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December 18, 2020

Jeff Jordan, Esq.
Assistant General Counsel
Complaints Examination
& Legal Administration
Office of General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: MUR 7809

Dear Mr. Jordan:

On behalf of Tribune Media Company,¹ and its parent company, Nexstar Inc. and Nexstar Media Group, Inc. (“Respondents”), we submit this letter in response to the Complaint received by Respondents on October 8, 2020 in MUR 7809. As set forth below, because the Complainant provides no facts that describe any violation of any statute or regulation by the Respondents, we respectfully request that the Commission find no reason to believe Respondents committed any violation and close the file in this matter. *See* 11 C.F.R. § 111.4(d)(3).

The Complaint filed by the Oklahoma Republican Party alleges that KFOR-TV provided a discounted rate for advertising purchased by the Abby Broyles for U.S. Senate Committee, which may have resulted in a prohibited in-kind corporate contribution from the station to the Committee. The Complaint compares the rates charged to the Broyles campaign with those charged to her opponent in the race, the Friends of Jim Inhofe Campaign, across several timeslots. The contracts between the campaigns and the station from which this information is derived are publicly available, per the requirements of the Federal Communications Commission, and were provided as attachments to the Complaint.

¹ Tribune Broadcasting Company II, LLC, a subsidiary of Tribune Media Company, is the owner and Federal Communications Commission (“FCC”) licensee of television station KFOR-TV of Oklahoma City, OK.

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Without any evidence whatsoever, the Complainant posits that the station provided an alleged discount because the candidate, Abby Broyles, had been employed as a reporter by KFOR-TV prior to running for Senate. This is purely speculative and inaccurate; no discounts or favorable treatment of any kind was provided to the Broyles campaign.

The allegations contained in the Complaint are based on a basic and fundamental misunderstanding of KFOR-TV's advertising rate structure and the "lowest unit charge" ("LUC") rules that apply to broadcasters. Under section 315(b)(1) of the Communications Act, during the sixty days preceding the general election, broadcast licensees may not charge legally qualified candidates more than "the lowest unit charge of the station *for the same class* and amount of time for the same period." 47 U.S.C. § 315(b)(1) (emphasis added). Per the FCC's regulations, this means that a candidate may not be charged more per unit than the station charges its most favored commercial advertisers for the same classes and amounts of time for the same periods. *See* 47 C.F.R. § 73.1942(a)(1)(i). Stations may establish categories of non-preemptible, preemptible with notice, immediately preemptible and run-of-schedule as distinct classes of time so long as they clearly define the differences between the classes, fully disclose them, and make them available to candidates. *See* 47 C.F.R. § 73.1942(a)(1)(ii-v).

KFOR-TV's advertising rates are set forth on a rate card that is updated and generally published quarterly.² Per the rate card, there are different rates depending on the day of the week, the time period, and the type of programming. For each of these distinct slots, and consistent with FCC regulations, there are five classes of time based on the priority of the ads purchased. The most expensive class, Class 1, is a fixed position, which means that an ad purchased in that slot is guaranteed to run and will not be preempted by the purchase of ad time by another advertiser. Next expensive is Class 2, which is preemptible upon 72 hours' notice. That means that there is a chance another advertiser could purchase an ad for the same slot that would preempt the original purchaser's ad, but only upon 72 hours notice. With that notice, the purchaser may decide to upgrade to a higher class to guarantee their ad runs in their originally selected slot, or they may choose to run their ad in a different slot. Similarly, Class 3 is preemptible with 48 hours' notice, and Class 4 is preemptible with 24 hours notice. Class 5, which is the least expensive, is immediately preemptible with no notice.

Although some broadcasters have multiple rates within each class,³ KFOR-TV has only one rate for each class that applies across the board and without deviation to all

² The rate card for the quarter relevant to the Complaint, Quarter 3 of 2020, is included as Attachment A. Rate cards may be adjusted during a quarter if circumstances warrant such adjustment

³ For example, some broadcasters offer different rates for "favored commercial advertisers" or offer bulk discounts.

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advertisers who seek to purchase time in a certain slot within a class. Therefore, effectively, the lowest unit charge for each class and time slot is the *only* charge for that class and time slot. As a matter of policy and practice, KFOR-TV does not offer any discounts to the rates published on the quarterly rate card, and the same rate card is provided to all advertising purchasers and their agents, regardless of whether they are commercial or political customers. Advertisers are free to select their desired slot based on the time of day and programming of their target audience, and within each of those slots, they select the rate class based on whether they wish to pay a premium for a slot that is less likely to be preempted.

With respect to the allegations contained in the Complaint, both the Abby Broyles for U.S. Senate Committee and the Friends of Jim Inhofe Campaign, through their purchasing agents, were provided with the same Q3 rate card for KFOR-TV (Attachment A). The rate card clearly sets forth the rates for each time slot and class of time and explains the preemption levels for each class. Having been presented with this information, as set forth in the contract attached to the Complaint, the Friends of Jim Inhofe Campaign chose to purchase Class 3 airtime for certain periods, which is preemptible with 48 hours' notice and more expensive than Class 4 and 5 airtime.⁴ With few exceptions, the Abby Broyles for U.S. Senate Committee chose to purchase Class 4 or Class 5 airtime, including during some of the same slots for which the Inhofe Committee purchased Class 3 airtime.⁵ This means that the Broyles Committee slots ultimately may not have run in those time periods because they may have been preempted by the premium Class 3 slots purchased by the Inhofe Committee.

The Inhofe campaign's strategic decision to purchase preferred and more expensive slots for its advertisements than those purchased by the Broyles campaign does not and cannot result in an in-kind contribution from KFOR-TV to the Broyles campaign. The Inhofe campaign had the same opportunity to purchase slots in Class 4 or 5 as the Broyles

⁴ At the end of September, around the same time the Complaint in this matter was filed, the Inhofe Campaign, through its agent, contacted Nexstar Broadcasting, Inc. management to complain about what they viewed as a discrepancy in the rates being charged to the Inhofe Campaign versus the Broyles Campaign. Nexstar management explained in an email to the agent, "[r]ate classes are set so, YOU all make the decision, not us. Across the nation we have varying rates, dependent upon what the candidate and their agency representation wishes to purchase, clearly nothing [sic] classes of time and their applicable pre-emption levels. If your candidate chose to air in a different class of time – than their opponent, that is not a station decision, it is each individual candidate's choice. We cannot rebate beyond rate classes, that would misrepresent our published policies...just as I would not go to your client's opponent and ask for them to retroactively pay more. (Email from Tim Busch to Paul Winn, September 28, 2020).

⁵ The Broyles Committee contract reflecting the Class 4 and Class 5 airtime rates was also attached to the Complaint.

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campaign did, but they knowingly and voluntarily chose to purchase Class 3 slots that had less of a chance of being preempted. Both campaigns were afforded the lowest (and only) unit charge with the slots they selected.⁶ And, each campaign paid the usual and normal charge for the advertising slots they selected – the same rates that any customer, political or commercial, would have paid. Consistent with its strict policy regarding the rate cards, KFOR-TV did not offer or provide any discounted rates to the Broyles campaign, notwithstanding the baseless and speculative allegations contained in the Compliant. This is abundantly clear when you look at the rates set forth on the Q3 rate card and compare it to the rates paid by each of the campaigns.

Under Federal Election Commission regulations, no contribution results when a vendor provides goods or services (including advertising services) at a rate that is the usual and normal charge for such goods or services. 11 CFR 100.52(d)(1); see also 11 CFR 100.111(e)(1). Here, the usual and normal charge was clearly and unambiguously provided to both campaigns on the rate card, and they each selected and paid for their preferred classes and rates. Accordingly, KFOR-TV did not make, and the Broyles campaign did not solicit or accept, a prohibited in-kind corporate contribution in connection with these advertisements.

Based upon the foregoing, we respectfully request that the Commission find no reason to believe Respondents violated 52 U.S.C. § 30118(a) in connection with this matter.

Very truly yours,



Kate Belinski

KB

Attachment:
KFOR-TV Q3 2020 Rate Card

⁶ In comparing all of the costs quoted in the Broyles and Inhofe contracts with the Q3 rate card, we did notice one minor discrepancy for one ad spot during the week of 9/15-9/21; it appears the Inhofe campaign was quoted \$325 for the 10:30-12pm “Saturday Night Slot” rather than the \$300 amount that appears on the rate card. Based on the fact that this is the only discrepancy we identified, it appears to be an inadvertent error.

KFOR Rate Card
3rd Quarter - 2020

updated 7/7/20

Rates effective 7/1/20 - 9/27/20. Rates and programming are subject to change without notice

		Section/Priority Code	1	2	3	4	5		
Day	Time Period	Programming	Fixed	Preemptible with 72 hours notice	Preemptible with 48 hours notice	Preemptible with 24 hours notice	Immediately Preemptible	Comments/Notes	
EMN	M-F 4-430am	News 4 EMN	225	125	75	50	20		
	M-F 430-5am	News 4 EMN	225	125	75	50	25		
	M-F 5-530am	News 4 EMN at 5a	625	350	225	150	100		
	M-F 530-6am	News 4 EMN at 530a	675	375	250	175	115		
	M-F 6-630am	News 4 EMN at 6am	1,150	650	425	300	200		
	M-F 630-7am	News 4 EMN at 630a	1,150	650	425	300	200		
	M-F 7-8am	NBC Today Show	1,150	650	425	300	200		
	M-F 8-9am	NBC Today Show	1,150	650	425	300	200		
	M-F 9-10am	NBC Today Show 2	625	350	225	150	100		
	SAT 6-7am	Sat NBC Today Show	425	275	175	125	75		
	SAT 7-8am	Sat NBC Today Show	525	350	225	150	90		
	SAT 8-830am	Sat News 4 EMN	575	375	250	175	125		
	SAT 830-9am	Sat News 4 EMN	575	375	250	175	125		
	SUN 6-630am	Sun News 4 EMN	350	225	150	100	65		
	SUN 630-7am	Sun News 4 EMN	425	275	175	125	75		
	SUN 7-8am	Sun NBC Today Show	525	350	225	150	90		
	SUN 8-830am	Sun News 4 EMN	675	450	300	200	140		
	SUN 830-9am	Sun News 4 EMN	750	500	325	225	150		
	SUN 9-930am	Sun News 4 EMN	800	525	350	250	165		
	SUN 930-10am	Flashpoint	875	575	375	225	150	Local political affairs program	
SUN 10-11am	Meet The Press	975	650	425	300	200	National political affairs program		
DT	M-F 10-11am	NBC Today Show 3	425	275	175	125	85		
	M-F 11a-12n	Rachel Ray	350	225	150	100	70		
	M-F 12-1230pm	News 4 @ Noon	675	450	300	200	140		
	M-F 1230-1pm	News 4 @ 1230p	675	450	300	200	145		
	M-F 1-2pm	Days Of Our Lives	525	350	225	150	100		
	M-F 2-3pm	The Doctors	350	225	150	100	70		
	EF	M-F 3-330pm	Inside Edition	525	350	225	150	115	
		M-F 330-4pm	Jeopardy	575	375	250	175	125	
	EN	M-F 4-430pm	News 4 EN at 4p	575	375	250	150	110	
		M-F 430-5pm	News 4 EN at 430p	575	375	250	150	115	
M-F 5-530pm		News 4 EN at 5p	1,125	750	500	300	225		
M-F 530-6pm		NBC Nightly News	3,725	2,475	1,650	1,000	700	Station has one unit per day	
M-F 6-630pm		News 4 EN at 6p	1,800	1,200	800	475	325		
M-F 630-7pm		News 4 EXTRA Edition News	1,100	725	475	275	210	Local news cast	
SAT 530-6pm		NBC Nightly News	3,725	2,475	1,650	1,000	700		
SAT 6-630pm		News 4 Sat EN	800	525	350	200	140		
SUN 5-530pm		News 4 Sun EN	875	575	375	225	150		
SUN 530-6pm		NBC Nightly News	3,725	2,475	1,650	1,000	700		
LN	M-F 10-1035pm	News 4 Late News	2,700	1,800	1,200	725	550		
	SAT 10-1030pm	News 4 Late News Saturday	1,450	900	600	350	265		
	SUN 10-1035pm	News 4 Late News Sunday	2,400	1,500	1,000	600	450		
LF	M-F 1035-1135pm	Tonight Show w/Jimmy Fallon	750	500	325	200	135		
	M-F 1135-1235am	Late Night w/Seth Meyers	225	150	100	50	30		
	M-F 1235-105am	A Little Late w/Lilly Singh	125	75	50	25	15		
	M-F 105-2am	NBC Today - All Night	125	75	50	25	5		
	SAT 1030p-12am	Saturday Night Live	675	450	300	175	115		
	SAT 1230-1am	Right This Minute	125	75	50	25	5		
	SUN 1035-1135pm	NCIS: New Orleans	425	275	175	100	55		
	SUN 1135p-1235a	Madam Secretary	225	150	100	50	30		
	SUN 1235-135am	Meet The Press	125	75	50	25	5		
	SUN 135-205am	Inside Edition Weekend	125	75	50	25	5		
MON 7-8pm	Titan Games/Am Ninja Warrior	3,350	2,025	1,350	950	700			
MON 8-9pm	The Wall/Am Ninja Warrior	3,350	2,025	1,350	950	700			
MON 9-10pm	Dateline	2,075	1,250	825	575	425			
TUE 7-8pm	America's Got Talent	4,300	2,600	1,725	1,225	900			
TUE 8-9pm	America's Got Talent	4,300	2,600	1,725	1,225	900			
TUE 9-10pm	World of Dance	2,600	1,575	1,050	750	550			
WED 7-8pm	Chicago Med	2,475	1,500	1,000	700	510			
WED 8-9pm	Chicago Fire	2,475	1,500	1,000	700	515			
WED 9-10pm	Chicago PD	2,575	1,550	1,025	725	525			
THU 7-8pm	Council of Dads	1,625	975	650	450	325			
THU 8-9pm	Blindspot	1,700	1,025	675	475	350			
THU 9-10pm	Law & Order SVU	2,075	1,250	825	575	425			
FRI 7-8pm	World of Dance	1,500	900	600	425	300			
FRI 8-9pm	Dateline	2,600	1,575	1,050	750	550			

KFOR Rate Card
3rd Quarter - 2020

updated 7/7/20

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			Fixed	Preemptible with 72 hours notice	Preemptible with 48 hours notice	Preemptible with 24 hours notice	Immediately Preemptible	
M-F	4-430am	News 4 EMN	225	125	75	50	20	
FRI	9-10pm	Dateline	2,600	1,575	1,050	750	550	
SAT	7-8pm	Dateline Saturday Mystery	1,200	725	475	325	225	
SAT	8-9pm	Dateline Saturday Mystery	1,250	750	500	350	250	
SAT	9-10pm	SNL: Vintage Primetime	1,250	750	500	350	250	
SUN	6-7pm	Hollywood Game Night	1,625	975	650	450	325	
SUN	7-8pm	Titan Games	2,375	1,425	950	675	500	New host: Melissa McCarthy
SUN	8-9pm	America's Got Talent	2,375	1,425	950	675	500	
SUN	9-10pm	America's Got Talent	2,375	1,425	950	675	500	
DIGITAL	M-SU	4am-4am	25					Per Commercial Spot
	M-SU	4am-4am	1,250					24-Hour Takeover
	M-SU	4am-4am	1,000					100,000 Impressions

KFOR does not discriminate in advertising contracts on the basis of race, ethnicity or gender and further requires that in the performance of all KFOR advertising agreements.

ADVERTISING POLICIES

Station does not guarantee competitive separation.

Rates shown as :30's -10 = 50%; -15 = 65% and :60 = 200% .

Sports and Specials available upon request. Rotators, ROS, DR and Paid Programming also available upon request.

Production facilities and rates available upon request.

Any termination of schedule requires two weeks written notice.

CLASSES OF TIME

Priority Code 1 Fixed Position

Priority Code 2 Preemptible with 72 hours notice

Priority Code 3 Preemptible with 48 hours notice

Priority Code 4 Preemptible with 24 hours notice

Priority Code 5 Immediately Preemptible