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

LUC Media Group, Inc.'s Reply Comments

As Donald B. Verrilli, Jr., the Solicitor General of the United States, told the Supreme Court last week when representing the Commission before the Supreme Court in *FCC v. Fox Television Stations, Inc.*, "when a broadcast licensee takes a license for the free and exclusive use of a valuable part of the public domain, it also accepts enforceable public obligations." One of those obligations is the maintenance of a public-inspection file. And an important part of the public-inspection file is the station's political file. A station's political file serves as a source of information to news organizations, public-interest groups, candidates, media buyers, and the general public.

In an *ex parte* communication, Hearst Television, Inc., told the Commission that, unless it can realize certain efficiencies, it estimates that it

would cost each of its stations $30,000 to $140,000 per year to make their political files available to the public online. Several other broadcaster groups cited Hearst Television's estimate as it if were the Gospel.[1] But those numbers are unsubstantiated, untested, and unverified. But, even if true, the Commission's response should be: Cry me a river.

It is estimated that $3.2 billion — that is $3,200,000,000 — will be spent on political advertising on TV in 2012.[2] And that does not include the extra money that broadcasters will make from charging commercial advertisers more as a result of the increased demand for commercial airtime during the year. Stations stand to make a windfall from political advertising, yet they complain about the marginal cost of making public information more easily available to the public over the Internet. But broadcasters accept public obligations in exchange for being given the free and exclusive use of a valuable part of the public domain. They make a great deal of money from using the public airwaves. If Hearst Television's cost estimate is accurate (which there is no basis to believe it is[3]), it is a small price to pay to keep the

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[1] *E.g.*, Named State Broadcasters Associations, Joint TV Broadcasters, National Association of Broadcasters.

[2] *Political Ads To Hit $3.2B, Most In Local TV Buys*, MEDIA DAILY NEWS, Nov. 18, 2011, http://tinyurl.com/cxv6kk7 (last visited Jan. 17, 2012).

[3] While citing Hearst Television's estimate, the Joint TV Broadcasters point out in their comments that the political file for one election for a large television station in a top-50 market can fill two or more lateral file drawers. *See* Joint TV Broadcasters Comments at 5.

(continued...)

public informed about the cash that is sloshing around our political system.

As it stands now, 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. And that's just for one media market. Now multiply that over a congressional district, of which many are covered by more than one media market. Or over an entire state. Or over the entire nation if you are interested in national spending. News organizations, public-interest groups, candidates, media buyers, and the general public all must expend resources to get the information they want or need. The question is not whether there are costs involved in making the information available to the public. There are. Rather, the questions are whether the information can be made publicly available more efficiently and whether the stations can and should afford to do so. And the answer to both of those questions is yes.

Using Fandango® is more efficient than going to the theater to check movie times and buy tickets in advance. The time has come to require

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[3](...continued)
But a 30-inch lateral-file drawer only holds about 4,400 sheets of paper. *See* Paper Calculator, http://tinyurl.com/86uugrf. The Xerox® DocuMate 4440 scanner can scan 40 single-sided pages per minute and is available for $855.99. *See Newegg.com - XEROX DocuMate 4440 XDM44405M-WU 24 bit Dual CCD 600 dpi Duplex Document Scanner*, http://tinyurl.com/8467ufu (last visited Jan. 17, 2012). That means a lateral-file drawer could be scanned in less than two hours. Since the cost of the scanner to do that is only $855.99, Hearst Television's $140,000 cost estimate seems a bit inflated.

stations and cable television systems to upload their public-file material to the Internet — and there is no reason to exempt their political files from that requirement. Given the amount of money that broadcasters are making from political advertising — an amount that is increasing exponentially in the wake of the Supreme Court's *Citizens United* decision[4] — broadcasters can afford the cost of uploading their political files to the Internet; the cost of doing so should be considered part of the public obligations they accept in exchange for being given the free and exclusive use of the public's airwaves. With $3.2 billion in just political-advertising revenue rolling in this year, broadcasters and cable system operators should be able to figure out how to upload their political files to the Internet without going bankrupt.

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 airtime that they buy. The only way that candidates can make sure that they receive the availabilities and prices that the law requires is to have access to stations' and cable television systems' political files. Internet access to those files will enable

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[4] *See* Joint TV Broadcasters Comments at 5 ("The amount of issue advertising that stations broadcast (including ads that support or oppose particular candidates paid for with soft money) has continued to grow exponentially during recent election cycles. Following the Supreme Court's *Citizens United* decision, it is anticipated that issue advertising will continue to grow during the 2012 election cycle." [parenthetical in original]); *In South Carolina, on Pace for Record Barrage of Political Ads*, NEW YORK TIMES (NYTimes.com), Jan. 15, 2012, http://tinyurl.com/6phrf82 (last visited Jan. 17, 2012).

more candidates to become better informed about availabilities and pricing and, thus, demand that they receive the lowest unit charge for the time that they buy. That is the real reason that stations are voicing objections to having to upload their political files to the Internet.[5]

At least one commenter, the Joint TV Broadcasters, suggested that information about issue ads — which is required to be placed in stations' political files and made available for public inspection[6] — shouldn't be placed online because issue advertising does not implicate equal opportunity rights. But the increased spending on issue ads[7] is a reason to increase transparency, not limit it. While candidates may not have a right to equal opportunity rights vis-à-vis issue ads, the public still has an interest in knowing the details about the money being spent airing them. *Citizens United* is changing the way political campaigns are conducted, and more and more money is being spent on issues ads to influence elections.[8] Indeed, super PACs have

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[5] *See In the Matter of Codification of the Commission's Political Programming Policies*, 7 FCC Rcd. 678, 699 n.80 (1991) (quoting Kahn & Jablonski stating "there is nothing in the history of political broadcasting to suggest that there is any intention [on the part of broadcasters] to act in good faith").

[6] Section 315(e)(1)(B)of the Communications Act provides that information about issue ads must be placed in stations' political file and made available to the public.

[7] *See* n.4, *supra*.

[8] *See* Joint TV Broadcasters Comments at 5 (stating that "[f]ollowing the Supreme Court's *Citizens United* decision, it is anticipated that issue advertising will continue to grow …").

spent more money to air "issue ads" in South Carolina's 2012 Republican presidential primary than the candidates have spent airing their own ads.[9] To require stations to put their political files online but exclude from that requirement information about issue ads could end up excluding from full public disclosure information about the majority of campaign-related spending.[10]

Just as it is important that issue-ad information be included in the political-file material to be placed online, it is equally important for the Commission to issue guidance regarding the issue-ad information that is required to be included in stations' political files.[11]

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

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[9] See *An Expensive Campaign*, NEW YORK TIMES (NYTimes.com), Jan. 17, 2012, http://tinyurl.com/7muflkh (last visited Jan. 17, 2012).

[10] *See id.* (detailing super PACs have spent more money to air "issue ads" in South Carolina's 2012 Republican presidential primary than the candidates have spent airing their own ads); Joint TV Broadcasters Comments at 5 (stating that "[f]ollowing the Supreme Court's *Citizens United* decision, it is anticipated that issue advertising will continue to grow …").

[11] *See* LUC Media Group, Inc.'s Comments at 8–9.

stopped including information about the RGA's ad buys in their political records that they were required to keep open to public inspection as required under by 47 U.S.C. § 315(e)(1)(B). The stations 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. The stations (intentionally?) overlooked 47 U.S.C. § 315(e)(1)(B), which requires public disclosure of information about issue ads.[12]

The requirements of 47 U.S.C. § 315(e)(1)(B) are clear. The statute provides that messages about any legally-qualified candidate (not just legally-qualified candidates for federal office) are messages that relate to a political matter of national importance and, thus, information about such ads are required to be made available for public inspection by stations.[13] The Commission should issue guidance making clear stations' obligations when it issues rules concerning migrating stations' political files to the Internet.

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[12] Section 315(e)(1)(B) of the Communications Act requires stations to include in their public file the records of requests to broadcast messages relating to (1) any legally-qualified candidate [not just legally-qualified federal candidates], (2) any election to Federal office, or (3) a national legislative issue of public importance.

[13] 47 U.S.C. § 315(e)(1)(B)(i).

Broadcasters frequently tout their role in keeping the public informed. It is thus incongruous to see them oppose simple and sensible efforts by the Commission designed to do just that.

Making information publically available on the Internet is not difficult. 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.[14] 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 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.

Stations have websites and iPhone apps where they are quick to post

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[14] *See* LUC Media Group, Inc.'s Comments at 5–7.

breaking news and the latest information on Justin Bieber and Brangelina. They can easily upload their political-file material to an FCC-maintained, Internet-based system. Requiring them to do so is asking very little in exchange for their free and exclusive use of the public airwaves.

Respectfully submitted this 17th day of January 2012.

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