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VIA EMAIL – Robert.Baker@fcc.gov

Mr. Robert L. Baker
Assistant Chief, Policy Division
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Complaint Against Station KMSP-TV, Minneapolis, MN

Dear Mr. Baker:

Fox Televisions Stations, Inc. (“FTS”), licensee of KMSP-TV, Minneapolis, Minnesota, hereby provides this response to the letter dated May 12, 2014 from Robert L. Baker to Joseph M. Di Scipio and Eric Null (“Letter”) regarding the complaint dated May 1, 2014 (“Complaint”) filed by the Campaign Legal Center and Sunlight Foundation (“Complainants”). The Letter required FTS to file an “Answer” via email to the allegations in the Complaint by May 27, 2014.

The Complainants contend that an advertisement sponsored by American Encore and broadcast by KMSP-TV at the end of March 2014 triggered the online political file disclosure requirements.¹ KMSP-TV agrees that its broadcast of the advertisement triggered certain disclosure requirements, and the station complied with virtually all of those requirements by placing the record of the advertisement in its online public file.

Section 315(e)(1) of the Communications Act of 1934, as amended (“Act”), requires broadcast licensees to maintain and make available for public inspection (in this case in an online public file hosted by the FCC) certain records if the advertisement:

- (A) is made by or on behalf of a legally qualified candidate for public office; or
- (B) communicates a message relating to any political matter of national importance, including—
 - (i) a legally qualified candidate;
 - (ii) any election to federal office; *or*
 - (iii) a national legislative issue of public importance.²

¹ Complaint at 1. The Complaint goes on for several pages about American Encore. While interesting, this discussion is not relevant to the disclosures required by the Communications Act or the FCC rules.

² 47 U.S.C. §315(e)(1) (emphasis added).

The records that broadcasters must maintain pursuant to Section 315(e)(1) are required to contain:

- (A) whether the request to purchase broadcast time is accepted or rejected by the licensee;
- (B) the rate charged for the broadcast time;
- (C) the date and time on which the communication is aired;
- (D) the class of time that is purchased;
- (E) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, *or the issue to which the communication refers (as applicable)*;
- (F) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and
- (G) in the case of any other request, the name of the person purchasing the time, the name, address and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.³

The advertisement in question discussed the importance of free speech and took issue with the Obama Administration's proposed IRS non-profit rule. The advertisement then encouraged viewers in the KMSP-TV viewing area to tell Senator Franken to stop attacking free speech. Reviewing the requirements of Section 315 of the Act and the actions KMSP-TV took in regard to the advertisement show that KMSP-TV made the correct decision that the content of the advertisement implicated a national legislative issue of public importance. The station thus placed the record in the public file and complied with the disclosure requirements (with one minor exception).⁴

When deciding if a political advertisement must be placed in the public file, the first and most important question with any political advertisement is whether the content of the advertisement implicates Section 315(e)(1) of the Act. If the content does not implicate Section 315(e)(1), the record of the buy (rates, schedule, etc.) is not required to be placed in the public file. Here, KMSP-TV reviewed the content of the advertisement and determined that Section 315(e)(1) was implicated because the ad addressed a national legislative issue of public importance.⁵ As a result, KMSP-TV was required to, and did, put records into the public file, including the order and the rates charged. Thus, KMSP-TV placed a record in the public file in compliance with Section 315(e)(2)(A-D)⁶ and (G)⁷ of the Act.

³ 47 U.S.C. §315(e)(2) (emphasis added).

⁴ Although the advertiser incorrectly filled in a part of the NAB PB-18 Form intended for candidate ads, that does not alter the fact that the ad itself clearly was not a spot directed toward the election or defeat of any candidate.

⁵ The advertisement in question was not made on or behalf of a legally qualified applicant so Section 315(e)(1)(a) is not implicated.

⁶ The Complainants agree that KMSP-TV complied with all of these requirements. Complaint at 6. Section 315(e)(2)(F) is not applicable to the instant advertisement.

⁷ This information was also provided in the record placed in the public file.

The facts are that KMSP-TV substantially complied with the Act and the applicable rules and regulations of the FCC while Complainants can show no injury.⁸ The record of the advertisement was properly placed in the public file.⁹ Moreover, as the Complainants acknowledge, the public file included the schedule of the broadcast of the advertisement in compliance with the Act and the FCC rules. The only item missing from the advertiser-provided form was the description of the national issue to which the advertisement referred. While that omission was unfortunate, it is at worst a minor, inadvertent error. There simply can be no question that KMSP-TV materially complied with the Act and the FCC rules.

The Letter also asks the licensee to indicate whether the documents referenced in the Complaint comply in all other respects with the applicable statute and the Commission's rules. FTS is unclear as to precisely what information the FCC is seeking in this request. FTS believes, however, that the documents placed in the file for the American Encore ad materially complied with the Act and the rules. The only exception relates to the minor, inadvertent oversight as discussed herein.

Given that KMSP-TV materially complied with the disclosure requirements, there is no basis for any Commission enforcement action. KMSP-TV agrees with the Complainants, though, that the FCC should issue a Public Notice indicating that it will work with stations and advertisers to ensure that all of the necessary information is provided by advertisers in a timely manner and that records placed in the public file are complete on a going-forward basis.

It is important to note that the Complainants are apparently confused as to the disclosure that is required by the Act. They appear to argue that the advertisement at issue triggered the disclosure requirement solely because it referenced Senator Al Franken. The Complainants read the statute incorrectly. Section 315(e)(2)(E) of the Act requires that the records contain the name of the candidate to which the communication refers and the office to which the candidate is seeking election ... *or* the issue to which the communication refers (emphasis added). The American Encore advertisement does not mention Senator Franken in reference to any election. The disclosure requirements of Section 315(e)(2) were triggered not because Senator Franken was named and identified in the advertisement, but because the ad related to an important national issue. Even if the ad also had focused on Senator Franken and advocated for or against his election, stations still would have had the option, by the plain language of the statute, of listing Senator Franken *or* the issue to which the communication refers – the station is not required to list both. Thus, the Complainants' claim that KMSP-TV should have identified Senator Franken

⁸The Complainants cannot demonstrate that they would be harmed by any failure of KMSP-TV to comply with the public file rules. In adopting the order that required stations to put the public file online, the FCC stated that its rationale was to “allow consumers to easily find the public files of all stations *in their viewing areas* making the Commission a one-stop shop for information about all broadcast television stations *in a viewer's market...*” *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 at para. 14 (emphasis added) (Enhanced Disclosure Second Report and Order). Complainants, based in Washington, DC, cannot possibly be consumers in the KMSP-TV viewing area, nor is KMSP-TV in their viewing market. As such, the advertisement at issue was not intended to be viewed by Complainants and the Complaint should not serve as the basis for any FCC action.

⁹ Although the yes/no box on the NAB PB-18 form, asking whether the ad communicated a political message of national importance, was left blank, the law does not require stations to complete or answer any yes/no box. The yes/no box is a creation of the NAB PB-18 form with no legal significance.

and the office for which he is seeking election is not correct. The very fact that there is so much apparent confusion as to the exact disclosure required by the Act, even by the Complainants, bolsters the view that any FCC action here should be limited to clarification and education.

In the Enhanced Disclosure Second Report and Order proceeding, certain broadcasters expressed their concern that “public advocacy groups and the Commission will play ‘stop watch’ roulette if the political files were to go online” and that “the FCC will have a strong incentive to find at least technical shortcomings in every television station’s efforts to comply with the mechanics of a new online political file requirement.”¹⁰ The instant Complaint is exactly the type of criticism identifying and highlighting a technical shortcoming that broadcasters feared. The FCC sought to assuage this fear by stating that no such enforcement incentive exists and that the aim of placing the public file online was to make information more available to the public.¹¹ The FCC should now stand by its statement and work with industry to make sure advertisers provide broadcasters timely, complete and accurate information. The Commission also should clarify the scope of the parties’ disclosure obligations and educate the public advocacy groups, advertisers and broadcasters about the information that is required to go in the public file. Such education and clarification is particularly important with the looming July 1, 2014, deadline, after which all television stations will be required to begin putting the political file online.

In sum, KMSP-TV materially complied the Act and the FCC’s rules. The missing information in the public file relating to the American Encore advertisement, while unfortunate, was minor and inadvertent. Other than clarification and education, no further action is required to resolve this matter.

Respectfully submitted,



Joseph M. Di Scipio

cc: Eric Null (via email)

¹⁰ Enhanced Disclosure Second Report and Order at note 187 (citations omitted).

¹¹ *Id.*