Nos. 26A476 & 26A477

IN THE

Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION

Applicant,

v.

SHERROD BROWN, ET AL.

Respondents.

NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, ET AL.

Applicants,

v.

SHERROD BROWN, ET AL.

Respondents.

ON APPLICATIONS FOR STAY AND ADMINISTRATIVE STAY PENDING PETITIONS FOR WRIT OF CERTIORARI

RESPONDENTS' OPPOSITION TO STAY APPLICATIONS

David R. Fox
Counsel of Record
Nicole E. Wittstein
Julianna D. Astarita
ELIAS LAW GROUP LLP
250 Massachusetts Ave. NW, Suite 400
Washington, DC 20001
(202) 948-1135
dfox@elias.law

Counsel for Respondents Sherrod Brown, Jon Ossoff, Roy Cooper, and Kristen McDonald Rivet

TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT 3

I. The Public Notice and the Application for Review 3

II. *Brown I* and *NRCC* 6

III. The Present Mandamus Proceeding 8

LEGAL STANDARD 9

ARGUMENT 10

I. The Fourth Circuit's order is consistent with this Court's stay order in *NRCC* 10

II. The Court is unlikely to grant certiorari and reverse. 12

A. The Fourth Circuit's discretionary writ is a poor candidate for certiorari. 12

B. Mandamus was proper to protect the Fourth Circuit's future jurisdiction. 14

C. The Candidates had a clear and indisputable right to a timely Commission decision. 15

III. Neither the United States nor the Party Committees will be irreparably harmed by the writ of mandamus. 23

IV. Equitable factors counsel against a stay. 26

CONCLUSION 29

TABLE OF AUTHORITIES

Page(s)

CASES

Allentown Mack Sales & Serv., Inc. v. NLRB,
522 U.S. 359 (1998) 25

Am. Encore v. Fontes,
152 F.4th 1097 (9th Cir. 2025) 28, 29

Am. Farm Lines v. Black Ball Freight Serv.,
397 U.S. 532 (1970) 26

Am. Hosp. Ass'n v. Burwell,
812 F.3d 183 (D.C. Cir. 2016) 13

Barnes v. E-Systems, Inc. Grp. Hosp. Med. & Surgical Ins. Plan,
501 U.S. 1301 (1991) 27

Barrios Garcia v. U.S. Dep't of Homeland Sec.,
25 F.4th 430 (6th Cir. 2022) 16

BLOM Bank SAL v. Honickman,
605 U.S. 204 (2025) 13

Brown v. FCC,
No. 26-1785, 2026 WL 2493115 (4th Cir. Aug. 25, 2026) 6, 7, 17, 19

Cmty. Legal Servs. v. U.S. Dep't of Health & Hum. Servs.,
137 F.4th 932 (9th Cir. 2025) 25

Dobbs v. Jackson Women's Health Org.,
597 U.S. 215 (2022) 24

Does 1-3 v. Mills,
142 S. Ct. 17 (2021) 12

Forest Guardians v. Babbitt,
174 F.3d 1178 (10th Cir. 1999) 16

Gonzalez v. Cuccinelli,
985 F.3d 357 (4th Cir. 2021) 21

Hinkel v. England,
349 F.3d 162 (3d Cir. 2003) 13

Hollingsworth v. Perry,
558 U.S. 183 (2010) 9, 23

In re A Cmty. Voice,
878 F.3d 779 (9th Cir. 2017) 16

In re Am. Rivers & Idaho Rivers United,
372 F.3d 419 (D.C. Cir. 2004) 16, 17

In re Core Commc'ns, Inc.,
531 F.3d 849 (D.C. Cir. 2008) 16

In re Nat'l Nurses United,
47 F.4th 746 (D.C. Cir. 2022) 15

In re United Mine Workers,
190 F.3d 545 (D.C. Cir. 1999) 17

Jingjing Liu v. Mayorkas,
No. 20-cv-654, 2021 WL 2115209 (D.D.C. May 25, 2021) 17

Kyles v. Whitley,
514 U.S. 419 (1995) 13

La. Pub. Serv. Comm'n v. FCC,
476 U.S. 355 (1986) 11

Labrador v. Poe,
144 S. Ct. 921 (2024) 12

League of Women Voters of U.S. v. Newby,
838 F.3d 1 (D.C. Cir. 2016) 28

Loper Bright Enters. v. Raimondo,
603 U.S. 369 (2024) 11, 18

Lovitky v. Trump,
949 F.3d 753 (D.C. Cir. 2020) 15

Nat'l Ass'n of Broads. v. FCC,
147 F.4th 978 (D.C. Cir. 2025) 27

Nat'l Env't Dev. Ass'n's Clean Air Project v. EPA,
752 F.3d 999 (D.C. Cir. 2014) 14

Nken v. Holder,
556 U.S. 418 (2009) 23

Norton v. S. Utah Wilderness All.,
542 U.S. 55 (2004) 15

NRCC v. Brown,
No. 26A274, 2026 WL 2618462 (U.S. Sep. 4, 2026) 2, 7, 8, 10, 14, 15, 18, 23, 24, 27

NRSC v. FEC,
146 S. Ct. 2404 (2026) 24

People Not Politicians v. Onder,
No. 26A388, 2026 WL 2883222 (U.S. Sep. 25, 2026) 2, 12, 26, 29

Purcell v. Gonzalez,
549 U.S. 1 (2006) 28

Regan v. Taxation with Representation of Washington,
461 U.S. 540 (1983) 24

Rsch. & Action Ctr. v. FCC,
750 F.2d 70 (D.C. Cir. 1984) 16

South Carolina v. United States,
907 F.3d 742 (4th Cir. 2018) 16

Texas v. United States,
40 F.4th 205 (5th Cir. 2022) 28

Trump v. California,
No. 26A124, 2026 WL 2473573 (U.S. Aug. 24, 2026) 25

W. Penn Power Co. v. EPA,
860 F.2d 581 (3d Cir. 1988) 26

Washington v. Reno,
35 F.3d 1093 (6th Cir. 1994) 28

Washington v. U.S. Dep't of Educ.,
167 F.4th 1241 (9th Cir. 2026) 25

Williams v. Zbaraz,
442 U.S. 1309 (1979) 9

Ysursa v. Pocatello Educ. Ass'n,
555 U.S. 353 (2009) 24

STATUTES

47 U.S.C. § 155 ..... 1, 3, 4, 6, 14, 15, 17, 18, 20, 25

47 U.S.C. § 315 3

47 U.S.C. § 402 4

REGULATIONS

47 C.F.R. § 0.61(e) 3

RULES

S. Ct. R. 10 13

AGENCY DECISIONS

In re Exclusive Jurisdiction with Respect to Potential Violations of the Lowest Unit Charge Requirements of Section 315(b) of the Commc'ns Act of 1934, As Amended, 6 FCC Rcd. 7511 (1991) 27

accept and address the Court's ruling that judicial review likely must await a Commission decision. "[R]equiring the Commission to decide the application does not evade the prerequisite [this] Court identified. It requires the Commission to fulfill it." App. 21a (Wynn, J., concurring).

To the extent there is now uncertainty over the scope of lowest unit charge, judicial review is the solution, not the problem. The question involves the scope of a statutory right, and only the federal courts can provide an authoritative answer to that question. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 398–401 (2024). The Commission cannot change the meaning of the Communications Act from the "single, best meaning" that has been "fixed [since] the time of enactment." *Id.* at 400 (citation omitted). Given that the Commission "literally ha[d] no power to act" to extend lowest unit charge beyond its statutory authority, *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986), the sooner judicial review occurs, the better—for everyone involved, and regardless of the outcome. Only then will the Commission and regulated parties know with certainty who is entitled to lowest unit charge and be able to conform their conduct accordingly.

To be sure, the Candidates, too, wish that this question had been answered months ago. That is why they sought expedited review by the Commission back in April, shortly after the Public Notice was issued, and that is why they filed a Petition for Review in the Fourth Circuit in June—after waiting as long as they could to let the Commission act, but grounded in what they believed in good faith was the best reading of the Communications Act's judicial review provisions. It is the Commission

that has, time and again, "dragg[ed] its feet" and changed its procedural plans to fit whatever seemed, at any given time, most likely to ward off judicial review. *See* App. 1a, 4a–9a, 11a–14a (detailing the procedural history supporting this conclusion). If review now occurs on the eve of the election, the Candidates are "not responsible for the late-breaking change[]." *People Not Politicians*, 2026 WL 2883222, at *2.

II. The Court is unlikely to grant certiorari and reverse.

A. The Fourth Circuit's discretionary writ is a poor candidate for certiorari.

Stripped of their threshold argument that the stay order in *NRCC* compels the same relief here, Applicants offer nothing to support "a discretionary judgment" that "the Court should grant review in the case" down the road. *Does 1–3 v. Mills*, 142 S. Ct. 17, 18 (2021) (mem.) (Barrett, J., concurring in denial of application for injunctive relief); *see also Labrador v. Poe*, 144 S. Ct. 921, 931 (2024) (Kavanaugh, J., concurring in the grant of stay) ("If the underlying merits issue would not warrant this Court's review when the case returned to the Court on the merits docket, then we should deny the application and leave the question of interim relief to the court of appeals."). Unlike in *NRCC*, there is not even a hint of a circuit split on any question of law; only a discretionary determination that under the particular circumstances of this time-sensitive case, the Commission's five-month delay in resolving the Candidates' Application for Review is too long. Applicants cannot "use the emergency docket to force the Court to give a merits preview in cases that it would be unlikely to take—and to do so . . . without benefit of full briefing and oral argument." *Does 1–3*, 142 S. Ct. at 18. Yet that is precisely what Applicants seek here.

Certiorari here would be unprecedented. Applicants do not cite, and the Candidates have been unable to locate, any case where this Court has granted certiorari to review a lower court's equitable finding that an agency had unlawfully delayed taking a discrete action it is required to take—in either a mandamus or Administrative Procedure Act posture. That is not surprising. The Court's review in such a case would be limited to the extraordinarily fact-bound question of whether the court below abused its discretion in finding the agency's delay unreasonable. *See Am. Hosp. Ass'n v. Burwell*, 812 F.3d 183, 190 (D.C. Cir. 2016) ("[T]hreshold requirements for mandamus jurisdiction" are reviewed "de novo," but the court would "review 'the equities' for abuse of discretion."); *Hinkel v. England*, 349 F.3d 162, 163 (3d Cir. 2003) ("We generally review mandamus decisions for abuse of discretion.").

The abuse-of-discretion standard "is limited and deferential," and the Court will affirm so long as the lower court "appl[ied] the correct legal standard and offer[ed] substantial justification for its conclusion." *BLOM Bank SAL v. Honickman*, 605 U.S. 204, 216 (2025) (cleaned up). This Court generally does not take up cases "when the petitioner claims only that a concededly correct view of the law was incorrectly applied to the facts." *Kyles v. Whitley*, 514 U.S. 419, 456 (1995) (Scalia, J., dissenting); *see also* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). There is no reason it would take up this case under that test.

B. Mandamus was proper to protect the Fourth Circuit's future jurisdiction.

Perhaps recognizing the unlikelihood that the Court would grant certiorari to review a discretionary, equitable finding of unreasonable delay, the Party Committees (but not the United States) launch a threshold attack on the Fourth Circuit's mandamus jurisdiction. Mandamus jurisdiction is lacking, they say, because the Fourth Circuit's order "neither preserves existing jurisdiction nor protects future jurisdiction." NRCC Appl. 12. But here it is the Party Committees who ignore *NRCC*. The Fourth Circuit likely lacked jurisdiction, this Court said, because the Communications Act requires the Commission to resolve a party's application for review before judicial review may be had. *NRCC*, 2026 WL 2618462, at *1–2. In ordering the Commission to resolve the Candidates' Application for Review, the Fourth Circuit commanded precisely the jurisdictional ingredient that this Court held it presently lacks. And to the extent that the Party Committees' argument is that the underlying Public Notice could *never* be judicially reviewable, NRCC Appl. 13, that argument is irreconcilable with the Communications Act's text, *see* 47 U.S.C. § 155(c)(7) (providing for judicial review of delegated actions at least once the Commission resolves an application for review), and with their own representations—not to mention this Court's holding in *NRCC*—that the Public Notice in question was so potent that its vacatur irreparably harmed the Party Committees by causing broadcasters to rescind favorable rates. *See NRCC*, 2026 WL 2618462, at *2; *see also, e.g.*, *Nat'l Env't Dev. Ass'n's Clean Air Project v. EPA*, 752 F.3d 999, 1007 (D.C. Cir. 2014) ("If an agency action announces a binding change in its enforcement policy

which immediately affects the rights and obligations of regulated parties, then the action is likely final and subject to review.”).

C. The Candidates had a clear and indisputable right to a timely Commission decision.

The Fourth Circuit correctly determined the Commission has a “clear duty to act” on the Candidates’ Application for Review, as the mandamus standard requires. *Lovitky v. Trump*, 949 F.3d 753, 760 (D.C. Cir. 2020). Agency inaction is cause for mandamus relief when the agency has “failed to take a *discrete* agency action that it is *required to take*.” *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004). Courts assess this requirement by “look[ing] to the statutory requirements imposed by Congress and whether an Executive Branch agency retains discretion over a particular action.” *In re Nat’l Nurses United*, 47 F.4th 746, 752 (D.C. Cir. 2022).

1. Applicants do not dispute the Commission’s “clear duty to act” on the Candidates’ Application for Review. Nor can they. The Communications Act provides that “every such application [for review] *shall be passed upon* by the Commission.” 47 U.S.C. § 155(c)(4) (emphasis added). And this Court emphasized in *NRCC* that “[t]he Commission is required to resolve every application it receives.” *NRCC*, 2026 WL 2618462, at *1.

Instead, the Party Committees fault the Fourth Circuit for finding the Commission had “a ‘clear duty to act’ on the [Candidates’] application for review *by October 9*,” maintaining the court lacked authority to compel Commission action “by a particular date.” NRCC Appl. 14, 16. That argument ignores that unlawful-delay claims exclusively arise in the absence of a specific, mandatory statutory deadline.

See, e.g., *Barrios Garcia v. U.S. Dep't of Homeland Sec.*, 25 F.4th 430, 453–54 (6th Cir. 2022) (distinguishing claims for agency action unlawfully withheld versus unreasonably delayed on this basis); *South Carolina v. United States*, 907 F.3d 742, 756 (4th Cir. 2018) (same); *Forest Guardians v. Babbitt*, 174 F.3d 1178, 1190 (10th Cir. 1999) (same). In such cases, courts routinely exercise equitable discretion to determine whether an agency's delay is unreasonable in the circumstances. *See Telecomms. Rsch. & Action Ctr. v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984). An order requiring the agency to act by a date certain is the ordinary remedy once a court has determined delay is unreasonable. *See South Carolina*, 907 F.3d at 765 (courts "retain[] discretion to order agency compliance, including by fixing firm deadlines if appropriate, . . . to ensure that the delinquent agency makes serious, vigorous attempts to fulfill its statutory responsibilities" (internal quotation marks omitted)).[3] Accepting the Party Committees' position would be a sea change to this well-established doctrine.

Along similar lines, the United States contends that "the statute's silence on timing" means "the Commission retains the freedom to formulate its own procedures for how long to take in acting on the application." U.S. Appl. 9. But therein lies the problem: the Commission has *not* developed general procedures to govern applications for review like the Candidates'. "[T]he time agencies take to make

---

[3] *See, e.g.*, *In re A Cmty. Voice*, 878 F.3d 779, 788 (9th Cir. 2017) (requiring action 90 days after decision); *In re Core Commc'ns, Inc.*, 531 F.3d 849, 862 (D.C. Cir. 2008) (granting writ of mandamus and directing action "by November 5, 2008"); *In re Am. Rivers & Idaho Rivers United*, 372 F.3d 413, 420 (D.C. Cir. 2004) (directing "judicially reviewable response" to petition "within 45 days").

decisions *must* be governed by a 'rule of reason.'" *In re United Mine Workers*, 190 F.3d 545, 549 (D.C. Cir. 1999) (emphasis added). The United States does not identify one; the Commission's shifting approach to the Candidates' Application based on its perceived risk of adverse judicial review belies the existence of any such rule; and the Party Committees affirmatively argue that the three-month objective in 47 U.S.C. § 155(d) *excludes* applications for review, NRCC Appl. 14–15. "A delay in adjudication caused by the agency's failure to follow any rule of reason is, almost tautologically, unreasonable." *Jingjing Liu v. Mayorkas*, No. 20-cv-654, 2021 WL 2115209, at *3 (D.D.C. May 25, 2021).

2. Under this well-established doctrine, and in the unique circumstances of this case, the Fourth Circuit did not abuse its discretion in finding the Commission's delay in resolving the Candidates' Application for Review unreasonable. "There is no *per se* rule as to how long is too long to wait for agency action, . . . but a reasonable time for agency action is typically counted in weeks or months." *In re Am. Rivers & Idaho Rivers United*, 372 F.3d at 419 (internal quotation marks omitted). Although delays of this length may not typically trigger mandamus relief, as Judge Wilkinson acknowledged in *Brown I*, "courts may calibrate their discretion to issue the writ and act more aggressively when the circumstances warrant it." *Brown I*, 2026 WL 2493115, at *20 (Wilkinson, J., dissenting). And this is an unusual case.

To start, as this Court's *NRCC* order recognized, the electoral context means that this dispute implicates "First Amendment rights to speak" and "reach the electorate in the critical weeks leading up to the midterms" that "cannot be remedied

after the fact through refunds or reimbursements." *NRCC*, 2026 WL 2618462, at *2. Moreover, whereas agencies may often need time to make up their minds and prepare a reasoned decision, here the Commission's forceful defense of the Public Notice in court leaves no doubt as to its position on the merits, and it is not required to provide any reasoning at all, *see* 47 U.S.C. § 155(c)(5). The issue involves a pure question of statutory construction in which the Commission has no particular expertise and which will be subject to de novo judicial review in any event. *Loper Bright*, 603 U.S. at 400–01.

Add to all of that the Commission's extraordinary procedural acrobatics in this matter: months of inaction and a statement at argument that nothing was planned any time soon, followed by an abrupt promise of an imminent denial that never came, followed by a sudden solicitation of comments on the day the mandamus response was due, followed by a second sudden solicitation of comments on the day after which the Fourth Circuit had indicated it might grant mandamus if no decision had been issued. *See* App. 4a–9a, 11a–14a (detailing this procedural history). The Fourth Circuit—which experienced all of this in closer proximity and in real time—reasonably concluded that the Commission had "thumbed its nose at Congress's statutory commands" and undertaken "an obvious effort to preclude judicial review prior to the November 3 election day." App. 1a. Judge Wynn identified the stakes: "The question is whether the Federal Communications Commission may withhold the decision necessary for judicial review while its disputed interpretation sets the terms

of an election." *Id.* at 20a (Wynn, J., concurring). There is no basis to disturb the court's ruling that it may not.

The United States responds that the "charge" of jurisdictional gamesmanship is "unfounded," yet it must rewrite the record to defend the Commission. *See* U.S. Appl. 10–11. The United States suggests that the Candidates' Petition for Review "created uncertainty about whether the Commission could lawfully act on the case" while the action was pending. *Id.* at 10. The Commission never expressed any such uncertainty before. Not one of the Commission's briefs in these cases questioned its own authority to act on the Candidates' Application while the Petition for Review was pending. The Fourth Circuit "never suggested" that either; "rather, [it had] consistently faulted the Commission for its failure to act and its blatant flouting of its obligation to do so." App. 18a n.2. And when pressed on the agency's progress at oral argument, counsel responded it was simply "very unlikely that the Commission [would] act" before lowest unit charge would become available. *Brown I*, 2026 WL 2493115, at *6 (quoting C.A. Oral Arg. at 49:49–50:12 (Aug. 7, 2026)). Counsel never suggested the Commission was unable to act while the Petition for Review was pending, and when Judge Wilkinson prodded him in that direction, he demurred that he could not speak to the Commission's internal processes and could not say that "the time period that ha[d] elapsed was in part brought on by the fact that th[e] petition was filed," C.A. Oral Arg. 56:01–57:43 (Aug. 7, 2026).

The United States next contends that "it was reasonable for the Commission to focus its energies on the litigation rather than on the parallel administrative

proceedings." U.S. Appl. 10. That does not make sense, either. The questions presented in the Candidates' Application for Review mirror precisely the merits questions in *Brown I*. And in *Brown I*, the Commission *squarely defended the Public Notice on the merits*. So the Commission's litigation efforts would have transferred cleanly to the administrative proceedings. And because the Commission was not required to provide any reasoning in denying the Application for Review, having decided to defend the Public Notice as lawful the Commission could simply have issued an order that said, "Denied." *See* 47 U.S.C. § 155(c)(5).

Moreover, and contradicting both of the United States' arguments on this score, the Commission *in fact did not* exclusively "focus its energies" on litigation or forswear further administrative procedures while the Petition for Review was pending. Just the opposite. After oral argument, the Media Bureau moved quite quickly to deny the related TVB reconsideration petition, while the Commission promptly circulated a draft order dismissing the Candidates' Application for Review on procedural grounds and then *tell the Fourth Circuit it had done so*, all in a clear effort to forestall judicial review.

For similar reasons, the United States is wrong to say that "the FCC 'went to work'" as soon as this Court issued a stay in *NRCC*, "resolving any remaining 'doubts about [the agency's] jurisdiction.'" U.S. Appl. 10 (quoting App. 27a (Wilkinson, J., dissenting)). By then, the Commission had already assembled a draft order dismissing the Application for Review after oral argument but before the *Brown I* decision issued. *See* Supp. App. 33–34. It then sat on that order despite a noted and

published dissent. Supp. App. 39–41. And it did not take further action on the Application for Review until its deadline for responding to this mandamus proceeding, at which point it abruptly decided to solicit public comment for the first time that very day. The Commission had *five months* to seek public comment. Yet it waited until "just hours before [its] response to the Mandamus Petition was due" to do so. App. 12a.

In sum, this is not a garden-variety record for agency delay, where an agency's "resource constraints and competing priorities" frequently counsel against judicial intervention before the passage of time alone renders the agency's delay egregious. *Gonzalez v. Cuccinelli*, 985 F.3d 357, 375 (4th Cir. 2021). As the Fourth Circuit rightly held, the record lays bare that "[t]he Commission has made its decision—it simply must publish the order." App. 16a. The Fourth Circuit appropriately held that the agency's refusal to do so was egregious under the circumstances and refused to reward the agency's gamesmanship. That is not an abuse of discretion. And it certainly does not raise any recurring and important legal question that is likely to prompt this Court to grant certiorari, so as to potentially justify a stay.

3. Finally, Applicants advance two "equitable principles" they say show "mandamus is not 'appropriate under the circumstances.'" U.S. Appl. 7 (quoting *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 381 (2004)). Neither is persuasive, particularly in view of the deferential standard of review.

First, notwithstanding its emphatic view that the Commission has not unreasonably delayed acting on the Candidates' Application, the United States

argues *the Candidates* have unreasonably delayed seeking mandamus. *Id.* at 8. The Party Committees similarly charge the Candidates with a "significant delay" of several months before seeking mandamus, which they argue counsels in favor of granting a stay. NRCC Appl. 20. But mere paragraphs earlier, the Party Committees suggest that the Candidates have been too hasty, and that mandamus could *possibly* be appropriate after four and a half, or six, or perhaps even after nineteen years of inaction on the part of the Commission. *Id.* at 17–18. These positions are irreconcilable.

In fact, the Candidates have diligently pursued their rights to obtain timely relief in this time-sensitive matter, while giving the Commission as much time as possible to resolve their Application for Review. If the Candidates had sought mandamus relief sooner, the Commission would no doubt have argued even more vociferously that too little time had passed. And the Commission's creativity in "conjur[ing] one excuse after another for further delay" can hardly be counted against the Candidates. App. 18a n.2.

Second, the United States, as well as the Party Committees, argue that it is now too close to election day for the Commission or the Fourth Circuit to set aside the Media Bureau's unlawful Public Notice. But as explained above, the fault for any late disruption on that score lies with the Commission for failing to take action on the Candidates' Application for Review for months, and for seizing, at every turn, any possible excuse to delay judicial review. *See supra* Part I. And because the question is the scope of a statutory right, only the courts may definitively answer it, and a late

answer is better than no answer at all. If, as the Candidates contend, broadcasters are being compelled to offer substantial unlawful discounts to party committees and JFCs, then the very importance of the communications involved, *see NRCC*, 2026 WL 2618462, at *2, militates in favor of prompt judicial review, not against it.

III. Neither the United States nor the Party Committees will be irreparably harmed by the writ of mandamus.

The party seeking a stay must demonstrate "a likelihood that irreparable harm *will result from the denial of a stay*." *Hollingsworth*, 558 U.S. at 190 (emphasis added). "Simply showing some 'possibility of irreparable injury' fails to satisfy" this requirement. *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation omitted). Applicants fail to make that showing.

Importantly, the relief ordered in this case is distinct from, and narrower than, the relief the Court stayed in *NRCC* after finding irreparable harm. There, the Fourth Circuit's order vacated the challenged Public Notice. Here, in contrast, the Fourth Circuit merely ordered the Commission to issue some order—any order—disposing of the Candidates' Application for Review. The Court's finding of irreparable harm in *NRCC* therefore does not compel a similar finding in this case.

Given the narrow relief ordered, the Party Committees cannot possibly show irreparable harm. No one seriously disputes that if the Commission is ordered to resolve the Candidates' Application for Review, it will deny it. Such a denial would leave the Public Notice that benefits the Party Committees in place. It would therefore not harm the Party Committees, much less irreparably. And while the Party Committees are correct that a denial order would allow the Candidates to seek

judicial review, they cite no case holding that the mere prospect of judicial review—review that Congress went out of its way to authorize—constitutes irreparable harm. Instead, the Party Committees prematurely point to second- or third-order effects of the writ as evidence of irreparable harm: they claim that the mandamus order will ultimately "sow confusion and uncertainty among candidates, committees, and broadcasters," and that they will suffer injuries that "implicat[e] their First Amendment rights." NRCC Appl. 18–19. In so doing, they ask the Court to prematurely relieve them from the results of further judicial proceedings that have not yet occurred. *Contra Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 348 (2022) (Roberts, C.J., concurring in the judgment) ("If it is not necessary to decide more to dispose of a case, then it is necessary *not* to decide more."). If the Candidates succeed in their judicial challenge to the Public Notice, it will be because the federal courts conclude that the Public Notice is unlawful—and the Party Committees can hardly complain that being stripped of an unlawful privilege to which they have no entitlement would constitute irreparable harm. If the Public Notice is lawful, the Candidates' challenge will presumably fail.[4]

---

[4] Moreover, while the Party Committees have a First Amendment interest in undertaking coordinated expenditures under this Court's precedent, *see NRSC v. FEC*, 146 S. Ct. 2404 (2026); *NRCC*, 2026 WL 2618462, at *2, an eventual decision setting aside the Public Notice would not be inconsistent with that interest. The "First Amendment prohibits government from 'abridging the freedom of speech'; it

The United States, too, fails to show that it or the Commission will suffer irreparable harm under the circumstances. The Fourth Circuit's order merely requires the Commission to comply with its legal obligation to issue a decision on the Candidates' Application. *Cf. Washington v. U.S. Dep't of Educ.*, 167 F.4th 1241, 1247 (9th Cir. 2026) (noting that agency cannot establish irreparable harm from being compelled to comply with statutory requirements); *Cmty. Legal Servs. v. U.S. Dep't of Health & Hum. Servs.*, 137 F.4th 932, 943 (9th Cir. 2025) (same). The United States complains that the order "demands at gunpoint an agency decision," U.S. Appl. 12, but it does not deny that the Commission made its substantive decision months ago, and it ignores that the agency could comply by issuing a one-word order—"Denied." 47 U.S.C. § 155(c)(5). The United States does not cite any precedent holding that compliance with statutory obligations constitutes irreparable harm to a federal agency. Neither *Trump v. California*, No. 26A124, 2026 WL 2473573, at *5 (U.S. Aug. 24, 2026), nor *Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 375 (1998), speaks to that issue.

---

does not confer an affirmative right to use" government mechanisms "for the purpose of obtaining funds for expression." *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 355 (2009) (Roberts, C.J.). Closely circumscribing the applicability of lowest unit charge, as Congress did, "does not restrict political speech, but rather declines to promote that speech." *Id.* And the Court has long "reject[ed] the 'notion that First Amendment rights are somehow not fully realized unless they are subsidized by the State.'" *Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 546 (1983) (citation omitted). Still less does the First Amendment entitle the Party Committees to have *broadcasters* subsidize their political speech by offering them a below-market rate while other speakers pay full freight.

The United States also complains that if the Fourth Circuit's order is reinstated, the Commission will not have time to consider comments on TVB's application for review, which involves overlapping issues, before issuing its decision on the Candidates' Application. U.S. Appl. 13. That argument runs headlong into basic administrative-law principles that preclude prejudicing one party's right to judicial review because of another party's choice to pursue different administrative remedies on a slower timeline. *See W. Penn Power Co. v. EPA*, 860 F.2d 581, 587 (3d Cir. 1988) (citing *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 541 (1970)). And as the Fourth Circuit recognized, the delay in receiving comments on the TVB application is the Commission's own doing anyway. The Commission waited 16 days after receipt of TVB's application to even open its comment period, even as it considered comments on the Candidates' Application for Review during that time. App. 13a–14a. The Commission cannot delay a decision until the eve of the election and then object to the clearly foreseeable consequences of that delay. *Cf. People Not Politicians*, 2026 WL 2883222, at *2 (noting that the Missouri Supreme Court "was not responsible for the late-breaking changes" in the period before the election, because it was the Missouri Secretary of State that delayed its determination of the validity of a referendum petition).

IV. Equitable factors counsel against a stay.

Even accepting the premise that either the Party Committees or the Commission will suffer irreparable harm if the Fourth Circuit's mandamus order is not stayed, the Court's analysis cannot end there. For a stay to be justified, "[t]he likelihood that denying the stay will permit irreparable harm to the applicant may

not clearly exceed the likelihood that granting it will cause irreparable harm to others." *Barnes v. E-Systems, Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1305 (1991) (Scalia, J., in chambers).

As between the Party Committees and the Candidates, the equities favor the Candidates. Just as vacating the Public Notice "hamper[s] [parties'] efforts to reach the electorate in the critical weeks leading up to the midterms," *NRCC*, 2026 WL 2618462, at *2, so too does leaving the Public Notice insulated from judicial review. The Public Notice allows parties and JFCs to blanket the airwaves with discount advertising, taking advantage of the "resource scarcity" that characterizes broadcast to crowd out less-resourced candidates' ability to have their message heard. *See Nat'l Ass'n of Broads. v. FCC*, 147 F.4th 978, 997–98 (D.C. Cir. 2025). The Party Committees' and the Candidates' injuries from review or the lack of review, respectively, are therefore two sides of the same coin. But only the Candidates' injury is wholly irreparable. In the absence of the Public Notice, the Party Committees would at least have the option to file a complaint with the Commission seeking a rebate of the additional funds, which would provide some, if incomplete, *see NRCC*, 2026 WL 2618462, at *2, form of redress. *See In re Exclusive Jurisdiction with Respect to Potential Violations of the Lowest Unit Charge Requirements of Section 315(b) of the Commc'ns Act of 1934, As Amended*, 6 FCC Rcd. 7511, 7514 (1991) (setting out the procedures for such a complaint). Absent relief in this proceeding, the Candidates have no path to any redress at all.

As for the Commission, the equitable analysis is not even close. The Candidates

are aggrieved parties seeking judicial review of the Commission's unlawful directive. "There is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations," *Texas v. United States*, 40 F.4th 205, 229 (5th Cir. 2022) (internal quotation marks omitted); *see also Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994), and "[t]here is generally *no* public interest in the perpetuation of unlawful agency action." *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (emphasis added). By issuing a writ of mandamus, the Fourth Circuit enabled lawful judicial review of the Commission's extension of lowest unit charge to party committees and joint JFCs—no more, and no less. The Commission has no legitimate interest in evading that judicial review. If the Public Notice is lawful, then it will survive review.

The Party Committees and the Commission take issue with the Candidates' timing. But as explained above, *supra* Part II.C.3, it cannot be that the Candidates have acted simultaneously too early and too late. And while Applicants reference *Purcell v. Gonzalez*, 549 U.S. 1 (2006), it has no application here. *Purcell* counsels federal courts not to disrupt election rules to avoid confusing *voters* in the lead-up to an election. But neither the Commission nor the Party Committees are voters who might be confused as they cast their ballots; they are highly regulated, sophisticated, institutional players. Courts ought to assess "factors that animated the Supreme Court's concern in *Purcell*" before deciding whether it applies. *Am. Encore v. Fontes*, 152 F.4th 1097, 1121 (9th Cir. 2025). Where the provision in question "does not affect the state's election processes or machinery," or "disrupt long standing state

procedures," it is inappropriate to apply *Purcell*. *Id.* Neither party presents a cogent explanation of how an order of mandamus affects the state's election processes.

Ultimately, the Commission itself created the exigency in this matter by refusing to decide the Candidates' Application for Review for months and manipulating its procedures to head off judicial review at every turn. The Commission should not be allowed to weaponize its own delay to bar review until it is too late to matter. *Cf. People Not Politicians*, 2026 WL 2883222, at *2.

CONCLUSION

The Court should deny the Applications, terminate the administrative stay, and restore the Fourth Circuit's order.

Respectfully submitted,

David R. Fox
Counsel of Record
Nicole E. Wittstein
Julianna D. Astarita
ELIAS LAW GROUP LLP
250 Massachusetts Ave. NW, Suite 400
Washington, DC 20001
(202) 948-1135
dfox@elias.law
nwittstein@elias.law
jastarita@elias.law

Counsel for Respondents Sherrod Brown, Jon Ossoff, Roy Cooper, and Kristen McDonald Rivet

Nos. 26A476 & 26A477

IN THE

Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION

Applicant,

v.

SHERROD BROWN, ET AL.

Respondents.

NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, ET AL.

Applicants,

v.

SHERROD BROWN, ET AL.

Respondents.

ON APPLICATIONS FOR STAY AND ADMINISTRATIVE STAY PENDING PETITION FOR WRIT OF CERTIORARI

APPENDIX TO OPPOSITION TO STAY APPLICATIONS

David R. Fox
Counsel of Record
Nicole E. Wittstein
Julianna D. Astarita
ELIAS LAW GROUP LLP
250 Massachusetts Ave. NW, Suite 400
Washington, DC 20001
(202) 948-1135
dfox@elias.law

Counsel for Respondents Sherrod Brown, Jon Ossoff, Roy Cooper, and Kristen McDonald Rivet

TABLE OF CONTENTS

Candidates' Application for Review (Apr. 29, 2026) ..... Supp. App. 1

FCC 28(j) Letter (Aug. 17, 2026) ..... Supp. App. 33

Exhibits to FCC's 28(j) Letter: Order on Reconsideration (Aug. 13, 2026) ..... Supp. App. 35

Commissioner Gomez's Dissent on Media Bureau Order (Aug. 25, 2026) ..... Supp. App. 39

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of *Entitlement to Lowest Unit Charge for Legally Qualified Candidates for Federal Office and All Authorized Committees*	Docket No. _____ DA 26-300

APPLICATION FOR REVIEW

David R. Fox
Richard A. Medina
Nicole E. Wittstein
ELIAS LAW GROUP LLP
250 Massachusetts Ave. NW, Suite 400
Washington, DC 20001
(202) 968-4490
dfox@elias.law
rmedina@elias.law
nwittstein@elias.law

Counsel for Applicants

April 29, 2026

TABLE OF CONTENTS

Summary iii

Application for Review 1

Question Presented 1

Background 2

I. Statutory and regulatory framework 2

A. The "lowest unit charge" entitlement 2

B. The Media Bureau's LUC Guidance 5

C. The Applicants 6

Argument 9

I. The LUC Guidance unlawfully dilutes candidates' exclusive entitlement to lowest unit charge by offering it to non-candidate political committees 9

A. Party committees' coordinated expenditures are not use by a candidate. 10

B. Advertisements by JFCs with non-candidate members are not "use" by a candidate. 13

C. Applicants are aggrieved by the Media Bureau's LUC Guidance. 17

Conclusion 19

SUMMARY

In 1971, to address candidates' ballooning campaign costs, Congress required broadcast stations to provide special low rates—known as "lowest unit charge"—to candidates in the run-up to elections. The plain text of the resulting statute, codified at Section 315(b) of the Communications Act, reflects this limited purpose—it entitles only "candidates" to the special rates. 47 U.S.C. § 315(b)(1). But the Media Bureau recently issued guidance purporting to require broadcast stations to offer lowest unit charge to advertising purchased by two categories of non-candidate political committees: (1) party committees engaged in coordinated expenditures and (2) "Joint Fundraising Committees" (JFCs) with candidate and non-candidate committee members. That guidance directly conflicts with the plain text of the Communications Act and the Commission should set it aside, making clear that only candidates and candidate committees are entitled to lowest unit charge.

Advertisements by party committees are not entitled to lowest unit charge because they are not "use" of a broadcasting station "by . . . a legally qualified candidate," *id.*, even if they are "coordinated" with a candidate. The Federal Election Campaign Act (FECA) distinguishes between (1) party committee *contributions* to candidate committees for the candidate's own use, *see* 52 U.S.C. § 30116(a)(1)(A), (h), and (2) party committee coordinated *expenditures*, which must be made directly by the party committee, *see id.* § 30116(d). The latter are "use" by a party committee, not by a candidate, because they are required to be the party committee's expenditures—if they were the candidate's use, they would be unlawful contributions to the candidate's committee.

Advertisements by JFCs with candidate and non-candidate members are also not entitled to lowest unit charge because, by law, much of the cost of those advertisements is borne by non-candidate members who are not entitled to lowest unit charge. *See* 11 C.F.R. § 102.17(c)(7). The

Media Bureau justified its guidance by noting that JFCs can be formally designated as "authorized committees" of candidates under FECA. But FECA allows candidates to designate JFCs as "authorized committees" "*solely* for the purpose of joint fundraising." 52 U.S.C. § 30102(e)(3)(A)(ii) (emphasis added). That designation reflects that the JFC spends *the candidate's* share of fundraising expenses and receives *the candidate's* share of contributions on behalf of the candidate, before transferring the candidate's share of net proceeds to the candidate's principal committee. *See id.* § 30101(6). It does not justify treating JFC expenditures as candidate expenditures entitled to lowest unit charge, even though some, and often nearly all, of those expenditures are paid for by non-candidate committees with no right to lowest unit charge.

Expedited action by the Commission is essential. The Bureau's unlawful guidance will imminently harm candidates in competitive House and Senate races in the 2026 cycle, including Applicants Senator Sherrod Brown, Senator Jon Ossoff, Governor Roy Cooper, and Representative Kristen McDonald Rivet, and their respective campaign committees. By forcing broadcasters to charge lower rates to non-candidate committees that—unlike Applicants—are not entitled to them, the Bureau's guidance ensures that Applicants will "face intensified competition" for limited airtime in violation of the Communications Act. *Shays v. FEC*, 414 F.3d 76, 86 (D.C. Cir. 2005) (emphasis omitted). They will also be subject to—and forced to respond to—a greater volume of negative advertisements purchased at lower rates. And because the Bureau's guidance allows non-candidates to buy more advertisements at lower rates, Applicants will be hampered in their ability to control their own independent campaign messages and policy positions, which risk being drowned out by political party messaging—from the Republican and Democratic Parties alike. As candidates for public office, Applicants have "an interest in a fair process" untainted by unlawful ad spending. *Bost v. Ill. State Bd. of Elections*, 146 S. Ct. 513, 519 (2026). The Commission should

set aside the Bureau's erroneous guidance and vindicate Congress's "effort to reduce candidates' escalating campaign costs" without extending those same benefits to other groups. *In re Codification of Comm'n's Pol. Programming Pol'ys*, 7 FCC Rcd. 678, 685 n.54 (1991).

APPLICATION FOR REVIEW

Applicants Senator Sherrod Brown, Senator Jon Ossoff, Governor Roy Cooper, and Representative Kristen McDonald Rivet, along with their principal campaign committees,[1] respectfully request that the Commission set aside the FCC Media Bureau's March 30, 2026, Public Notice providing Guidance on Entitlement to Lowest Unit Charge for Legally Qualified Candidates for Federal Office and All Authorized Committees, DA 26-300 ("LUC Guidance"). The LUC Guidance merits the Commission's review because it is in direct conflict with the Communications Act of 1934. *See* 47 CFR § 1.115(b)(2)(i). The LUC Guidance is attached to this Application as Exhibit A.

Applicants bring this challenge as an Application for Review pursuant to the D.C. Circuit's decision in *National Ass'n of Broadcasters v. FCC*, No. 14-1072, 2014 WL 4449657 (D.C. Cir. Sep. 9, 2024) (unpublished), which held that a challenge to a similar guidance document may—and must—be initiated via this procedure.

QUESTION PRESENTED

Whether the Media Bureau's March 30, 2026, Public Notice, DA 26-300, requiring broadcasters to provide the lowest unit charge for (1) political party committees' advertisements that qualify as coordinated expenditures under FECA, and (2) joint fundraising committees' advertisements, must be set aside as contrary to Section 315(b)(1) of the Communications Act of 1934?

[1] Friends of Sherrod Brown, Jon Ossoff for Senate, Cooper for North Carolina, and Kristen for Michigan.

BACKGROUND

I. Statutory and regulatory framework

A. The "lowest unit charge" entitlement

Section 315(b)(1) of the Communications Act of 1934 entitles "legally qualified candidate[s] for any public office" who "use . . . any broadcasting station" shortly before their elections to do so at "the lowest unit charge of the station for the same class and amount of time for the same period." 47 U.S.C. § 315(b)(1). This valuable entitlement takes effect 45 days before the candidate's primary election or runoff and 60 days before the candidate's general election. *Id.* § 315(b)(1)(A). It was enacted in its present form as part of the Federal Election Campaign Act of 1971 (FECA), which comprehensively regulates the finances of federal campaigns. *See Hernstadt v. FCC*, 677 F.2d 893, 897 (D.C. Cir. 1980).

FECA requires all federal candidates to designate a "principal campaign committee" to accept contributions and make expenditures on their behalf. 52 U.S.C. § 30102(e)(1). Everyone agrees that stations must offer lowest unit charge for advertisements purchased by those principal campaign committees on behalf of the "legally qualified candidate" they support. This Application concerns whether stations must *also* offer lowest unit charge to advertisements purchased by two other categories of committees that are further removed from the candidates themselves: party committees engaged in coordinated expenditures under 52 U.S.C. § 30116(d), and joint fundraising committees established by candidates and non-candidates "solely for the purpose of joint fundraising by such candidates," *id.* § 30102(e)(3)(A)(ii). While the dispute is ultimately over the meaning of the Communications Act, understanding it requires an explanation of federal campaign finance law's treatment of those two categories of committees.

Party Committee Coordinated Expenditures. FECA sharply limits the size of "contributions" that may be made to federal political committees, including candidate committees.

See 52 U.S.C. § 30116(a). To prevent donors from evading those limits by directly paying vendors on a candidate's behalf, FECA also treats as contributions, subject to those same limits, expenditures that are "made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents." *Id.* § 30116(a)(7)(B)(i); *see Shays v. FEC*, 414 F.3d 76, 97 (D.C. Cir. 2005). But FECA contains an important exception to that treatment, which Congress enacted with its 1974 FECA amendments: State and national political party committees may make substantial coordinated expenditures in connection with federal candidates' campaigns without those expenditures being treated as contributions. *See* 52 U.S.C. § 30116(d). In the 2026 cycle, eligible party committees may coordinate with candidates with respect to up to $130,600 of expenditures for most House contests and between $130,600 and $4 million in Senate contests.[2] The Supreme Court is currently weighing whether the First Amendment prohibits restricting at all the amount that parties may spend on coordinated expenditures. *See generally NRSC v. FEC*, No. 24-621 (U.S.). But whether party coordinated expenditures remain limited or become unlimited, they must still be *the party's* expenditures rather than the candidate's—that is, the party must be the one paying the bills—because the parties' direct monetary contributions to candidate committees are subject to much lower limits that are not being challenged in the pending Supreme Court case. *See* 52 U.S.C. § 30116(a)(1)(A), (h); Tr. of Oral Argument at 82:15-83:8, *NRSC*, No. 24-621.[3]

Joint Fundraising Committees. In addition to establishing a principal campaign committee, FECA allows federal candidates to "designate a political committee established solely

[2] *See Coordinated Party Expenditure Limits*, FEC, https://www.fec.gov/help-candidates-and-committees/making-disbursements-political-party/coordinated-party-expenditures/coordinated-party-expenditure-limits/ (last visited Apr. 28, 2026).

[3] Oral Arg. Transcript, *NRSC v. FEC*, No. 24-261 (U.S. Dec. 9, 2025), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2025/24-621_q86b.pdf.

for the purpose of joint fundraising by such candidates as an [additional] authorized committee." 52 U.S.C. § 30102(e)(3)(A)(ii); 11 C.F.R. § 102.17(a)(1), (2). Such committees are commonly known as "joint fundraising committees" or "JFCs." To form a JFC, the participating committees must establish a separate committee (or designate one of the participating committees) to serve as the joint fundraising representative and enter into an agreement that "state[s] a formula for the allocation of fundraising proceeds." 11 C.F.R. § 102.17(c)(1). A JFC's only permissible purpose is to "collect contributions, pay fundraising costs from gross proceeds and from funds advanced by participants, and disburse net proceeds to each participant." *Id.* § 102.17(b)(1); *see* 52 U.S.C. § 30102(e)(3)(A)(ii). In doing so, the FEC's joint fundraising regulation requires JFC participants to split expenses for each fundraising effort in proportion to their split of proceeds from that effort. 11 C.F.R. § 102.17(c)(7). In recent years, candidates have formed JFCs with party committees, which have higher contribution limits than candidates; with national party committees' even-higher-limit specialty account; and with other non-candidate committees, which also have higher contribution limits than candidates. An overwhelming majority of proceeds of these JFCs flow to the non-candidate committees, due to their higher contribution limits, which therefore bear the overwhelming majority of expenses as well.[4]

Beginning in the 2024 election cycle, select JFCs began running advertisements that were nearly indistinguishable from ordinary campaign ads. These advertisements advocated expressly for a specific Republican Senatorial candidate and against their Democratic opponent. Some

[4] *See, e.g.*, *Nevada Victory Committee*, FEC, https://www.fec.gov/data/committee/C00890962/ (last visited Apr. 28, 2026); *Wisconsin Victory Committee*, FEC, https://www.fec.gov/data/committee/C00889493/ (last visited Apr. 28, 2026).

advertisements were narrated by a Republican candidate, touting the candidates' background.[5] Others attacked Democratic opponents as corrupt or radical.[6] The only feature that distinguishes these ads from typical candidate or party-coordinated ads is a brief fundraising pitch—a call to "join" the candidate's "team"—in the final few seconds, along with an on-screen QR-code that prompts donations to the JFC.

B. The Media Bureau's LUC Guidance

Until recently, the FCC had not provided direct guidance on whether party coordinated expenditures and JFC expenditures are entitled to lowest unit charge for their use of broadcasting stations shortly before elections. And in connection with the litigation over the constitutionality of the party coordinated expenditure limits in *NRSC v. FEC*, the Solicitor General argued in his reply brief that the Communications Act "require[s] broadcasters to charge low rates for candidate spending, *but not for party spending—whether coordinated or independent*." Reply Brief for the Federal Respondents at 23, *NRSC v. FEC*, No. 24-261 (U.S. Oct. 1, 2025), 2025 WL 3068193 (emphasis added).

After this announcement, the National Association of Broadcasters released a new guidance memo to its broadcaster members. *See* Ex. B ("NAB Memo"). NAB stated its "belie[f]" that "a candidate's designated principal campaign committee is entitled to lowest unit charge, while 'joint fundraising committees' and other 'hybrid' committees are not."

On March 30, 2026, just days after the NAB Memo was issued, the Media Bureau issued the LUC Guidance. The LUC Guidance states the Bureau's position that "the LUC requirements

[5] *More Work to Do*, MI Victory Committee/Rogers, https://perma.cc/GY65-XBX6 (last visited Apr. 29, 2026); *Call to Duty*, Sheehy Victory Committee, https://perma.cc/9S62-6XMR (last visited (Apr. 29, 2026).

[6] *See, e.g.*, *Conflict of Interest*, WI Victory JFC/Hovde, https://perma.cc/8KUC-ZX7Z (last visited Apr. 29, 2026); *Radical Too*, Fischer Victory Fund, https://perma.cc/AV7G-FBPX (last visited Apr. 29, 2026).

are applicable to (1) authorized committees, including authorized committees that engage in joint fundraising with legally qualified candidates for federal office, and (2) advertisements that qualify as coordinated expenditures of political parties and legally qualified candidates for federal office." Ex. A ("LUC Guidance") at 1. It states that "the FCC has long held that LUC provisions of section 315(b) apply to both candidates and their authorized campaign committees" because the Act "repeatedly refers to candidates and their authorized committees as sharing the rights it confers." *Id.* It asserts that "[t]he FCC's rules do not recognize distinctions between types of committees for LUC purposes (*e.g.*, principal campaign committee, joint fundraising committee) provided that the committee is an authorized committee of the candidate under FECA." *Id.* at 2. And it further purports to "restate previous Media Bureau guidance" (which it neither cites nor otherwise identifies) that "candidate-party coordinated advertisements are subject to the LUC provisions, provided that the ad otherwise complies with other applicable requirements." *Id.*

C. The Applicants

Applicants are legally qualified Democratic candidates for the U.S. House of Representatives and U.S. Senate in the upcoming 2026 election, along with their principal campaign committees. Each is running in a highly competitive race that has been targeted by the Republican Party for likely coordinated party expenditures in support of Applicants' opponents.

Applicant Sherrod Brown served three terms as United States Senator from the state of Ohio, from 2007 until 2025. In 2024, Senator Brown lost his seat by less than 4% in a hotly contested race to now Senator Bernie Moreno. He is now challenging sitting Senator Jon Husted in the 2026 election, whom Ohio Governor Mark DeWine appointed to fill the seat vacated by Vice President J.D. Vance. The NRSC has characterized the Ohio Senate seat as one of only three

"true defensive targets."[7] Senator Brown therefore expects the race will draw significant spending by NRSC, including in party-candidate coordinated advertisements. In 2024, the NRSC spent more than $1.9 million on media in coordination with Senator Bernie Moreno's campaign to unseat Senator Brown,[8] and nearly $90k more in independent expenditures.[9]

Applicant Jon Ossoff is a United States Senator for the State of Georgia. Senator Ossoff won his seat in 2020 in an exceedingly close and nationally watched race. On election night, no candidate received more than 50% of the vote, forcing the race to a runoff between Senator Ossoff and then-incumbent Senator David Perdue. In the runoff election on January 5, 2021, Senator Ossoff prevailed by only 1.2%. The Republican Party has publicly touted Senator Ossoff's seat "as their top pickup opportunity in the Senate,"[10] and reporters have suggested that the race "may become the most expensive Senate race ever."[11] Indeed, the 2020 race for Senator Ossoff's seat currently holds the record for most expensive Senate race in history,[12] with the NRSC spending $1.3 million in coordinated expenditures with then-Senator Perdue's campaign,[13] and another $14

[7] Max Greenwood, *NRSC Chair Tim Scott Predicts Record-Breaking Spending in 2026 Senate Race*, Campaigns & Elections (Feb. 10, 2025), https://campaignsandelections.com/industry-news/nrsc-chair-predicts-record-spending-in-2026/.

[8] *Party-coordinated Expenditures*, FEC https://www.fec.gov/data/party-coordinated-expenditures/?committee_id=C00027466&candidate_id=S4OH00192&cycle=2024 (last visited Apr. 29, 2026).

[9] *Independent Expenditures*, FEC https://www.fec.gov/data/independent-expenditures/?data_type=processed&most_recent=true&q_spender=C00027466&cycle=2024&is_notice=true&candidate_id=S6OH00163 (last visited Apr. 29, 2026).

[10] Liz Goodwin, *Republicans Privately Fear This Swing State Democrat*, The Wash. Post (Mar. 23, 2026), https://www.washingtonpost.com/politics/2026/03/23/ossoff-georgia-senate-midterms-democrats-republicans/?utm_campaign=wp_main&utm_source=facebook&utm_medium=social.

[11] Max Cohen & John Bresnahan, *Ossoff Gears Up for Fight of His Political Life in 2026*, Punchbowl News (Feb. 6, 2025), https://punchbowl.news/article/campaigns/jon-ossoff-gets-ready-for-2026-senate-race/.

[12] Greenwood, *supra* note 7.

[13] *Party Coordinated Expenditures*, FEC, https://www.fec.gov/data/party-coordinated-expenditures/?committee_id=C00027466&candidate_id=S4GA11285&cycle=2020 (last visited Apr. 28 , 2026).

million in independent expenditures opposing Ossoff's candidacy.[14] To that end, Senator Ossoff expects the 2026 race will draw significant spending by the NRSC, as well.

Applicant Roy Cooper is the former Governor of North Carolina. He announced his candidacy for United States Senate on July 28, 2025, and he won the Democratic Party primary election for U.S. Senate in North Carolina on March 4, 2026. Like Ohio, the NRSC has characterized the North Carolina Senate seat as a "true defensive targets."[15] Governor Cooper therefore expects the race to draw significant spending by the NRSC. In 2022, when North Carolinians last elected a U.S. Senator, the NRSC spent $1.7 million in coordinated expenditures with Senator Ted Budd for media supporting his campaign.[16] And it spent more than $6 million more in independent expenditures opposing the Democratic candidate.[17]

Applicant Kristen McDonald Rivet represents Michigan's 8th Congressional District in the House of Representatives. Representative McDonald Rivet won her seat in 2024 in an election in which Donald Trump carried her district by two points. Representative McDonald Rivet will be on the ballot in November 2026 to keep her seat in MI-8. NRCC has announced its plan to target MI-8 to expand its House majority this election cycle,[18] and Representative McDonald Rivet expects NRCC will dedicate significant resources toward advertisements opposing her reelection.

[14] *Independent Expenditures*, FEC https://www.fec.gov/data/independent-expenditures/?data_type=processed&most_recent=true&q_spender=C00027466&cycle=2020&is_notice=true&candidate_id=S8GA00180 (last visited Apr. 28, 2026).
[15] Greenwood, *supra* note 7.
[16] *Party Coordinated Expenditures*, FEC https://www.fec.gov/data/party-coordinated-expenditures/?committee_id=C00027466&candidate_id=S2NC00505&cycle=2022 (last visited Apr. 28, 2026).
[17] *Independent Expenditures*, FEC https://www.fec.gov/data/independent-expenditures/?data_type=processed&most_recent=true&q_spender=NRSC&cycle=2022&is_notice=true&candidate_id=S2NC00497 (last visited Apr. 28, 2026).
[18] *NRCC Targets 26 Offensive Seats to Expand House Majority*, NRCC (Mar. 17, 2025), https://www.nrcc.org/2025/03/17/nrcc-targets-26-offensive-seats-to-expand-house-majority/.

In the 2024 election cycle, NRCC spent nearly $630,000 in independent expenditures on media opposing Representative McDonald Rivet's candidacy.[19] And in 2022, NRCC coordinated more than $100,000 in expenditures with the Republican candidate for MI-8.[20]

ARGUMENT

I. The LUC Guidance unlawfully dilutes candidates' exclusive entitlement to lowest unit charge by offering it to non-candidate political committees.

The LUC Guidance must be set aside because it unlawfully requires broadcasters to offer lowest unit charge for advertisements that are not entitled to it under the Communications Act. Section 315(b)(1) provides for lowest unit charge *only* "for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign." 47 U.S.C. § 315(b)(1). Lowest unit charge is therefore available only for uses of broadcasts *by candidates*, and not for other political advertisements. The Commission has explained that "*only candidates* are entitled to lowest unit charge benefits," and it has "*never* held that independent entities" that support or oppose candidates are "entitled to the lowest unit charge." *In re Codification of Comm'n's Pol. Programming Pol'ys*, 7 FCC Rcd. 678, 685 n.54, 686 (1991) (emphasis added). Commission regulations implementing the statutory lowest unit charge provision similarly provide that lowest unit charge is available for use by "any *person* who is a legally qualified *candidate* for any public office." 47 C.F.R. § 73.1942(a) (emphasis added).

As the Commission has explained, the lowest unit charge provision reflects a "Congressional effort to reduce *candidates'* escalating campaign costs." *In re Codification of*

[19] *Independent Expenditures*, FEC, https://www.fec.gov/data/independent-expenditures/?data_type=processed&q_spender=C00075820&is_notice=false&most_recent=true&candidate_id=H4MI08218&min_date=01%2F01%2F2023&max_date=12%2F31%2F2024 (last visited Apr. 28, 2026).

[20] *Party Coordinated Expenditures*, FEC, https://www.fec.gov/data/party-coordinated-expenditures/?committee_id=C00075820&candidate_id=H0MI08141 (last visited Apr. 28, 2026).

Comm'n's Pol. Programming Pol'ys, 7 FCC Rcd. at 685 n.54 (emphasis added). To that end, the provision "regulat[es] rates charged political candidates," and it was "viewed [by Congress] as providing an additional break for candidates." *Hernstadt*, 677 F.2d at 897. It "was intended to ensure that, during the pre-election period, *candidates* would receive . . . volume and frequency discounts regardless of the number of announcements purchased." *Id.* at 890 (emphasis added). But its scope was intentionally limited, to avoid "imposing unreasonable and possibly economically devasting burdens on small stations." *Id.* at 898.

The LUC Guidance must be set aside as unlawful because it purports to require stations to offer lowest unit charge to advertisements from party committees engaged in coordinated spending and from JFCs, when neither constitutes the use of a broadcasting station by a legally qualified candidate, as Section 315(b)(1)'s plain text demands.

A. Party committees' coordinated expenditures are not use by a candidate.

Party committees' coordinated expenditures are not entitled to lowest unit charge because they are expenditures by the party committees, not by candidates, so they are not "use" of a broadcasting station "by . . . a legally qualified candidate" as Section 315(b)(1) requires. This follows directly from FECA's distinction between (1) party committee *contributions* to candidate committees, which transfer funds to candidates that the candidates can then spend to purchase broadcast time for their own "use," *see* 52 U.S.C. § 30116(a)(1)(A), (h), and (2) party committee coordinated *expenditures*, which must be made directly by the party committee, *not* the candidate, although the party and candidate are free to discuss and plan them in advance, *see id.* § 30116(d). For party committee advertisements to be *the candidate's* use, they would need to be purchased by the candidate's campaign, not by the party—and if so, they would involve *contributions* by party committees to the campaign, rather than coordinated expenditures. By treating party committee advertisements as candidate spending under the Communications Act when it is party spending

under FECA, the LUC Guidance improperly puts the two statutes "at war with one another," instead of reading them "as a harmonious whole." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 502 (2018).

Section 315(b)(1) does not require lowest unit charge for the "use" of a broadcasting station by a political party or any other non-candidate political group—only by a "legally qualified candidate." It was specifically crafted to "reduce *candidates'* escalating campaign costs." *In re Codification of Comm'n's Pol. Programming Pol'ys*, 7 FCC Rcd. at 685 n.54 (emphasis added). That is why the Commission has "never held that independent entities were entitled to the lowest unit charge," even for ads supporting or opposing candidates, but has instead emphasized that "the lowest unit charge *inures to the benefit of candidates only*." *Id.* (emphasis added). If Congress had wanted to extend lowest unit charge to party expenditures also, it easily could have said so when it first authorized coordinated expenditures a short two years after passing the lowest unit charge requirement in the first place. But it opted instead to limit the entitlement to avoid "imposing unreasonable and possibly economically devasting burdens on small stations." *Hernstadt*, 677 F.2d at 898; *see also Hayes v. Sebelius*, 762 F. Supp. 2d 90, 115 (D.D.C. 2011) ("[W]hen Congress amends one provision of a statute but not another, it can be interpreted to have signaled its intention not to apply the amendment to the unaffected provision.").

Consistent with the provision's text and purpose, the Commission has historically interpreted Section 315(b)(1) to mean that "only candidates or their authorized campaign committees are entitled to the LUC pursuant to Section 315(b)." *In re Codification of the Commission's Pol. Programming Pol'ys*, Memorandum Opinion and Order, 7 FCC Rcd. 4611, 4614, ¶ 23 (1992). As explained below with respect to JFCs, this interpretation is overbroad to the extent it permits JFCs to benefit from lowest unit charge even when some of their members are

not candidate committees. But party committees' coordinated spending fails even this overbroad test. With one exception in presidential contests that is inapplicable to Applicants' circumstances,[21] party committees are not and cannot be "authorized campaign committees" under FECA because, by their very nature, they "support[] or ha[ve] supported more than one candidate" for office, and they exist to do more than "solely . . . joint fundraising." 52 U.S.C. § 30102(e)(3)(A). Thus, party coordinated expenditures are made neither by a candidate nor by "their authorized campaign committee[]," so they fail the Commission's own longstanding test of lowest unit charge eligibility.

The LUC Guidance has no answer to these arguments. The Guidance acknowledges that advertising "purchased by political parties as an independent expenditure is not entitled to LUC." Ex. A at 2. It points out that such expenditures are not coordinated with candidates. But it does not explain how coordination could convert a party's own expenditure into the use of a station by a candidate. The more natural reading of the statute, by far, is that offered by the Solicitor General to the Supreme Court late last year: that lowest unit charge is available *only* for candidates and is "not [available] for *party spending—whether coordinated or independent*." Reply Brief for the Federal Respondents at 23, *NRSC*, No. 24-261 (U.S. Oct. 1, 2025), 2025 WL 3068193 (emphasis added). And while the Guidance purports to merely "restate previous Media Bureau guidance" on the subject, it does not cite any and Applicants are aware of none. Ex. A at 2. The only source the Guidance cites on this subject is *FEC v. Colorado Republican Federal Campaign Committee*, 41 F. Supp. 2d 1197 (D. Colo. 1999). But that case—which was ultimately reversed, *FEC v. Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431 (2001)—holds no such thing. The quoted language—that "independent expenditures do not qualify for the lowest rates on the purchase of

[21] FECA allows a presidential candidate nominated by a political party to designate the national committee of the party as a principal campaign committee, but only if the national committee retains separate accounts with respect to that function. 52 U.S.C. § 30102(e)(3)(A)(i).

broadcasting time, as coordinated expenditures would"—is not a holding of the court but merely a description of one party's statement of undisputed facts. 41 F. Supp. 2d at 1210.

The LUC Guidance's statement that "candidate-party coordinated advertisements are subject to the LUC provisions" is therefore unlawful, because it purports to extend the entitlement to lowest unit charge to the use of broadcasting stations by political parties, whereas—as the Commission has long recognized—Congress limited that entitlement to candidates only.

B. Advertisements by JFCs with non-candidate members are not "use" by a candidate.

Advertisements by JFCs with non-candidate members are also not "use" of a broadcasting station "by . . . a legally qualified candidate" that is entitled to lowest unit charge because by law, much of the cost and much of the fundraising benefit of those advertisements must be borne by the non-candidate members of the JFC who have no right to lowest unit charge. In practice, those non-candidate members often completely dominate JFC fundraising. In the 2024 cycle, for example, the NRSC and Rogers for Senate formed a JFC, Michigan Victory Committee, that spent more than 98% of its receipts (more than $9 million) on advertising, while disbursing very little to its participants: just over 1% of its receipts (just under $100,000) to the NRSC, and just 0.02% (barely $2,000) to Rogers for Senate, the only candidate-committee member.[22] Under FEC rules, that means that the NRSC—the recipient of 98% of the proceeds after advertising expenses—must have paid for 98% of the more than $9 million in advertising expenses, while Rogers for Senate paid just 2%. *See* 11 C.F.R. § 102.17(c)(7). And, as explained above, the NRSC as a party committee is not entitled to lowest unit charge because its advertising expenses are not the use by *a candidate* of a broadcasting station. Yet the LUC Guidance requires stations to treat all of this

[22] *See Michigan Victory Committee – Disbursements*, FEC, https://www.fec.gov/data/committee/C00888883/?tab=spending#total-disbursements (last visited Apr. 28, 2026).

JFC's advertising expenses as if they are "use" by a candidate whose committee pays for almost none of them.

The Michigan Victory Committee did not stand alone. NRSC used the same strategy in Nevada and Wisconsin.[23] And even JFCs that do raise substantial money, rather than serving merely as advertising vehicles, often raise far more for party committees and PACs that are not entitled to lowest unit charge than they raise for candidate committees that are so entitled—meaning that their advertising expenses are overwhelmingly paid by committees not entitled to lowest unit charge. Grow the Majority, for example—Speaker Mike Johnson's principal joint fundraising committee—made more than half of its 2025 disbursements to party committees and non-candidate PACs, and less than half to candidate committees that could be entitled to lowest unit charge.[24]

The LUC Guidance's only justification for extending lowest unit charge to advertising purchased by JFCs like these—advertising which by law is paid for primarily by committees that are not entitled to lowest unit charge—is that the JFCs are formally designated as "authorized campaign committees" of the participating candidates. *See* Ex. A at 2. But FECA allows candidates to designate JFCs as "authorized committees" "*solely* for the purpose of joint fundraising." 52 § 30102(e)(3)(A)(ii) (emphasis added). That designation reflects that the JFC spends the candidate's share of fundraising expenses and receives the candidate's share of contributions on behalf of the candidate, before transferring the candidate's share of net proceeds to the candidate's principal committee. *See id.* § 30101(6). But that *at most* makes the *candidate's share* of the JFC's expenditures into candidate expenditures—it does not in any way transform the portions of the

[23] *See supra* note 4.

[24] *Grow the Majority – Spending*, FEC, https://www.fec.gov/data/committee/C00858373/?tab=spending (last visited Apr. 28, 2026).

JFC's expenditures paid for by non-candidate committees into candidate use that could qualify for lowest unit charge. It therefore does not justify treating expenditures by JFCs with non-candidate members as entitled to lowest unit charge, as the LUC Guidance does, because those expenditures are partially—and often overwhelmingly—paid for by non-candidates.

The mere fact that JFCs are designated as "authorized committees" by participating candidates does not justify the LUC Guidance's anomalous treatment of JFC expenditures funded in large part by non-candidates as if they were candidate use. The phrase "authorized committee" does not appear in the text of Section 315(b)(1), which grants *only candidates* the right to lowest unit charge. Nor does it appear anywhere in the Commission's regulations. *See* 47 C.F.R. § 73.1942. The only place the phrase "authorized committee" appears in the relevant statute is in a different subsection of Section 315, 47 U.S.C. § 315(b)(2). And that Subsection (b)(2), titled "Content of broadcasts," does not grant substantive rights to candidates, authorized committees, or anybody else. Instead, it places conditions on a *candidate's* right to lowest unit charge, which is separately conferred in Subsection (b)(1). Subsection (b)(2) provides that, to be eligible for lowest unit charge, a candidate must make a "written certification" that "the candidate (and any authorized committee of the candidate) shall not make any direct reference to another candidate for the same office, in any broadcast using the rights and conditions of access under [the Communications Act]," unless the ad also includes a disclaimer indicating that the candidate approved the broadcast and that the candidate's authorized committee paid for the broadcast. 47 U.S.C. § 315(b)(2)(A), (C). By its plain terms, this condition applies to "*any*" television or radio broadcast made by the candidate *or* the candidate's authorized committee—not just those entitled to lowest unit charge.

Subsection (b)(2) therefore does not mean that every "authorized committee" broadcast is entitled to lowest unit charge. It simply means that, for a candidate to receive lowest unit charge

for his *own* ads, he must certify that neither he nor any of his "authorized committees" will run *any* advertisement that mentions an opponent without including the required disclaimer. In other words, Section 315(b)(1) offers a limited benefit to candidates—lowest unit charge for candidate ads—in exchange for a broader commitment to abide by the conditions in Subsection (b)(2) in both candidate ads *and* authorized committee ads—including JFC ads. Nothing in the statute or its purpose limits the universe of broadcasts covered by Subsection (b)(2) to those covered by Subsection (b)(1). Thus, there is no reason to read the limitations in Subsection (b)(2) as enlarging the scope of entities entitled to lowest unit charge under Subsection (b)(1).

Confirming this, Subsection (b)(2)(B) provides that if the candidate "or any authorized committee of such candidate" breaches the conditions in Subsection (b)(2)(A), then "such *candidate* shall not be entitled to receive [lowest unit charge] on such broadcast or *any other* broadcast" within the covered period. *Id.* § 315(b)(2)(B) (emphasis added). Notably, this subsection does not say that a violation of Subsection (b)(2)(A) disentitles "authorized committees" from receiving lowest unit charge. If Congress meant for *both* "candidates" and "authorized committees" to get lowest unit charge, then the omission of "authorized committees" from this second clause of Subsection (b)(2)(B) would make little sense—it would produce a loophole that would swallow subsection (b)(2) whole. *See County of Maui v. Haw. Wildlife Fund*, 590 U.S. 165, 183 (2020) (rejecting a reading of a statute that "is inconsistent with the statutory text and simultaneously creates a massive loophole").

That both the "carrot" in Subsection (b)(1)—entitlement to lowest unit charge—and the "stick" in Subsection (b)(2)(B)—disentitlement from lowest unit charge—mention only "candidates" and not "authorized committees" is telling. This is particularly so because Congress *did* mention "authorized committees" in the parts of Subsection (b)(2) that describe the universe

of ads subject to the disclaimer requirement. "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983) (alteration omitted).

Thus, because broadcasting purchased by JFCs with non-candidate members is partially—and often overwhelmingly—paid for by non-candidate committees that are not entitled to lowest unit charge, the LUC Guidance is unlawful in requiring stations to extend lowest unit charge to such broadcasts.

C. Applicants are aggrieved by the Media Bureau's LUC Guidance.

The Commission's regulations authorize "[a]ny person aggrieved by any action taken pursuant to delegated authority [to] file an application requesting review of that action by the Commission." 47 C.F.R. § 1.115(a). Applicants have been "aggrieved" by the LUC Guidance within the meaning of Section 1.115(a).

Federal law widely recognizes "competitive injuries" for political candidates. A candidate for office suffers a legally cognizable injury "when regulations illegally structure [the] competitive environment" governing their election. *Shays*, 414 F.3d at 87. That is, candidates "suffer injury to a statutorily protected interest if" governing regulations require them to "compete for office in contests tainted" by illegal practices. *Id.* at 85. Such an injury arises, for example, when a candidate "face[s] *intensified* competition" under an unlawful regulatory scheme, requiring them to "anticipate and respond to a broader range of competitive tactics than federal law would otherwise allow." *Id.* at 86.

That is just the case here. Applicants are four legally qualified candidates for the U.S. House of Representatives and U.S. Senate and their principal campaign committees. Senator Sherrod Brown, Senator Jon Ossoff, Governor Roy Cooper, and Representative Kristen McDonald

Rivet will all appear on the 2026 general election ballot. Under Section 351(b), Applicants are indisputably entitled to lowest unit charge for their political advertisements.

Applicants' races are highly competitive. NRCC has announced it is targeting Representative McDonald Rivet's seat to attempt to expand the Republicans' majority in the House of Representatives this fall.[25] And the NRSC views Senator Ossoff's seat, as well as the North Carolina and Ohio seats for which Governor Cooper and Senator Brown are running, as absolutely critical to maintain Republican control of the Senate.[26] Applicants therefore expect that the Republican party committees will dedicate substantial resources toward political advertising opposing Applicants' campaigns and supporting their opponents, including through coordinated expenditures and JFC advertising. That is exactly what NRCC and NRSC have done in recent years: these committees have spent millions of dollars in coordinated expenditures with Republican candidates in recent election cycles,[27] and it is expected this cycle will shatter existing spending records.[28]And given these projections, Applicants also expect that more JFCs will continue the practice a select few test-drove in 2024 of running advertisements that function as candidate ads for their opponents.

For the reasons Applicants explain above, a straightforward, textual reading of Section 351(b) does not require broadcasters to offer party committees or JFCs lowest unit charge in these circumstances. Broadcasters *should* be permitted to charge party committees—which are vastly better resourced than Applicants and their designated campaign committees—normal rates for airtime. But the Media Bureau's LUC Guidance instead unlawfully requires broadcasters to charge

[25] *Supra* note 18.
[26] *Supra* notes 7, 10–11.
[27] *Supra* notes 8–9; 13–14; 16–17; 19–20.
[28] *See* Cohen & Bresnahan, *supra* note 11.

party committees lowest unit charge for candidate-coordinated advertisements and JFC advertisements, thereby vastly reducing the cost to run ads against Applicants and supporting their opponents. This illegal discount for party coordinated and JFC ads places Applicants at a competitive disadvantage, forcing them to respond to a higher volume of the counter advertisements than otherwise could have been purchased at the same price point, and diluting their independent campaign messaging—which is supposed to be privileged by the Communications Act—with party messaging at lower rates than it is entitled to under law.

Moreover, because the issue directly affects Applicants' ongoing campaigns for the 2026 election, urgent action by the Commission is needed to correct the Media Bureau's erroneous guidance. Applicants reasonably expect that JFC and party-coordinated broadcast spending against them will begin in just the next few months. The Commission should therefore expedite this matter and promptly set aside the LUC Guidance.[29]

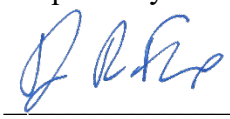
CONCLUSION

The Commission should set aside the LUC Guidance and explain that only candidates and their principal campaign committees are entitled to lowest unit charge.

[29] It was "not possible" for applicants "to participate in the earlier stages of the proceeding," 47 C.F.R. § 1.115(a), because there was no earlier proceeding—the Bureau did not solicit public input before it issued the LUC Guidance.

Dated: April 29, 2026

Respectfully submitted,



David R. Fox
Richard A. Medina
Nicole E. Wittstein
ELIAS LAW GROUP LLP
250 Massachusetts Ave. NW, Suite 400
Washington, DC 20001
(202) 968-4490
dfox@elias.law
rmedina@elias.law
nwittstein@elias.law

Counsel to Applicants

EXHIBIT A

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA 26-300
Released: March 30, 2026

FCC MEDIA BUREAU PROVIDES GUIDANCE ON ENTITLEMENT TO LOWEST UNIT CHARGE FOR LEGALLY QUALIFIED CANDIDATES FOR FEDERAL OFFICE AND ALL AUTHORIZED COMMITTEES

With another election season upon us, the FCC's Media Bureau takes this opportunity to remind broadcasters and the public about the FCC's lowest unit charge (LUC) requirements. As discussed below, the LUC requirements are applicable to (1) authorized committees, including authorized committees that engage in joint fundraising with legally qualified candidates for federal office, and (2) advertisements that qualify as coordinated expenditures of political parties and legally qualified candidates for federal office.

Section 73.1942 of the Commission's rules specifies that the charges made for the use of any broadcast station by a legally qualified candidate in connection with their campaign for nomination or election shall not exceed the LUC of the station for the same class and amount of time for the same period during 45 days preceding the date of a primary election and 60 days preceding the date of a general election.[1] Although section 73.1942 makes no reference to a legally qualified candidate's "authorized committee," section 315(b) of the Communications Act of 1934, as amended (Act), which section 73.1942 is intended to implement, repeatedly refers to candidates and their authorized committees as sharing the rights it confers.[2] Accordingly, the FCC has long held that LUC provisions of section 315(b) apply to both candidates and their authorized campaign committees.[3]

To determine what qualifies as an authorized committee, the Commission relies on subsection 315(b)(2)(F) of the Act, which explicitly defines the term "authorized committee" as having the same meaning given to it by the Federal Election Campaign Act (FECA), *i.e.*, the principal campaign committee or any other political committee authorized and designated by a candidate to receive contributions or make expenditures on behalf of such candidate.[4] Additionally, although the FECA generally prohibits the designation as an authorized committee a political committee that supports more

---

[1] 47 CFR § 73.1942(a).

[2] *See* 47 U.S.C. § 315(b).

[3] *See In the Matter of Codification of the Commission's Political Programming Policies*, Memorandum Opinion and Order, 7 FCC Rcd 4611, 4614, para. 23 (1992).

[4] 47 U.S.C. § 315(b)(2)(F) ("authorized committee" has the meaning given such term by section 30101 of title 52"). *See* 52 U.S.C. § 30101(6) (defining the term "authorized committee" to mean "the principal campaign committee or any other political committee authorized by a candidate under section 30102(e)(1) of this title to receive contributions or make expenditures on behalf of such candidate"); 52 U.S.C. § 30102(e)(1) ("Each candidate for Federal office . . . shall designate in writing a political committee in accordance with paragraph (3) to serve as the principal campaign committee of such candidate. . . . A candidate may designate additional political committees in accordance with paragraph (3) to serve as authorized committees of such candidate.").

than one candidate,[5] it provides an exception to allow candidates to designate as an authorized committee a political committee "established solely for the purpose of joint fundraising."[6] The FCC's rules do not recognize distinctions between types of committees for LUC purposes (*e.g.*, principal campaign committee, joint fundraising committee) provided that the committee is an authorized committee of the candidate under the FECA.

We also take this opportunity to restate previous Media Bureau guidance regarding LUC eligibility for candidate-party coordinated ads. Advertising time purchased by political parties as an independent expenditure is not entitled to LUC. These expenditures involve no coordination between the party and a candidate. By contrast, however, candidate-party coordinated advertisements are subject to the LUC provisions, provided that the ad otherwise complies with other applicable requirements in section 73.1942 of the Commission's rules and section 315(b) of the Act.[7]

Stations are always free to request documentation from parties to confirm that an entity purchasing time is eligible to receive LUC.

-FCC-

---

[5] 52 U.S.C. § 30102(e)(3)(A).

[6] 52 U.S.C. § 30102(e)(3)(A)(ii).

[7] *See, e.g.*, Colorado II at 1210 ("For example, independent expenditures do not qualify for the lowest rates on the purchase of broadcasting time, as coordinated expenditures would.").

EXHIBIT B

POLITICAL ADVERTISING
INDEPENDENT COMMITTEES AND "LUC" RATES

Many stations have encountered independent entities such as political action committees (PACs) or political parties, claiming to be "authorized" by a candidate and thus entitled to the "lowest unit charge" (LUC) for political advertising under Section 315(b) of the Communications Act of 1934 (47 U.S.C. § 315(b)). This question has also arisen in related litigation currently pending before the U.S. Supreme Court. This memo presents NAB staff's view of whether such claims, as a general matter, may be valid. This memo is not intended to provide legal advice on how the law or legal principles discussed herein may apply to a broadcast station's specific circumstances. Indeed, each station faces its own unique political and economic environment, and as such, the applicability of these views will vary based on the situation. Stations should seek the advice of their own attorneys when deciding whether an advertisement qualifies for the LUC.

NAB believes that, while a candidate's "authorized committee" is entitled to LUC, other entities are not. Specifically, under the applicable federal laws, a candidate's designated principal campaign committee is entitled to LUC rates, while "joint fundraising committees" and other "hybrid" committees are not. In fact, as detailed below, the Department of Justice, through the Solicitor General, recently reflected a similar view.

Although Section 315(b) only mentions LUC in the context of candidate ads, the FCC has historically interpreted the law to apply to both a "legally qualified candidate" and the "authorized committee of such candidate." Section 315(b)(2) states that an ad by a candidate and any "authorized committee" of the candidate that references an opponent for the same office is only entitled to the LUC if the ad includes the "stand by your ad" statement that the candidate has approved the ad. In a 1972 Public Notice, for instance, the FCC specifically denied that the LUC provision of Section 315(b)(1) applied to political broadcasts by groups, organizations, or persons other than candidates, stating: "The provision applies only to broadcasts by candidates for public office." Similarly, in a 1992 Memorandum Opinion and Order codifying its prior political programming policies, the FCC stated: "[W]e have always held that only candidates or their authorized campaign committees are entitled to the LUC pursuant to Section 315(b). Thus, even if an independent entity produces an advertisement that includes an appearance by a candidate, that independent entity is not entitled to the LUC." Accordingly, it is not sufficient for candidate to "authorize" or approve any particular advertisement. For any

entity to claim an entitlement to LUC rates, the entity itself must be the "authorized committee" of a legally qualified candidate.

Section 315(b) defines "authorized committee" by referring to Section 30101 of the Federal Election Campaign Act (FECA) (52 U.S.C. § 30101). Section 30101 states that "[t]he term 'authorized committee' means the principal campaign committee or any other political committee authorized by a candidate under section 30102(e)(1) of this title to receive contributions or make expenditures on behalf of such candidate." Section 30102(e)(1), in turn, provides that each candidate shall designate a committee to serve as the "principal campaign committee of such candidate." The "principal campaign committee" is therefore an "authorized committee" within the meaning of both Section 30101 of the FECA and Section 315(b) of the Communications Act. Section 30102(e)(1) also provides that a candidate "may designate additional political committees in accordance with paragraph (3) to serve as authorized committees of such candidate."

Section 30102(e)(3), however, generally limits the designation of additional committees as "authorized committees" to committees that exclusively support a single candidate. Paragraph (3) provides two exceptions to this limitation. First, a candidate for President nominated by a political party may designate the national committee of such political party as "a principal campaign committee."[1] Second, candidates "may designate a political committee established *solely for the purpose of joint fundraising* by such candidates as an authorized committee" (emphasis added). Thus, while such "joint fundraising committees" may be considered "authorized committees" under the FEC's rules, the plain language of the FECA limits their designation as an authorized committee *solely* to regulations regarding *fundraising*, not to any regulatory designations related to active campaigning or buying advertising. The Department of Justice, through the Solicitor General of the United States, essentially took this view in a 2025 filing with the United States Supreme Court, stating that the LUC rules "require broadcasters to charge low rates for candidate spending, ***but not for party spending—whether coordinated or independent***."[2]

NAB thus believes that, pursuant to the terms of Sections 30101 and 30102 of the FECA, only a candidate's designated principal campaign committee is entitled to LUC rates, while "joint fundraising committees" and other "hybrid" committees are not "authorized committees" eligible for LUC rates under Section 315(b) of the Communications Act.[3]

[1] This, of course, is applicable only to Presidential candidates and, under the terms of Section 30102(e)(3), only where the national committee maintains separate maintains separate books of account with respect to its function as a principal campaign committee.
[2] *Reply Brief for the Federal Respondents at 23, National Republican Senatorial Committee, et al., Petitioners, v. FEC, et al.*, No. 24-261, 2025 WL 3068193 (Oct. 1, 2025) (emphasis added). The Solicitor General added, "Parties could spend more money on advertisements, but broadcasters still would not be required to charge parties special low rates." *Id.*
[3] Note that, as of the date of this writing, the Supreme Court has agreed to hear arguments in a case brought by National Republican Senatorial Committee and others as to whether the First Amendment permits the government to restrict political parties from spending money on

In addition, because the key definition of “authorized committee” is tied to federal campaign finance limitations, it appears that these exceptions are limited to the narrow category of federal candidate committees. Nothing in the FECA, the Communications Act, or the FCC’s rules or published cases suggests that these exceptions extend to state or local political parties, or other groups that are purportedly authorized by a state or local candidate. Thus, even if such parties claim to be “authorized” to act for a candidate under state or local law, it does not appear that they would qualify for LUC status under federal law.

NAB's Counsel Memos are intended to serve as a source of general information on legal issues of interest to the broadcast industry. Broadcasters seeking information on how the principles discussed in a Counsel Memo apply to their specific circumstances should seek the advice of their own attorneys.

campaign advertising with input from the party’s candidate for office. (*National Republican Senatorial Committee, et. al. v. FEC, et. al*., 117 F.4th 389 (6th Cir. 2024), *cert. granted,* 2025 WL 1787717 (U.S. Jun. 30, 2025) (No. 24-261).) While some have suggested that the Court’s decision in this case may broaden the scope of entities entitled to LUC rates, neither the issues to be addressed in the case nor Section 315(b) of the Communications Act appear to support such an outcome. Indeed, the Solicitor General of the United States has already explicitly denied that the Court’s decision will impact LUC rates, stating “[p]arties could spend more money on advertisements, but broadcasters still would not be required to charge parties special low rates.” (*Reply Brief for the Federal Respondents at 23, National Republican Senatorial Committee, et al., Petitioners, v. FEC, et al.*, No. 24-261, 2025 WL 3068193 (Oct. 1, 2025).)

Nwamaka Anowi, Clerk of Court
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, VA 23219

Re: *Sherrod Brown, et al. v. FCC & USA*, No. 26-1785 (argued Aug. 7, 2026)

Dear Ms. Anowi:

In briefing and at argument, Respondents presented several threshold arguments, including that the challenged Public Notice was not a final Commission order and did not alter the regulatory status quo. Pursuant to Federal Rule of Appellate Procedure 28(j), the FCC now writes to update the Court on two developments that provide additional support for dismissal of Petitioners' untimely attempt to alter the regulatory status quo.

First, on August 13, the FCC's Media Bureau issued an order dismissing a petition for reconsideration of the challenged Public Notice filed by the Television Bureau of Advertising, Inc. *See Order on Reconsideration*, DA 26-851 (Media Bur. Aug. 13, 2026) (copy attached). The Bureau's *Order on Reconsideration* makes clear that, in merely "restat[ing] previous Media Bureau guidance," the Public Notice "broke no new ground"; it "simply collects in one place prior FCC orders and other relevant authority." *Id.* ¶¶ 2, 4, 7, 10, 12–14. "[N]othing in the Public Notice … reopens or otherwise creates a new opportunity to challenge the agency's prior determinations." *Id.* ¶ 12.

Second, on August 14, the FCC Chairman circulated a proposed order on the application for Commission review filed by Petitioners here. The Commissioners may now vote on that proposed order.[1] We have been authorized to disclose that the proposed order would also dismiss the application as an improper vehicle for revisiting existing law on the eve of an election, after primaries have occurred and plans have been made for the general election based on the existing rules.

[1] FCC, Items on Circulation, https://www.fcc.gov/items-on-circulation.

Neither the *Order on Reconsideration* nor the proposed order would alter parties' ability to bring case-specific disputes about the application of the "lowest unit charge" to the FCC for adjudication. And parties that wish for the Commission to reexamine past agency rules or guidance concerning the lowest unit charge would remain free to submit petitions for rulemaking or declaratory ruling for consideration in the normal course.

These administrative developments, which demonstrate that Petitioners sought review of a document that merely reminded the public of existing obligations, support Respondents' position that Petitioners' challenge should be dismissed.

Respectfully submitted,

/s/ *Scott M. Noveck*

Jacob M. Lewis
Associate General Counsel

Sarah E. Citrin
Deputy Associate General Counsel

Scott M. Noveck
Counsel

(Enclosure)

cc: All counsel (via CM/ECF)

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

In the Matter of	)
	)
Entitlement to Lowest Unit Charge for Legally Qualified Candidates for Federal Office and All Authorized Committees	)

ORDER ON RECONSIDERATION

Adopted: August 13, 2026 **Released: August 13, 2026**

By the Acting Chief, Media Bureau:

I. INTRODUCTION

1. In this *Order on Reconsideration*, we consider a petition from the Television Bureau of Advertising, Inc. (TVB) for reconsideration of the Media Bureau's March 2026 public notice reminding broadcasters and the public about the FCC's "lowest unit charge" (LUC) requirements.[1] For the reasons stated below, we dismiss TVB's request for reconsideration.[2]

2. First, TVB argues that the Bureau's Public Notice broke new substantive ground, and their Petition thus seeks reconsideration of what they contend is a new and final agency action. As explained below, however, that premise is incorrect. The Public Notice merely reminds the public, going into an election season, of the agency's longstanding and previous decisions regarding the scope of LUC obligations. It simply collects in one place prior FCC orders and other relevant authority so that a wide range of stakeholders can be aware of existing law. Such a reminder is not a decision or action that can be challenged through a petition for reconsideration.

3. Second, and given the above, insofar as TVB's Petition takes issue with prior agency guidance, the time for challenging that prior guidance has passed.[3] Moreover, there is nothing in the Public Notice that reopened those issues or underlying guidance sufficient to provide TVB with a right to challenge them through a petition for reconsideration of the Public Notice. Likewise, insofar as TVB appears to take issue with the longstanding definition of "authorized committee," which comes from 52 U.S.C. §§ 30101-30102, they are seeking the wrong type of relief in the wrong forum. Changing that definition is an issue for Congress, or the Federal Election Commission (FEC) through its implementing rules, to decide.

4. Third, we note that existing industry practice comports with the FCC's existing interpretations of the LUC requirements. This further confirms that the Public Notice broke no new ground; it did not change the status quo. As always, if there are particular instances in which a party

[1] *FCC Media Bureau Provides Guidance on Entitlement to Lowest Unit Charge for Legally Qualified Candidates for Federal Office and All Authorized Committees*, Public Notice, DA 26-300, 2026 WL 1013722 (MB Mar. 30, 2026) (Public Notice); Petition for Reconsideration or, In the Alternative, for Declaratory Ruling of the Television Bureau of Advertising, Inc. (Apr. 29, 2026) (Petition).

[2] We defer action on TVB's alternative request for a declaratory ruling and do not address it in this *Order on Reconsideration*.

[3] As indicated elsewhere in this document, parties can challenge the application vel non of the LUC in a particular case based on particular facts.

wishes to challenge a station's application of the LUC in a specific case, the agency can adjudicate those disputes on a case-by-case basis consistent with FCC precedent.[4]

II. BACKGROUND

5. Under section 315(b) of the Communications Act, during the period immediately preceding an election, any "use" of broadcast airtime for campaign advertisements "by any person who is a legally qualified candidate for any public office" must receive the "lowest unit charge" that the station offers for that airtime.[5] The statute directs the Commission to "prescribe appropriate rules and regulations to carry out" that requirement.[6] The Commission has accordingly implemented section 315(b) of the Act in section 73.1942 of its rules,[7] and in various other rules and orders.[8]

6. Neither section 315 of the Act nor section 73.1942 of the Commission's rules specifies what "use" of broadcast airtime "by" a candidate entails. But as TVB repeatedly acknowledges, the Commission and industry have long recognized the Commission that the LUC entitlement extends to both candidates and their principal campaign committees.[9] And previous Media Bureau guidance, in response to informal inquiries from regulated parties, has established candidate-party coordinated advertisements as eligible for the LUC rate.

7. In the Public Notice, the Bureau broke no new ground. Rather, consistent with the longstanding, undisputed recognition that principal campaign committees are eligible for the LUC, and with section 315(b)(2)(F) of the Act, the Bureau explained that "[t]o determine what qualifies as an authorized committee," the Commission is bound by the meaning given that term by the Federal Election Campaign Act (FECA).[10] Accordingly, the Bureau stated that "joint fundraising committee[s]"—committees authorized to raise funds jointly with other candidates, committees, or organizations—are entitled to the LUC rate when purchasing airtime for use by a participating candidate.[11]

8. In addition, the Public Notice includes a reminder that "candidate-party coordinated ads," in which a candidate uses airtime jointly with his or her political party's national or state committee to broadcast "advertisements that qualify as coordinated expenditures of political parties and legally qualified candidates for federal office," are entitled to the LUC.[12]

9. In the Petition, TVB asserts that "[f]or more than five decades, broadcasters, candidates, parties, [Political Action Committees], and other participants in the political advertising marketplace all understood, under the Act and FCC rules, that only a candidate and their singular designated principal campaign committee were entitled to the LUC."[13] On this premise, TVB contends that the Public Notice

---

[4] *See Exclusive Jurisdiction With Respect To Violations of the Lowest Unit Charge Requirements of Section 315(b) of the Communications Act of 1934, As Amended*, 6 FCC Rcd 7511, 7513-14, paras. 21-26 (1991) (outlining complaint procedures).

[5] 47 U.S.C. § 315(b).

[6] *Id.* § 315(d).

[7] 47 CFR 73.1942.

[8] *E.g.*, *id.* § 76.206; *The Law of Political Broadcasting & Cablecasting: Political Primer*, Update to 1978 Public Notice and Primer, 100 F.C.C.2d 1476 (1984) (*Political Primer*); *Codification of the Commission's Political Programming Policies*, Memorandum Opinion and Order, 7 FCC Rcd 4611 (1992) (*1992 Political Programming Order*), *reconsideration granted*, Memorandum Opinion and Order, 9 FCC Rcd 651 (1994).

[9] *See, e.g.*, Pet. at 2, 4 (recognizing that principal campaign committees are eligible for the LUC).

[10] Public Notice, at 1 (citing 47 U.S.C. § 315(b)(2)(F)).

[11] *Id.* at 2.

[12] *Id.* at 1-2.

[13] Pet. at 4.

"set[s] forth new substantive LUC requirements" without notice and comment required under the Administrative Procedure Act, and otherwise violates the Constitution and federal law.[14]

III. DISCUSSION

10. The central premise of TVB's Petition—that the Public Notice announces "new political broadcasting requirements" that would "upend" existing practice[15]—is wrong many times over.

11. As an initial matter, the Public Notice does not adopt any new rules or requirements. Instead, it simply "remind[s] broadcasters and the public" about the FCC's existing LUC requirements and "restate[s] previous Media Bureau guidance," to ensure that broadcasters and the public are aware, going into an election season, of how the FCC has previously interpreted the LUC requirements.[16] The FCC routinely provides these types of reminders. Therefore, we dismiss the Petition because the Public Notice is not the type of action that can be challenged through a petition for reconsideration.

12. TVB's real issue appears to be with past agency guidance. But the time for filing petitions for reconsideration or otherwise challenging earlier guidance has long since passed. Moreover, there is nothing in the Public Notice that reopens or otherwise creates a new opportunity to challenge the agency's prior determinations. TVB's Petition is thus an untimely attempt to challenge prior agency actions.[17]

13. In addition, the underlying LUC requirements established in law and in prior FCC guidance comport with existing industry practice. This confirms that the Public Notice broke no new ground, but merely summarized the status quo.

14. Candidate-party coordinated ads. The Public Notice's discussion of candidate-party coordinated ads takes no new action and breaks no new ground, but merely "restate[s] previous Media Bureau guidance regarding LUC eligibility."[18] Indeed, contrary to TVB's unsupported assertion, the prevailing practice among broadcasters has been to make the LUC available for party-coordinated ads for well over a decade. That practice is reflected in the National Association of Broadcasters' *Political Broadcasting Handbook* (formerly known as the *Political Broadcasting Catechism*), which recognizes that "[t]he national political parties and their campaign committee[s] have limited 'hard money' funds; ads paid for from those funds can be coordinated with a federal candidate and would, if they are, be entitled to the LUC."[19]

15. Joint Fundraising Committees. The Public Notice also correctly recognizes that the Commission has long treated "both candidates and their authorized campaign committees" as eligible for the LUC.[20] TVB does not dispute this, but contends that only the "designated principal campaign committee" can be an LUC-eligible "authorized committee."[21]

---

[14] *Id.* at 13; *see generally* Petition at 2-24.

[15] *Id.* at 4, 13.

[16] Public Notice at 1-2.

[17] Notably, too, the Commission would be afforded deference to reasonable interpretations of its own rules under *Kisor v. Wilkie*, 588 U.S. 558 (2019), which was not overturned by *Loper Bright Enterprise v. Raimondo*, 603 U.S. 369 (2024).

[18] *Id.* at 2. That these prior rulings have largely taken the form of informal oral opinions, *see Political Primer* at 1478, para. 5, does not change the fact that the *Public Notice* did no more than restate past guidance and took no new action.

[19] Nat'l Ass'n of Broads., *Political Broadcasting Catechism* 36 (18th ed. 2014); *accord* Nat'l Ass'n of Broads., *Political Broadcasting Handbook* 19 (19th ed. 2024).

[20] *Id.* at 1.

[21] Pet. at 21.

16. The Public Notice makes plain why that is wrong. Subsection 315(b)(2)(F) of the Act "explicitly defines the term 'authorized committee' as having the same meaning" assigned by FECA.[22] The Commission is thus bound to apply FECA's definition of "authorized committee" when interpreting the LUC requirement.[23] And Joint Fundraising Committees are "authorized committees" under FECA.[24] TVB appears to take issue with the longstanding definition of "authorized committee," which comes from 52 U.S.C. §§ 30101-30102. But once again, a petition for reconsideration of the Public Notice is not the right vehicle for the relief that TVB seeks. If TVB wants to change the definition of "authorized committee," then it must ask Congress to amend section 30101 of FECA, or the FEC to amend its implementing rules. In the meantime, the FCC is obligated to follow FECA as Congress has enacted it and the FEC implements it.

17. In acknowledging that the governing definition of "authorized committee" extends to Joint Fundraising Committees, the Public Notice does not expand the "universe" of committees eligible for the LUC, as TVB contends. Although it is true that Joint Fundraising Committees are a relatively new type of authorized committee, the existing practice of broadcasters with respect to these committees has been to regard them as eligible for the LUC, consistent with the Public Notice.[25] In any event, if parties wish to change the definition of "authorized committee," they must ask Congress to amend FECA.

18. Finally, we take this opportunity to remind the public that any disputes regarding application of the LUC in any specific instance can be adjudicated by the FCC on a case-by-case basis, consistent with agency's precedent and practice.[26]

IV. ORDERING CLAUSES

19. For the foregoing reasons, and to the extent set forth above,[27] **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and section 1.106 of the Commission's rules, 47 CFR § 1.106, the Petition for Reconsideration dated April 29, 2026, by the Television Bureau of Advertising, Inc., is **DISMISSED**.

20. **IT IS FURTHER ORDERED** that this Order on Reconsideration **SHALL BE EFFECTIVE** upon release.

FEDERAL COMMUNICATIONS COMMISSION

Alexander Sanjenis
Acting Chief, Media Bureau

[22] Public Notice at 1 (citing 47 U.S.C. § 315(b)(2)(F)).

[23] *Id.* at 1-2.

[24] *See* 52 U.S.C. § 30102(e)(3)(A)(ii): *see also id.* § 30101(6) ("The term 'authorized committee' means the principal campaign committee or any other political committee authorized by a candidate under section 30102(e)(1) . . . to receive contributions or make expenditures on behalf of such candidate."); *id.* § 30102(e)(1).

[25] *See* Br. of Intervenors NRCC & NRSC, *Brown v. FCC*, No. 26-1785 (4th Cir. filed July 20, 2026); Br. of Nat'l Media Rsch. Planning & Placement et al., *Brown v. FCC*, No. 26-1785 (4th Cir. filed July 24 , 2026).

[26] *See supra* notes 3, 4.

[27] As noted, *see supra* note 2, we defer action on TVB's alternative request for a declaratory ruling.

STATEMENT OF
COMMISSIONER ANNA M. GOMEZ

Re: *Entitlement to Lowest Unit Charge for Legally Qualified Candidates for Federal Office and All Authorized Committees*, Order on Reconsideration of Public Notice (DA 26-851), released August 13, 2026.

The establishment of rules through a bureau-level public notice to remind the public of unwritten guidance given by a former FCC staff member on how to interpret interrelated statutes is neither legal nor an established FCC practice. That is because it is not reasoned decision-making, and there is no precedent for such action.

As a starting point, it is important to understand the significance of the action at issue. The Commission is not always unanimous, so it is notable that we are with regard to the fact that the legacy broadcast industry has been upended by the advent and growth of digital advertising and the resulting reduction in legacy broadcast advertising revenues.[1] The direct result of the public notice (PN) "reminding" broadcasters how they should construe which entities are entitled to the lowest unit charge (LUC) required by statute (LUC PN)[2] will be a decrease in critical advertising revenues earned by broadcasters during a short window of time that starts next week.

As indicated by the parties challenging the LUC PN, this action will have a substantial negative impact on both the broadcasters that will be required to provide reduced pricing to an expanded group of campaign committees[3] in addition to the entities, legally qualified candidates, that the statute is intended to benefit.[4] Broadcasters have a limited window of time to sell election-related advertising, which makes up a disproportionate percentage of their shrinking slice of the advertising revenue pie,[5] and requiring that they sell at lowered rates to an expanded list of entities will lower their revenues. Likewise, candidates need to compete in their communities during the crucial last 60 days of an election cycle. As documented by Applicants, the newly

---

[1] *See Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, (2026) (statement of Chairman Brendan Carr), https://docs.fcc.gov/public/attachments/DOC-424076A2.pdf; (statement of Commissioner Anna M. Gomez), https://docs.fcc.gov/public/attachments/DOC-424076A3.pdf; (statement of Commissioner Olivia Trusty), https://docs.fcc.gov/public/attachments/DOC-424076A4.pdf.

[2] *FCC Media Bureau Provides Guidance on Entitlement to Lowest Unit Charge for Legally Qualified Candidates for Federal Office and All Authorized Committees*, Public Notice, DA 26-300, 2026 WL 1013722 (MB Mar. 30, 2026) (*Order on Reconsideration*).

[3] Petition for Reconsideration or, In the Alternative, for Declaratory Ruling of the Television Bureau of Advertising (Petitioners), Inc. (Apr. 29, 2026) (*Petition for Reconsideration*). The Petition for Reconsideration is attached to this statement as Attachment 1.

[4] Application for Review filed by Sherrod Brown, Jon Ossoff, Roy Cooper, and Kristen McDonald Rivet (Applicants) of a Public Notice issued by the Media Bureau on March 30, 2026 at 9-10 (*Application for Review*). The Application for Review is attached to this statement as Attachment 2.

[5] *See* National Association of Broadcasters Comments, *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, at 14, Docket No. 17-318 (filed August 4, 2025).

announced interpretation of the LUC will significantly increase the volume of broadcast advertising that can be bought with campaign dollars in this election cycle, which could, in fact, impact the outcome of the election.[6]

Nothing about this proceeding was handled correctly. The Media Bureau, without seeking comment, released a public notice purporting to restate existing legal authority.[7] The Order on Reconsideration characterizes the LUC PN as merely restating existing legal authority and, on that basis, dismisses the substantive challenges as procedurally defective.[8] There is, however, no citation to a substantive Commission action as a source of the "rule" at issue. Instead, there is a citation to a rule providing that broadcasters may seek an oral opinion or ruling from staff.[9] Based on the allowed practice that provides a means for individual entities to seek guidance on specific facts, the Media Bureau asserts that unwritten informal guidance provided by Media Bureau staff at some unidentified point in the past created "existing legal authority" about which the LUC PN is merely reminding broadcasters.[10] The LUC PN relies on such informal guidance and then the Order on Reconsideration relies on the LUC PN. "Existing legal authority" cannot lawfully be created out of thin air in this manner.

The substantive precedent on which the Commission relies for the interpretation and application of complex interrelated statutes is unwritten informal guidance. While an individual broadcaster or its customer may be allowed to rely on unwritten informal guidance in its individual actions, this unwritten informal guidance is being treated here as an established generally applicable rule. Even setting aside the wholesale lack of notice and comment and final appealable order published in the Federal Register, the Media Bureau does not have the authority to adopt generally applicable rules because such action would be new and novel and outside of its delegated authority.[11]

Notably, the Media Bureau failed to seek public comment on the Petition for Reconsideration at issue here, as well as the Application for Review. Nor did it create a docket or other file number that the public could use to locate and track related filings in the Commission's Electronic Comment Filing System (ECFS). That is not the normal process and, accordingly, I have

---

[6] *Application for Review* at 17-19.

[7] LUC PN.

[8] *Order on Reconsideration* at para. 2.

[9] *Order on Reconsideration* at para. 14 (asserting "[t]hat these prior rulings have largely taken the form of informal oral opinions . . . does not change the fact that the *Public Notice* did no more than restate past guidance and took no new action." citing *The Law of Political Broadcasting & Cablecasting: Political Primer*, Update to 1978 Public Notice and Primer, 100 F.C.C.2d 1476, 478, para. 5 (1984) (*Political Primer*) (which provides for parties to "obtain an oral staff opinion or ruling by placing a telephone call to" the Media Bureau' s political programming staff)).

[10] *Order on Reconsideration* at para. 11-13.

[11] 47 U.S.C. § 155(c); 47 C.F.R. §§ 0.61, 0.283(a) and (c).

attached copies of both the Petition for Reconsideration and the Application for Review to this statement.

Significant legal issues were raised in both the Petition for Reconsideration and the Application for Review that were not adequately addressed, if at all, in the Order on Reconsideration. These include, but are not limited to, a complex analysis of the distinctions between sections (b)(1) and (b)(2) of 47 U.S.C. § 315,[12] serious questions about whether the expanded interpretation violates either the First Amendment or the Takings Clause of the Constitution,[13] and the contradiction between the LUC PN and the U.S. Solicitor General's statement to the Supreme Court that the Communications Act "require[s] broadcasters to charge low rates for candidate spending, but not for party spending—whether coordinated or independent."[14] Again, the Media Bureau did not seek comment on these questions.

The Order on Reconsideration asserts further that there are adequate processes available for parties to challenge the substance of the LUC PN because any specific disputes can be adjudicated on a case-by-case basis.[15] This assertion ignores the very time-sensitive and serious facts before us in this case. The 60-day window at issue opens next week. This 60-day window is critical to both broadcasters and candidates for distinct reasons that are reflected in their filings.[16] The process identified by the Media Bureau will not address the issues raised in a timely manner.

For all of the above reasons, I dissent.

---

[12] *See Petition for Reconsideration* at pp. 4-6 and *Application for Review* at pp. 10-17. Section 315(b) has multiple subparts that do more than one thing. The Commission conflates them and fails to address the serious statutory construction challenge that is being made to a rule that it is implementing without notice and comment.

[13] *See Petition for Reconsideration* at pp. 15-16, 17-24.

[14] *See Application for Review* at 5 ("{I]n connection with the litigation over the constitutionality of the party coordinated expenditure limits in *NRSC v. FEC*, the Solicitor General argued in his reply brief that the Communications Act "require[s] broadcasters to charge low rates for candidate spending, *but not for party spending—whether coordinated or independent*." Reply Brief for the Federal Respondents at 23, *NRSC v. FEC*, No. 24-261 (U.S. Oct. 1, 2025), 2025 WL 3068193 (emphasis added)."); *see also Petition for Reconsideration* at 10.

[15] *Order on Reconsideration* at para. 14.

[16] *See Petition for Reconsideration* and *Application for Review*.