

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Campaign Legal Center, Common Cause,)
Sunlight Foundation, and Benton)
Foundation)
)
Against)
)
)
Scripps Media, Inc. licensee of)
WCPO-TV, Cincinnati, OH)
)
For Violations of the Communications Act)
§ 315 and FCC Regulation § 73.1212)

**REPLY OF CAMPAIGN LEGAL CENTER, COMMON CAUSE,
SUNLIGHT FOUNDATION, AND BENTON FOUNDATION**

Campaign Legal Center, Common Cause, Sunlight Foundation, and Benton Foundation¹ (Complainants) respectfully submit this reply to the response of Scripps Media, Inc., licensee of WCPO-TV (“WCPO”), dated October 14, 2016 (“Response”), regarding the complaint filed against it on September 26, 2016 (“Complaint”) alleging violations of the disclosure requirements of Section 315 of the Communications Act and the Federal Communications Commission’s (“FCC”) regulations.²

¹ The Benton Foundation is a nonprofit organization dedicated to promoting communication in the public interest. This complaint reflects the institutional view of the Foundation and, unless obvious from the text, is not intended to reflect the views of individual Foundation officers, directors, or advisors.

² Complainants incorporate by reference their September 29, 2016 letter to Robert Baker expressing dissatisfaction with the Commission’s dilatory administration of this time-sensitive election-related matter. They trust that, in the future, citizen complainants will be treated at least as well as broadcasters and advertisers in matters relating to elections.

WCPO does not dispute the factual accuracy of most of the instances of incomplete and/or inaccurate submissions identified in the Complaint. Nor does it dispute that in some cases it populated its public file with blank forms containing no information whatsoever. It attempts to sugarcoat these unmistakable violations of the Commission's rules, saying that "in some instances...the Station's Request Form was incomplete or failed to present the relevant information optimally"³ and that it "sometimes failed to properly list all the information required by its Request Forms."⁴

WCPO's response is a gross understatement. Moreover, it fundamentally mischaracterizes the requirements of the Commission's rules and demonstrates a willful disregard for its obligation to keep the public informed as to the identity of those to whom it has sold time for the discussion of political issues.

Because the nature of this misconduct is so blatant, it will not require extensive review or analysis for the Commission to conclude that WCPO has violated the Commission's rules. And, to ensure that WCPO and other Commission licensees get the message that the Commission will no longer tolerate pervasive non-compliance, Complainants call upon the Commission to resolve this complaint immediately – before the November 8, 2016 elections – so that public file compliance will be improved, at least for the period immediately preceding the elections.

I. All but one of WCPO's online public file entries for non-candidate issue ads were in violation of the requirements of the Communications Act and the Commission's rules.

WCPO euphemistically elides its non-compliance with its legal obligations by saying that it has "sometimes failed to properly list all the information required by its Request Forms."⁵ It argues that its many omissions from the NAB form it uses are

³ Response at 3.

⁴ Response at 8.

⁵ Response at 8.

harmless because the station also uploaded information about the ad sales in a Request Form. This does not change the fact that, as Complainants demonstrated, many required names, issues, officers, and other information were not included in the NAB form, the Request Form, or *anywhere* in the files.⁶ WCPO's contention that a scattering of occasional pieces of information spread across multiple documents within a file constitutes "a great deal of the relevant and accurate information"⁷ is outrageous, and in any event, falls far short of what is required by Sections 315 and 317.

II. WCPO fundamentally mischaracterizes the requirements of the Commission's rules and demonstrates a willful disregard for its disclosure obligations.

In addition to not following the rules, WCPO has demonstrated, even in its Response, utter disregard for its disclosure obligations to the public. For one, WCPO suggests that individualized harm must be demonstrated in order to prove a violation of Section 315.⁸ This is nonsense. Requirements concerning disclosure of the sponsors of political advertisements are meant to ensure that the public "know[s] by whom they are being persuaded."⁹

WCPO then blames the public for not presenting instances of its non-compliance to the station so that they could be remedied.¹⁰ However, even had they done so, it would not have changed the fact that WCPO had violated the rules. More importantly, it is WCPO's responsibility to comply with the rules without prompting

⁶ WCPO concedes that it "sometimes failed to properly list all the information required by its Request Forms." Response at 8.

⁷ Response at 7.

⁸ See Response at 3 ("It appears that any missing disclosures were not in fact being missed by any member of the public or by any political advertiser.").

⁹ *Applicability of Sponsorship Identification Rules*, 40 FCC 141 (1963).

¹⁰ See Response at 3 ("[T]o the best of Scripps' knowledge, no viewer or advertiser contacted the Station to express concern about the accuracy or completeness of the issue-advertising section of its political file.").

and, in any event, it is not the job of the public to identify violations and enforce non-compliance. This is the Commission's job.

It is especially untoward for WCPO to impugn Complainants' motive by stating that "If the complainants really were interested in any of the information not posted in the file, they never pursued the most expeditious way to obtain it—*i.e.* asking the station for it."¹¹ Complainants are dedicated to promoting transparency. They do so not just for themselves but also for journalists, academics and other members of the public who look to them to advocate for rules such as those which now mandate online access to public files. In any event, contacting the station is not the most expeditious way to obtain the required information. Rather, the fastest way to gain access to the information is by viewing to the Commission's online public file. WCPO seemingly fails to appreciate that this is the very reason for requiring these disclosures to be placed in a file on the centralized FCC website in the first place.

III. WCPO's files failed to indicate when the ads actually aired.

The Complaint demonstrated that many of WCPO's files failed to offer any indication of when the ads referenced actually aired. Pre-airing order forms, without more,¹² are insufficient because the public has no way of knowing whether the ads aired as ordered. Moreover, as WCPO concedes, its "Order Forms in some cases are not specific about which day of the week a spot aired,"¹³ leaving the public even more in the dark. WCPO's belated after-the-fact assurance in its Response that "the station's post-Complaint review confirms that these ads aired as listed,"¹⁴ is what the rules provide must be included *in the station's political file*, as soon as possible after

¹¹ Response at 3.

¹² *I.e.* a post-airing invoice or, if the ads aired as ordered, any post-airing documentation indicating that the ads aired as ordered.

¹³ Response at 3, n. 2.

¹⁴ Response at 3.

the airing, for every political ad. WCPO's offer to provide "an inquirer more specific information about the dates and times that a particular ad ran—should it ever receive such a request,"¹⁵ demonstrates once again its fundamental failure to understand that this information must be provided in its file, and not just in response to a request. The Commission must ensure that WCPO and all stations understand and meet these obligations.

IV. Conclusion

WCPO's response affirms its flagrant non-compliance with the Communications Act and the Commission's regulations. Thus, Complainants urge the Commission to take swift action – before the November 8, 2016 elections – to ensure that accurate information is made available to the public before votes are cast. They further request that the FCC promptly take other measures, including assessing forfeitures and issuing a Public Notice reminding broadcast stations of their obligations, to ensure that all Commission licensees get the message that the Commission will no longer tolerate pervasive non-compliance during this important election season, or ever.

¹⁵ Response at 3, n. 2.

Respectfully submitted,

/s/

Drew Simshaw
Andrew Jay Schwartzman
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue NW
Suite 312
Washington, DC 20001
(202) 662-9535

*Counsel for Campaign Legal Center,
Common Cause, Sunlight Foundation,
and Benton Foundation*

Thomas Koh
Georgetown Law Student

October 20, 2016

cc via email: Kenneth C. Howard, Jr.