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August 19, 2022

KTUU | KYES | KATH | KYEX | KUBD | KSCT

501 East 40th Ave.

Anchorage, AK 99503-7488

ATTN: General Manager, Nancy Johnson

Re: Kelly for Alaska Campaign Placing Your Station At Risk of Violating Federal Law

Dear Ms. Johnson:

Our office is counsel for Lisa Murkowski for U.S. Senate. In the latest example of Kelly Tshibaka's tendency to blatantly skirt, and in some cases, violate applicable laws, we are today notifying you of recent FCC and FEC infractions by Kelly for Alaska campaign's advertising aired on your station.

Unfortunately, these violations come as no surprise when examining the prior history of the candidate at hand and her documented pattern of unethical actions for personal gain. Kelly Tshibaka's reluctance to follow the law is not isolated to the unlawful conduct discussed herein. From an investigation into an "illegally purchased resident-only sport fishing license in 2019" while she lived outside of Alaska, to a citation from Alaska State Troopers for knowingly fishing without a commercial license in 2021 during her appearance in a campaign video, Kelly Tshibaka has a long history of violating rules. And she has skirted rules when it was to her benefit. In 2019, Tshibaka received more than \$81,000 in taxpayer funds to relocate from her Washington, D.C. area residence to Alaska in order to serve as head of the State's Department of Administration. As part of that very Department's manual, it is clearly stated that employees who receive such moving expenses are required to reimburse the state if they voluntarily leave service within two years. Ahead of asking Alaska voters for a promotion to the U.S. Senate, Tshibaka remained in office just barely long enough to ensure she could technically refuse to pay the state back for her moving expenses.

Now it is clear that her campaign has violated specific FCC laws. As you know, Congress recently amended laws requiring candidates for office to clearly identify themselves when they sponsor negative advertising. Commonly known as "Stand By Your Ad" provisions, these requirements were established so that viewers would know the candidates sponsoring attack ads, which in turn encourages advertising worthy of the viewing public.

Kelly Tshibaka's recent advertising simply does not abide by the FCC requirements. Tshibaka's most recent advertisement contributes to an already-toxic political environment while trying to evade responsibility for the attacks against Senator Murkowski. Specifically, the advertisement fails to include the legally required image of Tshibaka during the final four seconds of the advertisement, in violation of Federal law and in breach of her own certification under the law. These requirements of Federal law are not arbitrary, nor do they allow for discretion on the part of broadcast stations: they are clear mandates requiring candidates to take responsibility for their negative advertising. As a result of the Tshibaka campaign's failure to follow the law, we

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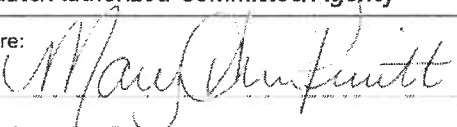
respectfully demand that your station confirm in writing that Kelly for Alaska “*shall not be entitled to*” the “lowest unit rate” during the upcoming 60-day window preceding the November 8, 2022, general election.

Kelly for Alaska Violated Federal Law and Breached Its Signed FCC Certification

On August 10, 2022, Kelly for Alaska, the principal campaign committee for Kelly Tshibaka, began airing a negative advertisement attacking Senator Lisa Murkowski. The advertisement opens by featuring an image of Kelly Tshibaka on screen for approximately two seconds. After this image disappears, the advertisement abruptly shifts to an entirely different audio and visual composition and proceeds to criticize Senator Lisa Murkowski for 28 seconds. During the final four seconds of the advertisement, small text appears on screen that reads “Paid for by Kelly for Alaska. Approved by Kelly Tshibaka,” but there is no image, photo, or footage of Kelly Tshibaka to correspond with the text as required by FCC law. Besides the obscure written statements at the end, the ordinary viewer is given little indication of who sponsored the 28 seconds criticizing Senator Murkowski. Tshibaka’s attempt to evade responsibility for the advertisement is clear: by only identifying herself for 2 seconds at the beginning, she can mislead viewers into believing that it was not she who sponsored the subsequent 28 seconds of attack.

Federal law specifically requires candidates to take responsibility for – i.e., to “stand by” – their negative advertising. Indeed, the Communications Act of 1934 (as amended) requires television stations to offer campaigns the lowest advertising rate during the final 60 days of an election, **only if** the campaign takes responsibility for its negative advertising. Specifically, in order to avail oneself of the lowest unit rate entitlement, a candidate for office must place a signed certification in the FCC Political File attesting that in negative advertisements, the candidate will include an image of the candidate for at least four seconds at the same time as the written disclaimer.

The Kelly for Alaska campaign signed and placed this certification in KTUU’s Political File, which was uploaded on August 10, 2022.

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| Federal Candidate Certification: The undersigned hereby certifies that the broadcast matter to be aired pursuant to this disclosure either (1) does not refer to an opposing candidate or, if it does, (2) contains a clearly identifiable photograph or similar image of the candidate for a duration of at least four seconds and a simultaneously displayed printed statement identifying the candidate, that the candidate approved the broadcast and that the candidate and/or the candidate’s authorized committee paid for the broadcast or if radio programming, contains a personal audio statement by the candidate that identifies the candidate, the office being sought and that the candidate has approved the broadcast. |
| Candidate/Authorized Committee/Agency |
| Signature:  |
| Name: Mary Ann Pruitt |
| Date: June 9, 2021 |

To be clear, in a signed contract with KTUU, the Kelly for Alaska campaign promised that its advertising would include “a clearly identifiable **photograph or similar image** of the candidate for a duration of **at least four seconds and a simultaneously displayed printed statement** identifying the candidate, that the candidate approved the broadcast and that the candidate and/or

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the candidate's authorized committee paid for the broadcast..." in addition to violating federal law, the Kelly for Alaska campaign failed to abide by the terms of this agreement. By sponsoring at least one full week of advertising without properly identifying herself for four seconds at the end, the campaign has violated 47 U.S.C. 315 and breached the "Political Broadcast Agreement Form for Candidate Advertisements" with your station.

According to 47 USC 315(a), "if a Federal candidate or committee makes any negative references to an opponent in its advertising broadcast that" fails to include an image of the candidate for at least four seconds while the written disclaimer is on screen, "such candidate **shall not be entitled** to receive" the lowest unit rate during the candidate rate windows. Specifically, the campaign "shall not be entitled" to the rate during "any portion of the 45-day and 60-day periods...that occur on or after the date" that the illegal advertisement is aired on broadcast. Because the advertisement was first aired on August 10, 2022, the Kelly for Alaska campaign "shall not be entitled" to the lowest unit rate during the upcoming 60-day candidate rate window preceding the November 8, 2022, election.

Should your station choose to ignore Congress's clear directive to require that candidates take responsibility for their negative advertising—by allowing Tshibaka to purchase advertisements at the lowest unit rate during the 60-day window—your station would be providing an illegal financial discount to the Kelly for Alaska campaign. The Federal Election Campaign Act prohibits financial contributions from corporate entities like your own. Your station, therefore, cannot sell political advertising to Kelly for Alaska at a rate below the rate currently being offered to non-candidate groups.

We respectfully request written confirmation that Kelly for Alaska is no longer entitled to the lowest unit rate on your stations for advertising after September 9, 2022. Can we receive such confirmation within ten days?

Alaskans deserve candidates for public office who follow basic legal requirements. When candidates do not follow the law, they should not receive the benefit of discounted broadcast rates. And Alaskan broadcasters do not have to provide such rates to candidates who choose to disregard the law. We expect your station will honor the requirements to promote proper attribution of candidate's ads.

We look forward to your prompt reply. If you have any questions or wish to discuss the foregoing, please do not hesitate to contact our office at the address above. We can also be reached via email at tmckeever@hwb-law.com with a copy to snichols@hwb-law.com.

Sincerely,

HOLMES WEDDLE & BARCOTT, P.C.



Timothy A. McKeever

cc: Federal Communications Commission via campaignlaw@fcc.gov
Federal Election Commission via enfcomplaint@fec.gov