

Ballard Spahr LLP

 1909 K Street, NW
 12th Floor
 Washington, DC 20006-1157
 TEL 202.661.2200
 FAX 202.661.2299
 www.ballardspahr.com

Kate Belinski
 Tel: 202.661.2225
 Fax: 202.661.2299
 belinskik@ballardspahr.com

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 7818

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 27, 2020 in MUR 7818. 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). In the alternative, we request that the Commission dismiss the allegations against Respondents as an exercise of the Commission’s prosecutorial discretion.

Complainant, the Illinois Democratic County Chairs Association, alleges that Respondent Tribune Media Company aired ads in June and October 2020 that did not comply with the “Stand by Your Ad” rules under the Federal Election Campaign Act (“the Act”). As a result, the Complaint alleges, Respondent may have made an in-kind contribution to the sponsor of the ads, Willie Wilson 2020 (“WW2020”). The Complainant posits that the alleged in-kind contribution would have resulted if the television station had

¹ Complainant incorrectly identified the owner and Federal Communications Commission (“FCC”) licensee of television station WGN-TV, Chicago, IL as WGN Television. We have used the correct company name throughout this response.

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permitted WW20 access to the lowest unit charge for ads that did not comply with FCC requirements.

The Act requires that whenever a candidate or an authorized political committee of a candidate makes a disbursement for the purpose of financing any communication through any broadcasting station, or any other type of general public political advertising, such communication shall clearly state that the authorized political committee paid for the communication. See 52 U.S.C. § 30120(a)(1); 11 C.F.R. § 110.11(b)(1). Furthermore, under the Act's "stand by your ad" provisions, a television communication paid for or authorized by a candidate's principal campaign committee must include a statement by the candidate that identifies the candidate and states that the candidate approves the communication. 52 U.S.C. § 30120(d)(1)(B); 11 C.F.R. § 110.11(c)(3)(ii). A "similar" statement must also appear in writing at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least four seconds. 52 U.S.C. § 30120 (d)(1)(B)(ii); 11 C.F.R. § 110.11(c)(3)(iii).

A similar (although not identical) provision within section 315 of the Communications Act of 1934 sets forth that broadcasters are required to provide the lowest unit charge ("LUC") rate for candidates' political advertisements in the 45 days prior to the primary election and 60 days prior to the general election for the same classification of advertising. See 47 U.S.C. § 315(b)(1)(A). Federal candidates "shall not be entitled" to the LUC if any of their advertisements make a direct reference to their opponent and fail to contain a statement identifying the candidate and stating that the candidate approved the communication. In the case of television advertisements, there must appear simultaneously for a period of no less than four seconds at the end of the ad: (i) a clearly identifiable photographic or similar image of the candidate; and (ii) a clearly readable printed statement, identifying the candidate and stating that the candidate has approved the broadcast and that their authorized committee paid for the broadcast. 47 § U.S.C. 315(b)(2)(C).

The Complaint mentions two ads, one that Complainant claims was aired on June 24, 2020, and one from October 5, 2020. The Complaint does not provide any descriptions of the ads and the YouTube links contained in the Complaint do not appear to be active, so it is not clear to which ads the Complainant is actually referring. In fact, the Complaint doesn't even actually allege that the ads in question, whichever ads they may be, were aired by television station WGN, nor does it specifically allege that the station provided the LUC for any of the WW2020 ads. Despite the vagueness of the allegations, Respondents reviewed all of the ads placed by WW2020 with WGN-TV from June through October, 2020, to attempt to determine whether the issues raised in the Complaint were valid. They are not.

WW2020 placed two ads with Tribune Media Company on WGN-TV in June 2020, "Term Limits" and "Health Care." Both of these ads feature the candidate speaking directly to the screen throughout the 30-second spot, starting with the candidate introducing himself ("I'm Dr. Willie Wilson") and ending with "I am asking for your support as I run for U.S.

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Senator in 2020.” The ads then include a voiceover that says “Paid for by Willie Wilson for Senate 2020” as well as a printed disclaimer with the same message. The ads do not mention any other federal candidates. The campaign placed four similar ads, “Bought,” “International,” “Justice,” and “Tax Burden” in September 2020. Each of the ads included the candidate introducing himself, asking for support, and including the voiceover and printed disclaimers. These ads also do not mention any other federal candidates.

Finally, WW2020 placed two additional ads in October 2020, “Family Affair” and “Crime Bill.” In these ads, the candidate appears at the end of the ad and says “I’m Dr. Willie Wilson and I support this ad,” followed by a voiceover that says “Paid for by Willie Wilson for Senate 2020” and a printed disclaimer with the same message. These last two ads aired from October 11 to October 19, at which time the WW2020 campaign provided updated versions of the ads that included language specifically stating that the candidate “approved” the ads to replace the original versions.

All eight of the advertisements placed by WW2020 that aired on WGN-TV clearly identified the candidate verbally, visually, and in the form of a printed disclaimer. To the extent that any of the ads in question (or those not in question) failed to include adequate disclaimers under the FECA because the candidate said he “supported” the ad rather than that he “approved” the ad, the statute and the Commission’s regulations impose liability exclusively on the speaker and not on broadcaster. Tribune Media Company is not required to police the ads placed on its airwaves to ensure they are fully compliant with the FECA’s disclaimer regulations; that burden falls upon the political committees that fall within the FECA’s jurisdiction. Accordingly, there is no reason to believe Respondents violated 52 U.S.C. § 30120 or 11 C.F.R. § 110.11.

With respect to the disclaimer requirements of the Communications Act, only “Family Affair” and “Crime Bill,” which ran from October 11 to October 19 for a total cost of \$10,750, make reference to the candidate’s opponent such that there is any question as to whether or not the ads are entitled to the LUC. However, as discussed in previous enforcement matters and advisory opinions, the Commission has no jurisdiction to make a formal determination as to whether candidate advertisements are entitled to the lowest unit charge under the Communications Act, and/or whether the sponsor of an ad violated the disclaimer requirements contained in the Communications Act. Such determinations are within the jurisdiction of the FCC. *See* AOR 2006-31 (Casey); 2004-43 (Missouri Broadcasters Assn.); MUR 5834 (Darcy Burner for Congress). In this matter, it is entirely possible the FCC would determine that the candidate’s verbal, visual and printed disclaimer identification in the ad were sufficient to substantially comply with the requirements under 47 U.S.C. § 315(b). In that case, the ads would be entitled to the LUC.

In the matters cited above wherein the FEC has considered the issue of whether an in-kind contribution would result if a candidate receives the LUC for an ad for which it is not “entitled,” the Commission has been unable to provide definitive guidance to the regulated

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community. On that basis, we respectfully request that the Commission find no reason to believe Respondents violated 52 U.S.C. § 30118(a) in connection with this matter. In the alternative, due to the low dollar value at issue, the remedial measures taken to correct the ad disclaimers, the uncertain precedent in this area of the law, and the speculative nature of the complaint, we request that the Commission dismiss the allegation that Respondents violated 52 U.S.C. § 30118(a) as a matter of prosecutorial discretion.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Kate Belinski", with a stylized flourish at the end.

Kate Belinski

KB