

**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; Extension of  
the Filing Requirement for  
Children’s Television Programming  
Report (FCC Form 398)

MB Docket No. 00-168

MB Docket No. 00-44

FCC No. 11-162

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**LUC Media Group, Inc.’s Comments**

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LUC Media Group, Inc. specializes in buying time for Democratic candidates for public office. It takes its name from Section 315(b) to the Communications Act, which requires broadcast stations to sell airtime to candidates at the station’s lowest unit charge. LUC Media works aggressively to ensure that its candidates are treated as broadcasters’ most favored advertiser as the law requires. Because Internet access is ubiquitous, LUC Media believes that it is time that the FCC required TV and radio broadcast stations as well as cable television systems to make their public-file material—particularly their political file—available over the Internet.<sup>1</sup>

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<sup>1</sup> In the notice of proposed rule making, the Commission said that it was proposing to limit the requirement that stations make their public file available over the Internet to television broadcasters, and that the Commission would consider later whether to apply

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The Internet is an effective and cost-efficient method of distributing information to the public. (When was the last time you looked up someone’s phone number in a phone book instead of looking it up on the Internet?) Requiring broadcast stations and cable television systems to make their political files available over the Internet would give the public 24-7 access to the material in the files. No longer would those interested in the information be forced to visit individual stations and cable television system offices. That political files should be made available over the Internet really is a no-brainer.

Some stations and cable television systems may conjure up objections to being required to make their political file available over the Internet. Despite

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<sup>1</sup>(...continued)

a similar requirement to radio licensees. *See* 76 Fed. Reg. 72147. But since the underlying policy of the Communications Act is the securing and protection of the public interest [*see WOKO, Inc. v. FCC*, 109 F.2d 665, 667 (1940)], there does not seem to be any reason to delay applying the proposed public-file reforms under consideration to radio licensees and cable television systems.

If there are cost concerns in applying the proposed public-file reforms to radio licensees and cable television systems, those concerns are either misplaced or can be alleviated. As discussed later in these comments, LUC Media expects that the proposed reforms would reduce stations’ compliance costs regarding their public-file requirements. Also, cable television systems that have less than 1,000 subscribers are exempt from many public-file requirements. *See* 47 C.F.R. § 76.1700. LUC Media does not believe that a cable television system that does not have to maintain public-file material under existing regulations should be required to maintain that material just because the public-file is being migrated from a filing cabinet to the Internet. Further, all broadcast stations—whether television or radio—could be excused from migrating their public file to an FCC-maintained, Internet-based system if they file at least annually with the Commission an “Affidavit of Inability to File Electronically” certifying that the station is unable to comply with the electronic-filing requirements because it lacks either (1) a computer, (2) broadband Internet access, or (3) a scanner capable of scanning documents into a PDF computer file.

what they may claim, their objections will not be rooted in cost concerns because the cost of uploading documents to an Internet system maintained by the FCC certainly is cheaper than storing the same documents on paper and making them available to the public during business hours. Nor can practical difficulties explain any objection because uploading files to the Internet has become so easy that people upload all sorts of ridiculous things, including things like this: <http://tinyurl.com/25evu3>. They will object because they make money by denying public access to their political file.

The political files that TV and radio stations and cable television systems are required to keep and make public contain information showing the schedule of airtime provided or purchased, when spots actually aired, the rates charged, and the classes of time purchased. This information is necessary to determine whether a station is giving equal opportunities and whether candidates are getting favorable or unfavorable treatment in the placement and cost of spots, especially in light of the wide rotations offered by most stations and cable television systems. That is why the Commission requires that this information be available for public inspection.

Stations and cable television systems have learned over the years that if they can limit the information that candidates have about availabilities and rates, they can get candidates to overpay for the commercial time they buy. This is because while most advertisers may not care whether their

commercial runs during the first week of November or the second, candidates for office do.

After a spate of complaints and enforcement actions in the 1990s, some stations and cable television systems have stopped trying to play games with their advertising inventory and pricing when it comes to candidate advertising. But some still do try. The economic reward for successfully doing so is too great for some to ignore.

The only way that candidates can make sure that they are receiving the availabilities and prices that the law requires is to have access to stations' and cable television systems' political files. Without those files being made available over the Internet, the only way for candidates and others that are interested in that information is to visit every station and cable television system in person.

Before the rise of the Internet, there was no other meaningful way to give the public access to stations' and cable television systems' public files other than to make stations and cable television systems throw open their doors and allow the public to come in and look at the files. Some stations and cable television systems, perhaps understandably, don't like having to make this public accommodation—they don't seem to enjoy taking time away from whatever other things they may be doing to allow someone to rummage through their files. And based on the experience of inspecting too many public

files to count, stations and cable television systems often make people inspecting their public file feel their displeasure. For those that want to review information from all stations and cable television systems in a single media market, one must trek to office upon office—drive, inspect, repeat.

Now, thanks to technology, there is a better way: requiring stations and cable television systems to upload their public-file material to the Internet. While moving stations' and cable television systems' public file to the Internet may not have made sense ten or even five years ago, it is now time to do it. Most Americans have access to the Internet either at home or work, many at both. And, according to the American Library Association, nearly all public libraries (98.7%) offer public access to the Internet.<sup>2</sup>

Instead of trying to recreate the wheel, the Commission should look to emulate a successful existing Internet system such as the PACER electronic public-access service that is maintained by the Administrative Office of the U.S. Courts. Federal appellate, district, and bankruptcy courts require parties to file their documents in a PDF format online instead of on paper. And the public is given access to the documents online through a centralized service. The PACER system successfully receives, organizes, and manages the vast array of documents that get filed in the federal courts. It also

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<sup>2</sup> See American Library Association's Issue Brief *U.S. Public Libraries and e-Government Services* at 3 (June 2009) available at <http://tinyurl.com/cxc3jqw>.

successfully manages giving the public 24-7 access to the electronically-stored information. Borrowing what the Administrative Office of the U.S. Courts has learned from designing and operating that system (or what another organization may have learned from designing another similarly-successful system) will allow the Commission to rapidly establish and implement an effective Internet-based filing system.<sup>3</sup>

A centralized and standardized filing system makes more sense than simply having stations upload documents to their own websites. Every station's and cable television system's public-file material would be organized identically online, which will give the public more meaningful access to the required public information. A centralized and standardized file structure would ensure that everyone would know where information is supposed to be. Further, a centralized and standardized filing system would allow the Commission to monitor compliance with its rules—if there is a complaint, the Commission would be able to quickly determine whether a station or cable television system is complying with its public-file obligations.

Borrowing the technology from a successful existing system to create an Internet-based public-file system has an additional benefit of that it can be

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<sup>3</sup> While the PACER system charges 8¢ per page for viewing documents online, we do not believe that the public should be charged for accessing any system that the Commission may establish for reviewing public files online. The costs for the new Internet-based file system should be borne by the stations and cable television systems that are required to make this material publicly available.

brought up to scale quickly, minimizing the need for beta-testing and for stations and cable television systems to keep duplicative paper records of the documents that they file online. Having duplicative public files—one online and one on paper at the station or cable television system office—would only create confusion<sup>4</sup> and unnecessarily increase compliance costs.

The Commission also sought comment on whether access to a station's public file should be limited to viewers within a station's viewing area. That is a ridiculous and horrendous idea as a general proposition, but it is particularly problematic when it comes to stations' political files. Stations' political files serve as a source of information to candidates, media buyers, public-interest groups, news organizations, viewers, and others. With the exception of viewers who obviously live in a station's viewing area, people interested in a station's political file may not live within the station's viewing area. Shouldn't a U.S. Senate candidate in a state that has multiple media markets—for example, Georgia—be entitled to inspect a station's political file even if the candidate lives in a different media market. Media buyers such as LUC Media often buy time for candidates from coast to coast. And news organizations often have interests in election contests outside their local media market. A public file should be public, not public only to those people

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<sup>4</sup> If a document has been filed online but was not kept in the paper file and someone inspects the paper file and doesn't see the missing document, would that be a violation?

that live in a certain geographic location. Imposing a geographic residential requirement for access to a station's public file would actually be a step away from public access.

Finally, the Commission should take the opportunity of migrating stations' public files to an FCC-maintained, Internet-based system to issue guidance to stations about what information is required to be included in their public files. Every television and radio station is required to maintain and make available for public inspection a complete record of all requests to buy broadcast time that communicates a message relating to any political matter of national importance, including (1) a legally-qualified candidate; (2) any election to Federal office; or (3) a national legislative issue of public importance.<sup>5</sup>

In 2010, the Republican Governors Association ("RGA"), through a political action committee it funded called "RGA Georgia 2010 PAC," spent millions of dollars on television advertising attacking Roy Barnes, a legally qualified candidate for governor in Georgia's 2010 gubernatorial election. The RGA bought airtime on television stations to broadcast ads attacking Barnes. At some point during the course of the campaign, some television stations stopped including information about the RGA's ad buys in their political

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<sup>5</sup> 47 U.S.C. § 315(e)(1)(B).

records that they were required to keep open to public inspection as required under by 47 U.S.C. § 315(e)(1)(B). They did so because they claimed that they were not required to make those records available for public inspection because the RGA’s advertisements were “issue ads.” The stations claimed that their duty to permit public inspection of political records was limited to records for ad buys made by or on behalf of a legally-qualified candidate for public office. That is the requirement of 47 U.S.C. § 315(e)(1)(A), but 47 U.S.C. § 315(e)(1)(B) requires additional public disclosures.

The requirements of 47 U.S.C. § 315(e)(1)(B) are clear. All records relating to requests to buy broadcast time to communicate a message relating to any political matter of national importance are required to be made available for public inspection. The statute provides that messages about a legally-qualified candidate are messages that relate to a political matter of national importance.<sup>6</sup> Thus, records relating to requests to buy broadcast time to communicate messages about legally-qualified candidates are required to be made available for public inspection by stations. The Commission should issue guidance making clear stations’ obligations as part of issuing rules concerning migrating stations’ public files to an FCC-maintained, Internet-based system.

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<sup>6</sup> 47 U.S.C. § 315(e)(1)(B)(i).

Respectfully submitted this 21st day of December 2011.

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