



FEDERAL ELECTION COMMISSION
Washington, DC 20463

BY EMAIL ONLY

May 16, 2022

BelinskiK@ballardspahr.com

Kate Belinski
Ballard Spahr, LLP
1909 K Street, NW, 12th Floor
Washington, DC 20006

RE: MUR 7818
Tribune Media Company

Dear Ms. Belinski:

On October 21, 2020, the Federal Election Commission ("Commission") notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time. Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 11, 2022, decided to exercise its prosecutorial discretion and voted to dismiss this matter. The Commission then closed its file in this matter. The General Counsel's Report, which more fully explains the Commission's decision, is enclosed for your information.

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). If you have any questions, please contact Don Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

Roy Q. Lockett

BY: Roy Q. Lockett
Acting Assistant General Counsel

Enclosure:
General Counsel's Report

BEFORE THE FEDERAL ELECTION COMMISSION
ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT

MUR: 7818

Respondents: Willie Wilson 2020 and Nicole Janes
in her official capacity as treasurer
(the “Committee”)
Willie Wilson
Spectrum
WFLD
WGN-TV

Complaint Receipt Date: October 14, 2020

Response Dates: November 20, 2020 (the Committee)
December 7, 2020 (Spectrum-Charter)
December 15, 2020 (WFLD)

Alleged Statutory **52 U.S.C. §§ 30120(d)(1)(B)(1), 30118(a);**
Regulatory Violations: **11 C.F.R. §§ 110.11(c)(3)(ii)(B), 114.2**

The Complaint alleges that Willie Wilson and his authorized committee, Willie Wilson 2020, distributed television advertisements that lacked “Stand By Your Ad” disclaimers in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations.¹ Specifically, the Complaint contends that at least two ads, one airing on June 24, 2020, and another on October 5, 2020, failed to include statements by Wilson indicating that he approved the communications.² The Complainant also suggests that television stations may have made in-kind contributions to the Committee by charging the lowest unit charge (“LUC”) for the advertisements, because under the Communications Act of 1934 (the “Communications Act”), a “Stand By Your Ad” disclaimer is apparently required in order to be entitled to receive the LUC for political ads that make a direct reference to an opponent.³

¹ Compl. at 1-3 (Oct. 14, 2020).

² *Id.* at 3.

³ *Id.* at 2. The LUC is the lowest advertising rate that a station charges other advertisers for the same class and amount of time for the same period. *See* 47 U.S.C. 315(b)(1) and 47 C.F.R. 73.1942(a)(1). The Communications Act generally requires broadcasters to charge candidates the LUC for a candidate’s political advertisements in the 45 days

1 The Committee’s Response acknowledges that the two ads named in the Complaint did not
 2 contain the required disclaimer, but contends that Wilson had previously recorded a “Stand By Your
 3 Ad” disclaimer for each ad, and attributes the omission to a production oversight by the video
 4 production company.⁴ The Committee further states that each ad featured the candidate Wilson
 5 introducing himself by name and speaking to viewers for the entirety of the ad, and that each ad
 6 disclosed in written text that it was paid for by the Committee.⁵

7 Charter Communications, Inc., parent company of Spectrum, responded on behalf of
 8 Spectrum (the “Spectrum-Charter Response”), and asserts that the Federal Communications
 9 Commission (“FCC”) has exclusive jurisdiction over the threshold issue of whether a candidate is
 10 entitled to the LUC for advertisements, and that the Federal Election Commission (“FEC”) lacks
 11 jurisdiction to determine this issue.⁶ The Spectrum-Charter Response also asserts that Wilson was
 12 in fact entitled to the LUC on the merits, because although the ads lacked a Stand By Your Ad
 13 disclaimer they did not make any direct reference to Wilson’s opponent, and that the Commission
 14 has previously concluded that providing the LUC to a candidate entitled to it does not amount to an
 15 impermissible in-kind contribution or violate FECA.⁷

preceding a primary election and the 60 days preceding a general election, however section 315(b) of the Communications Act provides that a federal candidate “shall not be entitled” to receive the LUC if any of their advertisements makes a direct reference to their opponent and fails to contain a statement identifying the candidate and stating that the candidate approved the communication. 47 U.S.C. 315(b). The Complaint also requests that the television stations cease airing the Campaign’s advertisements that lack the required disclaimer. Compl. at 2.

⁴ Committee Resp. at 1 (Nov. 30, 2020).

⁵ *Id.* at 3. The Committee also attached images of the ads to its Response, showing Wilson speaking directly to the camera with his name displayed on screen in large text with the campaign logo. *Id.* at 5-7. The Committee Response also asserts that it was not aware of the video production company’s oversight until it was notified of the Complaint in this matter, and that the Committee then requested the production company to add the previously recorded disclaimer, at which point the ads were promptly edited to include the disclaimer for all subsequent airings. *Id.* at 3.

⁶ Spectrum-Charter Response at 1 (Dec. 7, 2020).

⁷ *Id.* at 2.

1 Fox Television Stations, LLC responded on behalf of its licensee WFLD (the “WFLD
2 Response”) and contends that the disclaimer requirement applies to the Committee, not the
3 broadcaster, and further asserts that the request for WFLD to cease airing the Committee’s ads is
4 moot, because the Committee had already added the disclaimer to the ads after receiving the
5 Complaint.⁸ Additionally, the WFLD Response asserts that the Commission lacks jurisdiction to
6 interpret or enforce FCC rules, as the FCC regulates broadcasters.⁹

7 Tribune Media Company, the owner of WGN-TV, responded on behalf of WGN-TV and its
8 parent company Nexstar Inc. and Nexstar Media Group (the “WGN-Tribune Response”). The
9 WGN-Tribune Response contends that the Complaint does not allege that the ads in question were
10 aired by WGN, nor does the Complaint specifically allege that WGN provided the LUC for any of
11 the Committee’s ads.¹⁰ The WGN-Tribune Response asserts that the burden to comply with the
12 Act’s television ad disclaimer requirements falls upon the political committee placing the ad, not on
13 the broadcaster, further stating that all eight of the advertisements placed by the Committee that
14 aired on WGN-TV clearly identified the candidate verbally, visually, and in the form of a printed
15 disclaimer.¹¹

16 Based on its experience and expertise, the Commission has established an Enforcement
17 Priority System using formal, pre-determined scoring criteria to allocate agency resources and
18 assess whether particular matters warrant further administrative enforcement proceedings. These
19 criteria include (1) the gravity of the alleged violation, taking into account both the type of activity
20 and the amount in violation; (2) the apparent impact the alleged violation may have had on the

⁸ WFLD Response at 1-2 (Dec. 15, 2020).

⁹ *Id.* at 2.

¹⁰ WGN-Tribune Response at 3 (Dec. 18, 2021). Additionally, the WGN-Tribune Response asserts that the FEC lacks jurisdiction to determine the issue of whether candidate advertisements are entitled to the LUC. *Id.*

¹¹ *Id.*

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electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations and other developments in the law. This matter is rated as low priority for Commission action after application of these pre-established criteria. Given that low rating, the prompt remedial action by the Committee, the speculative nature of the allegation regarding the alleged in-kind contributions from the television stations in the form of the LUC, and the unlikelihood the general public would have been confused as to whether the television ad was authorized by Wilson, we recommend that the Commission dismiss the Complaint consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources.¹² We also recommend that the Commission close the file and send the appropriate letters.

Lisa J. Stevenson
 Acting General Counsel

Charles Kitcher
 Associate General Counsel

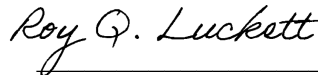
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Date

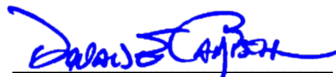
BY:



Claudio J. Pavia
 Deputy Associate General Counsel
 for Enforcement



Roy Q. Luckett
 Acting Assistant General Counsel



Donald E. Campbell
 Attorney

¹² *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).