

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Notice of Public Information Collection(s)) OMB Control Number: 3060-0214
Being Reviewed by the Federal)
Communications Commission)
)
Standardized and Enhanced Disclosure) MM Docket No. 00-168
Requirements for Television Broadcast)
Licensee Public Interest Obligations)
)
)
)
)
)

**PAPERWORK REDUCTION ACT COMMENTS
OF THE PUBLIC INTEREST PUBLIC AIRWAVES COALITION**

Benton Foundation
1250 Connecticut Ave., NW
Washington, DC 20036

Campaign Legal Center
215 E Street NE
Washington, DC 20002

Common Cause
1133 19th Street NW
Washington, DC 20036

Free Press
501 Third Street, NW
Washington, DC 20001

Media Access Project
1625 K Street, NW
Washington, DC 20016

New America Foundation,
1899 L Street, NW
Washington, DC 20036

January 23, 2012

Office of Communication, Inc. of
the United Church of Christ
100 Maryland Ave. NE
Washington, DC 20002

EXECUTIVE SUMMARY

The Public Interest Public Airwaves Coalition (the “Coalition”) respectfully submits the following Paperwork Reduction Act comments in response to the Federal Communications Commission Order on Reconsideration and Further Notice of Proposed Rulemaking. The Coalition supports the Commission’s decision to move forward with this important proceeding and for the commitment to bring broadcast disclosure in to the modern age by creating an integrated public file to be hosted online by the Commission. The public has waited far too long to access broadcast public files in a manner that reflects the technological realities of the 21st century. We commend the Commission for taking on the increased burden and responsibility for hosting such files itself, thereby maximizing access to information while easing the overall burden on the public and all other stakeholders.

The public file modernization initiative proposed by the Commission would promote the goals of the Paperwork Reduction Act and Communications Act by maximizing the utility of, and ensuring the greatest possible public benefit from, information collected by the FCC. Online access to the public file will encourage public involvement in monitoring stations’ performance and promoting dialogue between stations and their communities. It would also streamline management of these files and diminish many of the inconveniences and burdens associated with broadcasters’ maintenance of paper files. In short, these proposed improvements will reduce both *paper* and *work* for the public and for broadcasters.

The FCC has long recognized the vital role that broadcasters public inspection files play in ensuring that the licensing system functions consistent with the tenets of the Communications Act. When broadcasters fall short of their obligations or engage in outright violations of FCC rules, the public’s ability to alert the FCC by filing complaints or petitions to deny the renewal of

a station's broadcast license is essential. Without ready access to relevant information contained in broadcast public files, the licensing system would be undermined and the goals of the Communications Act would be subverted.

For too long, access to the public file has been decidedly inconvenient for the public. While that inconvenience may have been unavoidable twenty years ago, it is no longer necessary or justifiable. A paper-only inspection file is increasingly anachronistic in a world where the vast majority of businesses take advantage of electronic data processing. Online posting of broadcaster public files would enable the public to have greater access to stations' public file information by providing 24-hour access to this information and address the many problems citizens currently encounter in trying to review a station's public file. The impediments of geography, recalcitrant station staff, limited station hours, and copying costs are easily alleviated by technological developments and the relative ubiquity of internet access.

The Coalition strongly supports the Commission's conclusion that the online public file should include major components of the existing public file, including the political file. Because of the unique role that broadcasters play in the electoral process, it is essential that the broadcast political file be made part of online public file. Broadcast political advertising plays a critical part in the election processes and can shape democratic outcomes profoundly. The political advertising information and disclosures included in the political file furthers the First Amendment's goal of an informed electorate that is able to evaluate the validity of political advertising messages and hold to account the interests engaged in political advocacy. Online access to this information will better enable the public, journalists, researchers, and watchdog groups to reveal the true interests behind the purchases of advertising time, as well as track how often, to whom, and on what terms broadcasters have offered use of the public's airwaves for

political purposes. Many broadcasters already maintain these records in electronic format and currently must print them out to put them in the public inspection file. By eliminating the paper filing requirement and replacing it with an online posting requirement, broadcasters could simply upload the very same documents in electronic format and save themselves the trouble of printing them out and filing hard copies. Placing this information online would not only streamline access to and management of the political file, it would also reduce the burden on broadcasters who often receive multiple requests each day for in-person access to this information during the election season. Those broadcasters that continue to rely solely or primarily on handwritten documents and manual updating of political files would do well to reevaluate their business practices with an eye to joining the modern world. Nearly every other industry has recognized the business imperative of streamlining their recordkeeping and communications through the use of electronic and networked means. It is high time these broadcasters did as well.

The Coalition also supports adoption of a proposal requiring licensees to submit a record of “pay for play” arrangements for inclusion in their online public files. This increased disclosure will help to address the well-documented shortcomings of fleeting, on-air disclosures. Online records of these arrangements will afford viewers the opportunity to view sponsorship information that they otherwise may miss. Additionally, the information will be useful for academics and watchdog groups seeking to aggregate this information in order to track the prevalence of payola in the broadcast television market. Broadcasters must already maintain these records for the purpose of providing on-air disclosure under the existing sponsorship identification rules. Assuming that they currently comply with these requirements, it would not be burdensome to upload these records to the public file.

Finally, the Coalition also supports much needed improvements to public file data through the submission of broadcaster shared services agreements. Access to shared services agreements is a critical transparency measure that will alert citizens to the existence of local broadcasters' arrangements that may affect the quality, amount and independence of local news and information available in the community. Unless such agreements are available in the public file, it is exceedingly difficult for members of the public, or the Commission, to learn whether particular programming is generated by the station itself or is a product of an agreement with another entity, including a competing broadcast station. Broadcasters present no legitimate reason why shared services agreements should not be included in their public files, particularly given that the Commission and public interest groups agree that these types of agreements warrant more scrutiny – not less.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
I. The Public Inspection File Rule Changes Proposed By The Commission Would Further The Goals Of The Communications Act And The Paperwork Reduction Act	2
A. An Online Public File Requirement Would Alleviate The Unnecessary And Unjustifiable Obstacles That Members Of The Public Currently Face In Accessing The Public File	5
B. Online Posting Of The Public File Will Enhance Public Access To Information And Reduce File Maintenance Burdens On Broadcast TV Stations.....	11
C. An Online Public File Requirement Will Further Reduce The Burden On Broadcasters By Minimizing Duplicate Filings	14
D. The FCC Can Balance The Public’s Need For Ready And Searchable Access To Public File Documents With The Goal Of Minimizing Burdens On Broadcasters’ Transition From Paper To Electronic Filing.....	14
II. The Online Disclosures Sought By The Commission Are Necessary To Effectuate The Goals Of The Communications Act And Present No Significant Additional Burden On Broadcasters	16
A. The Political File Is An Essential Component Of The Public File And Should Be Made Available Online	17
1. Claims That Putting The Political File Online Will Be Burdensome Are Inflated And Unfounded	20
a. Broadcasters’ Refusal To Modernize Their Recordkeeping Is Not A Legitimate Defense To The Commission’s Reasonable Efforts To Increase The Accessibility Of Broadcasters Political Files.....	21
b. Going Forward, Online Management Of The Public File Would Be Less Burdensome – And More Efficient – Than Current Paper Filing	22
B. Payola Should Be Disclosed In The Online Public File In Addition To On Air Disclosures Currently Required	26
1. Assuming That Broadcasters Are Currently Complying With Existing Sponsorship Identification Rules, Maintaining An Online Record Of Such Relationships Would Not Be Onerous	29
C. The Public Should Have Online Access To Broadcasters’ Resource Sharing Agreements.....	32
Conclusion	36

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Notice of Public Information Collection(s))	OMB Control Number: 3060–0214
Being Reviewed by the Federal)	
Communications Commission)	
)	
Standardized and Enhanced Disclosure)	
Requirements for Television Broadcast)	MM Docket No. 00-168
Licensee Public Interest Obligations)	

**PAPERWORK REDUCTION ACT COMMENTS
OF THE PUBLIC INTEREST PUBLIC AIRWAVES COALITION**

Pursuant to the Paperwork Reduction Act of 1995, The Public Interest Public Airwaves Coalition, including the Benton Foundation,¹ Campaign Legal Center, Common Cause, Free Press, Media Access Project, New America Foundation, and the Office of Communication of the United Church of Christ, Inc. (collectively, “PIPAC” or the “Coalition”), respectfully submits the following comments in response to the Federal Communications Commission Order on Reconsideration and Further Notice of Proposed Rulemaking (“FNPRM”), which proposes to improve access to, and the quality of, the data contained in television broadcaster public files.²

¹ The Benton Foundation is a nonprofit organization dedicated to promoting communication in the public interest. These comments reflect the institutional view of the Foundation and, unless obvious from the text, are not intended to reflect the views of individual Foundation officers, directors, or advisors.

² *Standardized and Enhanced Disclosure Requirements of Television Broadcast Licensees Public Interest Obligations*, Order on Reconsideration and Further Notice of Proposed Rulemaking, MM Dkt. 00-168, FCC 11-162 (rel. Oct. 27, 2011, Fed. Reg. Nov. 22, 2011).

The Coalition, which has submitted extensive comments in this proceeding,³ comprises nonpartisan, nonprofit organizations dedicated to ensuring that broadcasters better serve the public interest and the local communities they are licensed to serve.

The Coalition strongly supports the FCC's efforts bring broadcast television public files into the 21st Century by requiring television broadcasters to place public file records online via a database hosted by the Commission itself. The Commission's proposal to update broadcaster public file obligations, and the attendant collection of information, is necessary for the proper performance of the functions of the Commission and the broadcast licensing process as a whole. Because of the ubiquity of electronic data processing and the increasing prevalence of internet communication, online publication of the public file records is not only significantly less burdensome than paper file maintenance, it also provides better and easier access to the public file. In short, these proposed improvements will reduce both *paper* and *work* for the public and for broadcasters.

I. The Public Inspection File Rule Changes Proposed By The Commission Would Further The Goals Of The Communications Act And The Paperwork Reduction Act

Modernizing and improving the public file as proposed by the Commission would better serve the goals of the Paperwork Reduction Act and the Communications Act. The Paperwork Reduction Act (PRA) seeks to minimize where possible the burden of government information collections while “[e]nsur[ing] the greatest possible public benefit from and maximiz[ing] the utility of information created, collected, maintained, used, shared and disseminated by or for the

³ Comments of the Public Interest Public Airwaves Coalition, filed MB Dkt 00-168 (Dec. 22, 2011), <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021751634>, (“PIPAC Comments”); Reply Comments of the Public Interest Public Airwaves Coalition, filed MB Dkt 00-168 (Jan. 17, 2012), <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021753792>.

federal government” and “[i]mprov[ing] the quality and use of federal information to strengthen decision making, accountability, and openness in government and society.”⁴

The Communications Act seeks to promote a broadcast licensing system that functions consistent with the “public interest, convenience and necessity.”⁵ In particular, the licensing regime is designed to encourage broadcasters to be transparent and responsive to the local communities they are licensed to serve and to promote meaningful public participation in the broadcast licensing process.⁶ To facilitate public oversight and to ensure compliance with FCC rules and policies, the FCC requires commercial broadcast stations to maintain a public inspection file.⁷ The Commission has determined that the public inspection file “serves the important purpose of facilitating citizen monitoring of a station’s operations and public interest performance and fostering community involvement with local stations. This in turn helps to ensure that stations are responsive to the needs and interests of their local communities.”⁸

In addition to facilitating dialogue between stations and their communities of license, the public file also assists in the enforcement of FCC policies and regulations.

[The FCC] does not routinely monitor each station's programming and operations, viewers and listeners are an important source of information about the nature of their area stations' programming, operations, and compliance with their FCC obligations. The

⁴ Pub. L. No 104–13, 109 Stat. 163 (1995).

⁵ 47 U.S.C. § 307(c)(1).

⁶ The “regulatory framework is designed to foster a system of local stations that respond to the unique concerns and interests of the audiences within the stations' respective service areas.” *Broadcast Localism*, Report and Notice of Proposed Rulemaking, 23 FCC Rcd 1324, ¶6 (2008).

⁷ 47 C.F.R. § 73.3526. The public file rule is rooted in Section 307(b) of the Communications Act of 1934. 47 U.S.C. § 307(b).

⁸ *Review of the Commission’s Rules Regarding the Main Studio and Local Public Inspection File of Broadcast Stations*, Report and Order, 13 FCC Rcd 15691, ¶18 (1998) (“1998 Main Studio R&O”).

documents contained in each station's public inspection file have information about the station that can assist the public in this.⁹

For example, with regard to the FCC's sponsorship identification rules, the FCC has acknowledged that the only way the FCC would even know about a violation "is if someone has complained."¹⁰ Similarly, access to information contained in broadcasters' political files enables citizens to "verify that licensees have complied with their obligations relating to use of their facilities by candidates for political office"¹¹ and to file complaints with the FCC if stations have not.

In short, if a broadcaster is in violation of applicable law and regulation, a public complaint (informed and supplemented by access to public file documents) is frequently the only mechanism that will trigger FCC enforcement of rules and policies. The FCC significantly deregulated the license renewal process in the 1980s and the Commission now places "near total reliance on petitions to deny as the means to identify licensees that are not fulfilling their public interest obligations."¹² Therefore, when broadcasters fall short of their obligations or engage in outright violations of FCC rules, the public's ability to alert the FCC by filing complaints or petitions to deny the renewal of a station's broadcast license is essential. Without ready access to relevant information contained in broadcast public files, the licensing system would be undermined and the goals of the Communications Act would be subverted.

⁹ Federal Communications Commission, *The Public and Broadcasting: How to Get the Most Service from Your Local Station*, at "The Local Public Inspection File" (revised July 2008) http://transition.fcc.gov/mb/audio/decdoc/public_and_broadcasting.html#_Toc202587576.

¹⁰ Paul Farhi, "Despite law against it, stealth commercials frequently masquerade as TV news," WASH. POST (Dec. 6, 2011) http://www.washingtonpost.com/lifestyle/style/despite-law-against-it-stealth-commercials-frequently-masquerade-as-tv-news/2011/12/05/gIQANXaxaO_story.html.

¹¹ *1998 Main Studio R&O*, 13 FCC Rcd at ¶54.

¹² *Office of Communication of United Church of Christ v. FCC*, 707 F.2d 1413, 1441 (D.C. Cir 1983) (Discussing the FCC decision to eliminate the requirement that stations include in their renewal applications any information about their program efforts).

Public access to broadcaster public inspection files is a critical component of an efficient and effective licensing system. However, as discussed below, this goal is unnecessarily thwarted by the fact that the files are largely only available in a hard-copy, paper form at the stations themselves. The FCC's proposal to modernize access to broadcast television stations public files by replacing paper files with an online public file hosted on the Commission's website¹³ would further the goals of the PRA and the Communications Act by encouraging public involvement in monitoring stations' performance and promoting dialogue between stations and their communities. It would also streamline access to and management of these files, while diminishing many of the inconveniences and burdens associated with broadcasters' maintenance of paper files.

A. An Online Public File Requirement Would Alleviate The Unnecessary And Unjustifiable Obstacles That Members Of The Public Currently Face In Accessing The Public File

The public file is critical to ensuring that the broadcast system functions in a manner consistent with the public interest, convenience and necessity.¹⁴ Yet for too long, access to the public file has been decidedly inconvenient for the public. While that inconvenience may have been unavoidable twenty years ago, it is not longer necessary or justifiable. The FCC's current public file rules must be updated to reflect technological developments that can help to minimize public file burden on both the public and on licensees.

Stations must maintain the public inspection file and make it available to anyone who visits the stations during normal business hours.¹⁵ The station may not require the person to

¹³ FNPRM at ¶16.

¹⁴ 47 U.S.C. §307(c)(1).

¹⁵ 47 C.F.R. §73.3526(c).

identify the organization on whose behalf he or she is requesting access, or the reason that he or she is asking to see it. Broadcaster public files currently must be housed at the licensee's main studio.¹⁶ When the Commission adopted its current public file requirements in 1984,¹⁷ its rulemaking was limited by the realities of the time. The most reasonable place to provide the public with access to a station's public file was the station itself. But given the prevalence of electronic data processing tools, and more importantly, the rise of the internet, this is no longer the case. Unfortunately, the Commission's public file rules have not been updated to account for these technological developments.

For example, the breadth of many broadcast service areas, as well as an expanded area in which broadcast licensees may locate their main studios, means that a broadcaster's public file may be located outside of the station's community of license.¹⁸ Even assuming the main studio is located within a broadcaster's service territory, a member of the public may have to travel dozens of miles to access the file. What is more, because the public may only visit a station's public file during business hours, an individual would have to take off work in order to participate in a meaningful and informed conversation about broadcast service in her community.

The Carnegie-Knight Task Force, which comprises deans of some of the nation's leading journalism schools, highlights the opportunities to further public discourse that will be lost if the

¹⁶ *Id.* at §73.3526(b).

¹⁷ *See Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 FCC 2d 1075 (1984).

¹⁸ In 1999 the Commission adopted a rule that permits stations to locate their main studios at any location that is either within the principal community contour of any station, of any service, that is licensed to its community of license; or within 25 miles from the reference coordinates of the center of its community of license, whichever it chooses. *See 1998 Main Studio R&O*, 13 FCC Rcd at ¶7, *recon. granted in part*, 14 FCC Rcd 11113 (1999). Stations may provide accommodations to public file requesters if their main studio is located outside the community of licensee. *Id.* at 11119, ¶13.

public files are not made more widely available, but continue to remain in filing cabinets at the stations themselves:

Today, taking advantage of the FCC's current transparency regulations requires physically traveling from station to station and looking at the records they are required to keep. This logistical difficulty ensures that there is not much robust public discussion of what the stations' records, in the aggregate, would show.¹⁹

Clearly, there is substantial need for online access to broadcast files online, preferably at a centralized location in a searchable and aggregable form. Coalition member, the New America Foundation (NAF), has itself been visiting local stations to copy and upload public file documents, as well as collating materials collected by others.²⁰ NAF has made headway in collecting some files and making them available via the internet; however, to create a complete and up-to-date record of all public files the organization would need to physically visit over 2000 TV stations across the country and pay for copies of individual stations' public files, as well as re-visit every licensee when the files are updated. These impediments make assembling and updating materials both labor- and cost- prohibitive for nonprofit groups.

Not only is access to a station's public file limited by geography, there is also evidence that some stations do not provide adequate access to the public onsite. A recent New York Times article highlighted some of these difficulties. It chronicled how a reporter attempting to visit one station's public file was "chided" for "trying to enter without an appointment and insisted she

¹⁹ See Letter from Alex Jones, Director of the Joan Shorenstein Center on the Press, Politics and Public Policy, Harvard Kennedy School on behalf of the Carnegie-Knight Task Force, filed MB Dkt 00-168 (Jan. 18, 2012) at 2 <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021754003>, ("Carnegie-Knight Letter").

²⁰ New America Foundation Media Policy Initiative, Public Interest Obligations, http://mediapolicy.newamerica.net/public_interest_obligations

arrange a time at least one day in advance.”²¹ Another station demanded that station visitors “make an appointment” claiming that the station “can’t let you in without knowing what company you’re with.”²² It was only after “multiple phone calls and e-mails to the station and its corporate parent” that access to the public file was finally permitted.²³

A local citizen group, Media Reform South Carolina (MRSC), recently described its own experiences visiting station public files in Charleston. The group found that station staff members “may not be prepared to provide access to the public files.”²⁴ Staff at one station questioned what the group’s search was “in reference to,” and told the group to leave and come back two and half hours later, a “delay [that] cut significantly into the amount of time [MRSC] had to examine files at the station.”²⁵

Another local citizen group, Media Council Hawai’i, attempted to visit the public inspection files of two television stations in Honolulu in order to view a “shared services agreement” between the stations through which one of the stations had taken over control over the local news production of the other station.²⁶ When group members arrived at one of the

²¹ Meredith Hoffman, “At TV and Radio Outlets, Little-Known Trove of Kudos and Complaints,” *NEW YORK TIMES* (Dec. 4, 2011) http://www.nytimes.com/2011/12/05/nyregion/at-radio-and-tv-outlets-a-little-known-trove-of-kudos-and-complaints.html?_r=3.

²² *Id.*

²³ *Id.*

²⁴ Comments of Media Reform South Carolina, filed MB Dkt 00-168 (Dec. 16, 2011) at 1, <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021750997>, (“MRSC Comments”).

²⁵ *Id.*

²⁶ Rick Daysog, “Honolulu TV Stations KGMB, KHNL & K5 will Combine Operations,” *HONOLULU ADVERTISER*, Aug. 19, 2009. Video evidence of the effect of this agreement is available at http://www.youtube.com/watch?v=7M_0jo-XR_A.

stations, the General Manager informed them that “he did not know where the public file was.”²⁷ Subsequently he told the group that “the public file was locked, and he would try to locate the key. They waited for about two hours, but no key was found.”²⁸ Later that day when group members attempted to visit the file of the other station, they found the public file “in such disarray that a meaningful inspection was impossible” and that the most current material in the file “was unsorted and simply piled up vertically in a file drawer.”²⁹

Similarly, the National Hispanic Media Coalition (NHMC), a non-profit media advocacy and civil rights organization³⁰ has relayed some of the difficulties it has faced in obtaining access to the public file of a Spanish-language station in Los Angeles. NHMC reports that initially station staff did not know how to respond to a request to view the public inspection file and had to locate other employees to permit access to the file. When NHMC staff finally gained access to public file, they found the file itself to be incomplete and in disorder. Many of the documents and records were incorrectly filed and were difficult to locate.

Given the limited hours that members of the public may visit a station, many visitors seek to make copies of public file documents so they do not have to take multiple days off work in order to examine the documents. Stations are supposed to provide such copies at reasonable charges,³¹ but unfortunately, unpredictable (and at times exorbitant) station copying charges also

²⁷ See *Media Council Hawai'i Complaint and Request for Emergency Relief Regarding Shared Services Agreement between Raycom Media and MCG Capital for Joint Operation of Television Stations KHNL, KFVE, and KGMB, Honolulu, Hawai'i*, at 9 (Oct. 7, 2009).

²⁸ *Id.*

²⁹ *Id.*

³⁰ See <http://www.nhmc.org/about>.

³¹ Federal Communications Commission, *The Public and Broadcasting: How to Get the Most Service from Your Local Station*, at “The Local Public Inspection File” (“You may request copies of materials in the file, which the station must provide to you at a reasonable charge, by visiting the station in person.”)

pose an unnecessary hurdle to citizens who wish to inspect the public file documents. For example, MRSC notes that “[r]equesting copies of the public documents can be costly, and pricing across stations is not consistent.”³² One station charged MRSC five cents per page for copying; but another station in the same market charged 25 cents per page and “would not permit [MRSC] to take the documents to a copy center for cheaper copying.”³³ Likewise, NHMC staff found that the volume and disorder of information in the TV station public file they visited made it impossible for them to read through it all in one day. Accordingly, they asked for a copy of the public file, and were informed that the copy would be made at Kinko’s at NHMC’s expense and had to be picked up at the station the following week. The station estimated that the printing costs would be in the \$200 range, but the bill came out to \$357.

The impediments of geography, recalcitrant station staff, limited station hours, and copying costs are easily alleviated by technological developments and the relative ubiquity of internet access. Online posting of broadcaster public files would promote greater access to stations’ public file information by providing 24-hour access to this information and address the problems citizens currently encounter in trying to review a station’s public file.

It is also worth pointing out that licensee public inspection file violations are punishable by fine. The examples above suggest that a number of broadcast stations may be “under-prepared” when it comes to providing citizens access to the public inspection file. Put less generously, some broadcasters are engaging in outright violations of their public inspection file obligations.³⁴ Indeed, for the license renewal cycle that concluded in 2010 “more fines were

³² MRSC Comments at 1-2.

³³ *Id.*

³⁴ In the case of Media Council Hawai’i, the Commission ultimately determined that the station in question had willfully and repeatedly violated the Commission’s rules by failing to “properly

(continued on next page)

imposed on broadcasters for violations of the public inspection file rule than for any other infraction.”³⁵ We commend the Commission for enforcing the public’s right to inspect these important records. We also note that, if broadcasters moved these records to an online database as the Commission has proposed, they could significantly diminish their lack of preparedness for in-person visitors to their public inspection files – and, consequently, also reduce their liability and fines paid for violating Commission rules.

B. Online Posting Of The Public File Will Enhance Public Access To Information And Reduce File Maintenance Burdens On Broadcast TV Stations

In addition to the public interest groups comprising this Coalition, a wide range of groups representing consumer protection, good government and transparency, union, social justice and community media interests support the FCC’s public file modernization initiative. A letter signed by thirty groups, including Consumers Union, the National Association of Broadcast Employees and Technicians, the Center for Media and Democracy and Public Citizen, states that

The Obama Administration has proclaimed its strong support of transparency in government—the more data available to members of the public, the easier it is for the public to hold both public and private institutions accountable. President Obama has directed government agencies to post as much data as possible online to facilitate an informed citizenry and more effective operations. The data maintained by broadcasters as part of their license obligations is no exception. This information is not available anywhere else. It

(footnote continued)

maintain and provide access to its public inspection file.” *In the Matter of KHNL/KMGB License Subsidiary, LLC and HITV Subsidiary Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 2011 WL 5910495 (Nov. 25, 2011) at ¶2 (“KNHL/KMGB Order”).

³⁵ *Davis Wright Tremaine Advisory*, “The Basics of Public Inspection File Requirements for Commercial Broadcasters,” (Mar. 25, 2010), <http://www.dwt.com/LearningCenter/Advisories?find=231182>.

is time broadcasters joined the 21st century and moved their public files out of the file cabinet and onto the Internet.³⁶

Not only would online posting of the public file facilitate community and researcher access to its contents, it also would reduce many of the burdens associated with maintenance of paper files, as well as station staff time dedicated to updating and supervising onsite public access to the file.

Some broadcasters already voluntarily upload their public file documents to their own websites, presumably because it is simple and cost-effective to do so.³⁷ The broadcasters that do not currently make public file documents available online frequently maintain these records in electronic format and currently must print them out to put them in the public inspection file. By eliminating the paper filing requirement for many of these documents and replacing it with an online posting requirement, broadcasters could simply upload the very same documents in electronic format and save themselves the trouble of printing them out and filing hard copies. Moreover, because the FCC proposes to host broadcasters' public inspections files on its own website, the burden on broadcasters would be diminished even further.

Broadcasters largely do not oppose, and in many cases support the Commission's decision to host a unified online public file generally,³⁸ (though some object to the inclusion of

³⁶ Letter from the Media and Democracy Coalition, filed MB Dkt 00-168; 11-189 (Jan. 17, 2012) at 2, <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021753780>.

³⁷ See, e.g., *Letter from the Public Interest Public Airwaves Coalition to Chairman Julius Genachowski*, filed MB Dkt. 00-168, GN Dkt. 10-25 (Aug. 4, 2011) at Appendix B, <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021700424>, (“PIPAC Letter”).

³⁸ See, e.g., Reply Comments of Network Station Owners, filed MB Dkt 00-168 (Jan. 17, 2012) at 4 <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021753788> (“the Network Station Owners have no general objection to this aspect of the Commission's proposal.”); Comments of Hubbard Broadcasting Inc., filed MB Dkt 00-168 (Dec. 21, 2011) at 1, <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021751416>, (“HBI Comments”) (“HBI supports the Commission's efforts to expand public access and transparency for public inspection documents by use of the Internet.”); Comments of the Joint Broadcasters, filed MB Dkt 00-168

(continued on next page)

certain records (see *infra* at section II)). Indeed, in its comments the National Association of Broadcasters acknowledges that

we live in a world dominated by digital technology. NAB agrees with the Commission that a re-examination of the rules governing the public inspection file is again useful in light of changing technology and consumer habits. The requirement that stations maintain a local public inspection file, usually still as a paper file, appears increasingly outdated.³⁹

Moreover, the NAB also “agrees with the Commission that advances in digital and IP technology now make it more feasible to host a significant portion of television stations’ public files online.”⁴⁰ Similarly, the Association of Public Television Stations and the Public Broadcasting Service “agree that hosting much of the public inspection file on the Commission’s website will improve the public’s access to information that helps facilitate dialogue between broadcast stations and the communities they serve, in a manner that will be more efficient for the public and less burdensome for broadcasters.”⁴¹

(footnote continued)

(Dec. 22, 2011) at 1, <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021751616>, (“Joint Broadcaster Comments”) (“The Joint Broadcasters support the Commission’s interest in trying to match technological ‘fixes’ to regulatory concerns.”)

³⁹ Comments of the National Association of Broadcasters, filed MB Dkt 00-168 (Dec. 22, 2011) at 4, <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021751608>, (“NAB Comments”). *See also* Reply Comments of The National Association of Broadcasters, filed MB Dkt 00-168 (Jan. 17, 2012) at I, <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021753752> (“NAB and most commenters in this proceeding have recognized that utilizing advances in digital and IP technology to create easier access to public file materials intended to encourage viewers’ interaction with stations could be useful.”)

⁴⁰ NAB Comments at i.

⁴¹ Comments of the Association of Public Television Stations and the Public Broadcasting Service, filed MB Dkt 00-168 (Dec. 22, 2011) at 1, <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021751599>, (“APTS/PBS Comments”) (internal quotations omitted).

C. An Online Public File Requirement Will Further Reduce The Burden On Broadcasters By Minimizing Duplicate Filings

The Commission's adoption of an online file requirement also will reduce existing filing burdens by eliminating duplicate filings of documents that currently must be submitted to the FCC and maintained in the paper public file. The Commission notes that some documents currently in the public file must also be filed with the FCC and are already available online to the public through the agency's Consolidated DataBase System.⁴² To minimize duplicate filing by broadcasters, the Commission has concluded that the FCC will itself import and update such information into each broadcaster's online public file.⁴³ Broadcasters will be "responsible for only those items not otherwise filed with the Commission or available on the Commission's website."⁴⁴ To this end, the online public file will generate substantial filing efficiencies for broadcasters, while creating a centralized information source for the public.⁴⁵

D. The FCC Can Balance The Public's Need For Ready And Searchable Access To Public File Documents With The Goal Of Minimizing

⁴² FNPRM at ¶12.

⁴³ *Id.* at ¶16.

⁴⁴ *Id.*

⁴⁵ However, we note that many citizens are likely to visit their local television broadcasters' websites for information. Thus, to fully apprise the public of this resource, broadcasters who maintain their own websites should be required to provide a prominently displayed "public file" link on the main page of their websites directing the public to the FCC webpage for the public files. Additionally, because members of the public who are interested in a specific station's public file are also likely to be viewers of that particular broadcaster, the Coalition believes it is appropriate for stations to also provide on-air announcements disclosing the existence and location of the public file twice daily, with at least one of the announcements occurring between the hours of 6 p.m. and midnight. We do not believe that such a requirement would add significant burden. Broadcasters are already required to provide hourly on-air station identification announcements, *see* 47 C.F.R. §73.1201(a)(b)(1), thus it would not be onerous to supplement these existing notifications twice daily with information on the existence and location of a station's public file.

Burdens On Broadcasters' Transition From Paper To Electronic Filing

The Commission seeks to ensure that the online public files ultimately are made available in “a structured or database-friendly format that can be aggregated, manipulated, and more easily analyzed.”⁴⁶ The Coalition believes that FCC should take all reasonable measures to expedite the eventual creation of an advanced database, while encouraging utility of existing files in the interim.

The FCC can accelerate the implementation of an advanced database by requiring all documents uploaded after the rules in this proceeding are adopted to be filed in a standardized, searchable format. The database itself should be searchable by text within the documents, and also by station, state, date, element of the public file and any other metadata. Furthermore, to realize the full benefits of access and use of data contained in the online public files for research purposes, the database should provide an easy-to-use graphic interface as well as an application programming interface (API) both of which permit searching and downloading of the documents and meta data *en mass*.

While the implementation of an advanced database is the ultimate goal, in the FNPRM the Commission observes that converting broadcasters' existing records into the requisite formats will take time. To avoid postponing the benefits of access to the online public file, the FCC proposes not to require broadcasters “to alter the form of documents already in existence prior to posting them to the online public file at this time.”⁴⁷

Submission of documents in non-searchable, non-machine readable format is a less than ideal solution. Nevertheless, the Coalition believes the proposal reflects a reasonable trade-off

⁴⁶ FNPRM at ¶37.

⁴⁷ *Id.*

between the goal of maximizing data searchability and analysis and the need to expedite access to broadcasters' online public files. That said, the FCC can make the most of this interim situation by encouraging broadcasters to submit current documents in searchable formats, to the extent they are available. A number of commonly available document formats (such as Word, .Txt, PDF or .odf) can be searched. Moreover, these formats can be converted easily into a PDF that can be processed by an optical character recognition tool such that the contents of the document can be loaded into a searchable database.⁴⁸ Broadcasters commonly use such formats as part of their existing record maintenance protocols. As such, filing documents in their native electronic format – as opposed to scanning paper files into formats that cannot be searched – would be both easier to submit and more database-friendly. Specifically, if a required record already exists in a searchable format, the Commission should require it to be submitted in that form. To the extent that a broadcaster currently maintains an existing record *only* in a non-searchable format, we urge the Commission to use an optical character recognition tool to permit searching within documents to the maximum extent possible.

II. The Online Disclosures Sought By The Commission Are Necessary To Effectuate The Goals Of The Communications Act And Present No Significant Additional Burden On Broadcasters

With the exception of duplicate documents currently filed with the FCC, the Commission has concluded that the online public file should include major components of the existing public file, including the political file.⁴⁹ In addition to existing components of the public file, the

⁴⁸ For example <http://www.resourcespace.org/> a free and open source software package could be integrated with an OCR processing tool such as <http://live.gnome.org/OCRFeeder> to easily deliver this functionality.

⁴⁹ FNPRM at ¶14. For list of current public file requirements, *see id.* at ¶12.

Commission sought comment on whether broadcaster sharing agreements⁵⁰ and sponsorship identification records⁵¹ should be added to the online public inspection file requirement. The Coalition strongly supports the Commission’s efforts to make these important records more transparent and accessible to the public and do not believe that including these records would unduly onerous for broadcasters.

A. The Political File Is An Essential Component Of The Public File And Should Be Made Available Online

Paradoxically, while virtually all broadcast commenters recognize the many benefits of making the public inspection files accessible via the internet generally,⁵² a number of broadcasters seek to exempt the political file from any online requirement. This opposition is misplaced, unsupportable, and ironic. The Coalition agrees with the comments of Carnegie-Knight Task Force that the broadcast industry’s “reflexive” opposition to portions of the public file transparency initiative is “disappointing” given that

[b]roadcast news organizations depend on, and consistently call for, robust open-record regimes for the institutions they cover; it seems hypocritical for broadcasters to oppose applying the same principle to themselves. The stations’ public “political file” contains vital information about the American political system, since so much of the money in politics goes toward the purchase of broadcast advertising....”⁵³

Congress directed the FCC to promote transparency and political discourse through broadcast regulations designed to provide access and opportunity to the public airwaves by candidates for office. Specifically, sections 312 and 315 of the Communications Act provide for

⁵⁰ *Id.* at ¶35.

⁵¹ *Id.* at ¶¶33-34.

⁵² *See infra* at section I(B).

⁵³ Carnegie-Knight Letter at 2.

the license revocation of any broadcaster that fails to allow “reasonable access” to a broadcast station by a legally qualified federal candidate⁵⁴ and requires broadcast licensees to maintain a “political record” containing information on when and under what terms broadcasters make airtime available for electoral candidates or for the communication of “a message relating to any political matter of national importance.”⁵⁵ Separately, the Commission’s rules also require broadcasters to retain records of purchasers of air time for any content that touches upon a “political matter or matter involving the discussion of a controversial issue of public importance,” as well as a publicly available list of the “chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity” that pays for or furnishes the political ad in question.⁵⁶

The information contained in the political file furthers the goals of the Communications Act by enabling citizens to “verify that licensees have complied with their obligations relating to use of their facilities by candidates for political office⁵⁷ and to “assess money expended and time allotted to a political candidate and to ensure that equal access was afforded to other legally qualified candidates.”⁵⁸

⁵⁴ 47 U.S.C. § 312(a)(7).

⁵⁵ *Id.* at § 315(e).

⁵⁶ 47 C.F.R. §73.1212(e). The list requirement dictated by section 73.1212(e) is part of the FCC’s broader “sponsorship identification” rules which stem from section 317 of the Communications Act. 47 U.S.C. § 317.

⁵⁷ *1998 Main Studio R&O*, 13 FCC Rcd at ¶54.

⁵⁸ *Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, 73 Fed. Reg. 13541, 13542 (Mar. 13, 2008).

Broadcasting (and broadcast television in particular) is the most popular medium for political advertising. 2012 is slated to be a “windfall” year for broadcasters⁵⁹ with some analysts predicting that political ad spending will jump “30 percent from four years ago—possibly reaching \$4 billion—with the bulk of expenditures going to local television outlets.”⁶⁰ Increasingly, third-party groups are purchasing broadcast advertising time to influence the outcomes of federal, state, and local elections.⁶¹ These third party groups frequently go by names that obfuscate the true interests and sources of funding behind their political messages.⁶²

As a result of these trends, voters have a greater need to know the true sponsors of advertisements supporting or opposing particular candidates, ballot initiatives, or policy proposals. The information contained in the political file can play an important role in promoting transparency of the sources of these ads. Specifically, the identities of the executives of a group made available through the public file can help to reveal some of the interests behind the

⁵⁹ Paul Thomasch and Lisa Richwine, “TV broadcasters enjoy spoils of political wars,” REUTERS (Jan. 7, 2012) <http://www.reuters.com/article/2012/01/07/us-advertising-politics-idUSTRE8060AE20120107> (“Around 85 percent of the money that is raised and spent on advertising historically goes toward local broadcast TV. In 2012, that could total between \$2.5 billion to \$3.0 billion, said Ken Goldstein, president of Kantar Media's Campaign Media Analysis Group.”)

⁶⁰ D.M. Levine, “Shot in Arm Expected for 2012 Political Ad Spend: MediaVest report expects big jump after slow start,” ADWEEK (Dec. 27, 2011) <http://www.adweek.com/news/television/shot-arm-expected-2012-political-ad-spend-137283>.

⁶¹ The Center for Responsive Politics estimates that outside groups spent close to \$300 million in 2010, as compared to less than \$69 million in 2006. See Center for Responsive Politics Report: Politicians & Elections, Outside Spending, <http://www.opensecrets.org/outsidespending/index.php>.

⁶² The Supreme Court in *McConnell v. FEC* acknowledged the phenomenon of issue advertising by deceptively named groups, finding that “sponsors of such ads often used misleading names to conceal their identity. “Citizens for Better Medicare,” for instance, was not a grassroots organization of citizens, as its name might suggest, but was instead a platform for an association of drug manufacturers. And “Republicans for Clean Air,” which ran ads in the 2000 Republican Presidential primary, was actually an organization consisting of just two individuals--brothers who together spent \$25 million on ads supporting their favored candidate.” 540 U.S. 93, 128 (2003).

purchases of advertising time and provide a transparency mechanism for citizens and other interested parties.

Thus, because of broadcast television's popularity with political advertisers and the unique role that broadcasters play in the electoral process, it is essential that the broadcast political file is made part of the unified online public file. As the Sunlight Foundation correctly pointed out in its comments in this proceeding, "[l]ittle is more fundamental to the functioning of our democracy than voters' understanding of who is influencing our elections. Broadcasters are in the position of making this information readily available to the public by placing the contents of its political file online."⁶³

1. Claims That Putting The Political File Online Will Be Burdensome Are Inflated And Unfounded

Broadcasters claim that placing the political file online would be too onerous.⁶⁴ These claims are unfounded or exaggerated and in any event, as demonstrated above, are outweighed by the significant benefits to the public and society of making this information more readily available online.

Broadcasters that claim placing political files online would be overly burdensome generally fall into one of the following camps: (1) they do not use, or do not consistently use, electronic means to manage their files, but instead create or maintain all or parts of the political file via handwritten or hard copy documents; or (2) they rely on electronic means to manage their political files, but claim that even with electronic means it is still less burdensome to provide access to the political file at the station itself. These arguments are unpersuasive.

⁶³ Comments of The Sunlight Foundation, filed MB Dkt 00-168 (Dec. 22, 2011) at 1, <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021751245>.

⁶⁴ NAB Comments at 8.

a. Broadcasters' Refusal To Modernize Their Recordkeeping Is Not A Legitimate Defense To The Commission's Reasonable Efforts To Increase The Accessibility Of Broadcasters Political Files

Broadcasters that continue to rely solely or primarily on handwritten documents and manual updating of political files would do well to reevaluate their business practices with an eye to joining the modern world. Nearly every other industry has recognized the business imperative of streamlining their recordkeeping and communications through the use of electronic and networked means. Yet some broadcasters appear to believe that neo-luddism is a legitimate defense to the Commission's reasonable efforts to modernize public access to the political file. For example, in a joint filing the state broadcast associations in North Carolina, Virginia, and Ohio assert that one of their member stations uses "handwritten documents for approximately 90% of its political file."⁶⁵ The same state association reports that 85% of its members have made no changes to their political advertising methodology or practices in five years.⁶⁶ These arguments strain credulity, not to mention good business sense. As Steven Waldman, lead author of the FCC's staff report on the Information needs of Communications, observed, "most of the rest of the world has figured out ways to use the Internet to reduce workload and cost. I'm not sure the broadcasters want to take the position that they will be the one industry that can't possibly be expected to use the Internet to improve efficiency."⁶⁷

⁶⁵ Comments of North Carolina, Ohio and Virginia Broadcasters, filed Mb Dkt 00-168 (Dec. 22, 2011) at 9, <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021751622>, ("NC/OH/VA Broadcasters").

⁶⁶ *Id.*

⁶⁷ Steven Waldman, "Local TV News, Meet the Internet," *Columbia Journalism Review* (Dec. 29, 2011) http://www.cjr.org/campaign_desk/local_tv_news_meet_the_internet.php?page=all&print=true.

Moreover, to actually maintain these important records in such an archaic and haphazard fashion, particularly in light of widely available and far more efficient electronic means, seems imprudent, if not lax. We suspect that these broadcasters are overstating their reliance on non-electronic means to maintain their political files and other business concerns. A number of commenters and observers of this proceeding have pointed out that broadcasters' apparent resistance to modernizing their filing practices is untenable. As Common Frequency so aptly put it, "[n]early every other business matter in the modern world has been moved to computer for the added efficiency of operation. If a filing cabinet somehow provided greater efficiency, filing cabinets would be ubiquitous over modern electronic data storage."⁶⁸

Broadcasters provide no legitimate reason why the FCC should ignore the significant technological advancements in computerized traffic systems and electronic filing. Instead they rely on the preposterous argument that local TV stations should continue to maintain reams of paper and slapdash methods for updating and organizing their political files. It is insupportable to allow broadcasters' inexplicable and obdurate choice to rely on outmoded and inefficient methods of maintaining their files to thwart the Commission's attempts to make the political file more accessible to the public.

b. Going Forward, Online Management Of The Public File Would Be Less Burdensome – And More Efficient – Than Current Paper Filing

Other broadcasters admit that they use electronic communications and traffic management systems as part of their political file maintenance, yet still oppose putting the public

⁶⁸ Comments of Common Frequency, filed MB Dkt, 00-169 (Dec. 22, 2011) at 1-2, <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021751641>.

file online because many electronic transactions use “varied and incompatible electronic formats” that do not facilitate uploading.⁶⁹

As a threshold matter, broadcast stations by and large are sophisticated operations. They employ technicians and engineers to ensure that pictures and sound travel hundreds of miles over the electromagnetic spectrum to reach the TV sets of their audiences. Moreover, a number of local television broadcasters already use the internet to upload video of their local programming. It is highly improbable that station staff do not possess the skills necessary to upload simple documents to the internet, particularly if the documents are already generated and transmitted in electronic form. One commenter in this proceeding already has submitted a presentation describing the capabilities of a currently available electronic public inspection file internet portal, which it claims provides a “facility for organizing and maintaining in electronic paperless format all materials required to be in the Local Public Inspection File.”⁷⁰ Further, the FCC has proposed not to require broadcasters “to alter the form of documents already in existence prior to posting them to the online public file at this time,”⁷¹ which means that broadcasters will not initially have to change the formats of the documents they maintain electronically to post them online, which will further diminish any burden of uploading existing documents at the outset.

Yet, broadcasters argue that even with the use of electronic tools “uploading political file materials entails burdens that far exceed those associated with handling in-person requests for the material” because “station personnel currently need only to direct interested parties to the

⁶⁹ NC/OH/VA Broadcasters Comments at 9.

⁷⁰ Comments of Broadcast1Source, filed MB Dkt 00-168 (Dec. 22, 2011), <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021751603>.

⁷¹ FNPRM at ¶37.

paper political file, which these parties are free to review.”⁷² One broadcaster asserts that “the time required to save relevant documents to PDF form, login into the FCC’s website, browse a hard drive for the PDF file, upload it to the FCC’s site” would require “an additional 37 hours for post-airing reports alone, not including orders and other required political file material.”⁷³

Putting aside the obvious inflation of the time that broadcasters are allotting for basic and rudimentary tasks such as “PDF’ing” documents and browsing a hard drive, this statement begs the question: what do broadcasters do to maintain their political files now that it requires so little time and effort? Put more bluntly, these burden arguments are only plausible if stations currently do nothing to organize their paper political files. But of course, the Commission long has required broadcasters to maintain their paper political files in an orderly manner.⁷⁴ Stations are not permitted to pile political record documents into a file without further organization and then simply direct members of the public to “have at them.”

Assuming broadcasters currently comply with Commission rules, they already must download and print out any electronically generated documents and organize them in the paper political file. Conversely, online political files would allow broadcasters simply to upload the very same documents that they presently maintain in electronic format and save themselves the trouble of printing them out and organizing hard copies in their filing cabinets. Consequently, broadcasters mistakenly assert that these proposed new standards will require them to devote more staff time to file maintenance. As one commenter put it, broadcasters “are making the classic mistake of viewing this information request as ‘additive’, instead of ‘in lieu of’ the

⁷² Joint Broadcasters Comments at 6-7, 15.

⁷³ See NAB Comments at Attachment B, Declaration of Fred Corbus, General Sales Manager of Station WOOD-TV, Grand Rapids, MI.

⁷⁴ *Codification of the Commission’s Political Programming Policies*, Order on Reconsideration, 7 FCC Rcd 4611, 4620 (1992).

information that is already being captured and kept on file at the local stations.”⁷⁵ Indeed, this change would not add to broadcasters’ current duty to keep their political file updated, and going forward the added efficiency of electronic processing arguably would save station staff time and effort (in addition to saving a significant number of trees).

Finally, some broadcasters argue that existing electronic booking and billing traffic management software “does not come even close to providing broadcasters with the ability to engage in *automated* online posting to their political files.”⁷⁶ The PRA notice does seek comment on whether there are “ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques.”⁷⁷ Certainly, automatic and instantaneous electronic updating of political files would be desirable if it can be achieved in the future. However, even if complete electronic automation is not possible under the FCC proposal, it is beside the point. Automatic updating currently is not possible with current paper version of the file that broadcasters seek to maintain, so we fail to see how this argument would defeat efforts to put these same records online.

Furthermore, while we understand that broadcasters might prefer not to exert any effort at all to update their political files, the Commission is not required to eliminate any and all broadcaster filing obligations in this proceeding. It suffices to say that broadcasters already must comply with the existing paper filing requirements. An online political file would not add to their

⁷⁵ Comments of Penelope Muse Abernathy, Knight Chair, Journalism and Digital Media Economics School of Journalism and Mass Communication The University of North Carolina at Chapel Hill, filed MB Dkt 00-168 (Jan. 17, 2012)

<http://fjallfoss.fcc.gov/ecfs/document/view?id=7021753756>.

⁷⁶ Joint Broadcasters Comments at 6 (emphasis added).

⁷⁷ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report* (FCC Form 398), Proposed Rules, 76 Fed. Reg. 72144, 72145 (Nov. 22, 2011).

responsibilities – rather such a requirement would help streamline and standardize these current filing practices to the benefit of both broadcasters and the public.

B. Payola Should Be Disclosed In The Online Public File In Addition To On Air Disclosures Currently Required

The Coalition believes the FCC should require licensees to submit a record of “pay for play” arrangements for inclusion in their online public files. Specifically, when a broadcaster airs programming that would require an on-air disclosure under the FCC sponsorship identification rules, the licensee should also post that information in the online public file and maintain it for a period of five years following the air-date of the related content.⁷⁸ This requirement, while not unduly burdening broadcasters that currently comply with the sponsorship identification rules, will greatly benefit the public.

Online records of these arrangements will afford viewers the opportunity to view sponsorship information that they may miss during the live airing of a program and will help mitigate the many shortcomings of fleeting, on-air disclosures. Existing on-air sponsorship identification is not sufficient to apprise members of the public when content is the product of a payola arrangement.⁷⁹ Sponsorship identification notices are typically relegated to a small fast-

⁷⁸ This period represents the statute of limitations on FCC enforcement actions pursuant to 28 U.S.C. §2462§2462 which provides that “[e]xcept as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.”

⁷⁹ While a number of Coalition members believe that the Commission’s current standards for sponsorship identification are insufficient and under-inclusive and should be amended, *see, e.g. Sponsorship Identification Rules*, Comments of Free Press, filed MB Dkt. 08-90 (Nov. 21, 2008), in these comments we are not proposing any changes to the substance of the current requirements for on-air identification of payola. We are merely proposing that, if broadcaster

(continued on next page)

moving scroll at the end of the program credits, are hard to locate on the screen, difficult to decode, too small, and presented for too short a time to read.⁸⁰

These concerns are heightened when payola is incorporated into broadcast news and information programming. While product placement is on the rise in all types of broadcast programming, local news coverage is frequently the last place that members of the public expect to be pitched a covert commercial in the guise of objective journalism. In other words, people expect to see actual “news” in their newscasts – not undisclosed advertisements. And because people rely on news and information programming to inform a range of decisions, their inability to ascertain whether information is accurate and unbiased has particularly toxic individual and societal implications. Online disclosure can provide a useful supplement to the fleeting and frequently insufficient on-air payola disclosure.

Nor would citizens be the sole beneficiaries of these transparency measures. Ready access to such information will be useful for policymakers, academic researchers, journalists, and watchdog groups who aggregate this information in order to track the prevalence of payola in the broadcast television market. This benefit has been affirmed by leaders in the journalism field. A number of commenters in the proceeding have pointed out the immense benefits to the public, journalism and society that could be achieved by making this information readily available via the internet. Ryan Thornburg, a professor at the School of Journalism and Mass Communication The University of North Carolina at Chapel Hill states:

(footnote continued)

currently provides on-air sponsorship identification, it should also maintain a publicly available written record of the arrangement in the online public file.

⁸⁰ PIPAC Comments at 24 (citing comments submitted in response to MB Dkt No. 08-90, *Sponsorship Identification Rules and Embedded Advertising*, Notice of Inquiry and Notice of Proposed Rulemaking, 23 FCC Rcd 10682 (2008), internal quotation and citations omitted).

at a time when news organizations are struggling to find a viable business model for public affairs reporting, the FCC has an opportunity to reduce the costs of that reporting without adding to the cost of doing business for broadcasters. In fact, many of the reporters who would take advantage of the cost savings associated with well-structured data formats are employed by television broadcasting companies who make money by trading on the public trust of their local news programming.⁸¹

The Carnegie-Knight Task Force agrees that the sponsorship information “can help make viewers aware that some of what they are seeing and hearing on the air, especially in the realm of health news, is being paid for by highly interested parties.”⁸² Similarly, the Association of Healthcare Journalists supports online disclosure of pay-for-play arrangements in which “marketing masquerades as news” because

[s]uch practices are especially pernicious when applied to matters of health and health care – as they often are – because people make decisions affecting their well-being based on such reports. The result is harm to individuals who make the wrong choices based on biased information and increased costs in the health care system that we all pay for.”⁸³

Glenn Frankel, director of the School of Journalism at the University of Texas at Austin, makes the following points in his comments:

the FCC's proposed requirement that TV stations disclose sponsorship deals with companies in return for favorable local coverage is another modest attempt to provide transparency and information to news consumers. Due to shrinking profits, many broadcasters have cut back on the size and ambitions of their news operations, and some corporate sponsors have moved to fill the gap in local news by seeking to dictate news content in return for advertising revenues. This kind of fake news at best is misleading

⁸¹ Comments of Ryan Thornburg, Director, OpenBlock Rural and Assistant Professor, School of Journalism and Mass Communication The University of North Carolina at Chapel Hill, Filed MB Dkt 00-168 (Jan. 17, 2012), <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021753755>.

⁸² Carnegie-Knight Letter at 2.

⁸³ Letter from Charles Ornstein on behalf of the Association of Healthcare Journalists, filed MB Dkt 00-168 (Jan. 11, 2012), <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021753323>.

and at worst is outright fraud -- presenting itself as independent reporting when in fact it is bought and paid for by the institution being featured.⁸⁴

Similarly, Sharon Dunwoody, a professor of journalism at the University of Wisconsin-Madison, recognizes the “obvious [] value of putting ‘sponsorship identification’ online. . . . local TV stations already collect and archive this information; online availability will simply make it a bit easier for interested parties to examine these types of evidence.”⁸⁵

In conclusion, making disclosure publicly available in a form that is less ephemeral than current on-air disclosures will increase access to this information, which in turn will help to keep viewers informed of the identities of those who seek to persuade them. A viewer who believes she has seen sponsored content, but misses the on-air disclosure, can check a broadcaster’s online file to see if the program contained sponsored material, and if so, from whom. Additionally, an electronic record of sponsorship can facilitate research and dialogue regarding the growing use of sponsored material, particularly in news and information programming – a goal that is no less important or legitimate in age where journalism and advertising are increasingly blurred.

1. Assuming That Broadcasters Are Currently Complying With Existing Sponsorship Identification Rules, Maintaining An Online Record Of Such Relationships Would Not Be Onerous

Requiring online sponsorship identification lists is a modest proposal that does not call for any alteration to the content that broadcasters air on television. Nor does the proposal require

⁸⁴ Comments of Glenn Frankel, Director, School of Journalism, University of Texas at Austin, filed MB Dkt 00-168 (Jan. 9, 2012) at 2, <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021753022>.

⁸⁵ Comments of Sharon Dunwoody, Professor of Journalism, University of Wisconsin-Madison, filed MB Dkt 00-168 (Jan. 9, 2012), <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021753049>.

broadcasters to collect any additional information other than what they must already maintain to ensure compliance with existing rules. Broadcasters merely would be required to document existing disclosures in their online public file. Thus, because they must already maintain these records to comply with current rules, the posting of the records in the online public file would not be onerous.

Nevertheless, a number of broadcasters complain that mandating sponsorship identification would impose an undue burden.⁸⁶ Assuming that broadcasters are currently acting in compliance with the existing sponsorship identification requirements, these concerns are unfounded.

The Commission's sponsorship identification rules already require stations to clearly identify the sponsors of all broadcast programming whether it is syndicated, network, or locally originated.⁸⁷ There are clear exemptions to this requirement, including when it is obvious from the context of the content that the material is sponsored,⁸⁸ or if the sponsored material appears in a "feature motion picture film produced initially and primarily for theatre exhibition."⁸⁹ Thus, with these exceptions and a few others,⁹⁰ broadcasters are ultimately responsible for on-air sponsorship identification information and are required to ensure compliance with the rules, even if the content is not originated by the station itself.

It is for this very reason that Congress enacted section 507 of the Communications Act. Section 507 provides that if money, services or other consideration are provided in exchange for

⁸⁶ See, e.g., NAB Comments at 26-27.

⁸⁷ 47 C.F.R. §73.1212 (a).

⁸⁸ *Id.* §73.1212(f).

⁸⁹ *Id.* §73.1212(h).

⁹⁰ See, e.g., *Applicability of Sponsorship Identification Rules*, Public Notice, 40 FCC 141 (1963) as modified 40 Fed. Reg. 41936 (September 9, 1975); See also *Access 1 New Jersey License Company, LLC.*, 26 FCC Rcd 3978, 3982 (Mar. 24, 2011).

inclusion of certain content for broadcast – regardless of where in the production chain the exchange takes place – then that fact must be disclosed to the station *in advance of the broadcast*, so that the station may broadcast the sponsorship identification announcement required by Section 317 of the Communications Act.⁹¹ Consistent with this obligation, stations must currently track and verify specific sponsorship identification conformity from syndicators and networks ahead of broadcast – or risk violation of the rules. Because stations already receive these records in advance, it would not be unduly burdensome for broadcasters to upload those records as part of the online public file.

The Coalition is concerned by the NAB’s suggestion that stations may not in fact verify such compliance. The NAB states that stations “often only learn that [network and syndicated] material was sponsored once the programs sponsorship announcement occurs” and, thus, if the Commission adopts an online reporting requirement that encompasses all sponsored programming “stations will need to dedicate personnel to monitoring and identifying network and syndicated programming with sponsorship identification.”⁹² The NAB’s burden argument appears predicated on an admission that TV stations generally fail to observe the requirements of sections 507 and 317, as well as the FCC’s rules. To the extent that broadcasters do not take any steps to ensure observance of the sponsorship identification rules and laws, it raises broader and more serious concerns about broadcaster observance of the sponsorship identification rules. But in any case, it does not justify exempting network and syndicated programming from online payola disclosure.

⁹¹ See 47 U.S.C. §508; see also Federal Communications Commission Enforcement Bureau, PAYOLA AND SPONSORSHIP IDENTIFICATION <http://transition.fcc.gov/eb/broadcast/sponsid.html>.

⁹² NAB Comments at 17.

C. The Public Should Have Online Access To Broadcasters' Resource Sharing Agreements

Access to broadcasters' shared services agreements (SSAs) and other resource sharing arrangements is a critical transparency measure that will alert citizens to the existence of local broadcasters' arrangements that may be affecting the quality, amount and independence of local news and information available in the community.

Citizen concerns regarding SSAs and other sharing arrangements are well-documented. Likewise, disclosure of SSAs themselves is long overdue. For sometime now, public interest and local citizen groups have been seeking greater transparency for SSAs on the grounds that the use of these types of agreements may be adversely impacting the amount and quality of independently produced broadcast news programming available to local residents. Free Press, a member of the Coalition, has compiled a list of sharing arrangements across the country and provided video showing how these agreements have resulted in the airing of carbon-copy newscasts across multiple – and ostensibly competing – local TV stations.⁹³

Citizens and activists are documenting the negative impact of shared services agreements on the local media environment, but because SSAs are not currently disclosed, members of the public frequently are prevented from viewing the underlying agreements.⁹⁴ Media Reform South Carolina, a local citizen group studying the consolidation of newscasts by two local television stations in Charleston, reports that it visited stations to review their public files but could not find information on their news sharing agreement. Instead they were told that “the news sharing agreement had never been in the public file but was treated like any other agreement with a

⁹³ See “Change the Channels” <http://www.savethenews.org/changethechannels> and <http://www.youtube.com/watch?v=0ZXqAl-acic&feature=relmfu>.

⁹⁴ In many cases, members of the public only learn of SSAs as result of press reports. In other cases, local residents may be completely unaware that local broadcasters have entered into an SSA even while the agreement impacts what they see on their local TV newscasts.

vendor who served the station – like the agreement with the company who takes out their trash.”⁹⁵

But news sharing agreements are not mere “vendor” agreements. These agreements (like Local Marketing Agreements and Joint Sales Agreements, both of which are already mandatory parts of the public file⁹⁶), affect control of the station, as well as production of local news and other programming. To this end, the Commission previously has found that public file disclosure of LMAs is necessary to subject these types of agreements to “scrutiny by competitors, the public, and the Commission.”⁹⁷

Likewise, the Commission and public interest groups agree that SSAs warrant more scrutiny – not less. In 2009, a local citizen group Media Council Hawai’i filed an FCC complaint regarding the use of a shared services agreement between three Honolulu TV stations, which has resulted in the virtual simulcast of local news programs across those stations.⁹⁸ In November 2011, the Media Bureau released an order denying the Media Council Hawai’i complaint, but finding that the “net effect” of some types of sharing agreements may be “clearly at odds with the purpose and intent of duopoly rule.”⁹⁹ The Commission has since sought comment on how it

⁹⁵ Comments of MRSC at 2.

⁹⁶ 47 C.F.R. § 73.3526(e)(14).

⁹⁷ *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry; and Reexamination of the Commission's Cross-Interest Policy*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 1097, ¶49 (2001).

⁹⁸ *See Media Council Hawai’i Complaint and Request for Emergency Relief Regarding Shared Services Agreement between Raycom Media and MCG Capital for Joint Operation of Television Stations KHNL, KFVE, and KGMB, Honolulu, Hawai’i* (Oct. 7, 2009); *see also* http://www.youtube.com/watch?v=7M_0jo-XR_A.

⁹⁹ *In the Matter of KHNL/KMGB License Subsidiary, LLC and HITV Subsidiary Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 2011 WL 5910495 (Nov. 25, 2011) at ¶23 (“KNHL/KMGB Order”).

should assess SSAs under its attribution rules.¹⁰⁰ Furthermore, the Commission determined that “consideration of the impact [shared services] agreements have on competition and diversity may be relevant in determining whether license renewal for one or either of the stations that are the subject of the transaction would be consistent with the public interest.”¹⁰¹

Cable operators also have raised concerns that broadcast resource sharing practices have adversely affected their negotiations for consent to retransmit broadcaster signals. They argue that these practices, and the lack of transparency around them, are distorting the competitive market for carriage of broadcast channels. Time Warner Cable states that “local broadcast stations increasingly are misusing sharing agreements as a means of colluding in the negotiation of retransmission consent and circumventing the Commission’s media ownership rules.”¹⁰² Similarly, the American Cable Association, which represents the interest of smaller cable operators, argues that disclosure of sharing practices is necessary because “today the information needed to evaluate whether broadcasters are in compliance with current media ownership, retransmission consent, and antitrust rules is not otherwise readily available,” and that, “despite recognition by the Commission and DOJ of the harms of collusive agreements by separately-owned same-market broadcast stations, neither the government, the industry, nor the public have

¹⁰⁰ See *2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, FCC 11-186, MB Dkt 09-182 (rel. Dec. 22, 2011) at ¶ 194.

¹⁰¹ *KNHL/KMGB Order* at ¶15.

¹⁰² Reply Comments of Time Warner Cable, filed MB Dkt 00-168 (Jan. 17, 2012) at 2-3, <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021753753>.

ready access to legally binding agreements through which broadcasters might coordinate their retransmission consent negotiations.¹⁰³

Because the broadcast licensing system places “near-total reliance” on complaints as the means to identify licensees that are not fulfilling their duty to the public or complying with FCC rules, “to deprive interested parties. . . of the vital information needed to establish a *prima facie* case in such petitions seems almost beyond belief.”¹⁰⁴ It would be patently unfair and contrary to the purpose of the public file to deny citizens the opportunity to view broadcaster arrangements that affect quality and content of programming offered by local broadcasters, as well as those agreements that ultimately may affect control over the station itself.¹⁰⁵ Disclosure of such agreements would generate the very real benefit of providing the public with the exact information it needs to unearth abuses or outright violations of FCC rules, and to establish a *prima facie* case in complaints to the FCC.¹⁰⁶

¹⁰³ Comments of American Cable Association, filed MB Dkt 00-168 (Dec. 22, 2012) at 11-12, <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021751636>.

¹⁰⁴ *Office of Communication of United Church of Christ*, 707 F.2d at 1441.

¹⁰⁵ “In determining whether an unauthorized transfer of control has occurred, the Commission looks to any acts or agreements vesting in a “new” entity the right to determine basic policies concerning the operation of the station. The Commission’s analysis “transcends formulas, for it involves an issue of fact which must be resolved by the special circumstances presented,” and must be determined on a case-by-case basis. However, the focus of any Commission inquiry with respect to the locus of control of a station’s operations focuses on programming, personnel, and finances.” *KNHL/KMGB Order* at ¶16.

¹⁰⁶ One broadcaster suggests that disclosure of such agreements would mean the disclosure of proprietary information. Comments of the Joint TV Broadcasters, filed MB Dkt. 00-168 9Dec. 22. 2011) at 11-14, <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021751629>. This concern is misplaced. The current FCC rules allow broadcasters to redact confidential information from LMAs and JSAs before they are submitted in the public file. The Commission could similarly allow broadcasters to redact confidential information from SSAs prior to online republic file submission, and has raised this issue in the FNPRM. FNPRM at ¶35. Thus, Joint TV Broadcasters’ concern is not a genuine impediment to SSA disclosure.

Conclusion

For the reasons stated above, the Public Interest Public Airwaves Coalition believes that the broadcast television public file modernization initiative proposed by the FCC, and the attendant information collection, will increase the accessibility and usability of information that broadcasters are required to make available in their public files. Moreover, because broadcasters must already maintain these records to fulfill current statutory and regulatory obligations, making this information part of a unified online public file will not be unduly burdensome for licensees.

Respectfully Submitted,

_____/s/_____
Corie Wright
Free Press
501 Third Street NW
Washington, DC 20001

* Angela Campbell
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, DC 20001

January 23, 2012

*Andrew Jay Schwartzman
Media Access Project
1625 K Street, NW
Washington, DC 20016

* *Counsel for the Public Interest, Public Airwaves Coalition*