Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

ACCEPTED/FILED

JUL 31 2014

Federal Communications Commission
Office of the Secretary

In the Matter of	)
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Requiring Cable and Satellite Systems to File Their Physical Public Files in the FCC-Hosted Online Database	)
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PETITION FOR RULEMAKING

The Campaign Legal Center ("CLC"), Common Cause, and the Sunlight Foundation respectfully request that the Federal Communications Commission ("FCC"), pursuant to Section 1.401(a) of its rules, initiate a rulemaking to expand to cable and satellite systems the requirement that public and political files be posted to the FCC's online database.

I. Background

In April 2012, the FCC required television broadcasters to upload the contents of their public files, including the political file, online rather than maintain them in physical form. That proceeding applied only to broadcasters, not to other forms of media.[1]

As cable and satellite systems have grown in popularity, they have increasingly become targets for political advertising. For instance, political advertising on local cable television tallied $340 million in the 2008 elections cycle, $455 million in the 2010 cycle (an increase of 33.8%), and $625 million in 2012 cycle (an increase of 37.3%).[2] Political advertising on cable as

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[1] *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Second Report and Order*, 27 FCC Rcd. 4535, 4585 (2012) ("*Second Order*") ("because this proceeding has long focused only on television stations, we do not have a sufficient record concerning . . . MVPDs on which to consider possible new rules for [that] entit[y]. . . . [Further, w]e 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.").

[2] Elizabeth Wilner, "*On Points:" Local Cable Could Claim 25% of Political TV Ad Spending in 2014*, Cook Political Report (Oct. 29, 2013), http://cookpolitical.com/story/6381.

a share of overall political spending on television has historically been in the mid-teens.[3] However, industry experts predict that political spending on cable in the 2014 election cycle will be somewhere between $680 million and $800 million, up to 25% of the projected overall political television spending.[4]

Many Super Political Action Committees ("Super PACs") and similar committee groups have purchased significant political advertising time on cable systems. For instance, "The Committee to Elect an Effective Valley Congressman," a Super PAC, purchased $500,000 worth of cable advertising time in the San Fernando Valley in California.[5] In Arizona, Adam Deguire, who managed Matt Salmon's race in Arizona's Fifth Congressional District, said GOP ads were being aired "on Fox News, the History Channel, ESPN, the Golf Channel and the Discovery Channel," all cable channels.[6] Ads for Democrats in the same area ran on MSNBC, though "not with the same vigor" as Republican ads.[7]

Furthermore, due to advances in technology, major satellite television providers have recently teamed up to sell household-specific "addressable advertising."[8] With the ability to "finely hone their TV pitches to individuals," advertising campaigns are very interested.[9]

Thus, the growth of cable and satellite systems has brought them into the fore and has made them appealing targets for political advertising. Despite this trend, only broadcasters must disclose political file information on the FCC's online database.

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[3] *Politics 2014: Local Market TV and the Next Political Cycle*, TVB, http://www.tvb.org/media/file/Political_Cycle_2014_pc.pdf.

[4] Wilner, *supra* note 2.

[5] Jean Merl, *Sherman Questions Super PAC Cable Buy for Berman*, LA Times (Apr. 30, 2012), http://latimesblogs.latimes.com/california-politics/2012/04/sherman-questions-super-pac-cable-buy-for-berman.html.

[6] Mike Sunnucks & Patrick O'Grady, *Political Campaigns Going to Cable TV Stations for Targeted Ad Buys*, Phoenix Bus. J. (Aug. 17, 2012), http://www.bizjournals.com/phoenix/print-edition/2012/08/17/political-campaigns-going-to-cable-tv.html?page=all.

[7] *Id.*

[8] Philip Elliot, *Next Up: TV Ads Just For You, Dear Voter*, AP (Feb. 17, 2014), http://bigstory.ap.org/article/next-tv-ads-just-you-dear-voter.

[9] *Id.*

II. Current legal requirements.

The FCC has long required television broadcasters to maintain a physical public file, including a political file, at their respective stations or headquarters.[10] The broadcast political file must contain a "complete and orderly record" of "requests for broadcast time made by or on behalf of a candidate for public office."[11] The file must also show the "schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased."[12] Issue advertisements require disclosure of the name of the purchasing organization and a list of the board of directors.[13] These records must be filed "as soon as possible, meaning immediately absent unusual circumstances," and retained for at least two years.[14]

Cable systems have very similar requirements. They must maintain a public file "at the office which the system operator maintains for the ordinary collection of subscriber charges, resolution of subscriber complaints, and other business or at any accessible place in the community served by the system unit(s)."[15] The public file includes the political file, which must contain a "complete and orderly record" showing "all requests for cablecast time made by or on behalf of a candidate for public office."[16] It must also show the "schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased."[17] Issue advertisements require disclosure of the name of the purchasing organization and a list of the board of directors.[18] These records must be filed "immediately absent unusual circumstances," and retained for at least two years.[19]

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[10] 47 CFR §§73.3526, 73.1943.
[11] 47 CFR §73.1943(a).
[12] *Id.*
[13] 47 CFR §73.1212(e).
[14] 47 CFR §73.1943(c).
[15] 47 CFR §76.1700(b).
[16] 47 CFR §76.1701(a).
[17] *Id.*
[18] 47 CFR §76.1701(d).
[19] 47 CFR §76.1701(c).

Satellite systems ("DBS") must also "keep and permit public inspection of a complete and orderly political file and shall prominently disclose the physical location of the file, and the telephonic and electronic means to access the file."[20] The file must include records of "all requests for [satellite] origination time," and the schedule, rates charged, and classes of time purchased for each request.[21] These records must be filed "as soon as possible" and retained for at least two years.[22] Unlike broadcasters and cable systems, the FCC rules require satellite systems to "make available via fax, e-mail, or by mail, photocopies of documents in their political files."[23] The rules specifically require satellite providers to "assist callers by answering questions about the contents of their political files."[24] In 2004, the FCC stated that satellite systems

> are required to comply with the public file obligation within the spirit of the Act's political broadcasting requirements. Specifically, we adopt rules to *require DBS providers to abide by political file obligations similar to those requirements placed on terrestrial broadcasters and cable systems*. Because DBS is a national service and each provider's headquarters is not necessarily readily accessible to most of its viewers and to candidates, we require DBS providers to make their political files available upon telephone or electronic request. They may provide access to the file by fax, e-mail, via Internet website access, or, if so requested, by mailing photocopies of the documents in their political files. We expect that DBS providers will assist callers by promptly answering questions about how to access the contents of the DBS providers' political files. . . . *DBS providers are encouraged to put their political files on their respective web sites* but must provide alternatives for individuals who do not have Internet access. . . . We [will] require[] that DBS providers prominently disclose the toll-free telephone number and e-mail address of the department responsible for responding to requests for access to the political file. In addition, because DBS experience with the political broadcasting rules is relatively new, . . . we will require that DBS providers maintain all requests for time from candidates or

[20] 47 CFR §25.701(d).
[21] 47 CFR §25.701(d)(1).
[22] 47 CFR §25.701(d)(2).
[23] 47 CFR §25.701(d)(3).
[24] *Id.*

> individuals on behalf of candidates, including general requests for availabilities and rate information.[25]

Thus, because of the difficulty in accessing a satellite provider's political file at the satellite provider's headquarters, the FCC required satellite providers to facilitate easier access to their public files.[26]

In 2002, Congress amended the political file requirements in the Bipartisan Campaign Reform Act ("BCRA"), affecting all three television mediums.[27] The new law required disclosure of specific information about ads that discuss political issues of national importance:

> (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;
> (E) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);
> (F) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and
> (G) in the case of any other request, 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.[28]

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[25] *Implementation of Section 25, Second Order on Reconsideration of First Report and Order*, 19 FCC Rcd 5647, 5661-62 (2004) (emphasis added) (footnotes omitted).

[26] Recently, CLC learned that DISH was not complying with the requirement to "prominently disclose the physical location of the file, and the telephonic and electronic means to access the file," 47 CFR §25.701(d). After CLC reached out to DISH about the oversight, DISH promptly corrected the error. *See Legal Information*, DISH, http://www.dish.com/legal/#political (last visited July 2, 2014).

[27] 47 USC §315(c)(1) (defining the term "broadcasting station" to include a "community antenna television system," which includes cable television); 47 USC §335(a) (extending Section 315 obligations to DBS).

[28] 47 USC §315(e)(1)-(2) (2012). The FCC never held a rulemaking to update its own rules to match the law.

In April 2012, the FCC required broadcast television stations to move their physical public file into an online database hosted by the FCC.[29] This requirement represented a modernization of the public file rules for the Internet age, improved access to the files themselves, and allowed for increased public engagement with local broadcasters. Implementation of the online filing requirement proceeded in two phases: first, the FCC required broadcasters affiliated with the top-four networks in the top fifty Designated Market Areas to store political files online; second, on July 1, 2014, the requirement extended to all broadcasters.[30]

While this was an important and essential improvement in political advertising transparency, the proceeding applied only to television broadcasters and not cable or satellite systems, which increasingly show political advertisements.

III. Cable and Satellite systems should be required to upload their public files, including political files, to the FCC-hosted database.

The FCC should require cable and satellite systems to upload their public files to the FCC's already-existing online database. Cable and satellite systems already maintain physical public and political files as a requirement of service. When the FCC moved the broadcast public file online, it did so to "unquestionably substantial" public benefits.[31] The parallel is simple: more of those same "unquestionably substantial" public benefits will come about if cable and satellite systems upload their public and political files online, and without any significant burden on the systems themselves.

A. Online filing creates public benefits.

Requiring cable and satellite systems to upload their public and political files to an online database will increase access to those files by taking out the middlemen, physical travel, and time constraints inherent with the physical file.[32] It will also alleviate the problems associated

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[29] *Second Order*, *supra* note 1, at 4540.
[30] *Id.* at 4551.
[31] *Id.* at 4542.
[32] *Id.* at 4542 (political files need only be available during business hours, and physical files

with a multi-tiered system of political ad disclosure. Currently, ad information is disclosed in different locations merely because of the platform on which the ad ran; this is a system that can create confusion. Does the person have to go to the cable station, call the satellite headquarters, or simply go online?[33] Confusion is further exacerbated by the differences among cable, satellite, and broadcast stations, and the public's general inability to know the difference. Requiring cable and satellite systems to upload their public and political files to the online database will provide a consistent, simple, and transparent way for the public to access disclosure records and to learn about who is spending how much money at which stations, no matter what medium is chosen. For satellite systems in particular, the easiest way to *facilitate* access to their public files is to place the public file online.

Another consequence of the multi-tiered system is that members of the public cannot obtain comprehensive data on political ad spending online; they must physically visit a cable station or call the satellite provider to find complete data. Expanding the amount of information available through the FCC-hosted database will improve public discourse and dialogue regarding political ad spending in general, and will allow the public to better engage in the democratic process.[34] For instance, the public can learn not just about which committees are spending money at their local broadcast television station, but can get a more complete picture of spending in the market overall by looking at cable and satellite ads that ran in the area as well. Given that political ad spending on cable has increased by roughly 35% each election cycle since 2008, the

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require the time and attention of otherwise busy station staff to help those viewing the file).

[33] This is a problem in particular with satellite providers. Each satellite provider need only maintain *one* political file for the entire U.S. at its headquarters. 47 CFR §25.701(d). To access that information, a member of the public would have to call the headquarters of the satellite provider to have a staff member copy and mail the documents, if the caller was able to find the right person in the first place. Satellite providers are supposed to facilitate access, but in practice, access can still be difficult. *See also supra* note 26.

[34] *See* Comments of PIPAC at 7-11, *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Dkt. No. 00-168 (filed Aug. 26, 2013), *available at* http://apps.fcc.gov/ecfs/document/view?id=7520939828.

amount of information that is hidden away in physical public files at cable and satellite systems is increasing.

B. There is no showing that online filing imposes a substantial burden on stations.

Broadcasters predicted that an online filing requirement would impose significant burdens on them, but they have failed to deliver on those predictions.[35] The National Association of Broadcasters ("NAB") characterized the first stage of implementation of the online filing requirement as "uneventful."[36] The very few problems NAB could point to had little to do with implementation of the filing requirement. Cable and satellite systems will also likely not be burdened by the online filing requirement.

Providing further evidence of a lack of burden, Time Warner Cable, which is not under any obligation to file online, already uploads its political files online because "[i]t's less expensive" and "[y]ou're not running six weeks behind."[37] Time Warner *chose* to file its public files online because of the efficiency gains and the ability to fully comply with its public file requirement. This, in turn, ensures the public has timely access to the information.

Last, extending the online filing requirement to cable and satellite systems would be simple for the FCC. The database already exists.[38] The FCC would only have to engage in a rulemaking proceeding to extend the requirement.

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[35] *Second Order*, *supra* note 1, at 4547.

[36] Comments of NAB at 3, *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket No. 00-168 (filed Aug. 26, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7520939835.

[37] Keenan Steiner, *Time Warner Cable Posts its Political File Online, So Why the Fuss, NAB?*, SUNLIGHT FOUNDATION (June 15, 2012), http://sunlightfoundation.com/blog/2012/06/15/time-warner-cable-already-posting-its-political-file-online/. Comcast Corporation has announced its intention to merge with Time Warner Cable, but neither has indicated whether the online public file practice will continue post-merger.

[38] PIPAC believes that the database should be improved, and invites the FCC to take this opportunity to reconsider PIPAC's suggestions. Comments of PIPAC, *supra* note 34, at 11-15.

Conclusion

For the foregoing reasons, the FCC should initiate a rulemaking to extend the online public file requirement to cable and satellite providers.

Respectfully submitted

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APPENDIX A

Proposed rule amendments:

1. 47 CFR §76.1700 shall be amended as follows:

(b) *Location of records*. The public inspection file, including the political file pursuant to 47 CFR §76.1701, shall be maintained on the Commission's public file database on the Commission's website.

2. 47 CFR §25.701 shall be amended as follows:

(d) Political file. Each DBS provider shall keep and permit public inspection of a complete and orderly political file, which shall be maintained on the Commission's public file database on the Commission's website.

3. 47 CFR §25.701(d)(1)(iii) shall be added as follows:

(iii) Such information as required by 47 U.S.C. §315(e)(2).