

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**JOINT REPLY COMMENTS OF THE  
NORTH CAROLINA ASSOCIATION OF BROADCASTERS,  
THE OHIO ASSOCIATION OF BROADCASTERS, AND  
THE VIRGINIA ASSOCIATION OF BROADCASTERS**

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## Introduction

The North Carolina Association of Broadcasters (“NCAB”), the Ohio Association of Broadcasters (“OAB”), and the Virginia Association of Broadcasters (“VAB”) (collectively, the “Associations”),<sup>1</sup> through their attorneys, hereby reply to comments submitted in response to the Commission’s Public Notice, DA 13-1440, (the “Public Notice”) in the above-captioned proceeding relating to the online political file.

The Commission’s *Second Report and Order* (the “*Order*”) together with attendant rules requiring television stations to place their public files online went into effect August 2, 2012.<sup>2</sup> As of that date, television stations in the top 50 markets that are affiliated with Big Four Networks have been required to upload political file documents to their online public files. The *Order* proposed to expand the requirement to all television stations starting July 1, 2014.<sup>3</sup> The Public Notice seeks comment on the proposed deadline and other issues related to the online political file.

For the reasons discussed in these Reply Comments, the Associations oppose the Commission’s proposal to comprehensively expand the requirement to all smaller market stations and to stations not affiliated with a Big Four Network. The Associations also disagree with and urge the Commission to reject the proposal by other commenters to require a standardized disclosure form to report political file data. This approach has been previously rejected by the Commission to avoid unduly burdensome regulation and

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<sup>1</sup> The Associations are trade associations representing the interests of radio and television broadcast stations in their respective states.

<sup>2</sup> See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012) (“*Order*”).

<sup>3</sup> See *Order*, ¶ 33.

unnecessary paperwork for broadcasters, and the proposal should again be rejected in this proceeding.

**I. THE COMMISSION’S PROPOSAL TO REQUIRE ALL TELEVISION STATIONS TO POST THEIR POLITICAL FILES ONLINE WOULD IMPOSE SIGNIFICANT, UNJUSTIFIABLE ADDITIONAL BURDENS ON SMALLER MARKET STATIONS**

As previously observed by the Associations, the Commission has now reversed its earlier conclusion that it would be unduly burdensome for stations to post their political broadcast file to online public files.<sup>4</sup> The Associations remain concerned that imposing this requirement on all television stations will impose significant risks to and cost burdens on smaller market stations, with no offsetting public interest benefits. These stations, for the most part, are not universally equipped with sufficient staff, sales practices, or equipment to accommodate the requirement to upload political file documents during a hectic political season.<sup>5</sup> The experience of Big Four Network affiliated stations with this requirement has brought to light only some of the issues that will likely arise in the expansion of the requirement, some of which have been noted in opening comments and covered in news reports.<sup>6</sup> And, as NAB observes, the “impact of

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<sup>4</sup> See Joint Comments of the North Carolina Association of Broadcasters, the Ohio Association of Broadcasters, and the Virginia Association of Broadcasters and Response to Initial Regulatory Flexibility Analysis, Docket Nos. 00-168, 00-44, 00-168 (filed Dec. 22, 2011) (“Joint Comments of the Associations”), p. 8; see also *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement For Children’s Television Programming Report (FCC Form 398)*, Report and Order, 23 FCC Rcd 1274, 1281-82 (adopted Nov. 27, 2007) (“2007 Order”), ¶ 20.

<sup>5</sup> See Reply Comments of Gray Television, Inc. (filed Aug. 29, 2013), p. 3.

<sup>6</sup> See, e.g., Comments of the National Association of Broadcasters (filed Aug. 26, 2013) (“Comments of NAB”), pp. 5-6 (citing news reports and client alerts).

this requirement is likely to be different and the experience more difficult for stations in smaller markets and those with fewer resources.”<sup>7</sup>

The Associations agree that smaller market stations will inevitably face even higher hurdles to ensure compliance, and the “immediacy” requirement imposes even more of an impediment to compliance.<sup>8</sup> As the Associations have previously explained, an “immediacy” requirement is hardly realistic for thinly staffed, small market stations as they are responding to the demands of the fast-paced political advertising marketplace.<sup>9</sup>

Moreover, online disclosure of proprietary rates endangers an important source of revenue for these stations operating on thin profit margins. Political file data include competitively sensitive rate information,<sup>10</sup> and a requirement of immediate, online disclosure of this information to the advertising competitors of these stations during the political season will cause competitive financial harm to these stations. The posting of this information online would enable competitors (e.g., cable, newspaper, radio station, billboard companies, online video distributors, and ad agencies) to access this sensitive information on a real-time, immediate basis and use it to competitively disadvantage these stations. As NAB observes, “During pre-election windows, when lowest-unit-

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<sup>7</sup> *Id.*, p. 2.

<sup>8</sup> See Reply Comments of Gray Television, Inc., p. 3 (“Any requirement that these stations upload political documents ‘immediately’ will cause a strain on both human and technical resources.”).

<sup>9</sup> See Joint Comments of the Associations, pp. 10-11.

<sup>10</sup> Notably, on the other hand, competitors of local television stations, such as cable and satellite operators, are completely exempted from online disclosure. The Associations agree with NAB’s concern that requiring television broadcasters, but not their competitors, to post real-time information regarding their advertising rates will impact the market for political time in a way that disadvantages broadcasters vis-à-vis their competitors. See Comments of NAB, pp. 7-9. The Commission should be reluctant to adopt new regulations that will have a market distorting impact.

charge requirements apply, this includes detailed information about each station’s best-available commercial advertising rates—information that competing media outlets can use in the advertising marketplace to television stations’ material disadvantage.”<sup>11</sup>

The Associations agree that the risk of loss is especially problematic in an asymmetrical competitive environment, where competitors of these stations are not required to disclose the same information online.<sup>12</sup> As a result of this lack of regulatory consistency, NAB has asked for the Commission to expeditiously address the regulatory and competitive disparity in its public and political file rules.<sup>13</sup> The Associations strongly support this recommendation.

Nevertheless, if the Commission proceeds in any event to impose these requirements on small market stations, the Associations urge the Commission, at a minimum, to partially defer imposing the online political file requirement on smaller market stations and consider an alternative approach to phase in the requirements for new markets.<sup>14</sup> For example, the Associations suggest that the Commission consider expanding the online political file requirement to Big Four Network affiliates in markets 51-100 on July 1, 2014, and deferring the requirement for Big Four Network affiliated, smaller market stations (i.e., markets 101-210). This approach would allow the Commission to gather more information over a second political season, as NAB suggests

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<sup>11</sup> Comments of NAB, p. 7.

<sup>12</sup> *See id.*

<sup>13</sup> *See id.*, p. 10.

<sup>14</sup> The Associations also support the alternative proposals presented by the Television Station Group in the Petition for Reconsideration pending in this proceeding, but the Associations agree with NAB that more information is needed regarding how the requirements will affect middle and smaller market stations before the petition is resolved. *See id.*, p. 6.

will be important to satisfy the goals of the proceeding,<sup>15</sup> and would also allow additional smaller market stations additional time and flexibility to prepare for the change in their sales practices, staffing, and equipment that will be necessary to create and maintain an online political file.

For members of the Associations, adoption of this phase-in proposal would mean that Big Four Network affiliates in an additional four markets<sup>16</sup>—all of which have more than 300,000 television households<sup>17</sup>—would become subject to the online political file rules, while the requirement would be deferred for all stations in markets with fewer than 300,000 television households. This deferral would facilitate the collection of more information and ease the costs of compliance and competitive harms posed to small market stations.

## **II. THE COMMISSION SHOULD AGAIN REJECT PROPOSED STANDARDIZED DISCLOSURE REQUIREMENTS THAT WOULD IMPOSE UNJUSTIFIED BURDENS ON SMALL MARKET STATIONS**

The Associations also oppose the standardized disclosure form proposed by other commenters.<sup>18</sup> The Public Interest Airwaves Coalition and other advocacy organizations

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<sup>15</sup> See Comments of NAB, pp. 6-7.

<sup>16</sup> The affected markets would be Greenville-New Bern-Washington (Market 100) in North Carolina, Dayton (Market 63) and Toledo (Market 76) in Ohio, and Tri-Cities, TN-VA (Market 96) in Virginia. See Nielsen Local Television Market Universe Estimates, available at [http://www.tvb.org/media/file/TVB\\_Market\\_Profiles\\_Nielsen\\_Household\\_DMA\\_Ranks2.pdf](http://www.tvb.org/media/file/TVB_Market_Profiles_Nielsen_Household_DMA_Ranks2.pdf).

<sup>17</sup> See *id.*

<sup>18</sup> See Comments of Public Interest Public Airwaves Coalition, Sunlight Foundation, and Center for Effective Government (filed Aug. 26, 2013) (“Comments of PIPAC”), pp. 17-24 (proposing standardized disclosure in an online form for electronic filing). In comments filed at an earlier stage in this proceeding, the Associations also opposed the proposed requirement to input political file information into prescribed online forms. See Joint Comments of the Associations, pp. 11-12.

have asked the Commission to impose a one-size-fits-all disclosure form,<sup>19</sup> an approach the Commission has historically rejected.<sup>20</sup> The Associations agree with NAB that this proposal is unwarranted.<sup>21</sup> Not only are such standardization requirements inconsistent with the intended purpose of the political file, they are inconsistent with the Commission's charge to avoid burdensome regulation and unnecessary paperwork.<sup>22</sup> To wit, the Commission precisely concluded in the *Order* that stations should not be burdened by new recordkeeping or software requirements as part of the transition to the online public file.<sup>23</sup>

The Associations acknowledge that the intended goal of the online political file is to provide greater access by candidates and the station's local community to relevant and timely information. But the Associations agree with NAB that the significant burdens of data entry for purposes of research and aggregated data are well beyond the intended purpose of the political file and broadcasters' responsibilities to maintain it.<sup>24</sup> PIPAC suggests that broadcasters should shoulder the significant burdens of data entry in place of its own volunteers.<sup>25</sup> This self-serving argument should be rejected. In practical

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<sup>19</sup> Comments of PIPAC, pp. 17-24.

<sup>20</sup> *See, e.g.*, Order ¶¶ 35-37 (acknowledging various recordkeeping processes and emphasizing that the online political file should not require changes to broadcasters' recordkeeping practices).

<sup>21</sup> *See* Reply Comments of NAB, pp. 4-7.

<sup>22</sup> *See, e.g.*, Order ¶¶ 113-14 (reporting on analysis to reduce paperwork burdens in information collection requirements); *see also* 5 U.S.C. § 603 (codifying the Regulatory Flexibility Act); Pub. L. No. 104-13 (Paperwork Reduction Act).

<sup>23</sup> *See* Order ¶ 37 ("Under the rules we are adopting, broadcasters will not need to change the software in their traffic systems to post documents to our online public file.").

<sup>24</sup> *See* Reply Comments of NAB, pp. 2-3; *see also* Joint Comments of the Associations, p. 12.

<sup>25</sup> *See* Comments of PIPAC, p. 11-13, 23.

terms, PIPAC’s proposed form would relegate station staff who are engaged in providing a local broadcast service to abandon these responsibilities to compile the information and enter it into a specified form for the convenience of private advocacy groups, journalists, or other researchers—a result that is inconsistent with the intended purpose of the political file and ultimately *disruptive* to local broadcast stations’ service to their communities.<sup>26</sup> In short, broadcast stations should not be required to perform tasks that are in all other contexts performed by these other groups.

### CONCLUSION

For the reasons discussed in these Reply Comments, the Commission should partially defer the requirement for small market television broadcasters to upload political file documents to their online public files. The Associations urge the Commission to reject—as it has in the past—the standardized disclosure requirements proposed by PIPAC and other advocacy organizations, in order to preserve the intended purpose of the political file and avoid unduly burdensome regulation on small business broadcasters.

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<sup>26</sup> See Joint Comments of the Associations, p. 12 (“Whatever research needs do exist are far outside the intended function of local broadcasters’ service to their communities, and to accommodate them would divert stations’ time and money away from the development of local programming.); see also Reply Comments of Gray Television, Inc., p. 6 (“Increased regulatory obligations on these station will tax already scarce resources and deplete assets better suited for on-air production, including newsgathering.”).

Respectfully submitted,

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