Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 Requirements for Children's Television Programming Report (FCC Form 398)	)	MM Docket No. 00-44

REPLY COMMENTS OF THE JOINT TELEVISION PARTIES

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California Oregon Broadcasting, Inc.
Cedar Rapids Television Company
Gray Television, Inc.
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EXECUTIVE SUMMARY

The Joint Television Parties acknowledge that, in this day and age, migrating some portions of television stations' public files to an online database makes sense. Certainly, an online public file might make it simpler for local television viewers to assess how a broadcast television station is serving its local community. As the *Information Needs of Communities Report* aptly recognizes, however, the transition to an online public file "needs to be handled carefully and in a manner sensitive to the capacities of different broadcasters." The record in this proceeding soundly demonstrates that wholesale adoption of certain of the proposals advanced would significantly burden broadcasters in terms of both time and money without sufficient countervailing public interest benefit.

First, the Commission has failed to justify reversal of its earlier conclusion that a television station licensee's political file need not be placed online. Maintaining a political file is a complex task, and certain of the assumptions made in the Commission's Notice about how political advertising buys are made do not reflect what actually transpires at local broadcast stations, including the nature and volume of material that would need to be updated. Adding a regulatory layer that requires political file material to be continuously uploaded to the web would place an exponential burden on television licensees for the benefit of relatively few researchers and academicians and strain limited resources. At a minimum, the Commission should delay implementation of any online political file requirement as the National Association of Broadcasters has proposed.

Further, the Joint Television Parties do not believe that the record establishes a legal or factual basis to require that broadcasters publish sponsorship identification

information in the public file. While imposing a substantial research and recordkeeping burden on licensees, requiring every station to compile lists of disclosures would do nothing to advance the purpose embodied in the Communications Act of contemporaneously informing viewers about those attempting to influence them.

Finally, the Joint Television Parties respectfully submit that the record offers no basis to require disclosure of a broad range of shared services agreements that are non-attributable or otherwise not subject to the Commission's public file rules.

TABLE OF CONTENTS

Page

EXECUTIVE SUMMARY i

I. INTRODUCTION 1

II. THE BURDENS IMPOSED BY THE COMMISSION'S PROPOSAL TO INCLUDE STATION'S POLITICAL FILES IN THEIR ONLINE PUBLIC FILES FAR OUTWEIGH ANY ATTENDANT BENEFIT 3

- A. The Initial Record Demonstrates That The Burden On Broadcasters Of "Instantly" Updating Online Political Files Would Be Overwhelming 4
- B. Placing Information From Political Files Online Is Of Limited Marginal Benefit To Candidates Or The Public 11
- C. Efforts To Standardize Political File Material Will Only Increase The Burden On Broadcasters 13
- D. At A Minimum, The Commission Should Delay The Online Political File Requirement 14

III. THERE IS NO LEGAL OR FACTUAL JUSTIFICATION FOR INCLUDING SPONSORSHIP IDENTIFICATION INFORMATION IN ONLINE PUBLIC FILES 16

IV. REQUIRING DISCLOSURE OF "SHARED SERVICES AGREEMENTS" IS BOTH UNNECESSARY AND PREMATURE 18

V. THE RECORD INCLUDES SEVERAL COMMON-SENSE PROPOSALS TO IMPROVE THE FCC'S ONLINE PUBLIC FILE REQUIREMENT 21

VI. CONCLUSION 23

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REPLY COMMENTS OF THE JOINT TELEVISION PARTIES

I. INTRODUCTION

The Joint Television Parties hereby offer these Reply Comments in response to the Federal Communications Commission's *Further Notice of Proposed Rulemaking* in the above-captioned dockets.[1] The Joint Television Parties include the owners of television stations in a wide-variety of markets, from Dallas, Texas (DMA #5) to Sioux City, Iowa (DMA #147) (including affiliates of almost every English and Spanish language television network serving viewers in the United States),[2] as well as the leading professional organization serving the electronic news profession.

The Joint Television Parties support a reasoned approach to placing public file information online—one that balances the benefits to local viewers, researchers, and scholars against the burdens that such requirements inevitably will impose upon

[1] In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirements for Children's Television Programming Report (FCC Form 398), *Order on Reconsideration and Further Notice of Proposed Rulemaking*, 26 FCC Rcd. 15788 (2011) (the "*Further Notice*").

[2] *See* Appendix A for a list of stations.

broadcasters. The Joint Television Parties agree that making certain portions of stations' public inspection files available online may benefit local viewers. Several of the proposed requirements, however, appear designed to benefit relatively few researchers and scholars,[3] yet would impose costly and time consuming obligations on numerous local television broadcast licensees. Such an approach runs counter to the *Information Needs of Communities Report*'s conclusion that the transition to an online public file "needs to be handled carefully and in a manner sensitive to the capacities of different broadcasters."[4]

Consistent with this directive, the rules governing the transition to an online public file should reflect an understanding of precisely what compliance will entail and what the ultimate consequences will be for broadcasters in terms of time, money, and diversion of resources. In some instances, it may make sense for the Commission not to impose certain requirements or at least to commit to working with stations to develop a less burdensome means for achieving the FCC's goals *before* requiring licensees to comply.

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[3] Although these comments acknowledge the potential benefits of online public file placement to researchers and scholars (whose interests may extend to markets outside of those in which they live), the Joint Television Parties question whether the Commission has legal authority to consider those potential benefits. "The FCC . . . 'literally has no power to act . . . unless and until Congress confers powers upon it.'" *Am. Library Ass'n v. FCC*, 406 F.3d 689, 698 (D.C. Cir. 2005) (quoting *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986)). The Communications Act charges the Commission with "regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." 47 U.S.C. § 151. Nothing in the Act grants the FCC the authority to promote research or scholarly interests, especially at the expense of fulfilling its ultimate purpose of making communications available to all persons at reasonable charges.

[4] Steven Waldman and the Working Group on Information Needs of Communities, *The Information Needs of Communities* 348 (2011) ("*INC Report*").

Accordingly, the Joint Television Parties urge the Commission to approach this issue with caution. As the Commission's experience with the Form 323 Ownership Reports has proven, migrating a large amount of information to an online database can be a tricky proposition. Form 323, like many aspects of the public file, was intended to benefit public interest groups and "researchers" who sought greater access to information about broadcast ownership.[5] However, Form 323 has been marred by problems, resulting in delayed implementation, uploading errors, and substantial amounts of time spent by licensees and attorneys. The result is a database of information that is confusing and of limited utility. In approaching the online public file, the FCC should learn from this experience, heeding the advice of the *INC Report* and the comments of NAB, the Named State Associations of Broadcasters, and others to adopt a gradual approach, starting with items that would be easier to transition and proceeding from there. If, instead, the Commission tries to do too much at once, as proposed in the *Further Notice*, it risks creating a system that will be difficult for all and useful for none.

II. THE BURDENS IMPOSED BY THE COMMISSION'S PROPOSAL TO INCLUDE STATION'S POLITICAL FILES IN THEIR ONLINE PUBLIC FILES FAR OUTWEIGH ANY ATTENDANT BENEFIT.

As a matter of administrative law and sound public policy, the Commission should not require television stations to include political file information in their online public files at this time. Fewer than five years ago, the Commission determined that it would be overly burdensome to incorporate the political file into an online requirement, recognizing the incredible burden that applying the existing political file rules in an

[5] *See* Promoting Diversification of Ownership In the Broadcasting Services, *Report and Order and Fourth Further Notice of Proposed Rulemaking*, 24 FCC Rcd. 5896, ¶¶ 2, 7-8 (2009).

online environment would create.[6] To justify a departure from this policy, the Commission must "focus on the fact of change and explain the basis for that change."[7] Here, the Commission's reasoning for abandoning its prior findings simply does not hold up to scrutiny. Moreover, the record demonstrates that placing the political file online will create only a marginal benefit over the existing process – certainly not enough to justify the burden that it is likely to impose. Accordingly, the Commission should reject this portion of its proposal or, at a minimum, postpone adoption of any online political file requirement until the online public file system is sufficiently tested and the unique issues associated with maintenance of the political file are fully vetted and appropriately addressed.

A. <u>The Initial Record Demonstrates That The Burden On Broadcasters Of "Instantly" Updating Online Political Files Would Be Overwhelming.</u>

The record in this proceeding contains no support for the Commission's proposed departure from its prior finding that "the burden of placing [political file materials] on the Internet outweigh its benefits."[8] To the contrary, as demonstrated below, television licensees have suggested that the Commission's understanding of the political advertising process is incomplete, and that maintenance of the same political file currently required in paper form online would be costly, of little additional utility to candidates and their ad buyers, and would divert resources away from ensuring that political advertising is timely

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[6] Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, *Report and Order*, 23 FCC Rcd. 1274, ¶ 20 (2007) (the "*2007 Report and Order*").

[7] *FCC v. Fox Television Stations*, 129 S. Ct. 1800, 1830 (2009) (Breyer, J., dissenting) (citing *Nat'l Cable & Telecommc'ns Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005)); *see also Motor Vehicle Mfg. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (citing *Burling Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

[8] *2007 Report and Order* at ¶ 20.

broadcast in a manner consistent with reasonable access and equal time requirements and at the appropriate rates.

In the *Further Notice*, the Commission suggests that the placement of political file information online would no longer be burdensome because, based on information the FCC "ha[s] learned" (the source of which is not identified), "the vast majority of television stations handle political advertising transactions electronically, through e-mails and a variety of software applications."[9] As the record reflects, this conclusion is flatly wrong and premised on an incomplete understanding of the process that television stations use to sell political advertisements. As several commenters described, many political orders are not placed electronically. While some large stations have electronic links to their national representatives through which commercial buys are made, many stations of all sizes, including a disproportionate number of stations in small and mid-sized markets, do not, instead relying on the very same procedures in place prior to the *2007 Report and Order*.[10] Moreover, even those stations that receive orders from their national sales representatives electronically accept orders for state and local campaigns as well as issue advertisements by phone, handwritten forms, fax, or e-mail.

Even when an order arrives electronically, the salesperson responsible cannot simply forward the e-mail to a particular address or upload the communication, *in toto*, to the FCC's website to satisfy the political file obligations. As an initial matter, the e-mail will likely contain personal information (such as e-mail addresses, phone numbers, and

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[9] *Further Notice* at ¶ 23.

[10] Several stations also have a hybrid system, where orders arrive through a software interface that outputs the orders to a printer. Station personnel can then check the orders before manually inputting them into their system.

ACH or credit card information) or irrelevant communications that should be redacted or otherwise removed. This would require either printing out the e-mail, manually redacting the personal information, scanning the e-mail back into a digital format, and then uploading it to the Commission's servers or having the tools, experience, and time necessary to redact the digital file before uploading it. In contrast, stations currently must only print the e-mail, redact it, and place it in the file. Additionally, a single e-mail will rarely contain all of the information necessary to comply with the Commission's public file requirement—the request, the disposition made by the licensee (including the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased), and the charges made.[11] As several commenters noted, this information often is separated into multiple documents, generated at various times in the process – perhaps a month or more later in the case of the charges made (in the form of an invoice).[12]

To illustrate, a station may receive an order by e-mail one month prior to the general election seeking to purchase three advertisements in a preemptible class to air the following week. The sales manager will then confirm the order and a sales assistant will manually enter it into the traffic system. One of the employees will then print the order (redacting any personal information) and the preliminary traffic report, staple a copy of the current rate card, and place the order with the attached rate card and a copy of the

[11] *See* 47 C.F.R. § 73.1943(a).

[12] *See* comments of Allbritton Communications Co., *et al*. ("Joint Broadcasters") at 11; ."); Broadcasting Licenses, L.P., *et al.* ("Joint TV Broadcasters") at 4-5 ("the information contained in the political file contains significantly more documentation than electronically transmitted order forms"); Named State Broadcasters Associations at 7-8 (noting that "political advertising requests are by their very nature often 'last minute' and 'end of the day,'" further complicating real-time updates); National Association of Broadcasters ("NAB") at 17-18 (information not included in electronic systems "often input in a different manner . . . before it is coupled with a sales invoice and included in the political file").

NAB Political Agreement Form (PB-17) (or a form with comparable information) into the political file. Because the time is preemptible, there is no guarantee that any of the advertisements will actually air. Further, the rates charged may not be determined until after the spot clears. Therefore, once the spot clears, a sales department employee will update the political file by placing alongside the original order a copy of the traffic report and information about the price charged.[13] Finally, once a copy of the invoice is generated, a sales department employee will again update the file to include a copy of the invoice.[14]

Under the proposed rule, the aforementioned process would require uploading at least five separate files to the online system. Either the station would have to find a way to append each subsequent file to the existing record, the station would have to properly identify the digital folder in which to place the subsequent file, or the station would upload the information without making such efforts, reducing the utility of the information and potentially violating the requirement to keep an "orderly" political file. Moreover, no matter how an initial advertising buy itself is placed, station staff must still combine these materials with other information that is required to be placed in the political file—items that are retained in a variety of incompatible formats and would require substantial time and effort to compile for online placement.[15] Accordingly, the

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[13] This process becomes even more complex if an initial order is preempted or the buy is revised. The station then must update the political file to reflect the make good order, including most of the same information as required for the initial order.

[14] Additional information that may be placed in the political file, depending on the circumstances, includes, *inter alia*, information on refunds of overpayments, detailed information on lowest unit charge rebates, and legal correspondence regarding the buy.

[15] *See* Comments of Bouchard Broadcasting at 1 ("99% of our political advertising comes in via the sales department and paper NAB style forms . . ."); Joint TV Broadcasters at 4 (political file includes "significantly more documentation than electronically transmitted order forms"); North Carolina

fact that some stations handle parts of the political advertising process electronically should not form the basis of the sea change in policy the Commission is proposing with respect to the political file.

Further complicating matters, the Commission has recognized that political candidates require "quick access to material" in the political file.[16] The Commission's rules require that records be placed in the political file "as soon as possible," meaning "immediately absent unusual circumstances."[17] As the Commission recognized in the *2007 Order*, "[t]his may mean multiple updates each day during peak periods of the election season," making the placement of such material online overly burdensome.[18]

In the days and weeks leading up to an election, when viable candidates are constantly re-evaluating their media strategies, preemptions and make goods are occurring with frequency, and rates charged are evolving, television sales departments operate at a frantic pace.[19] During these hectic periods, it is difficult enough for stations to keep up with constant and changing ad placement and scheduling, much less handle

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Association of Broadcasters, the Ohio Association of Broadcasters, and the Virginia Association of Broadcasters ("NC, Ohio, and VA Broadcaster Associations") at 9 (reporting survey results showing that "political time continues to be sold using a variety of non-automated processes, including telephone conversations, handwritten forms, emails, and faxes" and that this has not substantially changed since 2007).

[16] *2007 Report and Order* at ¶ 20.

[17] 47 C.F.R. § 73.1943(c).

[18] *2007 Report and Order* at ¶ 20.

[19] The Commission agreed with this observation, seeking 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." *Further Notice* at ¶ 23. It is telling that even those commenters supporting an online political file requirement did not offer any viable suggestions for lessening the burden of near real-time uploads during peak periods.

additional regulatory requirements.[20] The general sales manager at one medium market station called the online political file proposal a "nightmare" that would result in "total chaos" for station staff whose priority should be properly handling what is typically a barrage of political advertising inquiries and ensuring that candidates have appropriate access to the station and that political ads are properly run given finite availability. The conclusion of the Joint Television Parties is that an added layer of regulatory compliance during this time of massive influx would place an unbearable amount of strain on an already burdened system. As the general manager of a small market station explained, requiring that stations "immediately" update their online political files, especially during the weekend before an election, "sets up stations to fail."

The suggestion by the Public Interest Public Airwaves Coalition that "placing such information online will reduce the burden on broadcasters who often receive multiple daily in-person requests to access this information during an election season"[21] is not grounded in reality. Moving public file information online will not eliminate in-person requests. As the Commission recognized in the *2007 Report and Order*, political candidates and campaigns have the resources to visit the station in person and make heavy use of the political file.[22] It follows, and the record confirms, that stations will still have to field inquiries from buyers, who account for the strong majority of requests to

[20] In the days immediately before an election, candidates are more likely to purchase preemptible with notice or non-preemptible time, requiring extensive efforts by sales departments to accommodate their needs. A number of stations, especially those in small and mid-sized markets, have indicated that they will have to hire additional personnel to ensure that they can comply with both the substantive rules and the disclosure requirements.

[21] Comments of the Public Interest Public Airwaves Coalition ("PIPAC") at 11.

[22] *2007 Report and Order* at ¶ 20.

review the political file.[23] Additionally, even if the political file information contained online was updated in a timely and organized manner sufficient to satisfy the needs of political candidates and campaigns, for broadcasters, the burden of manually uploading political file information will be far greater than responding to in-person requests.[24]

Of course, the discussion above assumes that even if broadcasters had the resources to devote to immediate updates of an online political file, the system would function without delay or error. The Joint Television Parties and their undersigned counsel respectfully submit that their recent experience belies that assumption. In the days leading up to the deadline for broadcasters to file their Form 323 Broadcast Ownership Reports, the Commission's system became overloaded, causing some applications to remain in "pending" status for more than twenty-four hours, and crippling filers' ability to copy or otherwise utilize information contained in the reports to complete the filing process. If the system for hosting political file records were to experience similar or even lesser delays, the entire purpose of the online political file would be contravened, and both broadcasters and those political candidates and campaigns that depend on the information contained therein would be disserved. Such glitches are inevitable with an untested system, and would directly compromise the ability of stations to sell airtime to candidates and to comply with their obligations under the Commission's rules.

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[23] *See* Comments of Joint TV Broadcasters at 6.

[24] *See* Comments of Joint Broadcasters at 14-15.

B. **Placing Information From Political Files Online Is Of Limited Marginal Benefit To Candidates Or The Public.**

In contrast to the specific examples in the record of how an online political file requirement would burden broadcasters, there is limited information about how it would benefit candidates or the public, and what evidence is contained in the record contradicts prior Commission findings and demonstrates only a marginal benefit. The *2007 Report and Order* supported the Commission's decision not to include a station's political file in its online public file by, *inter alia*, distinguishing political candidates (who would obtain limited benefits and possibly experience detrimental effects of moving the political file online), from "members of the general public" (who would benefit from the ability to access other parts of the public file online).[25] Thus, the Commission clearly viewed the political file primarily as a resource for political campaigns and candidates.

The record is devoid of evidence that political candidates and campaigns would gain anything more than a marginal benefit from placing political file information online. One commenter contends that "the only way for candidates and others that are interested in [political file information to access that information] is to visit every station and cable television system in person,"[26] but the Commission directly addressed this point in the *2007 Report and Order*, concluding that candidates have sufficient resources to provide them with access to stations.[27] This process has served the needs of political candidates

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[25] *See 2007 Report and Order* at ¶ 20.

[26] Comments of LUC Media Group, Inc. ("LUC Media Group") at 4.

[27] *See 2007 Report and Order* at ¶ 20. LUC Media Group also suggests that an online database is necessary for the Commission to monitor compliance, but the FCC already has processes in place to enforce compliance with both the procedural and substantive rules regarding political airtime. There is nothing in the record to suggest that these processes are ineffective or that there is any need for additional compliance monitoring. Political candidates and campaigns already have strong incentives to monitor compliance.

and campaigns for more than two decades since the Commission adopted its political file rules, and there is no reason to believe that changing this process will provide political candidates or campaigns with any meaningful benefit.

Instead, as the Commission acknowledged in the *Further Notice*, this proposal is driven by public interest groups that urged the FCC to consider the interests of "the public, researchers, and public interest organizations that also need access to the files."[28] Nevertheless, the record fails to justify how that need is commensurate with the demonstrated burdens maintenance of near real-time political files online would impose on broadcasters. The Joint Television Parties do not contest that there is value to informing the public about political spending; to the contrary, campaign funding routinely is the subject of television and other news reports. But proponents of online political files fail to articulate why the Commission, relying on the efforts of broadcasters, is the proper agent from which to obtain that information. To the contrary, the Federal Election Commission and state and local boards of election, not the FCC, are the entities with primary authority over elections.

Even if the Commission were the only entity from which to obtain certain information about political spending, the needs of scholars, researchers, and public interest groups plainly fail to support any requirement that broadcasters update their political file "immediately." Public interest commenters concede that while the needs of political campaigns and candidates are "immediate and often short term," the needs of "the public and researchers" are "ongoing."[29] As such, there are other, less burdensome

[28] *Further Notice* at ¶ 23.

[29] Comments of PIPAC at 15.

means by which these groups can obtain accurate information about political spending. Regardless, the Joint Television Parties submit that the needs of these parties should not be paramount in the Commission's decision-making with respect to the online political file, particularly given the likelihood that this additional regulatory requirement will force broadcasters to shift resources away from activities that advance others of the Commission's objectives, including compliance with the political advertising rules embodied in the Communications Act and informing the local electorate.

C. Efforts To Standardize Political File Material Will Only Increase The Burden On Broadcasters.

Recognizing that merely uploading political file information in existing formats will be of limited value to any observers, some commenters have suggested that broadcasters be required to upload political file information using standardized forms.[30] This raises the dilemma identified by the NAB: either the information in the political file will not be organized, which will substantially reduce its utility, or it will require an extraordinary effort by broadcasters to present the information in a manner that will be useful to researchers, the only group of individuals that would truly benefit from placing political file information online.[31] Standardized forms, however, are not the answer. Given the Commission's prior acknowledgement that even uploading political file information would be unduly burdensome, it would be unfathomable for the FCC to impose an exponentially greater burden of modifying data to comply with a standardized reporting process.

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[30] *See* Comments of Common Frequency at 3.

[31] *Cf.* Comments of NAB at 13-21.

Additionally, the suggestion by one commenter to model the online political file system after the Administrative Office of the U.S. Courts' PACER system[32] merely underscores the attendant burdens of attempting to maintain a political file online. A PACER-like system potentially would become unwieldy, as it does not account for the use of folders and would instead require a multitude of "dockets" for every station and campaign. More importantly, before an individual is eligible to upload documents through the Electronic Case Filing ("ECF") system, courts require that the individual complete certain training, such as attending a live class or completing an online quiz.[33] Even with that training requirement, the ECF system still requires moderation by judicial clerks and by a central office. Additionally, PACER charges users an access fee to defray the costs of maintaining the system, something that would contravene the whole purpose behind placing public file information online. Thus, the PACER system only demonstrates the complexities of operating an online filing system.

D. At A Minimum, The Commission Should Delay The Online Political File Requirement.

Even if the Commission chooses to proceed with adopting rules that mandate an online political file, it should delay implementation of the requirement until it has worked through any issues with the online public file system and can migrate all political files, including those for radio and cable, online at the same time. As several commenters have noted, delaying implementation of the political file requirement will allow the Commission to gain valuable experience with the online public file and address any

[32] Comments of LUC Media Group at 5-6.

[33] *See, e.g.*, EDVA Electronic Case Filing Policies and Procedures Manual 9 (2010), *available at* http://www.vaed.uscourts.gov/ecf/documents/E-FilingPoliciesandProceduresManualwithTitlePages_001.pdf.

implementation issues before expanding the requirement to such a time-sensitive and potentially resource-consuming endeavor.[34] The record does not support any imminent need that would warrant throwing caution to the wind. The Commission should adopt a gradual implementation strategy that will minimize the disruptions caused by the transition to an online system.

Delaying implementation of the online political file requirement would also allow the Commission to migrate all political information to the web at one time. The political file requirement applies not only to television broadcasters, but also to radio broadcasters and multichannel video programming distributors ("MVPDs").[35] Commenters both supporting and opposing the online political file requirement agree that there is no justification for disparate treatment between television, radio, and MVPDs in this regard. The Joint Television Parties agree with NAB and the Named State Associations of Broadcasters that unilaterally requiring television stations to make rate and purchase information available online could create "market distortions" that favor other media.[36] Even LUC Media, a proponent of online political files, observes that "there does not seem to be any reason" to treat radio broadcasters and MVPDs differently with regard to placing political files online.[37] In light of the implementation concerns addressed above, however, the most appropriate course of action is to delay all online political file

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[34] *See* Comments of Hubbard Broadcasting at 3 ("[M]aking an online system at least as efficient as a paper system is imperative for the fairness of the political process."); NAB at 22 (supporting gradual implementation to avoid "unanticipated problems [that] can and do arise when a number of licensees attempt to upload data to the FCC's database around the same time").

[35] *See* 47 C.F.R. § 73.1943 (broadcast political file rule); 47 C.F.R. § 76.1701 (cable political file rule).

[36] Comments of NAB at 21-22; Named State Associations of Broadcasters at 10 n. 19.

[37] Comments of LUC Media Group at 1-2 & n.1.

implementation until the Commission has first addressed any concerns with the FCC-hosted online public file.

III. THERE IS NO LEGAL OR FACTUAL JUSTIFICATION FOR INCLUDING SPONSORSHIP IDENTIFICATION INFORMATION IN ONLINE PUBLIC FILES.

The Commission's proposal to expand the public file by requiring that broadcasters include in their online public files sponsorship identifications – that *by statute* are required to be disclosed contemporaneous with the broadcast – is unsustainable and not supported by the record. The requirement of Section 317 of the Communications Act is unambiguous:

> All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, *at the time the same is so broadcast*, be announced as paid for or furnished, as the case may be, by such person . . ."[38]

The Commission's sponsorship identification rules do not substantively depart from the statute, also requiring disclosure "at the time of the broadcast."[39] As several commenters correctly emphasize, the contemporaneous broadcast requirement is consistent with the purpose of the statute: informing *actual listeners and viewers* about who is trying to persuade them.[40]

There is no compelling rationale to expand the sponsorship identification requirement to provide additional disclosure of the same information already made

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[38] 47 U.S.C. § 317(a)(1) (emphasis added). Although Section 317 specifies "radio station[s]," the Commission has taken the position that this in Section 317 applies to television stations as well.

[39] *See* 47 C.F.R. § 1212(a).

[40] *See* Comments of Channel 51 of San Diego, Inc., *et al.* ("Four Commercial and NCE Television Stations") at 5; Joint Broadcasters at 16 ("Individuals who are not watching are not likely to be influenced – fairly or unfairly – by the messages aired.").

available contemporaneously. Rather, the record demonstrates that the FCC's proposal would impose the additional burden upon broadcasters in each market of monitoring and identifying the same network and syndicated programming for instances of sponsorship that would need to be identified online.[41]

The additional burden would not be limited to network and syndicated programming; it would apply to all forms of programming, including news. Under recent Commission precedent, for example, a news department extracting video of an automobile from a video news release would not only have to identify the provider of the release over the air, but also contact the proper person at the station to ensure that the provider is listed as a sponsor in the station's online public file.[42] The record lacks viable support for such an expansive new requirement, especially at a time when the Commission already is imposing additional burdens on broadcasters.

PIPAC attempts to bolster the record for its favored conclusion by citing its members' own statements about the alleged inadequacy of sponsorship disclosures.[43] But if existing on-air disclosures are inadequate (which they are not), the proper solution would be to improve on-air disclosures, not to enable a viewer who might be confused about whether the programming that he watched was sponsored to go to the FCC website,

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[41] *See* Comments of Joint Broadcasters at 17-18; NAB at 24 ("it makes little sense to have broadcasters list the same sponsorship identification information for programs aired on many stations across the country, when hundreds of other stations that air the same programming would be listing the same information"). PIPAC's suggestion that broadcasters "must already maintain these records to comply with existing rules," comments of PIPAC at 27, is simply false. Under the existing rules, broadcasters must disclose compensation received during the broadcast, but there is no current requirement for broadcasters to maintain any subsequent records regarding sponsorship identification.

[42] *See* In the Matter of Fox Television Stations, Inc., *Notice of Apparent Liability for Forfeiture*, 26 FCC Rcd. 3964 (EB 2011).

[43] *See* Comments of PIPAC at 24.

find the online public file, identify the station that he was watching, and then scroll through a list of sponsors to conclude that, no, this was in fact not paid material. There is simply no anecdotal or other evidence in the record to suggest that this is necessary.

Additionally, as some commenters noted, imposing an additional sponsorship identification requirement would be especially problematic in light of outstanding questions about the applicability of the existing rules.[44] The Commission has a pending proceeding that addresses the applicability of the sponsorship identification requirement to several forms of product sponsorship.[45] Moreover, the Commission issued Letters of Inquiry to approximately 80 television stations and cable operators in 2006 and 2007 regarding their use of video news releases in news programming without identifying the sources of the video. However, that exercise only produced limited guidance from the Commission about when disclosure is required,[46] leaving broadcasters guessing about other scenarios under which disclosure may be required. The Commission should address the pending substantive issues before adopting any new procedural requirement.

IV. REQUIRING DISCLOSURE OF "SHARED SERVICES AGREEMENTS" IS BOTH UNNECESSARY AND PREMATURE.

The record demonstrates that it would also be premature and improper for the Commission to mandate the disclosure of all sharing agreements between stations in the online public file. As several commenters note, the *Further Notice* contained a broad

[44] *See* Comments of Joint Broadcasters at 17-19.

[45] *See* Sponsorship Identification Rules and Embedded Advertising, *Notice of Inquiry and Notice of Proposed Rulemaking*, 23 FCC Rcd. 10682, ¶¶ 2-3 (2008).

[46] *See* Fox Television Stations, *supra* note 42 (using disproportionate amount of video); Access.1 N.J. License Co., LLC, *Notice of Apparent Liability for Forfeiture*, 26 FCC Rcd. 3978 (EB 2011) (relying on disproportionate references to a single product); Comcast Corp., *Notice of Apparent Liability for Forfeiture*, 22 FCC Rcd. 17474 (EB 2007) (requiring identification of segments using portions of VNR and only featuring single product).

definition of sharing agreements as "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."[47] This definition is extremely broad, and can include everything from the sharing of engineering support to news helicopters to office space.[48] Not finding the Commission's definition broad enough, however, the American Cable Association proposed an even more inclusive definition of a sharing agreement: "any agreement, regardless of name or purported effect on 'efficiencies' between separately-owned same-market broadcasters, but particularly those that facilitate the coordination of their retransmission consent negotiations."[49]

Quite simply, requiring disclosure of sharing agreements is a solution in search of a problem. The Commission already has examined this issue, determining that certain local marketing agreements (LMAs) and time-sharing agreements are attributable because they "accord the broker significant influence that warrants attribution."[50] Nothing in the record establishes a similar concern with regard to sharing agreements. Moreover, shortly after the close of the comment period in this proceeding, the Commission issued its Notice of Proposed Rulemaking for the 2010 Quadrennial Ownership Report that included fourteen paragraphs related to attribution issues, including sharing agreements.[51] In particular, the Commission is considering concerns

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[47] *Further Notice* at ¶ 35.

[48] *See* Comments of Joint TV Broadcasters at 12; NAB at 29 (not all SSAs involve arrangements that affect content).

[49] Comments of American Cable Association ("ACA") at 14-15.

[50] Attribution of Broadcast and Cable/MDS Interests, *Report and Order*, 14 FCC Rcd. 12559, ¶ 82 (1999).

[51] In the Matter of 2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of

raised by the same public interest groups participating in this proceeding about certain forms of shared service agreements (SSAs) or local news services (LNSs). Accordingly, the Quadrennial Ownership Review is the proper proceeding for the Commission to consider these agreements.

Nevertheless, parties such as the ACA seek to use this proceeding as a vehicle through which to alter substantively the FCC's rules. Despite the presence of rulemaking proceedings to address the issues that they raise,[52] these commenters seek to impose one-way obligations upon broadcasters without the benefit of an established record. Reasoned policymaking demands that the Commission adopt a more holistic approach to such policy issues. Without a factual underpinning that clearly demonstrates a need to revise the Commission's rules, there is no basis to require further disclosure of otherwise innocuous sharing agreements.

While the Joint Television Parties support transparency, the benefits of disclosure must outweigh the costs before any additional requirements are imposed. The result of requiring disclosure of a broad range of sharing agreements, including those for which there is not even an arguable public interest, will make complying with the online public file requirement even more burdensome. These agreements frequently contain confidential and proprietary information that will have to be reviewed and redacted before they can be added to the public file. Before imposing such burdens on broadcasters, the Commission must establish a compelling need for the information

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1996, MB Docket No. 09-182, *Notice of Proposed Rulemaking*, FCC 11-186, ¶¶ 194-208 (rel. Dec. 22, 2011) ("*2010 Ownership NPRM*").

[52] *See* Media Bureau Seeks Comment on A Petition for Rulemaking to Amend the Commission's Rule Governing Retransmission Consent, Docket No. MB 10-71,

contained in these agreements, and the present record clearly does not suffice for this purpose.

V. THE RECORD INCLUDES SEVERAL COMMON-SENSE PROPOSALS TO IMPROVE THE FCC'S ONLINE PUBLIC FILE REQUIREMENT.

There are several steps the Commission should take to minimize the burden of the online public file requirement while maximizing the utility of the information produced.

- ***The Commission Should Adopt a Pilot Program Before Requiring Widespread Conversion to an Online Public File.*** By working with broadcasters to test the online public file system, the Commission can minimize the burdens of placing public file information online while avoiding the need to issue multiple extensions to deal with unexpected consequences.[53] For example, such an approach might serve to avoid the difficulties encountered with the revised FCC Form 323, which was adopted without such a pilot program and ultimately required substantial revision and the granting of lengthy filing extensions.[54] The Commission should accept NAB's offer to identify broadcast participants to work through potential issues before the system for hosting online public files is finalized and any requirement becomes effective. This ultimately will benefit broadcasters and the public by enabling access to information in an organized online database while minimizing the added burdens imposed upon broadcasters.

- ***The Commission Should Not Apply The Online Public File Requirement Retroactively.*** The Commission should implement the online public file requirement on

[53] *See* Comments of NAB at 29-37; Named State Associations of Broadcasters at 12-15.

[54] *See, e.g.*, Promoting Diversification in the Broadcasting Services, *Order*, 24 FCC Rcd. 14628 (2009) (suspending the requirement to file Form 323 to "permit [the FCC] to investigate what changes can be made . . . to reduce the time required to complete it and to lessen and unanticipated burdens in this regard . . .").

a forward-looking basis, encompassing either all documents created after a date certain or all documents created after a station's next renewal. The record clearly establishes that requiring broadcasters to upload information that is in their existing public files would make compliance "extraordinarily more difficult."[55] Contrary to the suggestion by Common Frequency that scanning existing documents is merely "a rote process,"[56] the volume of documents in many stations' public files will make this an exceptionally time consuming task, magnified by the requirement that broadcasters retain certain documents "until final action has been taken on the station's next license renewal application" – a period of more than fifteen (15) years for some stations whose prior renewals face enforcement holds.[57] The record fails to establish the marginal value that will come from placing such dated information online.

- ***The Commission Should Eliminate Public File Certification From Form 303-S.***

The FCC's broadcast license renewal application currently requires that applicants certify that they have placed all documents required by Sections 73.3526 and 73.3527 in their public inspection file. As some commenters noted, this certification will no longer be necessary if the Commission is hosting station's public inspection files and can verify compliance at any time.[58] Accordingly, the Commission should amend Form 303-S to remove this unnecessary certification.

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[55] *See, e.g.*, Comments of Joint Broadcasters at 21 (retroactive application will make transition "extraordinarily more difficult").

[56] Comments of Common Frequency at 3.

[57] *See* 47 C.F.R. §§ 73.3526.

[58] *See* Comments of Named State Associations of Broadcasters at 15-16.

- ***The Commission Should Not Include Mere Allegations of Rules Violations In the Online Public File.*** The FCC's enforcement bureau investigates a large number of complaints each year, many of which are meritless and which receive no further action. As several commenters observed, the Commission should not require broadcasters to include information about meritless allegations in the online public file.[59] Mandating disclosure of enforcement bureau investigations and complaints would be akin to mandating disclosure of unsubstantiated ethics investigations. However, the potential downsides are greater here, where persons with interests adverse to a licensee would have an incentive to file false or irrelevant complaints to establish a record tarnishing the licensee's character that could be used against the licensee's renewal application. Even if, as Common Frequency argues, the public has "a right to know how a broadcaster is conducting business,"[60] this right does not extend to baseless allegations that cannot withstand the FCC's initial vetting process. The Commission already makes Notices of Apparent Liability for Forfeiture public and requires that broadcasters publish them in their public file; this more than suffices to serve the public interest in a licensee's operations.

VI. CONCLUSION

The Joint Television Parties support the Commission's efforts to modernize public inspection files in a way that will benefit the communities television broadcasters serve. In considering what elements to include in an online public file, however, the Commission must realistically consider the burden that such requirements – individually

[59] *See* Comments of Bouchard Broadcasting at 2; Four Commercial and NCE Television Licensees at 5 (information should be "treated as confidential – at least until there is an adjudication on the charges").

[60] Comments of Common Frequency at 5.

and cumulatively – will impose on broadcasters and the costs, both in terms of dollars and manpower. The Joint Television Parties respectfully submit that the Commission should only adopt rules consistent with these considerations.

Respectfully submitted,

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APPENDIX A

Owner	**Station**
Agape Church, Inc.	KVTH-DT, Hot Springs, AR KVTJ-DT, Jonesboro, AR KVTN-DT, Pine Bluff, AR
California Oregon Broadcasting, Inc.	KEVU-CD, Eugene, OR KLSR-TV, Eugene, OR KOBI(TV), Medford, OR KOTI(TV), Klamath Falls, OR K32DY, Medford, OR K19GH-D, Eugene etc., OR
Cedar Rapids Television Company	KCRG-TV, Cedar Rapids, IA
Gray Television, Inc.	KAKE(TV), Wichita, KS KBTX-TV, Bryan, TX KGIN(TV), Grand Island, NE KKCO(TV), Grand Junction, CO KKTV(TV), Colorado Springs, CO KLBY(TV), Colby, KS KOLN(TV), Lincoln, NE KOLO-TV, Reno, NV KXII(TV), Sherman, TX KUPK(TV), Garden City, KS KWTX-TV, Waco, TX WBKO(TV) Bowling Green, KY WCAV(TV), Charlottesville, VA WCTV(TV), Thomasville, GA WEAU-TV, Eau Claire, WI WHSV-TV, Harrisonburg, VA WIBW-TV, Topeka, KS WIFR(TV), Freeport, IL WILX-TV, Onandaga, MI WITN-TV, Washington, NC WJHG-TV, Panama City, FL WKYT-TV, Lexington, KY WMTV(TV), Madison, WI WNDU-TV, South Bend, IN WOWT-TV, Omaha, NE WRDW-TV, Augusta, GA WSAW-TV, Wausau, WI WSAZ-TV, Huntington, WV WSWG(TV), Valdosta, GA WTAP-TV, Parkersburg, WV WTOK-TV, Meridian, MS WTVY(TV), Dothan, AL

Owner	Station
	WVLT-TV. Knoxville, TN WYMT-TV, Hazard, KY WAHU-CD, Charlottesville, VA
Landmark Communications, Inc.	KLAS-TV. Las Vegas, NV WTVF(TV), Nashville, TN
Liberman Broadcasting, Inc.	KZJL(TV), Houston, TX KRCA(TV), Riverside, CA KPNZ(TV), Ogden, UT KETD(TV), Castle Rock, CO KMPX(TV), Decatur, TX
London Broadcasting, Inc.	KTYX(TV), Nacogdoches, TX KCEN-TV, Temple, TX KBMT(TV), Beaumont, TX KIII(TV), Corpus Christi, TX KCEB(TV), Longview, TX KTXD-TV, Greenville, TX
TTBG, LLC	KDBC-TV, El Paso, TX KFRE-TV, Sanger, CA KMPH-CD, Merced-Mariposa, CA KMPH-TV, Visalia, CA KPTH(TV), Sioux City, IA KPTM(TV), Omaha, NE KTNC-TV, Concord, CA KUBE-TV, Baytown, TX WCWG(TV), Lexington, NC
Una Vez Mas, L.P.	KASC-CA, Atascadero, CA KAZD(TV), Lake Dallas, TX KDFS-CA, Santa Maria, CA KEMO-TV, Santa Rosa, CA KHDF-CD, Las Vegas, NV KLDF-CA, Lompoc, CA KPAO-CA, Paso Robles, CA KPDF-CA, Phoenix, AZ KSBO-CA, San Luis Obispo, CA KTJA-CA, Victoria, TX KVDF-CA, San Antonio, TX KYAZ(TV), Katy, TX WTNO-LP, New Orleans, LA WXAX-LP, Clearwater, FL