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February 22, 2011

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Via Electronic Filing

Re: Notice of Ex Parte Presentation in Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MM Dkt. 00-168; Standardizing Program Reporting Requirements for Broadcast Licensees MB Dkt. 11-189

Dear Ms. Dortch,

Pursuant to section 1.1206(b) of the Commission's rules, Free Press on behalf of the Public Interest Public Airwaves Coalition submits this notice regarding an *ex parte* communication in the above referenced dockets.

On February 21, 2012, Meredith McGehee of Campaign Legal Center, Corie Wright of Free Press, Laura Moy of the Georgetown Institute for Public Representation, and Andrew Schwartzman of the Media Access Project (collectively, "Public Interest Public Airwaves Coalition" or "Coalition") met with Sherrese Smith, Chief Counsel and Legal Advisor to Chairman Genachowski, and Jessica Almond, Special Counsel to Chairman Genachowski.

The subject of the meeting was the Federal Communications Commission's recent proposal to replace broadcasters' paper public files with an online public file that would be hosted by the Commission.¹

Representatives of the Coalition explained that broadcaster estimates of the time and cost burden of maintaining their political files online are grossly exaggerated, if not outright wrong. The vast majority of estimates submitted by broadcasters treat the online posting requirement as it were an extra task rather than a replacement for existing filing obligations. The FCC's proposed online posting requirement is *in lieu of* – not in addition to – the time station staff must already spend organizing their paper files. The FCC is not proposing that broadcasters report any additional information in their political files. It is simply proposing that broadcasters replace their outdated paper files with electronic ones that can be more easily accessed by

¹ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Order on Reconsideration and Further Notice of Proposed Rulemaking, MB Dkt 00-168, FCC 11-162 (rel. Oct. 27, 2011).

the public. Contrary to broadcasters' assertions, they would not need to hire additional staff in order to make their political files available online; instead, current staff would substitute their existing paper file maintenance tasks with online ones.

In any event, broadcasters have not provided a reasoned or legitimate explanation for why maintaining an online political file entails more burden or requires more staff time than is already expended to maintain the existing paper file. In 2012 it is ludicrous for broadcasters to deny the efficiency advantages gained from switching from paper files to electronic ones. Indeed, many broadcasters admit that they already maintain these records in electronic form – an online public file would streamline the filing process by eliminating the burden of printing out these documents and organizing them by-hand in the existing paper file. It would also eliminate the staff time dedicated to supervising visitors inspecting the paper file, a not insignificant undertaking, particularly during the election season when stations receive numerous visitors seeking to inspect the political file.

The Coalition reiterated that ready public access to these records online is critical regardless of the designated market area in which a station is located. Currently every broadcast station must maintain a political file. These records help to reveal when, to whom, and on what terms broadcasters have offered use of the public's airwaves for political purposes, and allows the public to verify that broadcasters are giving candidates equal access to their facilities and to assess whether stations are favoring certain groups or political messages over others. Contentious elections and other controversial issues of public importance take place in all markets, regardless of their size or geographic location. Moreover, because residents of smaller markets have fewer local media choices generally, they are more likely to rely on electoral information (including political ads) generated by local television stations. Consequently, exempting some licensees from the online posting requirement based on station or market size would result in arbitrary line drawing by the Commission and would unjustifiably deny ready access to this critical information in the very communities that need it the most.

The Coalition also addressed a letter recently submitted by Barrington *et al* which puts forward an alternative to the Federal Communications Commission's proposal. Specifically, Barrington *et al* propose that TV stations should be allowed to continue to maintain their entire political files in paper form, but in addition, stations would also create and maintain a separate, but more limited, political record for submission online.²

We explained that the limited information Barrington *et al* was proposing to put online was inadequate under section 315 of Communications Act. As a consequence, broadcasters would have to maintain two separate political records – one online and one offline – while diminishing the amount and types of information that

² See Letter from Mary Jo Manning, Counsel to Barrington *et al*, filed MM Dkts 00-168, 00-44, 11-189 (Feb. 15, 2012) <http://apps.fcc.gov/ecfs/document/view?id=7021860425>.

members of the public could conveniently access via the internet. Broadcasters' primary rationale for seeking to exempt the political file from online posting has been the supposed burden of doing so, but the proposal advanced by Barrington *et al* would in effect double the file maintenance burden. Conversely, the Commission's current proposal to replace entirely TV stations' paper files with an online file is the far simpler and less onerous course of action.

Second, the limited data Barrington *et al* propose to make available online exempts a significant amount of important and statutorily-required political file information that citizens should be able to access readily and effectively through the internet. Barrington *et al* propose placing online limited information about advertisements purchased by or on behalf of candidates for elected office. But the proposal appears potentially to exclude from online posting the information that stations must by law collect about advertisements purchased by groups that are not affiliated with a candidate. As submitted, Barrington's proposal could be construed to exclude information on political and issue advertising purchased by groups organized under sections 501(c)³ and 527 of the internal revenue code, including independent expenditure committees (so-called "Super PACs"). These types of groups are playing increasingly prominent roles in political advocacy and excluding information on their advertising purchases would result in an incomplete and inadequate record of how the public airwaves are being used for partisan political purposes.

Additionally, the Barrington *et al* proposal does not provide online access to other important information that broadcasters must already collect and make available to the public. For example, the proposal would omit from online disclosure the cost of individual ads, whether a request to purchase broadcast time was accepted or rejected, the date and time on which the broadcast is aired, or the class of time purchased. The Coalition reiterated that this information is neither confidential nor proprietary, but was intended and mandated by Congress to be made available to the public.

The Coalition stated that Barrington *et al*'s proposal to allow stations to choose whether they want to submit political file information to the FCC or host it on their own website would defeat the significant benefits of having the data maintained in a single location. The FCC has offered to make these files available in a database hosted by the agency. This is the superior option as it would create a central location

³ These include 501(c)(4) social welfare organizations, 501(c)(5) labor and agricultural organizations and 501(c)(6) business leagues and trade organizations. These groups can engage in certain political campaign activities provided that it is not their primary activity. They may also engage in other forms of advocacy on controversial issues of public importance that subject them to disclosure provisions of the FCC's rules. *See e.g.*, 47 C.F.R. § 73.1212(d)(e).

for broadcasters' unified public files, thereby increasing the ease of locating the files and eliminating the burden on TV stations of maintaining such records on their own websites.

Finally, we renewed our support for the Commission's proposal to include "pay for play" records and resource sharing agreements in the online public file. We also urged the Commission to move expeditiously on issuing an NPRM in the agency's ongoing proceeding to replace broadcasters' issues/programs lists with a more streamlined and uniform reporting requirement.

In accordance with the Commission's rules, this *ex parte* notice is being filed electronically in the above referenced dockets. If you have any questions regarding this filing please do not hesitate to contact me.

Respectfully
submitted,
_____/s/_____
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Cc:
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