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Kim Collins, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

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November 24, 2008

RE: Meakem Communications Company LLC's Response to MUR 6089

Dear Ms. Collins:

Meakem Communications Company, LLC ("MCC"), through its undersigned counsel, submits the following response to the Complaint filed by Shawn T. Flaherty against Melissa Hart, People with Hart, Inc., and the Leadership Radio Network,¹ alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), and designated as MUR 6089.

The Complaint generally alleges that the Leadership Radio Network carried out an "illegal enterprise" with the Hart campaign when Ms. Hart appeared on The Glen Meakem Program (the "Program") on FM News Talk 104.7 in Pittsburgh, Pennsylvania on July 20, 2008. The Complaint characterizes the interview of Ms. Hart by talk-radio show host Mr. Glen Meakem as "an unabashed effort to expressly advocate Hart's election and solicit contributions for her campaign," that resulted in an illegal corporate contribution.

¹ The "Leadership Radio Network" is not an independent legal entity, but is a brand name utilized by Meakem Communications Company, LLC in connection with the The Glen Meakem Program. See Exhibit 1 (Affidavit of Mr. Glen Meakem).

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As demonstrated herein, the statements that are the subject of the Complaint - wherein Mr. Meakem expressed his support for Ms. Hart's candidacy, and Ms. Hart advised listeners how they could contribute directly to her campaign - came at the conclusion of Mr. Meakem's interview of Ms. Hart and were unprompted, unplanned, and *de minimis* when considered in the context of the interview in its entirety. In fact, the statements in question account for only two minutes and ten-seconds of a seventeen-minute interview with Ms. Hart, which itself was part of a fifty-seven minute radio show. The specifics of the interaction between Ms. Hart and Mr. Meakem were neither planned in advance nor coordinated.

Moreover, MCC is not a corporation for purposes of the Act, but instead is treated as a partnership under FEC regulations. Accordingly, to the extent that Mr. Meakem's and Ms. Hart's dialogue on the July 20, 2008 Program constituted a coordinated communication, as defined in 11 C.F.R. 109.21, such a contribution was not an impermissible corporate contribution. Should the Commission determine that the questioned segment of the Program was a coordinated communication, MCC proposes to treat the pro rata dollar value of the two-minute and ten-second segment at issue (\$13.31) as an in-kind contribution from MCC and Mr. Glen Meakem to the People with Hart, Inc. campaign committee.

I. BACKGROUND

The Glen Meakem Program is a radio program that currently airs on Saturday mornings from 7-8 am and Sunday mornings from 8-9 AM on FM News Talk 104.7 in Pittsburgh (the "Program"). At the time of the Melissa Hart interview on July 20, 2008, the program only aired on Sunday mornings from 8-9 am. The Program was launched by Glen Meakem in March 2008 to talk with a broad audience about the changes needed to make Pittsburgh and Pennsylvania healthy, growing places.

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The Program is paid for by Meakem Communications Company, LLC, a Pennsylvania Limited Liability Company ("MCC"), under the brand names of "The Glen Meakem Program" and "The Leadership Radio Network". See Exhibit 1 (Affidavit of Mr. Glen Meakem). MCC is treated as a "disregarded entity" by the IRS. See Exhibit 2 (IRS Form SS-4 for MCC). The sole member of Meakem Communications is SnowLine Partners, L.P., a Pennsylvania Limited Partnership. See Exhibit 3 (Operating Agreement of MCC). SnowLine Partners, L.P., in turn, is owned, controlled and capitalized by the living trusts of Mr. Meakem and his wife, Mrs. Diane Boone Meakem. See Exhibit 4 (Agreement of Limited Partnership of SnowLine Partners, L.P.). Mr. and Mrs. Meakem are the named trustees and beneficiaries of their respective trusts, and retain complete control over the trust funds. See Exhibit 1 (Affidavit of Mr. Glen Meakem).

MCC contracts directly with Clear Channel Communications ("CCC") to air the Program. The applicable contract provides for 57 minutes of airtime every Sunday for 52 weeks beginning March 16, 2008. See Exhibit 5 (FM News 104.7 Block Programming Opportunity). MCC pays CCC \$375.00 per program. See Exhibits 6 (Radio Station Invoice at p. 3, Order Line 2) and 7 (copy of MCC check for payment of July airtime).

The July 20, 2008 show of the Program that is the subject of the instant Complaint is available on-line at the following web address: <http://glenmeakem.com/2008/07/20/july-20th-2008-glen-meakem-on-the-economy-energy-and-taxes/>. The July 20, 2008 radio show included discussion of the following topics: (1) Listener's emails (00:00 – 15:08); (2) Interview of John Zyrkowski, author of "It's the Sun, Not Your SUV: CO2 Won't Destroy the Earth" (15:28 – 28:10, 28:30 – 35:56); (3) Interview of Melissa Hart, Candidate for 4th Congressional District, Pennsylvania (35:56 – 46:52, 47:09 – 53:40); and (4) Discussion of Economic Issues (53:40 – 57:00).

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The segment of the Program with the Hart interview consisted mainly of a general discussion of campaign issues and specific policies of interest to Mr. Meakem's radio audience. At the conclusion of the interview, for approximately one (1) minute and ten (10) seconds (51:30 – 52:00, 53:00 – 53:40), Mr. Meakem expressed his personal support and endorsement for Ms. Hart's candidacy. Ms. Hart also spoke for approximately one (1) minute (52:00 – 53:00) about how people interested in supporting her could contact the campaign through the internet, mail and phone. Significantly, prior to the Hart interview there was no coordination of any kind between Mr. Meakem, Melissa Hart, or any agent of the Hart campaign. See Exhibit 1. The interview was arranged by an external media consultant associated with Bowyer Media. *Id.* It was the media consultant who contacted the Hart campaign and scheduled the interview. *Id.*

II. THE JULY 20, 2008 PROGRAM WAS NOT A COORDINATED COMMUNICATION THAT MUST BE REPORTED AS AN IN-KIND CONTRIBUTION

The Act defines an in-kind contribution as an expenditure made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents." 2 U.S.C. 441a(a)(7)(B)(i). In-kind contributions as applied to communications are regulated by the Federal Election Commission's "coordinated communication" regulation at 11 CFR 109.21. That regulation sets forth a three-pronged test to determine whether a communication falls within the scope of a "coordinated communication" that must be reported as an in-kind contribution to the candidate with which it is coordinated. 11 CFR 109.21(b)(1).

Each one of the following three elements must be present for a communication to be "coordinated" within the meaning of the regulation: (1) the communication must be paid for by a person other than the Federal candidate or authorized committee in question; (2) the

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communication must meet one or more of the four content standards set forth in 11 CFR 109.21(c); and (3) the communication must meet one or more of the six conduct standards set forth in 11 CFR 109.21(d). See 11 CFR 109.21(a).

With respect to the communication at issue, MCC paid for the radio air time in whole, satisfying the first-prong of the test. See Exhibit 6. It is further not disputed that Mr. Meakem's expressed support for Ms. Hart's candidacy satisfied the content standard set forth in 11 CFR 109.21(c)(3). MCC submits, however, that the July 20, 2008 Program did not meet the conduct standards of 11 CFR 109.21(d) because there was no premeditated intent by either the candidate or the talk-radio show host to expressly use the Program as a platform to advocate for or solicit contribution to the Hart campaign. See Exhibit 1. Instead, the interchange between Mr. Meakem and Ms. Hart at issue was an off-the-cuff, spontaneous pronouncement of support by Mr. Meakem. See Exhibit 1. In response, Ms. Hart simply provided listeners with information about how to contribute and contact her campaign. This unplanned interchange certainly does not rise to the level of a premeditated and planned "coordinated communication" that must be reported as an in-kind contribution.

III. EVEN IF THE JULY 20, 2008 PROGRAM CONTAINED A COORDINATED COMMUNICATION, IT WOULD HAVE BEEN AN ALLOWABLE IN-KIND CONTRIBUTION BY A PARTNERSHIP

The Complaint alleges that the Program in which Mr. Meakem personally expressed his support for Ms. Hart was paid for by a corporation, resulting in an impermissible corporate contribution to the Melissa Hart's campaign committee, People with Hart, Inc. Complainant's allegation is factually incorrect. The Program was paid for by MCC, a Pennsylvania Limited Liability Corporation which elects to be treated as a "disregarded entity" by the IRS for federal tax purposes. See Exhibits 2, 6, 7. Accordingly, an in-kind contribution made by MCC, if any, was not an impermissible corporate contribution.

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FEC regulations in this regard are clear: "A contribution by an LLC that ... does not elect treatment as either a partnership or a corporation [by the IRS pursuant to 26 CFR 301.7701-3], shall be considered a contribution from a partnership pursuant to 11 CFR 110.1(e)." 11 CFR 110.1(g)(2). MCC did not elect treatment as either a partnership or corporation by the IRS, and therefore must be treated as a partnership under FEC regulations. See AO 2004-42 ("Commission regulations provide that a non-publicly traded LLC that does not affirmatively elect treatment for tax purposes as a corporation is treated by the Commission as a partnership."); AO 2003-28 ("Delian is a limited liability company and holding company organized under Delaware law that has not elected tax treatment for federal tax purpose. Under 11 CFR 110.1(g)(2), Delian is therefore treated as a partnership.").

As such, MCC may make contributions to a federal candidate campaign committee subject to the limitations in 11 CFR 110.1(b) ("Contributions to candidates") and 11 CFR 110.1(e) ("Contributions by partnerships."). Accordingly, in the event the Commission determines that the July 20, 2008 Program included a "coordinated communication", MCC proposes to report the same as an allowable in-kind contribution attributable to both MCC and Mr. Glen Meakem, personally, in accordance with 11 CFR 110.1(e).

MCC submits that the pro rata value of the interview that could be considered to be a "coordinated communication," if any, is \$13.31. As demonstrated, MCC pays \$375 to air the entire fifty-seven minute program, or \$6.60 per minute. The Hart interview comprised seventeen (17) minutes of the July 20, 2008 Program, for a value of \$112.20 in total. The only portion of that interview that contained Mr. Meakem's express advocacy of Ms. Hart's candidacy and the dissemination of information regarding contributions to her campaign lasted for only two-minutes and ten seconds, for a value of \$13.31.

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IV. CONCLUSION

MCC respectfully submits that the dialogue on the July 20, 2008 Program was not a "coordinated communication," but to the extent the Commission disagrees, MCC proposes that the value of such a "coordinated communication" is *de minimis* and warrants no further action by the Commission. Should the Commission find that the dialogue between Mr. Meakem and Ms. Hart rises to the level of a "coordinated communication," Mr. Meakem will report the same to the Hart campaign as an in-kind contribution to be itemized on the campaign committee's amended campaign finance filing for the appropriate period.

Please do not hesitate to contact me should you have any further questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "William H. Roberts /BSG".

WILLIAM H. ROBERTS
BRIAN S. GOCIAL

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