

**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)	

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters (“NAB”)¹ files these comments in response to the *Public Notice* seeking comment on the impact of the Commission’s rules requiring television broadcast stations to post their political files online, as well as on the Television Station Group’s Petition for Reconsideration of those rules.² In its *Order* requiring television broadcast stations to place their public files online,³ the Commission committed to requesting further comment on the political file requirement specifically, before smaller market stations and stations not affiliated with major networks must comply next year.

As an initial matter, NAB notes that, given our members’ concerns about the *Order*, we filed a Petition for Review in the U.S. Court of Appeals for the District of

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the FCC and other federal agencies, and the courts.

² *Media Bureau Seeks Comment on Online Political File and Petition For Reconsideration Filed by the Television Station Group*, MM Docket No. 00-168, Public Notice, DA 13-1440 (MB June 25, 2013) (“*Public Notice*”).

³ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket No. 00-168, Second Report and Order, 27 FCC Rcd 4535 (2012) (“*Order*”).

Columbia Circuit.⁴ That litigation remains in abeyance pending completion of this comment cycle and the Commission's decision regarding the Television Station Group's reconsideration petition.⁵ NAB's comments herein are without prejudice to this appeal. Nothing in these comments affects NAB's arguments before the D.C. Circuit that the FCC lacks statutory authority to require online political files and that the *Order's* asymmetric, broadcast-only public and political file requirements are arbitrary and capricious.

Setting those arguments aside, NAB acknowledges that the limited experience of the 2012 election season has produced some insights on the effect of the online political file. It is important to recognize, however, that only the largest stations in the largest markets were required to post the political file online. The impact of this requirement is likely to be different and the experience more difficult for stations in smaller markets and those with fewer resources. For this reason, NAB believes more information about the real-world effects of placing political files online is required before the Commission can reach a final decision on the merits of the changes proposed in the pending reconsideration petition. The Commission should keep the reconsideration petition on hold until stations of all sizes and types in all markets have experienced at least one election cycle under the online political file requirement.

NAB also continues to believe that requiring television broadcast stations, including the smallest, to place their public and political files online, while exempting even the largest cable and satellite operators from those requirements, is wrong. The *Order* requires local television stations to post online their public files, including competitively

⁴ *Nat'l Assoc. of Broadcasters v. FCC*, No. 12-1225 (D.C. Cir. May 21, 2012).

⁵ *Order, Nat'l Assoc. of Broadcasters v. FCC*, No. 12-1225 (D.C. Cir. February 12, 2013).

sensitive information about political advertising rates. And, this requirement will extend to all commercial and non-commercial television broadcasters starting July 1, 2014. In contrast, cable and satellite television operators, as well as other media that compete for local advertising, are not now — and are not scheduled to be — subject to any such immediate Internet disclosure requirement.⁶ This regulatory and competitive disparity is only becoming more indefensible, as political advertising on other outlets increases.

I. Some Lessons Can Be Drawn from Broadcasters' Initial Experiences with Online Political Files

NAB takes this opportunity to update the record on developments since the adoption of the *Order*. Stations affiliated with ABC, NBC, CBS, and/or FOX and licensed to communities in a top-50 Designated Market Area — about 240 stations in total⁷ — were required to begin posting political file information online on August 2, 2012. Overall, the posting of political files for these stations can be characterized as uneventful. Posting glitches occurred that were worked out with FCC staff, including a number of instances where uploaded PDF political files would not appear or open⁸ and at least one brief

⁶ Cable and satellite operators must keep public files and disclose their political rates, but these materials are not placed online. See 47 C.F.R. §§ 76.1701 and 25.701(d).

⁷ *Public Notice* ¶ 6.

⁸ Rebecca Shabad, "FCC Database Creates Headaches for TV Stations in Battlegrounds," Roll Call, *available at* http://www.rollcall.com/news/fcc_database_creates_headaches_for_tv_stations_in_battle_grounds-216800-1.html (Aug. 10, 2012). According to our members, a station would upload files for candidates or issue advertisers, and those documents would be accessible in the "station view" but not from the public view. In many instances, stations would have to upload the relevant information again.

outage of the online public file system.⁹ Broadcasters appreciate the efforts of FCC staff to address these and other technical difficulties.

More significantly, there were misunderstandings by some seeking to use the information in the political file. The Sunlight Foundation, for instance, ran an article on its website criticizing stations using the online political file for “constantly deleting old agreements and replacing them with newer versions,” as well as for removing erroneously uploaded correspondence between the station, an issue advertiser, and a group challenging the issue ad.¹⁰ In fact, the stations in question were correct that none of these materials are required to be maintained in a station’s political file. The *Order* expressly states that if a final order for a political advertisement “is later amended after being included in the on-line political file, a station can replace the previously final order with the amended final order, or may simply upload the amended final order.”¹¹ Such amendments improve the accuracy of the political file. The *Order* also is clear that the political file need not include back-and-forth correspondence between stations and advertisers, much less between stations and third parties challenging an ad.¹² Broadcasters’ political files are not intended to be the equivalent of Federal Election Commission disclosure documents, and NAB is concerned that some parties may have formed mistaken impressions on this point.

⁹ “Broadcast,” *Communications Daily* (Aug. 22, 2012). NAB members reported a number of other technical difficulties with the online public file system, particularly with the importing of information and FCC forms into the public file database.

¹⁰ Jake Harper, “Censored? Information goes missing from political ad files,” Sunlight Foundation Reporting Group, *available at* <http://reporting.sunlightfoundation.com/2012/fcc/> (Oct. 25, 2012).

¹¹ *Order*, 27 FCC Rcd at 4556 n. 131.

¹² *See Order*, 27 FCC Rcd at 4557.

For its part, NAB found that its political broadcast agreement form could be updated to clarify some statutory requirements and make it easier for parties that utilize the form to comply. The recently revised version of the political broadcasting agreement, PB-18, provides illustrative examples of what constitutes a message that “communicates a political matter of national importance” to assist advertisers in correctly certifying as to whether or not the ad contains such message(s). The revised form also provides additional space for issue advertisement disclosure of the list of the advertisers’ chief executive officers or members of the executive committee or the board of directors. Finally, the PB-18 Form suggests that, because the FCC’s online political files include a folder for “Terms and Disclosures,” stations subject to the online political rule list their contact person(s) in that folder. This final suggestion may help facilitate more uniformity of contact information in online public files.

The 2012 election cycle also showed that even small mistakes can have big consequences. For example, some media buyers had large sums of money stolen from their bank accounts after some stations, in accordance with their long-standing political file practices, uploaded images of payment checks to their online political files.¹³ As one report observed, “[w]hen the FCC set up the online database, nobody – not the ad buyers, the stations or the FCC itself – realized” that long-term practices needed to

¹³ Peter Overby, “Thieves Target Political Ad Consultants On New FCC Site,” NPR, *available at* <http://www.npr.org/blogs/itsallpolitics/2013/03/28/175570650/political-ad-consultants-targeted-by-criminals-on-new-fcc-site> (March 28, 2013). Tens of thousands of dollars were diverted to accounts across the country and the world. Womble Carlyle, Client Alert, “Pilfered Funds & The FCC’s Online Political Public File Rule: The Law of Unintended Consequences” (March 14, 2013).

change.¹⁴ Similar or other unintended consequences may become more common as the number of stations posting their political files increases dramatically.

NAB is concerned that the experiences of the large stations that have been using the online political file may not accurately predict the effects of expanding the online file requirement to all broadcast television stations. Small market stations have much more limited personnel and financial resources, and yet they may experience intensive demand to air political ads during a busy election. One NAB member, for instance, reported that several of its stations in DMAs below the top 50 — and some even below the top 100 — received more than 100 political orders (and in some cases, substantially more) in 2012, with each station placing thousands of individual political spots. Station personnel with limited resources to devote to maintaining the political file during these concentrated bursts of activity may, for instance, err on the side of including more information in the file than is necessary, which can have serious consequences when the information is posted immediately online. The example noted earlier of money stolen from media buyers is but one possibility.

Under these circumstances, NAB believes it is not yet time for the Commission to decide whether the Television Station Group's reconsideration petition should be granted. Given the novelty of the online political file and the uncertainties involved in expanding that file to many more stations with fewer resources, the Commission should not resolve the petition until experience shows how small market stations and smaller stations in large markets will be affected by the new requirement, especially during election seasons. The Commission should keep the petition under consideration until stations of

¹⁴ Overby, "Thieves Target Political Ad Consultants On New FCC Site."

all sizes and types in all markets have experienced at least one election cycle with the online political file requirement. After expansion of the online requirement to many hundreds more stations, all interested parties will have more information about possible harms that can arise from this requirement or further improvements that can be made to the online system.

II. Asymmetric Regulation of Television Broadcast Stations and Their Competitors Is Increasingly Indefensible

Expansion of the online political file requirement to smaller stations and small markets also puts the regulatory and competitive disparity between the Commission's treatment of broadcast stations and their cable, satellite and online competitors in sharp relief. The *Order* gives non-broadcast media asymmetrical, constantly available, and costless access to up-to-the-minute information about local broadcasters' advertising rates. During pre-election windows, when lowest-unit-charge requirements apply, this includes detailed information about each station's best-available commercial advertising rates – information that competing media outlets can use in the advertising marketplace to television stations' material disadvantage. At the same time, cable and satellite operators are permitted to maintain paper-based political files, and other video competitors are not required to disclose their political advertising rates at all.

The real-world consequences of this disparity cannot accurately be gleaned from a single election cycle. But, it is certain that the disparities will only become more pronounced as the online political file requirement expands to hundreds more stations across the country. We note the particular disparity of requiring even the smallest television stations to disclose their most sensitive pricing data via the Internet, while pay-

TV operators with millions of subscribers and the largest online entities are not so required.

The asymmetry created by the *Order* is increasingly indefensible in light of the changing landscape of political advertising. While broadcast television receives the largest share of political ads, political advertising on other platforms has grown significantly. The two major presidential campaigns spent a combined \$78 million on online advertising,¹⁵ and more than half of respondents in a September 2012 survey of potential voters said they had seen online political ads that year, “second only to TV as a source for such ads.”¹⁶ Political advertising on cable also has ballooned, from \$136 million in 2006 to \$650 million in 2012,¹⁷ and analysts believe that this trend will continue.¹⁸ In just the first three Republican nominating contests in 2012 (for Iowa, New Hampshire and South Carolina), “the candidates... spent more than \$2.25 million to run more than 68,000 individual ads on cable television,¹⁹ and in October 2012, President Obama’s campaign was airing 25,000 or more spots per week on cable systems.²⁰

¹⁵ John Hudson, “The Most Expensive Election in History by the Numbers,” *The Atlantic*, available at <http://www.theatlanticwire.com/politics/2012/11/most-expensive-election-history-numbers/58745/> (Nov. 6, 2012).

¹⁶ Adam Lehman, “Guess What? Online Political Ads Don't Turn Voters Off. They Work,” *Advertising Age*, available at <http://adage.com/article/digitalnext/online-political-ads-turn-voters-expect/237570/> (Oct. 4, 2012).

¹⁷ Marcus Stern and Tim McLaughlin, “Analysis: Obama's Ad Team Used Cable TV to Outplay Romney,” *Reuters*, available at <http://www.reuters.com/article/2013/01/05/us-usa-politics-cabletv-idUSBRE90406820130105> (Jan. 5, 2013).

¹⁸ See, e.g., Elizabeth Wilner, “Cable’s Prime,” *Cook Political Report*, available at <http://cookpolitical.com/story/5681> (May 7, 2013).

¹⁹ Reid Wilson, “Cable’s Rise in 2012,” *Campaigns & Elections*, available at <http://www.campaignsandelections.com/magazine/us-edition/315837/cableand39s-rise-in-2012.shtml> (March 30, 2012).

²⁰ Wilner, “Cable’s Prime.”

Assuming the Commission continues to believe that it serves the public interest for broadcasters' political files to be available online,²¹ there is no reason for declining to require at least cable and satellite operators' political files to be online, as well. The Commission previously concluded that traditional public files are burdensome to access and that "24-hour Internet access would greatly improve the accessibility of these files" for members of the public.²² The Commission additionally found that placing political files online would benefit campaigns and candidates.²³ Particularly in light of the growth of political advertising on non-broadcast platforms, these rationales for requiring local television stations to post their political files online apply with equal force to at least pay-TV providers.

III. Conclusion

For the reasons set forth in detail above, the Commission should (1) refrain from resolving the Television Station Group's petition for reconsideration until all sized stations in all markets gain significant experience with the online political file during at least one

²¹ *Order*, 27 FCC Rcd at 4542 (finding the public benefits to be "unquestionably substantial").

²² *Id.*

²³ *Id.* at 4543-44.

election season, and (2) expeditiously address the regulatory and competitive disparity in its public and political file rules.

Respectfully submitted,

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A handwritten signature in black ink that reads "Jerianne Timmerman". The signature is written in a cursive style and is positioned above a horizontal line.

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Jerianne Timmerman

August 26, 2013