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BY E-MAIL

December 9, 2020

Mr. Jeff S. Jordan
Assistant General Counsel
Federal Election Commission
Office of Complaints Examination
& Legal Administration
1050 First St., N.E.
Washington, D.C. 20463

Re: Matter Under Review 7818

Dear Mr. Jordan:

Our client Fox Television Stations, LLC hereby responds to the Complaint in the above-captioned MUR, on behalf of its licensee WFLD ("WFLD"), the television station that is named in the Complaint as a Respondent. For the reasons stated below, the Complaint should be dismissed with respect to WFLD, without finding reason to believe that WFLD violated the Federal Election Campaign Act ("FECA").

The Complaint concerns conduct by the Willie Wilson 2020 campaign committee (the "Campaign") rather than by WFLD. In particular, the Complaint alleges that the Campaign violated FECA by failing to include a required "Stand By Your Ad" disclaimer in certain broadcast advertisements submitted for airing by WFLD and other television advertisers in the Chicago area. Liability for failure to include the disclaimer runs to the Campaign, not to the broadcaster, however. The Complainant also seeks an order that WFLD cease airing the Campaign's advertisements without the required disclaimer. This claim for relief is moot, as the Campaign added the disclaimer after receiving the complaint, and of course the election has now already occurred.

The Complaint, as an afterthought, "note[s] that continuing to air advertisements that lack required disclaimers after being notified of their clear deficiencies may result in an in-kind contribution to Mr. Wilson's campaign." Complaint at 2. The Complaint offers no explanation for this conclusory statement. Nor has the Commission ever held that a campaign's failure to include a Stand By Your Ad disclaimer results in an in-kind contribution by the broadcaster that carries the advertisement. Because no in-kind contribution occurred in this case, and to conserve limited Commission resources, the Complaint should be dismissed with respect to WFLD.

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The Disclaimer Requirement Applies to the Campaign, Not WFLD

FECA provides that a television or radio advertisement aired by a candidate's authorized committee must include a statement by the candidate indicating that he or she has "approved" the advertisement. *See* 52 U.S.C. 30120(d)(1); *see also* 11 CFR 110.11(c)(3). This requirement applies "[w]hensoever a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station...." *Id.* 30120(a) (emphasis added). It is an obligation imposed solely on the political committee.

Broadcasters are subject to a separate regulatory regime under the Communications Act of 1934, which is administered and enforced by the Federal Communications Commission. The Communications Act imposes on broadcasters a variety of obligations that apply to political advertising, including sponsorship identification requirements and a requirement to charge campaigns the lowest unit charge ("LUC") in specified circumstances. The Federal Election Commission lacks jurisdiction to interpret these FCC rules or to enforce them against broadcasters. The FEC has pursued numerous enforcement actions against candidates and their authorized committees for failure to include FEC-mandated Stand By Your Ad disclaimers in advertisements, but in none of them has a broadcaster been named by the Complainant or by the FEC as a Respondent, reflecting the FEC's recognition that political committees rather than broadcasters are obligated to ensure that advertisements bear the required disclaimer.¹

Accordingly, any liability here for failure to include the required disclaimers on the Campaign's broadcast advertisements is solely attributable to the Campaign.

For the reasons stated above, the Complaint should be dismissed as to WFLD.

Respectfully submitted,



Robert K. Kelner

¹ *See, e.g.*, MUR 7022 (Bernie 2016) (2019); MUR 7198 (Ron Johnson for Senate, Inc.) (2017); MUR 7186 (Kathy Szeliga) (2017); MUR 6831 (Tom MacArthur for Congress) (2016); MUR 6883 (Clint Didier for Congress) (2015); MUR 6782 (Mark Pryor for US Senate) (2014); MUR 6565 (Blaha for Congress) (2012); MUR 6398 (Sestak for Senate) (2011); MUR 6283 (Manfred Schreyer Committee) (2010); MUR 6282 (John Lee Smith) (2010); MUR 5629 (Jim Newberry for Congress) (2007); MUR 6070 (Lyle Larson for Congress) (2009); MUR 6084 (John Kennedy for US Senate Inc.) (2009); MUR 6032 (Tom Leatherwood for Congress) (2009); MUR 6076 (Stevens for Senate Committee) (2009); MUR 6016 (Ose for Congress) (2008); MUR 5834 (Darcy Burner for Congress) (2007); MUR 5556 (Porter for Congress) (2006).