

**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
)	
Initial Regulatory Flexibility Analysis)	MM Docket No. 00-168

**JOINT REPLY COMMENTS OF THE
NORTH CAROLINA ASSOCIATION OF BROADCASTERS,
THE OHIO ASSOCIATION OF BROADCASTERS, AND
THE VIRGINIA ASSOCIATION OF BROADCASTERS**

and

**FURTHER RESPONSE TO
INITIAL REGULATORY FLEXIBILITY ANALYSIS**

Wade H. Hargrove
Mark J. Prak
Marcus W. Trathen
Coe W. Ramsey
Stephen Hartzell
Laura S. Chipman

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
Suite 1600
Wells Fargo Capitol Center
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304

Their Attorneys

TABLE OF CONTENTS

Summary	i
I. The Commission Should Establish A Working Group Or Pilot Project Before Moving Forward With Its Proposals.....	2
II. The Commission’s Proposal To Require Television Broadcasters To Post The Contents Of Their Political File To A Commission Database Would Impose Significant And Unjustified Burdens	4
III. The Proposed Sponsorship Disclosure Requirement Is Unjustified And Unsupported By Data In The Record	9
IV. The Commission Has Failed To Comply With The Requirements Of The Regulatory Flexibility Act	10
Conclusion.....	11

Summary

The North Carolina Association of Broadcasters, the Ohio Association of Broadcasters, and the Virginia Association of Broadcasters hereby reply to comments submitted in response to the Commission’s Further Notice of Proposed Rulemaking, FCC 11-162, (the “*Notice*”) in the above-captioned proceeding relating to the proposed online public file. The Associations also respond to and comment further on the Commission’s Initial Regulatory Flexibility Analysis (“IRFA”).

Other broadcasters have demonstrated—consistent with the Associations’ Comments—that the Commission’s proposals to require online posting of a station’s political file and sponsorship identification disclosures should be modified or rejected. The Commission’s estimate of the burden of these proposals on broadcasters are not supported by real-world data; rather, the *Notice* and the comments submitted in support of the proposal simply assume that broadcasters would not be burdened. In this proceeding, broadcasters have shown the opposite to be true. Through their comments, including affidavits, declarations, and other summaries of data, the Associations and other commenting parties have demonstrated the significant burden that the proposals would impose on stations. The Associations urge the Commission to reconsider the proposals in light of the uncontroverted data in the record.

In preparation for these comments, the Associations conducted surveys of television members on the issues raised by the *Notice*. Since the Associations filed their initial comments, other member stations have submitted additional responses. The survey results confirm that North Carolina, Ohio, and Virginia broadcasters would face significant operational and financial burdens as a result of the proposed regulations. *See*

Declaration of Laura S. Chipman (attached). The data submitted by other commenting parties bolster this conclusion. Broadcasters have submitted estimates and supporting affidavits demonstrating the significant paperwork, staffing time and expense, and other costs associated with compliance with the new proposals.

In these Reply Comments, the Associations urge the Commission to consider the uncontroverted data in the record that the expanded online posting requirements would impose a substantial burden on broadcasters that outweighs any putative public benefit.

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RESPONSE TO INITIAL REGULATORY FLEXIBILITY ANALYSIS

The North Carolina Association of Broadcasters (“NCAB”), the Ohio Association of Broadcasters (“OAB”), and the Virginia Association of Broadcasters (“VAB”) (collectively, the “Associations”), through their attorneys, hereby reply to comments submitted in response to the Commission’s Further Notice of Proposed Rulemaking, FCC 11-162, (the “*Notice*”) in the above-captioned proceeding relating to the proposed online public file. The Associations also respond to and comment further on the Commission’s Initial Regulatory Flexibility Analysis (“IRFA”).

I. THE COMMISSION SHOULD ESTABLISH A WORKING GROUP OR PILOT PROJECT BEFORE MOVING FORWARD WITH ITS PROPOSALS

The Associations agree with the comments of the National Association of Broadcasters which point out that providing online access to some portions of the public file has merit.¹ The Associations made this same observation in their opening Comments.² However, as discussed in the Associations' Comments, and as supported by the comments of numerous other broadcasters and broadcaster representatives, the proposed online public file requirements, if adopted in their entirety, would impose new and burdensome requirements on broadcasters. It should be underscored that the majority of the volume of a station's public file is not currently required to be filed with the FCC.³ Thus, under the Commission's proposal, stations would be responsible for manually and individually transferring documents to the online public file, resulting in a massive scanning and uploading project.

As the Associations and other commenters have demonstrated, this process would involve significant additional costs for most stations, including technological upgrades, staffing, and time diverted away from local broadcast activities. Of the stations surveyed by the Associations, near 40% of the stations reported that they would require additional equipment to accomplish the transfer. *See* Declaration of Laura S. Chipman (attached). Several stations reported that they would require additional staffing to fulfill the new

¹ Comments of National Association of Broadcasters p. 2 (filed December 22, 2011) ("Comments of NAB").

² *See* Joint Comments of NCAB, VAB, and OAB p. 4 (filed December 22, 2011).

³ *See id.* pp. 5-6.

requirements.⁴ Put simply, these burdens are significant and should be reconsidered by the Commission before imposing this requirement.⁵

It is possible that a greater degree of consensus could be reached by a better understanding of the manner in which broadcasters currently conduct their business, particularly the manner in which they document purchases of political time. In this regard, the Associations agree with the recommendation of the National Association of Broadcasters and other broadcasters that the Commission establish a working group to analyze the transition to an online public file and provide the Commission with real-world input and experience concerning how broadcasters currently maintain their public files.⁶

Several commenters note how previous Commission attempts to make information accessible via the Internet in searchable format has resulted in the imposition of enormously burdensome new regulatory requirements.⁷ As pointed out by the Associations in the Declaration of Kim Eshleman attached to their Comments, one client's ownership data comprising less than 200 pages resulted in the filing of over 4,800 pages of data once converted into the Commission's prescribed Form 323 electronic format. This endeavor was further complicated by the Commission's extremely slow and

⁴ For example, one station responded that they would have to hire at least one full time employee to manage the electronic file as it is proposed by the *Notice*. See Declaration of Laura S. Chipman (attached).

⁵ Moreover, these burdens are not justified by the convenience of researchers or academics far outside the localized interests of the community. See Comments of PIPAC, pp.7, 10-11, 22 (filed December 22, 2011).

⁶ See Comments of NAB pp. 29-30. See also Joint Comments of Named State Broadcaster Associations pp. 12-15 (proposing that Commission conduct a pilot program before instituting new rules) (filed December 22, 2011).

⁷ See Comments of NAB at Attachment D; Comments of Joint Broadcasters at Appendix B.

“buggy” electronic systems that caused filings to take 24 hours or more to validate as the filing deadline approached. Given this, Ms. Eshleman reported spending exorbitant time making what formerly were routine filings—for example, she spent more than 60 hours inputting data and filing the more than 4,800 pages for one client alone in connection with the 2011 biennial reports.

With its proposals in this proceeding, the Commission appears to be headed down the same road as with the ownership reports—the adoption of new requirements in the name of efficiency that have real-world, detrimental impacts on broadcasters with no balancing, demonstrable public benefit. Inefficiencies—such as those experienced with the ownership reports—drain already-strapped broadcaster resources and impair broadcasters’ ability to serve the public interest in the first place. These inefficiencies could be mitigated by the establishment of an industry working group or pilot project that would permit a more robust evaluation of the impact of the rules before they are adopted.

II. THE COMMISSION’S PROPOSAL TO REQUIRE TELEVISION BROADCASTERS TO POST THE CONTENTS OF THEIR POLITICAL FILE TO A COMMISSION DATABASE WOULD IMPOSE SIGNIFICANT AND UNJUSTIFIED BURDENS

As observed by numerous commenting parties, the Commission has now reversed its previous conclusion that it would be unduly burdensome for stations to have to upload political file documents continually into an online public file. As the Associations and other commenting parties have shown, political advertising transactions are conducted in largely the same way as they were in 2007 in terms of the manner in which political purchases are documented in the political file. Indeed, some 92% of the Associations’ survey respondents reported no changes to their political advertising recordkeeping

methodology and practices since 2007. *See* Declaration of Laura S. Chipman (attached). Moreover, most stations' practices necessarily involve documents in varied formats.⁸

The Commission's new position that the requirement would "impose far less of a burden than previously thought" is unsupported by the data in the record.⁹ To the contrary, broadcasters' comments in this proceeding clearly demonstrate that the burden of compliance would be substantial. Of the stations surveyed by the Associations, the respondents reported an average of approximately 3,000 pages in their political file. NAB has also provided data from its member stations of even more voluminous files. Moreover, NAB reports from one of its member stations that the conversion of a station's existing political file alone could take hundreds of hours for a single station even assuming no technical difficulties or delay.¹⁰ Using the assumptions employed by NAB in its Comments, the data collected by the Associations suggest that stations would spend, *on average*, 100 hours in complying with the Commission's electronic public file proposal; obviously, some stations would spend considerable more time. Stated another way, the Joint Broadcasters have estimated an additional burden of at least 15.7 hours per week of staff time that would be required just to manage the new requirements of posting the file online— at least a six-fold increase in time stations would have to devote to maintain the file.¹¹

⁸ *See* Joint Comments of NCAB, VAB, and OAB p. 9.

⁹ *Notice* ¶ 23.

¹⁰ *See* Comments of NAB pp. 19-20.

¹¹ Comments of the Joint Broadcasters (and supporting declarations) (filed December 22, 2011).

To meet this time demand, most stations would have to hire additional employees or divert staff away from local station programming and sales activities. The Associations' survey results indicate that the proposed rule would require television stations to hire at least one full-time person per station to manage updating the file within a reasonable time during the political season.¹² NAB reports that in a contentious election, the file itself can be thousands of pages per race, resulting in even more *thousands* of pages for its member stations to manipulate.¹³ The data presented by the Named State Broadcaster Associations also confirms the potential staffing costs for stations.¹⁴ In sum, the comments in the record consistently report that the paperwork burden of the proposed online political file would translate to expensive staffing costs for stations, especially during the election season.¹⁵

In addition to the staffing required to manage the burden, the expense to acquire the necessary equipment would be significant for some stations—especially small business television stations. Indeed, approximately 40% of the Association's survey respondent's reported that they do not have the high-quality scanner that would be necessary to upload the thousands of pages of documents in their political files.

¹² Some stations responding to the Associations' survey pointed out that, in a major election year, the station's political file is even more voluminous. One survey respondent indicated that "the additional work load of posting every document pertaining to the political file would be *overwhelming*" and "the amount of scanning of all documents would be extremely time consuming." The data demonstrates that the process would require stations to hire additional personnel to manage the paperwork, run daily reports, and submit the data to the FCC. However, without further clarification as to the Commission's proposed technical process of data submission, it is difficult for stations to respond and quantify the burden at this stage.

¹³ Comments of NAB pp. 13-15, 17 (and supporting declarations from member stations).

¹⁴ Joint Comments of Named State Broadcaster Associations p.6 (reporting the results of an informal survey).

¹⁵ *See also* Comments of NAB pp. 18-19 (and supporting declarations from member stations).

The proposed “immediacy” requirement imposes even more of an obstacle to compliance given these limitations. As the Associations explained in their initial comments, an “immediacy” requirement is not realistic for stations as they are responding to the demands of the fast-paced political time marketplace. During election season, the burden of posting the documents online is magnified, and there is no data in the record to suggest that broadcasters would be relieved of the burden in any way.¹⁶ As NAB observes, daily reports during election season could result in 100 or more pages of filing a day for its member stations, in addition to the materials already required to be in the political file.¹⁷

Moreover, station political sales practices and materials are varied and tailored to the needs of each station, and the record demonstrates that these materials (both paper and electronic) are not so easily translated into standard formats as the Commission assumes.¹⁸ The Associations have also demonstrated that conforming disclosure to prescribed online forms would make the process even more burdensome. The number of personnel hours that stations already devote to conform to prescribed online forms is astonishing, and a similar online filing mechanism for the political file would only increase the burden.¹⁹

¹⁶ In its comments, PIPAC asserts the unsupported conclusion that an online public file would “likely diminish many of the burdens associated with broadcasters’ maintenance of paper files.” Comments of PIPAC p. 7; *see also* Comments of PIPAC pp. 10-11. This mere assumption is not entitled to any evidentiary weight in this proceeding, and it is directly controverted by the submissions of broadcasters showing the burden of compliance for many stations.

¹⁷ Comments of NAB p. 3 (and supporting declaration).

¹⁸ *See* Comments of the Joint Broadcasters p. 11.

¹⁹ *See* Joint Comments of NCAB, VAB, and OAB pp. 11-12.

The Associations also agree with NAB's concern regarding the possible unintended consequences of requiring television broadcasters alone to place political rate information in a central database.²⁰ The market for political time is, of course, competitive. And requiring television broadcasters, but not their competitors, to post real-time information regarding their advertising rates will impact the market for political time in a way that disadvantages broadcasters vis-à-vis their competitors. The Commission should be reluctant to adopt new regulations that will have a market distorting impact.

The Associations acknowledge that, in requiring stations to maintain political files, the Commission's goal is to provide access to candidates and the station's local community to relevant and timely information. The Associations urge the Commission to reject PIPAC's generalized assertion that broadcasters should provide a record of aggregable and searchable data for the benefit of researchers and groups outside their local community.²¹ The Associations disagree with PIPAC's suggestion that "[p]olicymakers, researchers, journalists, and watchdog groups" are entitled to track and investigate political patterns at the expense of broadcasters.²² As the Associations explain in their Comments, these interests fall outside the intended function of local broadcasters' service to their communities and do not justify the burden that would be imposed on stations.

²⁰ Comments of NAB p. 21-22.

²¹ See Notice ¶ 48.

²² See Comments of PIPAC p. 9.

III. THE PROPOSED SPONSORSHIP DISCLOSURE REQUIREMENT IS UNJUSTIFIED AND UNSUPPORTED BY DATA IN THE RECORD

In their Comments, the Associations oppose the Commission's proposed vast expansion of station reporting requirements. Because the Commission's related proceedings are ongoing and the proposals in the *Notice* are imprecise at this stage, it is difficult for broadcasters to estimate the burden they would impose.²³ NAB and the Associations have observed, in any event, that the proposed requirement for broadcasters to list in the public file all sponsorships that require disclosure would result in burdensome collection efforts far outside what a station is already required to do.²⁴

Moreover, the proposed reporting requirement does not further any specific purpose under the sponsorship identification rules.²⁵ The Associations disagree with PIPAC's contention that viewers should be able to "view sponsorship information they may miss during the live airing of a program."²⁶ Whatever interest the public may have in after-the fact sponsorship information is plainly outside the scope of the sponsorship identification rules, which are expressly designed to be simultaneous with the message itself.²⁷ In practice, the proposed list of sponsorships would serve *only* the needs of researchers because it does not provide any context relevant or meaningful to viewers in

²³ See also Comments of NAB pp. 26-27.

²⁴ See Comments of NAB pp. 27-28; Joint Comments of NCAB, VAB, and OAB pp. 17-18.

²⁵ In fact, the proposed requirements fall outside the scope of the FCC's authority over sponsorship identification. The relevant statutes are specific directives to require disclosure of sponsorship *to viewers* and do not direct or authorize the Commission to require collection or reporting of the information in this way.

²⁶ Comments of PIPAC p.22.

²⁷ See 47 U.S.C. § 317 (disclosure required "at the time [the message] is broadcast"); 47 U.S.C. § 508 ("The inclusion *in the program* of the announcement. . . shall constitute the disclosure required by this section." (emphasis added)); see also *Applicability of Sponsorship Identification Rules*, Public Notice, 40 FCC 2d 141 (1963).

the community. The requirement would result in substantial costs to broadcasters that are not justified by the purported interests of researchers, academics, and watchdog groups.

IV. THE COMMISSION HAS FAILED TO COMPLY WITH THE REQUIREMENTS OF THE REGULATORY FLEXIBILITY ACT

In their Comments, the Associations observed that in its Initial Regulatory Flexibility Act analysis, the Commission fails to support the assumption that no significant impact will be imposed by the proposed rules on small entities.²⁸ The Commission's broad conclusion that "[h]aving the Commission host the public file will ease the administrative burdens on all broadcasters"²⁹ remains unsupported by any data in the record. Most, if not all, of the data in this proceeding is in fact contrary to the Commission's assumption. Because stations will be responsible for posting the majority of the volume of the public file in page numbers, the costs of manual transfer are significant, especially for small businesses with fewer resources. For example, the Named States Broadcasters' Comments submit that if only 1,000 small business television stations were to transfer the contents of their current public inspection files onto the FCC's website, the staff of these stations, in the aggregate, would have to scan and upload between 25 to 45 million pages of documents.³⁰ This process would involve significant additional costs, including new equipment, especially small entities, technological upgrades, staffing, and time diverted away from programming activities. The Commission is obligated to consider and develop data to evaluate the economic

²⁸ See Appendix C to the *Notice*, ¶¶ 1, 10.

²⁹ See *id.* ¶ 10.

³⁰ Joint Comments of Named State Broadcaster Associations p.13.

impacts of its proposals, and the Commission should not disregard the costs to small businesses threatened by these proposed requirements.

CONCLUSION

For the reasons discussed in the Associations' Comments and Reply Comments, the Commission should decline to adopt a rule requiring that all items currently required to be placed in the public inspection file be uploaded to a central, FCC-maintained database. In particular, the Commission's proposal to require television broadcasters to upload the political file is not practicable and would impose burdens that outweigh any perceptible public benefit. In addition, the proposed requirement for stations to collect and post sponsorship identifications would impose substantial burdens for little, if any, public benefit. The Associations urge the Commission to consider the uncontroverted data in the record that the expanded online posting requirements would impose an undue burden on broadcasters.

Respectfully submitted,

**NORTH CAROLINA ASSOCIATION
OF BROADCASTERS
OHIO ASSOCIATION OF
BROADCASTERS
VIRGINIA ASSOCIATION OF
BROADCASTERS**

/s/
Wade H. Hargrove

/s/
Mark J. Prak

/s/
Marcus W. Trathen

/s/
Coe W. Ramsey

/s/
Stephen Hartzell

/s/
Laura S. Chipman

**BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.**
Suite 1600
Wells Fargo Capitol Center
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304

Their Attorneys

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