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FOR JUSTICE

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January 23, 2012

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Nicholas Fraser  
Office of Management and Budget  
1650 Pennsylvania Avenue, NW  
Washington, DC 20503

Re: OMB Control No. 3060-0214;  
*In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast  
Licensee Public Interest Obligations, MM Docket No. 00-168*

Dear Secretary Dortch and Mr. Fraser:

I write on behalf of the Brennan Center for Justice at N.Y.U. School of Law<sup>1</sup> to comment on the above-referenced proceeding. The Brennan Center applauds the Commission for its efforts to enhance disclosure requirements for television broadcast licensees, and offers these comments to underscore the importance of requiring that the political file be included in the online public file.

The Commission's efforts in developing requirements for television broadcasters to post public files online will modernize the public file regulations in light of new information technologies, and will facilitate far more convenient and widespread public access to public file data. These efforts are commendable, and will facilitate dialogue between television broadcasters and the communities they serve, as well as stimulating engaged public discussion about how television broadcasters serve their communities.

The Brennan Center stresses that, as the Commission develops final rules in this area, it is particularly important to require that the political file be included in the online public file. As the Commission recognized in its *Order on Reconsideration and Further Notice of Proposed*

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<sup>1</sup> The Brennan Center is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. The Brennan Center's Money and Politics project works to reduce the real and perceived influence of special interest money on our democratic values. Project staff defend federal, state, and local campaign finance and disclosure laws in court around the country, and provide legal guidance to campaign finance reformers through counseling, testimony, and public education.

*Rulemaking*, while stations' political files are undoubtedly used by candidates and their campaign representatives, this is not the sole constituency that utilizes the political file.<sup>2</sup> The public, too, has a strong interest in ensuring ready access to stations' political files: access to political files allows researchers, journalists, and public interest organizations to monitor spending on the political advertisements that seek to influence elections—and thus to inform citizens about the groups and individuals that seek to influence their votes.

The U.S. Supreme Court has repeatedly recognized the importance of an informed citizenry in a self-governing republic. As the Court noted in the foundational campaign finance case *Buckley v. Valeo*, “In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential.”<sup>3</sup> In the case of televised political advertising, citizens with knowledge of candidate requests for airtime and the amounts charged for this airtime are better able to make informed choices in the political marketplace. For this reason, the Commission has long required stations to maintain this information in their files.<sup>4</sup> Granting the public access to this information furthers the important “First Amendment goal of producing an informed public capable of conducting its own affairs.”<sup>5</sup>

The importance of public access to the information contained in broadcasters' political files has increased in recent years as the costs of recent American political campaigns have skyrocketed. Congressional fundraising has more than doubled since 1998, when “candidates for the House and Senate raised a total of \$781 million. By 2008, campaign receipts had grown to \$1.4 billion and in 2010 soared to almost \$1.9 billion.”<sup>6</sup> Outside spending by non-candidate groups has also soared in recent years: spending by outside groups in the 2010 elections grew by more than 400 percent compared to the previous mid-term election cycle, and the 2012 elections are likely to see more than \$1 billion in outside money.<sup>7</sup>

Some of this political spending is reported to the Federal Election Commission, but much of it is not. Moreover, because of a diverse patchwork of disclosure laws at the state level, a huge amount of spending on political advertising for state, local, and judicial races is not disclosed at all. As a result, effective estimates of the amount spent on political television advertising in these elections—information voters require if they are to make informed political choices—can only be obtained if journalists, researchers, or advocates examine the political files maintained by television broadcasters.

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<sup>2</sup> *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Order on Reconsideration and Further Notice of Proposed Rulemaking*, MM Docket No. 00-168, FCC 11-162 (rel. Oct. 27, 2011), at ¶¶ 22-23.

<sup>3</sup> 424 U.S. 1, 14-15 (1976).

<sup>4</sup> *Broadcast by Candidates for Public Office*, 3 Fed. Reg. 1691 (July 12, 1938).

<sup>5</sup> *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 392 (1969).

<sup>6</sup> Committee for Economic Development, *After Citizens United: Improving Accountability in Political Finance* 1 (2011).

<sup>7</sup> Public Citizen, *12 Months After: The Effects of Citizens United on Elections and the Integrity of the Legislative Process* 9 (2011).

A report on campaign spending in Michigan elections highlights the importance of accessible political file information—as well as the extent to which that information is necessary to developing a full picture of political spending in light of loopholes in disclosure laws. The Michigan Campaign Finance Network (“MCFN”), a nonprofit, nonpartisan organization that researches money in Michigan politics, conducted a comprehensive study of spending in Michigan elections between 2000 and 2010, and revealed that millions of dollars of political advertising can be detected only by a station-by-station examination of broadcasters’ public files.<sup>8</sup> The MCFN report uncovered, for example, \$2.8 million worth of Michigan Republican Party television advertising in the 2010 state Supreme Court election, and another \$2.2 million spent by the party in the 2010 elections for secretary of state and attorney general.<sup>9</sup> None of this money was publicly reported because of holes in the political disclosure rules, but because the MCFN research team was willing to go station-by-station to examine public files at stations across the entire state, this information was eventually made public.

The Michigan example underscores the important political data that is available only in television broadcasters’ political files. Unfortunately, because of the serious time and effort required to compile this data, it can be challenging for researchers, journalists, and advocates to replicate the painstaking research methodology employed in the MCFN study. Ready access to on-line data would allow a much wider range of researchers to replicate the meticulous efforts of groups like MCFN, thus bring needed transparency to America’s ever more expensive elections.

The Brennan Center is mindful of the inevitable administrative and other costs associated with moving television broadcasters’ political file information online, and urges the Commission to structure its final rules with appropriate flexibility, so that the online reporting requirements are not unnecessarily onerous. Nevertheless, we urge the Commission to maintain the basic requirement that political file information be made available online in a timely and accessible manner. Such a requirement will substantially increase transparency and accountability in our democracy.

Respectfully submitted,



J. Adam Skaggs  
Senior Counsel, Democracy Program

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<sup>8</sup> Michigan Campaign Finance Network, *\$70 Million Hidden in Plain View: Michigan’s Spectacular Failure of Campaign Finance Disclosure, 2000-2010* (2011), available at [http://www.mcfn.org/pdfs/reports/MICFN\\_HiddenInPlainViewP-rev.pdf](http://www.mcfn.org/pdfs/reports/MICFN_HiddenInPlainViewP-rev.pdf).

<sup>9</sup> *Id.* at 2.