

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of a Complaint Involving the Political)
Files of)
)
Scripps Media, Inc., licensee of Station WCPO-TV,) File No. 160926a
Cincinnati, OH)

ORDER

Adopted: January 6, 2017

Released: January 6, 2017

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Order, we admonish Scripps Media, Inc. (Scripps), the licensee of Station WCPO-TV, Cincinnati, OH, for failing to include in WCPO-TV's political file certain information about two requests to purchase broadcast time for non-candidate issue advertisements, in willful violation of Section 315(e)(2) of the Communications Act of 1934, as amended (the Act), and Section 73.1212(e) of the Commission's rules.¹ The Order resolves a complaint² filed jointly by Campaign Legal Center,³ Common Cause,⁴ Sunlight Foundation,⁵ and Benton Foundation⁶ (collectively Complainants) against Scripps on September 26, 2016.

2. In a companion *Political File Clarification Order* released today, we resolve 11 other complaints filed by Campaign Legal Center and Sunlight Foundation alleging violations of the political

¹ 47 U.S.C. § 315(e)(2); 47 CFR § 73.1212(e).

² Complaint of Campaign Legal Center, Common Cause, Sunlight Foundation, and Benton Foundation against Scripps Media, Inc., licensee of Station WCPO-TV, Cincinnati, OH, filed September 26, 2016 (Complaint). Scripps submitted a written Answer on October 14, 2016; Complainants filed a Reply on October 20, 2016.

³ Campaign Legal Center describes itself as "a nonpartisan, nonprofit organization that promotes awareness and enforcement of political broadcasting laws. The Campaign Legal Center's mission is to represent the public interest in the enforcement of media and campaign laws." Complaint at Exhibit A.

⁴ Common Cause describes itself as "a nonpartisan, nonprofit advocacy organization. It was founded in 1970 as a vehicle for citizens to make their voices heard in the political process and to hold their elected leaders accountable to the public interest." *Id.*

⁵ Sunlight Foundation describes itself as "a nonpartisan nonprofit that advocates for open government globally and uses technology to make government more accountable to all." *Id.*

⁶ Benton Foundation describes itself as "a nonprofit organization dedicated to promoting communication in the public interest." *Id.* at n.1.

file requirements by a number of broadcast licensees.⁷ We also clarify in that order certain record-keeping obligations that the Act and the Commission's rules impose on broadcast licensees and other entities⁸ with respect to the purchase of broadcast time by legally qualified candidates for elective office and issue advertisers.⁹ We do not take enforcement action in the *Political File Clarification Order* in instances in which a licensee failed to satisfy a requirement that we clarify in that order, but we admonish licensees for other violations of the statute and our rules.¹⁰ We take the same approach here. Thus, we do not take enforcement action against Scripps for conduct that implicates the requirements we clarify in the *Political File Clarification Order*. However, we admonish Scripps for other violations and place it on notice that, going forward, it will be subject to enforcement action for willful and/or repeated failure to comply with its political file obligations, as clarified in the companion order.

II. BACKGROUND

3. Broadcast licensees have long been required by the Communications Act and the Commission's rules to maintain political files for public inspection. The Commission has stated that the political file record-keeping requirements are intended "to provide for accurate documentation of the disposition of requests for time."¹¹ Every broadcast licensee bears a critical responsibility to ensure that its political files are complete.

4. Section 315(e) of the Act requires licensees to maintain political files for certain types of advertisements. Specifically, pursuant to Section 315(e)(1)(B), licensees are required to make available for public inspection a "complete record" of each request to purchase broadcast time that "communicates a message relating to any political matter of national importance, including (i) a legally qualified candidate;¹² (ii) any election to Federal office;¹³ or (iii) a national legislative issue of public importance."¹⁴

5. As to each such request to purchase broadcast time, licensees are required under Section

⁷ *Complaints Involving the Political Files of WCNC-TV, Inc., licensee of Station WCNC-TV, Charlotte, NC, et al.*, Memorandum Opinion and Order, DA 17-14 (MB rel. Jan. 6, 2017).

⁸ The obligation to maintain political files for public inspection also applies to cable television system operators engaged in origination cablecasting (*see* 47 CFR § 76.1701); Direct Broadcast Satellite providers (*see* 47 CFR § 25.701(d)); and satellite radio licensees (*see* 47 CFR § 25.702(b)). *See also Political File Clarification Order* at n. 5.

⁹ *Political File Clarification Order* at paras. 12-35.

¹⁰ *Id.* at paras. 36- 65.

¹¹ *In the Matter of Codification of the Commission's Political Programming Policies*, Memorandum Opinion and Order, 7 FCC Rcd. 4611, 4621 (1992).

¹² 47 U.S.C. § 315(e)(1)(B)(i). Pursuant to Section 315(e)(1)(A), licensees also are required to maintain a political file for each request to purchase broadcast time that "is made by or on behalf of a legally qualified candidate for public office." *Id.* § 315(e)(1)(A). This provision is not implicated by the complaint.

¹³ *Id.* § 315(e)(1)(B)(ii).

¹⁴ *Id.* § 315(e)(1)(B)(iii). In the *Political File Clarification Order*, we clarify that the Commission will consider context in determining whether an advertisement that references a legally qualified candidate, an election, and/or a national legislative issue of public importance constitutes a "political matter of national importance" that triggers disclosure obligations under Section 315(e)(1)(B) of the Act. *Political File Clarification Order* at paras. 26-35. In that order, we also clarify that, for purposes of Section 315(e)(1)(B), an issue need not be subject to pending or proposed legislation in order to be considered a "national legislative issue of public importance." *Id.* at para. 34. This term also encompasses other political issues that are the subject of continuing controversy or discussion at the national level. *Id.* at paras. 27-28.

315(e)(2) to identify in their political files “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),”¹⁵ and a “list of the chief executive officers or members of the executive committee or of the board of directors of [the purchasing entity].”¹⁶ The file also must contain information regarding “whether the request to purchase broadcast time is accepted or rejected by the licensee,”¹⁷ “the rate charged for the broadcast time,”¹⁸ “the date and time on which the communication is aired,”¹⁹ and “the class of time that is purchased.”²⁰

6. Complainants allege that as of September 6, 2016, there were 17 entries in Station WCPO-TV’s non-candidate issue advertisement file for 2016. Of these 17 files, Complainants allege that 16 were in violation of the Commission’s political file requirements²¹ because the files did not include information required by Section 315(e)(2) of the Act.²² In its Answer, Scripps generally states that for each of those ads, it placed in its political file: (a) NAB Form PB-10 (or other purchase form) provided by

¹⁵ 47 U.S.C. § 315(e)(2)(E). As we clarify in the *Political File Clarification Order*, for each request to purchase broadcast time that triggers disclosure obligations under Section 315(e)(1)(B) of the Act, licensees must include in their political files the names of *all* candidates (and the offices to which they are seeking election), *all* elections, and *all* national legislative issues of public importance to which the communication refers. *Political File Clarification Order* at paras. 12-19.

¹⁶ 47 U.S.C. § 315(e)(2)(G). In addition, Section 73.1212(e) of the Commission’s rules requires that, when a station broadcasts material that is “political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall . . . [maintain] 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 . . . for public inspection.” 47 CFR § 73.1212(e). As we clarify in the *Political File Clarification Order*, under Section 315(e)(2)(G) of the Act and Section 73.1212(e) of the Commission’s rules, licensees must disclose *all* of the chief executive officers or members of the executive committee or board of directors of any person seeking to purchase broadcast time under Section 315(e)(1)(B). In cases where a station initially is given the name of a single official of a sponsoring entity, or otherwise has a reasonable basis for believing that the information initially provided is incomplete or inaccurate, the station is obligated to inquire whether there are any other officers or members of the executive committee or of the board of directors of such entity. *Political File Clarification Order* at paras. 20-25.

¹⁷ 47 U.S.C. § 315(e)(2)(A).

¹⁸ *Id.* § 315(e)(2)(B).

¹⁹ *Id.* § 315(e)(2)(C).

²⁰ *Id.* § 315(e)(2)(D).

²¹ Station WCPO-TV is licensed to operate in a top 50 Designated Market Area and is a network affiliate (ABC) in Cincinnati. As such, it was required to maintain its political records in the Commission-hosted online public file beginning on August 2, 2012. *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012); *Television Broadcast Stations Reminded of their Online Public Inspection File Obligations*, Public Notice, DA 12-2003 (rel. Dec. 11, 2012).

²² Complaint at 3. Because all of the communications in question are non-candidate-sponsored advocacy ads, the Complaint does not allege any violations of Section 315(e)(2)(F) of the Act (relating to materials that must be maintained for ads that are made by, or on behalf of, legally qualified candidates for public office). *See* 47 U.S.C. § 315(e)(2)(F).

the potential advertiser;²³ (b) a Scripps-generated Station Issue Advertising Request Sheet (Request Form); and (c) one or more order forms.²⁴ Scripps concedes, however, that in some instances required information was missing from Station WCPO-TV's political file.²⁵

III. DISCUSSION

7. We admonish Scripps for maintaining deficient political files with respect to two requests to purchase broadcast time for non-candidate issue advertisements (sponsored by AARP and the Democratic Senatorial Campaign Committee).²⁶ We do not take enforcement action against Scripps for alleged political file violations with regard to the remaining 14 advertisements subject to the Complaint²⁷ because the conduct at issue involved licensee obligations that we clarify in the *Political File Clarification Order*.²⁸

A. Advertisement Sponsored by AARP

8. We admonish Scripps for maintaining a record in its political file for an AARP²⁹ advertisement that did not identify *any* officials of the sponsoring entity, in willful violation of Section

²³ NAB Form PB-10 is a form that the National Association of Broadcasters makes available to stations to facilitate the entry of required information into their political files for public inspection. Stations are not required by any Commission rule to use NAB Form PB-10.

²⁴ Answer at 2.

²⁵ *Id.* at 2. Scripps further maintains that “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 that “Complainants themselves do not claim to be either WCPO viewers or academics who might be particularly interested in the Ohio ads that form the subject of their complaint.” *Id.* at 3. We reject Scripps’ suggestion that a complainant must demonstrate specific ties to a station’s viewing area to bring a complaint for violation of the political file rules. As we explained in the *Political File Clarification Order*, “a station’s public file not only serves members of a broadcast station’s community of license, but also is ‘a tool for the larger media policy community,’ including ‘public advocacy groups, journalists, and researchers’ who ‘act in part as surrogates for the viewing public in evaluating and reporting on broadcast stations’ performance.” See *Political File Clarification Order* at para. 10 (quoting *Enhanced Disclosure Order*, 27 FCC Rcd 4535, 4545 (2014)). Accordingly, we find that Complainants are among the entities the political and public file requirements are intended to serve. *Supra* notes 3-6. See also *Political File Clarification Order* at paras. 8-10.

²⁶ 47 U.S.C. § 315(e)(1)(B).

²⁷ The advertisements for which we are not taking action involve ads sponsored by: American Chemistry Counsel, American Future Fund, Club for Growth Action, Constitutional Responsibility Project, Fighting for Ohio, Freedom Vote, New Day for America, One Nation, Our Principles PAC, Priorities USA Action, Priorities USA African American, Senate Leadership Fund, Senate Majority PAC, and US Chamber 16 OH and U.S. Chamber of Commerce.

²⁸ With respect to the 14 ads, Scripps identified in Station WCPO-TV’s political file some, rather than all, of the political matters of national importance referenced therein and/or some, rather than all, officers or other officials of the sponsoring organization. The obligation to identify all such issues and officials for each ad are among those that we clarify in the *Political File Clarification Order* at paras. 12-25. For example, the WCPO-TV political file for the “New Day for America” advertisement identified only one of two candidates who were referenced in the ad. Answer at 5-6. Similarly, the WCPO-TV political file for the “Priorities USA African American” ad identified only one of two candidates referenced in the ad and provided a partial list of officials of the sponsoring entity. *Id.* at 6.

²⁹ AARP describes itself as “a nonprofit, nonpartisan organization that helps people 50 and older improve the quality of their lives.” See <http://www.aarp.org/>.

315(e)(2)(G) of the Act and Section 73.1212(e) of the Commission's rules.³⁰ Section 315(e)(2)(G) of the Act and Section 73.1212(e) of our rules require licensees to maintain in their political files, among other things, a list of the chief executive officers or members of the executive committee or of the board of directors of the requesting organization.³¹

9. The AARP advertisement advocated for a “real plan to keep Social Security strong” and called on the Presidential candidates in the Ohio Presidential primary elections to “[g]ive us a plan.”³² Scripps does not dispute that disclosure obligations were triggered by this ad under Section 315(e)(1)(B) because the ad communicated a message relating to two political matters of national importance -- an election to Federal office and a national legislative issue of public importance.³³ As we explain in the *Political File Clarification Order*, once the disclosure requirements under Section 315(e)(1) were triggered, Scripps was required to provide, among other things, the information required by Section 315(e)(2)(G) of the Act and Section 73.1212(e) of the Commission's rules (i.e., the names of *all* chief executive officers or members of the executive committee or board of directors of AARP).³⁴ Scripps admits, however, that Station WCPO-TV's political file did not identify *any* AARP officers or other like officials.³⁵ Had Scripps disclosed at least one AARP officer, given that the conduct occurred before release of our *Political File Clarification Order*, we would have refrained in this instance from taking action.³⁶ However, because it failed to disclose *any* AARP officials, we conclude that an admonishment is warranted. Accordingly, we admonish Scripps for its failure to comply with this aspect of its disclosure obligation with regard to this advertisement.

B. Advertisement Sponsored by the Democratic Senatorial Campaign Committee

10. We also admonish Scripps for maintaining a record in its political file for a Democratic Senatorial Campaign Committee³⁷ advertisement that did not identify the Democratic Senatorial Campaign Committee as the sponsoring entity, in willful violation of Section 315(e)(2)(G) of the Act.³⁸ Section 315(e)(2)(G) requires, among other things, disclosure of “the name of the person purchasing the

³⁰ 47 U.S.C. § 315(e)(2)(G); 47 CFR § 73.1212(e).

³¹ *Id.*

³² Complaint at 3.

³³ 47 U.S.C. § 315(e)(1)(B)(ii) and (e)(1)(B)(iii). In the context in which it was discussed, as described above, the Ohio Presidential primary elections constituted a political matter of national importance for which disclosure was required under Section 315(e)(2)(E). The reference to Social Security in the ad also triggered disclosure obligations. The matter of Social Security, including its funding and continued benefits, is a subject of continuing controversy, debate, dialogue, news reports, and intense political deliberations of national importance. In the context in which it was discussed, the reference to Social Security communicated a message relating to a national legislative issue of public importance that constituted a political matter of national importance.

³⁴ *Political File Clarification Order* at paras. 20-25.

³⁵ Answer at 3. Scripps also concedes that Station WCPO-TV's political file identified only one of two political matters of national importance referenced in the ad (Social Security, but not the Ohio Presidential primaries). *Id.* We decline to take enforcement action against Scripps for this nondisclosure because the requirement to disclose *all* political matters of national importance referenced in each ad is among the matters that we clarify in the *Political File Clarification Order*. *Political File Clarification Order* at paras. 12-19.

³⁶ *Id.* at para. 36.

³⁷ The Democratic Senatorial Campaign Committee describes itself as an organization “dedicated to electing a Democratic Senate.” See <http://www.dscc.org/about-us/>.

³⁸ 47 U.S.C. § 315(e)(2)(G).

time” for political advertisements.³⁹ Scripps concedes that it identified the sponsor of the ad in Station WCPO-TV’s political file using the acronym “DSCC-IE”⁴⁰ and that this acronym was “insufficiently descriptive.”⁴¹

11. Scripps’ identification of the sponsoring entity through use of the acronym “DSCC-IE” was not adequate to discharge its responsibility under Section 315(e)(2)(G) because the general public likely is not aware of what organization is represented by that acronym.⁴² Although Scripps maintains in its Answer that “any disclosure problem is substantially lessened by the fact that no ads from this buyer [had] yet run,”⁴³ licensees are required under Section 315(e)(2)(G) to identify in their political files the name of the sponsoring organization for every request to purchase broadcast time that communicates a message relating to a political matter of national importance. Section 315(e) provides no exception from the obligation to disclose the sponsor of an ad in cases where an ad has not yet aired. Accordingly, we admonish Scripps for its failure to properly identify the sponsoring organization in Station WCPO-TV’s political file.

IV. ORDERING CLAUSES

12. **ACCORDINGLY, IT IS ORDERED** that Scripps Media, Inc. **IS ADMONISHED** for failing to maintain complete political files for Station WCPO-TV, in willful violation of Section 315(e)(2)(G) of the Act and Section 73.1212(e) of our rules.

13. **IT IS FURTHER ORDERED** that the complaint filed by Campaign Legal Center, Common Cause, Sunlight Foundation, and Benton Foundation on September 26, 2016, is **GRANTED** to the extent indicated and is **DENIED IN ALL OTHER RESPECTS**.

14. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by United States first class and certified mail, return receipt requested, to: Kenneth C. Howard, Jr., Esq., Baker & Hostetler LLP, Washington Square, Suite 1100, 1050 Connecticut Ave., N.W., Washington, DC 20036, Counsel for Scripps Media, Inc., licensee of Station WCPO-TV, Cincinnati, OH.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

³⁹ *Id.*

⁴⁰ According to Complainants, the acronym “DSCC-IE” refers to “Democratic Senatorial Campaign Committee - Independent Expenditure.” Complaint at 8.

⁴¹ Answer at 5.

⁴² Complainants also allege that Scripps used the acronym “DSCC” in Station WCPO-TV’s political file to refer to the sponsoring organization. That acronym, too, is generally unfamiliar to the general public and its use is equally inadequate to satisfy Section 315(e)(2)(G) of the Act.

⁴³ Answer at 5.