

# The Media Institute

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July 26, 2012

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: *Standardized and Enhanced Disclosure Requirements for  
Television Broadcast Licensee Public Interest Obligations,  
MM Dockets No. 00-168 and 00-44*

Dear Ms. Dortch:

Submitted on behalf of the Media Institute, a nonprofit research foundation specializing in communications policy issues, are two attached articles in support of the Petition for Reconsideration filed in the above-referenced docket by the Television Station Group (Petition of Barrington Broadcasting Co., et al., for Reconsideration, MM Docket No. 00-168, June 11, 2012). The articles originally were posted on July 13, 2012 and June 25, 2012, respectively, and we would like them to be considered as part of the record in this proceeding.

Please contact the undersigned with any questions or comments.

Respectfully submitted,

*/s/ Patrick Maines*

Patrick Maines  
President

Enclosure

# MEDIA & COMMUNICATIONS POLICY

ISSUES & DEVELOPMENTS IN THE REALM OF COMMUNICATIONS POLICY, MEDIA POLICY, & THE FIRST AMENDMENT

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## RECONSIDERING THE FCC'S POLITICAL FILE RULE

The FCC's recently minted rule requiring certain broadcast stations to post their political ad files online rather than, as is currently the case, in their local public inspection files, is not the kind of issue that is likely to stir the nation's passions. Regardless of how challenges to the rule pan out, very few people are going to run off and join the circus if things don't go a certain way.

Still, it's a more interesting issue than, on its face, it would appear to be – and there's evidence that defenders of the rule, along with reporters, are not paying attention to some of the finer points being made in opposition to it.

As of today there are three separate challenges to the rule – one at the FCC, one at the Office of Management and Budget, and one in the U.S. Court of Appeals for the D.C. Circuit. The [petition for reconsideration](#) at the FCC, signed by 12 TV station groups, is the most nuanced of the complaints.

As with the others, the FCC petitioners are mostly concerned about having to reveal online their spot-by-spot ad rates, but with this difference: The petitioners propose to aggregate such data in a way that would not reveal their ad rates but would actually make it easier for everyone, journalists included, to understand who is contributing to whom, and in what amounts, and in addition to include online the same kind of information for state and local candidates, something the FCC rule does not require.

Why the broadcasters are opposed to having to reveal online their political ad rates, when they already provide this information in their local public files, takes a little explaining.

Currently, broadcasters are required by law to offer political advertising to candidates for federal office at the "lowest unit rate," which is the rate they charge their best commercial advertisers. But these data are not that user friendly, and in any event requires that someone physically go to a TV station for the purpose. (For anyone so disposed, the cumbersomeness in this only grows, as the date of an election draws near, because TV stations update their political files more frequently at that time.)

Campaign representatives sometimes do check these files to ensure that their candidates are not being charged more than their opponents, but commercial advertisers do not, and that fact touches on one of the main worries among the broadcasters: They fear that if they have to reveal online their spot-by-spot ad rates, some of their commercial advertisers (knowing that the political rates are based on what the stations charge their best commercial customers) will demand these rates for themselves.

It's also bothersome to broadcasters that their media competitors, both in broadcasting and cable, would have access to this information, and it's further been suggested that, as written, the FCC rule may encourage trial lawyers to file frivolous lawsuits against TV stations on behalf of losing candidates.

So in the case of the FCC petitioners, the question isn't why broadcasters don't want to provide their political files online (they *are* willing to do that), but why defenders of the FCC rule insist on requiring the online display of stations' ad rates?

After all, one of the main goals of the campaign finance laws is to provide, in a timely way, information about candidate and issue expenditures. It's not the goal of these laws to compel TV stations to divulge their competitive secrets about ad rates and the like.

When asked about the unwillingness of the FCC to approve this simple modification to its rule – the Commission had this suggestion before it prior to its vote in late April – a communications lawyer prominently involved in the matter said that, in the wake of the *Citizens United* decision, everything touching on campaign finance has taken on a kind of “religious aspect,” such that advocates of campaign finance laws are these days unwilling even to grant such harmless accommodations as those presented by the petitioners.

Notable by their absence from the FCC petition are the station groups owned and operated by the Big Four TV networks. Lawyers for the petitioners note that the networks supported the suggested “aggregation” approach prior to the FCC's vote, and aver that they support the petition now.

That may be right, but if so it's hard to confirm. It may be, instead, that the networks don't like the odds that the FCC will accommodate the petitioners, or that they are unhappy about the petitioners' proposed inclusion of political ad information about candidates for local office.

For its part, the National Association of Broadcasters has appealed the FCC's rule to the OMB, claiming that the obligation to put the political files online is unduly burdensome, and in conflict with the Paperwork Reduction Act.

There may well be real merit in these other concerns, and in the arguments to be fleshed out in the broadcasters' lawsuit in the D.C. Circuit, but it's the modest proposal made by the FCC petitioners that shines the brightest light on how hard it is these days to forge reasonable compromises in a deeply divided nation.



POSTED ON JULY 13, 2012 BY PATRICK MAINES

### **FCC DENIES STAY OF ITS POLITICAL FILE RULES**

In a decision that landed a country mile from being a surprise, the FCC yesterday denied a stay requested by the NAB of its new political file rules, under which broadcasters are required to post online their spot-by-spot ad rates for candidates for federal office.

As readers of this blog will [recall](#), a dozen broadcast station groups recently suggested an alternative approach in which the required information about political and issue ads would be posted online, but aggregated in a way that would not reveal the stations' ad rates. (The alternative proposal would also have provided information about political and issue ads in state and local races, something that the FCC's new rule does not require.)

The stations were concerned that, because the political ad rates are based on the rate they charge their best *commercial* advertisers, the effect of posting their political ad rates online would be to encourage other commercial advertisers to demand the same low rates for their products and services. (Broadcasters also chafed at the fact that cable and satellite companies would not have to provide this information.)

Yesterday's denial of the NAB's requested stay mentioned the alternative proposal only in passing, but in language that speaks volumes. "Requiring the public to view aggregated data online and separately review complete political rate data in the paper file," they said, "would not provide the efficiencies presented by online disclosure."

What is missing here is what part of the "public," other than broadcasters' competitors and advertisers, would want to view the spot-by-spot ad rates. The simple fact is that the proposed aggregated data would actually be *more* helpful to journalists and interested citizens than the disaggregated data that the FCC rule now requires.

But the best in the language of the FCC's decision was yet to come. In a sentence that is sure to have broadcasters rolling in the aisles with laughter, the FCC writes that "as an additional basis for rejecting the alternative proposal, the Commission finds that it would be significantly more burdensome on broadcasters because it would require both the maintenance of paper files with detailed spot-by-spot information and the creation and uploading of new aggregated files."

In other words, the FCC denied the broadcasters own proposal because the Commission was concerned that it would be too burdensome on them – surely the first time in recent memory that the FCC has been moved to act out of concern for broadcasters' welfare.