

BACKGROUND

Television broadcast stations are required to maintain a “political file” that provides information about requests by political candidates and other political advertisers to purchase television advertising time, including the station’s disposition of each request and the rate charged for the broadcast time. *See* 47 U.S.C. § 315(e); 47 C.F.R. § 73.1943. For many years, each station’s political file has been publicly available for in-person inspection at the station during regular business hours. In the order under review in this case, the FCC required approximately 200 television stations—those that are affiliated with one of the top four national television broadcast networks (ABC, NBC, CBS, or Fox) and licensed to serve communities in the top 50 Designated Market Areas (“DMAs”)—to immediately post new additions to their political files to an FCC-hosted website.¹ The FCC exempted other television stations within the top 50 DMAs from this requirement until July 1, 2014, and announced that it will seek comments on “the impact of moving online the political files for these 200 stations, to enable us to consider whether any changes should be made before the requirement takes effect for the other stations” by July 1, 2013. Order ¶ 33.

¹ Second Report & Order, *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, etc.*, MM Dkt. Nos. 00-168 & 00-44, FCC No. 12-44 (rel. Apr. 27, 2012), 77 Fed. Reg. 27631 (May 11, 2012) (hereinafter “the Order”).

Multiple television station groups filed a petition for reconsideration with the FCC, urging the agency to modify its Order so that stations are required to post only the total number of dollars spent by each candidate or other political advertiser, rather than current, detailed pricing information.² The parties seeking reconsideration contend that this alternative proposal would achieve the FCC's goal of facilitating greater public disclosure while avoiding the serious competitive harm that is likely to result from posting highly detailed and current information about television advertising rates on the Internet.

NAB sought an emergency stay of the Order from the FCC and this Court, based on its concern that requiring television stations to post the prices for specific advertisements to a public website immediately after the sales occur will cause serious competitive harm and place NAB's members at a significant disadvantage to non-broadcast competitors who are not required to post rate information on the Internet. Both the FCC and this Court denied NAB's motions for a stay.³ Accordingly, the Order took effect on August 2, 2012.⁴

² See Television Station Group Petition for Reconsideration, MM Dkt. Nos. 00-168 & 00-44 (filed June 11, 2012).

³ Order, MM Dkt. Nos. 00-168 & 00-44, DA No. 12-1122 (rel. July 12, 2012); *Order, Nat'l Ass'n of Broadcasters v. FCC*, No. 12-1225 (D.C. Cir. July 27, 2012).

⁴ Effective Date Announced for Online Publication of Broadcast Television Public Inspection Files, MM Dkt. Nos. 00-168 & 00-44 (filed July 3, 2012).

DISCUSSION

The FCC's Order recently went into effect for 200 television stations in the nation's top 50 DMAs. Over the next several months, NAB's members will gain experience concerning the actual effects of posting detailed advertising rate information online during the 2012 election season. Following the election on November 6, 2012, the volume of political advertisements purchased by candidates and other political advertisers will drop dramatically, allowing NAB an opportunity to assess the effects of the Order.

Based on experience gained during the 2012 election cycle, NAB may conclude that it is not necessary to proceed with this case. To the extent that experience with the new online posting requirements supports NAB's concerns that the rules are having an adverse effect on competition, the FCC has at least two procedural avenues available to it to consider possible modifications to the rule. *First*, the FCC could grant the pending petition for reconsideration, which puts forward an alternative proposal intended to advance the FCC's goal of increased disclosure while minimizing harm to competition. This Court often defers the briefing of challenges to FCC action when a petition for reconsideration is pending before the agency.⁵ *Second*, the FCC plans to seek comments on "the impact of

⁵ See *Teledesic LLC v. FCC*, 275 F.3d 75, 83 (D.C. Cir. 2001) ("[W]e often hold a petition for review in abeyance pending the FCC's further proceedings."); see also (continued...)

moving online the political files for these 200 stations, to enable us to consider whether any changes should be made before the requirement takes effect for the other stations.” Order ¶ 33. The FCC has taken no action with respect to the reconsideration petition and has made no commitment, beyond the plan to seek comment noted above, to any course of action. Depending on developments over the next several months, however, NAB may conclude that it is unnecessary to expend additional resources on this appeal.

This case has not been calendared and therefore deferral will not affect the oral argument schedule. *See D.C. Circuit Handbook of Practice and Internal Procedures* 37 (2011). Moreover, neither the FCC nor Intervenors will be prejudiced by a deferral of the briefing schedule because the Order has already taken effect. The Court may wish to direct NAB to file a status report by January 15, 2012, to inform the Court of any relevant developments in this matter.

CONCLUSION

The Court should grant NAB’s motion to defer the due date of NAB’s opening brief from October 4, 2012 to February 15, 2012. The Court may wish to require NAB to file a status report on January 15, 2012.

Northpoint Tech., Ltd. v. FCC, No. 02-1994, 2002 WL 31011256 (D.C. Cir. Aug. 29, 2002) (granting motion to hold case in abeyance pending FCC’s disposition of petition for administrative reconsideration).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2012, I electronically filed the foregoing Unopposed Motion to Defer Briefing Schedule with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. Participants in the case are registered CM/ECF users who will be served by the CM/ECF system.

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