

MASSACHUSETTS  
40 main st, suite 301  
florence, ma 01062  
tel 413.585.1533  
fax 413.585.8904

WASHINGTON  
1025 connecticut ave nw, suite 1110  
washington, dc 20036  
tel 202.265.1490  
fax 202.265.1489



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

April 12, 2012

**Re:** *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MB Dkt 00-168

Dear Ms. Dortch,

On April 11, 2012, I met with Dave Grimaldi, Chief of Staff to Commissioner Mignon Clyburn to discuss a draft Commission order requiring television broadcasters to replace their existing paper public inspection files with an online public file that would be hosted by the Commission. The item is tentatively slated for a vote in the Commission's April 27<sup>th</sup> Open Meeting.<sup>1</sup>

I conveyed Free Press's continued support for the Commission's efforts to make broadcast television station public files and political files more transparent and accessible to the public. Broadcast stations are required by law to disclose information on the political advertising they sell, including at what cost, and to whom, they sell it. I reiterated that the FCC is not proposing to change broadcasters' existing requirements with regard to the contents of the political file. It is simply furthering the purpose and transparency goals of the statute and attendant FCC rules<sup>2</sup> by replacing television broadcasters' existing paper political file with an online version that can be more easily accessed by members of the public.

I also explained that, contrary to the erroneous assertions of the National Association of Broadcasters, these records are not duplicative of information maintained by the Federal Election Commission.<sup>3</sup> The Federal Election Commission only collects data on "federal election" spending. It does not track political issue ad spending and does not track spending on races for state office, or other local elections and issues. Under the existing FCC rules, broadcasters must collect information on all of the political advertising time they sell, including for presidential and congressional races, elections for governor and state legislature, state ballot initiatives, as well as national and local issue advertisements, and regardless of whether ad time is purchased by a candidate, campaign, or third party group. Thus, the political advertising information that Congress and the FCC currently require broadcasters to maintain as part of their political files provides unique information about how local television stations are selling access to the public airwaves for political advertising purposes.

With regard to press reports suggesting that initial online posting requirements for political files would be limited to stations in the top 50 DMAs affiliated with ABC, CBS, FOX, and NBC networks, I explained that these criteria could inadvertently exclude online posting of political files by a number of highly ranked stations. While affiliation with a Big Four network can be a reasonable measure of a station's audience reach and resources in some markets, that is not universally the case. In markets ranked among the top 50 DMAs, consideration of station network affiliation alone would exclude a number of large, well-resourced and highly-ranked stations that are not affiliated with a Big Four network. Some examples

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<sup>1</sup> Public Notice, "FCC Announces Tentative Agenda for April Open Meeting," (Apr. 6, 2012) <http://www.fcc.gov/document/fcc-announces-tentative-agenda-april-open-meeting>.

<sup>2</sup> See 47 U.S.C § 315 (e) and attendant FCC regulations, 47 C.F.R §73.1212 and 47 C.F.R §73.1943.

<sup>3</sup> See *Ex Parte Communication of the National Association of Broadcasters*, filed MM Dkt 00-168 (Apr. 5, 2012) <http://apps.fcc.gov/ecfs/document/view?id=7021907262>.

include WGN, a top ranked station in Chicago affiliated with the CW network, as well as stations serving Spanish-speaking communities in cities like Los Angeles, New York, Miami, Houston and Phoenix.<sup>4</sup>

To remedy this inconsistency, I proposed the following alternative:

Online posting of the political file prior to the two year implementation mark for all television stations would be required of television licensees in the Top 50 DMAs if the licensee is either (1) affiliated with a Big Four Network, as defined by § 73.3613(a)(1) of the Commission's rules (i.e. ABC, CBS, Fox, and NBC); or (2) as of the effective date of the order, ranked among the Top Four stations in the market based on the most recent all-day (9 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service.<sup>5</sup>

Free Press believes that this Big Four/Top Four proposal would more effectively further the Commission's transparency goals by including on a more reliable basis those stations that have the greatest capacity to both reach local audiences and promptly convert to an electronic political file going forward. Importantly, this would ensure that members of the public have more consistent and equitable access to information about how and to whom television stations are selling political advertising time.

Finally, I conveyed Free Press's disappointment that, per press reports, the Commission may exclude from the draft order previous proposals to require disclosure of broadcast shared services agreements (SSAs). Continuing to exclude SSAs from the public file unfairly deprives the public of the very information it needs to unearth abuses or violations of FCC rules. The Commission does not routinely monitor every aspect of stations' compliance with FCC rules, but instead depends on viewers and listeners to provide information about whether stations are abiding by FCC rules and policies. Public file access to SSAs is necessary to ensure that licensees are not circumventing the FCC ownership rules through sharing arrangements or otherwise acting anti-competitively.

I explained that the fact that the FCC has not yet decided whether SSAs should be treated as attributable under the media ownership rules does not preclude disclosure of these agreements. Indeed, the fact that the FCC has yet to promulgate meaningful attribution rules for sharing arrangements makes their disclosure all the more imperative. The FCC has historically required disclosure of agreements that may affect control of a station or production of local news and other programming -- *irrespective of attribution*.<sup>6</sup> For example, in 1999 the FCC initially decided not to attribute broadcast joint sales agreements (JSAs), but, citing the need for public oversight, required disclosure of such contracts in the public file. "[W]e decline to impose new rules attributing JSAs . . . We will, however, require broadcasters who have entered into JSAs to place such agreements in their public inspection files, with confidential or proprietary information redacted where appropriate. This requirement will facilitate monitoring of JSAs by the public, competitors and regulatory agencies."<sup>7</sup>

Unfortunately, despite increasing concerns about use of SSAs and their impact on competition and viewpoint diversity in local communities, the FCC has failed to require disclosure of SSAs. Unless such agreements are available, it is exceedingly difficult for members of the public to even learn whether these agreements are in place and whether stations are using them to evade the FCC media ownership rules.

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<sup>4</sup> For example, publicly available sources indicate that the Univision affiliate in Los Angeles is the top ranked station in the country regardless of language. Univision affiliates in New York, Houston and Phoenix are among the top ranked stations in those markets. In Miami, Univision and Telemundo affiliates maintain higher audience shares than some Big Four affiliates in that market.

<sup>5</sup> The use of the Big Four network and Top Four station criteria is well-established in Commission rules and precedent. See, e.g., 47 C.F.R § 73.3555(b)(1)(i) (Multiple ownership rules); 47 C.F.R § 73.658 (Affiliation agreements and network program practices); 47 C.F.R § 79.3 (Video description of video programming).

<sup>6</sup> The Commission requires commercial television stations to put copies of local marketing agreements and joint sales agreements in their public inspection files. 47 C.F.R § 73.3526(e)(14).

<sup>7</sup> *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry; Reexamination of the Commission's Cross-Interest*, Report and Order, 14 FCC Rcd 12559, ¶ 124 (1999).

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

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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Corie Wright  
Senior Policy Counsel  
Free Press  
202-265-1490

Cc:  
Dave Grimaldi