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May 27, 2014

BY HAND DELIVERY AND ELECTRONIC MAIL

Mr. Robert Baker
Chief, Political Programming Branch
Policy Division
Mass Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Complaint of Campaign Legal Center and Sunlight Foundation*

Dear Mr. Baker:

Gannett Co., Inc. (“Gannett”), parent company of the licensee of station WCNC(TV), Charlotte, N.C. (the “Station”), hereby responds to the May 1, 2014 complaint of Campaign Legal Center and Sunlight Foundation (“Complainants”). Gannett takes seriously its obligations to maintain a complete and accurate political file, and has thoroughly investigated Complainants’ claims. Gannett has determined that the documentation at issue in the complaint fully complies with all applicable statutes and regulations. The complaint does not point to a single statutory or regulatory requirement that the Station has failed to meet, and is based entirely on Complainants’ misreading of the Communications Act. Thus, the Commission should dismiss the complaint.

The complaint involves only one advertisement that ran on the Station. The advertisement, paid for by Patriot Majority USA and aired in March 2014, accuses U.S. Senate candidate Thom Tillis of siding with health insurance companies, and asserts that “he’d let them deny coverage for pre-existing conditions and raise rates for women needing mammograms.” The advertisement also asserts that Tillis “supports a plan that would end Medicare as we know it. And force seniors to spend up to \$1,700 more for prescriptions.”

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The Station's documentation for this advertisement in its political file complies with all of the requirements in the Communications Act and the accompanying regulations. The Station's file discloses that the advertisement communicates a message relating to a political matter of national importance. Compl. at 11. The disclosure form accurately discloses that the message relates to "Thom Tillis, U.S. Senate, Primary 5/6/14." *Id.* The form also lists the mailing address for Patriot Majority USA, and the name of Patriot Majority USA's Treasurer, as required by Section 73.1212(e) of the Commission's regulations. *Id.* And the file contains the required details about schedule and rates, as required by Section 315(e)(2)(B)-(C) of the Communications Act. *Id.* at 15-17.

Complainants contend that the Station's documentation for this advertisement violates the Communications Act's requirement that the station maintain records regarding any request to purchase broadcast time for an advertisement that "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." 47 USC § 315(e)(1)(B)(i)-(iii). For these requests, the station must disclose in its political file "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)[.]" *Id.* (emphasis added).

Complainants acknowledge that the Station "properly disclosed the candidate referred to in the ad[.]" Compl. at 6. They contend, however, that the Station violated the Communications Act by failing to *also* describe the issue to which the advertisement refers. Complainants' claim is based entirely on a misreading of the Communications Act. The Act plainly requires the station to disclose the name of the candidate or the issue to which the advertisement refers. Complainants incorrectly assert that the statute requires disclosure of the candidate name and the issue. In other words, Complainants have taken the liberty to ignore the word "or," and replace it with "and," a clearly incorrect statutory construction. *See Act Now to Stop War & End Racism Coalition v. District of Columbia*, 905 F. Supp. 2d 317, 349 (D.D.C. 2012) ("A basic canon of statutory construction provides that, typically, 'and' joins a conjunctive list, and 'or' joins a disjunctive list.") (citing Antonin Scalia & Bryan A. Garner, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 116 (2012)). Because the statute is disjunctive and not conjunctive, Complainants claim clearly fails. The Station satisfied the Communications Act's requirements by disclosing the name of the candidate.

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Complainants do not allege a violation of any other statute or regulation. Complainants make a passing reference to Section 73.1212(e) of the Commission's regulations, but do not allege any specific violations of that rule. Presumably, Complainants are referring to the political file portion of that regulation, which states that if a broadcast advertisement is "political matter" or "matter involving the discussion of a controversial issue of public importance," the station shall "require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the location specified under § 73.3526." 47 CFR § 73.1212(e). The Station's records for this ad lists the name and title of Patriot Majority USA's treasurer. Complainants do not allege that this list is incomplete or otherwise fails to meet the regulation's disclosure requirements.

In short, the Station's documentation for the Patriot Majority USA advertisement fully complies with all applicable statutes and regulations. Gannett works diligently to comply with the Commission's political file requirements, and appreciates the opportunity to respond to the Complaint. Please contact the undersigned with additional questions.

Respectfully submitted,



Kurt Wimmer
Jeff Kosseff
Counsel for Gannett Co., Inc.

cc: Eric G. Null (by e-mail)
Angela J. Campbell (by e-mail)
Andrew J. Schwartzman (by e-mail)