

June 24, 2024

NJ Election Law Enforcement Commission
25 S Stockton Street
Trenton, NJ 08608

Re: Spadea for Governor Order to Show Cause

Dear Commissioners:

This firm represents Jack Ciattarelli and Ciattarelli for Governor (collectively "Ciattarelli for Governor").¹ I write in connection with the Amended Order to Show Cause issued by the Commission on June 21, 2024. Please accept this letter in lieu of a more formal brief on the issues presented in the Amended Order to Show Cause.

It is the public policy of the State "to limit political contributions and to require reporting of contributions received and expenditures made to aid or promote the nomination, election or defeat of any candidate for public office..." *N.J.S.A. 19:44A-2*. Mr. William Spadea ("Spadea") is a declared candidate for governor. He filed a Form D-1 with the Commission and is actively raising money in furtherance of his candidacy. Undoubtedly, he will ultimately seek matching funds as part of the State's public financing of gubernatorial elections. By providing Spadea with, at a minimum, four (4) hours of airtime per day, twenty (20) hours of airtime per week, Townsquare Media is conferring upon Spadea and his campaign, a "thing of value" pursuant to *N.J.S.A. 19:44A-3(d)*. A "thing of value" – in this case airtime – is a "contribution" or "in-kind contribution" pursuant to *N.J.S.A. 19:44A-3(d)*, *N.J.A.C. 19:25-1.7* and *N.J.S.A. 19:25-16.3*.² The maximum contribution allowable by law for gubernatorial candidates like Spadea is \$5800 per election.

On June 17, 2024, the date of Spadea's announcement of his candidacy, Ciattarelli for Governor placed an ad to run twice on Spadea's show on NJ101.5. The Ciattarelli for Governor ad also ran twice on June 18th and 19th during Spadea's show. Ciattarelli for Governor was provided by Townsquare Media with a "rate card" for political advertising on the show. (See Exhibit A). The rate card lists per minute rates during Spadea's show on the top row. The rates range from \$100

¹ Mr. Ciattarelli is a candidate for governor seeking the Republican nomination in the 2025 primary election. Ciattarelli for Governor is Mr. Ciattarelli's candidate committee.

² In addition to airtime, Spadea is also receiving the benefit of a significant digital presence in the form of online marketing. For Ciattarelli for Governor to acquire such a digital presence on NJ101.5's digital page would require a monthly minimum payment of \$18,165. Again, this constitutes a contribution which is in excess of the contribution limit.

per minute for preemptable airtime to \$500 per minute for non-preemptable airtime.³ Although Ciattarelli for Governor requested the preemptable rate, it was told that it could only acquire airtime at the non-preemptable rate of \$500 per minute. Accordingly, Ciattarelli for Governor paid \$500 per minute of airtime during Spadea's show. Six (6) total minutes of airtime over a three-day period cost Ciattarelli for Governor \$3000.

Based on a value of \$500 per minute of airtime as set by Townsquare Media, Spadea received the maximum \$5800 contribution from Townsquare Media after approximately twelve (12) minutes of airtime on the date of his announcement for Governor. Assuming Spadea is on air for only thirty (30) minutes per hour of his show and the rest of the time is for advertisements and callers – a very generous assumption – Spadea received \$60,000 of airtime on the date of his announcement. Since his announcement, Spadea has received more than \$360,000 of airtime based upon the rates set by Townsquare Media. That amount is far in excess of the maximum allowable contribution of \$5800 per election. Stated differently, it would have cost Ciattarelli for Governor at least \$360,000 to be on the air on NJ101.5 the same amount of time as Spadea was over the past week.

Spadea and Townsquare cannot credibly suggest that allowing Spadea to be on the radio for four hours per day to discuss his opinion on politics and policy issues is not providing his candidacy with a "thing of value" or contribution while at the same time they are charging Ciattarelli for Governor \$500 per minute for airtime. Once Spadea declared as a candidate and filed a Form D-1 he and his employer became subject to the New Jersey Campaign Contributions and Expenditures Reporting Act, *N.J.S.A. 19:44A-1 et seq.* (the "Act"). In the same way that a restaurant could not provide Spadea or his campaign with space or food for an event without it being considered a contribution, Townsquare Media cannot provide him with airtime without considering it a contribution.

Undoubtedly, Spadea and Townsquare Media will suggest that this is really an FCC issue about equal time. This Commission should not be fooled by this red herring. The FCC has very specific rules about equal time and they have nothing to do with the New Jersey Campaign Contributions and Expenditures Reporting Act. Ciattarelli for Governor is not asking this Commission for equal time on the air. Instead, Ciattarelli for Governor is asking this Commission to enforce the definition of "contribution" and "in-kind contribution" equally to all "things of value" and all candidates. Apply the definition of "contribution" which includes any "thing of value" to airtime which Spadea is using to further his gubernatorial campaign. Doing so, results in the evitable conclusion that Townsquare Media has made excessive contributions to Spadea.

To the extent Spadea and Townsquare Media attempt to argue that allowing Spadea to appear on the radio for four hours per day does not constitute an "expenditure" under *N.J.A.C. 19:25-1.7*, such an argument is entirely without merit. The definition of "expenditure" contains an exception for the cost incurred in carrying a news story, commentary, or other editorial by any broadcasting station but only if it is "part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area." Even Spadea and Townsquare Media cannot credibly contend that they afford "reasonable equal

³ Preemptable time allows the broadcaster to preempt or not run political ads under certain circumstances. Townsquare Media advised Ciattarelli for Governor that because the "window" for the 2024 primary elections was closed, all airtime on June 17, 18 and 19, 2024 would be billed at the non-preemptable rate.

coverage to all opposing candidates.” Instead, they provide coverage to a single candidate and a single point of view. As such, the amounts expended by Townsquare Media do not fit within the exception to the definition of “expenditure.” Again, Ciattarelli for Governor is not seeking equal time, but in the absence of being afforded equal time, Spadea and Townsquare Media cannot claim the protection of the exception to the definition of “expenditure.”

The Act charges this Commission with protecting the integrity of New Jersey’s elections from improper influence. If the Commission fails to enforce the definition of “contribution” to the value Townsquare Media is providing to Spadea, there will be nothing to stop wealthy individuals or corporations from buying up airtime or broadcasters and providing unlimited value in the form of airtime to a chosen voice. For the Act to be effective, the Commission must apply the definition of “contribution” which includes any “thing of value” to the airtime that Townsquare Media is providing to Spadea, a declared candidate for Republican gubernatorial primary. Without such action, there will be nothing to prevent improper influence.

Finally, this situation is entirely of Spadea’s making. He could have sought an advisory opinion from this Commission as to whether his airtime constituted a “contribution” under the Act. Spadea and his employer, Townsquare Media, both failed to avail themselves of that opportunity. Having failed to seek confirmation of their “interpretation” of the regulations, they should not be heard to complain of the consequences of their failure. This Commission should enforce the definition of “contribution” to airtime and hold Spadea and Townsquare Media accountable for their willful failure to abide by the \$5800 contribution limit.

Respectfully submitted,

Squire Patton Boggs (US) LLP

A handwritten signature in black ink, appearing to read 'MSD', written over the printed name of Mark D. Sheridan.

Mark D. Sheridan

EXHIBIT A

Political Rate Card

Market	Station	State	Rep Name	Owner Name	Broad Format	Start Day	End Day	Start Hour	End Hour	60	60	60	Comment	Overall Rate Card Comment	Modify Date	Modified By
										Lowest Unit Rate/Preemptible	Pre Emptible w/ Notice	Non Pre Emptible				
Middlesex/Somerset/Union, NJ	WKXV-FM	NJ	CHRISTAL RADIO	Townsquare Media	New/Talk/Info	Mo	Fr	6:00A	10:00A	100	150	500	NON PRE-EMPTIBLE RATES ARE HIGHLY RECOMMENDED		3/14/2024	BrianLang
Middlesex/Somerset/Union, NJ	WKXV-FM	NJ	CHRISTAL RADIO	Townsquare Media	New/Talk/Info	Mo	Fr	10:00A	3:00P	100	155	425	NON PRE-EMPTIBLE RATES ARE HIGHLY RECOMMENDED		3/14/2024	BrianLang
Middlesex/Somerset/Union, NJ	WKXV-FM	NJ	CHRISTAL RADIO	Townsquare Media	New/Talk/Info	Mo	Fr	3:00P	7:00P	100	150	425	NON PRE-EMPTIBLE RATES ARE HIGHLY RECOMMENDED		3/14/2024	BrianLang
Middlesex/Somerset/Union, NJ	WKXV-FM	NJ	CHRISTAL RADIO	Townsquare Media	New/Talk/Info	Mo	Fr	7:00P	12:00A	20	25	30	NON PRE-EMPTIBLE RATES ARE HIGHLY RECOMMENDED		3/14/2024	BrianLang
Middlesex/Somerset/Union, NJ	WKXV-FM	NJ	CHRISTAL RADIO	Townsquare Media	New/Talk/Info	Sa	Sa	6:00A	10:00A	25	50	100	NON PRE-EMPTIBLE RATES ARE HIGHLY RECOMMENDED		3/14/2024	BrianLang
Middlesex/Somerset/Union, NJ	WKXV-FM	NJ	CHRISTAL RADIO	Townsquare Media	New/Talk/Info	Sa	Sa	10:00A	3:00P	40	50	150	NON PRE-EMPTIBLE RATES ARE HIGHLY RECOMMENDED		3/14/2024	BrianLang
Middlesex/Somerset/Union, NJ	WKXV-FM	NJ	CHRISTAL RADIO	Townsquare Media	New/Talk/Info	Sa	Sa	3:00P	7:00P	35	40	150	NON PRE-EMPTIBLE RATES ARE HIGHLY RECOMMENDED		3/14/2024	BrianLang
Middlesex/Somerset/Union, NJ	WKXV-FM	NJ	CHRISTAL RADIO	Townsquare Media	New/Talk/Info	Su	Su	6:00A	10:00A	30	40	75	NON PRE-EMPTIBLE RATES ARE HIGHLY RECOMMENDED		3/14/2024	BrianLang
Middlesex/Somerset/Union, NJ	WKXV-FM	NJ	CHRISTAL RADIO	Townsquare Media	New/Talk/Info	Su	Su	10:00A	3:00P	20	25	100	NON PRE-EMPTIBLE RATES ARE HIGHLY RECOMMENDED		3/14/2024	BrianLang
Middlesex/Somerset/Union, NJ	WKXV-FM	NJ	CHRISTAL RADIO	Townsquare Media	New/Talk/Info	Su	Su	3:00P	7:00P	20	25	100	NON PRE-EMPTIBLE RATES ARE HIGHLY RECOMMENDED		3/14/2024	BrianLang