

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Standardized and Enhanced Disclosure)	MM Docket No. 00-168
Requirements for Television Broadcast)	
Licensee Public Interest Obligations)	
)	

**OPPOSITION TO
PETITION FOR RECONSIDERATION**

The National Association of Broadcasters (“NAB”)¹ submits this opposition to a petition requesting reconsideration² of the Commission’s order adopting extensive new disclosure requirements for television licensees.³ NAB urges the Commission to deny the CLC Petition calling for unjustified increases in the burdens associated with the online posting of television stations’ public files, especially with regard to political files. Indeed, other petitions make sensible proposals to reduce the burdens and to address specific problems with the online public file requirement (particularly privacy-related concerns) and with the new enhanced disclosure form. The Commission should consider these

¹ NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the Courts.

² Petition for Reconsideration of Campaign Legal Center, *et al.* (Apr. 14, 2008) (“CLC Petition” or “Petition”).

³ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 23 FCC Rcd 1274 (2008) (“*Report and Order*”). This *Report and Order* (1) requires television stations with websites to place their public files online (with certain exemptions, including the political file and paper letters from the public), and (2) replaces the quarterly issues/programs list with a new Form 355 that requires detailed quarterly reporting about numerous types of programming aired by stations (including local/national news, local civic affairs, local electoral affairs, other local, PSAs, religious, independently produced, closed captioned, video described, *etc.*).

proposals, which would reduce the very significant costs and burdens on stations without adversely affecting the public interest.

I. The Commission Should Decline To Increase The Burdens And Costs Associated With The Online Public File Requirement

The Commission correctly determined to exempt stations' political files from the general requirement to post public files online. As explained in the *Report and Order*, political candidates and campaigns make heaviest use of the political file, and they have sufficient resources to "provide them with greater access" to stations and thus have less need for online access. *Id.* at ¶ 20 (also noting the burden that stations would face in placing their frequently updated political files online). This determination is fully consistent with agency precedent. The Commission previously exempted the political file from the "telephone accommodation" requirement,⁴ similarly noting that candidates and their representatives are the persons most concerned with stations' political files and that these persons have greater resources and are able to access stations' public files more easily than average citizens.⁵

The CLC Petition does not present any grounds for its contention that the Commission should require broadcasters to post their political files online and to retain those online files for eight years, rather than the two years currently required for the paper political file. See Petition at 2-5; 8-9. The petitioners do not dispute that it is political

⁴ This accommodation requires a station that locates its main studio and public file outside the city limits of its community of license to mail public file documents to persons within the station's geographic service area when requested to do so by telephone. 47 C.F.R. § 73.3526(c)(2).

⁵ *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Memorandum Opinion and Order, 14 FCC 11113, 11122 (1999).

candidates and campaigns, rather than members of the public, that most frequently access stations' political files.⁶ However, petitioners' claim that "high-quality political coverage and discourse depend on public access to political files" indicates a fundamental misunderstanding of the purpose of the political file. Petition at 3. The narrow, specialized information about the purchase of time contained in political files is unconnected to the coverage of campaigns and elections by television stations in their news, public affairs and other programming (including the airing of candidate debates and PSAs about voting and voting registration), which provides the political information that interests the viewing audience.⁷ Political files do not address "political issues in a serious way." Petition at 3 (stating that television can promote democracy by dealing seriously with political issues). Generically asserting that "[t]elevision is an important medium for learning about candidates and campaigns," *id.*, is thus simply irrelevant to the information about candidates' purchase of time at specific rates contained in broadcast stations' political files. Moreover, to the limited extent that members of the general public may be interested in the contents of stations' political files, these files are easily accessible as part of stations' public files at their main studios.

⁶ The political file contains a complete record of all requests for airtime by or on behalf of candidates, with a notation showing how each request was handled, including (i) the schedule of time purchased; (ii) the classes of time purchased; (iii) the rates charged; and (iv) when each spot actually aired. 47 C.F.R. § 73.1943(a). Political campaigns and their media advertising buyers are the most interested in this information, with particular interest in availing themselves of the statutorily-required "equal opportunities" for the "use" of the station and the favorable "lowest unit charge of the station" for each class and time period. 47 U.S.C. § 315(a) & (b).

⁷ Members of the public also, of course, rely on other media including radio, daily and weekly newspapers, and, increasingly, the Internet for information about elections, campaigns and candidates.

The Petition's suggestions that broadcasters be required to post their political files online within 30 days after the end of an election, and retain those online records for eight years, should not alter the Commission's decision to exempt the political file. Political candidates and their representatives, especially those buying advertising during an election, have little need for the time/cost information in these files after the end of a campaign.⁸ And information about stations' schedule/classes of and rates for time during elections that have been over for years is not necessarily relevant to other elections that will most likely have different rates. Thus, requiring stations to post their political files online after the end of an election and to retain those online records until their next license renewal (*i.e.*, up to eight years, rather than the current two years for the paper political file) would not serve any campaign purpose. Neither would these additional requirements serve the general public's interest. Information about the details of candidates' advertising buys and of stations' ad rates for different classes of time in past elections does little to inform viewers "about candidates and campaigns" or "political issues," Petition at 3, especially for current elections.⁹ Thus, the CLC Petition offers no persuasive reason for the Commission to alter its appropriate decision to exempt the political file from the general requirement to place public files online.

⁸ Indeed, one of the main reasons for interest in political files – ensuring that candidates can avail themselves of their equal opportunity rights – loses virtually all relevance after the end of an election. That is why FCC rules require stations to include requests for time by candidates, and the associated rate and other information, in their political files "as soon as possible," which means "immediately." *Political Programming Policies*, Report and Order, 7 FCC Rcd 678, 698 (1991); 47 C.F.R. § 73.1943(c).

⁹ To the extent that access to political files can be said to promote stations' compliance with the political programming rules, it is political candidates – not members of the general public – that have the greatest incentive and ability to make sure stations comply with equal opportunity and reasonable access requirements.

II. The Commission Should Consider Petitioners' Sensible Proposals To Address Unnecessary Burdens And Specific Privacy And Other Problems With The Online Public File Requirement

Various petitioners offer sensible suggestions to reduce unnecessary burdens and to address specific problems associated with placing public files online. The Commission should consider these proposals, especially those addressing privacy concerns stemming from posting e-mails online and the technical difficulties in complying with W3C/WAI guidelines for accessibility to persons with disabilities.

Several petitioners point out the serious privacy concerns associated with the online posting of e-mails from members of the public.¹⁰ A person sending an e-mail to a television station may not expect or want the contents of that e-mail to be made available to the entire world by posting it on a website. In fact, requiring stations to post online all e-mails they receive could ultimately chill the dialogue that the Commission wants to promote between broadcasters and members of the community. Even more troubling would be making available the wealth of personal information contained in e-mails, such as the name, e-mail address, and perhaps address and telephone number of members of the public. And for children there are additional privacy concerns, including compliance with the Children's Online Privacy Protection Act. See 15 U.S.C. § 6501 *et seq.*

The *Report and Order* did not address these issues. The Commission should do so on reconsideration, and should consider treating e-mails from the public in the same manner as letters from the public by exempting them from the online posting requirement. Members of the public will still have access to these e-mails in the same way that they

¹⁰ See Block Communications, Inc., *et al.*, Joint Petition for Reconsideration (Apr. 14, 2008) at 7-8 ("Block Communications Petition"); Broadcasting Licenses Limited Partnership, *et al.*, Petition for Reconsideration (Apr. 14, 2008) at 21 ("Broadcasting Licenses Petition").

currently do – by viewing them in stations’ public files at their main studios without the significant privacy and other concerns raised by online posting.

The CLC Petition does not address any concerns about posting e-mails online, but instead calls to retain online all such e-mails until action on stations’ next license renewal applications (*i.e.*, up to eight years). See Petition at 8. The current period for retention of letters and e-mails from the public is three years. See 47 C.F.R. § 73.3526(e)(9)(i). Petitioners have shown no basis for revising this rule, especially given the vast numbers of e-mails that would be retained.¹¹ The Commission should not exacerbate these privacy and burden concerns by granting CLC’s request for reconsideration.

Many petitioners also asked the Commission to consider fully the technical challenges, costs and burdens associated with making online public files compliant with W3C/WAI guidelines for accessibility to persons with disabilities.¹² Petitioners note that scanning existing documents into the commonly used Portable Document Format (“PDF”) does not result in files that comply with W3C/WAI guidelines. And if stations cannot utilize PDF documents, then the *Report and Order’s* conclusions about the cost and related burdens of converting paper public files into electronic format are not valid. See Block Communications Petition at 10. Complying with W3C/WAI guidelines is even more

¹¹ One station in Johnstown, PA, reports routinely receiving about 6,000 e-mails per month and has received over 1,000 per day for extended periods of time in response to station programming or local events. See Block Communications Petition at note 12. Presumably, stations in larger markets receive even greater numbers of e-mails. But even a station that receives only approximately 6,000 e-mails a month would be required to retain online nearly 600,000 e-mails over an eight-year period.

¹² See Broadcasting Licenses Petition at 22; Block Communications Petition at 9-11; Association of Public Television Stations and Public Broadcasting Service, Joint Petition for Partial Reconsideration and Clarification (Apr. 14, 2008) at 21-22 (“APTS/PBS Petition”); Ball State University, *et al.*, Petition for Reconsideration (Apr. 14, 2008) at 16-17 (“Joint Public Television Petition”); Alabama Educational Television Commission, *et al.*, Joint Petition for Reconsideration (Apr. 14, 2008) at 7.

complex for documents that include non-text material, such as maps and graphics, that cannot be uploaded in a format compatible with text-reading software. See APTS/PBS Petition at 22. In addition, licensees need clarification on stations' obligations with regard to documents that reside on the FCC's website (to which stations are permitted to link), given that the FCC's website is apparently not currently compliant with W3C/WAI guidelines. See APTS/PBS Petition at 22. The Commission should address these issues and modify its accessibility requirements as appropriate, perhaps by permitting stations to utilize PDF documents in making their online postings. See Block Communications Petition at 9. The Commission should also clarify that linked materials on its website presumptively meet stations' online public file requirements. *Id.* at 6.

Various petitioners make additional proposals that would reduce unnecessary burdens associated with posting public files online. As one option, various State Broadcasters Associations suggest that, in lieu of every television station posting much of their public files online, stations could file certain additional information electronically with the Commission (*e.g.*, annual EEO reports) that is kept in public inspection files but is not currently available on the FCC's website.¹³ This would provide ease of access for members of the public via a single centralized website, and would be much less burdensome than requiring all stations to convert their paper public files for online posting.

The Commission should also consider limiting the online public file requirement to documents already on the FCC's website or generated after the effective date of this new requirement. See, *e.g.*, Block Communications Petition at 4-6. Requiring every television station in the country to convert large numbers of existing documents that may be several

¹³ See Joint Petition for Reconsideration of the Named State Broadcasters Associations (Apr. 14, 2008) at 7.

years old to electronic format for online posting is unnecessarily burdensome, given that the public may easily access these older (and likely less relevant) documents in their paper form at stations' main studios.

Similarly, the Commission should consider reducing the number of on-air announcements concerning public file availability. See Joint Public Television Petition at 17-18. The *Report and Order* made no showing that 730 announcements per station per year were necessary to inform the public about stations' public files, especially in light of the requirement to post these files online. In fact, the Commission had tentatively concluded in the notice in this proceeding *not* to require on-air announcements, *Report and Order* at ¶ 31, and then reversed course to require hundreds of announcements per year. Given that stations' public files will be online and easily searched for, a requirement to announce their existence, physical location and accessibility appears unwarranted.

Finally, some petitioners assert that stations should be allowed to limit access to their online public files to viewers within each station's service area. Block Communication Petition at 11-13. The Commission should consider this proposal, given the agency's long-standing position that a station's local public file is intended to serve the local viewers of each station, and that persons outside a station's geographic service area have a less compelling interest in access to that station's public file.¹⁴

III. The Proposals Made By Petitioners To Address Serious Problems With The New Standardized Disclosure Form Are Reasonable

¹⁴ See *Memorandum Opinion and Order*, 14 FCC Rcd at 11119 (although stations with main studios located outside their communities of license must generally honor any requests for public file documents made by telephone, the FCC expressly limited this telephone request rule to require the mailing of documents only to individuals within the geographic service area of the station; this limitation was consistent with "ensuring the continued access of local viewers and listeners of each station").

As NAB explained in its comments in this proceeding, replacing the quarterly issues/programs list with a standardized disclosure form with specific programming categories was not justified by the record; represented an unjustifiable return to regulatory policies that were discarded years ago as ineffective and unnecessary; and raised myriad practical, statutory and constitutional issues.¹⁵ Certain petitioners have, on similar grounds, urged the Commission to reconsider its adoption of the new Form 355. See Broadcasting Licenses Petition at 2-15. Many broadcasters have also recently demonstrated the tremendous burden, including very significant time and personnel costs, on stations and the limited public benefit gained from replacing the issues/programs list with the Form 355.¹⁶ NAB agrees with these petitioners and commenters.

Several petitioners have identified sensible proposals to ameliorate the extraordinary burden and other particularly problematic aspects of Form 355. For example, it would reduce the time, cost and personnel burden on local stations to require reporting only for a representative week each quarter. Block Communications Petition at 14-15. This proposal would provide sufficient information to satisfy any public interest in information

¹⁵ See Comments of NAB in MM Docket No. 00-168 (Dec. 18, 2000) at 3-18; Reply Comments of NAB in MM Docket No. 00-168 (Feb. 16, 2001) at 2-14; Comments of NAB in MM Docket Nos. 99-360, 00-167 and 00-168 (Apr. 21, 2003) at 7-10.

¹⁶ See Joint Comments of Television Broadcasters in MM Docket No. 00-168 (May 12, 2008); Joint Comments of Named Stated Broadcasters Associations in MM Docket No. 00-168 (May 12, 2008); Broadcasting Licenses Limited Partnership, *et al.*, Comments on Proposed Information Collection Requirements in MM Docket No. 00-168 (May 12, 2008); Comments of the ABC Television Affiliates Association in MM Docket No. 00-168 (May 12, 2008); Comments of The Walt Disney Company in MM Docket No. 00-168 (May 12, 2008); Comments of the Broadcast Industry Coalition on Proposed Information Collection Requirements in MM Docket No. 00-168 (May 12, 2008); Paperwork Reduction Act Comments of Alabama Broadcasters Association, *et al.* (May 12, 2008); Comments of the National Association of Broadcasters on Proposed Information Collection Requirements in MM Docket No. 00-168 (May 12, 2008).

about licensees' programming service to their communities, while substantially reducing unnecessary burdens on stations. Also, as petitioners point out, other steps should be taken to reduce needless burdens on local stations, including removing redundant questions on the form,¹⁷ clarifying or removing unclear questions,¹⁸ and eliminating questions requiring significant additional due diligence and research by stations.¹⁹

IV. Conclusion

For the reasons described above, the Commission should deny the CLC Petition calling for unjustifiable increases in the burdens associated with the online posting of television stations' public files, especially with regard to political files. The Commission should also consider the sensible proposals to address specific problems and burdens with both the online public file requirement and the new enhanced disclosure form.

Respectfully submitted,

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¹⁷ For example, parts of Section I. of the form include ownership questions that are duplicative of information already provided by licensees in their ownership reports. Block Communications Petition at 16.

¹⁸ For instance, petitioners have noted a lack of clarity and explanation in the questions pertaining to "underserved communities." *Id.* at 22-23.

¹⁹ For example, to determine whether a given program is independently produced, which it is required to do for every program run in prime time, a station will be forced to investigate the financial arrangements underlying the programming and the property rights associated with that programming. See *id.* at 18-22.

CERTIFICATE OF SERVICE

I, Jerianne Timmerman, Deputy General Counsel for the National Association of Broadcasters, hereby certify that a true and correct copy of the foregoing Opposition to Petition for Reconsideration was sent this 30th day of May, 2008, by first class mail, postage prepaid, to the following:

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