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Before the
Federal Communications Commission
Washington, D.C. 20554

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

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ORDER ON RECONSIDERATION AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: October 27, 2011 **Released: October 27, 2011**

Comment Date: [30 days after date of publication in the Federal Register]
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By the Commission: Chairman Genachowski; Commissioners Copps and Clyburn issuing separate statements. Commissioner McDowell approving in part, concurring in part and issuing a statement.

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I. INTRODUCTION

1. In this *Order on Reconsideration and Further Notice of Proposed Rulemaking* we take steps to modernize the way television broadcasters inform the public about how they are serving their communities. We vacate the prior *Report and Order*,[1] thereby resolving pending petitions for reconsideration of that order, re-codify the public file rules in existence prior to adoption of the *Report and Order*, and seek comment on the proposals set forth below. Our goals in this proceeding are to make information concerning broadcast service more accessible to the public by taking advantage of current technology, thereby improving dialogue between broadcast stations and the communities they serve, and if possible reduce the compliance burdens on broadcasters. This item also seeks to further the goal of modernizing the Commission's processes and expeditiously transitioning from paper to digital technology in order to create efficiencies and reduce costs both for government and the private sector.

2. Specifically, we propose to largely replace the decades-old requirement that commercial and noncommercial television stations maintain a paper public file at their main studios with a requirement to submit documents for inclusion in an online public file to be hosted by the Commission. We seek comment on ways to streamline the information required to be kept in the file, such as by excluding letters and emails from the public. We also propose that we should require that sponsorship identification, now disclosed only on-air, also be disclosed in the online public file, and propose to require disclosure online of shared services agreements. We seek comment on what steps we can implement in the future to make the online public file standardized and database compatible, further improving the usefulness of the data. The new proposals that the Commission host the online public file and that the online file largely replace the paper file at the main studio will meet the longstanding goals of this proceeding, to improve public access to information about how broadcasters are serving their communities, while at the same time significantly reducing compliance burdens on the stations. We propose to limit these reforms to television licensees at this time given that this proceeding has always been limited to television broadcasters. We will consider at a later date whether to apply similar reforms to radio licensees. Although in this *Order on Reconsideration* we vacate the standardized television disclosure form adopted in the 2007 *Report and Order*, we are addressing in a separate proceeding whether to adopt a standardized form and what to include in it, as a replacement for the issues/programs list that television stations currently place in their files.

II. BACKGROUND

3. One of a television broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license.[2] Broadcasters are afforded considerable flexibility in how they meet that obligation,[3] but they must maintain a public inspection file, which gives the public access to information about the station's operations and enables members of the public to engage in an active dialogue with broadcast licensees regarding broadcast

[1] *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 23 FCC Rcd 1274 (2007) ("*Report and Order*").

[2] *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 FCC 2d 1076, ¶ 32 (1984).

[3] *Id.* at ¶ 89.

service.[4] Among other things, the public inspection file must contain an issues/programs list, which describes the "programs that have provided the station's most significant treatment of community issues during the preceding three month period."[5] The original *Notice of Proposed Rulemaking* in this proceeding grew out of a prior *Notice of Inquiry*, which explored the public interest obligations of broadcast television stations as they transitioned to digital.[6] In the 2000 *NPRM*, the Commission concluded that "making information regarding how a television broadcast station serves the public interest easier to understand and more accessible will not only promote discussion between the licensee and its community, but will lessen the need for government involvement in ensuring that a station is meeting its public interest obligation."[7] The Commission tentatively concluded to require television stations to use a standardized form to report on how they serve the public interest.[8] The Commission also tentatively concluded to require television licensees to make the contents of their public inspection files, including the standardized form, available on their stations' Internet websites or, alternatively, on the website of their state broadcasters association.[9] In 2007, the Commission adopted a *Report and Order* implementing these proposals.[10]

4. Following the release of the *Report and Order*, the Commission received petitions for reconsideration from several industry petitioners and public interest advocates. The industry petitioners raised a number of issues regarding the standardized form and the online posting requirement, generally contending that the requirements were overly complex and burdensome.[11] Public interest advocates argued that the political file[12] should be included in the online public file requirement rather than exempted as provided in the *Report and Order*, and that the standardized form should be designed to facilitate the downloading and aggregation of data for researchers.[13] In addition, five parties appealed the *Report and*

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[4] *Review of the Commission's Rules regarding the Main Studio Rule and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, ¶ 18 (1998), *recon. granted in part* Memorandum Opinion and Order, 14 FCC Rcd 11113 (1999).

[5] 47 C.F.R. § 73.3526(e)(12).

[6] *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Notice of Proposed Rulemaking, 15 FCC Rcd 19816 (2000) ("*NPRM*"); *In the Matter of Public Interest Obligations of TV Broadcast Licensees*, Notice of Inquiry, 14 FCC Rcd 21633 (1999)("*NOI*").

[7] *NPRM* at ¶ 1.

[8] *NPRM* at ¶ 10.

[9] *NPRM* at ¶ 31.

[10] *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations,* Report and Order, 23 FCC Rcd 1274 (2007).

[11] Petitions for reconsideration are listed in Appendix A. *See, e.g.,* Association of Public Television Stations and PBS Petition for Reconsideration ("APTS & PBS Petition") at 3-5; Broadcasting Licenses Limited Partnership Petition for Reconsideration at 3,7; Joint Broadcasters Petition for Reconsideration at 18-22; Joint Public Television Licensees Petition for Reconsideration at 9-10.

[12] Sections 73.3526(e)(6), 73.3527(e)(5) and 73.1943 of the Commission's rules require that stations keep as part of the public inspection files a "political file." 47 C.F.R. §§ 73.3526(e)(6), 73.3527(e)(5), 73.1943. The political file chiefly consists of "a complete and orderly record ... of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted." 47 C.F.R. §73.1943(a).

[13] CLC *et al.* Petition for Reconsideration at 3-7.

Order, and the cases were consolidated in the United States Court of Appeals for the D.C. Circuit.[14] The D.C. Circuit granted a petition to hold the proceeding in abeyance while we review the petitions for reconsideration.[15] Challenging the rules in a third forum, several parties opposed the information collection contained in the *Report and Order* at the Office of Management and Budget ("OMB") under the Paperwork Reduction Act.[16] Because of the multiple petitions for reconsideration, the Commission has not transmitted the information collection to OMB for its approval, and therefore the rules adopted in the *Report and Order* have never gone into effect.[17]

5. In June 2011, a working group including Commission staff, scholars and consultants released "The Information Needs of Communities" ("*INC Report*"), a comprehensive report on the current state of the media landscape.[18] The *INC Report* discussed both the need to empower citizens to ensure that broadcasters serve their communities in exchange for the use of public spectrum, and also the need to remove unnecessary burdens on broadcasters who aim to serve their communities. The *INC Report* provided several recommendations relevant to this proceeding, including eliminating unnecessary paperwork and moving toward an online system for public disclosures in order to ensure greater public access.[19] The *INC Report* also recommended requiring that when broadcasters allow advertisers to dictate content, they disclose the "pay-for-play" arrangements online as well as on the air in order to create a permanent, searchable record of these arrangements and afford easy access by consumers, competitors and watchdog groups to this information.[20] The Report also suggested that governments at all levels collect and publish data in forms that make it easy for citizens, entrepreneurs, software developers, and reporters to access and analyze information in order to enable mechanisms that can present the data in more useful formats,[21] and noted that greater transparency by government and media companies can help reduce the cost of reporting, empower consumers, and foster innovation.[22]

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[14] *National Association of Broadcasters v. FCC*, No. 08-1135 (D.C. Cir.); *Office of Communication of the United Church of Christ, Inc. v. FCC*, No. 08-1151 (D.C. Cir.); *ABC Television Affiliates Ass'n v. FCC*, No. 08-1185 (D.C. Cir.); *The Walt Disney Company v. FCC*, No. 08-1186 (D.C. Cir.); *CBS Corporation v. FCC*, No. 08-1187 (D.C. Cir.).

[15] Order, *National Association of Broadcasters v. FCC*, Nos. 08-1135 *et al.* (D.C. Cir.) (July 11, 2008).

[16] The Paperwork Reduction Act of 1995, Pub. L. No. 104-13, requires that OMB approve any information collections. As required, the Commission had published a notice in the Federal Register seeking comment on the projected burdens of the rules. *See* 73 FR 13462 (Mar. 13, 2008); 73 FR 30316 (May 27, 2008).

[17] *See also* 47 C.F.R. §§73.3526, effective date nt. 2; 47 C.F.R. §§73.3526, effective date note; 47 C.F.R. §§73.1201, effective date note 2.

[18] "The Information Needs of Communities: The Changing Media Landscape in a Broadband Age," by Steven Waldman and the Working Group on Information Needs of Communities (June 2011), available at www.fcc.gov/infoneedsreport. As noted in the INC Report, the views of the report "do not necessarily represent the views of the Federal Communications Commission, its Commissioners or any individual Bureaus or Offices." *Id.* at 362.

[19] *INC Report* at 28, 348. The *INC Report* also recommended that the Commission should eliminate the long-standing issues/programs list and replace it with a streamlined, web-based form through which broadcasters can provide programming information based on a composite or sample week. *Id.* at 28. This recommendation will be the subject of another proceeding.

[20] *Id.* at 28, 349.

[21] *Id.*at 29, 351.

[22] *Id.* at 28, 360.

6. In the *Order on Reconsideration*, we conclude, in light of the reconsideration petitions we received with respect to the *Report and Order* and the comments and replies thereto, that the best course of action is to vacate the rules adopted in the *Report and Order* and develop a new record upon which we can evaluate our public file and standardized form requirements. In this *FNPRM* we seek comment on some of the proposals the parties put forth on reconsideration and other ideas as well to improve public access to information about how broadcasters are serving their communities while minimizing the burdens placed upon broadcasters. We also invite commenters to suggest any other changes that would promote these goals and modernize the provision of data to the public. We note that we are only addressing the online public file requirement in this *FNPRM*. Due to the complexity of the issues surrounding the replacement of the issues/programs list with a standardized form, we intend to promptly issue a separate Notice of Inquiry in a new docket seeking comment on the standardized form. We ask commenters to limit the comments filed in this docket to those related to the online posting requirement.

III. ORDER ON RECONSIDERATION

7. We issued the 2007 *Report and Order* to modernize broadcasters' traditional public file requirement to improve the public's access to information on how the stations are serving their local communities. We remain dedicated to that objective and to bringing broadcast disclosure into the 21st century. Nonetheless, the reconsideration petitions we received from broadcasters and public interest advocates and the responses thereto have persuaded us to reexamine the balance we struck in 2007 between public access to station information and the burden providing such access imposes on broadcasters.[23] In particular, the *Report and Order* was based upon an *NOI* and an *NPRM* that were issued over a decade ago, and the record upon which those rules were adopted does not reflect the rapid technological advances that have occurred over the last ten years. Furthermore, the *Report and Order* was issued approximately three and a half years ago, and since then we have seen even more technological and marketplace changes that may be pertinent to our consideration of broadcasters' public disclosure obligations. In light of these considerations, we conclude that the best course of action is to take a fresh look at the policy issues raised in this proceeding.

8. We further conclude that we should vacate the *Report and Order*. The rules adopted in that order cannot take effect without OMB approval of the information collection under the Paperwork Reduction Act, and we see no reason to undertake that process given our decision to take a fresh look at the issues. Accordingly, vacating the *Report and Order* will have no practical effect on any party.

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[23] Several broadcast petitioners argued that the online public file requirement as adopted was burdensome and duplicative of material already available on the Commission's website. *See generally* Broadcasting Licenses Limited Partnership Petition for Reconsideration, Joint Broadcasters Petition for Reconsideration, and Named State Broadcasters Petition for Reconsideration. With respect to the standardized disclosure form, several broadcast petitioners argued that the standardized form as adopted was vague, overly complex and burdensome. *See generally* APTS & PBS Petition; Broadcasting Licenses Limited Partnership Petition for Reconsideration; Joint Broadcasters Petition for Reconsideration; Joint Public Television Licensees Petition for Reconsideration; Named State Broadcasters Association Reply; National Association of Broadcasters Reply; Northern California Public Broadcasting Petition for Reconsideration. Public interest advocates generally supported the form, but also filed a petition for reconsideration seeking some revisions. *See generally* CLC *et al.* Petition for Reconsideration. More recently, these public interest advocates have proposed a new form that substantially streamlines and revises the form as adopted. Letter from Angela Campbell and Andrew Schwartzman, counsel for the Public Interest, Public Airwaves Coalition, to Julius Genachowski, Chairman of the FCC (Aug. 4, 2011)("PIPAC *ex parte*"). Due to the multiple and varied objections to the form as adopted, the lack of support generally for the form as originally adopted, and our concerns about the form's complexity and the burden associated with compliance, we determine that the best course of action is to vacate the form as adopted and promptly issue a Notice of Inquiry to seek comment on the newly proposed form, and seek alternatives.

Moreover, the record compiled thus far in this proceeding will continue to be available to any party going forward, and it will also be incorporated into the new docket we will create to focus on the standardized form. In these circumstances, we see no benefit to keeping the *Report and Order* in place, and by vacating that decision, we remove any procedural or regulatory uncertainty that might otherwise arise if we failed to take action to respond to the reconsideration petitions that have been filed while moving forward to reevaluate the issues.[24] Although the 2007 rules never became effective, they appear in the Code of Federal Regulations ("CFR"), while the pre-existing public file rules, which remain in effect, were removed from the CFR. For purposes of clarification, these pre-existing public file rules are being added back to the CFR, as reflected in Appendix D. We believe that it is important to re-codify the existing rules, so that the CFR reflects the rules in existence at this time, and so that the public and stations can clearly find the public file and station identification requirements.[25]

9. For the foregoing reasons, we grant the petitions for reconsideration that were filed, as listed in Appendix A, to the extent our vacatur of the *Report and Order* grants the relief requested by the petitions. In all other respects, the reconsideration petitions are dismissed as moot. To the extent that the arguments made in the petitions are relevant to our current proposals, and can inform the new *FNPRM,* we discuss them below.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

10. In this *FNPRM,* we seek input on how to create a modernized online public file requirement that increases public accessibility while taking into account and reducing where possible the burdens placed on broadcasters. First, we propose to largely replace the paper public file requirement with an online public file to be hosted by the Commission. We then seek comment on ways to streamline the information required to be kept in the file, and whether new items, such as sponsorship identifications[26] and shared services agreements,[27] should be disclosed online. We also seek comment on what steps we can implement in the future to make the online public file standardized and database compatible.

A. Placing the Public File Online

11. The Commission first adopted a public inspection file rule more than 40 years ago.[28] The public file requirement grew out of Congress' 1960 amendment of Sections 309 and 311 of the Communications Act of 1934 (the "Act").[29] Finding that Congress, in enacting these provisions, was guarding "the right of the general public to be informed, not merely the rights of those who have special

[24] The Commission has inherent authority to revisit its policy determinations at any time, and when it does so, it "need not demonstrate to a court's satisfaction that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates." *FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800, 1811 (2009). For these reasons, we do not believe that the *Report and Order* in any way binds or constrains our ability to reexamine our policies based upon an updated record. In the same vein, our decision to vacate the *Report and Order* should not be interpreted as an affirmative rejection of the rules or policies contained therein. Thus, our decision to take a fresh look does not preclude us from deciding that certain aspects of the *Report and Order* were correctly decided and should be re-adopted.

[25] *See* Appendix D, reflecting re-codification of 47 C.F.R. §§ 73.1201, 73.3526 and 73.2527.

[26] *See* ¶¶ 33-34, *infra.*

[27] *See* ¶ 35, *infra.*

[28] *Report and Order in Docket No. 14864*, 4 R.R.2d 1664 (1965); *recon. granted in part and denied in part* 6 R.R.2d 1527 (1965).

[29] 47 U.S.C. §§ 309 and 311.

interests,"[30] the Commission adopted the public inspection file requirement to "make information to which the public already has a right more readily available, so that the public will be encouraged to play a more active part in dialogue with broadcast licensees."[31]

12. A station's public file is currently composed of both items that have to be filed with the Commission and items that are only available in the public file at the station. The items that have to be filed with the Commission or are otherwise available on the Commission's website, and their retention periods, are:

- FCC Authorizations (as required by 73.3526(e)(1), 73.3527(e)(1)) (retain until replaced);
- Applications and related materials (as required by 73.3526(e)(2), 73.3527(e)(2)) (retain until final action taken on the application);[32]
- Contour Maps (as required by 73.3526(e)(4), 73.3527(e)(3)) (retain as long as they reflect current, accurate information regarding the station);
- Ownership reports and related materials (as required by 73.3526(e)(5), 73.3527(e)(4)) (retain until a new, complete ownership report is filed with the FCC);[33]
- Portions of the Equal Employment Opportunity file (as required by 73.3526(e)(7), 73.3527(e)(6)) (retain until final action taken on the station's next license renewal application);
- The Public and Broadcasting manual (as required by 73.3526(e)(8), 73.3527(e)(7)) (retain most recent version indefinitely);
- Children's television programming reports (Form 398) (as required by 73.3526(e)(11)(iii)) (retain until final action taken on the station's next license renewal application);
- DTV transition education reports (Form 388) (as required by 73.3526(e)(11)(iv), 73.3527(e)(13)) (retain one year after last filed).[34]

The following items are only available at the station:

- Citizen agreements (as required by 73.3526(e)(3)) (retain for term of agreement);
- Political file (as required by 73.3526(e)(6), 73.3527(e)(5)) (retain for two years);
- Portions of the Equal Employment Opportunity file (as required by 73.3526(e)(7), 73.3527(e)(6)) (retain until final action taken on the station's next license

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

[31] *Id.* at 1667.

[32] Applications for a new construction permit granted pursuant to a waiver showing and applications for assignment or transfer of license granted pursuant to a waiver showing must be retained for as long as the waiver is in effect. In addition, license renewal applications granted on a short-term basis must be retained until final action has been taken on the license renewal application filed immediately following the shortened license term. *See* 73.3526((e)(2), 73.3527(e)(2).

[33] *See also* 47 C.F.R. § 73.3613 (specifying the contracts, instruments and documents required to be filed with the FCC).

[34] Stations only need to retain these quarterly reports in their files for one year, and they must only be included through the quarter in which the station concludes its DTV transition education campaign. *See* 73.3526(e)(11)(iv), 73.3527(e)(13). While almost all full-power television stations successfully transitioned to digital technology in 2009 and no longer need to retain these files, a few of these stations are not yet operating at full power and continue to be required to include Form 388 in their file.

renewal application);

- Letters and e-mails from the public (as required by 73.3526(e)(9)) (retain three years from receipt);
- Material relating to FCC investigations and complaints (as required by 73.3526(e)(10), 73.3527(e)(11)) (retain until notified in writing that the material may be discarded);
- Issues/Programs lists (as required by 73.3526(e)(11)(i), 73.3527(e)(8)) (retain until notified in writing that the material may be discarded);
- Donor lists for non-commercial educational channels ("NCEs") (as required by 73.3527(e)(9)) (retain for two years from the date of the broadcast of the specific program reported);
- Records concerning children's programming commercial limits (as required by 73.3526(e)(11)(ii)) (retain until final action taken on the station's next license renewal application);
- Local public notice certifications and announcements (as required by 73.3526(e)(13), 73.3527(e)(10)) (retain for as long as the application to which it refers);[35]
- Time brokerage agreements (as required by 73.3526(e)(14)) (retain for as long as contract or agreement in force);
- Must-carry or retransmission consent elections (for commercial stations) or must-carry requests (noncommercial stations) (as required by 73.3526(e)(15), 73.3527(e)(12)) (retain for duration of election or request period);
- Joint sales agreements (as required by 73.3526(e)(16)) (retain for as long as contract or agreement in force);
- Class A TV continuing eligibility documentation (as required by 73.3526(e)(17)) (retain indefinitely);
- A list of chief executive officers or members of the executive committee of an entity sponsoring or furnishing broadcast material concerning political matter or matter involving the discussion of controversial issues of public importance (as required by 73.1212(e))[36] (retain for two years).

13. In the *Report and Order* the Commission required television stations that have Internet websites to place their public inspection files on their stations' websites and to make these files available to the public without charge.[37] As an alternative, the Commission determined that stations could place their public inspection files on their state broadcasters association's ("SBA") website, where permitted by the SBA to do so.[38] Several petitioners opposed this requirement, finding it costly and overly burdensome.[39]

14. We continue to believe that making all station public files available online is beneficial to the public, and necessary to provide meaningful access to the information in the 21st century. The evolution of the Internet and the spread of Internet access has made it easier to post material online, made it easier for consumers to read material online, and increased the public policy efficacy of disclosure

[35] *See also* 47 C.F.R. § 73.3580(h) (directing placement of certifications and announcements into the public file).

[36] This rule allows for the required list to be retained instead at the network headquarters where the broadcast is originated by the network.

[37] *Report and Order* at ¶17.

[38] *Report and Order* at ¶18.

[39] [illegible]

requirements. As the Commission noted in the *Report and Order,* by making the file available through the Internet, we hope to facilitate access to the file information and foster increased public participation in the licensing process.[40] The information provided in the public file is beneficial to consumers who wish to weigh in on a station's license renewal. We note that the Commission rarely denies license renewal applications due to the licensee's failure to meet its public interest programming obligation.[41] Easy access to public file information will also assist the Commission, Congress, and researchers as they fashion public policy recommendations relating to broadcasting and other media issues. Therefore, we tentatively conclude that television broadcasters should be required to make most of the required documents in their public inspection files available online, in lieu of maintaining all of the documents in paper files or electronic format available at their main studios. Currently, the public has access to public inspection files only by visiting the main studio – which may not be convenient -- during regular business hours. Making the information available online will provide 24-hour access from any location, without requiring a visit to the station, thereby greatly increasing public access to information on actions a station has taken to meet its public interest obligation. The Internet is an effective and cost-efficient method of maintaining contact with, and distributing information to, broadcast viewers. We understand the concerns that broadcasters have presented regarding the costs necessary to create and host an online public file.[42] We believe that technological advances in the intervening years since this requirement was contemplated, along with changes to the proposed requirements that are discussed below, in particular the Commission's proposal to expend its resources and assume the burden of hosting of the public files, will mitigate broadcasters' concerns. Given the wide-spread availability of internet access and our goal of limiting costs for broadcasters, we also believe that continuing to require a complete paper public file is largely unnecessary and that the costs of such a duplicative requirement cannot be justified.

1. Commission Hosting of Online Public File.

15. Several participants in this proceeding have expressed concern about the costs required for broadcasters to create and host their own online public file. A few reconsideration petitioners suggested that the Commission should instead host the public file on its website, arguing that such a solution would be less burdensome to licensees, and would also be more efficient, since many public file items are already filed with the Commission.[43] For instance, the Named State Broadcasters Association argued in its petition for reconsideration that the costs of hosting online public files should be borne by the Commission instead of individual stations, estimating that this will save broadcasters over $24 million in first-year costs, and almost $14 million in annual costs thereafter.[44]

16. We tentatively agree that the paper public file requirement should be largely eliminated, and replaced with an online public file requirement hosted on the Commission's website.[45] We believe it

[40] *Report and Order* at ¶12.

[41] As noted in the *INC Report,* "Licenses are routinely renewed . . . . Over the FCC's 75-year existence, it has renewed more than 100,000 licenses. It has denied only four renewal applications due to the licensee's failure to meet its public interest programming obligation. No license renewals have been denied on those grounds in past 30 years." *INC Report* at 25.

[42] *See generally* Named State Broadcasters Assn. Petition; Joint Broadcasters Petition.

[43] Named State Broadcasters Assn. Petition at 8; Association of Public TV Stations and PBS Reply at 8.

[44] Named State Broadcasters Assn. Petition at 8, citing estimates from one "experienced and well-respected vendor." We note that since these comments were filed in 2008, those estimates are likely now outdated.

[45] While we refer to the paper file throughout this document, we note that in lieu of paper files, stations may currently make their public inspection file available electronically at the station. *See* 47 C.F.R. § 73.3526(b), 73.3527(b).

will be more efficient for the public and less burdensome for broadcasters to have all or most of their public files available in a centralized location. Pursuant to this approach, a member of the public could enter a station's call sign and access an electronic version of the public file, making the Commission's website a one-stop shop for information about broadcast television stations. This would be easier for the public than searching for individual stations' websites, which would have been required under the *Report and Order*. Because more than a third of the required contents of the public file have to be filed with the Commission in our Consolidated DataBase System ("CDBS") under current rules, we propose that we will import and update any information that must already be filed with the Commission electronically in CDBS to each station's public file, which will be part of a database of all television station public files on the Commission's website.[46] This will create efficiencies for broadcasters and centralize information for the public. Under this mechanism, broadcasters would be responsible for uploading only those items not otherwise filed with the Commission or available on the Commission's website.[47] We seek comment on this proposal.

17. We believe that requiring broadcasters to upload the required items to their online public files housed on the Commission website will not be unduly burdensome. With the exception of those categories discussed below, stations will be required to upload only those types of documents currently maintained in their public files and ensure that the online file contains all required information. Thus, for example, if a station does not have time brokerage agreements,[48] joint sales agreements,[49] or citizen agreements,[50] there would be nothing in these categories for the station to upload, and the station would merely have to indicate that the category was not applicable. Stations that do have such agreements must only update them when the agreements change,[51] or remove them when the agreements expire. Stations will also be expected to maintain their online public files actively, making sure they contain information as required by the public file rules and removing of items that are no longer required to be retained under our

[46] A successful upload of a station's public file on the Commission's website would not be considered agency approval of the material contained in the filing. As with paper public files, the Commission staff would not review the material placed in each station's online public file for purposes of determining compliance with Commission rules on a routine basis. Thus, the purpose of online hosting would simply be to provide the public with ready access to the material.

[47] We expect that in order to upload information into its online public file, stations will need to log in, likely with their FCC Registration Numbers.

[48] A time brokerage agreement is a type of contract that generally involves a station's sale of blocks of airtime to a third-party broker, who then supplies the programming to fill that time and sells the commercial spot announcements to support the programming. Commercial radio and television stations must keep in their public files a copy of every agreement involving: time brokerage of that station, or any other station owned by the same licensee. These agreements must be maintained in the file for as long as they are in force. *See* "The Public and Broadcasting," *available at* http://transition.fcc.gov/mb/audio/decdoc/public_and_broadcasting.html#_Toc202587580.

[49] A joint sales agreement is a type of contract that involves a station's sale of advertising time with that of another station, whether the agreement involves a station in the same market or different markets. Commercial stations must keep these agreements in the public file for as long as they are in effect. *See* 47 C.F.R. § 73.3526(e)(16).

[50] A citizen agreement is any written agreement that licensees make with local viewers or listeners, that addresses programming, employment, or other issues of community concern. The station must keep these agreements in the public file for as long as they are in effect. *See* "The Public and Broadcasting," *available at* http://transition.fcc.gov/mb/audio/decdoc/public_and_broadcasting.html#_Toc202587580.

[51] *See also* 47 C.F.R. § 1.65 (making applicants responsible for the continuing accuracy and completeness of information furnished in a pending application.)

rules.[52] Broadcasters have raised concerns about inclusion of some of the items listed above, such as the political file and letters and emails from the public. We seek comment on specific issues related to those items below.

18. We also propose that stations will need to retain electronic copies for back-up purposes of all of the public file items to prepare for the unlikely event that the Commission's online public file database were to become unavailable or disabled. We do not believe that these electronic copies should be made generally available as an alternative to the Commission-hosted online public file. Therefore, we propose that such electronic copies need only be available to the Commission, and not the public, unless the online public file becomes unavailable or disabled for any reason, in which case stations must make their copies available to the general public in whatever format they choose. Should copies of any items in the public file be more readily available? For instance, due to the short seven-day deadline to request equal opportunity appearances, and the importance of candidates having prompt access to the political file, particularly in the days leading up to an election, should additional steps be taken to ensure that access to the political file is maintained? Should we require that stations make the back-up political file information available to candidates, their representatives, and the public at their stations, in whatever format they prefer, at least in the short term as we gain experience with the files being hosted by the FCC? We note that whatever requirement we ultimately adopt, stations can continue to make the public file available locally if they choose to do so. We believe that once all public file documents are available electronically, it will not be burdensome to keep electronic copies at the station. We also consider it likely that broadcasters would retain electronic copies of such documents in the ordinary course of business. We seek comment on this proposal, including estimates of any burden imposed by this requirement. We also seek comment on how long such copies should be maintained. Should copies be retained for the same length of time that each item must be retained under our existing rules?

19. Two petitioners on reconsideration suggested that broadcasters should be permitted to limit online public file access to viewers within a station's geographic coverage area.[53] We see no reason to limit online access to the public file, and seek comment on this tentative conclusion. As we noted in the *Report and Order,* we believe it entirely consistent with Congressional intent in adopting Section 309 of the Act to embrace a public file requirement that enhances the ability of both those within *and* those beyond a station's service area to participate in the licensing process.[54] Additionally, allowing access to people within and outside the station's service area creates no additional burden; indeed, limiting it to local residents would require taking additional steps to screen those seeking access to a particular file. In addition, limiting access to those in a geographic area would prevent local residents from accessing the information while they are temporarily outside the region.

20. *Transition.* A reconsideration petitioner proposed reducing the burden on licensees by limiting the online public file to material generated after any new rules become effective, thereby grandfathering all prior paper filings.[55] We do not agree with this proposal. Pursuant to this approach, only items created after the adoption of the online public file requirement would be required to be uploaded, not items currently in the paper files. As previously stated, we believe that the one-time electronic scanning and uploading of existing documents, both from the current licensee and any prior

[52] The Commission will also need to create a disposition schedule for retaining documents with the National Archives and Records Administration.

[53] *See* Joint Broadcasters Petition at 11-13; NAB Opposition at 8. Petitioners did not propose, nor do we have, a workable mechanism for enacting and enforcing such a proposal.

[54] *See Report and Order* at ¶13.

[55] Joint Broadcasters at 3-6; NAB Opposition at 7.

licensee,[56] would not be unduly burdensome and that adopting a grandfathering approach would be confusing to those seeking access to the information.[57] Those viewing an online public file might remain unaware of the existence of documents in the paper public file. Moreover, such an approach would necessitate the continued maintenance of a robust paper file, diminishing the benefits of the online file in terms of improved public access to information. We seek comment on this view.

21. *Accessibility.* In the *Report and Order,* the Commission determined that television licensees must make their website public files accessible to people with disabilities.[58] Many Petitioners asked for clarification of this requirement.[59] The *INC Report* noted that the recently passed Twenty-First Century Communications and Video Accessibility Act will help ensure that people with disabilities will have access to new media.[60] The Public Interest Public Airwaves Coalition ("PIPAC") has requested that the Commission require broadcasters to ensure that the portions of their websites that host the public file are accessible to people with disabilities.[61] Because the Commission is proposing to host all online public files, we do not believe that such a requirement will be necessary for these purposes.[62] We intend to ensure that the online public files, like the rest of the Commission's website, are accessible to people with disabilities. Under Section 508 of the Rehabilitation Act, federal agencies must ensure that members of the public who are disabled and who are seeking information or services from a Federal agency "have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities."[63] The Commission's website complies with this law. We invite comment on this matter.

2. Application of Online Posting Rule to Specific Public File Components.

22. *Political File.* In the *Report and Order,* the Commission excluded the political file from the website posting requirement, determining that the burden of placing a station's political file online outweighed the benefit of posting this information, which is most heavily used by candidates and their representatives.[64] In a petition for reconsideration of the *Report and Order*, CLC *et al.* asked the

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[56] *See* 47 C.F.R. § 73.3527(d) (noting that when a transfer occurs, stations are required to retain public file documents that were created by the prior licensee for the requisite retention period.)

[57] We recognize that an implementation plan needs to be developed to enable all television stations to post their public file documents in an orderly manner, possibly with rolling implementation dates. The Bureau, on delegated authority, will develop an implementation schedule and provide any necessary guidance regarding implementation issues at the appropriate time.

[58] *Report and Order* at ¶ 27.

[59] *See* Assoc of Public Television Stations and PBS at 2, 22; BLLP Petition at 22; Joint Broadcasters at 8-11; NAB Opposition at 6-7; Public Television Licensees at 7.

[60] *INC Report* at 359.

[61] PIPAC *ex parte* at 5.

[62] While we do not address any website accessibility requirements at this time, we encourage broadcasters to provide the information currently available on their website in an accessible manner, as well as provide information about accessible programming, such as that with video description, as part of their efforts to meet the public interest obligation. Station websites can be a primary source of information for consumers and providing information, particularly about accessible programming, in an accessible manner would be beneficial to viewers.

[63] *See* 29 U.S.C. § 794d(1)(A)(ii).

[64] *Report and Order* at ¶¶ 19-20. The Commission determined that the frequent requests for access by campaigns and the need for stations to update the file frequently during an election season made an online requirement inappropriate. The Commission also reasoned that political campaigns generally have greater resources than

Commission to reconsider the exclusion, contending that the decision focused exclusively on the interests of the candidates and broadcasters and not the public, researchers, and public interest organizations that also need to access the files.[65] In response, NAB argued that the Commission correctly determined to exempt stations' political files from the website posting requirement, as this approach is consistent with the Commission's prior exemption of political files from the requirement that stations make copies of documents in the public file available to persons that call the station.[66] More recently, the Public Interest, Public Airwaves Coalition ("PIPAC") has argued that placing political file information online will reduce the burden on broadcasters, who often receive multiple daily in-person requests to access this information during an election season.[67]

23. We propose that the political file should not be exempted from the online public file requirement. We agree with CLC *et al.* that the public is entitled to ready access to these important files. Since exempting the political file in 2007, we have learned that the vast majority of television stations handle political advertising transactions electronically, through e-mails and a variety of software applications. As a result, requiring them to make this information publicly available online appears to impose far less of a burden than previously thought.[68] We emphasize, however, that the online political file would serve as a source of information to candidates, buyers, viewers, and others, but that the actual purchase of advertising time and the receipt of equal time requests would continue to be handled by the station. We seek comment on these proposals and the relative burdens and benefits that broadcasters would face under this requirement. We also seek comment about the logistics of making this file available online. Our rules currently require that records should be placed in the political file "as soon as possible" and "as soon as possible means immediately absent unusual circumstances."[69] We tentatively conclude that stations should similarly be required to upload the same records to their online political file "immediately absent unusual circumstances." Immediacy is necessary with respect to the political file because a candidate has only seven days from the date of his opponent's appearance to request equal opportunities for that appearance.[70] We also seek comment on methods and procedures that can be implemented to enable the near real-time upload of political file documents during periods of heightened activity. Can the Commission assist in making tools available to enable such immediate uploads and make such immediate filing as non-burdensome as possible?

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individual viewers and, therefore, visiting stations would tend to be less burdensome for campaigns organizations. *Id.* at ¶ 20.

[65] CLC *et al.* at 3.

[66] NAB Opposition at 2. The telephone accommodation exemption provides that a station does not have to provide information about the political file over the phone to anyone who calls requesting such information, and can instead require individuals to come to the station to review the political file in person. 47 C.F.R. § 73.3526(c)(2)(i).

[67] Letter from Angela Campbell and Andrew Schwartzman, counsel for the Public Interest, Public Airwaves Coalition, to Julius Genachowski, Chairman of the FCC at 5 (Aug. 4, 2011)("PIPAC *ex parte*").

[68] In addition, as noted above, our rules do not require stations to accommodate political file requests over the phone, because such a requirement could disrupt station operations. 47 C.F.R. § 3526(c)(2)(i). Requiring stations to place the public files online would presumably have the opposite effect, reducing, rather than expanding, disruptions to operations at the station as station personnel would no longer have to process requests for access to this information in person, as they are currently required to do. Instead of accommodating each candidate or their campaign representatives personally on a frequent basis, an online requirement would allow a station to upload the most up-to-date information periodically for all interested parties.

[69] *See* 47 C.F.R. § 73.1943(c).

[70] *See* 47 C.F.R. § 73.1941(c).

24. Finally, we note that the public file rule requires licensees to keep "a complete and orderly" political file.[71] Accordingly, we would expect licensees to upload any political file information to the online file in an organized manner so that the political file does not become difficult to navigate due to the sheer number of filings. For an online political file to be useful, candidates and members of the public must be able to easily find information that they seek. Should the Commission create federal, state, and local subfolders for each station's political file? Should we allow stations to create additional subfolders within the political file? For instance, should stations be able to create subdivisions within federal, state and local races, to reflect individual political races? We seek comment on any other methods of organization that would make the information more easily accessible, and also lessen the number of questions that broadcasters would have to field about the contents and organization of the political file.

25. *Letters from the Public.* A station must currently retain in its paper public file all letters and e-mails from the public regarding operation of the station unless the letter writer has requested that the letter not be made public or the licensee feels that it should be excluded due to the nature of its content, such as a defamatory or obscene letter.[72] In the 2007 *Report and Order* the Commission determined that stations would not be required to post letters from the public on their online public files, due to the burden and cost.[73] The Commission did, however, require that public comments sent by e-mail to the station be placed in the station's online public file, as the costs of posting correspondence already in electronic form would be less burdensome on the station than uploading paper comments to electronic form.[74] Several reconsideration petitioners asked that we also exempt e-mail from the posting requirement, arguing that requiring their inclusion raises privacy concerns.[75] They asserted that posting e-mails from children online may result in violations of the Children's Online Privacy Protection Act, which prohibits posting children's personally identifiable information online.[76] These petitioners also argued that the Commission oversimplified the costs of such a requirement, since station personnel would need to review and redact all emails to strip them of personally identifiable information before posting them.[77] The public interest community responded that privacy concerns could be ameliorated through the use of warnings to posters that their submissions would become part of the public file, and that an online form could be used that conceals personal information.[78] More recently, PIPAC recommended that the Commission eliminate letters and e-mail from the online public file requirement.[79] They suggest that in order to alert members of the public to letters and emails, stations should instead be required to disclose the total number of letters available at the station and provide a notice that these materials are available for public viewing at the main studio consistent with existing paper public file rules.

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[71] *See* 47 C.F.R. § 73.1943(a).

[72] *See* 47 C.F.R. § 73.3526(e)(9).

[73] *Report and Order* ¶ 25. Stations were still required to retain such letters in the "hard copy" public inspection files, pursuant to 47 C.F.R. § 73.3526(e)(9).

[74] *Id.*

[75] Broadcasting Licenses Limited Partnership *et al.* at 21; Joint Broadcasters at 7; Named State Broadcasters Assn. at 10; NAB at 5.

[76] Joint Petitioners at 8; Named State Broadcasters Assn. at 11; NAB at 5. *See also* Children's Online Privacy Protection Act, 15 U.S.C. § 6501 *et seq.*

[77] Broadcasting Licenses Limited Partnership *et al.* at 21.

[78] CLC *et al.* Reply at 6.

[79] PIPAC *ex parte* at 6.

26. We propose that letters and e-mails from the public should not be required to be placed online. We agree that the privacy and burden concerns discussed above are significant enough to merit their exclusion. Letters and emails from the public that are currently included in the public file, like the rest of the file's contents, are already publicly available. We recognize that making this information available online would make it much more readily accessible to the public, but such increased accessibility may not be expected by viewers who communicate with their stations and may actually make some viewers less inclined to write to their stations. We seek comment on whether the concerns discussed above justify our proposal to exempt such communications from the online disclosure requirement. Alternatively, should we allow or require stations to redact personally identifiable information before posting online? While we propose that the online public file should largely replace the paper public file, we seek comment on PIPAC's proposal to require broadcasters to continue to retain copies of such letters at the station for public viewing in a paper file or an electronic database at their main studios. We envision that such a requirement would be limited to correspondence, and would not require any other public file information be publicly available at the station. Would such a correspondence file requirement be limited enough in scope to justify any additional burdens? We also seek comment on PIPAC's proposal to require stations to report quarterly on how many letters they have received. What would be the benefits of requiring stations to count and report how many letters they have received? What would be the burdens of such a requirement? Should we consider requiring a brief description of the letter(s) received? We seek comment on these and any other suggestions or proposals that would make letters and e-mails from the public more easily accessible while at the same time addressing privacy concerns. We also seek comment on whether stations should have to retain comments left by the public on social media pages, like Facebook. Should those be considered "written comments and suggestions received from the public regarding operation of the station"? We tentatively conclude that such information should not be required to be maintained in the correspondence file. We seek comment on this tentative conclusion. We also seek comment on whether any other contents of the public file raise similar privacy concerns, such as donor lists that NCEs must include in the public file, as required by §73.3527(e)(9).

27. *Contour maps.* Maps showing stations' service contours are available on the Commission's website, and are derived from information provided by stations in the CDBS.[80] Stations are also required to include contour maps in their public files; unlike the ones available on the Commission's website, these include the station's service contours and/or main studio and transmitter location. In their petition for reconsideration of the *Report and Order*, the Joint Broadcasters asked whether the availability of contour maps on the Commission's website is sufficient.[81] We believe that the contour maps available on the Commission's website are sufficient as they provide necessary information regarding a station's service contours, and seek comment on this issue. We discuss requiring information about a station's main studio in section 3 below.

28. *The Public and Broadcasting manual.* We propose to eliminate the requirement that stations make available "The Public and Broadcasting" manual in their public files. "The Public and Broadcasting" is a consumer manual that provides an overview of the Commission's regulation of broadcast radio and television licensees.[82] This manual is already available on the Commission's website.[83] As we look to centralize all public inspection files, we no longer believe it will be necessary for every station's electronic public file to contain this manual, nor will stations need to keep a copy at the

[80] More information on contour maps is available at http://transition.fcc.gov/mb/audio/includes/78-mapinfo.htm.

[81] *See* Joint Broadcasters Petition at 6.

[82] 47 C.F.R. §§ 73.3526(e)(8), 73.3527(e)(7).

[83] *Available at* http://transition.fcc.gov/mb/audio/decdoc/public_and_broadcasting.html.

station. Instead, we propose to make "The Public and Broadcasting" prominently available within the public file portion of the Commission's website once it is created. We seek comment on this proposal.

29. *Issues/programs lists.* All broadcasters must currently include in their public files issues/programs lists covering the current license term, which are a lists of programs that have provided the stations' most significant treatment of community issues during the preceding quarter.[84] In the 2007 *Report and Order,* we noted the deficiencies of the issues/programs lists, and replaced the requirement with a standardized disclosure form, subject to final OMB approval, as discussed above.[85] As noted above, we have vacated the 2007 Report and Order.[86] Although the issues/programs list required under the current rules provides some information to the public and establishes a record of some of a station's community-oriented programming, we continue to believe that it suffers from several drawbacks and intend to promptly a Notice of Inquiry to seek further input on a new standardized form. We propose that broadcasters should be required to post to their online public file, on a quarterly basis, their issues/programs lists required under current rules, until the Commission replaces the issues/programs list with a new standardized form, which we seek to address in an expedited fashion. We seek comment on this proposal.

30. *FCC investigations and complaints.* Stations are required to maintain in their public file material relating to a Commission investigation or complaint.[87] A petition for reconsideration of the *Report and Order* suggested excluding from a station's online public file any material that is the subject of an indecency investigation or complaint.[88] The petitioner argued that posting materials related to an indecency investigation online would be inappropriate, since it is "inconsistent with the purpose of the Commission's indecency regime, which is to protect children."[89] They argued that because children have easy access to an online public file, but not to a station's paper public file, any material related to indecency investigations should be available in a station's paper public file only.[90] We think it is important that material relating to indecency investigations not be excluded from the online public file, given its relevance to the renewal process. We do not believe that making this information available in the public file portion of the website will increase the risk to children, since the Commission already posts materials related to indecency investigations on its website. We seek comment on this proposal. We also seek comment on whether the FCC should post published sanctions, including forfeiture orders, notices of violation, notices of apparent liability, and citations, in a station's online public file. If so, should licensees be required to upload their responses, if any, to these FCC actions? We believe that this is the sort of information that the public would want to find in reviewing a licensee's public file, and is a natural extension of the requirement to retain FCC correspondence. We note that parties could seek confidential treatment of particular information in the filings, if necessary.

3. Potential Items to be Added to the Online Public File Requirement.

31. The *INC Report* noted the importance of making online disclosure a pillar of media policy and the public's need to have a more granular understanding of how broadcasters use their stations and

[84] 47 C.F.R. §§ 73.3526(e)(11)(i), 73.3527(e)(8).

[85] *See* ¶ 3, *supra*.

[86] *Id.*

[87] 47 C.F.R. §§ 73.3526(e)(10); 73.3527(e)(11).

[88] Joint Broadcasters at 5.

[89] *Id.*

[90] *Id.* at 5-6.

serve the public.[91] Given that we seek to modernize public disclosure requirements, we also seek comment on adding main studio information, sponsorship identification information, and any sharing agreements to a station's online public file. While we seek to avoid unduly burdening broadcasters, we do not believe that this modest expansion of the public file will be burdensome and we believe that this information will be useful to the public.

32. *Main Studio Information.* As discussed above, stations are currently required to include contour maps in their public files, which must include the station's service contours and/or main studio and transmitter location.[92] The contour maps available on the Commission's website, which we propose today to fulfill the online public file requirement, does not include main station information. Further, the Commission does not require the reporting of a station's main studio. We believe this information will help members of the public to engage in an active dialogue with broadcast licensees regarding its service, which is one of the goals of this proceeding, and will also assist in the identification of broadcasters that are engaging in shared services arrangements. We therefore propose that in the Commission-maintained online public file, the station's main studio address and telephone number be displayed. For stations with a main studio waiver, we propose that the location of the local file and the required toll free number should be listed. We seek comment on this proposal, as well as whether we should require the posting of an e-mail address that will serve as a station contact for the public file.

33. *Sponsorship Identifications.* Section 317 of the Communications Act requires that broadcasters disclose to their listeners or viewers if a matter has been aired in exchange for money, services, or other valuable consideration.[93] The Commission's sponsorship identification rules currently require that stations provide an on-air disclosure when content is paid for, furnished, or sponsored by an outside party.[94] The *INC Report* discussed examples of "pay-for-play" arrangements at local TV stations, where "advertisers have been allowed to dictate, shape or sculpt news or editorial content."[95] The *INC Report* expressed concern that this practice could have negative implications for the community's trust in local TV.[96] The *INC Report* recommended that the Commission require that the on-air disclosures for such "pay-for-play" arrangements, which are already required to be disclosed on-air, be available online, perhaps as part of the public file, in order to create a permanent, searchable record of which stations use these arrangements and to afford easy access by consumers and watchdog groups to this information.[97] PIPAC has recently recommended that, when a broadcaster airs news or information programming that would require an on-air disclosure of a sponsor under the FCC sponsorship identification rules, the licensee should also post that information in its online public file.[98]

34. With the exception of sponsored political advertising and certain issue advertising, the Commission only requires that the sponsorship identification announcement occur once during the

[91] *INC Report* at 28, 349.

[92] 47 C.F.R. §§ 73.3526(e)(4); 73.3527(e)(3).

[93] *See* 47 U.S.C. § 317.

[94] *See* 47 C.F.R. § 73.1212.

[95] *INC Report* at 349.

[96] *Id.*

[97] *INC Report* at 349.

[98] PIPAC *ex parte* at 5.

programming and remain on the screen long enough to be read or heard by an average viewer.[99] Section 317 requires stations to announce sponsorship information during the programming, and the implementing rule has long had an additional public file recordkeeping component for political and controversial issue announcements.[100] The Commission has explained that such recordkeeping furthers the rule's underlying purpose.[101] Given the fleeting nature of all disclosures, we believe it would also be useful to include such on-air disclosures in television broadcasters' online public file obligations, by requiring stations to list such sponsors in their online public file. Requiring a list of sponsors will create an accessible record of such sponsorships, and will allow interested parties to keep track of the number and extent of such sponsorships. We believe that such a list will further a central principle of the rule, which is that "listeners are entitled to know by whom they are being persuaded."[102] We seek comment on this proposal, and on our authority to impose such a requirement. We also seek input on how burdensome this requirement would be for broadcasters. This information must already be collected and disclosed on the air. What additional burden would be involved in listing the sponsors of such disclosures in the online public file? While the *INC Report* only suggests the online disclosure of sponsorship identification of news programming, we do not propose to limit disclosure to certain types of programming, but to include all sponsorships that require a special on-air disclosure. However, sponsorship identification announcements which are exempted under current rules, such as in situations involving commercial product advertisements where it's clear that the product is a sponsorship, will not need to be included in the online disclosures.[103] We are only proposing to make disclosures currently required by Section 317 and our rules more accessible. We seek comment on this proposal, including how long broadcasters should be required to retain this information.

35. *Sharing Agreements.* PIPAC has recently recommended that sharing agreements among licensees, such as local news sharing and shared services agreements, should be available in the public file.[104] Sharing agreements are contracts between licensees where one licensee provides certain station-related services to another station, including administrative, sales, and/or programming support, in order to obtain certain efficiencies.[105] PIPAC notes that the *INC Report* found that some stations are outsourcing their news production or engaging in other forms of cooperative newsgathering.[106] PIPAC argues that unless such agreements are available online it will be extremely difficult for members of the public, or the Commission, to learn about such agreements, which affect control of the station and

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[99] Political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance longer than five minutes "for which any film, record, transcription, talent, script, or other material or service of any kind is furnished...to a station as inducement for the broadcasting of such matter" requires a sponsorship identification announcement both at the beginning and the conclusion of the broadcast programming containing the announcement. 47 C.F.R. § 73.1212(d).

[100] 47 U.S.C. § 317(a)(1); 47 C.F.R. § 73.1212(e). *See also KGVO Broadcasting Inc.*, 9 FCC Rcd 6396 (1994). Section 315(e) of the Act includes a similar requirement to place a list of executives of a sponsoring entity in the political file for certain political matter. 47 U.S.C. § 315(e)(2)(G). This matter includes, among other things, a national legislative issue of public importance. *See* 47 U.S.C. § 315(e)(1)(B)(iii).

[101] *Amendment of the Commission's 'Sponsorship Identification' Rules*, 52 FCC 2d 701, 711 ¶ 30 (1975).

[102] *See Applicability of Sponsorship Identification Rules*, Public Notice, 40 FCC 141, 141 (1963).

[103] *See* 47 C.F.R. §§ 73.1212(f).

[104] *Id.*

[105] Some sharing agreements can affect at the Commission's attribution rules, which define what interests are counted for purposes of applying the Commission's broadcast ownership rules. *See generally* 47 C.F.R. § 73.3555.

[106] *Id.* at 5, *citing INC Report* at 96-97.

production of local news and other programming. We note that the Commission already requires the disclosure of certain sharing agreements, such as time brokerage and joint sales agreements.[107] We seek comment on whether disclosure of these similar agreements would serve the public interest, and whether stations should be required to disclose such items in their online public file. We seek comment on whether such agreements should be subject to the same redaction allowances that are made available to joint sales agreements and time brokerage agreements.[108] We also seek comments on the burdens of adopting such a requirement.

4. Format.

36. The *INC Report* finds that information "needs to be put out in standardized, machine-readable, structured formats that make it easy for programmers to create new applications that can present the data in more useful formats, or combine one agency's information with another," and that "data releases should include an Application Programming Interface (API) that allows the data to be shared easily with other computers and applications."[109] With respect to broadcasters' public files in particular, the *INC Report* states that "[o]nline disclosure should be done according to the principles advocated by experts on transparency: in standardized, machine readable and structured formats."[110]

37. We agree that some of the information in the public file would be of much greater benefit to the public if made available in a structured or database-friendly format that can be aggregated, manipulated, and more easily analyzed.[111] That is our ultimate goal. We recognize, however, that converting the files to this format will take time and money. We tentatively conclude that we should not delay the benefits of having the public file available online, and therefore propose to not require broadcasters to alter the form of documents already in existence prior to posting them to the online public file at this time. However, we seek comment here on issues we should consider in the implementation of such an advanced database. Would the investment and effort to establish a searchable database yield improvement from simply having the broadcasters post the documents online in their current format? What steps would need to be taken in order to ensure the uploading of searchable documents by the broadcasters could be accomplished in a non-burdensome way? We believe that further consideration of the issue may lead to creation of more useful tools to analyze the information produced in the online public file. We seek comment, however, on whether broadcasters should be required to upload any electronic documents in their existing format to the extent feasible. For example, to the extent that a required filing already exists in a searchable format – such as Microsoft Word ".doc" format or non-copy protect text-searchable "pdf" format for text filings, or "native formats" such as spreadsheets in Microsoft ".xml" format for non-text filings – should broadcasters be expected to upload the filing in that format to the extent technically feasible?[112] We believe that requiring broadcasters to do so could increase usability

[107] *See* 73.3526(e)(14), (e)(16). *See also* 47 C.F.R. §§ 73.3613(b), (c) (requiring stations to disclose agreements when they relate to control of a licenses or involve management consulting or similar agreements).

[108] 47 C.F.R. §§ 73.3526(e)(14), (e)(16).

[109] *Id.* at 207.

[110] *INC Report* at 348.

[111] We note that the Commission is part of the Task Force on Smart Disclosure: Information and Efficiency in Consumer Markets, established by the National Science and Technology Council Committee on Technology, which is investigating best practice approaches to "smart disclosures," which are disclosures to consumers that are accessible and usable, such as in electronic, machine readable formats. *See* http://wiki.citizen.apps.gov/SmartDisclosure/images/5/55/NSTC_Charter_v15-25-11.pdf.

[112] *See* Amendment of the Commission's *Ex Parte* Rules and Other Procedural Rules, GC Docket No. 10-43, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-11, 26 FCC Rcd 4517, 4530-31 (2011).

and facilitate text searches. Should we require that documents created after the effective date of rules adopted in this proceeding be posted in a searchable format? Would such a requirement be unduly burdensome? To the extent documents are filed in a non-searchable format, should the Commission digitize the documents and perform optical character recognition ("OCR")? Given that native and primary electronic formats are more reliable than OCR, we believe that it will be in every station's best interests to provide documents in native and primary electronic formats to the extent feasible.

38. We also seek comment on what metadata should be made available in the online public file. Should users be able to access when each item was uploaded to the file? Should we also make available metadata about who uploaded the item? Are there concerns about metadata disclosures for confidential or privileged information? If so, what steps should the Commission and stations take to manage these concerns?

B. Announcements and Links

39. In the 2007 *Report and Order,* the Commission determined that viewers should be notified of the existence, location, and accessibility of the station's public file, as this would increase viewer awareness and help promote the ongoing dialogue between a station and the viewers it is licensed to serve.[113] Therefore, the Commission required that licensees provide such notice on-air twice daily during the regular station identification announcements required under our rules,[114] with at least one announcement to be aired between 6 p.m. and midnight.[115] Reconsideration petitioners argued that twice daily announcements were excessive.[116] Public television stations argued that television station identifications are very limited in length, and that the *Report and Order* did not provide a reason for changing course from the tentative conclusion made in the *NPRM* that the Commission should not require announcements. They proposed that the Commission reduce this requirement to a few times a week, at most.[117]

40. We continue to believe that viewers should be notified of the existence, location, and accessibility of the station's public file; if most viewers are unaware of the existence of the public file or how to access it, its usefulness will be greatly diminished. We seek comment on how best to achieve this goal. Would requiring on-air announcements a few times a week be sufficient? Should we dictate day part requirements for certain announcements to be sure a large number of viewers are reached? We propose that stations be required to announce the existence, location, and accessibility of the station's public file three times a week as part of the station identification. We also propose that the notice state that the station's public file is available for inspection and that consumers can view it at the Commission's website, and that at least one of the announcements must occur between the hours of 6 p.m. and midnight. We seek comment on these proposals.

41. PIPAC proposes that a link to the online public file appear on a broadcaster's home page, along with contact information for people with disabilities to use if they have concerns.[118] They note that for a person with disabilities already struggling with an inaccessible site, the burden of searching through

[113] *Report and Order* at ¶ 31.

[114] *See* 47 C.F.R. § 73.1201.

[115] *Report and Order* at ¶ 31.

[116] Joint Public Television Petitioners at 18 and NAB at 8.

[117] Joint Public Television Petitioners at 18.

[118] PIPAC *ex parte* at 5.

several pages or levels becomes an insurmountable barrier. We tentatively agree that stations that have websites should be required to place a link to the public file on their home page, not just to assist the disabled community, but to assist all members of the public who are looking for more information about a licensee. We seek comment on PIPAC's proposal that stations also list on their home page contact information for people with disabilities. What types of contact information would be most useful?

C. Radio

42. Given this proceeding's genesis in the DTV transition, the *Report and Order* was limited to television stations.[119] The Commission later sought comment on implementing an online public file requirement for analog and digital radio stations in the *Further Notice of Proposed Rulemaking* in the Digital Audio Broadcasting proceeding.[120]

43. This *FNPRM,* like all other items in this docket, is directed toward television broadcasters. We may consider requiring radio licensees to abide by similar reforms to their public file requirements at a later date. We believe, however, that there are benefits to requiring television licensees to implement enhanced disclosure requirements first. Television stations have been significantly more involved in considering these issues, from the *NOI* in 1999 through the 2007 *Report and Order.*[121] Further, it may ease the initial implementation of a Commission-hosted online public file if we begin the process with the much smaller number of television licensees than with all broadcasters. Finally, we foresee that there may be some radio-specific concerns that we will need to address prior to implementing an online public file requirement on radio stations. We thus tentatively conclude not to include radio licensees in this proceeding.

V. COST/BENEFIT ANALYSIS

44. In proposing rules to ensure that the public has adequate access to information about how broadcasters are serving their communities, we intend to look at the many factors involved in effective enhanced disclosure. This will ensure that the rules serve their intended purpose without posing an undue burden on industry. There are two key criteria for the success of such an approach.

45. First, acknowledging the potential difficulty of quantifying benefits and burdens, we need to determine whether the proposed disclosure rules will significantly benefit the public. Second, we seek to maximize the benefits to the public from our proposed rules while taking into consideration the burden of compliance on broadcasters. These costs and benefits can have many dimensions, including cost implications for industry, public interest benefits to viewers, and other less tangible benefits.

46. To address the first criterion, we seek comment on the best ways to ensure that the forms of disclosure discussed in this *FNPRM* will actually benefit the public. While most of the information to be included in the online public file is largely the same as information already being provided in the paper file, we seek comment on the value and use of the potential items to be added to the online public file, as discussed above. Further, we seek comment on any considerations regarding the manner in which our proposals could be implemented that would increase the number of people who will benefit from such

[119] *See* ¶2 *supra; NPRM* at fn 7.

[120] *See Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service,* Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 10344, 10391 (2007).

[121] *In the Matter of Public Interest Obligations of TV Broadcast Licensees*, Notice of Inquiry, 14 FCC Rcd 21633 (1999).

rules, and the nature of these benefits. In particular, we seek comment on the best ways to ensure that information is more readily accessible to the public. While we believe that the proposed rules will increase its accessibility, by replacing the paper version of the public file with an online version, we seek further suggestions for increasing accessibility.

47. To address the second criterion, we seek comment on the nature and magnitude of the costs and benefits of our new streamlined proposals. We recognize that these may vary by broadcaster, and seek comment on possible differential impacts, including size and type of broadcaster. We seek specific information about whether, how, and by how much broadcasters may be impacted differently in terms of the costs and benefits of our proposed rules. We also seek comment on the most cost-effective approach for modifying existing policies and practices to achieve the goals of this proceeding.

48. To the extent possible, we request comment that will enable us to balance the positive benefits of these proposed disclosure rules with the costs that they may impose on broadcasters. We recognize that costs and benefits will vary depending on the specific documents and format we require broadcasters to submit for inclusion in an online public file to be hosted by the Commission. A rule that documents may be uploaded in any format will likely impose minimal burdens on broadcasters as compared to a requirement that only documents in standardized formats will be accepted, as at least some broadcasters may need to recreate or reformat their documents prior to submission. The benefit the public reaps from access to information about how broadcasters are serving their communities will similarly vary depending on the specific documents and formats we require broadcasters to submit. Information that is submitted in non-standardized formats will be useful to members of the public who are interested in only one or a few television stations. Researchers, however, need access to standardized data that are aggregable and searchable in order for the data to be useful in their analyses of industry performance. We request that commenters provide specific data and information, such as actual or estimated dollar figures for each specific cost or benefit addressed, including a description of how the data or information was calculated or obtained and any supporting documentation or other evidentiary support. All comments will be considered and given appropriate weight. Vague or unsupported assertions regarding costs or benefits generally can be expected to receive less weight and be less persuasive than more specific and supported statements.

A. Online public file

49. While it may be difficult to quantify the benefits of an online public file requirement, we seek comment on ways to do so. Is there a way to quantify the value of improving the quality of information presented to consumers? We also seek comment on the costs, which should be much more quantifiable. We received cost data from the commenters and petitioners in response to the *NPRM* and discussed them in the *Report and Order*.[122] Given the technological advances since these estimates were created, the fact that the Commission is contemplating becoming the host of the online public file requirement, and that we are proposing to modify the required materials to be posted to the file, we seek updated cost estimates. Because most of the items that we are seeking to include in the online public file are already available in an electronic format, and because we are proposing to largely eliminate the paper public file, we believe that the costs of uploading these files to the online public file will be less burdensome than originally anticipated.

50. We seek to weigh the costs of an online public file requirement against the benefits to the public of Internet accessibility of the information. It is beneficial for the community to have Internet

[122] *See, e.g.*, Comments of Benedek Broadcasting *et al* at 3; Comments of State Broadcasters Associations at 21; Reply Comments of STC at 5; Comments of Viacom at 25-26; Comments of NAB at 22.

access to information it may not otherwise be able to obtain. Making information available in the online public file will educate consumers on issues that they might not otherwise know about, absent an ability to visit a station to inspect the public file, and will assist consumers in educating themselves about the licensee and its programming. Making this information readily accessible will also assist the Commission and Congress in formulating public policy about broadcasting and other media issues. As discussed in previous Orders, the Commission has found that each of the items required to be placed in the public file is important, and needs to be accessible to the public.[123] Internet access to such information improves public access and reduces some burdens on broadcasters. As discussed throughout the *FNPRM,* we seek comment on further ways to relieve burdens on broadcasters in creating the online public file requirement. Should we consider creating different requirements for small television broadcasters?

B. Announcements

51. Finally, we seek to quantify the costs and benefits associated with notifying the public of the existence, location, and accessibility of the station's public file. The benefits of such a requirement, increasing viewer awareness and helping promote the ongoing dialogue between a station and the viewers they are licensed to serve, are difficult to quantify, but we seek comment on how to do so. We also seek comment on the projected costs of such announcements. Would requiring three announcements a week be a justifiable burden on broadcasters? Is the amount of the burden affected by the time of day that the announcement is made?

VI. PROCEDURAL MATTERS

A. Regulatory Flexibility Analysis

52. As required by the RFA,[124] the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") relating to this *NPRM*. The IRFA is attached to this *FNPRM* as Appendix C.

B. Paperwork Reduction Act Analysis

53. This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995.[125] In addition, pursuant to the Small Business Paperwork Relief Act of 2002,[126] we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."[127]

C. Ex Parte Rules

54. Permit-But-Disclose. This proceeding will be treated as a "permit-but-disclose"

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[123] *See, e.g., Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files*, Report and Order, 13 FCC Rcd 15691 (1998); *Amendment of Sections 73.1125 and 73.1130 of The Commission's Rules*, Report and Order, 2 FCC Rcd 3215 (1987).

[124] *See* 5 U.S.C. § 603.

[125] Pub. L. No. 104-13.

[126] Pub. L. No. 107-198.

[127] 44 U.S.C. § 3506(c)(4).

proceeding subject to the Commission's *ex parte* rules.[128] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

D. Filing Requirements

55. Comments and Replies. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,[129] interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS").[130]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.
- Paper Filers: Parties who choose to file by paper must file an original and one of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

  Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

[128] 47 C.F.R. §§ 1.1200 *et seq.*

[129] *See id.* §§ 1.415, 1.419.

[130] *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

56. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

57. Accessibility Information. To request information in accessible formats (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

58. Additional Information. For additional information on this proceeding, contact Holly Saurer of the Media Bureau, Policy Division, (202) 418-7283, or via email at holly.saurer@fcc.gov.

VII. ORDERING CLAUSES

59. Accordingly, IT IS ORDERED that pursuant to the Sections 4(i), 303 and 405 of the Communications Act, 47 U.S.C §§ 154(i), 303, and 405, the Report and Order released on January 24, 2008 in the above captioned proceeding is VACATED on our own motion, and 47 C.F.R. §§ 73.1201(b), 3526(b) and (e)(11) and 3527(b) and (e)(8) will be re-codified consistent with Appendix D.

60. IT IS FURTHER ORDERED that pursuant to sections 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 405, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petitions for Reconsideration filed by the petitioners listed in Appendix A ARE HEREBY GRANTED IN PART AND ARE OTHERWISE DISMISSED AS MOOT.

61. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 303, and 307 of the Communications Act, 47 U.S.C §§ 151, 152, 154(i), 303, and 307, this *Further Notice of Proposed Rulemaking* is ADOPTED.

62. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

APPENDIX A

Petitions for Reconsideration

Association of Public Television Stations and the Public Broadcasting Service ("APTS and PBS")

Broadcasting Licenses Limited Partnership; Davis Television Clarksburg; Davis Television Wausau; Eagle Creek Broadcasting of Corpus Christi; Eagle Creek Broadcasting of Laredo; Educational Broadcasting Corporation; Journal Broadcast Corporation; Multicultural Television Broadcasting; Mountain Licenses; Ramar Communications Ltd; Sarkes Tarzian; Shooting Star Broadcasting; Stainless Broadcasting; Televicentro of Puerto Rico; Western Kentucky University; and WQED Multimedia (collectively "Broadcasting Licenses Limited Partnership *et al.*")

Campaign Legal Center (CLC), Common Cause, Benton Foundation, and New America Foundation ("CLC *et al.*")

Block Communications; Cocola Broadcasting; Communications Corporation of America; Cox Broadcasting; ION Media Networks; Jovon Broadcasting; Local TV LLC; McGraw-Hill Broadcasting.; and Meredith Corporation (collectively "Joint Broadcasters")

Joint Public Television Petitioners

Named State Broadcasters Associations

Northern California Public Broadcasting, Inc ("NCPB")

Oklahoma Educational Television Authority ("OETA")

Public Television Licensees

KHRP-LP*

Oppositions to Petitions for Reconsideration

CLC *et al.*

National Association of Broadcasters ("NAB")

Telecommunications for the Deaf and Hard of Hearing, Inc., the National Association for the Deaf, and the Deaf and Hard of Hearing Consumer Advocacy Network ("TDI *et al.*")

Replies to Petitions for Reconsideration

APTS and PBS

CLC *et al.*

Named State Broadcaster Associations

NAB

* late filed

APPENDIX B

Proposed Rules

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The Authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 307, and 554.

2. Section 73.1201 is amended by adding § 73.1201(b)(3) as follows:

§ 73.1201 Station identification.

* * * * *

(b) Content.

* * * * *

(3) Three times a week, the station identification for television stations must include a notice stating that the station's public file is available for viewing at the FCC's website. At least one of the announcements must occur between the hours of 6 p.m. and midnight.

3. Section 73.1212 is amended by deleting "by the licensee" in the second to last sentence of § 73.1212(e) to read as follows:

(e) The announcement required by this section shall, in addition to stating the fact that the broadcast matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (d) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent. Where the material broadcast is political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the location specified under § 73.3526 of this chapter. If the broadcast is originated by a network, the list may, instead, be retained at the headquarters office of the network or at the location where the originating station maintains its public

inspection file under § 73.3526 of this chapter. Such lists shall be kept and made available for a period of two years.

4. Section 73.1943 is amended by adding § 73.1943(d) to read as follows:

§ 73.1943 Political File.

* * * * *

(d) *Location of the file.* A television station licensee or applicant must also place all of the contents of its political file on the Commission's website. This electronic political file must be updated in the same manner as subsection (c) above.

5. Section 73.3526 is amended by revising §§ 73.3526(b) and adding (e)(18) and (e)(19) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(b) *Location of the file.* The public inspection file shall be located as follows:

(i) For radio licensees, a hard copy of the public inspection file shall be maintained at the main studio of the station. For television licensees, letters and emails from the public, as required by subsection (e)(9) below, shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

(ii) A television station licensee or applicant shall place the contents required by subsection (e) below of its public inspection file on the Commission's website, with the exception of letters and emails from the public as required by subsection (e)(9) below, which will be retained at the station in the manner discussed in subsection (i) above. A station must link to the public inspection file hosted on the Commission's website from the home page of its own website, if the station has a website.

(iii) The Commission will automatically link the following items to the electronic version of all licensee and applicant public inspection files, to the extent that the Commission has these items electronically: authorizations, applications, contour maps; ownership reports and related materials; portions of the Equal Employment Opportunity file held by the Commission; the public and broadcasting; Children's television programming reports; and DTV transition education reports. In the event that the online public file does not reflect such required information, the licensee will be responsible for posting such material.

* * *

(18) *Sharing agreements.* For commercial television stations, a copy of every agreement or contract involving sharing agreements for the station, including local news sharing agreements and shared services agreements, whether the agreement involves stations in the same markets or in differing markets, with confidential or proprietary information redacted where appropriate.

* * *

(19) *Sponsorship identifications.* For commercial television stations, a list of all sponsorship identifications that must be announced on-air pursuant to 47 C.F.R. § 73.1212.

* * * * *

6. Section 73.3527 is amended by revising §§ 73.3527(b) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(b) *Location of the file.* The public inspection file shall be located as follows:

(i) For radio licensees, a hard copy of the public inspection file shall be maintained at the main studio of the station. For television licensees, letters and emails from the public, as required by subsection (e)(9) below, shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

(ii) A television station licensee or applicant shall place the contents of its public inspection file on the Commission's website, with the exception of letters and emails from the public, which will be retained at the station in the manner discussed in subsection (i) above. A station must link to the public inspection file hosted on the Commission's website from the home page of its own website, if the station has a website.

(iii) The Commission will automatically link the following items to the electronic version of all licensee and applicant public inspection files, to the extent that the Commission has these items electronically: contour maps; ownership reports and related materials; portions of the Equal Employment Opportunity file held by the Commission; and the public and broadcasting.

* * * * *

APPENDIX C

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") concerning the possible significant economic impact on small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking ("*FNRPM*") portion of this Order on Reconsideration and Further Notice of Proposed Rulemaking ("*ORFNPRM*"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *ORFNPRM*. The Commission will send a copy of the *ORFNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").[2] In addition, the *ORFNPRM* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rule Changes

2. One of a television broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license. Broadcasters are afforded considerable flexibility in how they meet that obligation. Among other things, they are required to maintain a public inspection file, which gives the public access to information about the station's operations.[4] The *FNPRM* seeks to make information regarding how a television broadcast station serves the public interest easier to understand and more accessible.

3. The *FNPRM* seeks comment on rule changes that would:

- replace the requirement that television stations maintain a paper public file at their main studios with a requirement to submit documents for inclusion in an online public file, including the political file, to be hosted by the Commission;
- reduce the number of documents that television stations would be required to upload to an online public file, by automatically linking to information already collected by the Commission;
- streamline the information required to be kept in the file, such as by excluding letters and emails from the public;
- require that sponsorship identification, now disclosed only on-air, should also be disclosed online, and require disclosure of online shared services agreements; and
- make the online public file standardized and searchable, further improving the usefulness of the data.

B. Legal Basis

4. The proposed action is authorized pursuant to Sections 1, 2, 4(i), 303, and 405 of the Communications Act, 47 U.S.C §§ 151, 152, 154(i), 303, and 405.

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[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *See id.*

[4] *Review of the Commission's Rules regarding the Main Studio Rule and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, ¶ 18 (1998), *recon. granted in part* Memorandum Opinion and Order, 14 FCC Rcd 11113 (1999).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[7] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[8] Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

6. *Television Broadcasting*. The SBA defines a television broadcasting station as a small business if such station has no more than $14.0 million in annual receipts.[9] Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."[10] The Commission has estimated the number of licensed commercial television stations to be 1,390.[11] According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of January 31, 2011, 1,006 (or about 78 percent) of an estimated 1,298 commercial television stations[12] in the United States have revenues of $14 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational ("NCE") television stations to be 391.[13] We note, however, that, in assessing whether a

[5] 5 U.S.C. § 603(b)(3).

[6] 5 U.S.C. § 601(6).

[7] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[8] 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

[9] *See* 13 C.F.R. § 121.201, NAICS Code 515120 (2007).

[10] *Id.* This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

[11] *See* News Release, "Broadcast Station Totals as of December 31, 2010," 2011 WL 484756 (F.C.C.) (dated Feb. 11, 2011) ("*Broadcast Station Totals*"); also available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-304594A1.pdf.

[12] We recognize that this total differs slightly from that contained in *Broadcast Station Totals*, *supra*, note 143; however, we are using BIA's estimate for purposes of this revenue comparison.

[13] *See Broadcast Station Totals*, *supra*, note 143.

business concern qualifies as small under the above definition, business (control) affiliations[14] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

7. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

8. Certain rule changes proposed in the *FNPRM* would affect reporting, recordkeeping, or other compliance requirements. Television broadcasters are currently required to maintain a copy of their public inspection files at their main studios.[15] The *FNPRM* proposes to replace that requirement with a requirement to submit documents for inclusion in an online public file, including the political file, to be hosted on the Commission's website. Items in the public file that must also be filed with the Commission, including FCC authorizations, applications and related materials, contour maps, ownership reports and related materials, portions of the equal employment opportunity file, the public and broadcasting manual, children's television programming reports (Form 398), and DTV transition education reports (Form 388), will be automatically imported into the station's online public file. Television stations will only be responsible for uploading and maintaining items that are not required to be filed with the Commission under any other rule. The *FNPRM* also proposes to exclude some items from the online public file requirement, such as letters and emails from the public, and proposes to add other items to the online public file requirement, such as whether sponsorship identification, now disclosed only on-air, should also be disclosed online, and whether to require disclosure of online shared services agreements.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

9. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[16]

10. The *FNPRM* seeks to minimize reporting requirements on all television broadcasters, by having the Commission host the online public file. The previous *Report and Order* in this proceeding, which has been vacated, required stations to host their own public file. Having the Commission host the public file will ease the administrative burdens on all broadcasters. More than a third of the required

[14] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

[15] *See* 47 C.F.R. §§ 73.3526, 3527.

[16] 5 U.S.C. § 603(c)(1)-(c)(4).

contents of the public file have to be filed with the Commission, and the *FNPRM* proposes to import and update information that must already be filed with the Commission automatically, creating efficiencies for broadcasters. Accordingly, since no significant economic impact is imposed by the proposed rules on small entities, no discussion of alternatives is warranted.

11. Overall, in proposing rules governing an online public file requirement, we believe that we have appropriately balanced the interests of the public against the interests of the entities who will be subject to the rules, including those that are smaller entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

12. None.

APPENDIX D

Re-Codified Rules

Part 73 of Title 47 of the U.S. Code of Federal Regulations is re-codified to read as follows:

PART 73 – RADIO BROADCAST SERVICES

1. Section 73.1201 is re-codified by eliminating § 73.1201(b)(3)

2. Section 73.3526 is amended by eliminating § 73.3526(b)(1) and (2); § 73.3526(e)(9)(iii); and revising § 73.3526(b) and (e)(11)(i) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(b) *Location of the file.* The public inspection file shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

* * *

(e)(11)(i) *TV issues/programs lists.* For commercial TV and Class A broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October—December, April 10 for the quarter January—March, etc.) The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

* * * * *

3. Section 73.3527 is amended by eliminating § 73.3527(b)(1) and (2); § 73.3527(e)(8)(i) and (ii); and revising § 73.3527(b) and (e)(8) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(b) *Location of the file.* The public inspection file shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

* * *

(e)(8) *Issues/Programs Lists.* For nonexempt noncommercial educational broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October–December, April 10 for the quarter January–March, etc.). The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

* * * * *

STATEMENT OF CHAIRMAN JULIUS GENACHOWSKI

Re: *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations* and *Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)*, MB Docket Nos. 00-168 and 00-44

On my first day as Chairman, I said the FCC should and would "use technology and new media to . . . improve [the] overall operations of the FCC – running efficiently [and] communicating effectively" with the American people and all stakeholders. Moving from paper to digital, and from offline to online, is central to this commitment.

We have been doing this consistently. Some examples:

- We've revised our rules for the filing of all tariffs electronically, decreasing burdens on carriers and the Commission.
- We now permit staff to notify parties electronically about docket filings instead of mailing copies.
- We've expanded the use of electronic notifications of fees owed.
- And we've harnessed modern technology to open our workshops, hearings and communications to people online, on multiple distribution platforms.

Moving processes and information online is important for several reasons. It drives additional broadband use; it empowers app developers and consumers to use public data in innovative ways; and it drives process efficiencies that reduce costs both for the private sector and for government.

Look at e-government. Our government spends hundreds of millions of dollars each year on paper communication with citizens, with most of those interactions with communities that are also low broadband adopters. By moving more services from paper to the Internet in smart and creative ways – showing citizens the value of Internet access – we can both incentivize broadband adoption and make government more efficient, ultimately generating significant savings that we can reinvest in knocking down barriers to adoption.

Today, we're applying the common sense principles of moving information online to rules relating to television broadcasters.

Broadcasters have long been required to disclose certain information as part of its public interest obligations. This information is commonly known as the "public inspection file." Right now, this information is disclosed in paper form. And the "public inspection file" is in a filing cabinet at the stations themselves.

In a broadband world, that just doesn't make any sense.

With this item, we propose to move the public file from paper to the Internet, and to host this information at the Commission so there's efficient public access, another important step in the Commission's efforts to ensure effective public access to information.

Making this information easily accessible will let the public see the large number of broadcasters that are doing a strong job of meeting their public interest obligations, and also those that are not.

This disclosure proposal we adopt today was featured in a major FCC report on how the information needs of communities can best be met in the Internet age. And it has already drawn support from leaders of the broadcasting and public interest communities, who are often at odds, but agree that there should be a streamlined and non-burdensome online mechanism for broadcasters to disclose key information about their service to their communities. I am pleased that we are able to take action on this recommendation of the Information Needs of Communities Report, and we intend to act on another recommendation – the Enhanced Disclosure NOI – in the very near future. By moving these matters along, we expect to complete the process on both of these proposals by next spring.

I look forward to hearing from all stakeholders on our NPRM and of course additional ideas about how to continue integrating digital technology into the way we work here at the FCC.

I thank the staff of the Media Bureau and the Managing Director's Office for their excellent work on this issue.

STATEMENT OF COMMISSIONER MICHAEL J. COPPS

Re: *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations* and *Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)*, MB Docket Nos. 00-168 and 00-44

One of the of the FCC-centric recommendations emanating from the Waldman Report on *The Information Needs of Communities* is to "Emphasize Online Disclosure as a Pillar of FCC Media Policy." So it is fitting that we have a disclosure item before us today.

The history of this proceeding goes back many, many years, but I will refrain from revisiting the full saga this morning, riveting though it is. To make the long story very short, the FCC in 1981 ended its requirement for broadcasters to keep a program log and to ascertain what were the programming and issues interests of their communities of service. The decision was premised upon a straight-forward, if rather narrow-minded, cost-benefit analysis. Those were some of the nadir years for public interest premises at the Commission—and that's putting it mildly. Rather, in an effort to deregulate at any cost, those Commissions made it ever more difficult for citizens not only to seek redress for poor station performance, but even to unearth the facts about what broadcasters were in fact doing. Concerned citizens had to go to a lot more trouble just to see a station's file, and even when they got to it, avenues of redress were closed off because so many of the public interest responsibilities of the stations had been eliminated by the FCC. I believe it is the responsibility of this Commission to move forward on both these fronts: (1) to provide for fuller and more adequate disclosure, and (2) to breathe life and meaning back into public interest responsibilities and guidelines. I have been pushing for action on both these fronts since I arrived here ten years ago. And, purely as an aside, there is still plenty of oxygen in my lungs that I will dedicate to breathing life into these critical issues going forward.

Many others have spoken up in favor of fuller disclosure and strengthened Commission oversight. These include the public interest community, President Clinton and Vice President Gore's Advisory Committee, Members of Congress, concerned broadcasters, and millions of citizens across the land. We are not trying to bring back yesterday, but to forge reasonable Twenty-first century expectations for Twenty-first century broadcasting. As Lyndon Johnson put it more eloquently, "Yesterday is not ours to recover, but tomorrow is ours to win or lose." So I hope that we can start down the road now of winning that tomorrow, late in the day though it is.

The Further Notice we are embarking upon holds promise. It proposes that television broadcasters move their public files online, to a site hosted by the FCC, which I hope will be searchable and aggregative and therefore offer real opportunity for comparative analysis and wide public understanding. Without that kind of searchability, online disclosure would be small improvement over having the file kept in the broadcast station's basement.

What we are moving online is in large measure the same information available in the current station files. We urgently need to consider expanding the range of required reporting. Too often the files are spare to the point of uselessness. And, indeed, a Notice of Inquiry currently on circulation tees up such issues. I hope that we complete this proceeding expeditiously so we can move on to common-sense rules responsive to the information needs of these communities.

There were some valid points made by broadcasters in regards to Form 355 and I have often remarked on the desirability of making some alterations to the Form and then getting on with the job. I had hoped that would be a far less time-consuming process than the one we have actually endured over the last few years—yes, I said years.

Instead we are for the most part starting over. The substantive action we take today is to vacate the previous Report and Order instead of looking for ways to revise our earlier work and expedite its completion. The Report and Order being vacated has been held in limbo for three years. I do hope we move beyond the NOI stage with dispatch, given this is a problem of the highest public interest priority. We just don't have more years to consider this, and I believe other Commission vehicles would have allowed us to travel a far quicker route.

Disclosure is sunlight and an important means to important ends. But I repeat what I said at the time of the release of the Waldman Report: ***Disclosure is a means to an end—not an end in itself***. Making information accessible to the public, prerequisite that it is, serves the public interest only if there are consequences when the files disclose station shortfalls. So we have to ask ourselves what the public is able to do with the disclosed information. Bring a complaint? Based on what? Have a hearing designated? Have a more serious license renewal? It was interesting to me that in the conversation that resulted from Form 355 some broadcasters were willing to provide the information—but only if it would be anonymous—and with assurances that their licenses would not be affected. While many broadcasters work hard to serve the public, it would appear there are some who need to read the public interest bargain one more time. If disclosure brings to light behaviors that require redress, I'm for having redress on the books.

I happily acknowledge the additional requirement to include pay-for-play and shared services as information that the broadcasters need to put online. While I would be even more pleased if we made a decision that shared services are an end run around our media ownership rules, I do believe this information will nevertheless be revealing.

Lastly, I note that we propose moving the stations' existing political files online. This, too, will be revealing—but not as revealing as it could be. I believe citizens are entitled to more information about the political ads that bombard them at election time and, nowadays it seems, almost all the time. The Supreme Court articulated in its *Citizens United* decision that transparency is a vital counter-balance to the perceived influence of corporations in the campaign process. Opaque and misleading information is not what democracy thrives on. We are not well-served when those who are attempting to manipulate our political dialogue and determine election outcomes can disguise themselves and hide behind misleading names. If a group calling itself "Citizens for Purple Mountain Majesties" is in reality the mouthpiece of a special interest that is refusing to clean up a toxic dump or is pouring pollution into the Great Lakes, don't citizens have a right—yes, I said "a right"—to know that? Open government can only exist where people and groups trying to determine elections stand up and tell us who they are. That's not happening often enough. The fissures in our democracy will continue to widen if anonymous money retains its unchecked influence in our elections. So I would hope the Commission would find its way to using the authority it has to require fuller sponsorship identification of the interests bank-rolling so many of the ads we all watch all the time.

When the roll is called I will vote to approve and move ahead with this item, hopeful that my colleagues will work with dispatch to advance wider disclosure proceedings in the months ahead. I thank the Bureau for bringing up this item and I especially want to recognize the hard work that our public interest community did to emphasize both the importance and the urgency of public disclosure for the public interest.

STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL
APPROVING IN PART, CONCURRING IN PART

Re: *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations* and *Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)*, MB Docket Nos. 00-168 and 00-44

Today, I enthusiastically vote in support of vacating the 2007 Order that required television broadcasters to post their public inspection files on the Internet and adopted the so-called "Enhanced Disclosure Form" to replace the quarterly issues/programs list. In 2007, I cast the sole dissent against the imposition of this form. At the time, I cautioned that our action was treading towards reinstating an ascertainment regime discarded by the Commission in 1984. Such action risked infringing upon the First Amendment rights of broadcasters.

Moreover, this form was burdensome, excessively regulatory and – to quote the FCC's *Information Needs of Communities* report – "overly complex." It is not surprising that the form was challenged before the Commission, the courts, and even the Office of Management and Budget where the information collection was questioned under the Paperwork Reduction Act. Although our action today concludes this regulatory chapter, it appears to be only temporary as this order contains a further notice of proposed rule making that could result in additional burdens on television broadcasters. Furthermore, recently placed on circulation here at the Commission is a notice of inquiry that initiates a separate proceeding to create a replacement standardized form and reporting requirements – but more about that another day.

In the further notice, the Commission asks additional questions about placing the public file online. As was the case in 2007, I remain supportive of making "the public inspection file more accessible and more useful, thus improving communications between broadcasters and their local communities." Here, the Commission tentatively concludes that public inspection files should be centrally located on the FCC website. Hopefully, this proposal would reduce costs and burdens on broadcasters – a concern that was voiced by many – by placing the onus of creating and hosting the website on the Commission. But I will be attentive to a record that indicates otherwise.

We also ask for comment about the proposal that the political file should be posted online and that updates should be made "immediately absent unusual circumstances." Previously, the Commission decided to exempt the political file from the online requirement concluding that "the burden of placing this material on the Internet outweighs the benefits." Now, the Commission asserts that most political advertising transactions are electronic, so online availability may be less burdensome than previously thought. I look forward to hearing from stakeholders regarding the possible ramifications of an online political file.

Although the majority of the questions in the further notice are meant to elicit comment on moving the public file online, others serve as a means to expand the required disclosures made by broadcasters. I have significant concerns about the substance of some of these questions and the possible direction in which the Commission could be headed. We propose that broadcasters upload a list of <u>all</u> on-air sponsorship identification announcements and seek comment regarding whether "sharing agreements" – including those not currently required to be reported under our rules – should be included in the online public file. Such sweeping requirements may overly burden the broadcaster without sufficient corresponding benefits to the local citizens served by the station. Further, I wonder whether history is doomed to repeat itself. Are we once again heading down a path towards

needlessly burdensome rules, regulatory overreach, Paperwork Reduction Act challenges and unconstitutional intrusions? Stay tuned.

Despite the serious reservations I may have, it is important to develop a full record and allow public comment prior to forming conclusions and implementing any regulations. In this vein, I would like to thank the Chairman for seeking specific comment on the costs and benefits of the proposals contained in the further notice. I hope that participants will provide us with the information and data needed to balance the public interest in ready access to information with the costs and legalities of such disclosure. As always, I will keep an open mind and look forward to learning from all interested parties. For these reasons, I support this order and further notice, but concur on the questions expanding the scope of the materials required to be contained in the public inspection file. Many thanks to the Media Bureau for its work on this order and further notice.

STATEMENT OF COMMISSIONER MIGNON L. CLYBURN

Re: *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations* and *Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)*, MB Docket Nos. 00-168 and 00-44

Disclosure and transparency: Words that inspire confidence, increase the public's trust, and convey good faith. We're seeing, hearing and focusing more and more each day, on ways to enhance these efforts in both our public and private sector engagement. So it greatly pleases me today, to join my colleagues in taking a meaningful leap to this end, when it comes to the media landscape.

Local television stations play a vital role in American communities. They provide us with daily updates on weather and traffic patterns, conduct in-depth reports about area officials and businesses, and expose us to rare views and personalities in our neighborhoods when we are often too busy to notice. While I wasn't personally involved in local TV reporting, the small newspaper that I owned and operated offered unique insights and reporting that had value worthy of protection.

Under current obligations that apply to commercial broadcast television stations, the program logs and files of any particular station can be accessed and inspected by the public.

Those files serve to assist not only media academics and scholars who assess the trends in local reporting and programming, but they also act as a verifiable means to hold stations accountable for their public interest obligations. If a broadcaster asserts that a certain show is educational, informational, and relevant to the community, these files serve as a means for others to evaluate that contention. Further, when a broadcast license comes up for renewal, community residents can examine the public file to determine if objections should be raised based on what they may conclude are the lack of cogent and frequent local reporting and community-based content. A community's desire to examine public files is only possible, if they have realistic, meaningful access.

I've seen such files. They reside deep within a broadcast station's inner-labyrinth, far from the reception area, in a vintage filing cabinet with letters marked only in small font. I make light of this, to stress a point. Now is the time to move these "PUBLIC" files out of cabinets and onto the web.

The public should have unfettered access to documents and records that affect them intimately, and I believe that local news does just that. Today, 74% of Americans turn to broadcast TV more frequently than any other source for local news, while 78% of Americans are online on a regular or semi-regular basis. That statistical overlap is striking.

Physically going to a station and sifting through documents is time-consuming, travel-intensive, and difficult. Creating a meaningful way for the public to view these files with an online engagement is, to quote a popular commercial, "priceless".

Despite these benefits, I am cognizant of the burdens that come with transitioning to web-based filing would result. To quote Steve Waldman's report on the Information Needs of Communities, "A transition to a digital system needs to be handled carefully and in a manner sensitive to the capacities of different broadcasters." Our item, therefore, asks probing and constructive questions in that regard, and I look forward to input and suggestions as we move toward full implementation.

In a separate but related proceeding, we will address the amount of programming content that should be contained in the online disclosure process. I certainly would like to see as much detail as possible. As I mentioned, I have seen the paper versions of these public files, and they leave much to be desired. And while I am an advocate for a streamlined process, submitting a flimsy description for an important story is neither okay, nor should be permitted. Thus, the submissions should have to meet a certain threshold, and I'm certain that broadcasters will be partners with me and my colleagues in that regard.

I have spoken to the Chairman, and I appreciate his assurances that we will move expeditiously on both the consideration and enactment of that item and the next steps for this one.

The Commission, I know is committed to devoting the necessary resources toward the construction of a host forum for these files and will get this up and running in a timely manner. With the inclusion of documents found in the FCC Consolidated Database System, the diligence of the able people behind our agency's website operations, and the related item concerning future form's layout and content, I am confident that we will develop a mechanism for a robust and thorough process.

And no matter what shape or form this offering takes, it must be accessible to those with sight and hearing impairments. We have made significant progress under the Communications and Video Accessibility Act, and this is another way where our agency can continue to lead by example.

I wish to thank all of the hard-working individuals behind this item, particularly Holly Saurer, and I look forward to the next iteration of this extremely important proceeding.