

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, DC 20554**

In the Matter of	)	
	)	MM Docket No. 00-168
Standardized and Enhanced Disclosure	)	
Requirements for Television Broadcast	)	MM Docket No. 00-44
Licensee Public Interest Obligations	)	

Opposition of the Public Interest Public Airwaves Coalition  
to National Association of Broadcasters'  
Petition for Stay Pending Judicial Review

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## Summary

The Public Interest Public Airwaves Coalition (“PIPAC”) strongly opposes the National Association of Broadcasters (“NAB”) petition for stay pending judicial review of the Federal Communications Commission rule requiring that broadcast television stations post the contents of their public inspection files on a website to be maintained by the Commission. NAB has failed to meet any of the criteria necessary for a stay.

First, NAB has failed to show that it is likely to prevail on the merits in court. NAB’s claim that the FCC acted arbitrarily and capriciously will not be successful. Requiring online posting of the rates charged for political ads does not raise serious antitrust concerns because this information has already been publicly available for many years, and no commenter has presented any evidence of anticompetitive harm. If anything, online disclosure will promote competition in the sale of political advertising. Moreover, the Commission considered alternative proposals set forth by broadcasters and provided well-reasoned grounds for rejecting them. NAB’s argument that the Commission’s action is contrary to the Bipartisan Campaign Reform Act (“BCRA”) will also fail because BCRA is silent as to the form by which broadcast stations are to make certain information available to the public.

Second, NAB has failed to demonstrate any harm to its members if the rule goes into effect as scheduled on August 2, 2012. And even assuming that its members will incur some initial expenses to comply with the rule, economic harm is not considered irreparable.

Third, NAB has failed to show that a stay would not substantially harm other interested parties. PIPAC’s members would suffer harm if the rules do not take effect as scheduled because they would have to devote a great deal more of their limited resources to conduct multiple in-person visits to broadcast stations to gather information they otherwise could obtain from a single website.

Finally, NAB has failed to show that a stay would serve the public interest. In fact, a stay would be harmful to the public interest. With the 2012 presidential election fast approaching and huge sums of money being spent to persuade potential voters, it is especially important that the public be able to easily find out who is paying and how much is being paid for the campaign messages they see on television.

## Table of Contents

Summary .....	i
Background.....	2
I. NAB Is Not Likely to Succeed on the Merits .....	3
A. NAB Is Unlikely to Prevail in Claims that the FCC Failed to Adequately Address Antitrust Concerns.....	4
B. FCC Acted Reasonably in Declining to Adopt Broadcasters’ Alternative Proposals .....	8
C. NAB Is Unlikely to Prevail in Claims that BCRA Precludes the FCC from Publishing the Political File Online.....	9
II. Broadcasters Have Failed to Show Irreparable Harm.....	10
III. Staying the Rule Would harm Other Parties and Would Not Serve the Public Interest .....	12
Conclusion .....	14

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**Opposition to NAB’s Petition for Stay Pending Judicial Review**

Pursuant to Section 1.45(d) of the Commission’s rules, the Public Interest Public Airwaves Coalition (“PIPAC”),<sup>1</sup> by its attorneys, respectfully requests that the Federal Communications Commission (“FCC”) deny the Petition for a Stay Pending Judicial Review (“Stay Pet.”) filed by the National Association of Broadcasters (“NAB”) on July 3, 2012.<sup>2</sup> NAB has failed to show that it is likely to prevail on the merits in its Petition for Review of the *Second Report and Order* (“*Order*”) in the above-referenced proceeding.<sup>3</sup> NAB has also failed to show that its members will suffer harm absent a stay. Moreover, granting a stay would harm other parties and would not serve the public interest.

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<sup>1</sup> PIPAC’s members are the Benton Foundation, Campaign Legal Center, Common Cause, Free Press, New America Foundation, and Office of Communication, Inc. of the United Church of Christ. The Benton Foundation is a nonprofit organization dedicated to promoting communication in the public interest. These comments reflect the institutional view of the Foundation and, unless obvious from the text, are not intended to reflect the views of individual Foundation officers, directors, or advisors.

<sup>2</sup> Petition for the National Association of Broadcasters for Stay Pending Judicial Review, MM. Dkt. 00-168 (July 3, 2012) [hereinafter Stay Pet.].

<sup>3</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, MM Dkt. No. 00-168, FCC 12-44 (rel. Apr. 27, 2012) [hereinafter *Order*].

## Background

The rule challenged by NAB merely requires that television broadcast stations post online most of the information that is already contained in their public inspection files maintained at the stations. This rule is the result of a rulemaking proceeding that has been ongoing since 2000, when the Commission first proposed that television stations post their public inspection files online to provide 24-hour access and increase public accessibility.<sup>4</sup> In 2008, the Commission adopted a rule requiring online posting of most of the public file,<sup>5</sup> but the rule was never put into effect. In October 2011, the Commission vacated the 2008 rule and proposed to reduce the burdens on broadcasters by instead requiring them submit documents for inclusion in an online public file to be hosted by the Commission.<sup>6</sup> The Commission received a large number of comments from the public supporting this proposal as well as comments from broadcasters raising concerns. Its *Order* adopting the rule is over fifty pages long with more than 340 footnotes.

The *Order* explains that the Commission adopted the online disclosure rule to modernize its recordkeeping and to make it easier for the public to actually inspect the public inspection files. *Order* at ¶¶ 1, 12-18. Moreover, to minimize any potential burdens on broadcasters, the Commission agreed to host the online files, declined to impose any new recordkeeping requirements, and, with respect to the political files, required online posting only prospectively

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<sup>4</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Notice of Proposed Rulemaking, MM Dkt. No. 00-168, 15 FCC Rcd 19816 (2000).

<sup>5</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, MM Dkt. No. 00-168, 23 FCC Rcd 1274 (2008).

<sup>6</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Order on Reconsideration and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 15788 (2011).

and deferred the effective date for all stations outside of the fifty largest markets and all stations within the top fifty that are not affiliated with one of the top four networks. *Id.* at ¶¶ 2-3, 19-37.

### **I. NAB Is Not Likely to Succeed on the Merits**

NAB makes two basic arguments as to why it is likely to succeed on the merits. First it argues that the Commission acted arbitrarily and capriciously in adopting a requirement that television broadcast stations post online most of the contents of their existing public inspection files and in failing to consider alternatives. Second, NAB contends that the Commission's action is contrary to BCRA.

Even before reaching the specifics of these claims, it is significant to note that the standard of review applicable to NAB's claims is extremely narrow and deferential to the agency. As the Supreme Court held in *Motor Vehicle Manufacturers Association v. State Farm Mutual Auto Insurance*, the "scope of review under the 'arbitrary and capricious' standard is narrow and a court is not to substitute its judgment for that of the agency." 463 U.S. 29, 43 (1983). Similarly, in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, the Court held that when, as here, a "statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." 467 U.S. 837, 842-43 (1984). Given the extensive rulemaking record, the Commission's lengthy and well-reasoned *Order*, and the modest impact of the rule ultimately adopted, it is almost inconceivable that a court would find that the FCC acted arbitrarily and capriciously or in violation of the statute in this case.

**A. NAB Is Unlikely to Prevail in Claims that the FCC Failed to Adequately Address Antitrust Concerns**

NAB contends that the FCC acted arbitrarily and capriciously because requiring online posting of the political files “raises serious antitrust” concerns. Stay Pet. at 13. Yet it is clear from the extensive discussion in Commissioner McDowell’s “Supplemental Policy and Legal Statement,” that the Commission considered and rejected the claim of antitrust concerns. In fact, in his statement, Commissioner McDowell thanked Chairman Genachowski and Commissioner Clyburn “for their willingness to engage in an open dialog throughout this process,” and acknowledged that his colleagues considered the merits of a proposal that would not require disclosure of rate information, but suggested that he “was insufficiently persuasive.” McDowell Statement, *Order*, at 70-71.

Commissioner McDowell’s failure to persuade the other Commissioners of his antitrust concerns is understandable, based on the record in this proceeding. Commissioner McDowell’s argument, which NAB cites on page 7 of its petition, is that requiring broadcast television stations to make public the prices they charge for political advertisements would force these broadcasters to engage in illegal activity and subject them to possible antitrust suits. McDowell Statement, *Order*, at 70-71. As the *Order* notes, however, “[b]roadcasters have been required to make political file information including rates charged for political advertising, available in some form since 1938, and . . . since 2002, Section 315(e) of the [Communications] Act has specifically required that the political file include ‘the rate charged for the broadcast time.’” *Order* at ¶ 39. If public access to the rates charged for political advertising had resulted in anticompetitive harms, antitrust authorities surely would have taken action. But they have not.

Similarly, no antitrust agency has raised concerns in this docket about the FCC’s proposal to modernize its reporting requirement to require that information be made available for public

inspection online. The Commission recognizes that “having the files accessible online will encourage other members of the public to make use of the political files,” *Order* at n.122.

However, the same is true in other cases where the FCC has moved from paper to online filing and reporting requirements, improving both efficiency and public access to information.<sup>7</sup>

None of the cases cited by NAB (Stay Pet. at 7-9) support Commissioner McDowell’s contention that online disclosure would violate antitrust law. These cases all involve claims under Section 1 of the Sherman Act, which makes illegal “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations.” 15 U.S.C. §1. To allege a violation under the Sherman Act, one would need to show both that there is some sort of an agreement and that the agreement has an anticompetitive effect on the market. Neither factor is present here.

NAB concedes that there is no agreement among broadcasters to restrain trade. It points out that because “the television stations will be compelled to publish the price information . . . there will be no ‘agreement’ in restraint of trade for purposes of Section 1 of the Sherman Act.” Stay Pet. at 8, n.19. Moreover, all of the cases cited by NAB are inapposite because they involve agreements among companies to disclose prices or related information and the disclosures at issue were not required by law.<sup>8</sup>

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<sup>7</sup> For example, the FCC requires that broadcasters electronically file a host of forms including Children’s Television Reports, renewal applications, applications to transfer or assign a license, and ownership reports. It even requires some of the entities that it regulates to electronically file tariffs that contain price information.

<sup>8</sup> *U.S. v. Container Corp.*, 393 U.S. 333 (1969) involved an agreement among the dominant sellers of corrugated containers to provide recent price information to each other upon request, which the Court found had the effect of stabilizing prices in a market where rates had been falling. *U.S. v. U.S. Gypsum Co.*, 438 U.S. 422 (1978), involved an agreement among the major producers of gypsum board to raise, fix and stabilize prices. *Todd v. Exxon Corp.*, 275 F.3d 191 (2d Cir. 2001) involved an allegation that fourteen major companies in the oil and petrochemical industry acted in concert to survey past and current salary information to set salaries at depressed

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NAB also fails to show how online disclosure will have any anticompetitive effects. The Supreme Court has held that “the dissemination of price information is not itself a *per se* violation of the Sherman Act.” *U.S. v. Citizens & S. Nat’l Bank*, 422 U.S. 86, 113 (1975). Indeed, in *U.S. v. U.S. Gypsum Co.*, one of the cases the NAB relies on, the Court noted that the “exchange of price data and other information among competitors does not invariably have anticompetitive effects; indeed such practices can in certain circumstances increase economic efficiency and render markets more, rather than less competitive.” 438 U.S. 422, 441 n. 16.<sup>9</sup>

Here, requiring online disclosure, if anything, will promote competition.<sup>10</sup> There is no reason to believe that disclosure of ad rates will lead to collusive action to raise or stabilize the price of advertising. Indeed, NAB’s real concern is just the opposite—that increased disclosure will lead to greater competition and ad prices will go down as a result. NAB argues that because “[c]able and satellite operators that compete for local advertising” are not subject to the online disclosure requirement, the rule creates an “information asymmetry” that “will give non-broadcasters an opportunity to shift advertising away from over-the-air television stations to these other media.” Stay Pet. at 11-12.

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(footnote continued)

levels. In contrast, where information is disclosed because of a government mandate rather than as a result of an agreement among industry participants, there is no antitrust problem. *See, e.g., Fisher v. City of Berkeley*, 475 U.S. 260 (1986) (finding no violation of the Sherman Act where the city unilaterally imposed price limitation on landlords and there was no contract, combination, or conspiracy among the landlords).

<sup>9</sup> It is simply wrong for NAB to suggest that the Commission is creating “exceptions to the antitrust laws.” Stay Pet. at 13. Here the FCC is not mandating any anticompetitive conduct, and its decision would not immunize any anticompetitive conduct. Thus, the FCC’s action is consistent with *U.S. v. RCA*, 358 U.S. 334 (1959), which held that the FCC’s approval of a station transfer did preclude antitrust authorities from alleging that the acquisition violated antitrust laws, and *Midland Telecasting Co. v. Midessa Television Co.*, 617 F.2d 1141, 1149 (DC Cir. 1980), which held that the FCC’s regulation of cable television did not immunize a cable company from an antitrust claim based on refusal to carry.

<sup>10</sup> The goal of the antitrust laws is “the protection of competition, not competitors.” *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962).

Many of NAB's members have reaped significant financial benefits from selling political advertising.<sup>11</sup> However, it is not part of the FCC's public interest mandate to protect broadcasters from competition. Moreover, NAB's argument is undermined by its acknowledgement that cable and satellite operators are also required to publicly disclose their political rates. Stay Pet. at 11-12. Any broadcaster or advertiser that wants to know what the cable company is charging can go view the cable operator's public file.<sup>12</sup>

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<sup>11</sup> NAB acknowledges that “[p]olitical advertisers spend more than a billion dollars on television advertising in election years.” Stay Pet. at 19 (internal citation omitted). The record reflects that “political ad spending doubled between 2008 and 2010 from \$2 billion to more than \$4 billion dollars, with local broadcast and radio commanding over 70 percent of the political advertising dollars for 2010.” PIPAC Comments, Dkt. 00-168 at 15 & n.50 (filed Dec. 22, 2012) (citing Steve McClellan, *Political Ad Spend to Soar*, Adweek (Aug. 23, 2010), <http://www.adweek.com/news/advertising-branding/political-ad-spend-soar-102848>); *Ex Parte* Letter from LUC Media Group, MM. Dkt. 00-168 (Mar. 1, 2012) at 3 (“some \$3.2 billion will be spent on advertising this year”). Recent press reports confirm the large amounts of political advertising dollars going to broadcast televisions. See, e.g., David Lieberman, *Political TV Ad Spending Picking Up After A Slow Start*, Deadline: Hollywood (Apr. 30, 2012), <http://www.deadline.com/2012/04/political-tv-ad-spending-picking-up-after-a-slow-start-analyst/> (“Campaigns have spent \$275.5M on TV ads through April 15; nearly 66% went directly to broadcast stations while the rest went to national TV and cable.”); Alexander Burns & Maggie Haberman, *2012 Political TV Ads: The Rush Is On*, Politico (May 17, 2012) (“With nearly six months left before Election Day, national party committees have already reserved more than \$72 million in television airtime for a fall campaign that’s shaping up as a Super Bowl-like spectacle of political advertising.”); Josh Lederman, *Congressional Campaign Committees Stake out TV Time in Busy Election Year*, The Hill (Apr. 20, 2012) (“House and Senate campaign committees are worried that if they don’t stake out their television time now, they could be eclipsed in the fall by super-PACs and the pricey presidential race. With more than six months until the election, the National Republican Senatorial Committee (NRSC) has already reserved \$25 million in airtime after Labor Day to target six races, while the Democratic Congressional Campaign Committee (DCCC) has announced plans to book \$32 million in airtime in districts across the country.”); David Gelles & Andrew Edgecliffe-Johnson, *CBS Eyes Strong Ad Sales in 2012*, Financial Times (Feb. 16, 2012), available at <http://www.ft.com/cms/s/0/b774b592-5828-11e1-ae89-00144feabdc0.html> (reporting that “Les Moonves, chief executive of CBS, said in February he expected ‘an extraordinary year in politics.’ CBS stations made \$150m from political advertising in the 2008 presidential campaign but this year could get close to \$180m”).

<sup>12</sup> Although it takes more effort to visit the files in person than online, there are generally far fewer cable operators in a market than television broadcast stations.

NAB tries to buttress its contention that the FCC failed to give sufficient weight to broadcasters' claims of commercial harm by citing *Business Roundtable v. Securities & Exchange Commission*, 647 F.3d 1144, 1152 (D.C. Cir. 2011). Stay Pet. at 12-13. However, that case is easily distinguished here, just as it was distinguished in *Association of Private Sector Colleges and Universities v. Duncan*. The *Duncan* Court explained:

In *Business Roundtable*, we found a regulation to be arbitrary and capricious, because, in promulgating it, the SEC had failed to satisfy its “unique [statutory] obligation to consider the effect of a new rule upon ‘efficiency, competition, and capital formation.’” Moreover, in *Business Roundtable*, this court criticized the SEC for failing to consider empirical studies and quantitative data. The Appellant points to no data or study the Department ignored and thus *Business Roundtable* is of no help to its argument.

681 F.3d 427, 447-48 (D.C. Cir. 2012) (internal citations omitted). Similarly, here NAB cites no unique statutory requirement to consider commercial harm to broadcasters or any data or studies to support its claim of commercial harm. Thus, the FCC acted reasonably in rejecting NAB's claims as generalized and vague.

**B. FCC Acted Reasonably in Declining to Adopt Broadcasters' Alternative Proposals**

NAB contends that “the Commission's decision is particularly vulnerable because the agency rejected an alternative approach that would largely avoid the anticompetitive concerns.” Stay Pet. at 13-14. Since the Commission decision raises no anticompetitive concerns, this circular argument does nothing to improve NAB's likelihood of prevailing on the merits.

In any event, the FCC did give full consideration to the alternative proposals set forth by some broadcasters in *ex parte* filings. After describing these proposals, the Commission stated: “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.” *Order* at n.177. It also concluded that the suggested approaches would impose additional reporting requirements on stations, and would be of only limited value to candidates seeking to exercise their statutory right to equal opportunities. Thus, the FCC clearly met its obligation to respond to significant comments. *ACLU v. FCC*, 823 F.2d 1554, 1582 (D.C. Cir. 1987).<sup>13</sup>

### **C. NAB Is Unlikely to Prevail in Claims that BCRA Precludes the FCC from Publishing the Political File Online**

Next, NAB argues, as it did for the first time in its Supplemental Comments, that requiring online posting of broadcasters’ political files is inconsistent with the Bipartisan Campaign Reform Act (“BCRA”) because BCRA explicitly requires that certain election-related records be made available on the Federal Election Commission (“FEC”) website but does not instruct the FCC to maintain a website for broadcasters’ political files. *Stay Pet.* at 15. Specifically, NAB contends that “Congress adopted a hard-copy inspection requirement for broadcasters, but did *not* require online publication.” *Id.* (citing Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155 § 504 (2002) (codified at 47 U.S.C. § 315(e))) (emphasis in original). But in fact, § 504 of BCRA is silent as to the method by which broadcast stations are to make the specified information available to the public.<sup>14</sup>

When a “statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency’s answer is based on a permissible construction of the statute.” *Chevron*, 467 U.S. at 842-43. Here, the Commission properly considered and rejected NAB’s

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<sup>13</sup> Moreover, the notice-and-comment provision of the APA, *see* 5 U.S.C. § 553(c), “has never been interpreted to require [an] agency to respond to every comment, or to analyze every issue or alternative raised by comments.” *Thompson v. Clark*, 741 F.2d 401, 408 (D.C. Cir. 1984).

<sup>14</sup> *See* Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155 § 504 (2002) (codified at 47 U.S.C. § 315(e)).

arguments. *Order* at ¶¶ 51-54. It found that in passing BCRA, Congress essentially codified the existing political file regulations at a time when the Commission had tentatively concluded that stations should place their political files online, but it nonetheless placed no restriction on how the Commission could direct stations to make the political file available for public inspection. *Id.* at ¶ 52. Given Congress’ silence in this context and “given the ubiquity and general expectation of electronic access to records today,” the Commission reasonably interpreted BCRA to allow the Commission to require the political files be made available for public inspection online.<sup>15</sup> Thus, NAB is unlikely to prevail in its argument that the FCC’s action is inconsistent with BCRA.

## **II. Broadcasters Have Failed to Show Irreparable Harm**

NAB devotes a mere two paragraphs to its claim of irreparable harm. The first argues that NAB’s members will be injured because non-broadcast competitors will gain an “unfair advantage” by being able to learn “exactly what prices local broadcast stations are charging for specific spots.” *Stay Pet.* at 19. The second asserts that “[t]hese losses constitute irreparable harm.” *Id.* at 20.

NAB’s allegation of harm is entirely speculative.<sup>16</sup> It offers no evidence to support its claim that online publication of information that has been on the public record for decades will

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<sup>15</sup> The FCC also rejected several related arguments made by NAB, noting that NAB’s arguments were contradictory, ignored the FCC’s statutory duty to make the contents of political files available to the public, and that the FCC and FEC serve different purposes and collect different information. *Order* at ¶ 53-54.

<sup>16</sup> NAB also says that “broadcasters will be unable to recoup the substantial costs of complying with *Order* [sic].” *Stay Pet.* at 19 (citing Exhibits 1-3). NAB does not elaborate on this and, significantly, does not dispute the Commission’s findings that broadcasters’ claims about the cost of compliance are extremely hyperbolic, *Order* at ¶¶ 24-32, or the Commission’s finding that any such costs will ultimately be offset by the inevitable savings of digitization. *Order* at ¶ 11. Indeed, PIPAC showed that the actual costs of compliance are a fraction of what NAB and

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somehow create a *new* form of harm. Moreover, if availability of this data were, indeed, a significant benefit for competitors, they surely would have been taking advantage of this access for a long time, and online publication would, at most, make this process somewhat easier.

However, there is nothing in the record, and nothing in NAB's declarations, to support the claim that competitors have *ever* used public file information to gain competitive advantage. For example, NBC told the Commission that its "experience has been that it receives relatively few requests to examine its stations' public inspection files."<sup>17</sup> According to Viacom, "the fact is that visits to the public file are presently exceedingly rare."<sup>18</sup> Viacom's community affairs director explained that "apart from visits to the political file by campaign workers during election periods (which she says are also minimal), public file visitors average less than one annually, virtually all of whom are college students on assignment."<sup>19</sup> Similarly, The Walt Disney Company says that those "most interested in the public inspection files are advocacy groups, political candidates and the press."<sup>20</sup>

Relying on a single unpublished opinion that does not involve action by a federal agency, NAB says that its claimed harm is irreparable. Stay Pet. at 20 (citing *Robertson v. Cartinhour*, 429 F. Appx. 1, 3 (D.C. Cir. 2011)). However, "the general rule" is that economic loss is not

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(footnote continued)

others claimed. *Ex Parte submission of PIPAC*, February 16, 2012 at 2-3. For example, at page 6 of her declaration, Exhibit 1 to the Stay Petition, Janine Drafts says that a dedicated computer, scanner and fax machine would cost about \$4,000. Leaving aside the question of why a new dedicated computer is even necessary, PIPAC showed that the cost of this equipment would be perhaps one-fourth of that amount. *Ex Parte submission of PIPAC*, February 16, 2012 at 2-3.

<sup>17</sup> Comments of National Broadcasting Company, MM Dkt. 00-168 (Dec. 18, 2000), at 15.

<sup>18</sup> Comments of Viacom, Inc., MM Dkt. 00-168 (Dec. 18, 2000), at 26.

<sup>19</sup> *Id.*

<sup>20</sup> Comments of The Walt Disney Company, MM Dkt. 00-168 (Dec. 18, 2000), at 17.

irreparable injury.<sup>21</sup> There are two exceptions to this principle, neither of which applies here. First, this not a case where “monetary loss . . . threatens the very existence of the movant’s business.”<sup>22</sup> Second, even where economic losses may be unrecoverable, the harm must be “certain, great and actual—not theoretical—and imminent, creating a clear and present need for extraordinary equitable relief to prevent harm.”<sup>23</sup> Here, by contrast, any economic costs of compliance with the FCC rule are minimal, and the rule is likely to result in cost-saving over time. *Order* at ¶ 11.

### **III. Staying the Rule Would Harm Other Parties and Would Not Serve the Public Interest**

Staying the rule would harm both PIPAC members and the public interest. For over a decade, PIPAC has advocated to make public inspection files more accessible to the public. The burdens associated with visiting a station in person to inspect or obtain copies of documents have been well documented.<sup>24</sup> The public should not have to wait any longer to take advantage of the benefits of the internet age.

With the 2012 presidential election fast approaching, it is especially important that the rules not be stayed. PIPAC is confident that in communities where broadcasters are required to post their political files, the public will have a better understanding of who is paying for the

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<sup>21</sup> *Davis v. Pension Benefit Guaranty Corp.*, 571 F.3d 1288, 1295 (D.C. Cir. 2009).

<sup>22</sup> *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

<sup>23</sup> *Power Mobility Coal. v. Leavitt*, 404 F. Supp. 2d 190, 204 (D.D.C. 2005) (quoting *Wisconsin Gas Company*, 758 F.2d at 674); see also *Mylan Pharm., Inc. v. Shalala*, 81 F. Supp. 2d 30, 42 (D.D.C. 2000) (“Because Mylan is alleging a non-recoverable monetary loss, it must demonstrate ‘that the injury [is] more than simply irretrievable; it must also be serious in terms of its effect on the plaintiff.’ *Gulf Oil Corp. v. Department of Energy*, 514 F. Supp. 1019, 1026 (D.D.C. 1981).”)

<sup>24</sup> See, e.g., Paperwork Reduction Act Comments of the Public Interest Public Airwaves Coalition, MM Dkt. No. 00-168, OMB Control No. 3060-0214 (June 11, 2012).

campaign messages they see on television and will be better equipped to make informed decisions about voting. PIPAC also believes that posting existing political files will not impose significant burdens on broadcasters and that online posting will be more efficient for both broadcasters and the public. Allowing the rules to take effect before the election will provide a test case so that the public, the industry, and the Commission can better assess the relative costs and benefits of online disclosure.

PIPAC members and other organizations would be harmed by a stay because they would need to devote many more resources to gathering political advertising information directly from broadcast stations, rather than from a single website. Likewise, the public interest would be harmed because it will be difficult for members of the public as well as political candidates to access the information to which they are entitled by law.

## Conclusion

Because NAB has failed to show that it meets any of the criteria for a stay, PIPAC urges the Commission to deny NAB's request.

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<sup>25</sup> Georgetown Law students Christine Poile and Margo Varona provided invaluable assistance preparing this Opposition.