

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Standardized and Enhanced Disclosure)	
Requirements for Television Broadcast)	MM Docket No. 00-168
Licensee Public Interest Obligations)	
)	
Extension of the Filing Requirement for)	
Children's Television Programming Report)	MM Docket No. 00-44
(FCC Form 398))	
)	

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

**NATIONAL ASSOCIATION OF
BROADCASTERS**
1771 N Street, NW
Washington, DC 20036
(202) 429-5430

Jane E. Mago
Jerianne Timmerman
Erin Dozier
Scott Goodwin

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Executive Summary

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. There is support in the record for proposals to move at least portions of television broadcasters' existing locally-maintained public inspection files into an online database hosted by the Commission. There is also considerable concern about some of the proposals. Several commenters agreed with NAB that the Commission should consider some type of working group, trial period or pilot program before determining whether and how to proceed in implementing these proposals – and certainly before imposing new online requirements on all TV stations in the country.

The proposal to place the entire political file online drew particularly strong responses from many commenters. Reflecting their long experience in working with political candidates and campaigns and in maintaining political files, broadcast commenters in particular expressed serious concerns that the proposal is impracticable, technically challenging, and would entail very significant burdens on broadcasters without commensurate benefits for the public or candidates. As we explained initially and below, proponents of placing political files online appear to greatly underestimate the burdens associated with uploading thousands upon thousands of pages of political file material in an organized and timely manner. No proponent of an online political file requirement has even attempted to justify requiring only broadcasters (and not competing cable and satellite operators, which also have political file requirements) to place sensitive commercial information, including rates, in a central database.

A number of commenters also opposed proposals to expand the public inspection file by including sponsorship identification information and shared service agreements (“SSAs”). Broadcast commenters joined NAB in opposing a new, and potentially costly, mandate that stations maintain online sponsorship lists for all programming, whether local, network or syndicated. Proponents of a new sponsorship identification requirement provide no evidentiary or other basis to support the proposal. Several commenters further agree with NAB that any decision to include SSAs in online public files is premature, as the Commission has yet to determine whether or how the public interest would be served by the disclosure of any of the various types of SSAs. This proceeding, which focuses on the feasibility, benefits and burdens of converting stations’ paper public files to online ones, is not the appropriate proceeding for making these substantive determinations.

Overall, the comments in this proceeding further demonstrate the complexity of the Commission’s proposals. NAB therefore continues to support strongly the formation of a joint FCC/broadcaster working group or similar program to consider the myriad technical, practical and policy questions raised by the *Notice*.

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I. Introduction

The National Association of Broadcasters (“NAB”)¹ submits these reply comments concerning the Commission’s proposal to require television broadcasters to replace their existing locally-maintained public inspection files with digital public inspection files to be hosted on the Commission’s website.² NAB notes that, in addition to our own comments, initial comments were filed on behalf of more than 45 other broadcaster associations³ and approximately 29 television broadcast licensees.⁴ These

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

² *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement For Children’s Television Programming Report (FCC Form 398)*, Order on Reconsideration and Further Notice of Proposed Rulemaking in MM Docket Nos. 00-168 and 00-44 (rel. October 27, 2011) (“*Notice*”).

³ See Joint Comments of the North Carolina Association of Broadcasters, the Ohio Association of Broadcasters, and the Virginia Association of Broadcasters (the

television broadcast commenters are in a unique position to address the issues raised in the *Notice* because they currently maintain the paper public files and manage the data that goes into these files. Like NAB, most television broadcast commenters agree with the Commission that a transition to online access to some portions of the public file has merit. As NAB previously stated, such access to materials intended to encourage viewers' interaction with stations can be useful.

Broadcast commenters caution, however, that implementation of an online public file should: (i) focus on facilitating meaningful interaction between viewers and stations, consistent with the file's longstanding purpose; (ii) identify a clear public interest benefit connected to each element of any new requirement; and (iii) carefully balance the potential benefits against the costs and burdens to broadcasters and their viewers, and minimize such burdens wherever possible. To this end, broadcast commenters have advanced several practical suggestions related to the implementation of the Commission's proposal. Among other points, several television broadcast commenters agree that some form of further study, trial period, or working group is appropriate for all

"NC/OH/VA Broadcasters Associations") in MM Docket No. 00-168 (Dec. 22, 2011) ("NC/OH/VA Broadcasters Associations Comments"); Joint Comments of the Named State Broadcasters Associations in MM Docket No. 00-168 (Dec. 22, 2011) ("Named State Broadcasters Associations Comments"); Comments of the Association of Public Television Stations ("APTS") in MM Docket No. 00-168 (Dec. 22, 2011) ("APTS Comments"); Comments of the National Religious Broadcasters ("NRB") in MM Docket No. 00-168 (Dec. 22, 2011) ("NRB Comments").

⁴ Comments of the Joint Broadcasters in MM Docket No. 00-168 (Dec. 22, 2011) ("Joint Broadcasters Comments"); Comments of the Joint TV Broadcasters in MM Docket No. 00-168 (Dec. 22, 2011) ("Joint TV Broadcasters Comments"); Comments of Hubbard Broadcasting, Inc. ("Hubbard") in MM Docket No. 00-168 (Dec. 22, 2011) ("Hubbard Comments"); Comments of Four Commercial and NCE Television Licensees (the "Four Licensees") in MM Docket No. 00-168 (Dec. 22, 2011) ("Four Licensees Comments").

or some aspects of the transition to an online public file.⁵ NAB believes this step is key to fully evaluating the true costs, burdens and benefits of all aspects of the online public file proposal, and will yield information needed by the Commission to determine how best to move forward.

To date, the record confirms NAB's initial observations that stations uploading some parts of broadcasters' current public files could be accomplished with relatively few difficulties, but that other portions – especially the political file – raise very complex implementation problems. To reverse its previous (and, in NAB's view, correct) decision to exempt the political file from online requirements, the Commission must address these significant technical and implementation concerns. It must also carefully assess all the potential benefits and costs (including the unintended costs of disparate regulation and distorted competition in the video marketplace) arising from a change in course. A joint FCC/broadcaster working group or similar program is critical for addressing these complex questions. Television broadcasters can bring decades of practical experience in dealing with the political file to any such program.

NAB and other broadcast commenters oppose using this proceeding to expand the public file into new areas, specifically the inclusion of new (and unnecessary) sponsorship identification information and shared services agreements (“SSAs”). On balance, the record does not support expansion of the file into these areas. Although certain commenters support such expansion of the public file, as we discuss further

⁵ See, e.g., Named State Broadcasters Associations Comments at 12-15 (proposing a pilot program); Hubbard Comments at 3 (proposing the exclusion of the political file from an online system, or, alternatively, that the FCC “study an online system for at least a year or two and seek additional comments before requiring the online posting of political materials”).

below, these commenters fail to connect their proposals to identifiable public interest benefits (or even a relevant Commission law or policy) and fail to provide evidence or data to support their views that the compliance costs and burdens will not be significant. Still others seek rule modifications that are beyond the scope of this proceeding.

II. The Record Supports NAB's Proposal for a Working Group or Other Fact-Gathering Process

In its initial comments, NAB proposed that the Commission employ a working group involving a wide range of television broadcaster volunteers in a consultative process to identify and analyze potential problems and their solutions before requirements are placed on all broadcasters.⁶ We observed that the Commission has frequently – and successfully – engaged in consultations, trials, and/or phase-ins to gather practical data and feedback about potential new policies, rules or processes.⁷ A working group could facilitate the Commission's analysis of various issues that must be considered from a practical, detail-oriented standpoint.⁸ Several commenters agree. The Named State Broadcaster Associations state that a pilot program could help the

⁶ NAB Comments at iii, 29-37.

⁷ *Id.* at 31-35.

⁸ NAB identified a number of issues that could be addressed by the working group, including: (i) ways to effectively design the system from the standpoint of a "filer," such as what "drop-down" menus are appropriate, what options should be contained in the menus, and whether the system can otherwise be tailored to reduce burdens; (ii) the nature and extent of burdens imposed on filers who are organizing, scanning (or otherwise converting to an electronic format), and uploading public file material (including what format should be used for uploading data and how metadata should be treated); (iii) the relative burdens of the online public file versus a paper file (particularly as it pertains to the political file); (iv) ways to effectively design the system from the standpoint of a public file "reviewer;" (v) the nature and extent of use of an online public file database by reviewers; (vi) how well the FCC's servers will perform under the burden of a processing and maintaining the online public files of significant numbers of stations. See NAB Comments at 30-31.

Commission to address a number of practical implementation issues,⁹ measure the impact of its proposal on small businesses,¹⁰ and carry out its obligations under the Paperwork Reduction Act of 1995 (“PRA”).¹¹ Hubbard argues that testing any new system through public participation will help avoid unintended problems.¹² Some commenters cite issues faced in using existing FCC electronic filing systems to further support a view that testing, trials, and/or exclusion of certain elements from the online file would be appropriate.¹³

As discussed further below in connection with specific elements of the file, expectations and estimates of the burden of complying with specific aspects of the online public file requirement vary significantly. For example, while the Public Interest Public Airwaves Coalition (“PIPAC”) asserts that an online public file will promote efficiencies for stations, broadcasters have submitted data and sworn declarations concerning the volume of material that would need to be scanned or otherwise processed and uploaded to comply with certain online public file requirements. Their

⁹ Named State Broadcasters Associations Comments at 12-13.

¹⁰ Named State Broadcasters Associations Comments at 13. See *also* NC/OH/VA Broadcasters Associations Comments at 20-21 (additional data and analysis is needed for the Commission to comply with the Regulatory Flexibility Act of 1980 (“RFA”), 5 U.S.C. § 603)).

¹¹ Named State Broadcasters Associations Comments at 14.

¹² Hubbard Comments at 3.

¹³ See, NC/OH/VA Broadcasters Associations Comments at 11-12 and Declaration of Kim Eshelman; Hubbard Comments at 2 (at one point during the recent ownership report filing window, FCC staff advised filers that it would “require more than 24 hours to complete the upload of single required ownership spreadsheet into CDBS.”); Joint Broadcasters Comments at Appendix D, Declaration of Susan Anderson, Communications Coordinator, Dow Lohnes, PLLC (“it took between eighteen and twenty-four hours for the FCC’s servers to process and validate a single spreadsheet that formed part of a station’s filing” during the recent FCC Form 323 filing window).

analyses have documented significant burdens—not savings—in terms of costs and time. A working group would allow the Commission to better understand all that stations must do to comply with the proposed online public file rules and to document and weigh the attendant costs and burdens.¹⁴

A working group also could meaningfully address various other questions and proposals in the record, such as whether it would be appropriate to apply an online filing requirement only prospectively (i.e., only items required to be filed after the effective date of new public file rules would be placed online, rather than requiring the upload of all documents currently in the existing paper file);¹⁵ issues regarding the searchability and format of files;¹⁶ how much time broadcasters should be afforded to upload materials to the online public file;¹⁷ and how the file should be monitored for accuracy.¹⁸ NAB also believes that the Named State Broadcasters' proposal that licensees be permitted to comply with an online public file requirement by either uploading materials

¹⁴ As NAB noted in its initial comments, the Commission has properly weighed the costs and benefits of placing stations' correspondence from the public online by proposing not to impose such a requirement. See *Notice* at ¶ 26. Clearly, making viewers' correspondence part of an online public file would raise privacy concerns and would also impose new burdens on stations. The record reflects virtual consensus on this point.

¹⁵ Joint Broadcasters Comments at 21; Joint TV Broadcasters Comments at 14-18.

¹⁶ See, e.g., Comments of the Public Interest Public Airwaves Coalition ("PIPAC") in MM Docket No. 00-168 (Dec. 22, 2011) ("PIPAC Comments") at 29-31 (proposing that the Commission convert existing public file documents to a searchable format using optical character recognition software and mandate use of searchable formats for documents filed after the effective date of new online file rules).

¹⁷ See Hubbard Comments at 3 (broadcasters should have ten days to upload material to the public file).

¹⁸ See APTS Comments at 4-5 (stations should not be required to remove materials that are no longer required from the online file); Four Licensees Comments at 4 (broadcasters should not be required to ensure the accuracy of applications/reports that the Commission imports into a station's online public file).

to their own websites *or* the FCC's site has merit, and should be examined in connection with the proposed working group.¹⁹

III. Many Commenters are Concerned that Placing the Entire Public File Online, Especially the Political File, Will Present Formidable Implementation Challenges

Broadcast commenters uniformly expressed concern about the Commission's reversal of course in proposing to include the political file. The concerns raised in the record are rooted in the practical steps involved in processing political advertising requests and complying with the current political broadcasting requirements, and the challenges of transitioning to an online political file system. Based on the evidence presented in the record, including the political file in a central online public file will jeopardize stations' ability to comply with their statutory obligations under Section 315, impede—not improve—the ability of campaigns and the public to get requisite information in a timely and organized manner, and require an expenditure of money, time, and human resources that will detract from stations' ability to serve local communities. Moreover, NAB's concerns about disparate regulation leading to distortions in the video marketplace are uncontroverted. The record thus clearly demonstrates that the Commission should not proceed with its political file proposal until a working group or pilot program has thoroughly examined these myriad concerns and the Commission can determine whether and how to proceed.

A. Supporters of an Online Political File Requirement Severely Underestimate the Burden of Compliance

Broadcast commenters provided detailed descriptions of the ways in which they currently manage requests for political time and comply with the political broadcasting

¹⁹ See Named State Broadcasters Associations Comments at 2-3.

requirements, and have developed estimates of what steps, time, and expense would likely be involved in complying with an online political file requirement. Several commenters note that the Commission correctly determined in 2007 that it would be unduly burdensome for stations to upload political file documents into an online public file, and that such burdens outweighed the potential public interest benefits.²⁰ Commenters note that the “good and valid reasoning” that underpinned the Commission’s previous decision to exempt the political file remains accurate today,²¹ and no new evidence in the record controverts this prior determination.

Specifically, the Four Licensees oppose placing the political file online on grounds that “[u]ploading relevant documents ‘immediately absent unusual circumstances’ would be extremely burdensome to stations.” They state that the “unsuitability” of an online political file is illustrated by the series of questions in the *Notice* about how this online file can be maintained in an organized manner.²²

Commenters explain that, contrary to the assumptions of the *Notice*, political time continues to be sold using a variety of non-automated processes, including telephone

²⁰ See *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 23 FCC Rcd 1274 ¶¶ 19-20 (2007). The Commission recognized that 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. The FCC also noted the burden that stations would face in placing their frequently updated political files online, as well as the problems raised for candidates and campaigns if online files cannot be updated quickly. *Id.* On balance, the Commission concluded that “that the burden of placing this material on the Internet outweighs the benefits.” *Id.*

²¹ Named State Broadcasters Associations Comments at 5-6. See also NC/OH/VA Broadcasters Associations Comments at 8 (“Now, without citing any empirical data, the Commission has reversed its position and concluded that the requirement would ‘impose far less of a burden than previously thought.’”).

²² Four Licensees Comments at 4.

conversations, handwritten forms, emails, and faxes. The NC/OH/VA Broadcasters Associations reported the results of a member survey which found that 85% of respondents had made *no changes* to their political advertising methodology or practices since 2007.²³ One station surveyed by the NC/OH/VA Broadcasters Associations reported using handwritten documents for approximately 90% of its political file.²⁴

While some stations surveyed reported an increase in the use of computer-generated sales information since 2007, the stations reported use of a variety of electronic methods, resulting in “varied and incompatible electronic formats.”²⁵ To wit, commenters in this proceeding have identified “at least fourteen” television trafficking software providers.²⁶ The record further shows that the electronic transactions that do take place are rarely, if ever, in a form that facilitates uploading to an online public file hosted by the FCC.²⁷ One broadcast traffic manager provided a detailed description of how “[e]ach traffic management system is unique” and how even identical systems are

²³ NC/OH/VA Broadcasters Associations Comments at 9.

²⁴ NC/OH/VA Broadcasters Associations Comments at 9. Notably, this station is described as “successful and profitable” with “significant local news, public affairs, and program production.” *Id.*

²⁵ *Id.*

²⁶ Named State Broadcasters Associations Comments at 8 (these include BroadView Software, Broadway Systems, Counterpoint Traffic Software-Networks, Gabriel, Myers Pro-Track, OSI - Optimal Solutions, Inc., Paradigm®, Pilat, SintecMedia, Summit Software Systems, VCI-Video Communications, VT-Visual Traffic Software, and WideOrbit). *See also* Joint Broadcasters Comments at 8.

²⁷ *See, e.g.*, NC/OH/VA Broadcasters Associations Comments at 9-10; NAB Comments at 14,18-19 and Attachments A-C.

used differently by different stations.²⁸ The manager estimated that it would take up to eight months for even one trafficking software developer to “re-engineer their database structure” to create an electronic means of importing trafficking data into an FCC database.²⁹ Because of the importance of advertising to broadcast stations’ economic viability, traffic software is the “lifeblood” of stations’ operations, and as such, any modifications or upgrades to software must be repeatedly tested and verified to ensure that “all bugs have been eliminated and that enhancements actually work.”³⁰ Even if this could be done successfully, as commenters point out, this approach still would not capture myriad elements of the file that are not part of automated traffic systems, including but not limited to officer/director information from groups purchasing time for issue ads.³¹

Commenters offer other examples of the “vast variation” among stations’ selling practices, and state that such variation, which reflects the competition among stations,

²⁸ Joint Broadcasters Comments at Appendix B, Declaration of Stephanie Helsley at ¶¶ 2-5 and Exhibit 1 (a printout of the user interface for the Harris OSi trafficking software); See *also* Joint Broadcasters Comments at 8-11.

²⁹ Joint Broadcasters Comments at Appendix B, Declaration of Stephanie Helsley at ¶¶ 5-7.

³⁰ Joint Broadcasters Comments at Appendix B, Declaration of Stephanie Helsley at ¶ 7.

³¹ See Joint Broadcasters Comments at 11; Joint TV Broadcasters Comments at 4-5 (noting that not all candidates purchase time online and that the information in political files includes significantly more information than an electronically transmitted order, such as: (i) the NAB PB-17 form; (ii) an order form; (iii) one or more related invoices; (iv) additional information for issue advertisements). Other broadcasters informed NAB that political files additionally include emails and internal forms when orders are changed or when “makegoods” are required.

has only increased over time.³² For example, they explain that levels of preemptability, program rotators, time blocks, and packages are unique to each station. These factors combine to create a grid of classes of time used to establish a station's lowest unit charge – and the classes of time are coded differently in each station's traffic system.³³ Accordingly, “[f]or the Commission to design a system that recognizes and incorporates all the multiple variables and codes from different stations would be prohibitively expensive and ultimately ineffectual.”³⁴

Given that some stations use non-electronic means of selling and compiling political broadcasting data, that many stations use a hybrid of electronic and non-electronic methods, the variety of types and uses of trafficking software across stations, and the challenge of creating compatibility between trafficking software and an FCC online political system, the use of electronic systems by broadcasters is *not* a mitigating factor that would reduce the burdens of an online political file requirement. Rather, the Commission must analyze the costs and burdens of developing an online political file based on an assumption that every existing and future political file document must be printed and scanned, saved electronically, and uploaded into the FCC's system. Various examples in the record demonstrate that this will be extremely burdensome, given the sheer size of stations' online political files:

- The NC/OH/VA Broadcaster Associations' survey reported an average of 2,900 pages in each station's political files.³⁵

³² See Joint Broadcasters Comments at 7-8, citing *Codification of the Commission's Political Programming Policies*, Order on Reconsideration, 7 FCC Rcd 4611, 4621 (1992) (“*Political Rules Reconsideration*”).

³³ See Joint Broadcasters Comments at 8. See *also* NAB Comments at 8-13.

³⁴ Joint Broadcasters Comments at 8.

³⁵ NC/OH/VA Broadcasters Associations Comments at 10.

- A Wichita, Kansas station’s political file for one campaign cycle generated approximately 8,100 pages of material.³⁶
- Other stations estimated the following page counts in their political files: 3,150 pages (an Anchorage, AK station) 4,388 pages (a Burlington, VT station); 4,725 pages (a Roanoke, VA station); 5,400 pages (a South Bend, IN station), and 6,750 (a Springfield, MO station).
- A station in a mid-sized market reviewed its files from recent campaigns and found that: (i) a House race generated approximately 1,000 pages of political file material; (ii) a Senate or gubernatorial race generated over 2,000 pages in its public file (these totals do not include the separate files for issue advertisements relating to those campaigns).³⁷
- One station group tallied the number of pages associated with political advertising sales orders in its traffic system for the 2010 election cycle. Although this page count did not include all of the documents that are in the stations’ paper files (such as invoices or forms with officer/director information), the orders alone totaled 28,000 pages across the group’s 18 stations.³⁸

The record also shows that the costs to stations in terms of the equipment, time, and human resources needed to upload the existing and future data into an online political file are significant:

- Two stations in North and South Carolina estimate that the time and workload involved in a typical political ad buy would “essentially double” in an online environment, resulting in the need to hire *eight additional temporary sales personnel* during election season at an estimated cost of nearly \$80,000.³⁹

³⁶ See NAB Comments at Attachment A, Declaration of Jack N. Goodman, Esq. at ¶¶ 3-4 (identifying the sizes of stations’ political files in six different small and mid-sized markets).

³⁷ See NAB Comments at 14.

³⁸ See Comments of Joint Broadcasters in MM Docket Nos. 00-168 and 00-44 (filed Dec. 22, 2011) at Appendix C, Declaration of Elizabeth Hicks, General Manager of Central Traffic Operations, Media General Broadcast Group at ¶ 3. Since 2010 was not a presidential election year, the station group anticipates higher political sales volume in 2012. *Id.* at ¶ 2.

³⁹ NAB Comments at Attachment C, Declaration of Chris Wolf, Director of Programming and Creative Services for Stations WJZY(TV), Belmont, NC and WMYT(TV), Rock Hill, SC (estimating that maintaining an online political file would have increased the total staff time devoted to handling political spots from 1,458 hours to 2,917 hours for the 2008 election cycle and from 281.5 to 562.5 hours for the 2010 election cycle – approximately double the staff time).

- One broadcaster estimated that to scan, save, and upload political sales orders alone in a non-presidential election year would require 4,800 hours of staff time across its 18 stations (this estimate does not include all of the documents that are in the stations' paper files, such as invoices or forms with officer/director information).⁴⁰ This broadcaster anticipates that some of its stations would be required to dedicate *at least one full-time staff person* to maintain a current online political file.⁴¹
- It would take an estimated 270 hours (i.e., *seven weeks of full-time work for one employee*) for a Wichita, KS station to scan and upload the approximately 8,100 pages in its existing political file.⁴²
- A station that received 222 political orders during the 2010 election cycle estimates 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, and perform organizational tasks online would have required an additional 37 hours for *post-airing reports alone*, not including orders and other required political file material.⁴³
- Not all broadcasters have the necessary equipment. For example, the NC/OH/VA Broadcaster Associations survey showed that 23% of respondents "do not possess a high-quality scanner that would be necessary to upload the thousands of pages of documents in their political files."⁴⁴

In addition to the burdens and costs that an online political file would impose on local stations, and in turn, their viewers, there is also a risk of potential harm to those who access the political file. Broadcasters take seriously their obligations under the political broadcasting requirements, and the current system, while complex in certain respects, is working. Any system that is less robust could create a real – or at least perceived – threat to fairness and access for campaigns and others. Hubbard notes, for example, that if the users of an online political file system experienced the kinds of

⁴⁰ Joint Broadcasters Comments at Appendix C, Declaration of Elizabeth Hicks, General Manager of Central Traffic Operations, Media General Broadcast Group at ¶ 3 and Exhibit 1.

⁴¹ Joint Broadcasters Comments at Appendix C, Declaration of Elizabeth Hicks, General Manager of Central Traffic Operations, Media General Broadcast Group at ¶ 4.

⁴² NAB Comments at Attachment A, Declaration of Jack N. Goodman, Esq. at ¶ 7.

⁴³ See NAB Comments at Attachment B, Declaration of Fred Corbus, General Sales Manager of Station WOOD-TV, Grand Rapids, MI.

⁴⁴ NC/OH/VA Broadcasters Associations Comments at 10.

delays that frequently occur when the FCC's servers are experiencing heavy traffic, campaigns could perceive a lack of access to relevant information as unfair or inequitable:

“Sporadic delays in making public file entries caused by the FCC's computer systems could be perceived as unfair in the heat of political campaigns, or even favoritism on the part of a station (when delays would be outside of station control), because timely access to political broadcasting materials may be important. Prompt access to political file information on some occasions, but delayed access at other times, might be seen as inequitable. Therefore, making an online system at least as efficient as a paper system is imperative for the fairness of the political process.”⁴⁵

NAB agrees that the potential harms to those who currently access today's paper political files must also be considered in connection with any transition to an online file.

B. The Online Political File Proposal Would Create Burdens Without Countervailing Public Interest Benefits

Broadcast commenters note that the vast majority of requests for access to stations' political files come from candidates and their representatives. Commenters explain that, “in the more than 70 years that the political file rules have been in effect, broadcasters and candidates have developed procedures to ensure that requests for political file access are handled efficiently and expeditiously.”⁴⁶ These organizations that have the means and wherewithal to access stations' political files, as Commission itself has previously found.⁴⁷

Broadcast commenters disagree with the suggestions of PIPAC and others that an online political file will lessen the burden on broadcasters by eliminating daily phone

⁴⁵ Hubbard Comments at 3.

⁴⁶ Joint Broadcasters Comments at 14-15.

⁴⁷ See *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 23 FCC Rcd 1274 ¶¶ 19-20 (2007).

inquiries and in-person information requests at stations.⁴⁸ The record contains a few bald assertions – but no evidentiary support – for this contention. To the contrary, as discussed above, broadcasters report that the time presently required to manage the political file will be significantly increased by transitioning to an online system.

Broadcasters also report that it is unlikely that other types of inquires will end because of the existence of an online political file. As one broadcast commenter notes, even with an online public file, it will remain “more meaningful and efficient to speak with a station’s sales department on the phone or to visit the station to view the political file.”⁴⁹ The process of going online first, *and* then speaking to a sales person with an inquiry into advertising availability, “would be very frustrating and would create inefficiencies for buyers and station staff.”⁵⁰

While the current system works, there is very little in the record to suggest that any clear public interest benefit would result from placing political files online. For example, although it is accurate that “access to political files allows researchers, journalists, and public interest organizations to monitor spending on political advertisements,”⁵¹ such access already is available to those who seek it.⁵² The fact that

⁴⁸ See, e.g., PIPAC Comments at 11; Comments of Common Frequency, Inc. (“Common Frequency”) in MM Docket No. 00-168 (“Common Frequency Comments”) at 3; *Notice* at ¶ 23; Comments of LUC Media Group, Inc. (“LUC Media”) in MM Docket No. 00-168 (Dec. 22, 2011) (“LUC Media Comments”) at 3; Comments of The Sunlight Foundation in MM Docket Nos. 00-168 and 00-44 (Dec. 22, 2011) (“Sunlight Foundation Comments”) at 2 (stating, with no supporting information, that “electronic filings are much easier to update than paper filings”).

⁴⁹ NC/OH/VA Broadcasters Associations Comments at 13.

⁵⁰ *Id.*

⁵¹ Comments of the Brennan Center for Justice in MM Docket No. 00-168 (Dec. 22, 2011) (“Brennan Center Comments”) at 2.

there are costs associated with conducting any form of research (including, in the case of research on political advertising, visits to station’s political files) does not automatically mean those costs should be shifted from researchers to stations with a duty to serve their local viewers. Based on evidence in the record, stations would undoubtedly be required to use significant human and capital resources to comply with an online political file requirement—resources that could otherwise be used to support stations’ programming and other services in their local communities. This shifting of private entities’ research burdens to broadcast stations (and, in turn, their viewers) is neither warranted nor appropriate.⁵³

Related proposals that the political file information be organized so that reviewers can “search for information based on type and/or sponsor of political advertisements”⁵⁴ suffer equal infirmities. Given the variances in the ways in which stations manage political advertising sales and the political file, as discussed above and throughout the record in this proceeding, such a system would be exceedingly difficult and costly to develop, and tremendously burdensome to use. More importantly, it would require standardization of stations’ political file processes in a manner that would, in turn,

⁵² This is evidenced by, for example, the report prepared and filed in this proceeding by the Michigan Campaign Finance Network (“MCFN”). See Comments of MCFN in MM Docket No. 00-168 (Dec. 22, 2011) (“MCFN Comments”) at Attachment.

⁵³ See, e.g., Four Licensees Comments at 2-3 (the online public file should not become “a general research tool”); NC/OH/VA Broadcasters Associations Comments at 12 (commenters “disagree . . . that there exists a generalized right for academics and researchers to rely on stations’ staff as research assistants” and oppose the diversion of broadcaster resources “from their important local functions” to meet the needs of potential researchers).

⁵⁴ See PIPAC Comments at 18-19 (proposing “clear labeling” of political files so that interested parties can “reveal the true interests behind the purchases of advertising time”); Sunlight Foundation Comments at 2 (the “ideal situation is for the FCC to create an online form where [stations] can enter the required data into a structured web form” which will facilitate “extensive machine processing of the data”).

dictate new requirements on how stations sell political advertising time. This would be a reversal of long-standing Commission policy permitting broadcasters flexibility in maintaining their political files to reflect variations in the sales of advertising.⁵⁵

It is not sufficient to simply assert, as PIPAC does, that an online political file would facilitate access to information on “sources of paid political content.”⁵⁶ Under the Administrative Procedure Act, the Commission may not assume, without evidence, that requiring online files will result in a greater public understanding of who pays for political advertising.⁵⁷ Current disclosure requirements already provide necessary information to the public, and nothing in the record suggests that there is insufficient information available. In any event, contrary to PIPAC’s suggestion, local stations’ political files are not intended as all-purpose campaign spending disclosure sites. As the Commission has recognized, the heaviest users of the political file are candidates and their

⁵⁵ See *Codification of the Commission’s Political Programming Policies*, Order on Reconsideration, 7 FCC Rcd 4611, 4621 (1992) (“*Political Rules Reconsideration*”) (“Because advertising may be purchased or ordered in a variety of ways, we do not believe we can mandate a definitive list of material that must be maintained in the political file.”). Our members have also stressed that stations utilize different filing systems – political files may be organized by political party, by candidate, or by primary, general or special election, depending on which approach makes most sense for each stations’ particular market.

⁵⁶ See PIPAC Comments at 15-17. See also Sunlight Foundation Comments; Brennan Center Comments at 2-3.

⁵⁷ See, e.g., *Cincinnati Bell Telephone Co. v. FCC*, 69 F.3d 752, 763 (6th Cir. 1995) (FCC rules restricting participants in spectrum auctions were arbitrary because agency had no factual support for them); *Bechtel v. FCC*, 10 F.3d 875, 880 (D.C. Cir 1993) (FCC’s criterion for licensing broadcast applicants was invalidated as arbitrary and capricious due to lack of evidence that the agency’s policy “achieve[d] even one of the benefits ... attribute[d] to it”). Moreover, increasing the burden of compliance with sponsorship identification rules without a corresponding public interest benefit would violate the PRA and RFA.

representatives, not the general public.⁵⁸ This is not surprising, given Congress' focus since 1927 on ensuring that candidates for office have equal opportunities in the use of broadcast stations.⁵⁹

Finally, as one commenter observes, new government standards directly affecting how stations offer advertising time to political candidates would raise First Amendment problems.⁶⁰ At the very least, such standards would require the FCC to oversee “more of the day-to-day operations” of broadcasters.⁶¹ The resulting intrusion requires more compelling evidence than has been presented here.

⁵⁸ See *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 Rcd 11113, 11122 (1999).

⁵⁹ The original Section 315 of the 1934 Communications Act “carried over almost verbatim” from the Radio Act of 1927 “the requirement that candidates for public office be accorded equal opportunities in the use of broadcast stations.” See A LEGISLATIVE HISTORY OF THE COMMUNICATIONS ACT OF 1934 at 75 (Max Paglin, ed., 1989). Reflecting this intent, the political file is designed to ensure that candidates know when they have equal time rights.

⁶⁰ See Joint Broadcasters Comments at 12 (“this standardization would necessitate Commission-imposed requirements for all commercial and political sales without regard to the unique characteristics of each station and each advertising market. Imposition of a uniform code of advertising sufficient to facilitate automatic online political file posting would far exceed the Commission’s jurisdiction and certainly would not comport with First Amendment requirements”). In addition, the potential harassment and chilling effect concerns raised by the National Religious Broadcasters (NRB) should not be taken lightly. NRB’s argument illustrates the need for careful consideration of narrowly tailored options to achieve valid public interest goals. To this end, the Commission must identify the clear public interest goal to be achieved by posting the public file online.

⁶¹ See *CBS v. DNC*, 412 U.S. 94, 146 (1973) (citing “[r]egimenting broadcasters” as basis for rejecting editorial advertising requirement on stations).

C. Proposals to Expand Issue Advertising Requirements are Beyond the Scope of this Proceeding and Contrary to Law

Some commenters urge the Commission to extend public file disclosure requirements to issue advertisements concerning state elections.⁶² Contrary to the implication in these comments, issue ads concerning state elections or state issues are not exempt from disclosure in station political files. The Commission's rules require a station broadcasting "political matter or matter involving the discussion of a controversial issue of public importance" to include in its political file an indication that it broadcast such material, the identity of the sponsor, and a list of officers or board members of the sponsoring entity.⁶³ An issue ad concerning a state election would certainly seem to come within this rule.

MCFN and LUC Media appear to seek application of the expanded disclosure provisions added by the Bipartisan Campaign Reform Act of 2002 ("BCRA") to Section 315(e)(1)(B) to state-only issue ads. As an initial matter, NAB observes that such a substantive change to the Commission's rules would be well beyond the scope of a proceeding focused on transitioning the paper public inspection file to an online file.

More significantly, the changes apparently sought by MCFN and LUC Media are not supported by the statute. The BCRA requirements apply only to "a message relating to any political matter of national importance," a definition that on its face excludes state and local issues. Although the examples in the Act of such nationally

⁶² MCFN Comments at 2; LUC Media Comments at 8-9. Both commenters claim that certain unidentified stations in Georgia did not disclose certain records of an advertising buy made by the Republican Governors' Association in 2010. *Id.* NAB cannot comment on the specifics of decisions made by unidentified stations, although it does not appear that any complaint about their actions was ever filed with the Commission.

⁶³ 47 C.F.R. § 73.1212(e).

important matters include messages relating to “a legally qualified candidate,”⁶⁴ there is nothing to suggest that the requirements apply to ads addressing only state or local matters. Every provision of BCRA is directed solely at federal candidates, the financing of their campaigns, the rates federal candidates would be charged for certain types of radio and television advertising, and the disclosures associated with messages relating to federal candidates and national issues. Given that context, the only reasonable reading of Section 315(e)(1)(B)(i) is that it means legally qualified candidates for federal elective office and that the new disclosure provisions added in BCRA apply only to messages involving federal candidates and national issues. Indeed, the targeted nature of BCRA suggests Congress’ apparent satisfaction that the Commission’s existing political file disclosure rules were adequate with respect to state and local issues and candidates.⁶⁵ Thus, there is no basis for adopting MCFN/LUC Media’s proposals, particularly in this proceeding.

D. The Commission Should Evaluate the Potential Competitive Impact of An Online Public File Requirement Placed Solely on Broadcasters

In its initial comments, NAB urged the Commission to carefully consider the unintended consequences of requiring only television broadcasters to place political advertising rate information in a central database.⁶⁶ We noted that political broadcasting requirements, including the obligation to maintain a political file, are applicable not only to broadcasters but also to cable systems and direct broadcast

⁶⁴ Section 315(e)(1)(B)(i), 47 USC § 315(e)(1)(B)(i).

⁶⁵ “Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change.” *Lorillard v. Pons*, 434 U.S. 575, 581 (1978).

⁶⁶ See NAB Comments at 21-22.

satellite (“DBS”) services.⁶⁷ We observed that stations compete with many other segments of the media market to earn vital advertising dollars. NAB expressed concerns that a broadcast-only online political file requirement could “create market distortions and place broadcasters at a disadvantage vis-à-vis their competitors.”⁶⁸ We also noted that public interest harms could result if advertising revenue drops due to disparate regulation, because reduced revenues would impede stations’ ability to expand service offerings or continue current service offerings.⁶⁹

NAB’s concerns remain uncontroverted by any evidence or arguments in the record. It would plainly be harmful to require the broadcast television industry alone to upload potentially hundreds of thousands of pages containing commercially sensitive information, such as rate information, into a central online database. As the Commission proceeds with its examination of the feasibility of a television broadcaster online political file, it should expeditiously commence a separate proceeding to evaluate the potential burdens and benefits of an online political file for other video providers subject to its political broadcasting rules. To the extent the Commission believes that online public and political files promote the public interest, there would appear to be no reason to exclude the public and political files of pay TV providers.

⁶⁷ See NAB Comments at 21, citing 47 C.F.R. § 76.1701 (cable political file requirement); 47 C.F.R. § 25.701(d) (DBS political file rule).

⁶⁸ NAB Comments at 22.

⁶⁹ *Id.*

IV. Commenters Agree with NAB that the Proposed Sponsorship Identification Requirement Would Be Duplicative and Provide Limited, If Any, Benefit to the Public While Creating a New Burden for Broadcast Stations

In our initial comments, NAB opposed the overbroad and unnecessary proposal for broadcasters to include a list of all non-obvious sponsorships of all TV programming in an online public file. NAB Comments at 23-28. To be clear, NAB fully supports the existing requirement that stations properly identify any and all sponsors contemporaneous with the sponsored programming. However, as we noted, the *Notice* proposes a completely new requirement. Broadcasters are not currently required to include in their paper public file a separate list of all sponsors of their programming – network, syndicated and local, 24 hours a day, seven days a week.

Most commenters that addressed the sponsorship identification proposal agreed with NAB's position. Broadcast commenters in particular noted that this new requirement would be burdensome, is premature, and that the *Notice* fails to provide any evidential or statutory support for expansion of the current rule. Those commenters that do support the new requirement provide no evidence suggesting that the public generally would utilize an online database of TV sponsorship information or that such a list will cure some perceived harm caused by these sponsorships.⁷⁰

As several commenters noted, the statute that underlies the Commission's sponsorship identification rules – Section 317 of the Communications Act – specifically requires that disclosure of a program's sponsor be made "at the time the same is so broadcast."⁷¹ The proposed new requirement for an additional online report thus goes

⁷⁰ See e.g., NC/OH/VA Broadcasters Association Comments at 16; Joint Broadcasters at 16-19; Joint TV Broadcasters at 7-8.

⁷¹ Joint Broadcasters at 16 (citing 47 U.S.C.A. § 317(a)(1)).

beyond the statutory text. *Id.* Given this statutory language, the *Notice* “does not adequately demonstrate how its expansive sponsorship identification proposals fit within Section 317’s framework.” Joint TV Broadcasters at 9. Because the Act speaks expressly to the specific kind of disclosure required, Commission reliance on more general regulatory authority to adopt different disclosure requirements would raise statutory authority questions.⁷²

Even if the Commission were entirely free to alter the type of disclosure required of broadcasters, the *Notice* provided “no regulatory purpose in support of this new proposal.” Joint TV Broadcasters at 9. The Commission cannot connect the political/issue recordkeeping requirements in Section 315 – an “entirely distinct” section of the Act – with a new recordkeeping requirement for *all* sponsorship of TV programming. *Id.* There is a justifiable reason to require broadcasters to maintain records of who is sponsoring political material aired on their stations, and it is rooted in the authority granted to the Commission by Congress in Section 315. *Id.* That same reason cannot be exported into Section 317 in order to support the proposal. In any event, existing rules provide ample information to the public regarding commercial sponsorships.

⁷² See, e.g., *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 228-229 (1957) (the “[s]pecific terms” of a statute “prevail over the general in the same or another statute”). The courts also have more particularly established that administrative agencies cannot rely on their general authority to act in the public interest if in doing so they ignore or contravene congressional intent embodied in a specific statutory provision. See, e.g., *Markair, Inc. v. Civil Aeronautics Board*, 744 F.2d 1383, 1385-86 (9th Cir. 1984); *Internat’l Brotherhood of Teamsters v. ICC*, 801 F.2d 1423, 1429-30 (D.C. Cir. 1986), *on rehearing*, 818 F.2d 87 (D.C. Cir. 1987) (initial decision mooted by subsequent legislation); *Regular Common Carrier Conference v. U.S.*, 820 F.2d 1323, 1331 (D.C. Cir. 1987).

Like NAB, several commenters noted that the new sponsorship identification proposal provides no articulated benefit to the public, beyond a vague argument that an online list of sponsors would somehow “further a central principle of the rule” that listeners and viewers are “entitled to know by whom they are being persuaded.” *Notice* at ¶34. NAB agrees, as we have stated repeatedly, with that principle, but continues to believe that on-air announcement achieves that end. The burden of justifying a new regulation requires more than simply stating a goal.

PIPAC argues that the Commission should impose the proposed requirement to “address the shortcomings of fleeting, on air disclosures.” PIPAC at 22. NAB disagrees with PIPAC’s unsupported assertion that legally-proper sponsorship identifications suffer from serious “shortcomings.” PIPAC attempts to use the word “fleeting” in a pejorative sense, but just like anything that appears on television, sponsorship identifications appear as required and then disappear. Additionally, in this era of digital video recorders, when many, if not most, television viewers can pause and rewind live television with the push of a button, the notion that sponsorship disclosures are “fleeting” is increasingly outdated. But they are, as the law requires, readable and contemporaneously available.⁷³

PIPAC also argues that this new rule is necessary to provide information to “journalists, academics and watchdog groups who aggregate this information in order to

⁷³ PIPAC also cites advocacy group Commercial Alert, arguing that disclosures are “hard to locate ... difficult to decode, [appear at] inconvenient times, [and are] ... too small and presented for too short a time to read.” PIPAC at 24 (citing Reply Comments of Commercial Alert in MB Docket No. 08-90 at 10-11 (filed Nov. 21, 2008)). Neither PIPAC nor Commercial Alert explains how broadcasters “code” their disclosures or air them at “inconvenient” times. To the extent that any broadcaster is failing to properly disclose sponsors, that is a matter for specific enforcement, not justification for a wholesale change to existing rules.

track the prevalence of payola in the market.” PIPAC at 22. PIPAC’s inflammatory use of a particular word – in this case “payola” – appears to conflate an appropriate and legal practice (properly disclosed sponsorship of TV programming) with an illegal practice (hidden “pay-for-play” deals). The latter, which NAB believes is exceedingly rare, would, of course, not be revealed in any online list of sponsors. This justification thus rings hollow. Moreover, the Commission should not, absent a reasonable and independent justification, impose this new rule merely to support the research of journalists, academics and watchdog groups. As one commenter notes, “there is no generalized right for researchers to conscript stations as research librarians.”⁷⁴

Finally, before the Commission imposes any new sponsorship identification requirement, it must weigh the benefits of such a rule against the likely new burdens. From evidence presented in the record, any benefits from such a list are highly speculative at best. Joint TV Broadcasters at 11. PIPAC argues simply that with such a list, “public access to this information will be increased.” PIPAC at 25. This is true, of course, but PIPAC provides no evidence suggesting the public is actively seeking this information beyond what they already see during the programming. As we noted in our initial comments, the benefit of “more information” is significantly minimized if that information is rarely accessed by members of the public.⁷⁵ PIPAC also argues that online disclosures would benefit TV broadcasters by forestalling inaccurate payola

⁷⁴ NC/OH/VA Broadcasters Association Comments at 19.

⁷⁵ NAB Comments at 24; See *also* Joint TV Broadcasters at 11 (“[I]t is difficult to conceive how a written list of program sponsors, contextually divorced from programming that has, at some point in the past, been on a broadcast station, would benefit such viewers.”)

complaints.⁷⁶ This “benefit” is similarly unsubstantiated. If broadcasters choose to provide such information voluntarily in an effort to limit inaccurate complaints they are, of course, able to do so.

Although several commenters, including NAB, expressed concern that the sponsorship identification proposal is too vague to allow a solid estimate of the burden on individual stations, most commenters, and especially broadcast commenters that understand how stations operate, agree that any new requirement would entail additional burdens on stations, including dedicated employee hours and possible technical upgrades. For example, several commenters note that existing agreements between stations and networks and syndicators do not include a requirement to provide a separate list of sponsored programming. Joint Broadcasters at 17. As such, stations might be required to assign personnel to actively watch, list the sponsors as they appear in each show, and then upload the list to the FCC’s website. NC/OH/VA Broadcasters Association Comments at 17.⁷⁷ According to the Joint TV Broadcasters, “enactment of the proposal would produce a lopsided regulatory result: a significant burden on broadcasters, with no commensurate benefit to the viewing public.” Joint TV Broadcasters at 11. NAB agrees. PIPAC’s assertion that broadcasters already “collect” sponsorship identification information shows a clear misunderstanding of how

⁷⁶ PIPAC at 25. PIPAC also suggests that broadcasters be required to list the portion of the show that was specifically sponsored. NAB opposes this extension of the rule as well. It is not supported by Section 317 and would clearly impose a far greater burden on stations.

⁷⁷ As NAB explained in its initial comments, much of this information would be duplicative, as hundreds of stations report the same sponsorship information for the same nationally distributed programming.

broadcast/network/syndicator relationships operate and is refuted by numerous comments in the record. PIPAC at 26.

In light of the myriad questions and concerns raised by commenters, it clearly would be premature for the Commission to adopt any new substantive sponsorship identification requirement in this proceeding, which should remain focused on issues related to the conversion of paper public files to online files.⁷⁸

V. Mandatory Inclusion of Shared Services Agreements in the Public File is Premature

In its initial comments, NAB pointed out that the Commission's proposal to include copies of all shared services agreements ("SSAs") in station's public files is premature.⁷⁹ We noted that the Commission is considering the need to obtain information about such agreements and the relevance of these agreements to enforcement of its rules in other proceedings⁸⁰ and should not prejudge the issue here.⁸¹ Unless and until the Commission makes a threshold determination that such agreements are relevant to its analysis of broadcaster compliance with some rule or standard, imposing a requirement to publicly disclose these agreements would be imposing costs and burdens on broadcasters without first identifying any public interest

⁷⁸ This is especially true given the still pending rulemaking proceeding on the sponsorship identification rules. See *Sponsorship Identification Rules and Embedded Advertising*, Notice of Inquiry and Proposed Rulemaking, 23 FCC Rcd 10682 (2008).

⁷⁹ NAB Comments at iii, 28-29.

⁸⁰ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Notice of Inquiry, FCC No. 11-169, MM Docket No. 00-168 (rel. Nov. 10, 2011) at ¶ 37; *2010 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, FCC No. 11-186, MB Docket No. 09-182 (rel. Dec. 22, 2011) at ¶¶ 204-208.

⁸¹ NAB Comments at iii. See also Joint Broadcasters Comments at 20; Joint TV Broadcasters Comments at 11.

benefit. Mandatory filing of information for its own sake would be unlawful from an APA, PRA, and RFA standpoint.

Several commenters addressing this issue agree. Commenters note that the public file rules currently require disclosure of two types of agreements – time brokerage agreements (“TBAs”) and joint sales agreements (“JSAs”).⁸² Both of these types of agreements have been the subject of varying levels of review and analysis, and each of these types of agreements has been deemed to have attribution implications at certain levels and for certain services.⁸³ SSAs, on the other hand, have not been examined by the Commission, and there has been no determination of what types of SSAs, if any, are relevant to compliance with any Commission rules or standards. SSAs vary widely, covering matters ranging from costly news-gathering equipment or operations to back-office accounting. As one commenter observed, there is often “little functional difference” between entering into an SSA with another station and entering into a similar operational agreement with a non-broadcast vendor, such as contracting with ADP to handle payroll functions.⁸⁴ With the benefit of a full examination of all relevant issues, the Commission can determine whether any SSAs are relevant to any of its rules, whether only specified types of SSAs have implications for specified rules, and what is the appropriate means of monitoring those SSAs (e.g., the filing of SSAs in connection with certain applications, filing of SSAs with the Commission when they are executed and/or disclosure in the public file, with redactions as appropriate). Absent this initial

⁸² See Joint TV Broadcasters Comments at 12, citing 47 C.F.R. §73.3526(e)(14) and (16).

⁸³ See *id.* See also 47 C.F.R. §73.3555 Note 2.j. (attribution pursuant to certain TBAs); 47 C.F.R. §73.3555 Note 2.k. (attribution pursuant to certain JSAs).

⁸⁴ Joint TV Broadcasters Comments at 12-13.

step, however, the Commission would be imposing substantial burdens on stations without any clearly identified rationale or public interest benefit.⁸⁵

Among the issues the Commission will need to address in connection with a more thorough examination of SSAs is the potential for the proposed expansion of regulations relating to SSAs to entangle the FCC in the details of how stations organize their administrative, operational and newsgathering functions. Any public interest benefit derived from SSA disclosure also must outweigh the potential burdens on licensees, which will be substantial. The Four Licensees note that these agreements contain “sensitive proprietary information” and that there are not sufficient grounds to justify public perusal of such documents.⁸⁶ The Joint TV Broadcasters further observe that because such agreements “contain numerous confidential and proprietary terms,” television broadcast licensees would be required to expend time and resources redacting portions of the agreements to avoid violating confidentiality clauses contained in the agreements.⁸⁷ Analysis of what to disclose and redact would involve not only the time of station personnel but also the costs of obtaining the advice of counsel.⁸⁸

Commenters that support disclosure of these agreements simply put the cart before the horse, contending that disclosure is appropriate without the Commission having first identified which, if any, sharing agreements are relevant to which, if any,

⁸⁵ See Joint Broadcasters Comments at 20 (the Commission “first needs to solicit comment and determine the legal status and regulatory disclosure requirements regarding such operational agreements”).

⁸⁶ Four Licensees Comments at 5.

⁸⁷ Joint TV Broadcasters Comments at 11-12.

⁸⁸ Joint TV Broadcasters Comments at 14 (“There is no doubt that the proposal would impose additional burdens on broadcasters, such as time spent determining which . . . agreements to include in the public file and the engagement of legal counsel to confirm this determination and prepare redacted documents.”).

Commission rules or policies. PIPAC would leapfrog over such a determination and mandate “public access” to agreements that “may” affect control of the station and production of local news and other programming. The Commission already has analyzed and specified a lengthy list of the types of agreements that it considers relevant to programming, ownership and control, and personnel.⁸⁹ Agreements concerning these matters already are required to be filed with the Commission⁹⁰ and must also be placed in the public file or identified in a list in the public file and made available to the public upon request.⁹¹ Accordingly, agreements that “may affect control of the station” already are required to be – and in fact are – filed with the Commission and are available to the public. PIPAC has not explained what is lacking in the Commission’s longstanding analysis of what agreements impact programming or control, and does not present any consideration of the potential burdens broadcasters would face in complying with this new SSA filing requirement, much less make the case that any public interest benefit would outweigh the burdens and costs.⁹²

⁸⁹ See 47 C.F.R. § 73.3613.

⁹⁰ *Id.*

⁹¹ See 47 C.F.R. §73.3615(a)(4)(i) (a list of contracts filed pursuant to 47 C.F.R. §73.3613 must be filed with stations’ ownership reports); 47 C.F.R. § 73.3526(e)(5) (contracts listed in connection with ownership reports must be placed in the public file or listed there and made available upon request).

⁹² PIPAC also ignores reliable anecdotal and empirical evidence that common ownership and operation has repeatedly been found to improve the quality and quantity of local news. See, e.g. Michael G. Baumann and Kent W. Mikkelsen, Economists Incorporated, “Effect of Common Ownership or Operation on Television News Carriage: An Update” (Attachment A, NAB Reply Comments, MB Docket No. 06-121, at 6-7 (Nov. 1, 2007)) (finding that a station in a same-market combination is 6.2 percent more likely to carry local news and public affairs programming than a station that is not in such a local combination). The FCC also has acknowledged the public interest benefits of common ownership of television stations in the same market. A study conducted in connection with the FCC’s last review of media ownership rules found that co-ownership of television stations in the same market “has a large, positive, statistically significant

ACA also would overlook the threshold determination of what rules and policies, if any, are impacted by SSAs. ACA is among the parties that filed a petition for rulemaking concerning retransmission consent and is involved in a pending proceeding examining the Commission's good faith negotiation requirements. ACA reiterates many of its arguments from the retransmission consent proceeding here. As NAB already has explained in the retransmission consent proceeding, however, ACA has failed to present any credible evidence to support its allegations that retransmission consent negotiations involving more than one television broadcast station are unlawful or harmful to the public interest.⁹³ To the contrary, NAB presented empirical data demonstrating that the stations alleged by ACA to be involved in joint negotiations were *significantly less likely* to be the subject of a negotiating impasse resulting in a

impact on the quantity of news programming”—specifically, a 15% increase in the amount of news minutes aired per day. See FCC, Daniel Shiman, *The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming* (July 24, 2007). See also Letter to Marlene H. Dortch, Secretary, FCC from Jonathan D. Blake, Counsel, the Coalition of Smaller Market Television Stations, filed in MB Docket Nos. 10-71 and 09-182 (Dec. 21, 2011) (“Small Market Coalition Ex Parte”) at 2-3 (listing examples of SSAs resulting in the provision of additional local news and other services to local viewers, including: (i) the launch of the only Spanish-language local news operation in the entire state of Kansas; (ii) a Wichita, Kansas station that added an HD-equipped newsroom and expanded local news programming; (iii) retention of news services that were otherwise likely to be eliminated on stations in Augusta, Georgia and Syracuse, New York; (iv) enhancement of local news operations in Peoria, Illinois; (v) launch of a local news operation on a station in Wausau, Wisconsin.

⁹³ See Reply Comments of NAB in MB Docket No. 10-71 (Jun. 27, 2011) at 47-53 and Appendix A, *Reply Declaration of Jeffrey A. Eisenach and Kevin W. Caves* at ¶¶ 11-16; Comments of NAB in MB Docket No. 10-71 (May 27, 2011) at 22-33; Reply Comments of NAB, the ABC Television Affiliates Association, the CBS Television Network Affiliates Association, the FBC Television Affiliates Association, and the NBC Television Affiliates in MB Docket No. 10-71 (Jun. 3, 2010) 18-20. See also Small Market Coalition Ex Parte at 5 (stations do not require joint negotiations in the SSA context but present MVPDs the option to negotiate jointly).

disruption in carriage.⁹⁴ NAB also has explained that joint negotiations are an important check against the unfettered bargaining power of MVPDs because a single MVPD often enjoys a very large share of any given local market.⁹⁵ ACA's attempt to recycle invalid arguments from an unrelated proceeding should be disregarded here, particularly when ACA has not identified a viable public interest benefit or balanced such a benefit against the attendant burdens and costs to broadcasters. Comments from ACA would be better directed to the issue of when and how MVPDs should transition to a mandatory online public file.⁹⁶

VI. Conclusion

After reviewing the many comments submitted on the Commission's proposal to include the public inspection file in an online database, NAB observes that: (i) there is evidence to support moving at least some elements of the file online; (ii) there are many difficult and challenging practical, technical and policy issues raised by the proposal to place stations' political files online; and (iii) the Commission should carefully examine these implementation concerns and all potential benefits and burdens associated with

⁹⁴ See Reply Comments of NAB in MB Docket No. 10-71 (Jun. 27, 2011) at 50-51 and Appendix A, *Reply Declaration of Jeffrey A. Eisenach and Kevin W. Caves* at ¶¶ 24-25.

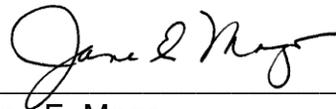
⁹⁵ See, e.g., Reply Comments of NAB in MB Docket No. 10-71 (Jun. 27, 2011) at 48-50. See also Comments of NAB in GN Docket No. 11-72 (Nov. 28, 2011) at 6-8 (discussing importance of retaining good faith negotiation rules to protect small broadcasters in negotiations with very large MVPDs, as well as so-called "small" MVPDs, like ACA's members, that enjoy large shares of local markets and are less likely to face head-to-head competition).

⁹⁶ See Section III.D., *supra*. To promote regulatory parity and a more level playing field, NAB urges the Commission to expeditiously issue a further notice or commence a separate proceeding seeking comment on implementation of an online public file requirement for cable operators and other MVPDs. *Id.* As the Joint TV Broadcasters argued, the Commission also should consider in a future proceeding whether there remains a need for the current main studio rule, if the Commission here adopts new requirements to make the public file accessible online. See Joint TV Broadcasters Comments at 18-20.

its proposal before determining whether and how to move forward. NAB continues to express strong support for a working group that will engage in such an examination. We look forward to working with the Commission and other broadcast groups on this working group or another similar program.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**



Jane E. Mago
Jerianne Timmerman
Erin Dozier
Scott Goodwin

1771 N Street, NW
Washington, DC 20036
(202) 429-5430

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