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November 9, 2018

Via Hand Delivery

Jeff S. Jordan
Assistant General Counsel
Federal Election Commission, Complaints
Examination & Legal Administration
1050 First Street, NE
Washington, D.C. 20463

Re: Ebert G. "Bill" Beeman v. WJET/Nexstar Broadcasting, Inc.
MUR 7514

Dear Counsel:

This office represents Nexstar Broadcasting, Inc. dba WJET ("Nexstar" or "WJET"). Please accept this letter as Nexstar's response to Ebert G. "Bill" Beeman's Federal Election Campaign Act (the "Act") Complaint (the "FEC Complaint"), MUR 7514.

As outlined below, Mr. Beeman's concerns with Nexstar's objective criteria for the October 8, 2018 Pennsylvania 16th Congressional District candidate debate in Pennsylvania, which he contends are inherently biased towards the two primary political parties, is without merit. These criteria were developed in accordance with First Amendment jurisprudence governing the regulation of speech in nonpublic fora.

I am enclosing the Declaration of Lou Baxter ("Baxter Declaration", attached hereto as Exhibit 1), WJET News Director, in support of this response. Nexstar is a privately-owned (publicly traded) company that owns and operates television station WJET TV in Pennsylvania, as well as another 133 stations in 99 additional markets around the country. Baxter Declaration at ¶2. In 2015, Nexstar determined to begin hosting more debates by its stations around the country and adopted formal debate participation criteria to govern participation in those debates. Baxter Declaration at ¶3. In order to accomplish this goal, Nexstar developed a set of objective criteria to determine which candidates it would invite to the debate. Baxter Declaration at ¶4. These criteria include requirements that the candidate be eligible for the election, be polling at a sufficiently high number, and have engaged in meaningful fundraising within the state – all with the goal of inviting only serious candidates for the position. Baxter Declaration at ¶5.

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Those criteria also include a set of objective indices of a functioning campaign, and a putative candidate must establish that he or she satisfies five of them to be qualified to participate in the debate. Baxter Declaration at ¶6. Among these indicators are planned in-district appearances or invitations to appear and/or speak at public gatherings and press coverage identifying the candidate as a candidate in the current election by at least eight unique news reports in media (e.g. newspapers, TV, cable news, radio, or online news websites that are recognized by local and/or national media). Baxter Declaration at ¶7. Candidates who fail to satisfy five of those criteria must demonstrate a minimum level of polling recognition. Baxter Declaration at ¶8. Finally, candidates for federal office must also establish, through filings at the Federal Elections Commission, a minimum level of fundraising in the state. Baxter Declaration at ¶9. These criteria apply equally to all candidates, regardless of party affiliation or viewpoint. Baxter Declaration at ¶10.

On or about July 12, 2018, WQLN Public Media (“WQLN”), the Manufacturer & Business Association of NWPA (“MBA”), and Mercyhurst University (“Mercyhurst”) met at WJET’s studio to plan a televised candidate debate for Pennsylvania’s election for the 16th Congressional District (the “Election”).¹ Baxter Declaration at ¶11. The Debate Organizers decided that: WQLN would be the production facilitator for the debate, providing cameras, camera operators, switching equipment, the television production’s director, and a feed of the debate to WJET’s studios. Baxter Declaration at ¶12; WJET would be the editorial lead partner, providing Nexstar’s debate participation criteria to guide the Debate Organizers in choosing participants and also providing the debate host/moderator. Baxter Declaration at ¶13; and MBA would plan the debate and invite the candidates. Baxter Declaration at ¶14. Mercyhurst would provide the location for the debate and ultimately provided two panelists for the debate. Baxter Declaration at ¶15.

On or about September 8, 2018, MBA scheduled the debate for October 8, 2018, between Mike Kelly (R) and Ron DiNicola (D). Baxter Declaration at ¶16. In late September 2018, the Debate Organizers met to discuss whether to include Mr. Beeman in the debate. Baxter Declaration at ¶17. Mercyhurst University again reviewed WJET’s debate participation criteria and recommended to the other Debate Organizers that they should not invite Mr. Beeman to participate, as he did not satisfy the criteria. Baxter Declaration at ¶18. WJET did not oppose this recommendation. Baxter Declaration at ¶19. The debate occurred on October 8, 2018, without Mr. Beeman. Baxter Declaration at ¶20.

Mr. Beeman’s Complaint to the FEC focuses on three main issues. First, he contends that the timing suggested an intent to exclude any non-Democrat or non-Republican candidates. Second, Beeman contends that the debate criteria’s provision regarding campaign fundraising is designed to preclude the participation of otherwise deserving

¹ Together, WQLN, MBA, Mercyhurst, and WJET shall be referred to as the “Debate Organizers.” Baxter Declaration at ¶11.

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candidates not belonging to one of the two main political parties. Finally, he contends that three candidates, rather than the two who were ultimately included is not an “unwieldy [sic] number” for a debate. None of Mr. Beeman’s claims have any merit.

Precedent nationwide is clear on this point - a broadcaster is within its sound journalistic discretion to preclude a candidate from a televised debate if its selection is viewpoint-neutral. “A broadcaster could, under the First Amendment, exclude an independent candidate with little popular support in the reasonable, viewpoint-neutral exercise of its journalistic discretion.” *Ark. Educ. Tv Comm’n v. Forbes*, 523 U.S. 666, 682-83 (1998) (emphasis added). “To be consistent with the First Amendment, the exclusion of a speaker from a nonpublic forum must not be based on the speaker’s viewpoint and must otherwise be reasonable in light of the purpose of the property.” *Id.* at 681.

Nexstar’s debate participation criteria, first developed in 2015 and not substantively changed since then, are consistent with the criteria of other broadcasters. *See* Baxter Declaration at ¶3. Nexstar’s criteria do not consider candidate platforms, party affiliations, a candidate’s stance on any specific issue, or any other subjective factors related to any given candidate’s viewpoint. Baxter Declaration at ¶10. The face of the criteria themselves contain no requirement related to a candidate’s viewpoint. Baxter Declaration at ¶¶5-9. Nexstar exercised its sound journalistic discretion, consistent with the debate’s status as a nonpublic forum and implemented objective, viewpoint-neutral criteria.

Courts nationwide repeatedly have found that debate participation criteria that provide for fundraising thresholds, polling numbers, and other indicators of the seriousness of a candidate’s campaign, are objective within the meaning of the FEC’s regulations. For example, in *Forbes*, the Supreme Court validated criteria that included polling thresholds and the prospective candidate’s apparent lack of financial support, evidenced by his failure to report campaign finances to the Secretary of State’s office or to the Federal Election Commission. The Court found that these factors reflect an “objective lack of support” and did not constitute subjective, viewpoint-based criteria: “There is no substance to Forbes’ suggestion that he was excluded because his views were unpopular or out of the mainstream. His own objective lack of support, not his platform, was the criterion.” *Forbes*, 523 U.S. at 682-83. Similarly, a New York federal court found that a requirement that a candidate have polled at 10% or higher in certain polls, and raised or spent in excess of \$250,000.00 – a funding threshold that exceeds the \$50,000 level in Nexstar’s criteria in this case – was an objective and reasonable, and therefore was entirely lawful. *Piccolo v. New York City Campaign Fin. Bd.*, 05 Civ. 7040 (GBD)(MHD), 2007 U.S. Dist. LEXIS 99233 at *68-70. (S.D.N.Y. 2007). Finally, the U.S. Court of Appeals for the Eighth Circuit also found that the use of fundraising benchmarks as part of the candidate selection process for a televised debate was objective and reasonable. *See Marcus v. Iowa Pub. TV*, 97 F.3d 1137 (8th Cir. 1996).

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WJET's criteria for the Election candidate debate are objective, reasonable, and directly related to a viewpoint-neutral evaluation of the seriousness of each candidate. First, Mr. Beeman is incorrect as to the timing of the adoption and of the criteria. While he may not have learned about them until October 6, the criteria were in place for this debate months earlier; in addition, the substance of the criteria has existed since 2015. There is nothing suspicious about the timing of the criteria's adoption.

Second, while Mr. Beeman objects to the substance of the criteria (particularly the \$50,000 fundraising threshold), courts have recognized that criteria materially the same as Nexstar's are an objective, view-point neutral measure of a candidate's seriousness. At most, Mr. Beeman raised less than \$29,000, only \$4,830.00 coming from individual donors. Baxter Declaration at ¶¶21-23. Mr. Beeman, under the criteria, simply is not a serious candidate.

Finally, the ultimate number of participants in the debate is irrelevant to any determination of the lawfulness of the process for selecting eligible participants in the debate. The debate criteria are a view-point neutral set of benchmarks for the seriousness of any given candidate. The Debate Organizers, including WJET, are entitled under the exercise of journalistic discretion to include any candidate who met the criteria and to exclude any candidate who did not.

For these reasons, the FEC should take no action against Nexstar Broadcasting, Inc. dba WJET on Mr. Beeman's meritless Complaint. We would be pleased to answer any questions the FEC may have.

Very truly yours,



Charles D. Tobin

CDT/jas

cc: Enforcement Division of the Office of the General Counsel

DECLARATION OF LOU BAXTER IN SUPPORT OF NEXSTAR'S RESPONSE TO
FEC COMPLAINT (MUR 7514)

I, Lou Baxter, a citizen of Erie County, State of Pennsylvania, over 18-years of age, being duly sworn, declare as follows:

1. I am the News Director for television station WJET-TV, ("WJET") a station owned by Nexstar Broadcasting, Inc. ("Nexstar"), involved in this complaint. I submit this declaration in connection with Nexstar's Response to FEC Complaint (MUR 7514). The facts stated in this declaration are based on either my personal knowledge or review of WJET's regularly-maintained business records unless stated otherwise. I could and would testify competently to facts below if called upon to do so.

2. Nexstar is a privately-owned, publicly-traded company that owns and operates WJET in Pennsylvania, as well as another 133 stations in 99 additional markets around the country.

3. In 2015, Nexstar determined to begin hosting more debates by its stations around the country and adopted formal debate participation criteria to govern participation in those debates.

4. In order to accomplish this goal, Nexstar developed a set of objective criteria to determine which candidates it would invite to the debate.

5. These criteria include requirements that the candidate be eligible for the election, be polling at a sufficiently high number, and have engaged in meaningful fundraising within the state – all with the goal of inviting only serious candidates for the position.

6. Those criteria also include a set of objective indices of a functioning campaign, and a putative candidate must establish that he or she satisfy five of them qualified to participate in the debate.

7. Among these indices are: planned, in-district appearances or invitations to appear and/or speak at public gatherings; and press coverage identifying the candidate as a candidate in the current election by at least eight unique news reports

in media (e.g. newspapers, TV, cable news, radio, or online news websites that are recognized by local and/or national media). A true and correct copy of the entire list of criteria for the debate candidates is attached here as Exhibit 1-A.

8. Candidates who fail to satisfy at least five of those criteria must demonstrate a minimum level of polling recognition. Exhibit 1-A at part 4.

9. Finally, federal candidates must also establish, through filings at the Federal Elections Commission, a minimum level of fundraising in the state. Exhibit 1-A at part 5.

10. These criteria apply equally to all candidates, regardless of party affiliation or viewpoint.

11. On or about July 12, 2018, WQLN Public Media ("WQLN"), the Manufacturer & Business Association of NWPA ("MBA"), and Mercyhurst University ("Mercyhurst") met at WJET's studio to plan a televised candidate debate for Pennsylvania's election for the 16th Congressional District (the "Election"). WQLN, MBA, Mercyhurst, and WJET are collectively referred to as the "Debate Organizers."

12. The Debate Organizers decided that: WQLN would be the production facilitator for the debate, providing cameras, camera operators, switching equipment, the television production's director, and a feed of the debate to WJET's studios.

13. WJET would be the editorial lead partner, providing and Nexstar's debate participation criteria to guide the Debate Organizers in choosing participants and providing the debate host/moderator.

14. MBA would plan the debate and invite the candidates.

15. Mercyhurst would provide the location for the debate and ultimately provided two panelists for the debate.

16. On or about September 8, 2018, MBA scheduled the debate for October 8, 2018, between Mike Kelly (R) and Ron DiNicola (D).

17. In late September 2018, the debate organizers met to discuss whether to include Mr. Beeman in the debate.

18. Mercyhurst University again reviewed WJET's debate participation criteria and recommended to the other debate organizers that they should not invite Mr. Beeman to participate, as he did not satisfy the criteria.

19. WJET did not oppose this recommendation.

20. The debate occurred on October 8, 2018, without Mr. Beeman.

21. On October 24, 2018, Beeman's campaign manager emailed WJET to indicate that their third quarter fundraising totals were posted with the Federal Election Commission. A true and correct copy of this email is attached here as Exhibit 1-B.

22. The FEC's website indicates that Beeman's campaign has only accepted \$28,930.00 in campaign contributions, including \$24,100.00 from Beeman himself. Beeman's campaign has only accepted \$4,830.00 in itemized individual contributions. A true and correct print-out of the FEC's website for the Beeman for Congress campaign fundraising page is attached here as Exhibit 1-C.

23. Even if Beeman's campaign had posted this fundraising in advance of the debate, it still would not have satisfied the minimum \$50,000 fundraising threshold required under the Nexstar criteria.

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24. As a result, Beeman would not have been eligible for the debate.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 9, 2018.

By: 
Lou Baxter

Nexstar Media Group Debate Criteria

July 2018

Nexstar Broadcasting Inc. is committed to hosting fair and open debates among qualified candidates as part of the Company's mission to inform the public and assist voters in making important electoral decisions. To determine who is a qualified candidate, the Company has adopted the following objective and non-discriminatory criteria to govern which candidates are eligible to participate in Company-sponsored debates. In order to be eligible to participate, a candidate must comply with *all* sections of this policy.

1. A candidate must be legally qualified and (x) listed on the ballot for the office the candidate is seeking or (y) be a write-in candidate who meets all of the legal qualifications required by the federal, state or municipal government for the office being sought and has filed the appropriate papers for write-in status.
2. A candidate must have publicly announced his or her candidacy in a public forum. For the purposes of this section, "public forum" includes an announcement of candidacy on the Internet.
3. A candidate must be actively campaigning for election in the jurisdiction he or she is seeking to represent for the office he or she is seeking. To meet the definition of an active campaign, a candidate must have all of the following:
 - a. A campaign headquarters with a paid and/or volunteer staff that is open to the public during business hours. For the purposes of this subsection, a campaign headquarters may not be a private residence, but may be a business address used primarily for non-campaign purposes; and
 - b. A campaign phone line; and
 - c. A publicized, dedicated candidate-specific website or web page; and
 - d. Planned in-district appearances or invitations to appear and/or speak at public gatherings; and
 - e. Monetary contributions and a campaign treasurer; and
 - f. Campaign literature; and
 - g. Press coverage identifying the candidate as a candidate in the current election by at least eight unique news reports in media (e.g. newspapers, TV, cable news, radio, or online news websites that are recognized by local and/or national media).
4. If a candidate meets at least five but not all of the requirements in Section 3 above (and meets the requirements in Section 5 below) and can show either:
 - a. He or she has received a minimum of 5 percent for a primary election, or 10 percent for a general election, support in an established, professionally conducted nonpartisan poll without taking the survey's margin of error into account, or
 - b. The percentage of votes cast for the candidate in a previous election within the four years immediately preceding the current election exceeds a minimum of 20 percent of votes for the same office or a comparable office, the candidate is eligible to participate in the debate.

5. In addition to the requirements of Sections 1-4 inclusive, a candidate for a state or federal office must have reported, on official forms filed with the appropriate election authority, accepting at least \$50,000 in monetary, as opposed to in-kind, campaign contributions, at least 25 percent of which must be raised from in-state constituents. For local offices, a candidate must have reported, on official forms filed with the appropriate election authority, having accepted at least \$15,000 in campaign contributions.
6. Nexstar Broadcasting Inc. and its affiliates, employees, agents and servants shall not guarantee to any candidate or candidate's campaign, verbally or in writing, that the candidate will be included in a debate until the requirements of this policy, and each of them, have been satisfied to the satisfaction of Nexstar Broadcasting Inc. and its affiliates.



From: Brandon Magoon <brandon.magoon@gmail.com>

Sent: Wednesday, October 24, 2018 2:12 PM

To: news@erienewsnow.com; Adam Snow Wicu Wsee Cw <asnow@wicu12.com>; jlast@wicu12.com; PAERI-ActionNews24 <PAERI-ActionNews24@nexstar.tv>; kevin.flowers@timesnews.com; Bill Palmer <BPalmer@wjettv.com>; Stories@eriereader.com; Michael Mahler <info@eriegaynews.com>; wcnj@neohio.twcbc.com; nenjeditor@gmail.com; editor@zoominternet.net; Edinboro Spectator <edinboro.spectator@gmail.com>; Becky Hilker <hilker001@knights.gannon.edu>; griswold002@knights.gannon.edu; editor@psu.edu; erinpass@thecorryjournal.com; rgreen@meadvilletribune.com; Lisa Adams <ladams@wicu12.com>; Keith Gushard <kgushard@meadvilletribune.com>

Subject: Beeman For Congress 3rd Quarter fundraising.

All,

Just wanted to let you know that the Federal Election Commission has posted our Third quarter fundraising.

<https://www.fec.gov/data/candidate/H8PA16094/>

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Thank you,
 Brandon Magoon
 Campaign Manager, Beman for Congress
www.EbertBeeman4Congress.com

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Home › Campaign finance data › Candidate profiles › BEEMAN, EBERT GORDAN

BEEMAN, EBERT GORDAN

CANDIDATE FOR HOUSE

PENNSYLVANIA - 16

ID: H8PA16094

LIBERTARIAN PARTY

Financial summary

ELECTION

2018

Time period:

2017-2018

Data is included from these committees:

- BEEMAN FOR CONGRESS

Total raised[Browse receipts](#)

Coverage dates: 07/01/2018 to 09/30/2018

TOTAL RECEIPTS	\$28,930.00
TOTAL CONTRIBUTIONS	\$28,930.00
Total individual contributions	\$0.00
<i>Itemized individual contributions</i>	<i>\$4,830.00</i>
<i>Unitemized individual contributions</i>	<i>\$0.00</i>
Party committee contributions	\$0.00
Other committee contributions	\$0.00
Candidate contributions	\$24,100.00
TRANSFERS FROM OTHER AUTHORIZED COMMITTEES	\$0.00
TOTAL LOANS RECEIVED	\$0.00
Loans made by candidate	\$0.00
Other loans	\$0.00
OFFSETS TO OPERATING EXPENDITURES	\$0.00
OTHER RECEIPTS	\$0.00

Total spent
[Browse disbursements](#)
[Coverage dates: 07/01/2018 to 09/30/2018](#)

TOTAL DISBURSEMENTS	\$28,930.00
OPERATING EXPENDITURES	\$28,930.00
TRANSFERS TO OTHER AUTHORIZED COMMITTEES	\$0.00
TOTAL CONTRIBUTION REFUNDS	\$0.00
Individual refunds	\$0.00
Political party refunds	\$0.00
Other committee refunds	\$0.00
TOTAL LOAN REPAYMENTS	\$0.00
Candidate loan repayments	\$0.00
Other loan repayments	\$0.00
OTHER DISBURSEMENTS	\$0.00

Cash summary
[Coverage dates: 07/01/2018 to 09/30/2018](#)

ENDING CASH ON HAND	\$0.00
DEBTS/LOANS OWED TO COMMITTEE	\$0.00
DEBTS/LOANS OWED BY COMMITTEE	\$0.00

