

53. NAB also argues that “[i]t is apparent that Congress intended the FEC to be the central repository of campaign information.”¹⁵⁸ From this, they argue that requiring the political file to be placed online would constitute “duplicative disclosure.”¹⁵⁹ This argument overlooks the explicit requirement in Section 315(e) that stations “maintain, and make available for public inspection, a complete record of a request to purchase broadcast time.”¹⁶⁰ NAB seems to be arguing that the statute, rather than our proposed regulation, is unnecessary and duplicative. The Commission “must give effect to the unambiguously expressed intent of Congress.”¹⁶¹ Here, that unambiguous intent is that the Commission require stations to make the contents of the political file, as outlined in the statute, “available for public inspection.”¹⁶² Both the existing requirement, and the proposed online update, give effect to the expressed Congressional intent. We note as well that NAB’s arguments regarding the Commission’s authority are contradictory – in the first argument, NAB wants to read BCRA’s lack of language concerning an online file strictly, and in the second, it wants to ignore the political file statutory provision entirely. We conclude that neither reading is correct.¹⁶³

54. Furthermore, the information filed with the FCC and the FEC is substantially distinct and intended for different purposes. The FEC was established by Congress to regulate federal elections, and FEC reporting requirements are limited to federal elections.¹⁶⁴ The FCC’s political file, by comparison, requires disclosure of information regarding all elective offices, including federal, state and local. The FCC’s broadcast political file must be made “available for public inspection” in part to notify candidates of information pertaining to transactions by an opponent. This notification is necessary in order to assess candidates’ equal opportunities rights under Section 315 corresponding to an opponent’s purchases of ad time.¹⁶⁵ The FEC does not collect any of the specific data that would be useful to candidates in connection with their equal opportunities rights, all of which appear in the political file, including: “(A) whether the request to purchase broadcast time is accepted or rejected by the licensee; (B) the rate charged for the broadcast time; (C) the date and time on which the communication is aired; (D) the class of time that is purchased.”¹⁶⁶ Instead, the spending data collected by the FEC requires candidates to disclose the *aggregate* amount expended during the period of time covered by the disclosure to a

¹⁵⁸ NAB Supplemental Comments at 4.

¹⁵⁹ *Id.* at 5.

¹⁶⁰ 47 U.S.C. § 315(e).

¹⁶¹ *Chevron USA Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984).

¹⁶² 47 U.S.C. § 315(e).

¹⁶³ NAB also quotes the FCC’s comments in an FEC proceeding in 2002, which stated that the FCC’s creation of an online database to comply with BCRA “could be extraordinarily complex and will require the expenditure of substantial resources in terms of time, money and personnel.” NAB Supplemental Comments at 8, citing Comments of the FCC, Media Bureau, before the FEC, Re: Notice 2002-13, Electioneering Communications, at 1 and 3 (Aug. 29, 2002) (“FCC Comments”). NAB goes on to say that “[t]he online posting burdens that the FEC proposed to impose on the FCC ten years ago and that caused the FCC to express concern are different from those the agency proposes to impose on television stations today. But the issues here about the burdens that would be imposed on stations by the FCC’s online file proposals “in terms of time, money and personnel” are similarly entitled to respect and weight.” *Id.* As discussed in detail in the text, we have afforded considerable respect and weight to broadcasters’ assertions about the burdens involved with posting their public files online, and have adopted a number of measures intended to reduce those burdens without sacrificing the goals of this proceeding.

¹⁶⁴ Federal Election Campaign Act of 1971, 2 U.S.C. § 431 *et. seq.*

¹⁶⁵ 47 U.S.C. § 315(a).

¹⁶⁶ 47 U.S.C. § 315(e)(2).

particular payee, the mailing address of the payee, the purpose of the transaction(s), the candidate's name and federal office sought, and the date of disbursement.¹⁶⁷ Typically, candidates make their television advertising purchases through media buyers. Thus, under the FEC's aggregate disclosure requirements, a candidate would only need to disclose the funds provided to a media buyer without disclosing how the media buyer allocated such funding – whether it goes to television, radio or print media, let alone how much was paid to each television station. There is no requirement to identify the specific components of the ad-sales transactions that broadcasters include in their political files, making the FEC disclosures nearly useless for a candidate seeking equal opportunities or learning what rates their opponents paid or the schedule of time purchased, and useless to members of the public who are seeking information about the purchasers of specific advertisements being carried on their local television station.

55. *Immediacy.* Consistent with our current political file rules, we adopt the *FNPRM's* tentative conclusion that stations must upload records to their online political file “immediately absent unusual circumstances.”¹⁶⁸ Whether maintained at the station or online, the contents of the political file are time-sensitive.¹⁶⁹ For example, a candidate has only seven days from the date of his or her opponent's appearance to request equal opportunities for an appearance.¹⁷⁰

56. We do not believe that complying with the longstanding immediacy requirement will be any more difficult when uploading to an online public file than when placing paper in a local file; in fact, using the online public file should often be quicker and more efficient. Some commenters claim that uploading the political file to the online public file immediately absent unusual circumstances is either extremely burdensome or technically impossible, with no public benefit.¹⁷¹ These commenters state that political advertising buys are fluid and often made at the last minute.¹⁷² They also point out that the final documentation indicating when spots are aired and how much is charged for them is typically generated only on a monthly basis.¹⁷³ They note that for this reason, the Commission has advised that rather than having to generate special documents, stations should provide the name of a contact person who can provide parties reviewing the political file with the times specific spots aired.¹⁷⁴ NAB argues that if stations were required to update the online political file to reflect the times that spots aired on a daily basis, that could entail filing more than 100 pages per day of traffic reports in addition to the materials already required to be in the political file.¹⁷⁵ Other commenters argue that moving the political file online will not lessen disruptions to station operations, because the delayed final disposition information about

¹⁶⁷ See FEC Form 3X (Reports of Receipts and Disbursements For Other Than An Authorized Committee), Schedule B (Itemized Disbursements), available at www.fec.gov/pdf/forms/fecfrm3x.pdf.

¹⁶⁸ Section 73.1943(c) of the Commission's rules provides that “[a]ll records required by this paragraph shall be placed in the political file as soon as possible As soon as possible means immediately absent unusual circumstances.” 47 C.F.R. § 73.1943(c).

¹⁶⁹ See 47 C.F.R. § 73.1943(c).

¹⁷⁰ See 47 C.F.R. § 73.1941(c).

¹⁷¹ Four Commercial and NCE Licensees Comments at 4, 6; Joint TV Broadcasters Comments at 5-6; Named State Broadcasters Assn. Comments at 8; North Carolina Assn. of Broadcasters *et al.* Comments at 10; Joint Television Parties Reply at 8.

¹⁷² Named State Broadcasters Assn. Comments at 8; North Carolina Assn. of Broadcasters *et al.* Comments at 10; Joint Television Parties Reply at 8-9.

¹⁷³ Joint TV Broadcasters Comments at 6; NAB Comments at 12.

¹⁷⁴ Joint TV Broadcasters Comments at 6.

¹⁷⁵ NAB Comments at 13. See also Joint Broadcasters at 5.

when a spot was aired is information that candidates are interested in obtaining from the station, and stations will still need to field daily in-person inquiries from buyers seeking this information.¹⁷⁶

57. These arguments generally suggest that online filing would involve a change to existing substantive requirements for assembling the public file. Under our existing rules, however, the political file must include all requests for broadcast time made by candidates, the final disposition of that request, and the charges made. The *FNPRM* did not propose to change these record-keeping requirements, and we do not do so.¹⁷⁷ We understand that stations generally place initial requests and the final order agreed to between the candidate and the station into the political file immediately, consistent with our rules.¹⁷⁸ We also understand that stations do not routinely place documentation relating to reconciliation information – including the times spots actually aired and details such as any make goods for preempted time,¹⁷⁹ rebates, or credits issued – in the political file on a daily basis. Stations instead make station personnel available to answer questions about final reconciliation in person, by email, or over the phone, and place written documentation about the final disposition in the file at a later date consistent with business practices – usually when final billing is compiled for the purchaser on a monthly basis. This practice is permitted. As the Commission stated in the *Political Rules Reconsideration* decision, “stations need not be required to employ extraordinary efforts to place immediately in the political file the exact time that candidate spots aired. . . . [I]t will be sufficient to provide information concerning the spots and program times that were ordered by the candidate, with a notation that the station will, upon request, provide immediate assistance and access to the station logs or other definitive information concerning actual air

¹⁷⁶ Joint TV Broadcasters Comments at 6; Joint Television Parties Reply at 9.

¹⁷⁷ We are not persuaded by alternative proposals, one by News Corporation and another by a coalition of broadcast station groups, to adopt additional record-keeping requirements for stations with respect to the political file. The proposal initially advanced by the coalition of broadcast station groups was that we not require stations to make their entire political files available online, but rather require online posting – on either the Commission's or the station's website, at the station's election – certain aggregate data concerning candidate purchases of advertising time, with weekly or monthly updates. Letter from Mary Jo Manning, on behalf of Barrington Broadcasting Co. et al., to William T. Lake, Chief, Media Bureau, FCC, MM Docket No. 00-168 (filed Feb. 15, 2012); Letter from Mary Jo Manning, Jonathan Blake, and Wade Hargrove, on behalf of Barrington Broadcasting Co. et al., to Marlene H. Dortch, Secretary, FCC, MM Docket No. 00-168 (filed March 15, 2012). An expanded coalition later advanced a revised proposal that would require stations to upload certain aggregate data concerning candidate purchases of advertising time, with updates daily, every second day, or weekly. Letter from Jonathan D. Blake, on behalf of Barrington Broadcasting Co. et al., to Marlene Dortch, Secretary, FCC, MM Docket No. 00-168 (filed April 20, 2012). News Corporation, on the other hand, submitted a proposal that would provide stations with the option of either placing their political files online or putting summary information (but not individual rates) in the online public file, while requiring stations to continue to maintain a paper file at the station that includes the rate information. See Letter from Maureen A. O'Connell, Senior Vice President, Regulatory and Government Affairs, News Corp., to Marlene Dortch, Secretary, FCC, MM Docket No. 00-168 (filed April 19, 2012). While we appreciate the efforts of these parties to develop alternatives, we believe that these options will deprive the public of the benefits of immediate online access to all the information in the political file. These suggested approaches would impose a new substantive public file reporting obligation on stations, which would be contrary to our goal of limiting the burdens on broadcasters. See ¶¶ 26-32, *supra*. Furthermore, our political file disclosure requirements take into account a candidate's equal access opportunities afforded under the statute. See 47 U.S.C. § 315(a). Under our rules, these rights exist for only 7 days; therefore, to be of value in this regard stations must post political file information immediately. The proposals requiring stations to post information every other day during the equal opportunity period (or even every day in the week before an election), would have limited value to candidates seeking to exercise their equal opportunities rights.

¹⁷⁸ See 47 C.F.R. § 73.1943.

¹⁷⁹ See fn. 106, *supra*.

time.”¹⁸⁰ We are not changing this precedent or practice. We are merely requiring that the materials that stations currently copy and place in their local files on a daily basis now be uploaded to the online public file on a daily basis, and that other information be uploaded consistent with existing business practices as previously approved under Commission precedent.¹⁸¹ Modernizing public inspection procedures for material in the public file will not increase stations’ costs of communicating information that is not yet in the public file.

58. Finally, some commenters argue that the existing political file system works adequately for stations and candidates, and that it is unreasonable to make the political file available immediately online for the benefit of researchers and other members of the public.¹⁸² Network Station Owners assert that the interests of researchers, scholars and citizens in having access to information about political spending “is not immediate and can be satisfied by visiting the station either during or after the election campaign.”¹⁸³ These commenters seem to be arguing that the needs of stations and candidates are singularly important, and that if these constituencies are not seeking changes to how the political file is maintained, then no changes are warranted. We disagree. First, as LUC Media points out, candidates will benefit from real-time posting of the political file.¹⁸⁴ Supporting that view, the record indicates that the online political file will be used by candidates, their representatives, and the general public.¹⁸⁵ Second, as discussed above,¹⁸⁶ the statute does not prioritize any potential users of the political file; it broadly mandates that the materials be made “available for public inspection . . . as soon as possible,” which the Commission has long interpreted to mean available to all members of the public “immediately absent unusual circumstances.”¹⁸⁷

¹⁸⁰ 7 FCC Rcd at ¶ 91.

¹⁸¹ In addition to making this information available online, stations are free to continue making this information available over the phone to candidates and their representatives, if that is their preferred business practice, and as long as that courtesy is extended to all candidates and their representatives.

¹⁸² Network Station Owners Reply at 11-12; Joint Television Parties Reply at 12-13. Joint TV Broadcasters argued that “even PIPAC, the entity urging the FCC to require stations to post their political files online has recognized that the political file can change daily during the election season and has suggested that the online posting requirement ‘could include provisions for a reasonable delay in posting updated information.’” Joint TV Broadcasters Comments at 6, *citing* Letter from Angela Campbell and Andrew Schwartzman, Counsel for the Public Interest, Public Airwaves Coalition, to Julius Genachowski, Chairman of the FCC (Aug. 4, 2011) (“PIPAC *ex parte*”). They contend this supports their conclusion that it would be difficult for stations to upload this information “in real time.” Joint TV Broadcasters Comments at 6. The commenter fails to note that with respect to burdens, PIPAC actually stated its belief that “placing this information online will reduce the burden on broadcasters that often receive multiple daily in-person requests to access this information during an election season.” PIPAC *ex parte* at 5. In their comments, PIPAC “strongly supports” the public file proposal discussed in the *FNPRM*. PIPAC Comments at 13-17.

¹⁸³ Network Station Owners Reply at 11.

¹⁸⁴ *See generally* LUC Media Comments and Reply.

¹⁸⁵ LUC Media Comments at 7; PIPAC Comments at 15; Michigan Campaign Finance Network Comments at 2.

¹⁸⁶ *See* ¶ 16, *supra*.

¹⁸⁷ 47 U.S.C. § 315(e)(1), (3); 47 C.F.R. § 73.1943 (stating that “[a]s soon as possible means immediately absent unusual circumstances”). The Named State Broadcasters Association expresses concern that “public advocacy groups and the Commission will play ‘stop watch’ roulette if the political files were to go online.” Named State Broadcasters Assn. Comments at 9. They state that the base fine for political file rule violations is \$9,000 and that “the FCC will have a strong incentive to find at least technical shortcomings in every television station’s efforts to comply with the mechanics of a new online political file requirement,” potentially exposing them to large fines

(continued...)

59. *Orderliness.* The Commission will design the online public file with an organizational structure that will ensure that the contents of the file, including the political file components, are orderly and easily uploaded and downloaded. The Commission's rules require licensees to keep "a complete and orderly" political file.¹⁸⁸ The Commission stated in the *FNPRM* that it expected licensees to upload any political file information to the online file in an organized manner so that the political file does not become difficult to navigate due to the sheer number of filings.¹⁸⁹ For an online political file to be useful, the Commission acknowledged, candidates and members of the public must be able easily to find information that they seek.¹⁹⁰ The Commission asked whether it should create federal, state, and local subfolders for each station's political file, and whether it should allow stations to create additional subfolders within the political file.¹⁹¹

60. NAB recognizes that there are efficiencies in the Commission creating some organizational categories for stations to use, and argues that "to the extent that the Commission can do this in a timely and accurate manner, for both the general and primary elections for every race in the country where candidates and issue advertisers may purchase advertising on a local TV station, NAB agrees that it would be desirable."¹⁹² We agree with NAB that it would be desirable and less burdensome on broadcasters for the Commission to create specific organizational subfolders, not only for candidate ad buys, but also for issue ads that relate to a political matter of national importance.¹⁹³

61. NAB also argues that the Commission should continue its policy of allowing broadcasters to manage their political file in a manner consistent with their particular operational and sales procedures.¹⁹⁴ It expressed concern that if the Commission creates a rigid standardized organizational structure, they will have to redesign their traffic management systems, which would expand the burdens on broadcasters by interfering with systems that stations use and that are tailored to their own circumstances.¹⁹⁵ NAB argues that the Commission should provide broadcasters with the flexibility to create their own subfolders and "subcategories" in order to further organize the data, and recommends that the Commission consider employing the services of a third-party Web-based file hosting service such as Dropbox.¹⁹⁶ To facilitate broadcasters' use of the online file, we will create and propagate subfolders

(...continued from previous page)

"notwithstanding the good faith efforts of staff-constrained broadcasters." *Id.* We reject this reasoning. First, if such an enforcement incentive exists, it would exist now with the existing public file rule. Second, as discussed throughout this proceeding, our aim in making the public file available online is to make it more accessible to the public. Commenters' unsupported speculation about possible arbitrary enforcement provides no basis for maintaining the obsolete paper filing system. Moreover, we reject the Named State Broadcasters Association's argument that the base fine for public and political file violations" should be lowered, *id.* at 16, an issue that is beyond the scope of this proceeding.

¹⁸⁸ 47 C.F.R. § 73.1943(a). See also *FNPRM* at ¶ 24.

¹⁸⁹ *Id.*

¹⁹⁰ *FNPRM* at ¶ 24.

¹⁹¹ *Id.*

¹⁹² NAB Comments at 20.

¹⁹³ *Id.*

¹⁹⁴ NAB Comments at 16.

¹⁹⁵ Joint Broadcasters Comments at 11; Named State Broadcasters Assn. Comments at 8; NAB Comments at 16-17.

¹⁹⁶ NAB Comments at 20-21. Services such as Dropbox synchronize identified files, including folder structures, between computers. Software installed on the machines watches in the background for modifications in user-selected folders and synchronizes those changes over the Internet to other user-selected computers. The New York

(continued...)

for candidates and will provide stations with the ability to create additional subfolders and subcategories in compliance with their own practices. We also agree with NAB that the use of hosting services providing a mechanism to allow stations to drag and drop files and folders to the online public file will allow for greater efficiencies.¹⁹⁷ We delegate to staff the authority to incorporate such efficiencies, and to cooperate with industry as it develops specifications to enable such efficiencies and to incorporate them in the online system, to the extent the staff concludes that such approaches are workable and effective. We also delegate to staff the authority to design, add to, or adjust the features of the online public file, as needed, to increase its ease of use.

2. Letters from the Public.

62. Responding to commenters, we exempt letters and emails from the public from the online public file, instead requiring that such material be maintained at the station in a correspondence file. In the *FNPRM*, the Commission proposed that letters and emails from the public, which now are required to be included in the local file, should not be incorporated in the online public file, but instead continue to be retained at the station for public viewing in a paper file or an electronic database at the station's main studio.¹⁹⁸ The Commission tentatively agreed with reconsideration petitioners that privacy and burden concerns were significant enough to merit excluding these documents from the online public file, and sought comment on its findings.¹⁹⁹ Alternatively, the Commission asked whether it should allow or require stations to redact personally identifiable information before posting letters and emails online.²⁰⁰ Some commenters, broadcasters and public interest advocates agree that letters and emails from the public should not be placed online due to privacy concerns and the burdens of review and redaction that such concerns would necessitate.²⁰¹ Some broadcasters believe that stations should maintain a correspondence file available locally at the station,²⁰² while others think we should eliminate the requirement entirely.²⁰³ Common Frequency argues that privacy concerns are exaggerated, since it is

(...continued from previous page)

Times Gadget Blog describes Dropbox as "a file syncing service that allows you to sync a single folder (or folders) between multiple computers." See <http://gadgetwise.blogs.nytimes.com/2011/07/27/3-ways-to-keep-your-data-with-you-at-all-times/>.

¹⁹⁷ NAB Comments at 21.

¹⁹⁸ *FNPRM* at ¶ 26. Section 73.3526(e)(9) requires commercial stations to place in the public file all "written comments and suggestions received from the public regarding operations of the station, unless the letter writer has requested that the letter not be made public or when the licensee feels it should be excluded from public inspection because of the nature of its content, such as a defamatory or obscene letter."

¹⁹⁹ *Id.* The Commission also sought comment about whether other public file information raises similar privacy concerns. We received very little input on this issue, and will not make any other privacy-based exemptions to the online public file. Our Privacy Threshold Analysis ("PTA") of the online files indicates that the files to be posted may contain personally identifiable information ("PII"). Consequently, the Commission will be preparing a Privacy Impact Analysis ("PIA") and a Privacy Act system of records notice ("SORN") to govern the handling of PII in the station files.

²⁰⁰ *Id.*

²⁰¹ Four Commercial and NCE Licensees Comments at 4; Network Station Owners Reply at 20; North Carolina Assn. of Broadcasters *et al.* Comments at 14; PIPAC Comments at 28-29.

²⁰² North Carolina Assn. of Broadcasters *et al.* Comments at 14.

²⁰³ Network Station Owners Reply at 20.

common for members of the public to comment on publicly available websites.²⁰⁴

63. We are concerned that requiring correspondence to be placed in the online public file may result in violations of the Children's Online Privacy Protection Act (COPPA), which prohibits posting children's personally identifiable information online.²⁰⁵ Commenters agree with our privacy concerns.²⁰⁶ Our review of the public files in the Baltimore DMA indicates that letters and emails from the public can account for up to one third of a station's public file. Thus, requiring stations to review these documents for compliance with COPPA before uploading them to the online public file could pose a burden, which our decision avoids. Therefore, we will not require stations to post this information in the online public file.

64. At the same time, we do not believe that the requirement to retain correspondence from the public should be eliminated entirely. Letters and emails are required to be made available to the public under our rules, and this proceeding is about updating the accessibility of the public file, not about changing its underlying requirements. We will require stations to maintain in a paper file, or electronically on a computer located at the main studio, a publicly available correspondence file at the station. As currently required, this file will include all letters and emails from the public regarding operation of the station unless the letter writer has requested that the letter not be made public or the licensee feels that it should be excluded due to the nature of its content, such as a defamatory or obscene letter.²⁰⁷ We emphasize that we are not imposing a new requirement here, but merely retaining the existing requirement for retaining correspondence consistent with our rules.

65. The *FNPRM* also sought comment on a proposal by PIPAC to require stations to report quarterly on how many letters they have received from the public.²⁰⁸ PIPAC was the only supporter of this proposal.²⁰⁹ Another commenter noted that such reporting would be burdensome for broadcasters, some of whom receive thousands of pieces of viewer correspondence in a year.²¹⁰ We are not persuaded that a mere count of letters received would be of substantial value to the public or the Commission. We thus conclude based on the current record that the burdens of tabulating and reporting on such correspondence cannot be justified, and we do not require it.

66. The Commission also sought comment on whether stations should have to retain comments left by the public on social media websites, like Facebook, and tentatively concluded that such information should not be required to be maintained in the correspondence file.²¹¹ Those who addressed this issue agree with our tentative conclusion that, because social media posts are already accessible to the

²⁰⁴ Common Frequency Comments at 4.

²⁰⁵ Children's Online Privacy Protection Act, 15 U.S.C. § 6501 *et seq.*

²⁰⁶ Network Station Owners Reply at 20; NAB Reply at 6; North Carolina Assn. of Broadcasters *et al.* Comments at 14.

²⁰⁷ See 47 C.F.R. § 73.3526(e)(9). We also note that NCE commenters have requested that we clarify that noncommercial educational stations are not required to retain letters and emails in their public inspection files. APTS and PBS Comments at 6; Public Television Licensees Reply at 4. This request for clarification stems from an inadvertent error in the draft rules published in the *FNPRM*. We confirm that NCE stations are not required to retain letters and emails from the public, and note that the rule changes in Appendix A reflect this.

²⁰⁸ *FNPRM* at ¶ 26.

²⁰⁹ PIPAC Comments at 29.

²¹⁰ North Carolina Assn. of Broadcasters *et al.* at 14.

²¹¹ *FNPRM* at ¶ 26.

public, the burden of requiring stations to place such material in a correspondence file would outweigh any benefit.²¹² We adopt this assessment, and will not require stations to retain social media messages in their correspondence file.

67. Common Frequency suggests that email comments to the station can be standardized for all stations through a comment form on the Commission-hosted public file website, and all commenters could be directed to this form.²¹³ We decline to adopt this requirement. We do not believe that the Commission is the proper forum to shape the dialogue between a local station and its viewers. Rather, we seek to encourage direct communication between the station and its viewers. As discussed below, the online public file will contain contact information for each station.²¹⁴ We encourage members of the public to relay their concerns directly to the station.

3. Other Components of the Online Public File.

68. *Contour maps.* We adopt the tentative conclusion that the contour maps available on the Commission's website are sufficient for the online public file. Our rules require that the public file contain "[a] copy of any service contour maps submitted with any application tendered for filing with the FCC, together with any other information in the application showing service contours and/or main studio and transmitter location."²¹⁵ In the *FNPRM*, the Commission noted that maps showing stations' service contours are available on the Commission's website, and are derived from information provided by stations in CDBS.²¹⁶ The Commission tentatively concluded that these contour maps available on the Commission's website are sufficient for the online public file as they provide the necessary information regarding a station's service contours.²¹⁷ Only one commenter discussed this issue, agreeing with the Commission that these contour maps are sufficient.²¹⁸ We ask that stations review these maps and contact the Media Bureau if they believe they contain any inaccuracies.

69. *Main Studio Information.* We will adopt the proposal in the *FNPRM*²¹⁹ that we require stations to include in the online public file the station's main studio address and telephone number, and the email address of the station's designated contact for questions about the public file. Given that the correspondence file will still be publicly available at the station, along with the existing political file (until its retention period expires in two years), and because we seek to encourage an open dialogue between broadcasters and the viewing public, we believe this information is necessary to assist the public.²²⁰ Stations with a main studio located outside of their community of license should list the location of the

²¹² Bouchard Broadcasting at 1; North Carolina Assn. of Broadcasters *et al.* at 14. One commenter stated that it does not retain email as letters from the public. This is contrary to the existing rule, which specifically states that letters and email from the public must be included in the public file. See 47 C.F.R. 73.3526(e)(9).

²¹³ Common Frequency Comments at 4.

²¹⁴ See ¶ 69, *infra*.

²¹⁵ 47 C.F.R. §§ 73.3526(e)(4), 73.3527(e)(3).

²¹⁶ *FNPRM* at ¶ 27. More information on contour maps is available at <http://transition.fcc.gov/mb/audio/includes/78-mapinfo.htm>.

²¹⁷ *Id.*

²¹⁸ Bouchard Broadcasting Comments at 1.

²¹⁹ *FNPRM* at ¶ 32.

²²⁰ See *FNPRM* at ¶ 32.

correspondence file and existing political file, and the required local or toll free number.²²¹

70. *The Public and Broadcasting manual.* We adopt the tentative conclusion that television stations will no longer be responsible for making available “The Public and Broadcasting” manual in their public files. We received no comment on this issue. As discussed in the NPRM, the Commission will make this manual prominently available on the Commission-hosted online public file website once it is created.²²² The staff is directed to ensure that this manual is updated to reflect the online public file requirements we adopt here.

71. *Issues/programs lists.* We adopt the proposal requiring stations to post their issues/programs lists to the online public file until the Commission adopts changes to this requirement. Broadcasters’ public files currently must include issues/programs lists, which are lists of programs that have provided the stations’ most significant treatment of community issues during the preceding quarter.²²³ The Commission stated in the *FNPRM* that it planned to expeditiously seek comment in a new proceeding to investigate replacing the issues/programs list with a standardized disclosure form, which it did last November in a *Notice of Inquiry*.²²⁴

72. In that *Notice of Inquiry*, the Commission noted that it remains dedicated to addressing the problem of the lack of access to consistent and uniform information about television broadcasters’ programming.²²⁵ Despite the shortcomings of the current state of the issues/programs lists, however, for now this is the best source of information the public has when investigating how a broadcaster’s programming is meeting the community’s needs and interests. A group of stations commenting as Four Commercial and NCE Licensees argues that the public has minimal interest in viewing this information, and until there is a standardized reporting form, issues/programs lists should not be placed online because they are voluminous and might include program guides that may not be easily uploaded.²²⁶ We disagree that the public has minimal interest in viewing this information. Public advocacy commenters PIPAC and Common Frequency point out that issues/programs lists are the only requirement that broadcasters have to disclose how they are providing community-responsive programming, and agree with the Commission

²²¹ See 47 C.F.R. § 73.1125(e). Joint TV Broadcasters argues that if access to the public file is to be facilitated by means of online posting, the justification for government regulation of a station’s main studio location, at a minimum, erodes substantially. Joint TV Broadcasters Comments at 18. We disagree with this assertion, which is in any event beyond the scope of this proceeding. The Commission has previously stated that a main studio is necessary to maintain reasonable accessibility of station facilities, personnel, and information to members of the station’s community of license, which enables the residents of the community to monitor a station’s performance, encourages a continuing dialogue between the station and its community, and integrates a station into the activities of the community in order to be more responsive to local community needs in its programming. See *Review of the Commission’s Rules regarding the Main Studio Rule and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, ¶ 1 (1998), *recon. granted in part*, Memorandum Opinion and Order, 14 FCC Rcd 11113 (1999). Although as a result of our action today most required information about the station will be available online, the other benefits cited here, as well as access to the elements of the public file that will not be posted online, continue to support maintenance of a local main studio.

²²² *FNPRM* at ¶ 28.

²²³ 47 C.F.R. §§ 73.3526(e)(11)(i), 73.3527(e)(8).

²²⁴ *FNPRM* at ¶ 6. See also *Standardizing Program Reporting Requirements for Broadcast Licensees*, Notice of Inquiry, 26 FCC Rcd 16525 (2011).

²²⁵ *Standardizing Program Reporting Requirements for Broadcast Licensees*, Notice of Inquiry, 26 FCC Rcd 16525, ¶ 9 (2011).

²²⁶ Four Commercial and NCE Licensees Comments at 5.

that these lists should be posted to the online public file on a quarterly basis until the Commission implements a new standardized form.²²⁷ When creating the issues/programs list requirement, the Commission declared that one of a broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license, and described the issues/programs list as "[t]he most significant source of issue-responsive information under the new regulatory scheme."²²⁸ Moreover, the list is a significant source of information for any initial investigation by the public or the Commission when renewal of the station's license is at issue.²²⁹ Because of the importance of the issues/programs lists, we conclude that any burden imposed upon broadcasters to upload such information is justified, and find that the lists must be available to the public in the online public file.

73. *FCC investigations and complaints.* Our rules currently require that stations retain in the public file "material having a substantial bearing on a matter which is the subject of an FCC investigation or complaint to the FCC" of which the station is aware.²³⁰ The Commission sought comment in the *FNPRM* on whether the Commission should post published sanctions, including forfeiture orders, notices of violation, notices of apparent liability, and citations, in a station's online public file.²³¹ The Commission also asked whether licensees should be required to upload their responses, if any, to such Commission actions.²³² The Commission noted that this is the sort of information that the public would want to find in reviewing a licensee's public file, that this is a natural extension of the requirement to retain Commission correspondence, and that parties could seek confidential treatment of particular information in the filings, if necessary.²³³ Common Frequency argues that the Commission should require broadcasters to post all materials relating to complaints, petitions, and Commission orders, because the public has a right to know how a broadcaster is conducting its business.²³⁴

74. The public is entitled to review information regarding Commission investigations and complaints and we consider the scope of the disclosure rule for this material to be quite broad, although we also recognize that premature publication can hamper an investigation and that privacy concerns counsel some limitations on the online posting of some of this information. We conclude that, subject to any disclosure limitation included in a Commission inquiry itself or directed by the staff, the online public file must include Letters of Inquiry ("LOI"), any supplements thereto, and any other correspondence from the Commission commencing an investigation, materials related to such inquiries, licensee responses to these Commission inquiries, and any documents – including Commission orders – terminating or concluding the investigation or imposing penalties as a result of the investigation. We agree that public access to this type of information concerning a station – information that could be key to a full understanding of a station's performance of its duties as a licensee – is important and conclude that it must be placed in a station's online public file. This material is relevant to any member of the public that wishes to participate in a station's license renewal process or to otherwise review and evaluate the service a station is providing to its

²²⁷ PIPAC Comments at 28; Common Frequency Comments at 5.

²²⁸ *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 FCC 2d 1076, at ¶ 76 (1984).

²²⁹ *Id.* at ¶ 77.

²³⁰ 47 C.F.R. §§ 73.3526(e)(10); 73.3527(e)(11).

²³¹ *FNPRM* at ¶ 30.

²³² *Id.*

²³³ *Id.*

²³⁴ Common Frequency Comments at 5.

community of license. We will therefore adopt the tentative conclusion in the *FNPRM* that stations' online public files should contain all material relating to a Commission investigation. Unless directed to the contrary by the Commission (in an LOI or otherwise), stations will be responsible for uploading any materials related to a Commission investigation or inquiry that they generate or possess (such as responses to LOIs and relevant documents related to an investigation). To reduce burdens on stations, the Commission, as it deems appropriate, will post to the online public file any material that it originates relating to an investigation, such as LOIs and other investigative requests. The Commission will also post to the online public file any complaint or complaints that it possesses and that underlie an investigation, if doing so is feasible, will not interfere with or obstruct an investigation and disclosure is consistent with any privacy concerns that publication might raise. When there are circumstances in investigatory and enforcement contexts that would weigh against the disclosure of Commission investigations and related materials, the Commission or the staff may inform a licensee that a Letter of Inquiry or request for information or other material related to a particular investigation need not be placed in the public file or uploaded to the online public file.²³⁵

75. With respect to complaints that have not prompted an LOI or other investigative request, whether filed with the Commission or submitted only to the station, we believe local retention in the station's correspondence file is appropriate. We conclude, as a general matter, that privacy concerns weigh against routine online posting of these complaints.²³⁶

76. A few commenters argued that the Commission should not require broadcasters to include information about erroneous or meritless allegations in the online public file.²³⁷ They argue that these claims may be unsubstantiated, and that persons with interests adverse to a broadcaster would have an incentive to file false or irrelevant complaints to establish a record tarnishing the broadcaster's character that could be used against it in the license renewal process, and that the increased accessibility to such false claims will increase such incentives.²³⁸ As discussed above, we are not requiring stations to include complaints that are not the subject of a Commission investigation in their online public files, though they are required to include them in their local correspondence files unless the Commission specifies otherwise. We believe that commenters' concern about erroneous or meritless allegations is adequately addressed by allowing stations to include their responses to such complaints in their correspondence files.²³⁹ As the Commission and the courts are the final arbiters of whether allegations are meritorious, we will not allow individual stations to decide whether particular investigations and complaints against them should be kept out of the public file.

²³⁵ In the *FNPRM*, the Commission acknowledged concerns expressed in reconsideration petitions about posting to the online public file any material that is the subject of an indecency investigation or complaint, and tentatively concluded that such concerns were unfounded because such material is relevant to the renewal process and the Commission already posts information relating to indecency investigations, such as Notices of Apparent Liability and Forfeiture Orders, on its website. *FNPRM* at ¶ 30. As is the case today, stations filing responsive materials subject to a confidentiality request may place copies of their filings into the online database with the confidential material redacted. See 47 C.F.R. § 0.459.

²³⁶ The Commission or relevant Bureaus on delegated authority, however, may expressly direct a licensee to post such complaints – ones not related to any Commission investigation or inquiry – to the online public file, or it may do so itself, if circumstances warrant.

²³⁷ Bouchard Broadcasting Comments at 2; Joint Television Parties Reply at 23; Four Commercial and NCE Licensees Comments at 5.

²³⁸ Joint Television Parties Reply at 23.

²³⁹ As discussed above, stations are *required* to include in their public files responses to Commission investigations, unless directed otherwise in the LOI.

77. *EEO and Children's Requirements.* Under the Commission's equal employment opportunity ("EEO") rules, all broadcast stations that are required to create an EEO public file report are also required to place their most recent annual report in their public file and post a link to the report on their website, if they have a website.²⁴⁰ This requirement was established in order to facilitate meaningful public input, as the public has a "right to participate in the process of monitoring and enforcing our EEO Rule, which directly impacts them."²⁴¹ We will continue to require that stations make their EEO materials available on their websites, if they have one. In an effort to reduce burdens on broadcasters, however, we will permit stations to fulfill this website posting requirement by providing on their own website a link to the EEO materials on their online public file page on the Commission's website.

78. Similarly, in light of our decision in this Order to require stations with websites to provide a link to the online public file on their homepage,²⁴² we will not require that stations with websites also post copies of their Children's Television Programming Reports (FCC Form 398) on their websites. In the *Further Notice of Proposed Rulemaking* in MM Docket No. 00-44, the FCC sought comment on whether broadcasters should be required to provide their completed Form 398s on their own websites.²⁴³ Members of the public interested in viewing a station's Form 398 will be able to locate that filing from the online public file and, therefore, we do not believe it is necessary to require stations to post the forms on their own websites.

79. *Existing Public File Sponsorship Identification Requirements.* Although, as discussed below, we do not impose new sponsorship identification reporting requirements, we also do not exempt existing public file requirements regarding sponsorship identification from the online posting requirement. Specifically, we decline the request by the National Religious Broadcasters ("NRB") to exempt from the online public file the disclosure of material required in Section 73.1212(e) of our rules – namely, where "material broadcast is political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter," stations must disclose "a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity."²⁴⁴ Requiring that this information be included in the online public file should impose little burden on broadcasters, as this information is already being maintained in the local file.²⁴⁵

²⁴⁰ 47 C.F.R. § 73.2080(c)(6).

²⁴¹ *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, 17 FCC Rcd. 24018, ¶ 140 (2002), *recon. pending*.

²⁴² See Section III.F., *infra*.

²⁴³ See *Extension of the Filing Requirement For Children's Television Programming Reports (FCC Form 398), Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 22921, 22930, ¶¶ 25-27 (2000). See also *2007 Report and Order*, 23 FCC Rcd at 1283, ¶ 23, *vacated*, 26 FCC Rcd 15788, ¶ 59 (2011).

²⁴⁴ 47 U.S.C. § 317(a)(1); 47 C.F.R. § 73.1212(e). We note that the rule also states that "[i]f the broadcast is originated by a network, the list may, instead, be retained at the headquarters office of the network or at the location where the originating station maintains its public inspection file." In addition, Section 315(e) of the Act, added by BCRA, requires that with respect to messages relating to any "political matter of national importance," the political file must contain "the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person." 47 U.S.C. § 315(e)(2)(G). This information must be included in the political file, and therefore must be posted to the online file along with other political file information.

²⁴⁵ See fn. 201, *supra*, indicating the steps we will be taking to address the PII in the station files to be posted.

80. In addition, we reject NRB's argument that making such lists available via the Internet will violate citizens' First Amendment rights to enjoy a level of privacy and anonymity regarding their political, social, moral, and religious values and beliefs, and associations.²⁴⁶ NRB argues that this will have a chilling effect on citizens' willingness to participate in political campaigns.²⁴⁷ PIPAC responds that making such already-public records available via the Internet does not change the substance of the existing retention requirement.²⁴⁸ We agree.²⁴⁹ We also agree with PIPAC that courts, in evaluating First Amendment challenges, have embraced disclosure of sponsors of political advertisements as promoting speech and discussion, not chilling it. As the Supreme Court stated in *Citizens United v. FEC*, "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages" and that "[w]ith the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters."²⁵⁰ Similarly, the First Circuit determined that state laws requiring disclosure of the names of board members on political action committees "neither erect a barrier to political speech nor limit its quantity. Rather, they promote the dissemination of information about those who deliver and finance political speech, thereby encouraging efficient operation of the marketplace of ideas."²⁵¹

4. Proposals to Increase the Public File Requirement Rejected.

81. We decline to adopt any new disclosure obligations with respect to sponsorship identifications and shared services agreements at this time. While we continue to believe that the public would likely benefit from further information regarding sponsorship identifications and shared services agreements as discussed in the *FNPRM*,²⁵² we believe it inadvisable to impose new reporting requirements at the same time stations are transitioning to the online public file. We wish to ensure that this *Second Report and Order*, in all major respects, involves changing only the form of disclosure and location of material already required to be included in the public file. We discuss both of these categories below.

82. *Sponsorship Identifications.* We will not at this time require new written disclosure of sponsorship identifications in the online public file, as proposed in the *FNPRM*. Section 317 of the Communications Act requires that broadcasters disclose to their listeners or viewers at the time of broadcast whether material was aired in exchange for money, services, or other valuable consideration.²⁵³ The Commission's sponsorship identification rules implement these provisions and require that stations

²⁴⁶ National Religious Broadcasters Comments at 9-12. See also Ex Parte Presentation of Target Enterprises at 15-16 (filed April 19, 2012).

²⁴⁷ *Id.* at 11.

²⁴⁸ PIPAC Reply at 11.

²⁴⁹ In addition, we find NRB's argument that this disclosure will chill citizens' speech overstated, as the disclosure requirement in Section 73.1212(e) of our rules applies to executives and board members of sponsoring organizations; it does not relate to individuals' campaign contributions or other political activities. 47 C.F.R. § 73.1212(e). We note also that the FEC requires candidates committees to report to the FEC the identity of individuals who contribute more than \$200 to a candidate's campaign. 2 U.S.C. § 434(b)(3). The identity includes the individual's name, mailing address and occupation, as well as the name of his or her employer. 2 U.S.C. § 431(13)(A).

²⁵⁰ *Citizens United v. Federal Election Commission*, 130 S.Ct. 876, 916 (2011)

²⁵¹ *National Organization for Marriage v. McKee*, 649 F.3d 34, 40 (1st Cir. 2011).

²⁵² *FNPRM* at ¶ 31. See also *INC Report* at 28, 349.

²⁵³ See 47 U.S.C. § 317.

provide an on-air disclosure when content is paid for, furnished, or sponsored by an outside party.²⁵⁴ With the exception of sponsored political advertising, and certain issue advertising that must be disclosed in writing, these rules require that stations make an on-air disclosure only once during the programming and that the disclosure remain on the screen long enough to be read or heard by an average viewer.²⁵⁵ The *FNPRM* noted that the *INC Report* discussed examples of “pay-for-play” arrangements at local TV stations, where “advertisers have been allowed to dictate, shape or sculpt news or editorial content.”²⁵⁶

83. While we agree with commenters that additional written sponsorship disclosures – posted to a station’s public file – would benefit the public by addressing the shortcomings of sometimes fleeting on-air disclosures and would provide valuable information that is otherwise difficult to collect,²⁵⁷ we are also persuaded that we lack sufficient information at this time to properly evaluate the burden that complying with this requirement would impose.²⁵⁸

84. *Sharing Agreements.* We also decline to adopt the tentative conclusion that stations include sharing agreements in the online public file. In the *FNPRM*, the Commission asked whether sharing agreements among licensees, such as local news sharing and shared services agreements, should be available in the online public file.²⁵⁹

Some broadcasters argue that the disclosure of sharing agreements is beyond the scope of this proceeding, and should be considered in a separate proceeding.²⁶⁰ They argue that the Commission must first solicit comment and determine the legal status of such agreements.²⁶¹ They argue that there has been no determination that shared services agreements are relevant to compliance with any Commission rules or standards, unlike time brokerage agreements and joint sales agreements, which the Commission has deemed to have attribution implications, and which are required to be placed in the public file.²⁶² Some note that the recent 2010 Quadrennial Review seeks comment on sharing agreements, and argue that it

²⁵⁴ See 47 C.F.R. § 73.1212.

²⁵⁵ The implementing rule has long had an additional public file recordkeeping component for political and controversial issue announcements, as discussed further below.

²⁵⁶ *FNPRM* at ¶ 33, citing *INC Report* at 349. Despite our decision not to add new reporting requirements, we continue to believe that issues pertaining to sponsorship identification and “pay-for-play” are important. We will continue to monitor the use of these practices, and enforce the statute as appropriate. See *Fox Television Stations, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 3964 (Enf. Bur. 2011) (finding that Fox’s airing of the VNR material on Station KMSB-TV’s June 19, 2006, news program without the required sponsorship identification announcement constituted an apparent violation of Section 317 of the Act and Section 73.1212 of the Commission’s rules), *aff’d*, Forfeiture Order, 26 FCC Rcd 9485 (Enf. Bur. 2011) (forfeiture paid); *Access.1 New Jersey License Co., LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 3978 (Enf. Bur. 2011) (finding that Access.1’s airing of the VNR material on Station WMGM-TV’s October 18, 2006 news program without providing a sponsorship identification announcement was an apparent violation of Section 317 of the Act and Section 73.1212 of the Commission’s rules) (forfeiture paid).

²⁵⁷ PIPAC Comments at 22, Reply at 19. See also Glenn Frankel at 2; Association for Education in Journalism and Mass Communication Reply at 1; Association of Healthcare Journalists Reply at 1; Free Press Reply at 1.

²⁵⁸ Joint TV Broadcasters Comments at 11; Bouchard Broadcasting Comments at 2; Four Commercial and NCE Licensees Comments at 5.

²⁵⁹ *FNPRM* at ¶ 35.

²⁶⁰ NAB Comments at 28, Replies at 27; Joint Broadcasters Comments at 20; Joint Television Parties Reply at 20.

²⁶¹ Joint Broadcasters Comments at 21; Joint Television Parties Reply at 20.

²⁶² Joint Broadcasters Comments at 20; NAB Reply at 28.

would be premature to require disclosure of sharing agreements prior to the conclusion of that review.²⁶³ We disagree that the Commission must first address the appropriate regulatory status of such agreements prior to requiring their disclosure, as disclosure itself could inform those decisions and the Commission has wide latitude to impose such a requirement.²⁶⁴ Nonetheless, we decline to impose this new requirement on broadcasters as they transition to the online public file. We will continue to monitor this issue, and revisit a disclosure requirement either in this proceeding, or in the ownership proceeding, as suggested by broadcasters.²⁶⁵

D. Format of the Online Public File.

85. We will not establish specific formatting requirements for documents posted to the online public file at this time. Some commenters promoted making the data well-structured,²⁶⁶ as searchable as possible,²⁶⁷ and downloadable.²⁶⁸ PIPAC argues that the online public file should be searchable by text within the documents, and also by station, state, date, element of the public file and any other metadata contained in the file.²⁶⁹ They further argue that the file should provide an easy-to-use graphic interface in addition to an API, as these both provide searching and downloading of documents and metadata en mass.²⁷⁰ We agree that certain information in the public file would be of much greater benefit to the public if made available in a structured or database-friendly format that can be aggregated, manipulated, and more easily analyzed; this continues to be our ultimate goal.²⁷¹ We agree with PIPAC, however, that converting the files to this format would take time and money, and the online public file should not be delayed in order to make all of the material in it available in such a manner.²⁷² PIPAC argues that this will likely result in the submission of documents in non-searchable, non-machine readable

²⁶³ Joint Broadcasters Comments at 20.

²⁶⁴ See 47 U.S.C. § 303(j); *Office of Communications of United Church of Christ v. FCC*, 779 F.2d 702, 707 (D.C. Cir. 1985) (“There is no question but that the Commission has the statutory authority to require whatever recordkeeping requirements it deems appropriate.”).

²⁶⁵ Because we decline to adopt this requirement, we will not address comments pertaining to the scope of shared services agreements covered by this proposal. See, e.g., American Cable Assn. Comments at 14-15; Time Warner Cable Reply at 12-13.

²⁶⁶ Ryan Thornburg Comments.

²⁶⁷ Time Warner Cable Reply at 13.

²⁶⁸ Common Frequency Comments at 6; PIPAC Comments at 29.

²⁶⁹ PIPAC Comments at 29. In addition, the *INC Report* finds that information “needs to be put out in standardized, machine-readable, structured formats that make it easy for programmers to create new applications that can present the data in more useful formats, or combine one agency’s information with another” *INC Report* at 207.

²⁷⁰ PIPAC Comments at 29-30. The *INC Report* states that “data releases should include an Application Programming Interface (API) that allows the data to be shared easily with other computers and applications.” With respect to broadcasters’ public files in particular, the *INC Report* states that “[o]nline disclosure should be done according to the principles advocated by experts on transparency: in standardized, machine readable and structured formats.” *INC Report* at 207, 348.

²⁷¹ We note that the Commission is part of the Task Force on Smart Disclosure: Information and Efficiency in Consumer Markets, established by the National Science and Technology Council Committee on Technology. The Task Force is investigating best practice approaches to “smart disclosures,” which are disclosures to consumers that are accessible and usable, such as in electronic, machine readable formats. See http://wiki.citizen.apps.gov/SmartDisclosure/images/5/55/NSTC_Charter_v15-25-11.pdf.

²⁷² PIPAC Comments at 30. See also *FNPRM* at ¶ 37.

format, but it believes this proposal represents a reasonable trade-off between maximizing searchability and the need to expedite access to broadcasters' online public files.²⁷³ We agree that this trade-off is reasonable, and adopt the Commission's tentative conclusion that the benefits of an online public file should not be delayed. At this time we therefore will not require broadcasters to undertake the burdens of altering the form of documents already in existence prior to posting them to the online public file.²⁷⁴ We observe, though, that even without mandating that documents be filed in a particular format, our creation of a centralized, orderly public file will facilitate search and analysis across all elements of stations' public files.

86. We adopt the *FNPRM*'s proposal to require stations to upload any electronic documents in their existing format to the extent feasible.²⁷⁵ For example, to the extent that a required document already exists in a searchable format – such as the Microsoft Word .doc format or non-copy protected text-searchable .pdf format for text filings, or native formats such as spreadsheets in Microsoft .xml format for non-text filings – broadcasters are expected to upload the filing in that format to the extent technically feasible.²⁷⁶ PIPAC agreed with our proposal to require stations to file documents in their native electronic format.²⁷⁷ We understand that it may be difficult for stations to provide older material that has been in the public file for some time in its native format. In those instances, we understand that stations may need to scan these materials for electronic upload into the online public file. We expect that the need to do this will diminish over time.

87. Also consistent with the *FNPRM*, the Commission will use optical character recognition on public file materials that are scanned, and by default are non-searchable. The Commission asked in the *FNPRM* whether, to the extent documents are posted in a non-searchable format, the Commission should digitize the documents and perform optical character recognition (“OCR”) on them.²⁷⁸ PIPAC agrees with the Commission's suggestion that if a broadcaster posts a record in only a non-searchable format, the Commission should use an OCR tool to permit maximum searchability.²⁷⁹ We determine that, when appropriate, the Commission will use OCR.²⁸⁰

88. *Metadata.* We will not require stations to create or preserve metadata in the online public

²⁷³ PIPAC Comments at 30.

²⁷⁴ Given our decision not to require documents to be converted to other formats for inclusion in the online file, we find no need to consider NAB's argument that we should convene a working group to explore formatting issues. NAB Comments at 29-30. See also Bouchard Broadcasting Comments at 2 (advocating the use of MS Word .doc over .pdf); Hubbard Broadcasting Comments at 2 (arguing that pdf should be considered compliant).

²⁷⁵ *FNPRM* at ¶ 37

²⁷⁶ *Id.* See also Amendment of the Commission's *Ex Parte* Rules and Other Procedural Rules, GC Docket No. 10-43, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-11, 26 FCC Rcd 4517, ¶¶ 49-52(2011).

²⁷⁷ PIPAC Comments at 29-30.

²⁷⁸ *FNPRM* at ¶ 37.

²⁷⁹ PIPAC Comments at 30-31. PIPAC notes that commonly available document formats - including Microsoft Word .doc, .txt, .pdf or .odf - can be searched, and can easily be converted into a .pdf file that can be processed by an OCR tool so the contents can be loaded into a searchable database. But commenter Ryan Thornburg notes that OCR software is expensive and faulty, and prefers that the Commission require well-structured formats. Ryan Thornburg Comments at 2. For the reasons discussed above, we decline to do so at this time.

²⁸⁰ OCR will be used when text cannot be extracted from the uploaded document format. When documents are uploaded to the online public file, documents that are not in recognized formats will be automatically pushed into OCR, which will scan the document to extract as much text as possible.

file. In the *FNPRM*, the Commission asked whether users should be able to determine when each item was uploaded to the file, whether the Commission should make available metadata about who uploaded the item, and if there were any concerns about metadata disclosures for confidential or privileged information.²⁸¹ NAB anticipates that many stations may use software that removes metadata from its documents for reasons of confidentiality, privilege, or privacy, and does not see value in disclosing who uploaded a document, other than differentiating between documents uploaded by the Commission versus a station.²⁸² The Sunlight Foundation noted that as long as each station provides contact information, there is no need for the metadata to identify the individual who uploads a filing.²⁸³ We agree, and determine that stations using software that removes metadata will not be required to make any modifications. Given that we will be requiring station contact information, as discussed above, we do not believe that it is necessary to make metadata information available as part of the online public file. However, the Sunlight Foundation also argues that being able to identify the time and date of a filing is important, as it helps to track the most recent version of a particular filing, and allows the user to create a timeline of submitted files.²⁸⁴ This information, which is captured by the system as files are uploaded, does not generate similar privacy concerns as the metadata contained within the documents uploaded by stations. Our system may present information on the date and time of a filing to users.

E. Implementation.

89. Having concluded that broadcast television stations must upload the contents of their public file, other than the political file and letters from the public, to a Commission-hosted online public file, we next discuss issues relating to implementation of the new posting procedure. As with our consideration of all the issues covered by this Order, our resolution of implementation issues is guided by a commitment to creating an online public file experience that is not burdensome for broadcasters, and is as useful as possible for the public.

90. *Cloud-Based Solution.* We plan to develop the online public file in accordance with the Federal Government's "Cloud First Policy" which directs agencies to default to scalable and elastic, cloud-based solutions for increased reliability at lower cost.²⁸⁵ The public file, consisting entirely of publicly disclosed material, is ideal for leveraging the cloud-based hosting solutions. We anticipate being able to design an online public file that is highly available, scalable, cloud-based, and eliminates any user wait times associated with processing documents after upload. We expect that this will enable stations to upload public file material in a timely fashion, including uploading political file material promptly even

²⁸¹ *Id.* at ¶ 38.

²⁸² NAB Comments at 30.

²⁸³ Sunlight Foundation Comments at 3. The Sunlight Foundation also argues that there should be a way for the public to provide feedback to the broadcaster on the data in the filings. *Id.* We encourage an open dialogue between users of public file data and broadcasters, but the initial phase of the online public file will only allow for broadcasters and the Commission to upload information into each station's online public file.

²⁸⁴ Sunlight Foundation Comments at 3.

²⁸⁵ Federal Cloud Computing Strategy, February 8, 2011 at 2, available at <http://www.cio.gov/documents/federal-cloud-computing-strategy.pdf>. Scalable is defined as "[s]omething that can be made larger or smaller relatively easily and painlessly." Newton's Telecom Dictionary (Steve Schoen, 25th ed. 2009) at 981. This will allow the capacity of the system to grow and shrink based upon use. Cloud computing is "[a]n Internet-based or intra-net based computing environment wherein computing resources are distributed across the network (i.e., the 'cloud') and are dynamically allocated on an individual or pooled basis, and are increased or reduced as circumstances warrant, to handle the computing task at hand. The user is blissfully unaware of where the computing resources reside." Newton's Telecom Dictionary (Steve Schoen, 25th ed. 2009) at 286.

during times of increased traffic prior to elections.

91. We disagree with broadcasters who argue that their experiences trying to file the revised Form 323 ownership reports suggest a Commission-created database would suffer from implementation problems.²⁸⁶ These commenters represent that it can take hours to upload just one attachment to the revised Form 323, and that the political file contains similarly large documents. They argue that such delays would be unacceptable with respect to the political file, where timely access is so important.²⁸⁷ We agree that it is essential that stations are able to upload public file documents, and particularly political files, efficiently, and that the online public file should be able to handle many stations uploading documents at the same time even during an election season. We recognize problems stations have experienced uploading the revised Form 323 and are working to fix those problems. But we do not anticipate similar problems with respect to uploading the public file. The delays in the Form 323 uploading process stem from the time required in the current Form 323 filing application to validate the large spreadsheets that must be filed with Form 323, and the validation queuing process. Public file documentation will not be subject to the validation process that is required for the Form 323 spreadsheets, nor will we need to impose a similar queuing system necessitated by the validation process. Furthermore, Form 323 was launched and run on existing FCC infrastructure. Since then, the Commission has begun utilizing scalable cloud-based IT architecture solutions to enhance the agency's capabilities. In particular, the Commission anticipates using for online public files the same scalable architecture that currently is being used successfully for the Customer Proprietary Network Information certification document filing system and the National Broadband Map.²⁸⁸

92. *Back-up Files.* In lieu of requiring stations to maintain back-up copies of all public file materials, as proposed in the *FNPRM*, the Commission will generate copies of their online files. With respect to the political file, however, we will require stations to maintain local electronic back-up files to ensure that, in the event our online public file were to become temporarily unavailable, they can comply with their statutory obligation to make that information available to candidates, their representatives, non-candidate political time buyers and the public generally as soon as possible. To minimize any burden imposed by this requirement, we have developed tools to allow stations to easily copy mirrors of their online public files, which contain the political files.

93. In the *FNPRM*, the Commission proposed that stations retain electronic copies for back-up purposes of all public file items in the event the Commission's online public file were to become unavailable or disabled.²⁸⁹ The Commission also proposed that in such circumstances, stations would have to make these back-up files available to the public.²⁹⁰ We are persuaded by commenters, however, that requiring stations to maintain back-up copies of all public file materials and to make them routinely available directly to the public would reduce the efficiencies of placing the public file online.²⁹¹ These commenters explain that such an approach would force stations to continue maintaining a separate complete public file on site

²⁸⁶ Hubbard Broadcasting at 2-3; Joint Broadcasters at 2; Joint Television Parties Reply at 3.

²⁸⁷ Hubbard Broadcasting at 3.

²⁸⁸ See <http://apps.fcc.gov/eb/CPNI/>; <http://broadbandmap.gov/>.

²⁸⁹ *FNPRM* at ¶ 18.

²⁹⁰ *Id.*

²⁹¹ Four Commercial and NCE Licensees Comments at 4; North Carolina Assn. of Broadcasters *et al.* Comments at 5-6; Broadcasting Licenses, L.P. *et al.* ("Joint TV Broadcasters") Comments at 7 (arguing that requiring a back-up political file will at least double the burdens of the proposed requirements). See also APTS and PBS Comments at 3; Alabama Educational Television Commission *et al.* ("Public Television Licensees") Reply at 6.

so as to comply with the Commission's rules at a moment's notice.²⁹²

94. To ensure that stations' public files are available even if the Commission's online public file were to become temporarily unavailable or in the event technical problems prevented broadcasters from accessing the Commission's online file, we will create "failover"²⁹³ backups of the online public file, including mirroring daily snapshots of the public file.²⁹⁴ That is, the Commission will make a mirror copy of each station's public file records daily to ensure that if the data in the online public file is compromised, the public files can be reconstituted using the back-up copy. Thus, the Commission will relieve stations of the burden of maintaining a back-up of the entire public file locally. In addition, with the exception of the political file, discussed below, will not make stations responsible for making available to the public information from the public file in the event the Commission's online files become temporarily inaccessible;²⁹⁵ the mirroring approach will enable us to perform the back-up function ourselves. To the extent the public may experience a delay in accessing the information due to the brief unavailability of the online file, we consider that delay (with the exception of the political file), on balance, to be acceptable in order not to burden broadcasters with the necessity of making public file materials available to the public at the station. If the Commission's online file becomes temporarily inaccessible to stations for the uploading of new documents, however, stations must maintain those documents and upload them to the online file once it becomes available again for upload. The Commission will also daily make the mirror copy of every station's public file available for the station or other interested parties to download so that, if they wish, they can periodically download a complete mirror of their public file or automate a periodic synchronization.

95. As suggested in the *FNPRM*, we conclude that additional steps should be taken to ensure that access to the political file is not compromised.²⁹⁶ Accordingly, if the Commission's online public file were to become temporarily unavailable, stations will be required to provide any information pertaining to the political file not just to candidates, their representatives and other political time buyers, but directly to any member of the public as well. The benefits of making such information available immediately outweigh the burdens of maintaining this limited back-up requirement. Given the short seven-day deadline for candidates to request equal opportunity appearances,²⁹⁷ it is essential to candidates' exercise of their rights under the Act that they have prompt access to political file information. Moreover, limiting that access to candidates and their representatives would be inconsistent with the Communications Act, which requires that political file information shall be "available for public inspection" and "placed in a political file as soon as possible."²⁹⁸ These requirements do not distinguish between candidates and their representatives and other members of the public. In addition, although only candidates have rights to

²⁹² APTS and PBS Comments at 3.

²⁹³ Failovers are defined as "[w]hen one individual computer fails, another automatically takes over its request load. The transition is invisible to the user. Failover involves switching off the failed redundant component and switching on the backup unit. A disk subsystem is running in failover mode when it switches to a hot spare or begins to use the backup disk in a mirrored pair." See Newton's Telecom Dictionary (Steve Schoen, 25th ed. 2009) at 460.

²⁹⁴ See Common Frequency Comments at 2.

²⁹⁵ Although we will not require stations to maintain back-up copies of the public file, stations are free to maintain back-up materials and to continue to make the public file available locally or on their own website, in addition to on our website, if they choose to do so.

²⁹⁶ *FNPRM* at ¶ 18.

²⁹⁷ 47 U.S.C. § 315(a), 47 C.F.R. § 73.1941.

²⁹⁸ 47 U.S.C. § 315(e)(1), (3); see also 47 C.F.R. § 73.1943 (requiring the same, and stating that "[a]s soon as possible means immediately absent unusual circumstances").

equal opportunities and lowest unit charge under Section 315,²⁹⁹ other members of the public may also have time-sensitive needs to access a station's political files. For example, a sponsor of a political issue advertisement may have a significant interest in ascertaining which candidates or other issue advertisement sponsors have bought time at a station.

96. The Commission is taking all steps necessary to ensure that the Commission-hosted online public file will not become unavailable, and we expect instances of unavailability to be both rare and of short duration. As a result, we do not expect the requirement to provide back-up access to the political file during any times of outages to be overly burdensome. In addition, we will allow stations to retain such information in whatever form is most convenient for them. Our making mirror copies of stations' public files available to stations, as described above, will enable stations to comply with the political file back-up requirement with little burden. That is, while not required, stations may choose to meet the political file back-up requirement by periodically downloading a mirror copy of the public file. When choosing this option, stations will need to ensure that they retain any political file records that have not been uploaded or were uploaded after their last download of a mirror copy of their online public file. This means that if a station decides to download a mirror copy of their online public file on a weekly basis, it will need to maintain at the station, in paper or electronic form, any documents that have not been uploaded or that it uploaded to the online political file after its last weekly download. If a station chooses to download a mirror copy of their online public file on a monthly basis, it will need to maintain at the station any documents that have not been uploaded or that it uploaded to the online political file after its last monthly download. If a station chooses not to download a mirror copy of their online public file, and does not otherwise satisfy the back-up requirement, it will need to maintain at the station all documents required to be in its online political file. We stress that stations will only be required to make these backups available if and during such time as the Commission's online public file is unavailable, which we believe will only happen in rare instances, such as national or localized emergencies, because the Commission will follow necessary protocols for creating failover backups of the online public file.

97. *Compliance Dates.* In order to facilitate a smooth transition to the online public file, we will provide a phase-in period for stations to begin uploading files. Stations will be required to begin using the online public file after the effective date of this Order, which is 30 days after the Commission announces in the Federal Register that OMB has completed its review under the Paperwork Reduction Act and approved the collection.³⁰⁰ After the effective date, if a station determines that any document must be placed in the public file, that document must be posted to the online public file. We refer to this as the requirement to post documents online "on a going-forward basis." In order to ensure that broadcasters have time to familiarize themselves with the online public file, the Commission will make a version available to the public soon after adoption of this item. We also instruct the staff to help educate broadcasters about the online public file and how it functions.

98. To ensure that existing public file materials – that is, the public file as it exists prior to the effective date – are uploaded to the online public file in an orderly manner, we will give broadcasters sufficient time to do so. Stations will be permitted to begin uploading existing public file materials immediately after the effective date, at the same time stations must also begin posting online documents

²⁹⁹ 47 U.S.C. § 315(a), (b).

³⁰⁰ Pub. L. No. 104-13. The Commission previously sought comment on the paperwork burden associated with these proposals. See 76 FR 72144 (Nov. 22, 2011). Because the Order today substantially adopts the item as proposed in the *FNPRM*, with the exception of a few proposed collections that we are declining to impose, a 30 day public comment cycle will be appropriate. 5 CFR 1320.11(h). The Commission will publish a notice in the Federal Register regarding the reduced paperwork burdens adopted in this Order. The OMB review process will then commence.

on a going-forward basis. Stations must complete the process of uploading the existing public file within six months after the effective date, *i.e.*, six months after the Commission publishes a notice in the Federal Register announcing OMB approval under the Paperwork Reduction Act. We believe that giving stations six months to complete the upload of existing files will provide broadcasters adequate time and flexibility to undertake this process.

99. *Accessibility for People with Disabilities.* In the *FNPRM*, the Commission stated that it intended to ensure that the online public files, like the rest of the Commission's website, is accessible to people with disabilities. Under Section 508 of the Rehabilitation Act, federal agencies must ensure that members of the public who have disabilities and who are seeking information or services from a federal agency "have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities."³⁰¹ For federal agencies, including the Commission, this requires access by people with disabilities to the agencies' websites, including electronic filing systems, such as the Commission's ECFS. In the *FNPRM*, we sought comment on whether further actions were necessary to ensure compliance with respect to the online public file. No commenters raised concern about this issue. To assure compliance, the Commission will perform accessibility tests and address any known issues once the online public file has been created. We believe that Commission compliance with the requirements imposed by Section 508 of the Rehabilitation Act will be sufficient to ensure that the online public file is accessible to individuals with disabilities. If we learn of any problems with accessibility of the online public file, we will revisit this issue.³⁰²

100. *Geographic Coverage Area.* The Commission's online public file will be available to anyone who has Internet access, regardless of their location. Two petitioners on reconsideration of the 2007 *Report and Order* suggested that broadcasters should be permitted to limit online public file access to viewers within a station's geographic coverage area.³⁰³ The Commission concluded in the *FNPRM* that it saw no reason to limit online access to the public file, nor did it know of a workable mechanism for implementing and enforcing such a proposal.³⁰⁴ No commenter opposed this tentative conclusion, and commenters in support agreed that limiting access to a station's public file to viewers within a station's viewing area would be misguided.³⁰⁵ We believe it entirely consistent with Congressional intent in adopting Section 309 of the Act to enhance the ability of both those within and those beyond a station's service area to participate in the licensing process.³⁰⁶ We see no additional burdens, and several benefits, in providing full access to the public file of each station.³⁰⁷ We note, moreover, that such a restriction would reduce the scope of public access now provided by our rules³⁰⁸ – a result clearly at odds with our objective of increasing the transparency and availability of public records. We conclude that each

³⁰¹ See 29 U.S.C. § 794d(1)(A)(ii).

³⁰² As discussed further above, we plan to use optical character recognition tools to enhance the searchability of some documents. We believe that this may help facilitate accessibility for individuals who are blind or vision impaired. See ¶ 87, *supra*.

³⁰³ *FNPRM* at ¶ 19.

³⁰⁴ *Id.*

³⁰⁵ Common Frequency Comments at 2; LUC Media Comments at 7.

³⁰⁶ *FNPRM* at ¶ 19. See also 2007 *Report and Order* at ¶ 13.

³⁰⁷ See Section III.A, *supra*.

³⁰⁸ There is no current restraint – based on residency or any other "local" connection – on members of the public who may demand and obtain access to any station's public file.

station's online public file will not be limited to viewers within its geographic coverage area.

101. *Maintenance.* In order to keep each public file orderly, we conclude that stations must actively maintain their online public file, although the Commission will ensure that items filed in CDBS are updated in the public file as they are updated on CDBS. In the *FNPRM*, the Commission proposed that stations would be expected to maintain their online public files, ensuring that the files contain the information required by the public file rules and that items be removed once they no longer must be retained under our rules.³⁰⁹ In response, APTS and PBS argue that it would be more efficient for the Commission automatically to replace old materials when new materials are imported into the public file.³¹⁰ They argue that it is inefficient and burdensome for stations to be required to monitor the addition and deletion of materials.³¹¹ They also argue that the Commission should avoid introducing contradictory objectives by punishing stations for sharing information above and beyond what is required while still expecting the stations to increase disclosure so the public is informed of the station's broadcast services.³¹²

102. We believe it is important that stations maintain orderly public files. While one of our goals is increased disclosure, another is to be able to provide the public with relevant information in an efficient manner. We are concerned that if material is never removed from the online public file, it will be difficult for the public to find information that is relevant. We note that public file items have different document retention periods, and recommend that stations remove such items in a timely fashion. We do not require stations to remove each item at the end of its retention period, but note that stations are still required to maintain an orderly file. Each station's online public file should not become so overgrown with out-of-date documents that it is difficult to access relevant materials. To assist with this process, the Commission will strive to facilitate the identification and management of aging materials. The Commission will explore creating a mechanism to automatically identify documents that may be beyond their retention period, and flag such documents for station review. Some categories of documents, such as time brokerage agreements and joint sales agreements that need to be retained for as long as the items are effective, will need active management on the part of the station.³¹³ At a minimum, we will require stations to remove expired contracts when and if replacement agreements are uploaded. Materials in the online file will be disposed of consistent with the records schedule we will develop under the Federal Records Act.

103. *Certification.* We decline the request of two parties that the Commission remove a question on renewal Form 303-S that asks whether local public file documents have "been placed in the station's public inspection file at the appropriate times."³¹⁴ The two parties argue that this certification will be unnecessary, since the online public file will be available for anyone to evaluate for completeness. We disagree. Although the Commission will be importing into the online public file all items that are filed with the Commission in CDBS, stations will still be responsible for uploading to the online public

³⁰⁹ As required by the Federal Records Act, 44 U.S.C. §§ 3301, *et seq.*, the Commission will create a records schedule to set the retention and disposal of the files. The schedule will require approval by the National Archives and Records Administration. The records schedule will govern our handling of the station files.

³¹⁰ APTS and PBS at 4. *See also* Public Licensees Reply at 4; Four Commercial and NCE Licensees Comments at 4.

³¹¹ APTS and PBS at 4.

³¹² *Id.* at 15-16; Public Television Licensees Reply at 7.

³¹³ *See, e.g.*, 47 C.F.R. § 73.3526(e)(14)(requiring that time brokerage agreements "be retained as long as the contract or agreement is in force").

³¹⁴ Named State Broadcasters Assn. Comments at 16; Joint Television Parties Reply at 22.

file all other items required under our rules.³¹⁵ As there will still be a requirement that stations maintain their public files, it is necessary that stations certify to their compliance with this requirement at the time of license renewal. This certification requirement is designed to promote voluntary rule compliance.³¹⁶ In addition, as noted in the *FNPRM*, a successful upload of a station's public file on the Commission's website will not be considered agency approval of the material contained in the filing.³¹⁷ The purpose of online hosting is to provide the public ready access to the material, although Commission staff may review the material placed in each station's online public file, just as Commission staff currently reviews station public files to determine compliance with Commission rules.

104. *Working Group and Pilot Program.* We decline to adopt NAB's proposal that the Commission create a joint Commission-broadcaster working group or a pilot program to address the implementation issues and technical challenges raised by the online public file.³¹⁸ NAB argues that a working group, through which the Commission would work with broadcasters to design the online public file and develop rules for its use, would likely reduce overall costs and burdens for the Commission and stations by identifying more quickly potential problems and their solutions.³¹⁹ NAB and others also support a pilot program, through which a limited number of stations would test the online public file before the Commission requires broadcast stations to post files to it.³²⁰ These commenters argue that the Commission will gain valuable experience and insight if it conducts a pilot program involving the licensees of representative large, medium, and small market commercial and noncommercial educational television stations, and their trade association representatives.³²¹ Other implementation suggestions include transition periods, phase-in approaches, and workshops.³²²

105. For more than ten years the Commission has been exploring in this proceeding the best way to move broadcasters' public files online to make them more accessible. A broad group of

³¹⁵ In order to upload information into its online public file, a station will need to log in with the same credentials used to file station applications and materials in CDBS. This will ensure that only station licensees will be able to post information to their files.

³¹⁶ *1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056 at ¶ 23 (1998).

³¹⁷ *FNPRM* at fn 46.

³¹⁸ NAB Comments at 6, Reply at 3.

³¹⁹ NAB Comments at 36 (suggesting that the working group could consult on issues including the time and expense associated with the initial upload of material to the online file; the time and expense associated with adding additional material to the file; functionality of the online system and whether technical modifications are needed; any reactions from users of the public file that the station receives; additional staffing or outsourcing required; expenses for purchases associated with establishing and maintaining the public file; costs associated with specific provisions of the rules; and identification of changes in FCC rules needed to facilitate the placing of public files online).

³²⁰ NAB Comments at 30; Joint Television Parties Reply at 21; Named State Broadcasters Assn. Comments at 12-13; North Carolina Assn. of Broadcasters *et al.* Reply at 2,4; Public Television Licensees Reply at 4; Hubbard Broadcasting at 3. Named State Broadcasters Association argues that a pilot program is an important way for the Commission to meet its statutory obligations under the Paperwork Reduction Act. Named State Broadcasters Assn. Comments at 14. *See also* Ex Parte Presentation of Target Enterprises at 10-12 (filed April 19, 2012). We disagree with their argument that rules implementing the Paperwork Reduction Act require the Commission to test information collections a pilot program. *Id.*; *see* 5 C.F.R. § 1320.8(a)(6).

³²¹ Named State Broadcasters Assn. Comments at 13.

³²² NAB Comments at 32; Public Television Licensees Reply at 9.

commercial and noncommercial broadcasters has participated in every phase of the proceeding. We do not believe a working group or pilot program is necessary to ensure that the process of implementing an online public file is successful, and we believe that the creation of a working group as a condition precedent could unduly delay its implementation.³²³

106. We are addressing the concerns expressed about implementation, however. The Commission is undertaking rigorous testing of the online public file to ensure a smooth user experience. We will provide opportunities for user testing and education before stations are required to upload their online public files. Because our rules will require stations simply to upload information to a Commission-hosted online public file, a process similar to uploading applications to CDBS – which licensees have been doing for more than ten years³²⁴ – we do not believe that this process demands the kind of groundwork that broadcasters advocate. As already discussed, only 200 stations, or approximately 11% of all stations, will be required to upload their political files for the first two years. While this is not a pilot program, we believe that this smaller group of stations, which as major-network affiliates are generally likely to be relatively capable and sophisticated users of technology, can assist in meeting NAB's stated goals of addressing implementation issues and technical challenges as they arise. In addition, as discussed above, we believe that the user testing and education we will provide will assist stations with any concerns they may have. Commission staff will be dedicated to assisting stations with any issues they may confront after implementation of the online public file. We will also explore the option of providing user or peer support groups to help stations identify and work through implementation issues. Such support groups can assist the Commission in identifying whether any issues are common to many users, or station-specific.

F. Announcements and Links

107. We decline to adopt the *FNPRM's* proposal to require stations to make on-air announcements about the availability of the online public file, but do adopt the proposal that stations provide information about the online public file on their websites to the extent that they have them. In the *2007 Report and Order*, the Commission adopted a requirement that stations make twice-daily announcements about the online availability of the public file.³²⁵ On reconsideration, public television petitioners argued that this was unduly burdensome, and asked that the Commission reduce this requirement to a few times a week, at most.³²⁶ In the *FNPRM*, the Commission proposed that stations be

³²³One commenter claims that details of a “pilot program” were not properly raised in the *Further Notice*. See Ex Parte Presentation of Target Enterprises at 4-7, 17 (filed April 19, 2012). To the extent these notice concerns relate to the phase-in approach we are adopting in this proceeding, we note that in the *FNPRM*, the Commission sought comment on whether we should “consider creating different requirements for small television broadcasters.” *FNPRM* at ¶ 50. In any event, the Commission has discretion to implement changes in a step-by-step fashion. See *U.S. Cellular Corp. v. FCC*, 254 F.3d 78, 86 (D.C. Cir. 2001) (“agencies need not address all problems in one fell swoop”) (citations and internal quotation marks omitted); *Personal Watercraft Industry Assoc. v. Dept. of Commerce*, 48 F.3d 540, 544 (D.C. Cir. 1995) (“An agency does not have to ‘make progress on every front before it can make progress on any front.’”) (quoting *United States v. Edge Broadcasting Co.*, 509 U.S. 418, 434 (1993)); *National Association of Broadcasters v. FCC*, 740 F.2d 1190, 1207 (D.C. Cir. 1984) (“[A]gencies, while entitled to less deference than Congress, nonetheless need not deal in one fell swoop with the entire breadth of a novel development; instead, ‘reform may take place one step at a time, addressing itself to the phase of the problem which seems most acute to the [regulatory] mind.’”) (citations and internal quotation marks omitted, alteration in original).

³²⁴ See, e.g., Mass Media Bureau Implements Mandatory Electronic Filing of FCC Forms 301, 314 and 315, Public Notice, 16 FCC Rcd 3989 (2001).

³²⁵ *2007 Report and Order* at ¶ 31.

³²⁶ Joint Public Television Reconsideration Petitioners at 18.

required to notify viewers of the existence, location, and accessibility of a station's public file; it noted that if most viewers are unaware of the existence of the public file or how to access it, its usefulness would be greatly diminished.³²⁷

108. The Commission has long required stations to identify both the call letters of their stations and the cities which they are primarily licensed to serve in order to enable the public to readily "identify the stations to which they are listening and, further, to identify the communities which they are primarily licensed to serve."³²⁸ APTS and PBS argue that stations should have the option of making announcements regarding the online public file on their websites without having to also make an on-air announcement.³²⁹ APTS and PBS argue that on-air announcements are ineffective in informing the public because they are fleeting and might not reach all individuals within the community, whereas a notice on the station's website is more likely to be found by persons who are interested in accessing an online public file and can provide more detail.³³⁰ We are persuaded that providing information on a station's website about the existence and location of the online public file is a better means of ensuring that all viewers know about the availability of the online public file than requiring occasional on-air announcements. Stations will, however be required to revise their on-air pre- and post-filing renewal announcements to reflect the availability of a station's renewal application on the Commission's website, as reflected in Appendix A.

109. We adopt the tentative conclusion that stations that have websites be required to place a link to the online public file on their home page.³³¹ Common Frequency supports the proposal, and no commenter opposed it.³³² Although we have concluded that posting station information to an online public file hosted by the Commission will make the information easily accessible by viewers, we want to ensure that those viewers who seek such information on a station's website are directed to the online public file, particularly since stations will not be required to broadcast on-air announcements regarding the change in location of their public file. In lieu of requiring stations to announce on their websites the availability of their correspondence files at their main studios, we will include language in the online public file that directs the public to the station's main studio to access letters and email from the public.

110. We also adopt the *FNPRM's* proposed requirement that stations that have websites include on their home page contact information for a station representative that can assist any person with disabilities with issues related to the content of the public files.³³³ PIPAC noted that for a person with disabilities, "the burden of searching through several pages or levels becomes an insurmountable barrier."³³⁴ We will adopt the proposal, which no commenter opposed.

G. Radio and Multichannel Video Programming Distributors

111. Consistent with the *FNPRM*, we limit this proceeding to television stations at this time.

³²⁷ *FNPRM* at ¶ 40.

³²⁸ *Amendment of Part 73 of the Commission's Rules and Regulations Relating to Station Identification Requirements*, Notice of Proposed Rulemaking, 6 FCC 2d 805, ¶ 2 (1967).

³²⁹ APTS and PBS Comments at 5. See also Public Television Licensees Reply at 4.

³³⁰ APTS and PBS Comments at 5; Public Television Licensees Reply at 8.

³³¹ *FNPRM* at ¶ 41. See also PIPAC *ex parte* at 5.

³³² Common Frequency Comments at 6.

³³³ *FNPRM* at ¶ 41. We note that if stations receive comments about the accessibility of the online public file system, it should direct those questions and concerns to the Commission.

³³⁴ PIPAC *ex parte* at 6.

In the *FNPRM*, the Commission noted that this proceeding is directed toward television broadcasters, and that we may require radio licensees to abide by similar public file reforms at a later date.³³⁵ LUC Media Group asks that the Commission consider requiring radio and cable systems to also maintain an online public file.³³⁶ We disagree that we should extend the online public file rules to radio and cable systems (or other multichannel video programming distributors (“MVPDs”)) at this time. First, because this proceeding has long focused only on television stations, we do not have a sufficient record concerning radio stations or MVPDs on which to consider possible new rules for those entities. Second, as discussed in the *FNPRM*, we anticipate that starting the online public file process with the much smaller number of television licensees, rather than with all broadcasters and MVPDs, will ease the initial implementation of the online public file.³³⁷

112. Public TV Licensees asks that we allow NCE radio stations, or at least those that are licensed to the same entity as, or under common control with, an NCE television station, to maintain their public inspection files online on the Commission’s website on a voluntary basis.³³⁸ Public Television Licensees argues that this will allow radio stations that are jointly owned or operated with television stations to avoid duplicative efforts from having to maintain two separate public file systems, involving some of the same documents.³³⁹ It notes that with respect to the NCE rules, all of the requirements for radio stations are being included in the proposed online public file.³⁴⁰ We appreciate that commonly owned and operated radio stations may prefer an early transition to the online public file. In this initial phase of implementing the online public file, however, we are concerned about adding a significant number of additional entities to the universe of users. As we and the broadcasting industry gain more experience with the online public file we will revisit the possibility of allowing stations not required to use the online public file to use it on a voluntary basis. We delegate to Commission staff the authority to allow (but not require) radio stations to voluntarily post their public files at such time as staff determines that such an option is feasible and desirable; this will ensure that radio stations wishing to avail themselves of the online public file can do so promptly. We further authorize Commission staff to take into account common-ownership considerations if appropriate.

³³⁵ *FNPRM*. at ¶ 43.

³³⁶ LUC Media Comments at 2. *See also* 47 C.F.R. § 76.1701(a); 47 C.F.R. § 25.701(d).

³³⁷ *FNPRM* at ¶ 43. We reject arguments that requiring television broadcasters to place their political files online will put them at a disadvantage with respect to competitors, such as MVPDs and radio stations. As discussed above, to the extent competitors and potential advertisers have an economic incentive to access this information, they can already do so at the station; the online disclosure rule will not alter the economic incentives of these entities in any meaningful way. *See* ¶ 39, *supra*. In any event, the Commission has discretion to implement changes in a multistep fashion. *See* fn 325, *supra*. We further note that 75% of political advertising is spent on broadcast television, thus demonstrating a preference by media buyers to utilize broadcast television over other forms of available media to reach voters or customers. *See* <http://www.pqmedia.com/about-press-20101215-pcms2010.html>; <http://www.deadline.com/2011/06/tv-stations-ready-for-2012-election-windfall/>. There is no evidence in the record to suggest that such advertising would shift to other forms of media simply because rate information, already public, will now be accessible online.

³³⁸ Public Television Licensees at 10.

³³⁹ *Id.* at 10-11.

³⁴⁰ *Id.* at 10.