⁴⁰ AO 2012-31 at 4 (AT&T, Inc.) (opining that AT&T’s proposed rate structure for text message fundraising was not a contribution because, although rates would be lower than those AT&T usually charges to use its text

1 situated persons in the general public.”⁴¹ Other Commission authorities have stated that the key
 2 inquiry is whether third party payment, in this case ActBlue’s incurrence of any incremental cost
 3 associated with transmitting the specific information at issue, relieves the recipient committee of
 4 an expense it otherwise would incur to obtain the same benefit.⁴²

5 The available information does not indicate that ActBlue incurred an incremental cost to
 6 provide committees email addresses and phone numbers of its contributors. In light of ActBlue’s
 7 established 3.95 percent fee that it charges committees, there is no indication that it was
 8 providing any services for free in transmitting that additional information or that it was relieving
 9 the committees of a cost that they would otherwise incur to obtain such a benefit.

10 * * *

11 In summary, the Complaint’s allegations are too speculative to support a finding of
 12 reason to believe. The Complaint does not substantiate the estimates of the incremental value of
 13 the additional information furnished by ActBlue to the candidates and committees, and its
 14 principal argument appears to be based on the inference that since the Act does not require the
 15 reporting of email addresses and telephone numbers by either conduits or committees, then
 16 ActBlue’s charges must not cover the cost of their collection and transmission. Without more
 17 specific information or evidence that the processing fee does not contemplate the transmission of
 18 the additional contributor contact information, the Complaint’s allegation remains merely

message platform, the proposed rates would cover the company’s costs as well as profit and would be offered on the same terms to all political customers).

⁴¹ Advisory Opinion 2004-06 at 4 (Meetup) (concluding that a fee is usual and normal if the charge is “set in accordance with the fixed set of fee criteria” and “applied equally between the various classes of Federal candidates . . . and other . . . members of the general public who are similarly situated with respect to the respective classes of candidates and political committees”); *see also* Advisory Opinion 2014-09 at 4 (Reed Marketing).

⁴² *See* MURs 7838, 7849, 7852 and 7856 (Expensify, Inc., *et al.*), Factual and Legal Analysis, at 8 n.33 (citing, *inter alia*, Advisory Opinion 2017-06 (Stein and Gottlieb), at 5) (May 31, 2022).

speculative, which is an insufficient basis for finding reason to believe.⁴³

Accordingly, the Commission dismisses the allegation that ActBlue made, and the Candidates and Committees knowingly accepted, excessive in-kind contributions in violation of 52 U.S.C. § 30116(a)(1)(A) and (f) in connection with ActBlue’s transmission of contributors’ email addresses and telephone numbers to the Committees, and dismisses the allegation that either ActBlue or the Committees failed to report such contributions in violation of 52 U.S.C. § 30104(b)(6)(B)(i), (b)(2)(D), and (b)(3)(B).

⁴³ See *Common Cause Georgia v. FEC*, 2023 WL 6388883 at *6 (D.D.C. 2023) (“speculation is not enough” to find reason to believe); see also Statement of Reasons, Comm’rs Mason, Sandstrom, Smith & Thomas at 1-2, MUR 4960 (Hillary Rodham Clinton for US Senate Expl. Comm., Inc., *et al.*) (“The Commission may find ‘reason to believe’ only if a complaint sets forth sufficient specific facts which, if proven true, would constitute a violation of the [Act]. . . . [M]ere speculation . . . will not be accepted as true.”).