

FEDERAL ELECTION COMMISSION**FIRST GENERAL COUNSEL'S REPORT****MUR 7809**

DATE COMPLAINT FILED: Oct. 1, 2020

DATE OF NOTIFICATIONS: Oct. 7, 2020

DATE OF LAST RESPONSE: Dec. 18, 2020

DATE ACTIVATED: Apr. 29, 2021

EXPIRATION OF SOL: Sept. 9 – Nov. 26, 2025

ELECTION CYCLE: 2020

COMPLAINANT: Oklahoma Republican Party**RESPONDENTS:** Abby Broyles for US Senate and Danielle Ezell
in her official capacity as treasurer
KFOR-TV
Nexstar Media Group**RELEVANT STATUTES:** 52 U.S.C. § 30104(b)
52 U.S.C. § 30118(a)
52 U.S.C. § 30125(e)(1)(A)**INTERNAL REPORTS CHECKED:** Disclosure Reports**FEDERAL AGENCIES CHECKED:** None**I. INTRODUCTION**

The Complaint alleges that Abby Broyles for US Senate and Danielle Ezell in her official capacity as treasurer (the “Broyles Committee”), the principal campaign committee of 2020 U.S. Senate candidate Abby Broyles, knowingly and willfully solicited, accepted, or received, and failed to report prohibited in-kind corporate contributions in the form of discounted rates for television advertising from KFOR-TV (“KFOR”), an Oklahoma television station owned by Nexstar Media Group, Inc. (“Nexstar”), in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). The Complaint specifically points to different rates that KFOR

1 apparently charged the Broyles Committee compared to the campaign of Broyles's general
2 election opponent, Senator Jim Inhofe.

3 Respondents deny the allegations and contend that the Broyles Committee did not receive
4 discounted rates. They assert that KFOR offered the Broyles Committee the same rates available
5 to all of its advertisers. Respondents acknowledge that the Broyles Committee paid less for its
6 advertising compared to the Inhofe campaign, but they state this was because the Broyles
7 Committee purchased time slots on less desirable terms, specifically, it was entitled to less notice
8 from KFOR if its advertisements would be preempted.

9 As explained below, the available information does not indicate that KFOR offered the
10 Broyles Committee discounted rates unavailable to KFOR's other customers. Accordingly, we
11 recommend that the Commission dismiss the allegations that the Broyles Committee solicited,
12 accepted, or received, and failed to report prohibited in-kind corporate contributions in violation
13 of 52 U.S.C. §§ 30118(a), 30125(e)(1)(A), and 30104(b), and that KFOR and Nexstar (the
14 "KFOR Respondents") made prohibited in-kind corporate contributions in violation of 52 U.S.C.
15 § 30118(a).

16 **II. FACTUAL BACKGROUND**

17 Abby Broyles was a candidate for U.S. Senate in Oklahoma during the 2020 election
18 cycle, and the Broyles Committee is her principal campaign committee.¹ KFOR is an NBC-
19 affiliated station in Oklahoma City that previously employed Broyles as a reporter.² During the
20 election, the Broyles Committee and Friends of Jim Inhofe (the "Inhofe Committee"), the
21 principal campaign committee of Broyles's general election opponent, purchased time slots for

¹ Compl. ¶ 1 (Oct. 1, 2020); Abby Broyles for US Senate, Amend. Statement of Org. at 2 (Feb. 27, 2020).

² Compl. ¶¶ 2-3.

1 advertising on KFOR.³ The Complaint alleges that the Broyles Committee used its candidate's
 2 prior relationship with KFOR to secure discounted advertising rates that were not available to the
 3 Inhofe Committee.⁴ The Complaint points specifically to disparities in prices that KFOR
 4 charged the committees during the week of September 14, 2020, during the same time slots, as
 5 set out below, which it obtained from KFOR contracts filed with the Federal Communications
 6 Commission ("FCC"):⁵

Time Slot	Price Charged to Broyles Committee	Price Charged to Inhofe Committee
7AM – 8AM	\$300	\$425
8:30AM – 9AM	\$175	\$250
12PM – 12:30PM	\$140	\$300
12:30PM – 1PM	\$145	\$300
10:30PM – 12AM	\$175	\$325

7 The Complaint also states that the Broyles Committee bought \$69,920 in advertising from KFOR
 8 between September 9-27, 2020, as reflected in a contract filed with the FCC, and asserts
 9 (apparently extrapolating from the above rate differentials) that it would have paid "thousands of
 10 dollars more" had it been charged the same prices as the Inhofe Committee.⁶ The Complaint
 11 therefore contends that the Broyles Committee solicited, accepted, received, and failed to report
 12 thousands of dollars in prohibited in-kind corporate contributions.⁷

³ *Id.* ¶¶ 4-5; Friends of Jim Inhofe, Amend. Statement of Org. at 2 (Dec. 2, 2020). KFOR and Nexstar's Response in this matter was submitted jointly by Tribune Media Company and its parent company, Nexstar, Inc., and Nexstar Media Group, Inc. The Response states that the owner and Federal Communications Commission licensee of KFOR is Tribune Broadcasting Company II, LLC, which is a subsidiary of Tribune Media Company. KFOR and Nexstar Media Group Resp. at 1 & n.1 (Dec. 18, 2020) ("KFOR Resp.").

⁴ Compl. ¶¶ 6, 10.

⁵ *Id.* ¶ 7; *id.*, Exs. A, B (KFOR contracts with the Broyles and Inhofe Committees). Based on the KFOR contracts attached to the Complaint, both committees purchased 30-second ad spots. *Id.*, Exs. A, B.

⁶ *Id.* ¶ 8; *id.*, Ex. A.

⁷ *Id.* ¶¶ 9-11.

1 The KFOR Respondents assert that the different prices the Complaint observed reflect the
2 terms on which each committee purchased time.⁸ They state that KFOR charges for advertising
3 according to a rate card that is given to all customers, including political campaigns; they do not
4 offer discounts; and the same card was given to both committees.⁹ The rate card sets out
5 advertising prices depending on the day of the week, time period, type of programming, and
6 priority of advertising purchased.¹⁰ Advertising priority is divided into five classes based on
7 how much notice must be given if an advertisement will be preempted by another
8 advertisement.¹¹ Class 1 advertisements cannot be preempted, while those in the remaining
9 classes can be preempted with notification by a set time period before they are scheduled to run:
10 Class 2 with 72 hours of notice, Class 3 with 48 hours, Class 4 with 24 hours, and Class 5 with
11 no notice.¹² KFOR's Class 1 advertisements are the most expensive, and the price decreases
12 with each increase in class level.¹³

13 Respondents contend that the seemingly disparate prices charged to the committees are
14 explained by the class of time each chose to purchase. The KFOR Respondents assert that the
15 Inhofe Committee bought "preferred and more expensive" Class 3 time for certain periods, while
16 the Broyles Committee, with few exceptions, bought less expensive Class 4 or 5 time.¹⁴ The

⁸ KFOR Resp. at 2-3.

⁹ *Id.*

¹⁰ *Id.* at 2; *id.*, Ex. A (KFOR rate card for July 1, 2020 – September 27, 2020).

¹¹ *Id.* at 2.

¹² *Id.* Once notice is given, the original purchaser may decide to upgrade to a higher class or switch to a different time slot. *Id.*

¹³ *Id.* Pursuant to 47 U.S.C. § 315(b), during the 60 days preceding a general election broadcasting stations may charge legally qualified candidates in that election no 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); *accord* 47 C.F.R. § 73.1942(a)(1). The Federal Communications Commission recognizes non-preemptible, preemptible with notice, and immediately preemptible as distinct classes of time. 47 C.F.R. § 73.1942(a)(1)(ii).

¹⁴ KFOR Resp. at 3.

1 Broyles Committee argues more specifically that the prices the Complaint highlights during the
2 week of September 14, 2020, are fully explained by the class of time purchased.¹⁵ They provide
3 screenshots of the relevant KFOR rate card, which appear to show that, for each charge
4 highlighted by the Complaint, the price the Inhofe Committee paid matches the price for Class 3
5 time, while the price the Broyles Committee paid corresponds with the price of either Class 4 or
6 Class 5 time.¹⁶ Respondents conclude that, because the differences in price are fully explained
7 by the class of time purchased, there is no basis to find that they violated the Act.¹⁷

8 **III. LEGAL ANALYSIS**

9 Contributions are defined in the Act to include any “gift, subscription, loan, advance, or
10 deposit of money or anything of value made by any person for the purpose of influencing any
11 election for Federal office.”¹⁸ The term “anything of value” includes all in-kind contributions,
12 including “the provision of any goods or services without charge or at a charge that is less than
13 the usual and normal charge.”¹⁹ The Act requires political committees to report the identity of
14 each person who makes a contribution aggregating more than \$200 in the relevant reporting
15 period, along with the date and amount of the contribution.²⁰

16 Corporations are prohibited from making contributions to federal candidates, and the Act
17 likewise bars candidates, political committees (other than independent expenditure-only political

¹⁵ Broyles Committee Resp. at 2-4 (Oct. 26, 2020).

¹⁶ *Id.* In one instance the Inhofe Committee appears to have been overcharged for Class 3 time by \$25, as explained further below. *Infra* p. 8 and note 33.

¹⁷ *See* Broyles Committee Resp. at 4; KFOR Resp. at 3-4.

¹⁸ 52 U.S.C. § 30101(8); 11 C.F.R. § 100.52(a).

¹⁹ 11 C.F.R. § 100.52(d). The usual and normal charge for services is the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered. *Id.* § 100.52(d)(2).

²⁰ 52 U.S.C. § 30104(b)(3)(A).

1 committees and committees with hybrid accounts), and other persons from knowingly accepting
2 or receiving corporate contributions.²¹ Finally, the Act provides that federal candidates and
3 entities they directly or indirectly establish, finance, maintain, or control may not solicit or
4 receive funds in connection with an election for federal office that do not comply with the
5 limitations, prohibitions, and reporting requirements of the Act.²²

6 The Commission has previously determined that “the purchase of goods or services at a
7 discount does not result in a contribution when the discounted items are made available in the
8 ordinary course of business and on the same terms and conditions to the vendor’s other
9 customers who are not political committees.”²³ Even more pertinently, the Commission has
10 declined to find that a contribution was made when the discount was due to the respondent
11 purchasing a less desirable item. In MUR 5942 (Rudy Giuliani Presidential Committee, Inc.),
12 the Commission found no reason to believe that a committee accepted a corporate in-kind
13 contribution by paying an allegedly reduced price for a newspaper advertisement.²⁴ The
14 available information indicated the committee had purchased the advertisement at the “standby
15 rate,” which meant that it would run within seven days but no specific date was guaranteed,
16 whereas another committee that had paid a significantly higher price for an advertisement was
17 guaranteed a specific date.²⁵

²¹ *Id.* § 30118(a); 11 C.F.R. § 114.2(a), (d).

²² 52 U.S.C. § 30125(e)(1)(A).

²³ Factual & Legal Analysis (“F&LA”) at 9, MUR 6040 (Fourth Lennox Terrace Assoc.) (collecting prior matters and advisory opinions).

²⁴ F&LA at 1, MUR 5942 (Rudy Giuliani Presidential Committee, Inc.).

²⁵ *Id.* at 1-2, 4-6.

1 The Complaint asserts “upon information and belief” that the Broyles Committee
2 solicited an in-kind contribution in the form of discounted advertising rates, but it offers no
3 support for that allegation beyond the fact that KFOR contracts show the Inhofe Committee paid
4 higher prices than the Broyles Committee.²⁶ The KFOR Respondents assert that KFOR offered
5 its customers (including the Broyles and Inhofe Committees) the same rates from the same rate
6 card, and the price differences highlighted by the Complaint are due to the committees choosing
7 to purchase different classes of time.²⁷ As explained above, the class of time reflects the amount
8 of notice KFOR agrees to provide before preempting a customer’s advertisement with one
9 purchased by another customer in a more preferred class.²⁸ Analysis of the Broyles and Inhofe
10 Committee contracts attached to the Complaint largely supports Respondents’ argument — the
11 Inhofe Committee appears to have nearly always purchased Class 3 time, while the Broyles
12 Committee appears to have purchased mostly the less expensive Class 4 time.²⁹

13 The available information does not entirely foreclose the possibility that the Broyles
14 Committee received more favorable rates. Notably, although the prices the Broyles Committee
15 paid do align with certain classes on KFOR’s rate card, the contracts do not confirm which class
16 was ultimately applied to each advertisement.³⁰ It is possible, therefore, that the Broyles
17 Committee received a discount in the form of paying Class 4 or 5 rates, while receiving Class 3
18 (or higher) treatment for its advertisements. However, there is no available information
19 suggesting that was the case. Additionally, in a few instances, the contracts show purchases in

²⁶ Compl. ¶ 10.

²⁷ See KFOR Resp. at 2-4.

²⁸ *Id.* at 2.

²⁹ Compare Compl., Exs. A-B., with KFOR Resp., Attach. A (rate card).

³⁰ See Compl., Exs. A-B.

1 time slots or for programs that do not exist on the corresponding rate card, which calls into
2 question the KFOR Respondents' assertion that the same card applied to all customers.³¹ Again,
3 however, no available information suggests that those few instances represent special prices
4 given to the Broyles Committee. Finally, in one instance, the Inhofe Committee was
5 overcharged by \$25 for an advertising slot, a fact that the KFOR Respondents characterize as an
6 inadvertent error.³² However, even for that purchase, the Broyles Committee was not given a
7 more favorable rate because it apparently did not purchase the same class of time as the Inhofe
8 Committee,³³ and in any case, the amount of overcharge was minimal.

9 Accordingly, because no available information indicates that the Broyles Committee
10 solicited, accepted, received, or failed to report in-kind corporate contributions in the form of
11 discounted advertising rates, we recommend that the Commission dismiss the allegations that the
12 Broyles Committee violated 52 U.S.C. §§ 30104(b), 30118(a), and 30125(e)(1)(A). We also
13 recommend that the Commission dismiss the allegation that the KFOR Respondents made a
14 prohibited corporate contribution in violation of 52 U.S.C. § 30118(a).

15 **IV. RECOMMENDATIONS**

- 16 1. Dismiss the allegations that Abby Broyles for US Senate and Danielle Ezell, in
17 her official capacity as treasurer, violated 52 U.S.C. §§ 30104(b), 30118(a), and
18 30125(e)(1)(A);
- 19 2. Dismiss the allegations that KFOR-TV and Nexstar Media Group violated
20 52 U.S.C. § 30118(a);

³¹ *Compare* Compl., Ex. A at 6 (showing charge for ads during “FB Night in Amer Pre Game” without a corresponding time slot), *with* KFOR Resp., Attach. A (rate card not showing corresponding advertising slot).

³² KFOR Resp. at 4 n.6.

³³ For September 19, 2020, in the 10:30pm-12am time slot, KFOR charged the Inhofe Committee \$325 for an advertisement during “Saturday Night Live,” but the rate card shows that Class 3 time for that slot was \$300. *Compare* Compl., Ex. B at 6, *with* KFOR Resp., Attach. A at 1. The Broyles Committee purchased time for the same date and slot for \$175, which was the price for Class 4 time. *Compare* Compl., Ex. A at 2, *with* KFOR Resp., Attach. A at 1.

