



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA ELECTRONIC MAIL

November 17, 2021

Kate Belinski, Esq.
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RE: MUR 7809
KFOR-TV
Nexstar Media Group

Dear Ms. Belinski:

On October 7, 2020, the Federal Election Commission notified your clients, KFOR-TV and Nexstar Media Group, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. Upon further review of the allegations contained in the complaint, and information provided by your client, the Commission, on November 9, 2021, dismissed the allegation that your clients violated 52 U.S.C. § 30118(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Laura Conley, the attorney assigned to this matter, at (202) 694-1475 or lconley@fec.gov.

Sincerely,

Anne B. Robinson

Anne B. Robinson
Acting Assistant General Counsel

Enclosure:
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**

3
4 Respondents: Abby Broyles for US Senate and Danielle MUR 7809
5 Ezell in her official capacity as treasurer
6 KFOR-TV
7 Nexstar Media Group
8

9 **I. INTRODUCTION**

10 This matter was generated by a Complaint filed with the Federal Election Commission by
11 the Oklahoma Republican Party, alleging that Abby Broyles for US Senate and Danielle Ezell in
12 her official capacity as treasurer (the “Broyles Committee”), the principal campaign committee
13 of 2020 U.S. Senate candidate Abby Broyles, knowingly and willfully solicited, accepted, or
14 received, and failed to report prohibited in-kind corporate contributions in the form of discounted
15 rates for television advertising from KFOR-TV (“KFOR”), an Oklahoma television station
16 owned by Nexstar Media Group, Inc. (“Nexstar”), in violation of the Federal Election Campaign
17 Act of 1971, as amended (the “Act”). The Complaint specifically points to different rates that
18 KFOR apparently charged the Broyles Committee compared to the campaign of Broyles’s
19 general election opponent, Senator Jim Inhofe.

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

26 As explained below, the available information does not indicate that KFOR offered the
27 Broyles Committee discounted rates unavailable to KFOR’s other customers. Accordingly, the

1 Commission dismisses the allegations that the Broyles Committee solicited, accepted, or
2 received, and failed to report prohibited in-kind corporate contributions in violation of 52 U.S.C.
3 §§ 30118(a), 30125(e)(1)(A), and 30104(b), and that KFOR and Nexstar (the “KFOR
4 Respondents”) made prohibited in-kind corporate contributions in violation of 52 U.S.C.
5 § 30118(a).

6 **II. FACTUAL BACKGROUND**

7 Abby Broyles was a candidate for U.S. Senate in Oklahoma during the 2020 election
8 cycle, and the Broyles Committee is her principal campaign committee.¹ KFOR is an NBC-
9 affiliated station in Oklahoma City that previously employed Broyles as a reporter.² During the
10 election, the Broyles Committee and Friends of Jim Inhofe (the “Inhofe Committee”), the
11 principal campaign committee of Broyles’s general election opponent, purchased time slots for
12 advertising on KFOR.³ The Complaint alleges that the Broyles Committee used its candidate’s
13 prior relationship with KFOR to secure discounted advertising rates that were not available to the
14 Inhofe Committee.⁴ The Complaint points specifically to disparities in prices that KFOR
15 charged the committees during the week of September 14, 2020, during the same time slots, as
16 set out below, which it obtained from KFOR contracts filed with the Federal Communications
17 Commission (“FCC”):⁵

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

² Compl. ¶¶ 2-3.

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.

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

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

7 The KFOR Respondents assert that the different prices the Complaint observed reflect the
8 terms on which each committee purchased time.⁸ They state that KFOR charges for advertising
9 according to a rate card that is given to all customers, including political campaigns; they do not
10 offer discounts; and the same card was given to both committees.⁹ The rate card sets out
11 advertising prices depending on the day of the week, time period, type of programming, and
12 priority of advertising purchased.¹⁰ Advertising priority is divided into five classes based on
13 how much notice must be given if an advertisement will be preempted by another
14 advertisement.¹¹ Class 1 advertisements cannot be preempted, while those in the remaining

⁶ *Id.* ¶ 8; *id.*, Ex. A.

⁷ *Id.* ¶¶ 9-11.

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.

1 classes can be preempted with notification by a set time period before they are scheduled to run:
2 Class 2 with 72 hours of notice, Class 3 with 48 hours, Class 4 with 24 hours, and Class 5 with
3 no notice.¹² KFOR's Class 1 advertisements are the most expensive, and the price decreases
4 with each increase in class level.¹³

5 Respondents contend that the seemingly disparate prices charged to the committees are
6 explained by the class of time each chose to purchase. The KFOR Respondents assert that the
7 Inhofe Committee bought "preferred and more expensive" Class 3 time for certain periods, while
8 the Broyles Committee, with few exceptions, bought less expensive Class 4 or 5 time.¹⁴ The
9 Broyles Committee argues more specifically that the prices the Complaint highlights during the
10 week of September 14, 2020, are fully explained by the class of time purchased.¹⁵ They provide
11 screenshots of the relevant KFOR rate card, which appear to show that, for each charge
12 highlighted by the Complaint, the price the Inhofe Committee paid matches the price for Class 3
13 time, while the price the Broyles Committee paid corresponds with the price of either Class 4 or
14 Class 5 time.¹⁶ Respondents conclude that, because the differences in price are fully explained
15 by the class of time purchased, there is no basis to find that they violated the Act.¹⁷

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.

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* note 29.

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

1 **III. LEGAL ANALYSIS**

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

9 Corporations are prohibited from making contributions to federal candidates, and the Act
10 likewise bars candidates, political committees (other than independent expenditure-only political
11 committees and committees with hybrid accounts), and other persons from knowingly accepting
12 or receiving corporate contributions.²¹ Finally, the Act provides that federal candidates and
13 entities they directly or indirectly establish, finance, maintain, or control may not solicit or
14 receive funds in connection with an election for federal office that do not comply with the
15 limitations, prohibitions, and reporting requirements of the Act.²²

16 The Commission has previously determined that “the purchase of goods or services at a
17 discount does not result in a contribution when the discounted items are made available in the
18 ordinary course of business and on the same terms and conditions to the vendor’s other

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).

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

²² 52 U.S.C. § 30125(e)(1)(A).

1 customers who are not political committees.”²³ Even more pertinently, the Commission has
2 declined to find that a contribution was made when the discount was due to the respondent
3 purchasing a less desirable item. In MUR 5942 (Rudy Giuliani Presidential Committee, Inc.),
4 the Commission found no reason to believe that a committee accepted a corporate in-kind
5 contribution by paying an allegedly reduced price for a newspaper advertisement.²⁴ The
6 available information indicated the committee had purchased the advertisement at the “standby
7 rate,” which meant that it would run within seven days but no specific date was guaranteed,
8 whereas another committee that had paid a significantly higher price for an advertisement was
9 guaranteed a specific date.²⁵

10 The Complaint asserts “upon information and belief” that the Broyles Committee
11 solicited an in-kind contribution in the form of discounted advertising rates, but it offers no
12 support for that allegation beyond the fact that KFOR contracts show the Inhofe Committee paid
13 higher prices than the Broyles Committee.²⁶ The KFOR Respondents assert that KFOR offered
14 its customers (including the Broyles and Inhofe Committees) the same rates from the same rate
15 card, and the price differences highlighted by the Complaint are due to the committees choosing
16 to purchase different classes of time.²⁷ As explained above, the class of time reflects the amount
17 of notice KFOR agrees to provide before preempting a customer’s advertisement with one
18 purchased by another customer in a more preferred class.²⁸ Analysis of the Broyles and Inhofe

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.

²⁶ Compl. ¶ 10.

²⁷ *See* KFOR Resp. at 2-4.

²⁸ *Id.* at 2.

1 Committee contracts attached to the Complaint largely supports Respondents’ argument — the
2 Inhofe Committee appears to have nearly always purchased Class 3 time, while the Broyles
3 Committee appears to have purchased mostly the less expensive Class 4 time.²⁹

4 Accordingly, because no available information indicates that the Broyles Committee
5 solicited, accepted, received, or failed to report in-kind corporate contributions in the form of
6 discounted advertising rates, the Commission dismisses the allegations that the Broyles
7 Committee violated 52 U.S.C. §§ 30104(b), 30118(a), and 30125(e)(1)(A). The Commission
8 also dismisses the allegation that the KFOR Respondents made a prohibited corporate
9 contribution in violation of 52 U.S.C. § 30118(a).

²⁹ Compare Compl., Exs. A-B, with KFOR Resp., Attach. A (rate card). In a few instances, the contracts show purchases in time slots or for programs that do not exist on the corresponding rate card. 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). In another instance, the Inhofe Committee was overcharged by \$25 for an advertising slot, a fact that the KFOR Respondents characterize as an “inadvertent error.” KFOR Resp. at 4 n.6. There is no information that the Broyles Committee received favorable advertisements in any of these instances.