



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Robert K. Kelner and Elizabeth Upton
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August 16, 2021

RE: MURs 7821, 7827, 7868

Dear Mr. Kelner and Ms. Upton:

On October 22, 2020, October 23, 2020, and January 15, 2021, the Federal Election Commission notified your clients, Twitter, Inc., Jack Dorsey, and Brandon Borrman, of three Complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On August 10, 2021, the Commission, on the basis of the information provided in the complaint and information provided by your clients, found no reason to believe that Twitter, Inc., violated 52 U.S.C. § 30118(a) and 11 C.F.R. §§ 109.21, 114.2(b) by making corporate in-kind contributions; and no reason to believe that Jack Dorsey and Brandon Borrman violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b) by consenting to corporate contributions. 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 findings, is enclosed for your information.

If you have any questions, please contact Justine A. di Giovanni, the attorney assigned to this matter, at (202) 694-1574 or jdigiovanni@fec.gov.

Sincerely,

A handwritten signature in blue ink that reads "Claudio J. Pavia".

Claudio J. Pavia
Acting Assistant General Counsel

Enclosures:
Factual and Legal Analysis

1 an individual who worked for Twitter later joining the Biden team, the Biden Committee
2 coordinated with Twitter and therefore knowingly accepted the prohibited corporate
3 contributions.

4 Respondents deny the allegations. Twitter states that it (1) blocked users from sharing
5 links to and posting certain information from the *New York Post* articles relating to hacked and
6 personal information and (2) labeled Trump's tweets regarding election fraud and election
7 results. It argues that it did not make a contribution because these actions were undertaken for
8 *bona fide* commercial reasons and not for the purpose of influencing a federal election. Twitter
9 denies the remaining allegations that it limited visibility of Republican users, suppressed
10 distribution of an interview, or limited coverage of election lawsuits, asserting that the Complaint
11 does not submit any reliable evidence that such actions occurred. The Biden Committee states
12 that it did not coordinate with Twitter.

13 As discussed below, Twitter has credibly explained that it acted with a commercial
14 motivation in response to the *New York Post* articles rather than with an electoral purpose. With
15 respect to its actions concerning Trump's tweets, there is no evidence that Twitter coordinated its
16 actions with the Biden Committee, and as such, the actions did not constitute contributions.
17 Finally, the remaining allegations that Twitter limited the visibility of Republican users,
18 suppressed distribution of an interview, and limited coverage of election lawsuits are vague,
19 speculative, and unsupported by the available information. Therefore, the Commission finds no
20 reason to believe that Twitter violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b) by making
21 prohibited in-kind corporate contributions; finds no reason to believe that Jack Dorsey, Twitter's
22 CEO, and Brandon Borman, Twitter's Vice President, Global Communications, violated
23 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(e) by consenting to prohibited corporate

1 contributions; and finds no reason to believe that the Biden Committee knowingly accepted or
2 received and failed to report such contributions in violation of 52 U.S.C. §§ 30104(b)(3)(A),
3 30118(a) and 11 C.F.R. §§ 104.3(a), 114.2(d).

4 **I. FACTUAL BACKGROUND**

5 Twitter is a social media platform and public Delaware corporation; it states that it
6 derives the majority of its revenue from advertising.² The platform allows users to publish
7 tweets, which are 280-character-or-less posts, which may include pictures, videos, or links.³
8 Jack Dorsey is Twitter’s CEO, and Brandon Borman is Twitter’s Vice President of Global
9 Communications.⁴ Biden for President is 2020 presidential candidate Joe Biden’s authorized
10 committee, and Andrea Wise is its treasurer.⁵ The Complaints allege that Twitter, by
11 suppressing negative information regarding Biden and taking certain actions directed against
12 Trump and his supporters, all of which are detailed below, did so “for the clear purpose of
13 supporting the Biden campaign.”⁶

² Resp. at 2 (Dec. 21, 2020), MUR 7821 [hereinafter MUR 7821 Twitter Resp.].

³ *See generally* TWITTER, <https://twitter.com> (last visited June 2, 2021); *About*, TWITTER, <https://about.twitter.com/en/who-we-are/our-company> (last visited June 2, 2021) (“Twitter is an open service that’s home to a world of diverse people, perspectives, ideas, and information.”).

⁴ Compl. at 1 (Oct. 21, 2020), MUR 7827 [hereinafter MUR 7827 Compl.]; MUR 7821 Twitter Resp. at 2; *About*, TWITTER, <https://about.twitter.com/en/who-we-are/our-company> (last visited June 2, 2021). Borman and Dorsey submitted a joint Response with Twitter in MUR 7827. Resp. (Dec. 21, 2020), MUR 7827 [hereinafter MUR 7827 Twitter Resp.].

⁵ Biden for President, Statement of Organization (Jan. 12, 2021), https://docquery.fec.gov/pdf/224/20210112_9398457224/202101129398457224.pdf.

⁶ Compl. at 1 (Oct. 16, 2020), MUR 7821 [hereinafter MUR 7821 Compl.]; *accord* MUR 7827 Compl. at 2; Compl. at 1 (Jan. 12, 2021), MUR 7868 [hereinafter MUR 7868 Compl.].

1 **A. Twitter’s Content Policies**

2 Twitter asserts that it has enacted a number of content policies, which are enforced by its
 3 Site Integrity Team, part of Twitter’s larger Trust & Safety Team.⁷ Twitter states that, “as a core
 4 commercial objective,” it enacted these policies as part of its efforts to concentrate on the
 5 “reduction of abuse, harassment, spam, manipulation and malicious automation on the
 6 platform.”⁸ In its public securities filings, Twitter has identified that “a decrease in the
 7 perceived quality, usefulness, trustworthiness or relevance of the content generated by people on
 8 Twitter or content partners” may have a “potentially negative” effect on its business.⁹

9 As relevant here, Twitter’s policies include the following:

- 10 • **Distribution of Hacked Materials Policy.** Prohibits users from
 11 distributing hacked materials, including by posting hacked content directly
 12 or by linking to hacked content hosted on other websites, but provides that
 13 users “can discuss a hack that has taken place.”¹⁰
- 14 • **Private Information Policy.** Prohibits Twitter users from sharing certain
 15 information about others without permission, including contact

⁷ MUR 7821 Twitter Resp. at 3; *id.*, Ex. A (Decl. of Yoel Roth, Head of Site Integrity, Twitter) [hereinafter Roth Decl.]; Twitter Resp. at 4 (Mar. 5, 2021), MUR 7868 [hereinafter MUR 7868 Twitter Resp.]. Twitter’s Terms of Service specify that Twitter has the authority to “remove or refuse to distribute any Content, . . . limit distribution or visibility of any Content, . . . suspend or terminate users, and reclaim usernames.” *Twitter Terms of Service*, TWITTER (June 18, 2020), <https://twitter.com/en/tos>; MUR 7821 Twitter Resp. at 2.

⁸ MUR 7821 Twitter Resp. at 3 (quoting TWITTER, INC., 2020 OCTOBER QUARTERLY REPORT at 46 (Oct. 30, 2020)).

⁹ TWITTER, INC., 2020 OCTOBER QUARTERLY REPORT at 46 (Oct. 30, 2020), <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001418091/cb1d93d5-13d2-4d03-96b4-c90efe5ac5fc.pdf>; *see also* TWITTER, INC., 2020 JULY QUARTERLY REPORT at 46 (July 31, 2020), <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001418091/51caa042-6314-4604-92ce-98dfb080ac5b.pdf>, MUR 7821 Twitter Resp. at 2.

¹⁰ TWITTER, DISTRIBUTION OF HACKED MATERIALS POLICY (Mar. 2019) [hereinafter Twitter Hacked Materials Policy], <https://help.twitter.com/en/rules-and-policies/hacked-materials> [<https://web.archive.org/web/20200930214928/https://help.twitter.com/en/rules-and-policies/hacked-materials>]. Twitter has subsequently revised its policy to limit blocking hacked materials shared directly by the hacker; with respect to hacked materials shared by others, it may append labels providing context regarding the source of the material. *See* TWITTER, DISTRIBUTION OF HACKED MATERIALS POLICY (Oct. 2020), <https://help.twitter.com/en/rules-and-policies/hacked-materials> (“As such, we don’t permit the use of our services to directly distribute content obtained through hacking by the people or groups associated with a hack. In addition, we may label Tweets containing or linking to hacked materials to help people understand the authenticity or source of these materials and provide additional context.”). References to the policy throughout this Report are to the version in effect at the time Twitter took the actions at issue in these matters, dated March 2019.

1 information; physical location; identity documents; financial account
 2 information; and medical records.¹¹

- 3 • **Civic Integrity Policy.** Prohibits users from using Twitter to
 4 “manipulat[e] or interfere[e] in elections or other civic processes.”¹²
 5 Twitter enforces this policy by labeling or removing information deemed
 6 false or misleading and “intended to undermine public confidence in an
 7 election.”¹³ Prior to the 2020 election, Twitter publicly announced that
 8 candidates would not be permitted to “claim an election win before it is
 9 authoritatively called” by either one of a list of state election officials or
 10 two or more national news outlets.¹⁴ Twitter states that it enacted the Civil
 11 Integrity Policy to protect “the integrity of the election conversation.”¹⁵

12 B. Twitter’s Response to the October 2020 *New York Post* Articles

13 On October 14 and 15, 2020, the *New York Post* published three articles relating to
 14 emails purportedly obtained from a laptop belonging to Joe Biden’s son, Hunter.¹⁶ The emails
 15 allegedly suggested that Hunter Biden used his relationship with his father to further his business

¹¹ TWITTER, PRIVATE INFORMATION POLICY (Mar. 2019) [hereinafter Twitter Private Information Policy], <https://help.twitter.com/en/rules-and-policies/personal-information>.

¹² TWITTER, CIVIC INTEGRITY POLICY (Oct. 2020) [hereinafter Twitter Civic Integrity Policy], <https://help.twitter.com/en/rules-and-policies/election-integrity-policy> [<https://web.archive.org/web/20201101021029/https://help.twitter.com/en/rules-and-policies/election-integrity-policy>]. Twitter has sense amended its policy. TWITTER, CIVIC INTEGRITY POLICY (Jan. 2021), <https://help.twitter.com/en/rules-and-policies/election-integrity-policy>. References to the policy throughout this report are to the prior version dated October 2020. The relevant portions of the Policy are substantively identical to that currently in effect.

¹³ MUR 7868 Twitter Resp. at 4.

¹⁴ Vijaya Gadde & Kayvon Beykpour, *Additional Steps We’re Taking Ahead of the 2020 US Election*, BLOG.TWITTER (Oct. 9, 2020), https://blog.twitter.com/en_us/topics/company/2020/2020-election-changes.html.

¹⁵ MUR 7868 Twitter Resp. at 4 & n.14; Twitter Safety, *Expanding Our Policies to Further Protect the Civic Conversation*, BLOG.TWITTER (Sept. 10, 2020), https://blog.twitter.com/en_us/topics/company/2020/civic-integrity-policy-update.html.

¹⁶ Emma-Jo Morris & Gabrielle Fonrouge, *Smoking-Gun Email Reveals How Hunter Biden Introduced Ukrainian Businessman to VP Dad*, N.Y. POST (Oct. 14, 2020), <https://nypost.com/2020/10/14/email-reveals-how-hunter-biden-introduced-ukrainian-biz-man-to-dad/> (cited in Compls., *passim*); Emma-Jo Morris & Gabrielle Fonrouge, *Hunter Biden Emails Show Leveraging Connections with his Father to Boost Burisma Pay*, N.Y. POST (Oct. 14, 2020), <https://nypost.com/2020/10/14/hunter-biden-emails-show-leveraging-connections-with-dad-to-boost-burisma-pay/> (cited in Compls., *passim*); Emma-Jo Morris & Gabrielle Fonrouge, *Emails Reveal How Hunter Biden Tried to Cash In Big on Behalf of Family with Chinese Firm*, N.Y. POST (Oct. 15, 2020), <https://nypost.com/2020/10/15/emails-reveal-how-hunter-biden-tried-to-cash-in-big-with-chinese-firm/> (cited in Compls., *passim*) (collectively, the “*New York Post* articles”).

1 dealings in Ukraine, and other materials included a video appearing to show Hunter Biden
2 engaging in illegal activity.¹⁷ The *New York Post* articles republished some of these materials.¹⁸
3 Twitter states that, on October 14, its Site Integrity Team, part of its Trust & Safety
4 department, reviewed the first of the *New York Post* articles for compliance with Twitter’s
5 policies and determined that the materials were potentially obtained through hacking and that the
6 materials contained private email addresses and phone numbers.¹⁹ Twitter states that the Site
7 Integrity Team escalated the issues to leadership within Twitter’s Trust & Safety department, and
8 that, pursuant to its Hacked Materials and Private Information policies, Twitter’s Trust & Safety
9 leadership team determined to block users from sharing links to the *New York Post* articles and
10 prevent users who had previously shared the articles from sending new tweets until they deleted
11 their previous tweets sharing the articles.²⁰ Twitter states that all users were permitted to discuss
12 the content of the *New York Post* articles so long as they did not link to or share the articles
13 containing the hacked and private information.²¹ In a declaration submitted with Twitter’s
14 Response, the head of Twitter’s Site Integrity Team attests that Twitter received official
15 warnings throughout 2020 from federal law enforcement that “malign state actors” might hack
16 and release materials associated with political campaigns and that Hunter Biden might be a target
17 of one such operation.²²

¹⁷ See MUR 7821 Compl. at 2; MUR 7821 Compl. at 2-3; MUR 7868 Compl. at 1.

¹⁸ *New York Post* articles, *supra* note 16

¹⁹ MUR 7821 Twitter Resp. at 6; Roth Decl. at 3.

²⁰ MUR 7821 Twitter Resp. at 5-7; Roth Decl. at 3. Twitter states that it does not delete users’ tweets, but instead restricts them from posting additional content until they delete any tweets in violation of Twitter’s policies. MUR 7821 Twitter Resp. at 7.

²¹ MUR 7821 Twitter Resp. at 7.

²² *Id.* at 5-6; Roth Decl. at 2-3. The head of Twitter’s Site Integrity Team, Yoel Roth, attests that: “[F]ederal law enforcement agencies communicated that they expected ‘hack-and-leak operations’ by state actors might occur

1 **C. Other Alleged Twitter Actions**

2 Aside from the main allegation among the three Complaints that Twitter made an in-kind
3 contribution to the Biden campaign through its response to the *New York Post* articles, the MUR
4 7868 Complaint alleges that Twitter made contributions to the Biden Committee in several other
5 ways. First, the MUR 7868 Complaint points to labels that Twitter placed on certain of Donald
6 Trump’s tweets leading up to and following the 2020 election concerning alleged voter fraud and
7 that he had won the 2020 presidential election, which stated that “claims about election fraud are
8 disputed,” and that “the [Associated Press] has called the race differently.”²³ Neither the MUR
9 7868 Complaint nor the Responses provide examples of Trump’s tweets, which are currently
10 unavailable on the Twitter platform, or of the labels applied to these tweets. Twitter states that,
11 in addition to Trump, it similarly labeled approximately 300,000 tweets, and 456 tweets also
12 received warning messages,²⁴ including a number of tweets by Trump.²⁵ Twitter asserts that it
13 labeled tweets and issued warning messages to enforce its Civic Integrity Policy.²⁶ As discussed
14 above, prior to the election, Twitter publicly announced that candidates would not be permitted

in the period shortly before the 2020 presidential election I also learned in these meetings that there were rumors that a hack-and-leak operation would involve Hunter Biden.” Roth Decl. at 2-3.

²³ MUR 7868 Compl. at 2.

²⁴ MUR 7868 Twitter Resp. at 5; Vijaya Gadde & Kayvon Beykpour, *An Update On Our Work Around the 2020 US Elections*, BLOG.TWITTER (Nov. 12, 2020), https://blog.twitter.com/en_us/topics/company/2020/2020-election-update.html.

²⁵ MUR 7868 Compl. at 2. Neither the Complaint nor the Response indicate how many of Trump’s tweets were so labeled.

²⁶ MUR 7868 Twitter Resp. at 12.

1 to “claim an election win before it is authoritatively called” by either state election officials or
2 two or more national news outlets.²⁷

3 Second, the MUR 7868 Complaint alleges that Twitter “filter[ed] out, and limit[ed] the
4 reach and visibility of conservative, [R]epublican, and pro-Trump voices,”²⁸ a practice known as
5 “shadow banning.” The Complaint points to a news article covering an issue on Twitter’s
6 platform regarding auto-population of the search field, which appeared to exclude prominent
7 conservative accounts from appearing as suggested results to user searches.²⁹ Twitter
8 spokespersons contended at the time that the issue occurred due to a technological error that was
9 “not limited to a certain political affiliation or geography.”³⁰ News reports reflect that the issue
10 was resolved within a day of media outlets reporting on it.³¹ Twitter argues that the Complaint
11 has failed to present any evidence to support the allegation that it shadow banned Republican
12 accounts.³²

13 Third, the MUR 7868 Complaint alleges that Twitter suppressed coverage of an October
14 2020 Tucker Carlson interview of Tony Bobulinski, an alleged former business associate of

²⁷ Gadde & Beykpour, *supra* note 14.

²⁸ MUR 7868 Compl. at 2.

²⁹ Alex Thompson, *Twitter Appears to Have Fixed “Shadow Ban” of Prominent Republicans Like the RNC Chair and Trump Jr.’s Spokesman*, VICE NEWS (July 25, 2018), <https://www.vice.com/en/article/43paqq/twitter-is-shadow-banning-prominent-republicans-like-the-rnc-chair-and-trump-jrs-spokesman> (cited in MUR 7868 Comp. at 2 n.4) (“Twitter is limiting the visibility of prominent Republicans in search results — a technique known as “shadow banning” — in what it says is a side effect of its attempts to improve the quality of discourse on the platform.”).

³⁰ Vijaya Gadde & Kayvon Beykpour, *Setting the Record Straight on Shadow Banning*, BLOG.TWITTER (July 26, 2018), https://blog.twitter.com/en_us/topics/company/2018/Setting-the-record-straight-on-shadow-banning.html; *see also* MUR 7868 Twitter Resp. at 8.

³¹ Thompson, *supra* note 29 (“**UPDATE: July 26, 10:00 AM:** Twitter appears to have adjusted its platform overnight to no longer limit the visibility of some prominent Republicans in its search results.” (emphasis in original)).

³² MUR 7868 Twitter Resp. at 7-8.

1 Hunter Biden, who claimed that Joe Biden had been involved in his son’s foreign business
2 ventures.³³ According to a news report cited by the Complaint, Twitter users shared the video
3 over 65,000 times and the video collected “more than 115,000 likes.”³⁴ However, the interview
4 did not “trend” — *i.e.*, appear on Twitter’s list of most active topics.³⁵ The Complaint appears to
5 allege that, given the video’s popularity, Twitter must have taken action to prevent it from
6 trending on the platform.³⁶ Twitter denies that it in any way “undertook to suppress the
7 Bobulinski story” and asserts that the interview was viewed over 2.5 million times on Twitter as
8 support for its contention that it did not suppress the story.³⁷

9 Fourth, the MUR 7868 Complaint further alleges that Twitter suppressed coverage of
10 lawsuits regarding election fraud in the 2020 election,³⁸ pointing to the fact that, in November
11 2020, Twitter blocked users from linking to a lawsuit filed in Georgia challenging the state’s
12 election results, marking the link as “unsafe.”³⁹ Twitter states that this was an error, and that the
13 issue was “quickly resolved upon discovery.”⁴⁰

³³ Tucker Carlson (@TuckerCarlson), TWITTER (Oct. 27, 2020, 9:30 PM), <https://twitter.com/TuckerCarlson/status/1321263064319217665> (tweeting video of Bobulinski interview).

³⁴ Mili Godio, *Tucker Carlson’s Tony Bobulinski Interview Viewed Over 2.5 Million Times on Twitter, as Trump Says Big Tech Is Suppressing the “Biden Corruption” Story*, NEWSWEEK (Oct. 28, 2020), <https://www.newsweek.com/tucker-carlsons-tony-bobulinski-interview-viewed-over-25-million-times-twitter-trump-says-big-1543001> (cited in MUR 7868 Compl. at 2 n.2).

³⁵ *Id.*

³⁶ MUR 7868 Compl. at 2 & n.2.

³⁷ MUR 7868 Twitter Resp. at 9.

³⁸ MUR 7868 Compl. at 2 & n.3.

³⁹ *Id.* at 2; MUR 7868 Twitter Resp. at 9; Jonathan Garber, *Twitter Claims It Has Reversed Ban of Link to Sidney Powell’s Georgia Election Lawsuit*, FOX BUS. (Nov. 26, 2020), <https://www.foxbusiness.com/markets/twitter-claims-reversed-censorship-of-link-to-attorney-sidney-powells-lawsuit-seeking-to-decertify-overtun-georgia-election-results> (cited in MUR 7868 Compl. at 2 n.3).

⁴⁰ MUR 7868 Twitter Resp. at 9; *see also* Garber, *supra* note 39 (quoting Twitter spokesperson as stating, “The URL referenced was mistakenly marked under our unsafe links policy — this action has now been reversed”).

1 Finally, the MUR 7868 Complaint also alleges that Twitter coordinated its activities with
2 the Biden Committee, based on the fact that Twitter’s former director of public policy joined the
3 Biden transition team.⁴¹ Twitter and the Biden Committee both deny that they ever discussed
4 Twitter’s enforcement of its policies, both generally and with respect to the actions at issue
5 here.⁴² In a sworn declaration, Twitter’s Head of U.S. Public Policy states that neither she nor
6 any Twitter employees of which she is aware were contacted by the Biden Committee prior to
7 Twitter’s policy enforcement determinations.⁴³ The Biden Committee states that the Biden
8 transition team, which hired a former Twitter Public Policy Director, and which the Complaint
9 alleges shows a relationship between Twitter and the Biden Committee, is a separate entity from
10 the Biden Committee.⁴⁴

11 **II. LEGAL ANALYSIS**

12 **A. Relevant Law Concerning Contributions**

13 The Act prohibits corporations from making contributions to federal candidates, and
14 likewise bars candidates, political committees (other than independent expenditure-only political

⁴¹ MUR 7868 Compl. at 2; *see also* MUR 7821 Compl. at 3 (observing that “there appears to be a revolving door between the Biden campaign and the company” and pointing to the same director of public policy mentioned in the MUR 7868 Complaint as well as the fact that the former press secretary for Kamala Harris, Biden’s running-mate, now works for Twitter). The MUR 7821 Complaint does not explicitly allege that Biden or the Biden Committee coordinated with Twitter.

⁴² MUR 7821 Twitter Resp. at 1, 11-12; MUR 7827 Twitter Resp. at 3, 7, 17-18; MUR 7868 Twitter Resp. at 1, 13-14; MUR 7868 Biden Committee Resp. at 3-5.

⁴³ MUR 7821 Resp, Ex. B (Decl. of Lauren Culbertson, Head of U.S. Public Policy, Twitter) [hereinafter Culbertson Decl.] (identifying her team as the point of contact for political campaigns).

⁴⁴ MUR 7868 Biden Committee Resp. at 4 (“Mr. Monje and Ms. Hertz are not now, and were not at the time of their hiring, employees of the Committee.”)

1 committees and committees with hybrid accounts), and other persons from knowingly accepting
2 or receiving corporate contributions.⁴⁵

3 Under the Act, a “contribution” includes “any gift, subscription, loan, advance, or deposit
4 of money or anything of value made by any person for the purpose of influencing any election
5 for Federal office.⁴⁶ The term “anything of value” includes “all in-kind contributions.”⁴⁷ In-kind
6 contributions include “coordinated expenditures,” that is, expenditures “made by any person in
7 cooperation, consultation or in concert, with, or at the request or suggestion of, a candidate, his
8 [or her] authorized committees, or their agents.”⁴⁸ Under Commission regulations, a
9 communication is considered coordinated and thus treated as an in-kind contribution when it is:
10 (1) paid for by a third-party; (2) satisfies one of five content standards; and (3) satisfies one of
11 five conduct standards.⁴⁹ All three prongs are required in order for the communication to be
12 considered a coordinated communication and treated as an in-kind contribution under these
13 regulations.⁵⁰ In-kind contributions also include “provision of any goods or services without
14 charge or at a charge that is less than the usual and normal charge for such goods or services.”⁵¹

15 The Commission has concluded that a commercial vendor providing services to political
16 committees will not make a contribution for the purpose of influencing an election when its
17 business activity “reflects commercial considerations and does not reflect considerations outside

⁴⁵ 52 U.S.C. § 30118(a); *accord* 11 C.F.R. § 114.2(a), (d).

⁴⁶ 52 U.S.C. § 30101(8)(A); *accord* 11 C.F.R. § 100.52.

⁴⁷ 11 C.F.R. § 100.52(d).

⁴⁸ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20.

⁴⁹ 11 C.F.R. § 109.21(a).

⁵⁰ *See id.*

⁵¹ *Id.* § 100.52(d) (listing examples of goods or services, such as securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists).

1 of a business relationship.”⁵² A commercial vendor need not make its services available to
2 committees representing all political ideologies, but rather may establish objective business
3 criteria to protect commercial viability of its business without making contributions to the
4 committees that meet those criteria.⁵³

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).⁵⁴ This is true even if a candidate benefitted from the
8 commercial activity.⁵⁵

⁵² Advisory Opinion 2012-31 at 4 (AT&T).

⁵³ Advisory Opinion 2017-06 (Stein & Gottlieb) at 6 (“[A] commercial vendor, providing services to political committees . . . need not make its services available to committees representing all political ideologies, but rather may establish objective business criteria to protect the commercial viability of its business without making contributions to the committees that meet those criteria.”); Advisory Opinion 2004-06 at 1 (Meetup) (explaining that a corporation may provide goods and services to political committees without being considered to have made an in-kind contribution so long as it does so “on the same terms and conditions available to all similarly situated persons in the general public”); Advisory Opinion 2012-26 at 10 (Cooper for Congress, *et al.*) (concluding that no contribution to committee resulted where its participation in a text message fundraising program was subject to “objective and . . . commercially reasonable” criteria).

⁵⁴ *See, e.g.*, Factual & Legal Analysis at 4, MUR 6586 (World Wrestling Entertainment, Inc.) (finding that WWE acted with the “sole intent to defend its business reputation” and not for the purpose of influencing an election when WWE’s senior vice president sent a letter to a newspaper seeking a retraction of a negative article about Senate candidate Linda McMahon, who owned and served as CEO of WWE); First Gen. Counsel’s Rpt. at 13 & Cert. ¶ 1 (June 7, 2005), MUR 5474 (Dog Eat Dog Films, *et al.*) (approving no reason to believe recommendation) (determining that 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”); Advisory Opinion 2018-11 at 4 (Microsoft Corp.) (concluding that commercially reasonable efforts “to protect [Microsoft’s] brand reputation” by providing election-sensitive customers with free account security services are not an in-kind contribution).

⁵⁵ *See* First Gen. Counsel’s Rpt. at 16 & Cert. ¶ 5 (June 6, 1994), MUR 3622 (The Clinton/Gore ‘92 Committee) (approving no reason to believe recommendation); First Gen. Counsel’s Rpt. at 16, MUR 3622 (The Clinton/Gore ‘92 Committee) (“[T]he fact that any of these candidates . . . 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.”); Factual & Legal Analysis at 6, MUR 7024 (Van Hollen for Senate, *et al.*) (opining that 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,” and concluding there was no contribution given the “absence of any objective or subjective indication” respondents acted for the purpose of influencing the election).

1 **B. The Commission Finds No Reason to Believe That Twitter Made and the**
2 **Biden Committee Knowingly Accepted and Failed to Report Prohibited In-**
3 **Kind Corporate Contributions**

4 As explained below, the actions taken by Twitter in response to the October 2020 *New*
5 *York Post* articles, *i.e.*, blocking users from tweeting hacked or personal information, and in
6 response to Trump’s tweets regarding alleged voter fraud and the election results, *i.e.*, labeling
7 these tweets as disputed, appear to reflect *bona fide* commercial considerations rather than an
8 effort to influence a federal election. It appears that both of these actions were in accordance
9 with Twitter’s pre-existing content policies, and that Twitter enacted these policies for
10 commercial reasons ultimately relating to the protection of its brand and its ability to attract
11 advertisers — *i.e.*, its “commercial viability.”⁵⁶ The remaining actions alleged by the MUR 7868
12 Complaint, relating to “shadow banning,” suppressing video of the Bobulinski interview, and
13 limiting coverage of post-election lawsuits, are vague, speculative, and otherwise not supported
14 by the available information. Finally, there is no information in the current record to suggest that
15 Twitter coordinated any of its activities with the Biden Committee.

16 1. Blocking Sharing of the *New York Post* Articles

17 Twitter acknowledges that, following the October 2020 publication of the *New York Post*
18 articles at issue, Twitter blocked users from sharing links to the articles. But Twitter states that
19 this was because its Site Integrity Team assessed that the *New York Post* articles likely contained
20 hacked and personal information, the sharing of which violated both Twitter’s Distribution of
21 Hacked Materials and Private Information Policies. Twitter points out that although sharing

⁵⁶ MUR 7821 Twitter Resp. at 2-3; *see also* MUR 7827 Twitter Resp. at 1 (“Twitter blocked potentially hacked content that contained private information such as email addresses, phone numbers, and personal photographs for bona fide commercial reasons and to enforce preexisting Rules and policies intended to protect the safety, integrity, and commercial viability of its social media platform.”).

1 links to the articles was blocked, users were still permitted to otherwise discuss the content of the
2 *New York Post* articles because doing so did not directly involve spreading any hacked or
3 personal information.⁵⁷ Based on the information available to Twitter at the time, these actions
4 appear to reflect Twitter’s stated commercial purpose of removing misinformation and other
5 abusive content from its platform, not a purpose of influencing an election.⁵⁸ Federal law
6 enforcement agencies apparently communicated to Twitter that they expected hack-and-leak
7 operations by state actors might occur in the period shortly before the 2020 presidential election
8 and warned that such a hack-and-leak operation might involve Hunter Biden.⁵⁹ Moreover,
9 images of the materials plainly show unredacted email addresses and phone numbers.⁶⁰ These
10 circumstances appear to reflect a commercial, not electoral, basis for Twitter to have blocked
11 users from sharing this information on its platform.

12 Two of the Complaints argue that the materials at issue were not “hacked” and therefore
13 were not in violation of Twitter’s Distribution of Hacked Materials policy.⁶¹ It remains unclear
14 whether the materials were hacked under the meaning of Twitter’s policy, but what is relevant
15 here is that Twitter’s contemporaneous assessment that these materials were hacked, based on
16 warnings from federal intelligence agencies, was done in accordance with its existing content
17 policies, which were adopted for commercial reasons.⁶² In any event, because the materials

⁵⁷ MUR 7821 Twitter Resp. at 2-7; Roth Decl. at 3; MUR 7827 Twitter Resp. at 1-3; MUR 7868 Twitter Resp. at 11-12; Twitter Hacked Materials Policy; Twitter Private Information Policy.

⁵⁸ Twitter has identified that “a decrease in the perceived quality, usefulness, trustworthiness or relevance of the content generated by people on Twitter or content partners” may have a “potentially negative” effect on its business. *See supra* note 9 and accompanying text.

⁵⁹ Roth Decl. ¶¶ 10-11.

⁶⁰ *New York Post* articles, *supra* note 16.

⁶¹ MUR 7821 Compl. at 3; MUR 7827 Compl. at 3-4.

⁶² Roth Decl. ¶¶ 10-11 (“I have had regular meetings with the Office of the Director of National Intelligence, the Department of Homeland Security, the FBI, and industry peers regarding election security. . . . During these

1 contained personal information, which was apparent on their face, Twitter could have separately
2 blocked users from sharing the materials, given the apparent violation of Twitter’s Private
3 Information Policy.⁶³

4 Two of the Complaints allege that, even if Twitter did follow its policies, Twitter has
5 been inconsistent in the enforcement of its policies, reflecting an ideological bias.⁶⁴ However,
6 the Complaints do not provide convincing information to support their claim. Their main
7 argument is to present a contrast between Twitter’s treatment of the *New York Post* articles and
8 its treatment of a *New York Times* story on Trump’s leaked tax returns that Twitter did not block
9 or suppress. However, as Twitter’s Response points out, unlike the *New York Post* articles, the
10 *New York Times* article only *discussed* but did not *republish* the tax returns at issue, and thus did
11 not contain any hacked or private information.⁶⁵ Accordingly, it does not appear there was a
12 basis for Twitter to have identified a violation of its rules that would have justified blocking
13 users from sharing the *New York Times* articles. In short, the allegedly differing treatment

weekly meetings, the federal law enforcement agencies communicated that they expected ‘hack-and-leak’ operations by state actors might occur in the period shortly before the 2020 presidential election . . . [and] that there were rumors that a hack-and-leak operation would involve Hunter Biden.”).

⁶³ Twitter Private Information Policy (“Under this policy, you can’t share the following types of private information, without the permission of the person who it belongs to: . . . contact information, including non-public personal phone numbers or email addresses . . .”).

⁶⁴ MUR 7821 Compl. at 3-4; MUR 7827 Compl. at 5-6.

⁶⁵ MUR 7821 Twitter Resp. at 10 n.51; MUR 7827 Twitter Resp. at 3; *see* Twitter Hacked Materials Policy (“[T]his policy only addresses instances in which the materials themselves are being distributed — not discussions of or reporting about hacking which refer to but do not embed or link to the materials themselves. Tweets referring to a hack or discussing hacked materials would not be considered a violation of this policy unless materials associated with the hack are directly distributed in the text of a Tweet, in an image shared on Twitter, or in links to hacked content hosted on other websites.”); Twitter Private Information Policy (listing only categories of personal information such as “home address or physical location information,” “identity documents, including . . . social security or other national identity numbers,” and “biometric data or medical records” as “in violation of this policy”).

1 identified by the MUR 7821 and 7827 Complaints does not show that Twitter’s actions were
2 inconsistent.

3 In sum, Twitter has credibly explained that its actions to block uses from sharing links to
4 the *New York Post* articles were undertaken for commercial reasons and thus did not constitute a
5 contribution within the meaning of the Act.

6 2. Labeling Trump’s Tweets

7 Leading up to and following the 2020 election, Twitter placed labels on certain of
8 Trump’s tweets concerning alleged voter fraud (informing readers that his claims of voters fraud
9 were disputed) and tweets in which Trump claimed that he had won the election (informing
10 readers that the Associated Press had called the race for Joe Biden).⁶⁶ The MUR 7868
11 Complaint alleges that these labels constituted “an in-kind contribution, and [were] equivalent to
12 offering free advertising [to] the Biden campaign.”⁶⁷

13 Although the available information suggests that Twitter may have met the payment
14 prong of the coordinated communications test by expending corporate resources to add the labels
15 to Trump’s tweets, neither the “content” or the “conduct” prongs appear to be satisfied.

16 First, the content standards in the regulation all require a communication to be either an
17 “electioneering communication” or a “public communication,” neither of which appears to apply
18 to Twitter’s activities.⁶⁸ An electioneering communication is “any broadcast, cable, or satellite
19 communication” that refers to a “clearly identified candidate for Federal office,” is publicly
20 distributed within a certain time before the election, depending on the office, and meets certain

⁶⁶ MUR 7868 Compl. at 2.

⁶⁷ *Id.*

⁶⁸ *See* 11 C.F.R. § 109.21(c) (content standards).

1 requirements regarding the audience, depending on the office.⁶⁹ Twitter’s labeling of Trump’s
2 tweets was published on the internet, not distributed on broadcast, cable, or satellite, and
3 therefore does not legally qualify as an electioneering communication. Alternatively, a public
4 communication is “a communication by means of any broadcast, cable, or satellite
5 communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone
6 bank to the general public, or any other form of general public political advertising.”⁷⁰ The
7 Commission’s implementing regulation provides that public communications “shall not include
8 communications over the Internet, except for communications placed for a fee on another
9 person’s Web site.”⁷¹ While Twitter’s labels are internet communications, the available
10 information indicates that Twitter did not place them for a fee on another person’s website, but
11 rather on its own. As such, these posts do not appear to be public communications.

12 Second, each of the conduct standards requires some interaction with the allegedly
13 coordinating candidate or campaign regarding the communication, such as a request or
14 suggestion, substantial discussions, or use of a common vendor, but there is no indication of any
15 such interaction between Twitter and the Biden Committee.⁷² The MUR 7868 Complaint does
16 not allege, and there is no other information to suggest, that Twitter added the labels to Trump’s
17 tweets in coordination with the Biden Committee. In sum, the content and conduct prongs of the
18 three-part test are not satisfied, and thus no basis to conclude that there was a coordinated
19 communication.

⁶⁹ 52 U.S.C. § 30104(f)(3) (definition of electioneering communication); 11 C.F.R. § 100.29 (same).

⁷⁰ 52 U.S.C. § 30101(22) (definition of public communication); 11 C.F.R. § 100.26 (same).

⁷¹ 11 C.F.R. § 100.26.

⁷² *See id.* § 109.21(d) (conduct standards); *see also id.* 109.21(e) (stating that an agreement or formal collaboration “is not required for a communication to be a coordinated communication”).

1 The available information likewise does not indicate that Twitter’s costs in labeling
2 Trump’s tweets satisfy the definition of coordinated expenditure — the analysis here focuses on
3 any payments by Twitter that were “not made for communications.”⁷³ To the extent that Twitter
4 incurred any costs unrelated to communications, there is still nothing to suggest that Twitter
5 made the payments “in cooperation, consultation or concert with, or at the request or suggestion
6 of” any candidate, for the reasons stated above with respect to the conduct prong of the
7 coordinated communication test.⁷⁴ Again, there is no information from which to infer that
8 Twitter had such contact with the Biden Committee. Accordingly, there is no basis to infer that
9 any payments by Twitter were coordinated expenditures.⁷⁵

10 In conclusion, there is no information to suggest that Twitter and the Biden Committee
11 coordinated Twitter’s labeling of Trump’s tweets concerning alleged voter fraud and claims that
12 he had won the 2020 election. Moreover, Twitter has presented information to suggest that its
13 actions were undertaken to advance its commercial interest and not made for the purpose of
14 influencing a federal election. Therefore, it does not appear that Twitter’s labeling of Trump’s
15 tweets resulted in an in-kind contribution from Twitter to the Trump campaign.

16 3. Alleged Shadow Banning, Suppression of the Bobulinski Interview, and
17 Limiting of Coverage of Lawsuits Regarding Election Fraud

18 With respect to Twitter’s other alleged activities, including “shadow banning” prominent
19 Republican Twitter users, suppressing Tucker Carlson’s interview of Tony Bobulinski, and

⁷³ Coordinated and Independent Expenditures, 68 Fed. Reg. at 425; *see* Advisory Opinion 2011-14 at 4 (Utah Bankers Ass’n).

⁷⁴ 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a).

⁷⁵ The available information does not suggest any direct or indirect contact between Twitter and the Biden Committee about the labeling of Trump’s tweets, such that Twitter might have provided anything of value to the Biden Committee.

1 suppressing coverage of election fraud lawsuits, Twitter has credibly denied that the alleged
2 activity occurred, or explained that the events alleged were the result of inadvertent technological
3 errors rather than intentional determinations.⁷⁶

4 First, the MUR 7868 Complaint claims that Twitter took actions to limit the “reach and
5 visibility” of conservative voices on its platform.⁷⁷ But the very news article cited by the
6 Complaint does not support the Complaint’s conclusion that suppression occurred: The article
7 instead describes an error regarding Twitter’s search feature that was “not limited to a certain
8 political affiliation” and which was quickly remedied after it was identified.⁷⁸

9 Second, the MUR 7868 Complaint provides statistics about the popularity of a video
10 showing a Tucker Carlson interview and claims that it should have “trended” on Twitter but did
11 not, arguing that Twitter must have “suppressed” the interview to prevent it from doing so.⁷⁹
12 However, the Complaint does not provide any specific allegations as to how Twitter may have
13 suppressed the interview, or why it would have allowed it to be shared but not allow it to trend.⁸⁰
14 Twitter denies that it took any action to manipulate whether the interview would trend, but it also
15 does not explain why the apparently popular video did not trend despite users sharing it 2.5
16 million times.⁸¹ Nonetheless, the Commission is aware of no information that contradicts
17 Twitter’s denial, and the MUR 7868 Complaint itself presents only a theory that the popularity of

⁷⁶ See Part II.C, *supra*.

⁷⁷ MUR 7868 Compl. at 2.

⁷⁸ Thompson, *supra* note 29 (“**UPDATE: July 26, 10:00 AM:** Twitter appears to have adjusted its platform overnight to no longer limit the visibility of some prominent Republicans in its search results.” (emphasis in original)).

⁷⁹ MUR 7868 Compl. at 2 & n.2.

⁸⁰ See *id.* at 2.

⁸¹ MUR 7868 Twitter Resp. at 8-9.

1 the video should have made it trend in the way that was apparently expected without any
2 supporting information or statistics.

3 Third, the MUR 7868 Complaint claims that Twitter suppressed coverage of lawsuits
4 filed regarding the 2020 election.⁸² The Complaint again cites to information that does not
5 appear to support its claim. It points to a news article that reported how Twitter blocked users
6 from linking to a lawsuit filed in Georgia, but which also quotes a Twitter spokesperson as
7 stating that this was an error and that it was quickly resolved.⁸³ The Complaint does not identify
8 any other instances of alleged suppression of election lawsuits other than this apparently isolated
9 and inadvertent instance. The MUR 7868 Complaint presents no information contradicting
10 Twitter's explanations, and cites only to press articles, many of which in fact support Twitter's
11 claims that the alleged activity was done in error and quickly remedied.⁸⁴

12 4. Alleged Coordination

13 Finally, there is no basis to conclude that Twitter coordinated any of its actions with
14 Biden or his campaign — *i.e.*, that Twitter undertook these actions “in cooperation, consultation
15 or concert with, or at the request or suggestion of” Biden or the Biden Committee.⁸⁵ The
16 Complaint relies upon the fact that a former Twitter employee was hired by the Biden transition
17 team following the 2020 election.⁸⁶ Without more, this fact does not plausibly suggest that,
18 during the election, prior to this individual's hiring by the transition team, Twitter coordinated its
19 response to the *New York Post* articles or labeling of Trump's tweets with Biden or the Biden

⁸² MUR 7868 Compl. at 2.

⁸³ Garber, *supra* note 39 (quoting Twitter spokesperson as stating, “The URL referenced was mistakenly marked under our unsafe links policy—this action has now been reversed”).

⁸⁴ *See, e.g., id.*; Thompson, *supra* note 29.

⁸⁵ 11 C.F.R. § 109.20 (definition of coordinated expenditure).

⁸⁶ MUR 7868 Compl. at 2.

1 Committee. Both Twitter and the Biden Committee expressly deny that Twitter’s policy
2 enforcement determinations were ever discussed with or influenced by the Biden Committee.⁸⁷
3 Twitter submitted a sworn declaration by its Head of U.S. Public Policy attesting that neither she
4 nor any other Twitter employee “received any communications from or had any communications
5 with representatives of [the Biden Committee] . . . before Twitter implemented the enforcement
6 actions on October 14, 2020.”⁸⁸

7 * * *

8 As discussed above, the information before the Commission indicates that Twitter’s
9 actions in response to the *New York Post* articles (blocking apparently hacked and personal
10 information) were undertaken for commercial reasons and not for the purpose of influencing an
11 election. Consequently, because Twitter’s actions reflect a commercial, rather than electoral,
12 purpose, they were not contributions. Further, the information available indicates that Twitter’s
13 actions regarding Trump’s tweets (labeling apparent misinformation about the election) were not
14 coordinated with the Biden Committee, and as such also did not constitute contributions.
15 Regarding Twitter’s alleged shadow banning, limiting the visibility of the Bobulinski interview,
16 and suppression of election lawsuits, the allegations as a whole are vague, speculative, and
17 unsupported.⁸⁹ Finally, not only does the available information indicate that Twitter acted with a
18 *bona fide* commercial purpose and not an electoral one, but there is also no information
19 indicating that Twitter coordinated its activities with the Biden Committee.

⁸⁷ MUR 7868 Twitter Resp. at 13-14; MUR 7868 Biden Committee Resp. at 4.

⁸⁸ Culbertson Decl. at ¶ 9.

⁸⁹ Statement of Reasons at 1, Comm’rs Mason, Sandstrom, Smith & Thomas, MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Comm., *et al.*).

1 Therefore, the Commission finds no reason to believe that Twitter made prohibited in-
2 kind corporate contributions in violation of 52 U.S.C. § 30118(a) and 11 C.F.R. §§ 109.21,
3 114.2(b); finds no reason to believe that Biden for President knowingly accepted or received and
4 failed to report contributions in violation of 52 U.S.C. § 30104(b)(3)(A), 30118(a) and 11 C.F.R.
5 §§ 104.3(a), 114.2(d); and finds no reason to believe that Jack Dorsey, Twitter's CEO, and
6 Brandon Borrman, Twitter's Vice President, Global Communications, violated 52 U.S.C. §
7 30118(a) and 11 C.F.R. § 114.2(e) by consenting to prohibited corporate contributions.