

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	)	
Licensee Public Interest Obligations	)	
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**PAPERWORK REDUCTION ACT COMMENTS  
OF THE PUBLIC INTEREST PUBLIC AIRWAVES COALITION**

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## **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 Second Report and Order (“Order”) which will replace television broadcasters’ paper public file records with an integrated electronic public file to be hosted online by the Commission. We urge the Office of Management and Budget to promptly approve the revised information collection process so that these rules can be implemented and so that members of the public will enjoy fuller and more meaningful access to the broadcast records they already have a right to view.

The public file modernization initiative adopted by the Commission promotes 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. Notably, the Commission has adopted no new records or additional information collection from television broadcasters. It is simply requiring that broadcasters scan their existing paper records and submit them to the FCC electronically rather than photocopy and place in a filing cabinet. Moreover, we support the FCC’s decision to itself take on the increased burden and responsibility for hosting such electronic files, thereby maximizing access to broadcast file information while easing the overall burden on the public, television broadcast stations and other stakeholders.

The Coalition agrees with the FCC’s assessment that the benefits of conversion from paper to electronic filing are “unquestionably substantial.” Access to television broadcasters’ public files will encourage public involvement in monitoring station performance and will promote dialogue between stations and their communities of license. An online public file and database of broadcaster public files will provide 24-hour access to important station records and

will remedy the many problems citizens currently face when trying to review a station's public file, including travel obstacles, recalcitrant station staff, limited station hours, and photocopying costs. Each of these impediments is easily alleviated by technological developments and the relative ubiquity of internet access. An online public file will also streamline management of these files and diminish many of the inconveniences and burdens associated with broadcasters' maintenance of paper files.

The FCC has long recognized the vital role that broadcast 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.

The Coalition strongly supports the Commission's requirement that the online public file include major components of the existing public file, including television broadcasters' political files. Because of the unique role that broadcasters play in the electoral process, it is essential that the broadcast political file be made part of the online public file. Broadcast political advertising plays a critical part in the democratic process and can shape electoral 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 the interests engaged in political advocacy to account. 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.

In adopting the online public file requirement, the Commission has gone to great lengths to minimize the burden of uploading and digitizing these files for broadcasters. More importantly, over time, the transition to an online public file will be more efficient and cost effective for broadcasters. A paper-only inspection file is increasingly anachronistic in a world where the vast majority of businesses take advantage of electronic data processing. Electronic maintenance of and public access to station records is more consistent with existing technologies and modern business practices. Indeed, many broadcasters already maintain their station records in electronic format and currently must print them out to put them in the public inspection file. Eliminating the paper filing requirement and replacing it with an online posting requirement will allow broadcasters to simply upload the very same documents in electronic format, saving them the trouble of printing them out and filing hard copies. Placing this information online will not only streamline access to and management of the public and political file, it will also reduce the burden on broadcasters who receive requests for in-person access to these public records – particularly during the election season when stations receive multiple and frequent visitors seeking access to their political files.

In sum, these improvements will reduce both *paper* and *work* for the public and for broadcasters, while better effectuating the Congressional goal of public access to station file. To these ends, we urge the OMB to expeditiously approve this revised information collection.

## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	i
I. An Online Public Inspection File Will Further The Goals Of The Communications Act And The Paperwork Reduction Act.....	2
A. The FCC’s Online Public File Requirement Will Alleviate The Unnecessary And Unjustifiable Obstacles That Members Of The Public Currently Face In Accessing Television Broadcasters’ Public File Information .....	5
B. The Political File Is An Essential Component Of The Public File And Should Be Made Available Online .....	10
1. Broadcast Station Files Contain Unique and Valuable Information About National And Local Political Issue And Electoral Advertising Aired On The Public Airwaves .....	13
2. None Of The Records In Broadcast Public Or Political Files Are Proprietary Or Confidential.....	16
II. Online Posting Of The Public File Will Enhance Public Access To Information And Reduce File Maintenance Burdens On Broadcast TV Stations .....	17
A. The Commission Has Taken Considerable Steps To Forestall Any Burdens Associated With Broadcasters’ Conversion To And Maintenance Of An Online Public File .....	20
B. Going Forward, Online Management Of The Public File Would Be Less Burdensome – And More Efficient – Than Current Paper Filing .....	21
Conclusion .....	24

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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

Pursuant to the Paperwork Reduction Act, The Public Interest Public Airwaves Coalition, including the Benton Foundation,<sup>1</sup> Campaign Legal Center, Common Cause, Free Press, New America Foundation, and the Office of Communication of the United Church of Christ, Inc. (collectively, “PIPAC” or the “Coalition”), respectfully submits the following Paperwork Reduction Act comments in response to the Federal Communications Commission Second Report and Order, which adopts new online posting requirements to improve public access to, and the quality of, the existing data contained in television broadcaster public files.<sup>2</sup> The

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<sup>1</sup> 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.

<sup>2</sup> *Standardized and Enhanced Disclosure Requirements of Television Broadcast Licensees Public Interest Obligations*, Second Report and Order, MM Dkt. 00-168, FCC 12-44 (rel. Apr. 27, 2012, Fed. Reg. May 11, 2012) (“Order”).

Coalition, which has submitted extensive comments in the FCC's proceeding,<sup>3</sup> 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 to bring broadcast television public files into the 21<sup>st</sup> Century by requiring television broadcasters to place public file records online via a database hosted by the Commission itself. Updating broadcaster public file obligations, and revising the attendant collection of information, is necessary to facilitate oversight by the Commission and the public of broadcast licensees, and for the proper performance of the broadcast licensing process as a whole. Because of the ubiquity of electronic data processing and the increasing prevalence of Internet-based communication, online publication of the public file records is not only significantly less burdensome than current paper file maintenance, it also provides better and easier public access to the public file.

In short, these proposed improvements will reduce both *paper* and *work* for the public and for broadcasters. To this end, we urge the Office of Management and Budget to promptly approve the revised information collection so that these rules can be implemented and so that members of the public can enjoy fuller and more meaningful access to the broadcast television stations records they already have a right to view.

#### **I. An Online Public Inspection File Will Further The Goals Of The Communications Act And The Paperwork Reduction Act**

Modernizing and improving public file access by moving in online will better serve the goals of the Paperwork Reduction Act and the Communications Act. The Paperwork Reduction

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<sup>3</sup> 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>.

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

The Communications Act seeks to promote a broadcast licensing system that functions consistent with the “public interest, convenience and necessity.”<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.”<sup>8</sup>

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.

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<sup>4</sup> Pub. L. No 104–13, 109 Stat. 163 (1995).

<sup>5</sup> 47 U.S.C. § 307(c)(1).

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> *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”).



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

For example, access to the political records contained in broadcasters' public files enables citizens to "verify that licensees have complied with their obligations relating to use of their facilities by candidates for political office"<sup>10</sup> 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."<sup>11</sup> 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 indispensable. 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.

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<sup>9</sup> 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](http://transition.fcc.gov/mb/audio/decdoc/public_and_broadcasting.html#_Toc202587576).

<sup>10</sup> *1998 Main Studio R&O*, 13 FCC Rcd at ¶54.

<sup>11</sup> *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 has been 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 newly adopted rules, which modernize access to broadcast television stations' public files by replacing paper files with an online public file hosted on the Commission's website, further the goals of the PRA and the Communications Act by encouraging public involvement in monitoring television stations' performance and promoting dialogue between stations and their communities. It will also streamline access to, and management of these files, while diminishing many of the inconveniences and burdens associated with television broadcasters' maintenance of paper files.

**A. The FCC's Online Public File Requirement Will Alleviate The Unnecessary And Unjustifiable Obstacles That Members Of The Public Currently Face In Accessing Television Broadcasters' Public File Information**

The public file is critical to ensuring that the broadcast system functions in a manner consistent with the public interest, convenience and necessity.<sup>12</sup> 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 no longer necessary or justifiable. As the Commission stated in its Order:

The updated rules we adopt today modernize disclosure procedures to improve access to station files that, for decades, have been public more in theory than in practice. Today, reviewing a television station's public file typically involves the substantial expense and inconvenience of traveling to the station and paying for paper copies. Under our rules, review will involve a quick and

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<sup>12</sup> 47 U.S.C. §307(c)(1).

essentially costless Internet search. This modernization is plain common sense.<sup>13</sup>

Many in the public interest community can attest firsthand to the difficulties that members of the public face in accessing broadcaster public files in their current form. For example, the size of many broadcast service areas, as well as an expanded area in which television 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.<sup>14</sup> 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 from 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, submitted comments in the FCC's online public file proceeding which highlight the opportunities to further public discourse that will be lost if the public files are not made more widely available, but continue to remain in filing cabinets at the television 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

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<sup>13</sup> *Order* at ¶10.

<sup>14</sup> 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 ¶13.

difficulty ensures that there is not much robust public discussion of what the stations' records, in the aggregate, would show.<sup>15</sup>

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 when they arrive on-site. A 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 arrange a time at least one day in advance."<sup>16</sup> 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."<sup>17</sup> 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.<sup>18</sup>

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."<sup>19</sup> 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."<sup>20</sup>

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<sup>15</sup> 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").

<sup>16</sup> 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](http://www.nytimes.com/2011/12/05/nyregion/at-radio-and-tv-outlets-a-little-known-trove-of-kudos-and-complaints.html?_r=3).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> 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").

<sup>20</sup> *Id.*

Another local citizen group, Media Council Hawai'i, attempted to visit the public inspection files of two television stations in Honolulu. When group members arrived at one of the stations, the General Manager informed them that "he did not know where the public file was."<sup>21</sup> 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."<sup>22</sup> 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."<sup>23</sup>

Similarly, the National Hispanic Media Coalition (NHMC), a non-profit media advocacy and civil rights organization,<sup>24</sup> has related some of the difficulties it faced in obtaining access to the public file of a Spanish-language station in Los Angeles. NHMC reports that station staff initially 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

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<sup>21</sup> 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).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See <http://www.nhmc.org/about>.

charges,<sup>25</sup> but unfortunately, unpredictable (and at times exorbitant) station copying charges also pose an unnecessary hurdle to citizens who wish to view public file documents. Public volunteers for Free Press, a coalition member, who have inspected local television station files have been charged as much as one dollar per page to copy public inspection file documents. Similarly, MRSC notes that “[r]equesting copies of the public documents can be costly, and pricing across stations is not consistent.”<sup>26</sup> 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.”<sup>27</sup> 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 barriers of geography, recalcitrant station staff, limited station hours, and copying costs are easily overcome by technological developments and the relative ubiquity of internet access.<sup>28</sup> Online posting of broadcaster public files will promote greater access to stations’ public file information by providing 24-hour access to this information and eliminate the problems citizens currently encounter in trying to review a station’s public file.

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<sup>25</sup> 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.”)

<sup>26</sup> MRSC Comments at 1-2.

<sup>27</sup> *Id.*

<sup>28</sup> *Order* at ¶13.

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

The Commission has concluded that the online public file should include most components of the existing public file, including the political file records going forward.<sup>29</sup> The Coalition strongly supports the Commission's efforts to make these important records more transparent and accessible to the public and does not believe that including these records would unduly onerous for broadcasters. Paradoxically, while virtually all broadcast commenters recognize the many benefits of making the public inspection files accessible via the internet generally,<sup>30</sup> a number of broadcasters oppose including political records currently contained in the public files from any online posting requirement. This opposition is misplaced and unsupportable.

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 the license revocation of any broadcaster that fails to allow "reasonable access" to a broadcast station by a legally qualified federal candidate<sup>31</sup> 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

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<sup>29</sup> "Stations will not be required to upload letters and emails from the public to their online public file; rather, they will continue to maintain them in a correspondence file at the main studio." *Id.* at ¶11. Additionally, "[t]elevision stations will not be required to upload their existing political files to the online file; rather, they will be permitted to maintain at the station those documents placed in their political file before the effective date of our rules, and only upload documents to the online political file on a going-forward basis." *Id.*

<sup>30</sup> *See infra* at section II.

<sup>31</sup> 47 U.S.C. § 312(a)(7).

political matter of national importance.”<sup>32</sup> 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.<sup>33</sup>

Access to the political records contained in broadcasters’ public files 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 office<sup>34</sup> 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.”<sup>35</sup>

Broadcasting (and broadcast television in particular) is the most popular medium for political advertising. 2012 is slated to be a “windfall” year for broadcasters,<sup>36</sup> with some analysts predicting that political ad spending will jump “30 percent from four years ago—possibly

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<sup>32</sup> *Id.* § 315(e).

<sup>33</sup> 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.

<sup>34</sup> *1998 Main Studio R&O*, 13 FCC Rcd at ¶54.

<sup>35</sup> *Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, 73 Fed. Reg. 13541, 13542 (Mar. 13, 2008).

<sup>36</sup> 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.”)



reaching \$4 billion—with the bulk of expenditures going to local television outlets.”<sup>37</sup>

Increasingly, third-party groups are purchasing broadcast advertising time to influence the outcomes of federal, state, and local elections.<sup>38</sup> These third party groups frequently go by names that obfuscate the true interests and sources of funding behind their political messages.<sup>39</sup>

These trends underscore voters’ increasingly vital interest in knowing 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 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 these political records be made part of the unified online public file. As the Sunlight Foundation correctly pointed out in its comments in the FCC proceeding, “[l]ittle is more fundamental to the

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<sup>37</sup> 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>.

<sup>38</sup> 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>.

<sup>39</sup> 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).

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.”<sup>40</sup>

**1. Broadcast Station Files Contain Unique and Valuable Information About National And Local Political Issue And Electoral Advertising Aired On The Public Airwaves**

Some broadcasters have suggested that the FCC online political file rules are of little value because such records are already available to the public through the Federal Election Commission (FEC) online database. Such claims are erroneous.

The FCC's public and political file documentation requirements are not duplicative of the FEC's election expense disclosure requirements. First, the FEC's disclosure requirements apply exclusively to federal elections. Local stations' political files, by contrast, offer detailed information about the source and extent of advertising in local and statewide campaigns, which the FEC, by definition, cannot reach. Second, given changing dynamics in the sponsorship of political advertising, the public and political file requirements may be the public's only consistent and readily available source of information about forms of political ads not subject to FEC disclosure rules. Finally, the information on record in the political file is unique, providing the public with insight on the extent of campaign spending in their communities and helps to make more transparent the relationship between their broadcasting station—a custodian of the public airwaves—and political actors and advocacy groups.

First, the scope of the FCC's political and public file record-keeping requirements is much broader than FEC requirements. The political file must contain records of requests for

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<sup>40</sup> Comments of The Sunlight Foundation, filed MB Dkt 00-168 (Dec. 22, 2011) at 1, <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021751245>.

broadcast time by or on behalf of *any* qualified candidate for public office, including local and statewide, as well as federal offices.<sup>41</sup> Conversely, the FEC disclosure rules do not apply to gubernatorial elections, state legislative elections, or other non-federal contests. As a consequence, a station's political file is frequently a citizen's sole source of detailed information on political ad purchases regarding the electoral issues closest to them and with the most immediate effect on their lives and communities. The public's interest in knowing where campaign commercials come from and the extent of their influence is not confined to federal elections. Thus, placing these FCC-required political records online serves an invaluable public interest that FEC disclosures cannot.

FEC disclosure requirements are also limited in their applicability and are increasingly circumvented. For broadcasting expenditures, FEC only requires disclosure of *aggregate* amounts of spending by political campaigns, associated committees, and third-party organizations.<sup>42</sup> Broadcast political files provide citizens added value by showing the exact amount of advertising purchased in their communities and at what price, in addition to the specific dates and times of broadcast. Such granular and community-specific information gives members of the public better information about how their communities are being targeted for political advertising purposes.

More significantly, so-called "issue ads" sponsored by third-party groups are only considered "electioneering communications" subject to FEC reporting requirements when broadcast time is bought within 60 days of an election or 30 days of a primary or nominating

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<sup>41</sup> 47 U.S.C. § 315(e).

<sup>42</sup> 2 U.S.C. § 434.

convention.<sup>43</sup> In recent election cycles (including this year's presidential race), millions of ad dollars have been spent months, and even years, before the targeted election.<sup>44</sup> The FCC requires political file records for all messages on "political issues of national importance," regardless of when the purchase is made, thereby filling an informational gap left by temporal limits on FEC disclosure requirements.<sup>45</sup>

Moreover, the public file supplies important political information not readily available elsewhere. Broadcast public files are required to contain records on all messages that are "political or involve[] the discussion of a controversial issue of public importance,"<sup>46</sup> including lists of sponsoring organizations' executives or directors.<sup>47</sup> These records may be one of the few ways for members of the public to learn about the leaders and interests of groups sponsoring "issue ads" involving local or statewide matters like ballot initiatives or recall elections.

Broadcast public and political file records are also independently and uniquely informative about the role that broadcasters, as trustees of the public airwaves, play in the democratic process. FEC disclosure requirements are important on a national political level: their purpose is to hold candidates, campaigns, committees, and contributors accountable for their fund collecting and spending. FCC requirements mesh meaningfully with this larger goal, but they first and foremost serve the local community interests of broadcaster transparency, accountability and an informed citizenry. Making political and public files easily accessible via

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<sup>43</sup> *Id.* § 434(f)(3)(A).

<sup>44</sup> See Dan Eggen, "Most Independent Ads for 2012 Election Are from Groups That Don't Disclose Donors," WASH. POST (Apr. 25, 2012), [http://www.washingtonpost.com/politics/most-independent-ads-for-2012-election-are-from-groups-that-dont-disclose-donors/2012/04/24/gIQACKkpfT\\_story.html](http://www.washingtonpost.com/politics/most-independent-ads-for-2012-election-are-from-groups-that-dont-disclose-donors/2012/04/24/gIQACKkpfT_story.html).

<sup>45</sup> 47 U.S.C. § 315(e).

<sup>46</sup> 47 C.F.R. § 73.1212(e).

<sup>47</sup> *Id.*

the Internet permits the public to see how local stations are selling access to the public airwaves for political advertising purposes. The political records contained in the public files allow the public to see what advocacy groups their station does and does not sell time to, to better understand the extent of ad buys allowed in their towns and cities, and to ensure that broadcasters fulfill their duty to provide a fair forum for democratic discourse. The reporting requirements of the FEC and FCC are thus complementary, but by no means redundant.

## **2. None Of The Records In Broadcast Public Or Political Files Are Proprietary Or Confidential**

Similarly misplaced are broadcast industry suggestions that some of the information contained in broadcasters' political files constitutes proprietary or confidential advertising pricing information that should not be made available online.<sup>48</sup> These claims are inconsistent with both law and fact. To suggest that the information contained in the *public file* is somehow "private" is to misunderstand the very purpose of the file itself. The purpose of the *public file* is to "make information to which the public already has a right more readily available."<sup>49</sup>

All of the information contained in the political file already must be made available to the public and has been so for years. The Communications Act directs broadcasters to keep records of political advertising time sold, including "the rate charged for the broadcast time" and "the class of time that is purchased."<sup>50</sup> Given that Congress intended and mandated that this information be disclosed to the public, it is erroneous for broadcasters to suggest that such information is confidential. Nor does the FCC have the authority to treat it as confidential. At

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<sup>48</sup> See e.g., *Ex Parte filing of the Walt Disney Company*, filed MM Dkt 00-168 (Feb. 13, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021859933>.

<sup>49</sup> *Report and Order in Docket No. 14864* at 1666 (citing, e.g., *Senate Report No. 690*, 86th Cong., 1st Sess., to accompany S. 1898, "New Pre-Grant Procedure" (Aug. 12, 1969) page 2) (emphasis added)).

<sup>50</sup> 47 U.S.C. § 315(e).

any rate, placing this information online would not adversely affect the competitive incentives that already exist in the marketplace. Under existing law, anyone may inspect the records contained in the political file without disclosing their organization or affiliation. Visitors to the public file are also permitted to copy documents contained in the political file.<sup>51</sup>

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

As the Commission properly recognized in the Order, “the public benefits of posting this information online, while difficult to quantify with exactitude, are *unquestionably substantial*.”<sup>52</sup> The Commission observed that “the public file is first and foremost a tool for community members, [but] it is also a tool for the larger media policy community. Public advocacy groups, journalists, and researchers act in part as surrogates for the viewing public in evaluating and reporting on broadcast stations’ performance.”<sup>53</sup> The Commission also observed that easy access to public file information “will assist the Commission, Congress, and researchers as they fashion public policy and recommendations relating to broadcasting and other media issues.”<sup>54</sup>

This Coalition agrees with the Commission that meaningful public access to public file information is essential to promoting a healthy broadcast licensing system. 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

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<sup>51</sup> The New America Foundation, a member of the Coalition, has visited a number of stations to copy portions of their political files for purpose of posting those records online. See Tom Glaisyer, *Bringing Broadcaster Public Files into the 21st Century*, New America Foundation (Feb. 13, 2012), [http://mediapolicy.newamerica.net/blogposts/2012/bringing\\_broadcaster\\_public\\_files\\_into\\_the\\_21st\\_century-63637](http://mediapolicy.newamerica.net/blogposts/2012/bringing_broadcaster_public_files_into_the_21st_century-63637).

<sup>52</sup> *Order* at ¶13 (emphasis added).

<sup>53</sup> *Id.* at ¶18.

<sup>54</sup> *Id.*

interests support the FCC's public file modernization initiative which dovetails with the Obama Administration's broader transparency initiatives. As 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, notes,

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 is time broadcasters joined the 21st century and moved their public files out of the file cabinet and onto the Internet.<sup>55</sup>

The FCC's Order is thus in keeping with the Administration's announced goals of transparency in the workings of government and the political process more generally.

Nearly every other industry has recognized the business imperative of streamlining their recordkeeping and communications through the use of electronic and networked means. 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.”<sup>56</sup> Similarly, FCC proceeding commenter Common Frequency pointed out that “[n]early every other business matter in the modern world has been moved to computer for the

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<sup>55</sup> 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>.

<sup>56</sup> 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](http://www.cjr.org/campaign_desk/local_tv_news_meet_the_internet.php?page=all&print=true).

added efficiency of operation. If a filing cabinet somehow provided greater efficiency, filing cabinets would be ubiquitous over modern electronic data storage.”<sup>57</sup>

Indeed, in its comments to the FCC, the National Association of Broadcasters concedes 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.<sup>58</sup>

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.”<sup>59</sup> 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.”<sup>60</sup>

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<sup>57</sup> Comments of Common Frequency, filed MB Dkt, 00-169 (Dec. 22, 2011) at 1-2, <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021751641>.

<sup>58</sup> 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 ii, <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.”)

<sup>59</sup> NAB Comments at ii.

<sup>60</sup> 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> (internal quotations omitted).



**A. The Commission Has Taken Considerable Steps  
To Forestall Any Burdens Associated With  
Broadcasters' Conversion To And Maintenance  
Of An Online Public File**

In adopting the Order, the Commission has adopted no new records or additional information collection from television broadcasters. It is simply requiring that broadcasters replace their existing paper records with electronic ones.<sup>61</sup>

The Commission has taken considerable steps to minimize the burden on television broadcasters to convert to an online file. By taking on the burden of hosting television broadcaster public files itself, the FCC has eliminated any burdens stations might incur if they were required to maintain an online file via their own websites.<sup>62</sup> Stations will not be required to upload letters and emails from the public to their online public file.<sup>63</sup> Nor will stations be required to upload their existing political files to the online file. Instead, they will be permitted to upload documents to the online political file on a going-forward basis.<sup>64</sup> Additionally, the FCC has given smaller broadcasters and all broadcasters located outside the top 50 media markets more than ample time – over two years – to make the transition to online political record keeping practices.<sup>65</sup>

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<sup>61</sup> “Stations will not be required to include in their online public file any documents not already required to be included in their local file.” *Order* at ¶11.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> “To smooth the transition for both stations and the Commission and to allow smaller broadcasters additional time to begin posting their political files online, we will exempt all stations that are not in the top 50 DMAs and all stations not affiliated with the top four national television broadcast networks, regardless of the size of the market they serve, from having to post new political file materials online until July 1, 2014.” *Id.*

Further, the FCC will not require broadcasters to alter the form of documents already in existence prior to posting them to the online public file at this time.<sup>66</sup> This means that broadcasters will not 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.

Moreover, 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 both submitted to the FCC and maintained in the paper public file. Broadcasters will only need to upload records currently required to be in the public file but not otherwise filed with the Commission or available on the Commission's website.<sup>67</sup> Currently, a number of documents in the public file must also be filed with the FCC through the agency's Consolidated Database System. To minimize duplicate filing by broadcasters, the Commission will itself import and update such information into each broadcaster's online public file.<sup>68</sup> To this end, the online public file will generate substantial filing efficiencies for broadcasters, while creating a centralized information source for the public.

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

As demonstrated above, in adopting its online public file requirements, the FCC has gone to great effort to limit compliance burdens on television stations. In the long run, transitioning to an online file will be more efficient and cost effective for broadcasters. As the Commission notes in the Order,

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<sup>66</sup> *Id.* at ¶¶85-6.

<sup>67</sup> *Id.* at ¶11.

<sup>68</sup> *Id.*

while broadcasters will incur a modest, one-time transitional cost to upload some portions of their existing public file to the Commissions online database, that initial expense will be offset by the public benefits of online disclosure. Over time, moreover, broadcasters will benefit from the lower costs of sending documents electronically to the Commission, as opposed to creating and maintaining a paper file at the station.<sup>69</sup>

In fact, some broadcasters already voluntarily upload their public file documents to their own websites, presumably because it is simple and cost-effective to do so.<sup>70</sup> 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 may now 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 will host broadcasters' public inspection files on its own website, the burden on broadcasters would be diminished even further.

Even so, some 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 paper political file, which these parties are free to review."<sup>71</sup> One broadcaster asserted 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

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<sup>69</sup> *Id.*

<sup>70</sup> 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>.

<sup>71</sup> Joint Broadcasters Comments at 6-7, 15.

additional 37 hours for post-airing reports alone, not including orders and other required political file material.”<sup>72</sup>

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.<sup>73</sup> Stations are not permitted to heap 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. Under the Order, 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, some broadcasters mistakenly assert that these new standards will require them to devote more staff time to public and political 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 information that is already being captured and kept on file at the local

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<sup>72</sup> See NAB Comments at Attachment B, Declaration of Fred Corbus, General Sales Manager of Station WOOD-TV, Grand Rapids, MI.

<sup>73</sup> *Codification of the Commission’s Political Programming Policies*, Order on Reconsideration, 7 FCC Rcd 4611, at ¶90 (1992).

stations.”<sup>74</sup> In fact, this change would not add to broadcasters’ current duty to keep their public and political files 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).

### **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. In fact, in the long run, it is likely that this modernization effort will lower the burden on broadcast licensees.

We urge the Office of Management and Budget to promptly approve the revised information collection so that these rules can be implemented and so that members of the public can enjoy fuller and more meaningful access to the broadcast records they already have a right to view.

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<sup>74</sup> 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>.

Respectfully Submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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*On behalf of the Public Interest, Public  
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