



**FEDERAL COMMUNICATIONS COMMISSION**  
Media Bureau, Policy Division, Political Programming Staff  
445 12<sup>th</sup> Street, S.W., Suite 3-A832  
Washington, DC 20554

January 28, 2019

**VIA EMAIL to [andrew.sutor@entercom.com](mailto:andrew.sutor@entercom.com)**

Andrew Sutor  
Executive Vice President, General Counsel  
Entercom License, LLC  
401 E. City Avenue, Suite 809  
Bala Cynwyd, PA 19004

Re: Station WGR(AM), Buffalo, NY (Facility ID No. 56101)  
Station WBEN(AM), Buffalo, NY (Facility ID No. 34381)  
Station WTSS(FM), Buffalo, NY (Facility ID No. 34382)

Dear Mr. Sutor:

The Commission is in receipt of a complaint from an individual who identifies herself as Jackie Drost, a former “candidate for United States Congress.” (**Attachment 1**). Ms. Drost alleges that Entercom License, LLC (“Entercom”), licensee of the three referenced broadcast stations, charged her more than the “lowest unit charge” for use of the stations during the 2018 Congressional campaign. The complaint raises questions as to whether Entercom may have willfully and repeatedly violated Section 315(b) of the Communications Act of 1934, as amended, relating to lowest unit charges.<sup>1</sup> In addition, upon receipt of the complaint, the Commission staff conducted an independent examination of the online political files for each of the three referenced broadcast stations to verify the information in Ms. Drost’s correspondence. That examination revealed that Entercom apparently had not uploaded *any* records of requests for the purchase of broadcast time by or on behalf of legally qualified candidates running in Federal, State or local elections in 2018. The dearth of any such records in the online political files of the three stations, all of which serve a major metropolitan area in upstate New York, suggests that Entercom may have willfully and repeatedly violated Section 315(e) of the Communications Act of 1934, as amended, relating to the maintenance of political files.<sup>2</sup>

No decision has been reached in this matter. However, in order that we may be more fully informed, we direct Entercom, pursuant to Sections 4(i), 4(j), and 403 of the Act,<sup>3</sup> to provide the documents and information requested in **Attachment 2** by no later than February 28, 2019.

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<sup>1</sup> 47 U.S.C. § 315(b).

<sup>2</sup> 47 U.S.C. § 315(e).

<sup>3</sup> 47 U.S.C. §§ 154(i), 154(j), 403.

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This letter of inquiry (“LOI”) constitutes an Order of the Commission to produce the documents and information requested.<sup>4</sup> Failure to respond appropriately to this LOI may constitute a violation of the Act and our Rules.<sup>5</sup> In addition, to knowingly and willfully make any false statement, conceal any material fact in reply to this inquiry, or destroy any information relating to this investigation may be punishable by fine or imprisonment.<sup>6</sup>

In responding to this LOI, Entercom shall comply with the filing requirements, instructions, and definitions contained in **Attachment 3**. Entercom shall direct its written response to the undersigned at the above address. It also shall email copies to the undersigned at [robert.baker@fcc.gov](mailto:robert.baker@fcc.gov) and to Gary Schonman, Special Counsel, Policy Division, Media Bureau, Federal Communications Commission, at [gary.schonman@fcc.gov](mailto:gary.schonman@fcc.gov). In addition, Entercom shall serve a copy of its response on Ms. Drost, who shall reply, if at all, in writing within 20 calendar days thereafter. Such reply, if any, shall be directed to the undersigned at the above address, with email copies transmitted to the undersigned, Mr. Schonman and Entercom.

Entercom is further directed to upload a copy of this LOI and accompanying complaint, as well as all subsequent correspondence and documents relating to this investigation, to its public file as soon as possible.

If you have any questions about this matter, please contact Gary Schonman at 202-418-1795 or the undersigned at 202-418-1417.

Sincerely,

/s/

Robert L. Baker  
Assistant Chief, Policy Division  
Media Bureau  
Federal Communications Commission

Attachments

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<sup>4</sup> See 47 U.S.C. § 155(c)(3).

<sup>5</sup> See 47 U.S.C. § 503(b)(1)(B); see also *Net One Int’l, Net One, LLC, Farrahotel Int’l, LLC*, Forfeiture Order, 29 FCC Rcd 264, 267, para. 9 (EB 2014) (imposing a \$25,000 penalty for failure to respond to LOI); *Conexions, LLC d/b/a Conexion Wireless*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 15318, 15325, para. 22 (2013) (proposing a \$300,000 forfeiture for failure to provide timely and complete responses to an LOI); *Technical Commc’n Network, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 1018, 1020, para. 8 (EB 2013) (proposing a \$25,000 forfeiture for failure to provide a complete response to an LOI).

<sup>6</sup> See 18 U.S.C. § 1001; see also 47 C.F.R. § 1.17.

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**ATTACHMENT 1**

**Complaint**

**From:** Jackie Drost [<mailto:jackieintheair@gmail.com>]  
**Sent:** Thursday, December 13, 2018 7:24 PM  
**To:** Hotline <[Hotline@fcc.gov](mailto:Hotline@fcc.gov)>  
**Subject:** Unfair rate card for political candidate advertising at Entercom Radio Buffalo

Sir or Madam:

Please investigate the Entercom Radio stations in Buffalo, NY. They are governed by the FCC which tells them they must offer the lowest unit rate to political candidates within 60 days of a primary election and 90 days of a general election. I was a candidate for United States Congress. I have found out that the stations overcharged me for my campaign this past November by 4 or 5 times what I should have been charged. I know that other advertisers during the same weeks I was on-air with WBEN, WTSS, and WGR were paying about 1/4 to 1/5 what I was charged. Please audit them. I have heard they have been doing this for years at Entercom Buffalo. When you have them pull other advertisers' invoices to check for low rates, be sure you ask for Mavis Discount Tire's invoices, Cellino and Barnes invoices, Upstate TOYOTA Dealers invoices. You will see that they are grossly violating the FCC's rules regarding political candidate advertising. If you can look back several years, you will see that this is a recurring violation. I may have won the election if they charged fairly because I would have been able to buy more ads elsewhere with the low rates that they SHOULD have charged me!

Thank you!

## **ATTACHMENT 2**

### **Information and Documents to be Provided**

Entercom is directed to provide the following Information and Documents in accordance with the Instructions and Definitions set forth herein.

Unless otherwise indicated, the time covered by these Inquiries is **January 1, 2018, to the present**.

#### **Station WGR(AM)**

1. State whether Station WGR(AM) received any request for the purchase of broadcast time that was made by or on behalf of any legally qualified candidate for public office running in a primary or general election in calendar year 2018. If so, as to each such request:
  - a. Identify the candidate who made the request or on whose behalf the request was made
  - b. State whether the request related to a primary or general election
  - c. Specify the office the candidate was seeking
  - d. Specify the date of the request
  - e. State whether the request was accepted or rejected
  - f. Specify the rate charged
  - g. Specify the date and time the ad was broadcast
  - h. Specify the class of time purchased
2. As to each request for the purchase of broadcast time referenced in response to Inquiry No. 1 above, state whether Station WGR(AM) timely uploaded into its online political file, as required by Section 315(e)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 315(e)(3), all required information about the request. If not, explain fully why not. If so, specify the date when Station WGR(AM) uploaded information about the request into its online political file.
3. State whether Station WGR(AM) broadcast any advertisement (whether for free or otherwise) by or on behalf of any legally qualified candidate for public office in calendar year 2018. If so, as to each such advertisement:
  - a. Identify the candidate on whose behalf the advertisement was broadcast
  - b. Specify the office the candidate was seeking
  - c. State whether the ad related to a primary or general election
  - d. Specify the date and time the ad was broadcast
  - e. Specify the rate charged, if any
4. State whether Station WGR(AM) received any requests for the purchase of broadcast time by or on behalf of Jackie Drost. If so, as to each such request:
  - a. Specify the office Drost was seeking
  - b. Specify the date of the request
  - c. State whether the request was accepted or rejected
  - d. Specify the rate charged and explain fully how the rate was determined

- e. Specify the date and time the ad was broadcast
  - f. Specify the class of time purchased
  - g. Provide all documents related to the request
5. Identify all managers of Station WGR(AM).

**Station WBEN(AM)**

6. State whether Station WBEN(AM) received any request for the purchase of broadcast time that was made by or on behalf of any legally qualified candidate for public office running in a primary or general election in calendar year 2018. If so, as to each such request:
- a. Identify the candidate who made the request or on whose behalf the request was made
  - b. State whether the request related to a primary or general election
  - c. Specify the office the candidate was seeking
  - d. Specify the date of the request
  - e. State whether the request was accepted or rejected
  - f. Specify the rate charged
  - g. Specify the date and time the ad was broadcast
  - h. Specify the class of time purchased
7. As to each request for the purchase of broadcast time referenced in response to Inquiry No. 1 above, state whether Station WBEN(AM) timely uploaded into its online political file, as required by Section 315(e)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 315(e)(3), all required information about the request. If not, explain fully why not. If so, specify the date when Station WBEN(AM) uploaded information about the request into its online political file.
8. State whether Station WBEN(AM) broadcast any advertisement (whether for free or otherwise) by or on behalf of any legally qualified candidate for public office in calendar year 2018. If so, as to each such advertisement:
- a. Identify the candidate on whose behalf the advertisement was broadcast
  - b. Specify the office the candidate was seeking
  - c. State whether the ad related to a primary or general election
  - d. Specify the date and time the ad was broadcast
  - e. Specify the rate charged, if any
9. State whether Station WBEN(AM) received any requests for the purchase of broadcast time by or on behalf of Jackie Drost. If so, as to each such request:
- a. Specify the office Drost was seeking
  - b. Specify the date of the request
  - c. State whether the request was accepted or rejected
  - d. Specify the rate charged and explain fully how the rate was determined
  - e. Specify the date and time the ad was broadcast
  - f. Specify the class of time purchased

g. Provide all documents related to the request

10. Identify all managers of Station WBEN(AM).

**Station WTSS(FM)**

11. State whether Station WTSS(FM) received any request for the purchase of broadcast time that was made by or on behalf of any legally qualified candidate for public office running in a primary or general election in calendar year 2018. If so, as to each such request:

- a. Identify the candidate who made the request or on whose behalf the request was made
- b. State whether the request related to a primary or general election
- c. Specify the office the candidate was seeking
- d. Specify the date of the request
- e. State whether the request was accepted or rejected
- f. Specify the rate charged
- g. Specify the date and time the ad was broadcast
- h. Specify the class of time purchased

12. As to each request for the purchase of broadcast time referenced in response to Inquiry No. 1 above, state whether Station WTSS(FM) timely uploaded into its online political file, as required by Section 315(e)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 315(e)(3), all required information about the request. If not, explain fully why not. If so, specify the date when Station WTSS(FM) uploaded information about the request into its online political file.

13. State whether Station WTSS(FM) broadcast any advertisement (whether for free or otherwise) by or on behalf of any legally qualified candidate for public office in calendar year 2018. If so, as to each such advertisement:

- a. Identify the candidate on whose behalf the advertisement was broadcast
- b. Specify the office the candidate was seeking
- c. State whether the ad related to a primary or general election
- d. Specify the date and time the ad was broadcast
- e. Specify the rate charged, if any

14. State whether Station WTSS(FM) received any requests for the purchase of broadcast time by or on behalf of Jackie Drost. If so, as to each such request:

- a. Specify the office Drost was seeking
- b. Specify the date of the request
- c. State whether the request was accepted or rejected
- d. Specify the rate charged and explain fully how the rate was determined
- e. Specify the date and time the ad was broadcast
- f. Specify the class of time purchased
- g. Provide all documents related to the request

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15. Identify all managers of Station WTSS(FM).
16. Provide any additional information you believe is responsive to the matters raised in this letter of inquiry.

### **ATTACHMENT 3**

#### **Filing Requirements**

***Affidavit Requirement.*** We direct Entercom to support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of Entercom with personal knowledge of the representations provided in Entercom's response. The affidavit or declaration must verify the truth and accuracy of the information therein, state that all of the information requested by this letter that is in Entercom's possession, custody, control, or knowledge has been produced, and state that any and all documents provided in its responses are true and accurate copies of the original documents. In addition to such general affidavit or declaration of the authorized officer of Entercom described above, if such officer (or any other affiant or declarant) is relying on the personal knowledge of any other individual rather than his or her own knowledge, and if multiple Entercom-affiliated individuals contribute to the response, Entercom shall provide separate affidavits or declarations of each such individual with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting. All such declarations provided must comply with Section 1.16 of the Rules and be substantially in the form set forth therein. Failure to support your responses with a sworn affidavit could subject you to forfeiture.

#### **Instructions**

***Request for Confidential Treatment.*** In addition to providing the requested information and documents, any request for confidentiality of certain information or documents must strictly comply with the requirements of 47 C.F.R. § 0.459, including a statement of the reasons for withholding the materials from inspection. The request must include a schedule of the information or documents for which confidentiality is requested that states, individually as to each such item, the information required by Section 0.459(b) of the Rules including, but not limited to, identifying the specific information for which confidential treatment is sought; explaining the degree to which the information is commercial or financial, or contains a trade secret or is privileged; and explaining how disclosure of the information could result in substantial competitive harm.<sup>7</sup> Accordingly, a "blanket" request for confidentiality or a casual request, including simply stamping pages "confidential," will not be considered a proper request for confidentiality, and those materials will not be treated as confidential.<sup>8</sup>

***Claims of Privilege or Work Product.*** If Entercom withholds any information or documents under claim of privilege or work product, it shall submit, together with any claim of privilege or work product, a schedule of the items withheld that states, individually as to each such item: the numbered Inquiry to which each item responds and the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific grounds for claiming that the item is privileged or protected.

***Format of Responses.*** The response must be organized in the same manner as the questions asked, i.e., the response to Inquiry No. 1 should be labeled as responsive to Inquiry No. 1.

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<sup>7</sup> See 47 C.F.R. § 0.459(b).

<sup>8</sup> See 47 C.F.R. § 0.459(c).



***Documents No Longer Available.*** If a document responsive to any Inquiry made herein existed but is no longer available, or if Entercom is unable for any reason to produce a document responsive to any Inquiry, identify each such document by author, recipient, date, title, and specific subject matter, and explain fully why the document is no longer available or why Entercom is otherwise unable to produce it.

***Retention of Original Documents.*** With respect only to documents responsive to the specific Inquiries made herein and any other documents relevant to those Inquiries, Entercom is directed to retain the originals of those documents until notified otherwise by the Bureau or the Commission.

***Continuing Nature of Inquiries.*** The specific Inquiries made herein are continuing in nature. Entercom is required to produce in the future any and all documents and information that are responsive to the Inquiries made herein but not initially produced.

***Construction.*** The terms “any” and “all,” “and” and “or,” and “each” and “every” shall be construed inclusively to bring within the scope of the requests for information and documents all information and documents that might otherwise arguably be construed as outside the scope of the requests. Likewise, the singular of any word or defined term shall include the plural and the plural of any such word or defined term shall include the singular. The words “relating to” or “relate to” shall be construed to mean, whether directly or indirectly, in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, supporting, qualifying, confirming, contradicting, or stating.

### **Definitions**

“Document” shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, punched, computer-stored, electronically-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including, but not limited to, any video or audio transmission, advertisement, book, pamphlet, periodical, contract, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tape, disks and such codes or instructions as will transform such computer materials into easily understandable form).

“Identify,” when used with reference to a person, shall mean to state his or her full legal name, job title (if any), current business address, business phone number, and e-mail address. If business address or telephone number are not available, state the person’s home address and telephone number.

“Entercom” means Entercom License, LLC, licensee of Station WGR(AM), Buffalo, NY (Facility ID No. 56101); Station WBEN(AM), Buffalo, NY (Facility ID No. 34381); and Station WTSS(FM), Buffalo, NY (Facility ID No. 34382).