

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

In the Matter of)) Complaints Involving the Political Files of) WCNC-TV, Inc., licensee of Station WCNC-TV,) Charlotte, NC, et al.)) Complaints Involving the Political Files of) Scripps Broadcasting Holdings, LLC, licensee of) Station WCPO-TV, Cincinnati, OH)) Complaints Involving the Political Files of) Meredith Corporation, Licensee of Station) WPCH-TV, Atlanta, GA, and Georgia Television,) LLC, licensee of Station WSB-TV, Atlanta, GA))) MB Docket No. 19-363 File Nos. 140502A-H, J-L)) File No. 160926a))) File No. 082117a-b))))
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ORDER ON RECONSIDERATION

Adopted: April 20, 2020

Released: April 21, 2020

By the Commission: Commissioner O’Rielly issuing a separate statement.

I. INTRODUCTION

1. In this Order on Reconsideration, we clarify that our *Political File Order*¹ was and is limited to requests for the purchase of broadcast time by issue advertisers whose commercials communicate a message relating to any political matter of national importance, *not* to requests for the purchase of broadcast time by or on behalf of a legally qualified candidate for public office. We also clarify that it was and is our intention to apply a standard of reasonableness and good faith decision-making with respect to efforts of broadcasters in: (a) determining whether, in context, a particular issue ad triggers disclosure obligations under section 315(e)(1)(B) of the Communications Act of 1934, as amended (Act);² (b) identifying and disclosing in their online political files all political matters of national importance that are referenced in each issue ad;³ and (c) determining when it is appropriate to use acronyms or other abbreviations in their online political files when disclosing information about issue ads.

II. BACKGROUND

2. In our *Political File Order*, we resolved complaints against 11 commercial television stations involving certain requirements in section 315(e) of the Act, related to the maintenance of online political files for public inspection. Specifically, we admonished the licensees in instances where their conduct was determined to be inconsistent with the clear mandate of section 315 and clarified certain record-keeping obligations under the Act. We refrained from taking enforcement action in instances where a licensee failed to satisfy a requirement clarified by the *Political File Order*. On the same day that

¹ *Complaints Involving the Political Files of WCNC-TV, Inc., et al.*, MB Docket No. 19-363, Memorandum Opinion and Order, 34 FCC Rcd 10048 (2019) (*Political File Order*).

² 47 U.S.C. § 315(e)(1)(B).

³ *See* 47 U.S.C. § 315(e)(2)(E).

the Commission released its *Political File Order*, it also released its companion *Scripps Order*.⁴ Therein, the Commission, relying on its *Political File Order*, resolved a similar political file-related complaint against a twelfth commercial television station. Certain of the licensees of these stations along with the National Association of Broadcasters (NAB) (collectively, Petitioners) jointly filed a consolidated Petition for Reconsideration of the *Political File Order* and the *Scripps Order*.⁵ Thereafter, by *Public Notice*,⁶ the Media Bureau (Bureau) solicited comments on the Petition for Reconsideration. The Bureau subsequently released its *Meredith Order*⁷ resolving political file-related complaints against two more commercial television stations in reliance on the *Political File Order*. Meredith Corporation along with NAB (collectively, Meredith/NAB) then sought reconsideration of the *Meredith Order*.⁸ These two petitions, as well as the comments filed in response to them,⁹ raised multiple arguments challenging our interpretations and applications of section 315(e) of the Act.

3. Petitioners and a number of commenters expressed concern that the *Political File Order* was unclear as to whether it applied to candidate-sponsored ads as well as to issue ads.¹⁰ In response, Campaign Legal Center *et al.* argued that it would be irrational not to apply the Commission's interpretations to candidate-sponsored ads and, in any event, the Commission need not resolve any such uncertainty in the context of the instant proceeding because the *Political File Order* did not involve complaints about candidate-sponsored ads.¹¹ Petitioners, a number of commenters, and Meredith/NAB also expressed concern that our *Political File Order* introduced, and as a consequence, the *Scripps Order* and *Meredith Order* applied, what effectively was a strict liability standard of review of broadcasters' compliance with their political file disclosure obligations and in the use of acronyms and abbreviations in their political files.¹² The organizations whose complaints gave rise to the three orders disagreed with that characterization.¹³

III. DISCUSSION

4. Section 315(e) of the Act imposes disclosure obligations on broadcast stations and other

⁴ *Scripps Broadcasting Holdings, LLC*, Order, 34 FCC Rcd 10082 (2019) (*Scripps Order*).

⁵ The Petition for Reconsideration was filed by Graham Media Group, Hearst Television, Inc., Fox Corporation, Tegna, Inc., and The E.W. Scripps Company (collectively referred to as Station Petitioners). See Petition for Reconsideration and Clarification of the National Association of Broadcasters, *et al.*, MB Docket No. 19-363, filed Nov. 15, 2019, at 1-2, 25 (Petition for Reconsideration). NAB joined the Petition for Reconsideration. *Id.* Because the Station Petitioners were parties to the original proceedings, we need not address whether NAB has satisfied the requirements of section 1.106(b)(1) of the Commission's rules. 47 CFR § 1.106(b)(1).

⁶ *Media Bureau Seeks Comment on National Association of Broadcasters, et al., Petition for Reconsideration of Political File Orders and Establishes "Permit-But-Disclose" Ex Parte Procedures*, Public Notice, 34 FCC Rcd 11133 (MB 2019).

⁷ *Meredith Corporation, et al.*, Order, 34 FCC Rcd 11168 (MB 2019) (*Meredith Order*).

⁸ See Petition for Reconsideration of the National Association of Broadcasters and Meredith Corporation, filed Dec. 19, 2019 (Meredith Petition for Reconsideration). Pursuant to section 1.106(a)(1) of the Commission's rules, 47 CFR § 1.106(a)(1), the Bureau is referring the Meredith Petition for Reconsideration to the Commission for resolution because the issues raised in both the Petition for Reconsideration and the Meredith Petition for Reconsideration are related.

⁹ In response to the *Public Notice*, the Commission received the following comments and reply comments: Comments of the Law Offices of Jack N Goodman; Joint Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates; Comments of the NCTA – The Internet & Television Association; Joint Broadcaster Comments; Opposition of Campaign Legal Center, *et al.*; ACA Connects Reply Comments; Joint Reply Comments of Alpha Media USA LLC, *et al.*; Reply Comments of Capitol Broadcasting Company, Inc.; Reply Comments of the Independent Television Group; Reply of the National Association of Broadcasters; Joint Reply Comments of the State Broadcasters Associations; Reply Comments of TechFreedom; and Reply of Campaign Legal Center, *et al.*

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regulatees¹⁴ when they receive a request for the purchase of political broadcast time by or on behalf of a legally qualified candidate for public office,¹⁵ and by or on behalf of a third party issue advertiser whose ad communicates a message relating to any political matter of national importance.¹⁶ The nation is fast approaching the height of the 2020 presidential campaign cycle, during which the volume of political advertising and corresponding disclosures required under the *Political File Order* will reach their peak. Under these circumstances, we take this opportunity to clarify two key concerns raised in the Petition for Reconsideration and in the Meredith Petition for Reconsideration.¹⁷

A. Application of *Political File Order* to Issue Ads

5. We clarify that the *Political File Order* applies only to issue ads. Specifically, footnote 24¹⁸ of that order was intended to convey that, because the complaints which were the subject of the *Political File Order* were limited to requests for the purchase of broadcast time under section 315(e)(1)(B) of the Act (*i.e.*, requests by third-party issue advertisers whose issue ads communicate a message relating to any political matter of national importance), the rulings that we provided in our *Political File Order* were similarly limited to such issue advertisers and their commercials. The *Political File Order* also contained multiple other references to section 315(e)(1)(B) of the Act which were intended to so limit the Commission's rulings in these complaint proceedings to issue ads only.¹⁹

6. To the extent that our prior statements may have been unclear, we believe it is important to resolve such ambiguity, particularly in light of the obligations to which broadcasters and other regulatees are subject during the current, active campaign cycle. Thus, we clarify that the *Political File Order* relates only to requests under section 315(e)(1)(B) of the Act for the purchase of broadcast time by or on behalf of third-party issue advertisers whose issue ads communicate a message relating to any political matter of national importance. None of the complaints that were the subject of the *Political File*

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Although the *Public Notice* did not solicit comments on the Meredith Petition for Reconsideration, the Opposition of Campaign Legal Center, *et al.*, opposed both the Petition for Reconsideration and the Meredith Petition for Reconsideration.

¹⁰ See Petition for Reconsideration at 20-22. See also Joint Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates at 6; Joint Broadcaster Comments at 3-5; Joint Reply Comments of Alpha Media USA LLC, *et al.* at 5; Reply Comments of Capitol Broadcasting Company, Inc. at 2-3; and Reply of the National Association of Broadcasters at 2.

¹¹ See Opposition of Campaign Legal Center, *et al.* at 15-16; Reply of Campaign Legal Center, *et al.* at 6-8.

¹² See Petition for Reconsideration at 18-20, 22-24; Joint Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates at 2-3, 6-8; Comments of NCTA – The Internet & Television Association at 1-2, 5-7; Joint Broadcaster Comments at 2, 8-10; ACA Connect Comments at 2-5; Reply Comments of Capitol Broadcasting Company, Inc. at 3-4; Joint Reply Comments of the State Broadcasters Associations at 11; and Reply of the National Association of Broadcasters at 6. See also Meredith Petition for Reconsideration at 5-9.

¹³ See Opposition of Campaign Legal Center, *et al.* at 22; Reply of Campaign Legal Center, *et al.* at 14-15.

¹⁴ The obligation to maintain online 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)).

¹⁵ 47 U.S.C. § 315(e)(1)(A).

¹⁶ 47 U.S.C. § 315(e)(1)(B).

¹⁷ All other issues raised in the Petition for Reconsideration of the Commission's *Political File Order* and in the Meredith Petition for Reconsideration of the Bureau's *Meredith Order* remain pending.

¹⁸ The *Political File Order*, at footnote 24, stated:

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Order involved requests under section 315(e)(1)(A) of the Act for the purchase of broadcast time by or on behalf of legally qualified candidates for public office, and consequently, the rulings in our *Political File Order* did not reach such requests. Further, in the absence of any complaint providing a basis to consider applying the rulings more broadly, we make no determination with respect to the merits of Campaign Legal Center *et al.*'s claim²⁰ that the rational approach would be to require the same disclosures for candidate-sponsored ads.

B. Standard of Reasonableness, Good Faith Judgments and Efforts of Broadcasters

7. We clarify that we will apply a standard of reasonableness in the context of evaluating efforts by broadcasters to comply with the *Political File Order*. Nowhere in our *Political File Order* did we state or imply that broadcasters would be subject to an actual or effective strict liability regime of compliance.²¹

8. To the extent that our intentions may have been misunderstood, we clarify that we have applied and will continue to apply a standard of reasonableness and good faith decision-making with respect to the efforts of broadcasters to comply with the *Political File Order*, specifically as it relates to three areas identified by Petitioners. Deference by the Commission to the reasonable, good faith determinations of licensees is evident throughout the political programming regulatory scheme.²² Consistent with that practice, we will apply a standard of reasonableness and good faith to broadcasters in (1) determining whether, in context, a particular issue ad triggers disclosure obligations under section 315(e)(1)(B) of the Act;²³ (2) identifying and disclosing in their online political files all political matters of national importance that are referenced in each issue ad;²⁴ and (3) determining whether it is appropriate to identify an issue advertiser or provide other information relating to an issue ad using an acronym or other abbreviated notation.²⁵

9. Campaign Legal Center, *et al.*, appear to suggest that stations should refrain from ever

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[S]ection 315(e)(1) of the Act requires licensees to maintain records for two types of requests for the purchase of political advertising time. The first type concerns requests for advertising time that are “made by or on behalf of a legally qualified candidate for public office.” 47 U.S.C. § 315(e)(1)(A). The second type concerns requests for advertising time by all other persons and which communicate a message relating to “any political matter of national importance.” 47 U.S.C. § 315(e)(1)(B). The complaints that are the subject of this [*Political File Order*] relate to the second type of request.

Political File Order, 34 FCC Rcd at 10054, n.24.

¹⁹ See *Political File Order*, 34 FCC Rcd at 10050, 10054-56, 10060-64, paras. 2, 12-16, 21, and 27-38.

²⁰ See *supra*, para. 3.

²¹ See also Opposition of Campaign Legal Center, *et al.* at 22 (“[T]he Commission nowhere uses the term ‘strict liability.’ Nor does the Commission indicate any intention to depart from the usual deference it affords to licensees’ good faith determinations.”) (footnote omitted).

²² See, e.g., *Codification of the Commission’s Political Programming Policies*, Report and Order, 7 FCC Rcd 678, para. 4 (1991) (the Commission will “[c]ontinue to defer to licensees’ reasonable, good faith judgment in determining whether sufficient sponsorship identifications have been provided in political programming and advertising.”); *id.* at para. 8 (“[W]e should continue to rely upon the reasonable, good faith judgments of licensees to provide reasonable access to federal candidates.”). See also *Petitions of Henry Geller, et al.*, Report and Order, 95 FCC 2d 1236, at para. 13 (1983) (“[T]he entire thrust of the 1959 amendments and their legislative history evidence a congressional intent to enhance the exercise of broadcasters’ good faith news judgments to enable more extensive coverage of political issues, balancing the important goals of equal treatment of candidates and the public’s need to be apprised of newsworthy issues.”) (footnote omitted).

using acronyms or other abbreviations in their political files.²⁶ We disagree and do not believe that anything in our prior orders suggests that we would not apply a reasonableness standard to the use of acronyms or abbreviations.²⁷ The purpose of an online political file is frustrated if the information in it is so cryptic or obscure as to not be clear to members of the public. If, in the exercise of its reasonable, good faith judgment, a broadcaster concludes that the general public would readily comprehend the meaning of an acronym or abbreviation relating to an issue advertiser or its ad, it may reference the acronym or abbreviation in its online political file. On the other hand, if, in the exercise of its reasonable, good faith judgment, a station determines that the general public would not readily comprehend the meaning of an acronym or abbreviation, it should avoid using such reference. In the case of an issue advertiser whose legal name *is* an acronym—such as AARP, which formally changed its name from the American Association of Retired Persons—it would be entirely appropriate for a station to identify that issue advertiser in its online political file by the organization’s actual, abbreviated name. Moreover, there are certain organizations that are widely known as their acronyms, such as the NRA (National Rifle Association) and NFL (National Football League).

10. We believe that applying a reasonable, good faith standard in the three areas described above strikes an appropriate balance between the burdens that broadcasters bear in maintaining full and complete political files and the public’s right of access to critical information about issue advertisers and their ads. We emphasize that full disclosure and transparency are fundamental goals of section 315(e) of the Act. Consequently, we expect broadcasters to take their online political file obligations seriously and to exercise their reasonable, good faith judgments and efforts with appropriate diligence. In the event of a complaint against a licensee for allegedly failing to exercise reasonable, good faith judgment and/or efforts as described herein, we will consider the facts of each situation on a case-by-case basis and take appropriate action as warranted.

IV. ORDERING CLAUSE

11. **ACCORDINGLY, IT IS ORDERED**, pursuant to section 1.106 of the Commission’s rules,²⁸ that the Petition for Reconsideration and the Meredith Petition for Reconsideration **ARE GRANTED TO THE LIMITED EXTENT INDICATED HEREIN.**

FEDERAL COMMUNICATIONS COMMISSION

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²³ See *Political File Order*, 34 FCC Rcd at 10060-64, paras. 27-38.

²⁴ See *id.* at 10054-58, paras. 12-20. We make no finding at this time on the proposal advanced by the NAB, *et al.*, and opposed by Campaign Legal Center, *et al.*, requiring stations to disclose only those topics that are the focus of each issue ad, rather than all political matters of national importance referenced therein. See Petition for Reconsideration at 18-20; Opposition of Campaign Legal Center, *et al.* at 15-16.

²⁵ See *Scripps Order*, 34 FCC Rcd at 10085-86, paras. 7-9; *Meredith Order*, 34 FCC Rcd at 11171-72, paras. 9-13.

²⁶ See Opposition of Campaign Legal Center, *et al.*, at 16-17.

²⁷ We note that to the extent that the Bureau’s decision in the *Meredith Order*, 34 FCC Rcd at 11172, para.12, could be read as suggesting that broadcasters lack discretion to determine when it is appropriate to use acronyms or abbreviated notations in their online political files, we disagree with this interpretation. As explained above, we clarify that stations have the discretion to make reasonable, good faith determinations consistent with the purpose of the online political files regarding the use of acronyms and other abbreviated notations when referring to issue advertisers and information in issue ads. By doing so, we grant Meredith/NAB’s request that the Commission defer to the broadcasters’ reasonable, good faith efforts in the use of acronyms or abbreviations. See Meredith Petition for Reconsideration at 7-8.

²⁸ 47 CFR § 1.106.

Marlene H. Dortch
Secretary

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Complaints Involving the Political Files of WCNC-TV, Inc., licensee of Station WCNC-TV, Charlotte, NC, et al.; Complaints Involving the Political Files of Scripps Broadcasting Holdings, LLC, licensee of Station WCPO-TV, Cincinnati, OH; Complaints Involving the Political Files of Meredith Corporation, Licensee of Station WPCH-TV, Atlanta, GA, and Georgia Television, LLC, licensee of Station WSB-TV, Atlanta, GA, MB Docket No. 19-363, Order on Reconsideration.*

Political speech and its transmission to the American people are incredibly important issues for me. Like many defenders of the First Amendment, I fundamentally agree with an approach that places very few restrictions on the practice of either. This is a founding principle of our country, and as such, government regulators must tread very lightly when it comes to compelling or restraining the speech of private entities, especially when it comes to the transmission of political speech to the American people via broadcast or other telecommunications services, a point I raised in another proceeding earlier this year as well. Notwithstanding these protections, the Commission is required to implement certain political ad disclosure requirements enacted by Congress and sustained by the courts. The tension between these two obligations deserves a much larger and detailed discussion, and there are serious questions as to whether these burdens on broadcasters continue to pass constitutional muster. However, these are matters for another time and worthy of deeper discussion than is warranted here.

I wholeheartedly support this item because it effectively narrows the scope—and thus the legal exposure for well-meaning local broadcasters—of our recent October 2019 items that “clarify” our political file mandates. At the time, I was reluctant to approve those actions, and only voted to concur after extensive work over the course of more than a year to remove some the items’ more onerous and objectionable draft provisions. While I was willing to stomach the end result, it remains flawed in many respects as well as constitutionally suspect. Many of the arguments and objections raised by petitioners to the October items are ones I raised during the Commission’s consideration of them, but my arguments at the time simply did not carry the day. And, that’s not to mention the major procedural concerns I had. In bypassing our regular Notice and Comment process, we effectively prevented *ex parte* conversations with all affected broadcasters, who had little to no knowledge of the end result’s content or breadth, and they were not permitted to provide counterarguments or properly challenge the conclusions before the items were finalized.

This item makes a modicum of improvement to the whole mess and provides parties with more certainty as they anticipate a very busy election ad season. Not surprisingly, I suspect that we will have to revisit this issue again, and those potentially captured in this web of compelled speech should know that I intend to be appropriately suspicious of any draft FCC enforcement effort on this matter. The First Amendment protections afforded all Americans apply no less when it comes to our nation’s media companies that communicate information and ideas.