

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) File No. 140502J
WCNC-TV, Charlotte, NC) Facility ID No. 32326
Scripps Broadcasting Holdings LLC, licensee of) File No. 140502H
Station KMGH-TV, Denver, CO) Facility ID No. 40875
Fox Television Stations, LLC., licensee of Station) File No. 140502K
KMSP-TV, Minneapolis, MN) Facility ID No. 68883
New World Communications of Tampa, Inc.,) File No. 140502F
licensee of Station WTVT(TV), Tampa, FL) Facility ID No. 68569
Nexstar Broadcasting, Inc., licensee of Station) File No. 140502E
WFLA-TV, Tampa, FL) Facility ID No. 64592
NBC Telemundo License, LLC, licensee of Station) File No. 140502C
WTVJ(TV), Miami, FL) Facility ID No. 63154
WTVD Television, LLC, licensee of Station) File No. 140502L
WTVD(TV), Durham, NC) Facility ID No. 8617
CBS Broadcasting, Inc., licensee of Station) File No. 140502G
WWJ-TV, Detroit, MI) Facility ID No. 72123
Scripps Broadcasting Holdings LLC, licensee of) File No. 140502B
Station KNXV-TV, Phoenix, AZ) Facility ID No. 59440
Hearst Properties, Inc., licensee of Station) File No. 140502D
WMUR-TV, Manchester, NH; and) Facility ID No. 73292
Graham Media Group, Michigan, Inc., licensee of) File No. 140502A
Station WDIV-TV, Detroit, MI) Facility ID No. 53114

MEMORANDUM OPINION AND ORDER

Adopted: October 2, 2019

Released: October 16, 2019

By the Commission: Commissioners O’Rielly, Rosenworcel and Starks concurring and issuing separate statements.

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I. INTRODUCTION

1. In this Memorandum Opinion and Order (Order), we resolve 11 complaints that were filed jointly by Campaign Legal Center and Sunlight Foundation (Complainants) against each of the captioned commercial television broadcast station licensees.¹ The complaints allege that the licensees violated section 315(e) of the Communications Act of 1934, as amended (the Act), and/or section 73.1212(e) of the Commission’s rules,² by failing to maintain certain information in their political files. Because the complaints raise similar issues, we consolidate our consideration of them.³

¹ Complaints filed by Campaign Legal Center and Sunlight Foundation on May 1, 2014. Each of the captioned licensees filed an Answer on May 27, 2014, and Complainants submitted a Consolidated Reply on June 3, 2014. On January 11, 2017, the Chief, Media Bureau, by delegated authority, granted consent to the transfer of control of licenses held by subsidiaries of Media General, Inc., including the license for Station WFLA-TV, from the shareholders of Media General, Inc., to Nexstar Media Group, Inc. See *In the Matter of Applications for Consent to Transfer of Control of Media General, Inc., from Shareholders of Media General, Inc. to Nexstar Media Group, Inc.*, Memorandum Opinion and Order, MB Docket No. 16-57, DA 17-23 (MB rel. Jan. 11, 2017). On March 17, 2017, the name of the licensee of WFLA-TV changed to Nexstar Broadcasting, Inc. See Application File No. 20170306ACC. Although the conduct at issue here, including the filing of the Answer, occurred before the transfer and the name change, we refer to the licensee and its filings herein pursuant to its new name. In addition, by *Public Notice*, Report No. 48637, December 22, 2015, the Commission consented to the *pro forma* voluntary assignment of licenses of Stations KMGH-TV, Denver, CO, and KNXV-TV, Phoenix, AZ, from Scripps Media, Inc., to Scripps Broadcasting Holdings LLC. These transactions were consummated on February 2, 2017.

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

³ The 11 complaints that are the subject of this Order were previously considered in *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). That Bureau-level action was subsequently set aside, and the complaints

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2. The principal focus of these complaints involves the obligations Congress added via the Bipartisan Campaign Reform Act of 2002 (BCRA), which are codified in sections 315(e)(1)(B), (e)(2)(E), and (e)(2)(G) of the Act.⁴ The latter two provisions identify the specific information that is required to be placed in a political file with respect to requests to purchase advertising time if, pursuant to section 315(e)(1)(B), the advertising communicates a message relating to any political matter of national importance. As noted below, in response to these complaints, we clarify certain disclosure obligations that section 315(e) and the Commission's rules impose on broadcast licensees and other entities with respect to requests for the purchase of political advertising time.⁵ We expect that the clarification in these cases will facilitate licensees' compliance with the political file requirements and improve public access to information about political advertising. Specifically, we clarify that:

- For each request to purchase political advertising time that triggers disclosure obligations under section 315(e)(1)(B) of the Act, licensees must, pursuant to section 315(e)(2)(E), disclose in their political files *all* political matters of national importance, including the names of *all* legally qualified candidates for federal office (and the offices to which they are seeking election), *all* elections to federal office, and *all* national legislative issues of public importance, to which the communication refers.
- 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 political advertising time under section 315(e)(1)(B). In cases where the station has a reasonable basis for believing that the information provided appears to be incomplete, e.g., where the name of only one official has been supplied, the station will be deemed to have satisfied this obligation by making a single inquiry to either the organization sponsoring the ad or the third-party buyer of advertising time acting on the organization's behalf as to whether there are any other officers or members of the executive committee or of the board of directors of such entity.
- We will consider context in determining whether an advertisement constitutes a "political matter of national importance" that triggers record-keeping obligations under section 315(e)(1)(B) of the Act. A broadcast message must be political in nature and must be of national importance to trigger a licensee's record-keeping obligations under section 315(e)(1)(B). For purposes of section 315(e)(1)(B)(i) and (iii), respectively, we interpret the term "legally qualified candidate" to mean legally qualified candidates for federal office, and the term "national legislative issue of public importance" to include issues that are the subject of federal legislation that has been introduced and is pending in Congress at the time a request for air time is made. The term "political matter of national importance" encompasses political issues that are the subject of controversy or discussion at the national level, regardless of whether such issues relate to a legally qualified candidate, an election to federal

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were returned to pending status to provide the full Commission with the opportunity to consider them. *See Complaints Involving the Political Files of WCNC-TV, Inc., licensee of Station WCNC-TV, Charlotte, NC, et al.*, Order, DA 17-126 (MB rel. Feb. 3, 2017).

⁴ 47 U.S.C. §§ 315(e)(1)(B), (e)(2)(E), and (e)(2)(G); Pub. L. No. 107-155, 116 Stat. 81 (2002).

⁵ Several parties in this proceeding have asserted that the political file requirements are vague and that the Commission thus should issue a Public Notice or other advisory clarifying those requirements. KMSB-TV Answer at 3-4 (arguing that the fact that "there is so much apparent confusion" as to the disclosure required under section 315(e)(2)(E) bolsters the view that FCC action should be limited to clarification and education); WTVT(TV) Answer at 4 (urging the Commission to provide clarity with respect to disclosure requirements under section 315(e)(2)); WTVT(TV) Answer at 3-4 (stating that the FCC should issue a PN indicating that it will work with stations and advertisers to ensure disclosure of all the necessary information required under section 315(e)(2)(E)). Because we clarify those requirements herein, we find that no further action to clarify them is warranted at this time.

office, or a national legislative issue of public importance within the meaning of sections 315(e)(1)(B)(i)-(iii).

3. Although some of the above-captioned licensees failed to make disclosures in a manner that was consistent with these clarifications, we do not take enforcement action with respect to those instances of noncompliance where the particular requirements were not sufficiently clear prior to the clarifications we provide today or where stations disclosed some, but not all, of the information required by the statute based on a misreading of the statutory language. We place entities subject to these requirements on notice that, going forward, they will be subject to enforcement action for willful and/or repeated failure to comply with their political file obligations, as clarified here. However, we admonish the licensees of eight stations for their willful and/or repeated violations of section 315(e) of the Act for actions where their conduct violated the clear mandate of the statute.⁶

II. BACKGROUND

4. Broadcast licensees have long been required by the Act and the Commission's rules to maintain political files for public inspection.⁷ The information in political files enables the public to obtain information about sponsoring entities and to verify that licensees have complied with their obligations relating to use of their broadcast facilities by candidates for political office and by others for specified political purposes.⁸

5. Section 315(e) of the Act requires licensees to maintain political files for certain types of advertisements. Specifically, pursuant to section 315(e)(1):

A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that –

(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.⁹

⁶ Those stations are WTVT(TV) (Tampa, FL); WFLA-TV (Tampa, FL); WTVJ(TV) (Miami, FL); WTVD(TV) (Durham, NC); WWJ-TV (Detroit, MI); KNXV-TV (Phoenix, AZ); WMUR-TV (Manchester, NH); and WDIV-TV (Detroit, MI).

⁷ Although the instant complaints involve only broadcast licensees, 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)). The clarification provided in this Order is intended to assist all such entities in complying with their political file record-keeping obligations.

⁸ *In the Matter of Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691 (1998).

⁹ 47 U.S.C. § 315(e)(1). Congress adopted the current version of section 315 as part of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81 (2002), which was signed into law in 2002. The BCRA, among other things, amended section 315 by codifying the Commission's already-existing record-keeping requirements for any request to purchase political advertising time that "is made on or behalf of a legally qualified candidate for public office." The BCRA further amended section 315 by expanding record-keeping requirements to include any request to purchase political advertising time 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." *Id.*

Section 315(e)(2) requires broadcast licensees to place in their political files the following information:

- (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.¹⁰

6. In addition, section 315(e)(3) of the Act provides, among other things, that “[t]he information required by [section 315(e)] shall be placed in a political file as soon as possible.”¹¹ 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.”¹²

7. All of the stations subject to the complaints we resolve in this Order are within the top 50 Designated Market Areas and are owned by or affiliated with one of the four major television broadcast networks. The stations, therefore, were required to place their political records in a Commission-hosted online public file beginning August 2, 2012.¹³

III. DISCUSSION

A. Standing

8. Before addressing the merits of the complaints, we resolve the threshold procedural issue of whether Complainants have legal standing to bring the complaints.¹⁴ The licensees of Stations

¹⁰ 47 U.S.C. § 315(e)(2).

¹¹ *Id.* § 315(e)(3).

¹² 47 CFR § 73.1212(e). *See also id.* § 73.1943.

¹³ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012) (*Enhanced Disclosure Order*). In addition to broadcast television licensees, the Commission requires broadcast radio licensees, Direct Broadcast Satellite providers, and Satellite Digital Audio Radio Services to upload their political files to the Commission’s online database. *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016) (*Expanded Online File Order*); *Effective Date Announced for Expanded Online Public Inspection File Database*, Public Notice, DA 16-536, rel. May 12, 2016.

¹⁴ In general, standing refers to a complainant’s direct interest in the matter that is the subject of the complaint. *Implementation of Section 255 of the Telecommunications Act of 1996; Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, Notice of Proposed Rulemaking, 13 FCC Rcd 20391, 20457, n.261 (1998). *See also Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast*

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WTVT(TV) and KMSP-TV assert that the complaints against them are defective because Complainants have not demonstrated that they would be harmed by any failure of the stations to comply with the political file rules. In particular, they contend that the online public file requirements were intended to allow consumers to more easily locate the political and public files of stations within their viewing area and to access in one location information about all broadcast stations within a viewer's market.¹⁵ Because Complainants are not consumers within either station's viewing area, they assert, "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."¹⁶

9. We conclude that Complainants have standing to bring the complaints. In contrast to contexts in which Congress or the Commission has established specific standing requirements,¹⁷ nothing in the Act, the Commission's public file rules, or Commission precedent requires a complainant to demonstrate that he or she resides within a station's viewing area to file a complaint for violation of the political file rules. As noted above, section 315(e)(1) of the Act requires licensees to maintain, and make available "for public inspection," records of certain requests to purchase political advertising time.¹⁸ Because such records must be kept for inspection by the general public, and nothing in section 315(e)(1) expressly limits the scope of entities entitled to bring complaints, we believe that Congress intended to permit any interested member of the public, including persons located outside of a station's market, to bring complaints for alleged violations of section 315's record-keeping requirements.

10. In addition, we find that accepting complaints only by consumers within a station's viewing area would hinder the Commission's ability to ensure that stations are complying with the political and public file requirements and are properly discharging their duty to operate in the public interest.¹⁹ This conclusion is consistent with the Commission's previous determination that 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."²⁰ A station's failure to comply with the political and public file rules could impede the

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Application, Memorandum Opinion and Order, 82 F.C.C.2d 89, 95-96 (1980) ("[T]o establish standing a litigant must allege a threatened or actual injury to himself, whether economic, aesthetic or otherwise, that is likely to be prevented or redressed by a favorable decision. So long as these requirements are satisfied, persons to whom Congress has granted a right of action may have standing to seek relief on the basis of the legal rights of others, and indeed, may invoke the general public interest in support of their claim.") (citations omitted).

¹⁵ WTVT(TV) Answer at 3 n.8; KMSP-TV Answer at 3, n.8.

¹⁶ *Id.*

¹⁷ For example, the Commission has established standards by which consumers may qualify as parties-in-interest with standing to file a petition to deny a license application under section 309(d)(1) of the Act. *See, e.g., Applications for Consent to Transfer of Control from License Subsidiaries of Allbritton Communications Co. to Sinclair Television Group, Inc.*, MB Docket No. 13-203, Memorandum Opinion and Order, 29 FCC Rcd 9156, 9162 (MB 2014).

¹⁸ 47 U.S.C. § 315(e)(1). *See also* 47 CFR § 73.1212(e) (requiring, among other things, that licensees "[make] available for *public* inspection" a list of the chief executive officers or other specified officials) (emphasis added).

¹⁹ *Id.*

²⁰ *Enhanced Disclosure Order*, 27 FCC Rcd at 4545. *See also Expanded Online File Order*, 31 FCC Rcd at 528, para. 5 ("To provide the *public* with access to information about station operations, the Commission's rules have long required television and radio broadcast stations to maintain a physical public inspection file, including a political file, at their respective stations or headquarters and to place in the file records that provide information about station operations. The purpose of the public inspection file requirement is to 'make information to which the public already has a right more readily available, so that the public will be encouraged to play a more active part in dialogue with broadcast licensees.'") (emphasis added). In an analogous case involving the Commission's broadcast

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efforts of research groups to analyze information and report on how local stations serve their communities, to the detriment of the public. Complainants Campaign Legal Center²¹ and Sunlight Foundation²² are among the entities the political and public file requirements are intended to serve.²³ For these reasons, we find that Complainants have standing to bring the complaints.

B. Clarification of Political File Requirements

11. We clarify below certain disclosure obligations that the Act and/or the Commission's rules impose on broadcast licensees with respect to requests for the purchase of political advertising time.²⁴ The complaints generally allege that the licensees failed to meet their obligations under section 315(e)(2) of the Act and/or section 73.1212(e) of our rules. Resolution of the complaints turns on the appropriate interpretation of those provisions, and the record reveals that parties have varying interpretations about the nature and extent of the obligations that they impose. Accordingly, we take this opportunity to clarify those obligations.²⁵ In so doing, we place licensees on notice that, going forward, they will be subject to enforcement action for willful and/or repeated failure to comply with their political file disclosure obligations, as clarified here.

1. Contents of Political Records Required by Section 315(e)(2)(E)

12. We interpret section 315(e)(2)(E) to mean that, for each request to purchase political advertising time that triggers disclosure obligations under section 315(e)(1)(B), licensees are required to disclose in their political record all political matters of national importance, including the names of all legally qualified federal candidates (and the offices to which they are seeking election), all elections to federal office, and all national legislative issues of public importance, to which the advertisement refers.²⁶ Complainants maintain that section 315(e)(2)(E) requires licensees to include all of these categories of information in their political records for each relevant request for air time and that several of the licensees

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contest rule, the Commission's Enforcement Bureau rejected a radio station's argument that only those individuals residing within a station's listening area have standing to file a complaint. *See CBS Radio Inc. of Philadelphia, Licensee of Station WIP(AM), Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 24 FCC Rcd 10993 (EB 2009). The Enforcement Bureau found that "the contest rule is designed to protect the general public" from false or misleading contests and "does not preclude any member of the public from filing a complaint if they have information establishing that a contest rule violation has occurred." *Id.* at 10994-95.

²¹ The Campaign Legal Center describes itself as a "nonpartisan, nonprofit organization that promotes awareness and enforcement of political broadcasting laws" whose mission is "to represent the public interest in the enforcement of media and campaign laws." KMGH-TV Complaint at 1. Through public education, advocacy for federal rulemaking proceedings, and congressional action, the Campaign Legal Center "seeks to shape political broadcasting policies and promote effective enforcement of the public interest obligations of the media." *Id.*

²² The 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.* at 2. The foundation seeks to accomplish these goals "by building tools that empower democratic participation and by working with policymakers and civil society organizations to employ a technology-centric and transparency-oriented approach to their work." *Id.*

²³ *Supra* notes 21 and 22.

²⁴ As noted in paragraph 5 above, section 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 Order relate to the second type of request.

²⁵ As noted above, we do not take enforcement action in instances in which one or more of these licensees has failed to satisfy a requirement that we clarify in this Order.

²⁶ 47 U.S.C. §§ 315(e)(1)(B), (e)(2)(E).

failed to satisfy this obligation.²⁷ By contrast, licensees argue that the language of section 315(e)(2)(E) indicates that Congress intended to afford licensees the discretion to selectively identify in their political record any one—but not necessarily all—of the categories of information listed in that provision.²⁸ As discussed below, we find that the text, design, and purpose of sections 315(e)(1)(B) and (e)(2)(E) support a broader interpretation that favors disclosure.

13. As a threshold matter, we note that section 315(e)(1)(B) requires licensees to maintain a record of each request for the purchase of political advertising time that “communicates a message relating to *any* political matter of national importance,”²⁹ including (i) a legally qualified candidate;³⁰ (ii) any election to federal office;³¹ or (iii) a national legislative issue of public importance.³² As to each such request, section 315(e)(2) requires broadcast licensees to place in their record certain information specified in section 315(e)(2), including information identified in section 315(e)(2)(E).³³ Section 315(e)(2)(E) states that the contents of a licensee’s record must include “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).”³⁴ The three categories listed in that provision (i.e., candidate/election/issue) mirror the three kinds of messages listed in section 315(e)(1)(B) that trigger section 315(e)(2)(E)’s record-keeping requirement.³⁵

14. Section 315(e)(1)(B) contemplates that messages “relating to any political matter of national importance” could include any one or a combination of the three categories set out in the provision: a legally qualified candidate, an election to federal office, or a national legislative issue of public importance.³⁶ Although the language indicates that the presence of any one of the three is sufficient to trigger record-keeping requirements, it does not foreclose the possibility that a single on-air message could reference more than one of the three categories or encompass subjects matters that are not listed. Against this backdrop, section 315(e)(2)(E) describes what the required record must contain, including the name of the candidate and the office, the election, or the issue (as applicable).³⁷ We interpret section 315(e)(2)(E)’s delineation of the three categories in the disjunctive with the inclusion of the parenthetical modifier “as applicable” to mean that each category that is addressed in an advertisement covered under section 315(e)(1)(B) must be disclosed. We believe this interpretation evinces Congress’s understanding that not every advertisement will necessarily reference each of these

²⁷ Complainants’ Consolidated Reply at 2-3 (claiming that certain licensees disclosed the legally qualified candidates referenced in advertisements that they broadcast, but not other political matters of national importance referenced in those ads).

²⁸ WCNC-TV Answer at 2; WTVD(TV) Answer at 3-4; KMSP-TV Answer at 3; WDIV-TV Answer at 2; WWJ-TV Answer at 2, n.1; WFLA-TV Answer at 3-4.

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

³⁰ *Id.* § 315(e)(1)(B)(i).

³¹ *Id.* § 315(e)(1)(B)(ii).

³² *Id.* § 315(e)(1)(B)(iii).

³³ *See id.* § 315(e)(2)(A)-(E), (G).

³⁴ Section 315(e)(2) prescribes the content of the political record for each request to purchase political advertising time that triggers disclosure obligations under section 315(e)(1). *Id.* § 315(e)(1), (e)(2). The type of “issues” to which section 315(e)(2)(E) refers are those involving political matters of national importance, including “national legislative issues of public importance” referenced in section 315(e)(1)(B)(iii).

³⁵ *Compare* 47 U.S.C. § 315(e)(2)(E) with 47 U.S.C. § 315(e)(1)(B).

³⁶ 47 U.S.C. § 315(e)(1)(B).

³⁷ 47 U.S.C. § 315(e)(2)(E).

categories, but that disclosure is required for the categories that are covered, i.e., whatever categories are “applicable.”

15. Thus, for example, if the request to purchase political advertising time communicates a message relating to a “legally qualified candidate,”³⁸ then under section 315(e)(2)(E), the record must contain “the name of the candidate to which the communication refers and the office to which the candidate is seeking election.”³⁹ Similarly, if the request to purchase political advertising time communicates a message relating to an “election to Federal office,”⁴⁰ then under section 315(e)(2)(E), the record must contain information regarding “the election to which the communication refers.”⁴¹ If the request to purchase political advertising time communicates a message relating to “a national legislative issue of public importance,”⁴² then under section 315(e)(2)(E), the record must contain information regarding “the issue to which the communication refers.”⁴³ And if the request communicates a message relating to more than one of these categories (e.g., if it refers to both “a legally qualified candidate” and “a national legislative issue of public importance”), then all such references must be disclosed (e.g., “the name of the candidate to which the communication refers and the office to which the candidate is seeking election” and “the issue to which the communication refers”).

16. We are not persuaded by arguments that the language of section 315(e)(2)(E) compels a more limited interpretation of licensees’ obligations. Some licensees argue, for example, that because the categories listed in section 315(e)(2)(E) are connected by the word “or,” rather than “and,” those items represent alternatives, and that a licensee satisfies its section 315(e)(2)(E) obligation by including in its political record any one of those listed items.⁴⁴ We disagree with this interpretation. Although the use of the word “or” in a statute typically carries a disjunctive meaning, the parallel language in sections 315(e)(1)(B) and (e)(2)(E), together with Congress’s inclusion of the phrase “as applicable” in section 315(e)(2)(E), lead us to conclude that our reading is the better one. Based on the text and design of section 315(e)(1), we find that use of the word “or” in section 315(e)(2)(E) was intended merely to signify that a licensee need only maintain a record of the information relevant to the particular triggering message. We therefore agree with Complainants that Congress’s use of the word “or” should be interpreted to account for the fact that not all advertisements that communicate a message relating to a political matter of national importance will mention a candidate, an election, and an issue.⁴⁵

17. We also find that our interpretation of section 315(e)(2)(E) is more likely to ensure meaningful disclosure and to avoid illogical results than a narrower reading that would permit broadcasters to select which categories to disclose with regard to a specific ad. For example, a station that ran an ad referencing a candidate and an election to federal office, could, under the alternative interpretation suggested by licensees, reference just the election, but not the name of the candidate running for that office. We do not believe that the selective disclosure of such limited information would

³⁸ 47 U.S.C. § 315(e)(1)(B)(i). *See infra* paras. 31-35 (interpreting the term “legally qualified candidate” for purposes of section 315(e)(1)(B)(i)).

³⁹ *Id.* § 315(e)(2)(E).

⁴⁰ *Id.* § 315(e)(1)(B)(ii).

⁴¹ *Id.* § 315(e)(2)(E).

⁴² *Id.* § 315(e)(1)(B)(iii).

⁴³ *Id.* § 315(e)(2)(E).

⁴⁴ *See, e.g.,* WCNC-TV Answer at 2. *See also* WDIV-TV Answer at 2 (asserting that “use of the disjunctive indicates alternatives and requires [that the listed items] be treated separately unless such a construction renders the provision repugnant to the Act”).

⁴⁵ Complainants’ Consolidated Reply at 2, n.4.

be sufficient to reasonably serve the interests of those for whom the political files were intended.⁴⁶ Similarly, if several stations broadcast the same ad containing references to multiple categories of political matters of national importance, and each was permitted to select a single category to disclose, the result could be political files containing dramatically different records, creating the potential for confusion and, thereby, frustrating the ability of those who are seeking to track and analyze political advertising in a particular market. In enacting section 504 of BCRA, which expanded section 315's record-keeping requirements, Congress identified the categories of information that broadcasters must disclose to promote the law's purpose of "promot[ing] the free and swift flow of information to the public regarding the activities of groups and individuals in the political process."⁴⁷ We believe that requiring disclosure of all applicable categories of information, rather than allowing broadcasters to report the required information selectively, will better achieve the law's purpose.

18. We also are not persuaded that, because each of the items listed in section 315(e)(2)(E) is written in the singular tense, the Commission must construe that provision as requiring licensees to identify in their political record only one item from any of the three categories, even if a broadcast message references multiple candidates, elections, and/or issues.⁴⁸ Under basic canons of statutory construction, the use of singular tense generally includes the plural tense, and vice versa.⁴⁹ We find nothing to suggest that Congress intended a different result here. Thus, the fact that section 315(e)(2)(E) is written in the singular tense is not dispositive of the question whether *all* of the categories listed in that provision must be identified in a licensee's record.

19. Finally, we are not convinced by the arguments of some licensees that requiring disclosure of all candidates, elections and issues referenced in each political broadcast message would be too onerous.⁵⁰ We find that requiring stations to make all such information, as applicable, available to the public is reasonable and not unduly burdensome for licensees. While such record-keeping responsibilities require reasonable diligence on the part of stations to ensure that their files properly reference all political matters of national importance that are referenced in each ad, we believe the benefits of disclosing all the information set out in section 315(e)(2)(E) reasonably outweigh the marginal burdens stations may incur. We note that licensees already are obligated to review the content of programming covered by section 315(e) to confirm that information furnished by advertisers is complete.⁵¹ Additionally, most

⁴⁶ See *supra* paras. 4, 10. We believe that the approach we adopt today is also more consistent with the *Citizen United* case, in which the Supreme Court emphasized the First Amendment values that disclosure advances. In upholding the disclaimer and disclosure requirements of BCRA, sections 201 and 311, respectively, the Court stated: "The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." *Citizens United v. FEC*, 558 U.S. 310, 371 (2010); see also *id.* at 369 ("The Court has explained that disclosure is a less restrictive alternative to more comprehensive regulations of speech.").

⁴⁷ Statement by President George W. Bush Upon Signing H.R. 2356, <http://www.presidency.ucsb.edu/ws/?pid=64503> (last visited April 17, 2018) (stating that the legislation creates new disclosure requirements that will provide the public with more accurate and timely information about the activities of groups and individuals in the political process).

⁴⁸ See, e.g., WTVD(TV) Answer at 3-4.

⁴⁹ See 1 U.S.C. § 1; *Public Citizen, Inc. v. Mineta*, 340 F.3d 39, 54 (2d Cir. 2003).

⁵⁰ See, e.g., WTVD(TV) Answer at 3-4 (asserting that it would be impractical and inappropriate to impose on broadcasters the obligation to identify and describe every "political issue of national importance" to which a broadcast message refers because "political advertisements often include quick references to a myriad of issues and votes").

⁵¹ For example, in order to ensure that they provide appropriate on-air sponsorship identification, licensees must necessarily review political advertisements that they intend to broadcast. See 47 U.S.C. § 317 (requiring the licensee

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advertisements, even those that cover multiple categories, are typically only 30 or 60 seconds in duration. Thus, reviewing the content of such ads for the purpose of identifying all candidates, elections, and issues, as applicable, should not be unduly burdensome for licensees.⁵²

20. Based on the above reasoning, we interpret section 315(e)(2)(E) to require that licensees include in their political records information about all political matters of national importance referenced in each ad, including: (i) the names of all candidates for federal office referenced in the broadcast message; (ii) the respective offices to which all such candidates are seeking election; (iii) all elections referenced in the broadcast message; and (iv) all national legislative issues of public importance referenced in such message. We find that this interpretation is most consistent with the statutory text and structure and will most effectively ensure public access to comprehensive information memorializing the contents of each political broadcast message.

2. List of Officers or Other Officials Required by Section 315(e)(2)(G)

21. We clarify that section 315(e)(2)(G) of the Act and section 73.1212(e) of the Commission's rules⁵³ require broadcast licensees to maintain a record that identifies, among other things,⁵⁴ *all* of the chief executive officers or members of the executive committee or board of directors of any person seeking to purchase political advertising time under section 315(e)(1)(B). The record reflects that parties have differing views of the obligations that these provisions impose on broadcast licensees. At least one party suggests that these provisions impose no obligations on licensees beyond disclosing the information supplied by sponsoring entities.⁵⁵ Under that interpretation, if the sponsor provides the name of only one executive officer or board member, disclosure of that name suffices for purposes of these provisions. By contrast, Complainants assert that licensees are obligated to obtain the requisite information in cases where material provided by a sponsoring entity is insufficient.⁵⁶

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to identify, at the time of broadcast, those who furnished or paid for the broadcast, and exercise reasonable diligence to obtain from its employees information necessary to enable the licensee to make the required announcement); 47 CFR § 73.1212 (requiring the licensee that receives consideration for transmitting any matter to “fully and fairly disclose the true identity” of the person(s) or entity whom or for whom the consideration was supplied, and to exercise reasonable diligence in obtaining such information from its employees in order to make the announcement). Accordingly, the obligations at issue here do not extend significantly beyond the obligations broadcasters have undertaken for decades to comply with sponsorship identification rules.

⁵² We note that licensees do not object to disclosing any particular category of information required under section 315(e). Instead, their objection is centered on having to identify each category of information implicated by a particular advertisement. Licensees have failed to provide any record evidence regarding the incremental burden associated with providing more information about what is typically a 30-60 second ad that requires review under either scenario, i.e., reviewing such an advertisement and reporting on multiple categories of information compared to reviewing it to selectively identify any one of the categories of information. *See also supra* note 51.

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

⁵⁴ Section 315(e)(2)(G) also requires licensees to disclose the name and certain contact information for the sponsoring entity. 47 U.S.C. § 315(e)(2)(G). None of the instant complaints alleged that any station failed to provide this additional information, and we believe that the requirement to provide such information is self-explanatory and requires no clarification.

⁵⁵ WFLA-TV Answer at 4 (asserting that because the Federal Election Commission generally requires only one named officer to form a political action committee, the station had no way of knowing whether there were any other officials that needed to be disclosed, and that under Commission precedent, broadcasters are not obligated to act as “private investigators” to determine the identity of officers and directors).

⁵⁶ Complainants' Consolidated Reply at 4 (“The treasurer is not the chief executive officer, nor does identifying the treasurer constitute a *list* of members of the executive committee or of the board of directors.”) (emphasis in original).

22. Section 315(e)(2)(G) provides, with respect to requests for political advertising time other than those made by or on behalf of candidates, that a licensee shall maintain “a list of the chief executive officers or members of the executive committee or of the board of directors of” the entity requesting political advertising time.⁵⁷ In addition, section 73.1212(e) of our rules provides that:

[w]here material broadcast 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 . . . [make available for public inspection] 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. . . .⁵⁸

23. Given that section 315(e)(2)(G) of the Act and section 73.1212(e) of our rules expressly require that licensees maintain a “list” of specified officials, we conclude that if the station has a reasonable basis for believing that the information provided appears to be incomplete, e.g., where the name of only one official has been supplied, the licensee will be deemed to have satisfied its record-keeping obligations by making a single inquiry to either the organization sponsoring the ad or the third-party buyer of advertising time acting on the organization’s behalf as to whether there are any other officers or members of the executive committee or of the board of directors of such entity. As noted above, one of the principal purposes of BCRA, which expanded section 315’s record-keeping requirements, was “to promote the free and swift flow of information to the public regarding the activities of groups and individuals in the political process.”⁵⁹ Ensuring that licensees undertake reasonable efforts to provide complete and accurate disclosure of the sponsoring entity’s officials in the political file will best achieve Congress’s goals in enacting BCRA by enabling the public to access information about broadcast political ads specifically identified in the statute.

24. Although some licensees argue that they are required to identify in their political files only those individuals whose names have been provided to them,⁶⁰ we believe the requirement that licensees maintain a “list” of specified officials obligates stations to inquire further in cases where the station has a reasonable basis for believing that the information provided appears to be incomplete, e.g., where the name of only one official has been supplied. Because Congress in BCRA amended section 315 to require that licensees maintain specific information in their records, we find it reasonable to conclude that it intended to impose on licensees an obligation to take certain steps to obtain that information. We also find that requiring licensees to make this follow-up inquiry is not unduly burdensome, and is necessary to discharge their statutory duty to maintain a “list” of the required information.⁶¹ For example, in cases where a purchaser of political advertising time has provided the name of only one official, licensees may discharge their obligation by asking the purchaser whether there are other officials of the sponsoring entity that must be identified under section 315(e)(2)(G) of the Act and section 73.1212(e) of our rules, or, alternatively, by informing the purchaser as to which officials must be identified under those provisions and asking it to provide that information. We note that under section 315(e)(1), the

⁵⁷ 47 U.S.C. § 315(e)(2)(G).

⁵⁸ 47 CFR § 73.1212(e).

⁵⁹ Statement by President George W. Bush Upon Signing H.R. 2356, <http://www.presidency.ucsb.edu/ws/?pid=64503> (last visited April 17, 2018); *see supra* note 47.

⁶⁰ *See, e.g.*, WFLA-TV Answer at 4. Based on the record, it appears that a few licensees subject to complaints disclosed only one official, and that the official disclosed did not represent the complete list of officials required to be disclosed under the Act and the Commission’s rules. *See, e.g.*, KMGH-TV Answer at 1; KNXV-TV Answer at 1.

⁶¹ 47 U.S.C. § 315(e)(2)(G); 47 CFR § 73.1212(e) (both requiring that licensees maintain and make publicly available a “list”).

responsibility to maintain the list of officials resides with licensees, not advertisers.⁶² Thus, the onus is on licensees to make reasonable efforts to obtain that information, regardless of whether the purchaser affirmatively has supplied such information.

25. We reject the suggestion that this approach will improperly place stations in the role of “private investigators” contrary to Commission precedent.⁶³ Nexstar Broadcasting, Inc., the licensee of Station WFLA-TV,⁶⁴ contends, for example, that “absent a claim that the listed officer/director information is incomplete or incorrect, stations have not been obligated to research issue group executive leadership.”⁶⁵ Under our interpretation of section 315(e)(2)(G) of the Act and section 73.1212(e) of our rules, licensees need not conduct independent research to identify all of the officials of a sponsoring entity. Rather, as noted above, a licensee may satisfy its obligation by making a simple inquiry if it has a reasonable basis for believing that the information provided appears to be incomplete, e.g., if the name of only one official has been supplied.

26. If, after such further inquiry, a licensee is provided with the names and titles of additional officials, it must identify those persons and their titles in its political file. In cases where a licensee makes further inquiry yet is not provided with additional information, the licensee will be deemed to have discharged its duty by disclosing the information it has been given.⁶⁶

3. Political Matters of National Importance under Section 315(e)(1)(B)

27. For the purpose of applying section 315(e)(1)(B) of the Act,⁶⁷ we clarify that we will consider context in determining whether an advertisement communicates a message relating to a “political matter of national importance.”⁶⁸ As discussed below, the record generated in response to the complaints reflects conflicting views regarding the meaning and scope of this phrase. Although fulfillment of a licensee’s disclosure obligations under this provision will be determined on a case-by-case basis, we provide examples below to assist broadcasters in evaluating their obligations.

⁶² 47 U.S.C. § 315(e)(1) (providing that “a licensee shall maintain and make available for public inspection” certain records) (emphasis added). *See also* Complainants’ Consolidated Reply at 4 (asserting that section 315 imposes the disclosure burden on licensees, not advertisers, and that if information supplied by an advertiser is insufficient, then it is the station’s responsibility to obtain the requisite information).

⁶³ WFLA-TV Answer at 4, citing *Trumper Communications of Portland, Ltd.*, 11 FCC Rcd 20415, 20417 (MB 1996) (asserting that *Trumper* supports interpreting the relevant provisions as not requiring stations to act as private investigators in an effort to identify every officer or director of an entity purchasing programming that communicates a political matter of national importance).

⁶⁴ *See supra* note 1.

⁶⁵ WFLA-TV Answer at 4.

⁶⁶ We acknowledge that in some cases a sponsoring entity may in fact have only one officer or other official in one or more of the specified categories. In such instances, after the licensee has made the additional inquiry discussed above, the licensee will have satisfied its obligation to provide the “list” required by section 315(e)(2)(G) of the Act and section 73.1212(e) of our rules by identifying such officer or official in each of the relevant categories. Although WFLA-TV’s licensee maintains that it “had no way of knowing whether there were any additional officers/directors that should have been disclosed” because “the rules of the Federal Election Commission only require one named officer to form a political action committee,” *id.*, citing the FEC website at <http://www.fec.gov/info/toolkit.shtml>, and we acknowledge that the FEC allows political action committees to be formed with, and to identify in FEC Form 1, Statement of Organization, just a treasurer and a custodian of records (which may be the same person), *see* 11 CFR § 102.7, it is nonetheless incumbent upon FCC regulatees to make the additional inquiry as mentioned in the clarification above.

⁶⁷ 47 U.S.C. § 315(e)(1)(B).

⁶⁸ *Id.* § 315(e)(1)(B).

28. As noted above,⁶⁹ section 315(e)(1) of the Act requires that licensees maintain records for two types of requests to purchase political advertising time: those made by or on behalf of legally qualified candidates,⁷⁰ and those that communicate a message relating to “any political matter of national importance.”⁷¹ When Congress amended section 315 to include the latter category of broadcast messages, it provided in section 315(e)(1)(B) three examples of the kinds of messages that may constitute “political matters of national importance.”⁷² Specifically, section 315(e)(1)(B) requires broadcasters to maintain a political file for *any* request for political advertising time that “communicates a message relating to any political matter of national importance, including (i) a legally qualified candidate;⁷³ (ii) any election to Federal office;⁷⁴ or (iii) a national legislative issue of public importance.”⁷⁵

29. As a threshold matter, we interpret the items specified in section 315(e)(1)(B) – a “legally qualified candidate,” an “election to Federal office,” and a “national legislative issue of public importance” – to represent a nonexclusive list of examples of “political matters of national importance” that trigger a licensee’s obligation to maintain records of requests to purchase political advertising time. Our interpretation is supported by the language of section 315(e)(1)(B), which refers to “*any* political matter of national importance,”⁷⁶ and states that such matters “includ[e],”⁷⁷ and thus are not limited to, these three specified items.⁷⁸

⁶⁹ See *supra* para. 5 and note 24.

⁷⁰ 47 U.S.C. § 315(e)(1)(A).

⁷¹ *Id.* § 315(e)(1)(B).

⁷² This category was added to section 315 as a result of the Bipartisan Campaign Reform Act of 2002. *Supra* note 9.

⁷³ 47 U.S.C. § 315(e)(1)(B)(i).

⁷⁴ *Id.* § 315(e)(1)(B)(ii).

⁷⁵ *Id.* § 315(e)(1)(B)(iii) (emphasis added).

⁷⁶ See, e.g., *New York v. EPA*, 443 F.3d 880, 885 (D.C. Cir. 2006) (“[r]ead naturally, the word ‘any’ has an expansive meaning, that is ‘one or some indiscriminately of whatever kind’”); see also Merriam Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/any> (defining “any” to mean “one or some indiscriminately of whatever kind”; “every”).

⁷⁷ See, e.g., *Exxon v. Lujan*, 730 F. Supp. 1535, 1545 (D.Wyo. 1990), *aff’d*, 970 F.2d 757 (10th Cir. 1992) (“The use of the word ‘includes’ rather than ‘means’ in a definition indicates that what follows is a nonexclusive list which may be enlarged upon”); see also Merriam Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/include> (defining “include” to mean “to take in or comprise as a part of a whole or group”);

⁷⁸ 47 U.S.C. § 315(e)(1)(B) (requiring a licensee to maintain a complete record of a request to purchase political advertising time that “communicates a message relating to *any* political matter of national importance, *including* – (i) a legally qualified candidate; (ii) any election to [f]ederal office; or (iii) a national legislative issue of public importance”) (emphasis added). The overwhelming weight of authority—including decisions from the U.S. Supreme Court and the U.S. Courts of Appeal—indicates that the better reading of the word “including” is “by way of illustration” or “by way of example,” rather than indicating an exhaustive list. See, e.g., *Fed. Land Bank v. Bismarck Lumber Co.*, 314 U.S. 95, 100 (1941) (“the term ‘including’ is not one of all-embracing definition, but connotes simply an illustrative application of the general principle”); *Puerto Rico Maritime Shipping Auth. v. ICC*, 645 F.2d 1102, 1112 n. 26 (D.C.Cir.1981) (“It is hornbook law that the use of the word ‘including’ indicates that the specified list . . . that follows is illustrative, not exclusive.” (citation omitted)); *Cobell v. Norton*, 240 F.3d 1081, 1100 (D.C. Cir. 2001) (same and citing *Puerto Rico Maritime Shipping Auth. v. ICC*); *United States v. Vitillo*, 490 F.3d 314, 323 (3d Cir. 2007) (“[T]he [statutory] list that ‘includes’ the terms ‘servant,’ ‘employee,’ ‘partner, director, officer, manager, and representative’ is, by its own plain language, not exhaustive.”); *In re Kunz*, 489 F.3d 1072, 1078–79 (10th Cir. 2007) (“Courts have held that the use of the word ‘includes’ in this section indicates that Congress did not intend for the categories listed to be exclusive. Instead the categories are illustrative rather than exhaustive.”) (citation omitted); *United States v. Wyatt*, 408 F.3d 1257, 1261 (9th Cir. 2005) (“The use of the word ‘includes’ suggests the list is non-exhaustive rather than exclusive.”) (citation omitted); *United States v. Cianci*, 378

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30. In addition, we note that under section 315(e)(1)(B), a broadcast message must satisfy two requirements in order to trigger a licensee’s disclosure obligations. First, the message must be “political” in nature. Second, it must be of “national importance,” i.e., it must have significance on a national level. If a message relates to a “political matter” *and* is “of national importance,” the Act requires the licensee to disclose information about the message in its political file. We construe the term “political matters of national importance” to encompass political matters that have significance on a national level. Thus, as discussed below, we will consider context in determining whether an advertisement communicates a message relating to a “political matter of national importance.”

31. “*Legally Qualified Candidate*” under Section 315(e)(1)(B)(i). For purposes of section 315(e)(1)(B)(i), we interpret the phrase “legally qualified candidate” to mean legally qualified candidates for *federal* office. Section 315 uses different terms to describe the type of candidates covered, depending on the different subsection, including “legally qualified candidate,”⁷⁹ “legally qualified candidate for public office,”⁸⁰ “legally qualified candidate for *any* public office,”⁸¹ and “candidate for *Federal* office.”⁸² We find that interpreting the term “legally qualified candidate” in section 315(e)(1)(B)(i) to mean only candidates running for federal office is consistent with both the language and structure of section 315(e)(1)(B) as a whole. The introductory clause in section 315(e)(1)(B) contains a reference to matters of “national” importance, and the two other listed examples in that subsection (i.e., section 315(e)(1)(B)(ii), (iii)) reference “Federal” elections and “national” legislative issues.⁸³ Read in this context, we find it reasonable to conclude that Congress intended the political ads covered under section 315(e)(1)(B) to be those of a national character and, therefore, the term “legally qualified candidate” as used in that provision was intended to refer to only federal candidates. As noted below, it is possible that some ads concerning state and local candidates may qualify as raising “political matters of national importance,” but many will not—the purpose behind section 315(e)(1)(B)(i) is simply to make clear that all ads involving legally qualified candidates for federal office are covered.

32. We also conclude that it is reasonable to interpret the reference to a “legally qualified candidate” in section 315(e)(1)(B) more narrowly than other references to candidates in section 315 of the Act. For example, the equal opportunities, lowest unit charge, and comparable charge provisions of section 315(a) and 315(b), respectively, expressly apply to any legally qualified candidate “for any public office,” which includes federal, state, and local offices. Similarly, Congress’s use of the broader term “legally qualified candidate for public office” in section 315(e)(1)(A) was intended to require that stations maintain records of requests for broadcast time by all candidates -- federal, state and local. In contrast, Congress added the specific disclosure requirements under section 315(e)(1)(B) only for messages relating to political matters of “national importance” – including messages relating to “a legally qualified candidate.” Given that the language in section 315(e)(1)(B) references “political matter[s] of national importance,” inclusion of the word “Federal” in section 315(e)(1)(B)(i) was unnecessary to limit

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F.3d 71, 79 (1st Cir. 2004) (“The term’s flexibility is denoted by the use of the word ‘includes’ rather than ‘means’ or ‘is limited to’; it does not purport to be exhaustive.”) (citation omitted)); but see *United Services Auto. Ass’n v. Perry*, 886 F. Supp. 596, 609 (W.D. Tex. 1995) (“[W]hile ‘include’ may mean ‘for example,’ it may also mean ‘and’ or ‘in addition to’ or even ‘means’ What the word may mean in a particular case depends on the context, legislative history, and rules of construction.”) (citations omitted), rev’d on other grounds, *United States Auto. Ass’n v. Perry*, 102 F.3d 144 (5th Cir. 1996). In the instant case, we do not see any evidence of Congressional intent to ascribe to the word “including” any meaning other than the reading described above.

⁷⁹ 47 U.S.C. § 315(e)(1)(B)(i).

⁸⁰ 47 U.S.C. § 315(e)(1)(A).

⁸¹ See, e.g., 47 U.S.C. § 315(a), (b)(1) (emphasis added).

⁸² *Id.* § 315(b)(2)(A), (B) (emphasis added). By contrast, section 315(e)(1)(A) references the more general term “legally qualified candidate for public office.” *Id.* § 315(e)(1)(A).

⁸³ *Id.* § 315(e)(1)(B).

application of that provision to federal candidates. On the other hand, Congress's inclusion of the word "Federal" in section 315(b)(2)(A) and (B) was necessary to distinguish those provisions from other provisions in section 315(b) that apply to candidates for any public office.⁸⁴ Although we will consider context in evaluating whether any individual ad communicates a message relating to a political matter of national importance triggering disclosure obligations, an ad either supporting or opposing a candidate for federal office must be disclosed because a federal candidacy is considered such a matter for purposes of section 315(e)(1)(B)(i).

33. In addition, an advertisement that references a non-federal candidate would be covered by section 315(e)(1)(B) and consequently trigger record-keeping obligations if the ad also communicates a message that is political in nature and has national importance. For example, an advertisement that promotes the virtues of an individual running for governor and references the candidate's stance on immigration reform would have to be disclosed because immigration reform is an issue that is a political matter of national importance. By contrast, an ad promoting a gubernatorial candidate that does not reference issues considered or debated at the national level would not reasonably constitute a message having national importance and need not be disclosed.

34. In addition, we clarify that a legally qualified candidate for federal office need not be mentioned in connection with an election in order to trigger the obligation to maintain information about a particular advertisement under section 315(e)(1)(B)(i). Based on the record, parties appear to have differing views about the circumstances under which licensees are obligated to maintain political records for ads that mention a "legally qualified candidate" for public office. For example, Fox Television Stations, Inc., the licensee of Station KMSP-TV, suggests that it is obligated to disclose the name of the candidate and the office to which the candidate is seeking election only if the candidate is referenced in connection with an election.⁸⁵ By contrast, Complainants argue that the obligation to disclose this information is triggered whenever a legally qualified candidate for public office is referenced in a political advertisement, even if that candidate is not mentioned in connection with an election.⁸⁶

35. We agree with Complainants' interpretation. As explained above, the categories listed in section 315(e)(1)(B)(i), (ii), and (iii),⁸⁷ are examples of "political matters of national importance," the reference to *any one of which* in an advertisement may, when considered in context, trigger disclosure obligations.⁸⁸ Thus, an ad triggers the obligation to disclose information specified in section 315(e)(2) if it references a legally qualified candidate but not an election to federal office and vice versa. Contrary to the suggestion of Fox Television Stations,⁸⁹ nothing in section 315(e)(1) or (e)(2) requires that a candidate be mentioned in connection with an election in order to trigger disclosure requirements. Moreover, we find that use of the word "or" in section 315(e)(1)(B) indicates that Congress contemplated that each of the items listed in that provision could independently trigger record-keeping obligations. Thus, the reference to a legally qualified candidate and an election to federal office are independent criteria, either of which may trigger appropriate disclosure.

⁸⁴ See, e.g., *id.* § 315(b)(1). For these reasons, we reject the Bureau's interpretation of section 315(e)(1)(B)(i) in the rescinded Bureau order. *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, para. 30 (MB rel. Jan. 6, 2017).

⁸⁵ KMSP-TV Answer at 3-4 ("The American Encore advertisement does not mention Senator Franken in reference to any election.").

⁸⁶ Complainants' Consolidated Reply at 7-8.

⁸⁷ They are: (i) a legally qualified candidate; (ii) any election to federal office; or (iii) a national legislative issue of public importance.

⁸⁸ However, if the advertisement is made by or on behalf of a legally qualified candidate for public office under section 315(e)(1)(A), disclosure requirements are automatically triggered without regard to context.

⁸⁹ KMSP-TV Answer at 3.

36. “*Any Election to Federal Office*” under Section 315(e)(1)(B)(ii). We will also consider context in evaluating ads that reference an “election to Federal office” under section 315(e)(1)(B)(ii).⁹⁰ Again, only ads that communicate a message relating to a political matter of national importance trigger a record-keeping obligation. For example, a commercial advertisement by an auto dealership that announces the sale of new cars to celebrate an upcoming presidential election would not reasonably be deemed to be a message that is political in nature. As a result, such an ad, despite having referenced an “election to Federal office,” would not constitute a message relating to a political matter of national importance and, thus, would not have to be reported by a station in its political file.

37. “*National Legislative Issue of Public Importance*” under Section 315(e)(1)(B)(iii). With respect to section 315(e)(1)(B)(iii), we interpret the term “national legislative issue of public importance” to refer to an issue that is the subject of federal legislation that has been introduced and is pending in Congress at the time a request for air time is made. By using the term “national” to qualify the type of legislative issues involved, we believe Congress contemplated only federal legislation, not State or local legislation. Furthermore, we believe that “national legislative issues of public importance” involves only pending legislation; that is, legislation that has been introduced in the current Congress and bears a current House of Representatives or Senate number. We conclude that construing the term “national legislative issue of public importance” otherwise to include legislation that has been signed into law, may be introduced in the future, or has been introduced but rejected, would expand the term to include matters that are not (or are no longer) live controversies before the legislative body, and thus not likely to qualify as ‘legislative issues’ subject to section 315(e). We also believe that this interpretation is reasonable and strikes an appropriate balance between providing guidance that is readily administrable and BCRA’s purpose to foster greater public access to information about political ads.⁹¹

38. We note that not every ad that references a “national legislative issue of public importance,” however, will automatically trigger the disclosure requirement. The disclosure obligation will also turn on whether the ad “communicates a message relating to” a political matter of national importance.⁹² Consider, for example, an advertisement that promotes the sale of power-operated wheelchairs and briefly mentions that the cost to consumers will be covered by Medicare (where Medicare is the subject of federal legislation that was introduced and is pending in the current Congress). While Medicare coverage would, under such circumstances, constitute a “national legislative issue of public importance,” its reference in this particular advertisement, when considered in context, would not trigger the disclosure requirement because the ad is not “communicating a message relating to” a political matter of national importance; rather, Medicare is simply being mentioned peripherally to help sell a commercial product. Thus, disclosure would not be required. Conversely, stations should be mindful that an ad referencing a political issue that is the subject of controversy and/or discussion at the national level could constitute a “political matter of national importance” (and therefore require disclosure) even if the issue did not necessarily fit within the narrow definition of a “national legislative issue of public importance” because, as explained above, the list of examples contained in section 315(e)(1)(B) is not exhaustive.⁹³ Thus, an ad that communicates a message about “any political matter of national importance” will trigger the disclosure requirement.

⁹⁰ 47 U.S.C. § 315(e)(1)(B)(ii).

⁹¹ For these reasons, we reject the Bureau’s interpretation of section 315(e)(1)(B)(iii) in the rescinded Bureau order. *See 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, para. 34 (MB rel. Jan. 6, 2017).

⁹² 47 U.S.C. 315(e)(1)(B).

⁹³ *See supra* para. 29.

C. Individual Complaints

39. In this section, we address the merits of Complainants' allegations with respect to each of the above-captioned licensees. For the reasons explained below, we admonish eight of the 11 licensees for their willful and/or repeated violations of section 315(e) of the Act, where their conduct violated the clear mandate of the statute. Although we do not rule out more severe sanctions for a violation of this nature in the future, we believe that in these particular circumstances, the issuance of admonishments will send an appropriate message to the individual licensees and the industry as a whole of the Commission's continuing commitment to ensuring the integrity of its rules relating to political files. We decline to take enforcement action in those instances in which a licensee's actions were inconsistent with the obligations that we clarify in this Order. Going forward, we expect all entities that receive requests for political advertising time that trigger disclosure requirements under section 315(e)(1) to place in their political files immediately the specific items of information required by section 315(e)(2), as clarified.

1. Station WTVT(TV), Tampa, FL

40. We admonish New World Communications of Tampa, Inc. (New World), the licensee of Station WTVT(TV), for maintaining a record in its political file for a Democratic Congressional Campaign Committee⁹⁴ advertisement that did not disclose any political matters of national importance that were communicated in the ad, in willful violation of section 315(e)(2)(E) of the Act.⁹⁵ The ad referenced David Jolly, a legally qualified candidate in the special election for the 2014 U.S. House of Representatives in Florida, and criticized his "lobbying for special interests that received over three million in taxpayer-funded earmarks" at a time that the U.S. "face[d] record debt."⁹⁶ Although the station placed a record of the ad in its political file, it failed to specifically disclose either the candidate or the reference to national debt, both of which are political matters of national importance.⁹⁷ New World concedes that the ad triggered disclosure requirements under section 315(e)(1)(B) because it referenced a legally qualified candidate.⁹⁸

41. New World argues, however, that "the ad in question did not address a 'national legislative issue of public importance.' The ad attacks Jolly's record as a lobbyist and notes America is facing record debt. There is no national legislative issue presented in the ad."⁹⁹ Furthermore, New World claims that even if the ad had referenced a national legislative issue of public importance, the station had the option to disclose either the issue or the candidate.¹⁰⁰ As clarified above, all references to political matters of national importance (including, but not limited to, a legally qualified candidate, an election to federal office, and a national legislative issue of public importance) in each ad must be disclosed in a station's political file.¹⁰¹ Even assuming, *arguendo*, that the subject ad had referenced only one political

⁹⁴ The Democratic Congressional Campaign Committee describes itself as "the official campaign arm of the Democrats in the House of Representatives." See <http://dccc.org/about/>.

⁹⁵ 47 U.S.C. § 315(e)(2)(E).

⁹⁶ WTVT(TV) Complaint at 3-4. The national debt, including its effect on the economy, is a subject of continuing debate, dialogue, news reports, and controversy affecting the nation as a whole. Thus, we believe that, in context, the reference to the national debt in the subject ad constituted a political matter of national importance that New World should have disclosed in Station WTVT(TV)'s political file.

⁹⁷ New World states that Station WTVT(TV) determined that the "advertisement communicated a message relating to a legally qualified candidate which implicated an election for federal office. The station thus placed the record [of the ad] in the public file. . . ." WTVT(TV) Answer at 2.

⁹⁸ *Id.*

⁹⁹ *Id.* at 3-4.

¹⁰⁰ *Id.* at 4.

¹⁰¹ *Supra* paras. 12-20.

matter of national importance (i.e., a legally qualified candidate) rather than two (the second being the reference to the national debt), New World failed to identify the one political matter that it acknowledges was referenced in the ad. Had New World disclosed either the candidate or the issue, we would have refrained in this instance from taking action in light of the fact that the conduct occurred before our clarification. However, because New World disclosed neither political matter of national importance communicated in the ad, we conclude that an admonishment is warranted.

2. Station WFLA-TV, Tampa, FL

42. We admonish Nexstar Broadcasting, Inc. (Nexstar), the licensee of Station WFLA-TV,¹⁰² for the station's conduct in maintaining a record in its political file for a National Republican Congressional Committee (NRCC)¹⁰³ advertisement that did not disclose any political matters of national importance communicated in the ad, in willful violation of section 315(e)(2)(E) of the Act.¹⁰⁴ The subject advertisement compared and contrasted the opposing positions of two competing candidates for the U.S. House of Representatives on two controversial matters of national significance -- the Affordable Care Act and a balanced budget.¹⁰⁵ The licensee of Station WFLA-TV acknowledged that the station's political file did not disclose either the issues or the candidates.¹⁰⁶

43. Nexstar claimed that the public could have ascertained from other information in the station's political file the identities of the candidates mentioned in the ad.¹⁰⁷ In particular, it asserted that based on its identification of the NRCC as the sponsor of the ad, information about the NRCC on that organization's website, and the timing of the ad (just prior to a special election for U.S. House of Representatives), the identity of the candidates should have been evident to anyone reviewing the file.¹⁰⁸ We find this argument unpersuasive. Section 315(e)(2)(E) of the Act expressly requires that a licensee's political file contain, among other things, "the name of the candidate" to which an advertisement refers.¹⁰⁹ In addition, we find that requiring the public to "connect the dots" in order to determine the identity of candidates mentioned in an ad, or any other information required to be disclosed under section

¹⁰² See *supra* note 1.

¹⁰³ The NRCC describes itself as "a political committee devoted to increasing the Republican majority in the U.S. House of Representatives." See <https://www.nrcc.org/about/>.

¹⁰⁴ 47 U.S.C. § 315(e)(2)(E). Complainants also allege that Station WFLA-TV violated section 315(e)(2)(G) of the Act and section 73.1212(e) of the Commission's rules by failing to maintain a list of the NRCC's board of directors or chief executive officers. WFLA-TV Complaint at 7. The licensee of WFLA-TV argued that it disclosed the NRCC's Treasurer in the station's political file, and that it had no way of knowing that there were other officials that should be disclosed because Federal Election Commission rules generally require only one named officer (usually a treasurer) to form a political action committee. WFLA-TV Answer at 4. Because we clarify in this Order how licensees should proceed in situations where they are provided with the name of only one officer or other like official, *supra* paras. 21-26, we take no enforcement action for the failure to identify all such officials in Station WFLA-TV's political file.

¹⁰⁵ WFLA-TV Complaint at 3-4. We agree with Complainants that the Affordable Care Act (also referred to as "Obamacare") may be the "quintessential legislative and controversial issue of public importance: it was President Obama's key initiative and has been the subject of nationwide debate and court challenges, including at the Supreme Court." *Id.* at 6. The matter of a balanced budget also is a subject of continuing debate, dialogue, news reports, controversy, and national importance. In the context in which they were discussed, these issues and candidates constituted political matters of national importance. The licensee of WFLA-TV did not contend otherwise.

¹⁰⁶ WFLA-TV Answer at 2-3.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ 47 U.S.C. § 315(e)(2)(E).

315(e)(2)(E), would improperly shift to the public a burden that Congress expressly imposed on licensees in section 315(e)(1).

44. We also reject the licensee's contention that by including other information about the ad in the station's file (such as the rates charged and the dates and times the ads aired), the information in the file "met the Commission's policy goal that 'the disclosures included in the political file [should] further the First Amendment's goal of an informed electorate that is able to evaluate the validity of messages and hold accountable the interests that disseminate political advocacy.'"¹¹⁰ We agree with Complainants that the statute does not require licensees to disclose "just enough information for viewers to infer the candidates, elections, and issues mentioned by an ad based on political party leanings or names of groups," and that a licensee's "[failure] to disclose information required by law does not inform the electorate."¹¹¹ It is not enough for a licensee to provide the information in its political file required by sections 315(e)(2)(A), (B), (C) and/or (D). It also must provide the information required by sections 315(e)(2)(E), (F), and/or (G), as applicable.

45. Nexstar further argued in mitigation of a sanction that it provided public and political file training to its employees prior to the complaint and continued to do so after the Complaint was filed.¹¹² While we recognize the licensee's efforts to train its staff in maintaining the station's public and political files, it is apparent that these efforts were not completely effective, and in any case they do not provide a basis for excusing its misconduct. Given that WFLA-TV did not identify any political matters of national importance communicated in the NRCC ad, we admonish the licensee of Station WFLA-TV for the station's transgressions.

3. Station WTVJ(TV), Miami, FL

46. We admonish NBC Telemundo License, LLC (NBC Telemundo), the licensee of Station WTVJ(TV), for maintaining a record in its political file for a LIBRE Initiative¹¹³ advertisement that did not disclose any political matters of national importance that were communicated in the ad, in willful violation of section 315(e)(2)(E) of the Act.¹¹⁴ The LIBRE advertisement opposed the Affordable Care Act, arguing that premiums were going up and health policies were being cancelled. NBC Telemundo states that the ad referenced a national legislative issue of public importance and that the station did not identify that issue in the station's political file.¹¹⁵

47. The ad also questioned why a particular politician had supported the law.¹¹⁶ Complainants allege that NBC Telemundo violated section 315(e)(2)(E) by failing to identify in the station's political file that individual, whom Complainants asserted was a candidate for U.S. House of Representatives.¹¹⁷ However, NBC Telemundo maintains that it was not obligated to identify the politician mentioned in the ad because he was not a legally qualified candidate under Florida law and the

¹¹⁰ WFLA-TV Answer at 3 (citing *Enhanced Disclosure Order*, 27 FCC Rcd 4535 (2012)).

¹¹¹ Complainants' Consolidated Reply at 8-9.

¹¹² WFLA-TV Answer at 4-5.

¹¹³ The LIBRE Initiative describes itself as "a 501(c)(4) non-partisan, non-profit grassroots organization that advances the principles and values of economic freedom to empower the U.S. Hispanic community." See <http://thelibreinitiative.com/about-us>.

¹¹⁴ 47 U.S.C. § 315(e)(2)(E).

¹¹⁵ WTVJ(TV) Answer at 1-2. We need not address the scope of the "national legislative issue of public importance" as applied to the ACA here, however, because in the context in which it discussed the ACA the ad communicated a message relating to a political matter of national importance.

¹¹⁶ WTVJ(TV) Complaint at 3.

¹¹⁷ *Id.* at 6.

Commission's rules at the time the ad aired.¹¹⁸ Complainants concede that point.¹¹⁹ We find no basis for enforcement action with regard to the station's failure to disclose the name of an individual who was not at the time a legally qualified candidate for public office under our rules.¹²⁰

48. NBC Telemundo argues in mitigation of a sanction that Station WTVJ(TV)'s political file previously contained the information required by sections 315(e)(2)(A)-(D) and it has taken remedial action to ensure that the additional information required by section 315(e)(2)(E) also is placed in the file.¹²¹ We see no basis for mitigation. Licensees are required to provide all of the information required under section 315(e)(2), as applicable. Furthermore, remedial measures do not constitute a basis for mitigating or eliminating a sanction.¹²² Given that the ad communicated a political matter of national importance requiring disclosure, and NBC Telemundo failed to include that information in Station WTVJ(TV)'s political file, we admonish NBC Telemundo.

4. Station WTVD(TV), Durham, NC

49. We admonish WTVD Television, LLC (WTVD), the licensee of Station WTVD(TV), for maintaining a record in its political file for an American Crossroads¹²³ advertisement that did not disclose any political matters of national importance that were communicated in the ad, in willful violation of section 315(e)(2)(E) of the Act.¹²⁴ The ad compared and contrasted the opposing positions of two competing candidates for the U.S. Senate on, among other things, the Affordable Care Act and the national debt.¹²⁵ In its response on behalf of WTVD, ABC, Inc. (ABC) concedes that the advertisement communicated a message relating to political matters of national importance, which were not disclosed in its political file.¹²⁶ Because ABC failed to disclose any of the information it concedes was required by section 315(e)(2)(E), we conclude that an admonishment is warranted.

¹¹⁸ WTVJ(TV) Answer at 2-3.

¹¹⁹ Complainants' Consolidated Reply at n. 2.

¹²⁰ See 47 CFR § 73.1940.

¹²¹ WTVJ(TV) Answer at 2.

¹²² See, e.g., *San Jose Navigation, Inc.*, 22 FCC Rcd 1040, 1043 (2007) ("It is the Commission's long-standing policy . . . that corrective measures implemented after Commission inquiry or enforcement action do not nullify past violations and thus do not warrant reduction or cancellation of forfeiture liability"); *TCI Cablevision of Maryland, Inc.*, 7 FCC Rcd 6013, 6014, para. 8 (1992) (rejecting a claim that subsequent corrective actions mitigate past violations because it "would tend to encourage remedial rather than preventative action"); *Cate Communications Corp.*, 60 RR2d 1386 (1986) (rejecting a claim that a licensee should be excused from past violations because of subsequent remedial measures). See also *Behringer USA, Inc.*, 21 FCC Rcd 1820, para. 24 (2006) ("implementation of corrective measures in response to an LOI is expected, and thus does not nullify or mitigate past violations"); *ACR Electronics, Inc.*, 19 FCC Rcd 22293, 22304, para. 25 (2004), *forfeiture ordered*, 21 FCC Rcd 3698 (2006) (the Commission expects that corrective action will be implemented to bring past violations into compliance. However, such corrective action does not nullify or mitigate past marketing violations, and thus does not warrant any reduction in the proposed forfeiture); *AT&T Wireless Services, Inc.*, 17 FCC Rcd 7891 (2002), *forfeiture ordered*, 17 FCC Rcd 21866, 21875, para. 26 (2002) (all licensees and Commission regulatees are expected to promptly take corrective action when violations are brought to their attention); *Seawest Yacht Brokers*, 9 FCC Rcd 6099, para. 7 (1994) (corrective action taken to come into compliance with Commission rules or policy is expected and does not nullify or mitigate any prior forfeitures or violations).

¹²³ American Crossroads describes itself as "registered with the Federal Election Commission as an independent expenditure committee." See <https://www.americancrossroads.org/donate/>.

¹²⁴ 47 U.S.C. § 315(e)(2)(E).

¹²⁵ WTVD(TV) Complaint at 2-3.

¹²⁶ WTVD(TV) Answer at 3.

50. ABC asserts in defense of WTVD that the station's political file disclosed other information required by sections 315(e)(2)(B), (C), and (G) of the Act (i.e., the rate charged, the date and time on which the ad was broadcast and the name of the sponsor, and the name and telephone number of a contact person for the sponsor).¹²⁷ Such disclosures, however, do not excuse WTVD's failure to provide specific information about legally qualified candidates and other political matters of national importance required by section 315(e)(2)(E). WTVD also maintains that its failure to comply with section 315(e)(2)(E) was attributable to "administrative oversight"¹²⁸ and that it took subsequent action to remedy its omission.¹²⁹ Such explanation and remedial measures, however, provide no bases for excusing its misconduct.¹³⁰

5. Station WWJ-TV, Detroit, MI

51. We admonish CBS Broadcasting, Inc. (CBS), the licensee of WWJ-TV, for maintaining a record in its political file for a Senate Majority PAC¹³¹ advertisement that did not disclose any political matters of national importance that were communicated in the ad, in willful violation of section 315(e)(2)(E) of the Act.¹³² The ad mentioned a legally qualified candidate for the U.S. Senate, Terri Lynn Land, arguing that she was being influenced by large donors and taking positions on controversial healthcare policy (including cuts to, and the rising costs of, preventative care for women) that would hurt average Americans.¹³³ CBS argues that it was required under section 315(e)(2)(E) to disclose the name of the candidate *or* the issue, but concedes that its political file did not contain information about either.¹³⁴

52. As discussed above, we clarify in this Order that section 315(e)(2)(E) requires the disclosure of all federal candidates and issues (and federal elections, as applicable) referenced in each ad which, when considered in context, constitute a political matter of national importance.¹³⁵ In those cases before us where the conduct in question occurred before release of the instant order and a licensee has disclosed some, but not all, such information in its political file, we take no enforcement action. However, here, CBS failed to disclose any of the information required by section 315(e)(2)(E) with respect to the subject advertisement (i.e., neither the candidate nor the issue). Additionally, while CBS

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Supra* note 122. Complainants also allege that WTVD violated section 315(e)(2)(G) of the Act and section 73.1212(e) of the Commission's rules by providing the name of only one official of the sponsoring entity in its political file, rather than a "list" of officials. WTVD(TV) Complaint at 7. Because the subject disclosure was made prior to the issuance of our clarification regarding licensees' obligations to identify officials of sponsoring entities under these provisions, we decline to take enforcement action against WTVD for this alleged violation.

¹³¹ Senate Majority PAC describes itself as a political action committee that "seeks the election of Democratic U.S. Senators." See <http://www.senatemajority.com/about/>.

¹³² 47 U.S.C. § 315(e)(2)(E).

¹³³ WWJ-TV Complaint at 2-3. Health care reform is a subject of continuing controversy, debate, dialogue, news reports, and national importance affecting millions of Americans. In the context in which it was discussed, the subject of health care reform constituted a political matter of national importance within the meaning of section 315(e)(1)(B) of the Act.

¹³⁴ WWJ-TV Answer at 1-2. CBS asserts that it placed an incorrect NAB PB-18 form (relating to a previous order by the sponsoring entity in 2013) in the Station WWJ-TV political file. *Id.* at 1.

¹³⁵ *Supra* paras. 12-20.

asserts that it has taken corrective measures to ensure that the station's political file is complete,¹³⁶ as noted above, such remedial action provides no basis for excusing its misconduct.¹³⁷

6. Station KNXV-TV, Phoenix, AZ

53. We admonish Scripps Broadcasting Holdings LLC (Scripps), the licensee of Station KNXV-TV, for maintaining a record in its political file for a House Majority PAC¹³⁸ advertisement that did not disclose any political matters of national importance that were communicated in the ad, in willful violation of section 315(e)(2)(E) of the Act.¹³⁹ The House Majority PAC advertisement advocated for the reelection of U.S. Representative Ann Kirkpatrick from Arizona's 1st Congressional District by highlighting how she had worked to fix the Affordable Care Act's HealthCare.gov website, which the ad characterized as "disastrous." The ad also claimed that the candidate had sought to prevent insurance companies from denying coverage for pre-existing conditions or dropping coverage when a patient becomes ill.¹⁴⁰ Scripps concedes that KNXV-TV's political file failed to disclose the name of the candidate, the office sought, or the issue referenced in the ad.¹⁴¹

54. Although Scripps maintains that it disclosed other information required by section 315(e)(2),¹⁴² such disclosure does not excuse its failure to disclose the specific information required by section 315(e)(2)(E). Moreover, the fact that Scripps subsequently took corrective action to address the deficiencies in KNXV's political file¹⁴³ provides no grounds for excusing its misconduct.¹⁴⁴

7. Station WMUR-TV, Manchester, NH

55. We admonish Hearst Properties, Inc. (Hearst), the licensee of Station WMUR-TV, for maintaining a record in its political file for an Americans For Prosperity¹⁴⁵ advertisement that did not disclose any political matters of national importance that were communicated in the ad, in willful

¹³⁶ WWJ-TV Answer at 1-2.

¹³⁷ *Supra* note 122. Complainants also allege that Station WWJ-TV violated section 315(e)(2)(G) of the Act and section 73.1212(e) of the Commission's rules by maintaining a political file for the ad that disclosed the name of only one official of the sponsoring entity, rather than a "list" of officials. WWJ-TV Complaint at 6. Because the subject disclosure was made prior to the issuance of our clarification regarding licensees' obligations to identify officials of sponsoring entities under these provisions, we decline to take enforcement action against CBS for this alleged violation.

¹³⁸ House Majority PAC describes itself as a political action committee that seeks to "help Democrats win a majority in the House." See <https://secure.actblue.com/contribute/page/hmp20141?refcode=mainpage>.

¹³⁹ 47 U.S.C. § 315(e)(2)(E).

¹⁴⁰ KNXV-TV Complaint at 3. The subject of health care coverage is a matter of continuing controversy, debate, dialogue, news reports, and intense political deliberations of national importance. In this context, the reference to health care coverage (including the HealthCare.gov website and actions of health insurance companies) communicated a message relating to a political matter of national importance.

¹⁴¹ KNXV-TV Answer at 1.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Supra* note 122. Complainants also allege that Station KNXV-TV violated section 315(e)(2)(G) of the Act and section 73.1212(e) of the Commission's rules by maintaining a political file that disclosed the name of only one official of the sponsoring entity, rather than a "list" of officials. KNXV-TV Complaint at 6. Because the subject disclosure was made prior to our clarification regarding licensees' obligations to identify officials of sponsoring entities under these provisions, we decline to take enforcement action against Scripps for this alleged violation.

¹⁴⁵ Americans for Prosperity describes itself as "a § 501(c)(4) entity, as determined by the Internal Revenue Service." See <https://americansforprosperity.org/donate-today/>.

violation of section 315(e)(2)(E) of the Act.¹⁴⁶ The Americans for Prosperity advertisement was critical of the Affordable Care Act and of Ann McLane Kuster, candidate for the U.S. House of Representatives, for her support of it.¹⁴⁷ Hearst concedes that the station's political file omitted the name of both the legally qualified candidate¹⁴⁸ and the issue¹⁴⁹ referenced in the ad. Had Hearst disclosed either the candidate or the issue, we would have refrained in this instance from taking action in light of the fact that the conduct occurred before the issuance of the instant order. However, here, Hearst failed to disclose any of the information required by section 315(e)(2)(E) with respect to the subject advertisement.

56. Hearst asserts that it has since conducted a review of its political file and taken steps to correct its omissions.¹⁵⁰ As noted above, however, the fact that a licensee may have corrected deficiencies in its political file and instituted measures to ensure future compliance with section 315(e) provide no grounds for excusing its misconduct.¹⁵¹

8. Station WDIV-TV, Detroit, MI

57. We admonish Graham Media Group (Graham Media), the licensee of Station WDIV-TV, for failing to disclose any officials of the sponsoring entity of an Americans for Prosperity¹⁵² advertisement, and for failing to place required materials in the file in a timely manner, in willful violation of sections 315(e)(2)(G) and 315(e)(3) of the Act.¹⁵³ The ad mentioned U.S. Representative Gary Peters, who was running for the U.S. Senate from Michigan, and his support for the Affordable Care Act, under which, according to the ad, health care premiums were skyrocketing and 225,000 Michigan residents had lost health insurance coverage.¹⁵⁴ Complainants allege that the political file for Station WDIV-TV was deficient because it did not disclose the candidate, and it incorrectly identified the issue as "Americans for Prosperity."¹⁵⁵ Complainants further argue that the political file did not disclose a list of officers of the sponsoring entity, and materials were placed into the file in an untimely manner.¹⁵⁶

58. In its response on behalf of Station WDIV-TV, Post-Newsweek Stations, Inc. (Post-Newsweek), the parent company of the licensee of WDIV-TV, argues that the order form in the political

¹⁴⁶ 47 U.S.C. § 315(e)(2)(E). *See also* WMUR-TV Complaint at 6-7.

¹⁴⁷ *Id.* at 3.

¹⁴⁸ WMUR-TV Answer at 1. Hearst states that the Complaint erroneously identified Carol Shea-Porter as the candidate whose identity was not properly disclosed in the Station WMUR-TV political file. *Id.* at 1 and n. 1.

¹⁴⁹ *See* WMUR-TV Answer at 1.

¹⁵⁰ WMUR-TV Answer at 1-2.

¹⁵¹ *Supra* note 122. Complainants also allege that Station WMUR-TV violated section 315(e)(2)(G) of the Act and section 73.1212(e) of the Commission's rules by maintaining a political file that disclosed the name of only one official of the sponsoring entity, rather than a "list" of officials. WMUR-TV Complaint at 6-7. Because the subject disclosure was made prior to our clarification regarding licensees' obligations to identify officials of sponsoring entities under these provisions, we decline to take enforcement action against Hearst for this alleged violation.

¹⁵² Americans for Prosperity describes itself as "a § 501(c)(4) entity, as determined by the Internal Revenue Service." *See* <https://americansforprosperity.org/donate-today/>.

¹⁵³ 47 U.S.C. §§ 315(e)(2)(G), 315(e)(3). *See also* WDIV-TV Complaint at 6-7.

¹⁵⁴ *Id.* at 3-4. According to Complainants, the Affordable Care Act is "the quintessential legislative and controversial issue of public importance. It was President Obama's key initiative and has been the subject of nationwide debate and court challenges, including at the Supreme Court." *Id.* at 6. We agree. In the context in which it was discussed, the references to the Affordable Care Act constituted a political matter of national importance.

¹⁵⁵ *Id.* at 6-7.

¹⁵⁶ *Id.* at 7-8.

file noted that the ad's subject was "Anti-Peters Senate Race."¹⁵⁷ Post-Newsweek asserts that this disclosure satisfied the requirements of section 315(e)(2)(E) by disclosing the name of the candidate (and the office sought).¹⁵⁸ Post-Newsweek concedes that the station's file did not identify the issue, but argues that under section 315(e)(2)(E), it had the discretion to identify either the candidate or the issue in its political file.¹⁵⁹ Post-Newsweek also concedes that it did not identify a list of officers.¹⁶⁰

59. As a threshold matter, we believe that it is prudent for licensees to identify candidates in their political files by their full names whenever possible. This practice is consistent with maintaining a "complete" record. However, contrary to complainant's assertions, we find, on balance, that the reference to "Anti-Peters Senate Race" was adequate to identify the candidate and the office being sought.¹⁶¹ U.S. Senate races generally are not obscure contests, and it is reasonable to assume in this instance that interested parties examining the political file for this ad would have been able to draw from the information provided that Gary Peters was running for the office of United States Senator.¹⁶² The Senate race in Michigan was apparently hotly contested and the name of Gary Peters likely was familiar to many viewers given his status as a U.S. Congressman at the time.¹⁶³ Graham Media adequately disclosed in WDIV-TV's political file the name of the candidate and the office sought, but omitted information about the issue referenced in the ad. Because the subject disclosure was made prior to the issuance of our clarification that licensees must disclose all political matters of national importance referenced in a political ad that they broadcast, we decline to take enforcement action against WDIV-TV for this alleged violation.

60. Post-Newsweek does not dispute that WDIV-TV's political file did not include a list of officers or like officials of the sponsoring organization as required under section 315(e)(2)(G). Had Post-Newsweek identified even one officer, we would have refrained in this instance from taking action in light of the fact that the conduct occurred before the issuance of the instant order. However, here, the licensee did not identify any officers or other like officials of the sponsoring organization.

¹⁵⁷ WDIV-TV Answer at 3.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 2-3.

¹⁶⁰ *Id.*

¹⁶¹ 47 U.S.C. § 315(e)(2)(E).

¹⁶² For these reasons, we reject the Bureau's determination in the rescinded Bureau order that in this instance, the political file for Station WDIV-TV did not adequately identify the candidate. *See 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, para 58 (MB rel. Jan. 6, 2017). Unlike Station WFLA-TV (discussed at paras. 44-47 *supra*), which failed to identify any names of candidates that were the subject of ads it aired, Station WDIV-TV identified the last name of the candidate referenced in its ad as well as the fact that he was running for Senate, which in this particular context we find provided sufficient information to inform the public that the ad mentioned Gary Peters, a candidate for the U.S. Senate.

¹⁶³ *See, e.g.*, http://www.southbendtribune.com/news/politics/senate-race-hotly-contested-in-michigan/article_a37b2fdc-0511-51f2-bc87-494f834bb167.amp.html (describing the Senate race in Michigan as "hotly contested" and one that, at the time, "spurred heavy interest and out-of-state contributions.").

61. With regard to the allegation that the station failed to place materials into its political file in a timely manner, section 315(e)(3) provides, in pertinent part, that “[t]he information required under this subsection shall be placed in a political file *as soon as possible*”¹⁶⁴ In this context, the Commission has defined the phrase “as soon as possible” to mean “immediately absent unusual circumstances.”¹⁶⁵ Post-Newsweek concedes, as alleged by Complainants,¹⁶⁶ that while it placed a record of the orders in WDIV-TV’s political file on January 17, 2014, two days before the spots started airing, it has no record that the final dispositions of the orders were placed in the file before April 1, 2014.¹⁶⁷ Post-Newsweek does not claim the existence of unusual circumstances that prevented it from placing the final dispositions of these orders in its political file in a timely manner. Under the circumstances, we find that Post-Newsweek’s delay in placing required materials into WDIV-TV’s political file failed to meet the requirements of section 315(e)(3) of the Act.¹⁶⁸

62. Based on the foregoing, we admonish Graham Media for not disclosing in Station WDIV-TV’s political file the names and titles of any officials of the sponsoring entity, and placing materials in the station’s political file in an untimely manner.

9. Station KMSP-TV, Minneapolis, MN

63. We do not take enforcement action against Fox Television Stations, Inc. (Fox), the licensee of Station KMSP-TV, in connection with the information it disclosed for an American Encore advertisement.¹⁶⁹ The advertisement mentioned Senator Al Franken, who was then a legally qualified candidate for election to the U.S. Senate, and his support for an Internal Revenue Service (IRS) proposed rulemaking involving the activities of certain non-profit organizations, which the sponsor argued would have adverse First Amendment implications.¹⁷⁰ Neither the candidate nor the proposed rulemaking was disclosed in the Station’s political file.

64. Fox acknowledges that the ad referenced Senator Al Franken, but maintains that it was under no obligation to identify him in Station KMSP-TV’s political file because the ad did not mention the candidate in connection with an election.¹⁷¹ We find that the ad triggered disclosure requirements

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

¹⁶⁵ 47 CFR § 73.1943(c).

¹⁶⁶ WDIV-TV Complaint at 7-8.

¹⁶⁷ WDIV-TV Answer at 3.

¹⁶⁸ Placing information in a political file about the disposition of an order is particularly important because the disposition contains information about “the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.” See 47 CFR. § 73.1943(a). Such information about the ultimate *disposition* of an order frequently differs from information that also is required to be placed in a station’s political file about the initial *request* to purchase political advertising time.

¹⁶⁹ American Encore describes itself as “an IRS-recognized nonprofit social welfare organization organized under section 501(c)(4) of the Internal Revenue Code.” See <https://transact.com/Donate/EN4LPQ/AmericanEncore/>.

¹⁷⁰ KMSP-TV Complaint at 4. In late 2013, the IRS proposed new regulations to “provide guidance to tax-exempt social welfare organizations on political activities related to candidates that will not be considered to promote social welfare.” 78 Fed. Reg. 71535 (Nov. 29, 2013). According to Complainants, “IRS rulemakings and First Amendment speech issues are subject to nationwide debate and media coverage, and impact citizens across the country.” KMSP-TV Complaint at 6. We agree with Complainants’ assertion and conclude that in the context in which it referenced the proposed IRS rule, the American Encore advertisement communicated a political matter of national importance. We also conclude that the ad communicated an additional message relating to a political matter of national importance by its reference to Senator Al Franken, a legally qualified federal candidate. Because the ad triggered disclosure requirements under section 315(e)(1)(B), the station was required to place in its political file, among other things, the items of information required by section 315(e)(2)(E).

¹⁷¹ *Id.* KMSP-TV Answer at 3-4.

under section 315(e)(1)(B) because it referenced a legally qualified federal candidate.¹⁷² As discussed above, we clarify that a candidate need not be mentioned in connection with the specific election in which he or she is running in order to trigger disclosure requirements.¹⁷³

65. Fox states that, in response to the Complaint, “KMSB-TV reviewed the content of the advertisement and determined that section 315(e)(1) was implicated because the ad addressed [the IRS proposed rulemaking]...”¹⁷⁴ Fox specifically states that the IRS rulemaking constituted a “national legislative issue of public importance.”¹⁷⁵ Contrary to Fox’s statement, we clarify that the ad’s reference to an IRS proposed rulemaking did not communicate a message relating to a national legislative issue of public importance because a rulemaking does not come within the scope of that term as defined above (i.e., federal legislation pending in Congress at the time the request for air time was made).¹⁷⁶ Nonetheless, we find that the ad triggered a disclosure obligation because the rulemaking is a political matter of national importance. Specifically, the message about the IRS proposed rulemaking was political in nature and had national importance at the time the ad aired.

66. Finally, Fox argues that even assuming the ad referenced two matters of political importance (both the candidate and the reference to national debt), under section 315(e)(2)(E), it had the option to disclose either the candidate or the IRS proposed rulemaking issue referenced in the ad.¹⁷⁷ As we clarify in today’s order, a licensee is required to identify all political matters of national importance communicated in an ad.¹⁷⁸ Overall, given that the conduct occurred before release of the instant order and we clarified Fox’s disclosure obligations with respect to both the candidate and the reference to the rulemaking, we decline to take action.

10. Station WCNC-TV, Charlotte, NC

67. We do not take enforcement action against WCNC-TV, Inc., the licensee of Station WCNC-TV, for maintaining a record in its political file that did not identify all political matters of national importance communicated in a Patriot Majority USA¹⁷⁹ advertisement. The Patriot Majority USA advertisement mentioned Thom Tillis, a 2014 Republican candidate for the U.S. Senate from North Carolina, and claimed that he supported the interests of insurance companies and “a plan that would end Medicare as we know it”¹⁸⁰

¹⁷² Specifically, we conclude that the ad communicated a message relating to a political matter of national importance by its reference to Senator Al Franken, a legally qualified federal candidate. Because the ad triggered disclosure requirements under section 315(e)(1)(B), the station was required to place in its political file, among other things, the items of information required by section 315(e)(2)(E).

¹⁷³ *Supra* paras. 34-35.

¹⁷⁴ KMSB-TV Answer at 2.

¹⁷⁵ *Id.*

¹⁷⁶ *See supra* paras. 37-38.

¹⁷⁷ *Id.*

¹⁷⁸ *Supra* paras. 12-20.

¹⁷⁹ Patriot Majority USA describes itself as an IRS section 501(c)(4) organization whose primary purpose is to encourage “economic development in the United States.” *See* <http://www.patriotmajority.org/about>.

¹⁸⁰ WCNC-TV Complaint at 3. Health care reform and Medicare are issues of continuing controversy, debate, dialogue, news reports, and national importance. The funding for and benefits provided by each program are subjects of ongoing political deliberation affecting millions of Americans. In the context in which they were discussed in the ad, the references to health care reform and Medicare communicated messages relating to political matters of national importance.

68. Gannett Co., Inc., the parent company of the licensee of WCNC-TV, properly identified the candidate in the Station WCNC-TV political file, but omitted information about the issues in the erroneous belief that section 315(e)(2)(E) of the Act requires disclosure of one or the other (rather than both, as we are clarifying today).¹⁸¹ Because the subject disclosure was made prior to the issuance of our clarification that licensees must disclose all political matters of national importance referenced in political advertisements, we decline to take enforcement action against WCNC-TV, Inc. for this alleged violation.

11. Station KMGH-TV, Denver, CO

69. We do not take enforcement action against Scripps Broadcasting Holdings LLC (Scripps), the licensee of Station KMGH-TV, for maintaining a record in its political file that did not identify all political matters of national importance for a Senate Majority PAC¹⁸² advertisement and did not identify all officers or like officials of the sponsoring organization. The ad referenced two legally qualified candidates, Cory Gardner and Mark Udall, both of whom were candidates for the U.S. Senate from Colorado. It endorsed Udall and criticized Gardner by suggesting that the latter candidate would “end Medicare’s guarantee, giving billions in profits to insurance companies, but forcing seniors to pay \$6000 more a year.”¹⁸³ Scripps properly identified the two candidates in the Station KMGH-TV political file, but omitted information about Medicare¹⁸⁴ because, according to Scripps, the ad’s reference to Medicare was not in the context of any pending legislation.¹⁸⁵

70. Scripps should have identified in its political file that Medicare was mentioned in the ad because, in this context, a reference to the possible introduction of legislation that would alter an existing law of such significance and controversy constitutes a political matter of national importance.¹⁸⁶ We recognize that the ad did not reference legislation pending in Congress at the time the request for air time was made, and thus was not a “national legislative issue of public importance” specified in the section 315(e)(1)(B)(iii) example. Nonetheless, the ad satisfied the general requirements of section 315(e)(1)(B) because by mentioning Medicare, the ad relayed a message that was “political” in nature and of “national importance” (i.e., it had significance on a national level). Accordingly, the Act requires the licensee to disclose information about the message in its political record. Nevertheless, we do not take action against Scripps in this instance because it properly identified the two candidates, and its failure to also disclose the subject issue was made prior to the issuance of our clarification that licensees must disclose all political matters of national importance referenced in political ads that they broadcast.

71. Station KMGH-TV’s political file also disclosed the name of the Treasurer of the sponsoring entity, but no other official.¹⁸⁷ As we clarify in this Order, when a licensee is provided with the name of just one official associated with the sponsoring entity, it has an obligation to inquire further whether there are any additional persons who should be disclosed. Given that we had not previously clarified the obligation to make this inquiry, we will not take enforcement action against Scripps for its failure to do so.

¹⁸¹ WCNC-TV Answer at 2.

¹⁸² Senate Majority PAC is a political action committee that “seeks the election of Democratic U.S. Senators.” See <http://www.senatemajority.com/about/>.

¹⁸³ KMGH-TV Complaint at 3.

¹⁸⁴ *Id.* at 6-7.

¹⁸⁵ KGMH-TV Answer at 1-2.

¹⁸⁶ KMGH-TV Complaint at 3. Medicare is the subject of considerable ongoing debate, dialogue, controversy, and news reports affecting millions of Americans. The funding for and benefits provided by this federal program are subjects of ongoing political deliberation and concern. In the context in which it was discussed, the reference to Medicare communicated a message relating to a political matter of national importance.

¹⁸⁷ *Id.* at 12.

IV. ORDERING CLAUSES

72. For the reasons set forth above, and pursuant to sections 4(i), 4(j), and 315 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) 154(j), and 315; and sections 0.283 and 73.1212 of the Commission's rules, 47 CFR §§ 0.283 and 73.1212, **IT IS ORDERED** that New World Communications of Tampa, Inc., licensee of Station WTVT(TV), Tampa, FL, is **ADMONISHED** for its willful and/or repeated violation of section 315(e)(2)(E) of the Act.

73. **IT IS FURTHER ORDERED** that Nexstar Broadcasting, Inc., licensee of Station WFLA-TV, Tampa, FL, is **ADMONISHED** for its willful and/or repeated violation of section 315(e)(2)(E) of the Act.

74. **IT IS FURTHER ORDERED** that NBC Telemundo License, LLC, licensee of Station WTVJ(TV), Miami, FL, is **ADMONISHED** for its willful and/or repeated violation of section 315(e)(2)(E) of the Act.

75. **IT IS FURTHER ORDERED** that WTVD Television, LLC, licensee of Station WTVD(TV), Durham, NC, is **ADMONISHED** for its willful and/or repeated violation of section 315(e)(2)(E) of the Act.

76. **IT IS FURTHER ORDERED** that CBS Broadcasting, Inc., licensee of Station WWJ-TV, Detroit, MI, is **ADMONISHED** for its willful and/or repeated violation of section 315(e)(2)(E) of the Act.

77. **IT IS FURTHER ORDERED** that Scripps Broadcasting Holdings LLC, licensee of Station KNXV-TV, Phoenix, AZ, is **ADMONISHED** for its willful and/or repeated violation of section 315(e)(2)(E) of the Act.

78. **IT IS FURTHER ORDERED** that Hearst Properties, Inc., licensee of Station WMUR-TV, Manchester, NH, is **ADMONISHED** for its willful and/or repeated violation of section 315(e)(2)(E) of the Act.

79. **IT IS FURTHER ORDERED** that Graham Media Group, Michigan, Inc., licensee of Station WDIV-TV, Detroit, MI, is **ADMONISHED** for its willful and/or repeated violation of section 315(e)(2)(G) and (e)(3) of the Act.

80. **IT IS FURTHER ORDERED** that the complaints filed by Campaign Legal Center and Sunlight Foundation against each of the captioned commercial television broadcast stations on May 1, 2014, are **GRANTED** to the extent indicated herein and **OTHERWISE ARE DENIED**.

81. **IT IS FURTHER ORDERED** that the complaint proceedings involving Fox Television Stations, Inc., licensee of Station KMSP-TV, Minneapolis, MN; WCNC-TV, Inc., licensee of Station WCNC-TV, Charlotte, NC; and Scripps Broadcasting Holdings LLC, licensee of Station KMGH-TV, Denver, CO, **ARE TERMINATED**.

82. **IT IS FURTHER ORDERED** that copies of this Order shall be sent by first class mail to:

- Kurt Wimmer, Esq., Covington & Burling, LLC, 1201 Pennsylvania Ave., N.W., Washington, DC 20004, Counsel for Gannett Company, Inc., parent company of WCNC-TV, Inc., licensee of Station WCNC-TV, Charlotte, NC;
- Kenneth C. Howard, Jr., Esq., Baker & Hostetler LLP, Washington Square, Suite 1100, 1050 Connecticut Ave., N.W., Washington, DC 20036, Counsel for Scripps Broadcasting Holdings LLC, licensee of Station KMGH-TV, Denver, CO;
- Joseph M. Di Scipio, Vice President, Legal and FCC Compliance, Fox Television Stations, Inc., 400 N. Capitol St., N.W., Suite 890, Washington, DC 20001, Counsel for Fox Television Stations, Inc., licensee of Station KMSP-TV, Minneapolis, MN;

- Joseph M. Di Scipio, Vice President, Legal and FCC Compliance, Fox Television Stations, Inc., 400 N. Capitol St., N.W., Suite 890, Washington, DC 20001, Counsel for New World Communications of Tampa, Inc., licensee of Station WTVT(TV), Tampa, FL;
- Gregory L. Masters, Esq., Wiley Rein LLP, 1776 K Street, N.W., Washington, DC 20006, Counsel for Nexstar Broadcasting, Inc., licensee of Station WFLA-TV, Tampa, FL;
- Margaret L. Tobey, Vice President, Regulatory Affairs and Assistant Secretary, NBCUniversal, 300 New Jersey Ave., N.W., Suite 700, Washington, DC 20001, Counsel for NBC Telemundo License, LLC, licensee of Station WTVJ(TV), Miami, FL;
- John W. Zucker, Deputy Chief Counsel, ABC, Inc., 77 W. 66th St., New York, NY 10023, Counsel for WTVD Television, LLC, licensee of Station WTVD(TV), Durham, NC;
- Martin P. Messinger, Chief Legal Officer, CBS Television Stations, Inc., a wholly owned Division of CBS Corporation, 524 W. 57th St., New York, NY 10019, parent company of CBS Broadcasting, Inc., licensee of Station WWJ-TV, Detroit, MI
- Kenneth C. Howard, Jr., Esq., Baker & Hostetler LLP, Washington Square, Suite 1100, 1050 Connecticut Ave., N.W., Washington, DC 20036, Counsel for Scripps Broadcasting Holdings LLC, Inc., licensee of Station KNXV-TV, Phoenix, AZ;
- Mark J. Prak, Esq., Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, 1600 Wells Fargo Capitol Center, 150 Fayetteville St., Raleigh, NC 27601, Counsel to Hearst Properties, Inc., licensee of Station WMUR-TV, Manchester, NH; and
- Jennifer A. Johnson, Esq., Covington & Burling, LLC, 1201 Pennsylvania Ave., N.W., Washington, DC 20004, Counsel for Post-Newsweek Stations, Inc., parent company of Graham Media Group, Michigan, Inc. licensee of Station WDIV-TV, Detroit, MI.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY,
CONCURRING**

Re: *Complaints Involving the Political Files of WCNC-TV, Inc., licensee of Station WCNC-TV, Charlotte, NC, et al.*, Memorandum Opinion and Order.

As experience has shown, the Commission's vast array of broadcast regulations has at times created a complex web of unnecessary difficulties for stations trying to compete in today's cutthroat media marketplace. While our media modernization effort has helped to alleviate some of these burdens, the FCC's political file rules remain in place due to the statutory mandates of the Communications Act. Given the need to operate within the constraints of these provisions, I thank the Chairman for working with me to help minimize unnecessary liability due to our rules and provide better guidance for compliance than currently exists.

While I remain concerned about the constitutional basis that undergirds some of the political file statutory requirements, I am more comfortable with the approach we adopt today than with previous drafts. Alternative implementation regimes would result in far more uncertainty for stations acting in good faith. At a minimum, our action today creates a clearer structure that hopefully opens the door to consistent enforcement across future Commissions, while perhaps even injecting a level of regulatory humility as well.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL,
CONCURRING**

Re: *Complaints Involving the Political Files of WCNC-TV, Inc., licensee of Station WCNC-TV, Charlotte, NC, et al.*, Memorandum Opinion and Order.

For decades, the Federal Communications Commission has required that broadcast stations keep a public file with information about the station's operation and service to the community. These filings include things like station authorizations, contour maps, and ownership reports. They also include what is known as a political file. It features sponsorship information concerning political advertisements paid for by candidates, groups, and individuals; details on when they run; and what issues they discuss.

More than a decade and a half ago, in the Bipartisan Campaign Reform Act, Congress charged the FCC with overseeing changes to what specifically needs to be included in the political file. Among other things, Congress specified that licensees must maintain and make available for public inspection a complete record of requests to purchase broadcast time that features "a message relating to any political matter of national importance," including legally qualified candidates, election to federal office, or "a national legislative issue of public importance."

In this decision, the FCC updates its policies regarding these provisions. This clarifying effort comes after an earlier Bureau-level decision regarding the same complaints which featured a different interpretation of the statutory language that did not put a premium on whether the legislation at issue in an advertisement is currently pending in Congress. While I would have preferred that we not cause confusion by revisiting our interpretation, I believe the reading here is a reasonable attempt to modernize our policies. For this reason, I will concur.

However, this modernization step alone is woefully inadequate.

A little less than a decade ago, the FCC decided it was time to begin uploading the contents of these public inspection files online. As part of this effort, the agency required that going forward new political file materials would also be uploaded in the same manner. Thanks to this decision, the agency effectively moved documents from dusty file cabinets dispersed across the country to a centralized online public portal. As a result, right now there are thousands and thousands of entities that post their public file online at the FCC. In fact, there were 42,111 documents and records posted to the agency's political file portal in the last week alone.

So far, so good. But now the hard truth: this system is dated. These filings are not machine-readable. They cannot be processed by a computer. That means they are stuck in analog age format. They are not built for the era we live in now—where data is all. Consequently, journalists, researchers, advocates, and the public at large do not have the ability to download, sort, or search our files in a meaningful way. That means it is all but impossible to use this system to study trends in everything from media ownership to political advertising. In fact, researchers have called our data "pretty useless," and "effectively unusable."

This matters. At a time when billions are spent on television advertising each election cycle, our online political file could be an invaluable tool for the public to know who is sponsoring candidates and trying to influence our elections. But right now, our data is so difficult to navigate, this is not possible.

I think we can do better. The Internal Revenue Service provides machine-readable data for non-profit organizations that allows for bulk downloads. The Federal Election Commission has standardized forms with machine-readable data and archives that make it possible to track trends over time. In other

words, agencies across Washington have already updated their online platforms. They offer machine-readable data—and in the process support transparency in elections. We should do the same. We should update the public file system for the digital age. It should be searchable, sortable, and downloadable. It should be transparent and useful for the public.

There are big questions about who pays for political advertising and where those election advertisements now find ears and eyeballs. Likewise, there are big questions about how, as citizens, we get the information we need to make decisions about our lives, our communities, and our country. Between broadcasting, cable, and online platforms, candidates, organizations, and individuals have many ways to reach the voting public. This agency, however, has long had an admirable role in promoting transparency in political advertising through its public file system. That transparency has served us well, but it will no longer do so if our filing system is stuck in the analog age. For an agency charged with developing the digital future, this is an embarrassment. It's one we can fix. I sincerely hope we do so without further delay.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS,
CONCURRING**

Re: *Complaints Involving the Political Files of WCNC-TV, Inc., licensee of Station WCNC-TV, Charlotte, NC, et al.*, Memorandum Opinion and Order.

As I've previously noted, the rules surrounding paid political speech are of particular importance to our democracy.¹ When it comes to political advertising, we should do everything in our power to ensure that Americans are not confused or misled by content attempting to influence them. This goes to the heart of how people exercise their right to vote and participate in the political process.

I concur with the Commission's efforts to clarify our political file rules in this item – and to do so in a way that, largely, makes known that broadcasters should err on the side of disclosing more about the political advertisements that they air, rather than less. With the next election season already underway, and increasing threats impacting the quality of information that Americans receive about candidates, the need for transparency in political advertising has never been more critical. The clarifications offered in this *Memorandum Opinion and Order* provide additional guidance to broadcasters on their recordkeeping obligations and, for the most part, strengthen disclosure requirements for political messages on the airwaves.

However, while today's action will help ensure that broadcasters will no longer have any excuse for not complying with our rules, I must concur because I believe that parts of our interpretation of the statute in this item are flawed. As a matter of statutory construction, reading the word "federal" into section 315(e)(1)(B)(i) to modify "legally qualified candidate" where Congress explicitly excluded it is not legally sound.² Counter to the majority's reasoning, I see no reasonable basis to strictly limit our statutory interpretation of "a legally qualified candidate" to a candidate seeking federal office. The requirement in section 315(e)(1)(B) to disclose political advertising that relates to "any political matter of national importance" is a broad one, and we should not give the impression that we are limiting it in this manner.

In any event, with the clarifications issued here, broadcasters are now fully advised of the Commission's expectations for their political files and should now understand that minimal or incomplete disclosures will likely violate our rules. I expect that these clarifications will increase the quality of political files, making them more valuable tools for those engaged in our electoral process.

¹ See *Cumulus Radio LLC et al.*, Notice of Apparent Liability for Forfeiture, FCC 19-70, at 13 (Aug. 6, 2019) (Dissenting Statement of Commissioner Geoffrey Starks).

² See *Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 341 (2005) ("We do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply, and our reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest.").