

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
)
Standardized and Enhanced Disclosure) MM Docket No. 00-168
Requirements for Television Broadcast)
Licensee Public Interest Obligations)
)
Extension of the Filing Requirement) MM Docket No. 00-44
For Children’s Television Programming)
Report (FCC Form 398))
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)
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COMMENTS OF THE PUBLIC INTEREST PUBLIC AIRWAVES COALITION

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SUMMARY

The Public Interest Public Airwaves Coalition (the “Coalition”) respectfully submits the following comments in response to the Federal Communications Commission Order on Reconsideration and Further Notice of Proposed Rulemaking. The Coalition supports the Commission decision to move forward with this important proceeding and for the commitment to bring broadcast disclosure in to the 21st century by creating an integrated public file to be hosted online by the Commission. The public has waited far too long to access broadcast public files in a manner that reflects the technological realities of the 21st century. We commend the Commission for taking on the increased burden and responsibility for hosting such files itself, thereby maximizing access to information while easing the overall burden on the public and all other stakeholders.

The broadcast licensing system is rooted in a form of social contract established by Congress and enforced by the FCC. In return for their exclusive use of the publicly owned spectrum, broadcasters must operate and program their stations in the public interest. The public file contains critical information about broadcaster service to communities and compliance with FCC rules. The Commission does not routinely monitor every aspect of stations’ compliance with those rules. Instead it depends on viewers and listeners to provide information about whether stations are meeting their public interest obligations and abiding by FCC rules and policies. Accordingly, access to public file information promotes meaningful public participation in the broadcast licensing process, and assists in the enforcement of FCC policies and regulations.

The public file is critical to ensuring that the broadcast system functions in a manner consistent with the public interest, convenience and necessity. Yet for too long, access to the

public file has been anything but convenient for the public. Despite the importance of this information, members of the public currently face unnecessary and unjustified obstacles when accessing the public file. For many years, the most reasonable place to provide the public with access to a station's public file was the station itself. But given the prevalence of electronic data processing tools, and more importantly, the rise of the internet, this is no longer the case. The FCC's current public file rules must be updated to reflect technological developments that can help to minimize public file burdens on both the public and on broadcasters. By putting the public file online, the FCC can remove unnecessary impediments that currently hinder or dissuade interested parties from viewing broadcast public files. It also likely would reduce many of the licensee burdens associated with maintenance of paper files, as well as staff time dedicated to updating and supervising onsite public access to the file.

The online public file should contain documents and data that will help the public more effectively assess broadcasters' service to the community and compliance with FCC rules and policies. To that end, the online public file should include major components of the existing public file, including the political file, as well as records of sponsorship arrangements and broadcast resource sharing agreements.

The Political File

We urge the Commission to require broadcasters to post their political file online. Online access to this information will better enable the public, journalists, researchers, and watchdog groups to reveal the true interests behind the purchases of advertising time, as well as track how often, to whom, and on what terms broadcasters have offered use of the public's airwaves for political purposes. Moreover, placing this information online will reduce the burden on

broadcasters who often receive multiple requests each day for in-person access to this information during the election season.

Sponsorship Identification Information

The FCC should require licensees to submit a record of “pay for play” arrangements for inclusion in their online public files. Specifically, when a broadcaster airs programming that would require an on-air disclosure under the FCC sponsorship identification rules, the licensee should also post that information in the online public file for a period of five years following the air-date of the content in question. This increased disclosure will help to address the many shortcomings of fleeting, on-air disclosures. Online records of these arrangements will afford viewers the opportunity to view sponsorship information that they may miss during the live airing of a program. Additionally, the information will be useful for academics and watchdog groups who aggregate this information in order to track the prevalence of payola in the market. Nor would the requirements be unduly burdensome for broadcasters. Broadcasters must already collect and disclose sponsorship identification information to comply with current rules, and the posting the records in the online public file would not be onerous.

Sharing Arrangements

The Commission currently requires commercial television stations to put copies of time brokerage agreements and joint sales agreements in their public inspection files. It is critical that these arrangements continue to be part of the online public file. Additionally, because some stations are increasingly outsourcing their news production, engaging in other forms of joint news production, and combining stations resources and activities, we urge the Commission to require broadcasters to submit shared services, joint resource, joint operation and news sharing agreements for their online public files. Unless such agreements are available online, it is

exceedingly difficult for members of the public, or the Commission, to learn about agreements affecting control of the station and production of local news and other programming, and whether such agreements are being used to circumvent the FCC media ownership rules.

Issues/Programs Lists

As the Coalition has observed in previous filings, the current issues/programs lists suffer from several deficiencies. Consequently, the FCC has opened a separate proceeding to replace the current requirement with an improved and standardized reporting mechanism. The Coalition supports the Commission's efforts to improve and standardize how broadcasters report on programming that serves their communities of license and has submitted a proposal and sample form to meet this goal. However, in the interim, issues/programs lists remain the only way that broadcasters disclose whether and how they are providing community responsive programming. Thus, broadcasters should be obligated to post online their issues/programs lists required under current rules, until the Commission replaces such lists with a new standardized form.

Finally, online public file information ultimately should be made available in a structured or database-friendly format that can be aggregated, manipulated, and more easily analyzed. The FCC can accelerate the implementation of an advanced database by requiring all documents created after the rules are adopted in this proceeding to be filed in a standardized, searchable format. In the interim, if broadcasters maintain current file documents in a searchable format (such as Word, .Txt, PDF or .odf), the Commission should require them to submit those documents in their native form. To the extent that a broadcaster currently maintains an existing record *only* in a non-searchable format, we urge the Commission to digitize such documents and perform optical character recognition so that the Commission can make them part of the advanced database.

In conclusion, the Commission should move expeditiously in adopting and implementing public file modernization policies that will increase the accessibility and usability of information that broadcasters are required to make available in their public files. The Commission cannot afford to delay these measures further. Neither can the public.

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Extension of the Filing Requirement For Children’s Television Programming Report (FCC Form 398))	MM Docket No. 00-44
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COMMENTS OF THE PUBLIC INTEREST PUBLIC AIRWAVES COALITION

The Public Interest Public Airwaves Coalition, including the Benton Foundation,¹ Campaign Legal Center, Common Cause, Free Press, Media Access Project, New America Foundation, and the Office of Communication of the United Church of Christ, Inc. (collectively, “PIPAC” or the “Coalition”), respectfully submits the following comments in response to the Federal Communications Commission Order on Reconsideration and Further Notice of Proposed Rulemaking (“FNPRM”) in these dockets.² In the FNPRM, the Commission seeks comment on proposals to modernize broadcaster disclosure by requiring TV stations to make their public files available online, and to improve public access to information on broadcaster sponsorship arrangements and shared services agreements. It also asks about the relative benefit for and burden on the public and broadcasters from such improvements.

¹ 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.

² *Standardized and Enhanced Disclosure Requirements of Television Broadcast Licensees Public Interest Obligations*, Order on Reconsideration and Further Notice of Proposed Rulemaking, MM Dkt. 00-168, FCC 11-162 (rel. Oct. 27, 2011, Fed. Reg. Nov. 22, 2011).

The Coalition commends the Commission for moving forward with this important proceeding and for the commitment to “bringing broadcast disclosure in to the 21st century.”³ We note that such modernization efforts are over a decade in the making. The public and other stakeholders have waited far too long for access to broadcast public files in a manner that reflects the technological realities of the 21st century. We urge the Commission to expeditiously adopt and implement public file modernization policies that will increase the accessibility and usability of information that broadcasters are required to make available in their public files. The Commission cannot afford to delay these measures further. Neither can the public.

Because of the protracted history of this proceeding, the Coalition already has addressed many of the issues presented in the current FNPRM in its previous comments, *ex parte* presentations and letters.⁴ In these comments we reiterate many of our earlier arguments and also address additional questions posed in the FNPRM. Throughout these comments, PIPAC emphasizes the critical need for meaningful and technologically current access to the public file. We also explain how moving the public file online will not impose significant or undue additional burdens on broadcasters and in fact is likely to diminish the burden on station staff in terms of maintaining and updating station files. We also discuss the public file documents that should be made available online, including the need for broadcasters to supplement existing public file obligations with disclosure of “sharing agreements” and records reflecting pay-for-play arrangements. Finally, we propose technical mechanisms through which the Commission can maximize access to, and efficient use of, broadcast public file data.

³ *Id.* at ¶7.

⁴ See, e.g., *Letter from the Public Interest Public Airwaves Coalition to Chairman Julius Genachowski*, filed MB Dkt. 00-168, GN Dkt. 10-25 (Aug. 4, 2011) (“*PIPAC Letter*”).

Background

The present comment cycle marks the latest round in a proceeding that was opened in 2000⁵ and culminated in the adoption in 2007 of a report and order (“2007 R&O”) which, if it had taken effect, would have required broadcasters to host their public inspection files on their own websites (if they maintain one), and would have replaced broadcasters’ current issues/programs lists with a standardized form.⁶ Both broadcast and public interest groups filed petitions for reconsideration of the order;⁷ others filed petitions for review, which were consolidated in the U.S. Court of Appeals for the District of Columbia Circuit.⁸ Those actions remained stalled for several years pending approval of the rules by the Office of Management and Budget (OMB). However, as the FCC conceded in the FNPRM, it never transmitted the rules to OMB for approval, and therefore the rules never took effect.⁹

In the FNPRM the Commission vacated the 2007 R&O, determining that the record underlying it did “not reflect the rapid technological advances that have occurred in the last ten years.”¹⁰ Instead the FCC now seeks to refresh the record to “create a modernized online public

⁵ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Notice of Proposed Rulemaking, 15 FCC Rcd 19816 (2000).

⁶ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children’s Television Programming Report (Form 398)*, Report and Order, 23 FCC Rcd 1274, ¶1 (2008). The R&O was adopted in November 2007, but was not released until 2008.

⁷ For example, PIPAC members Campaign Legal Center, Common Cause, New America Foundation and Benton Foundation, filed a joint petition for reconsideration. *See Petition for Reconsideration of Campaign Legal Center et al.*, filed MB Dkt 00-168 (April 14, 2008).

⁸ PIPAC member, the Office of Communication of the United Church of Christ filed a petition for review; Campaign Legal Center, Common Cause, and Benton Foundation subsequently intervened in the case. *See* U.S. Court of Appeals for the District of Columbia Circuit, Consolidated Dkt Nos. 08-1135, 08-1151, 08-1185, 08-1186, 08-1187. The consolidated petitions for review were dismissed by the D.C. Circuit on November 28, 2011 following motions for voluntary dismissal by the parties.

⁹ FNPRM at ¶4.

¹⁰ *Id.* at ¶7.

file requirement that increases public accessibility while . . . reducing where possible the burdens placed on broadcasters.”¹¹ The Commission has also opened a separate docket seeking comment on replacing broadcasters’ issues/programs lists with a standardized online form reporting on the types and amount of locally responsive programming broadcasters air to serve their communities of license.¹²

I. Broadcaster Transparency And Public File Obligations Are Critical Components Of A Functioning Broadcast Licensing System

The broadcast licensing system is rooted in a form of social contract established by Congress and enforced by the FCC.¹³ In return for their exclusive use of the publicly owned spectrum, broadcasters must operate and program their stations in the public interest.¹⁴ The broadcast licensing system is predicated on citizen involvement and broadcaster accountability to local communities of license. To facilitate public oversight and to ensure compliance with FCC rules and policies, the FCC requires commercial broadcast stations to maintain a public inspection file.¹⁵ Ready public access to information about the operations and activities of local

¹¹ *Id.* at ¶10.

¹² *Standardizing Program Reporting Requirements for Broadcast Licensees*, Notice of Inquiry, MB Dkt. 11-189, FCC 11-189 (rel. Nov. 14, 2011, Fed. Reg. Dec. 15, 2011) (“Standardized Reporting NOI”).

¹³ *Broadcast Localism*, Report and Notice of Proposed Rulemaking, 23 FCC Rcd 1324 (2008). This “regulatory framework is designed to foster a system of local stations that respond to the unique concerns and interests of the audiences within the stations’ respective service areas.” *Id.* at ¶6.

¹⁴ *Office of Communication of United Church of Christ v. FCC*, 359 F.2d 994, 1003 (D.C. Cir. 1966) (“[A] broadcaster seeks and is granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations. . . . [A] broadcast license is a public trust subject to termination for breach of duty.”).

¹⁵ 47 C.F.R. § 73.3526. The public file rule is rooted in Section 307(b) of the Communications Act of 1934. 47 U.S.C. § 307(b).

broadcast stations is not only practical; it is *critical* to the proper functioning of the broadcast licensing system.

First, by providing public access to information regarding broadcaster performance and compliance, the public file promotes meaningful public participation in the broadcast licensing process. For citizens to engage in an informed dialogue with their local stations or to file complaints or petitions to deny the renewal of a station's license, they need access to information about broadcast stations' activities and practices. To this end, the Commission has determined that the public inspection file "serves the important purpose of facilitating citizen monitoring of a station's operations and public interest performance and fostering community involvement with local stations. This in turn helps to ensure that stations are responsive to the needs and interests of their local communities."¹⁶

In addition to facilitating dialogue between stations and their communities of license, the public file also assists in the enforcement of FCC policies and regulations. The Commission does not routinely monitor every aspect of stations' compliance with FCC rules. Instead it depends on viewers and listeners to provide information about whether stations are meeting their public interest obligations and abiding by FCC rules and policies. For example, with regard to the FCC's sponsorship identification rules, the FCC has acknowledged that the only way the FCC would even know about a violation "is if someone has complained."¹⁷ Similarly, access to information contained in broadcasters' political files enables citizens to "verify that licensees

¹⁶ *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection File of Broadcast Stations*, Report and Order, 13 FCC Rcd 15691, ¶18 (1998) ("1998 Main Studio R&O").

¹⁷ Paul Farhi, "Despite law against it, stealth commercials frequently masquerade as TV news," WASH. POST (Dec. 6, 2011) http://www.washingtonpost.com/lifestyle/style/despite-law-against-it-stealth-commercials-frequently-masquerade-as-tv-news/2011/12/05/gIQANXaxaO_story.html.

have complied with their obligations relating to use of their facilities by candidates for political office”¹⁸ and to file complaints with the FCC if stations have not.

In short, if a broadcaster is in violation of applicable law and regulation, a public complaint (informed and supplemented by access to public file documents) is frequently the only mechanism that will trigger FCC enforcement of rules and policies. Because the FCC significantly deregulated the license renewal process in the 1980s, the Commission now places “near total reliance on petitions to deny as the means to identify licensees that are not fulfilling their public interest obligations.”¹⁹ Therefore, when broadcasters fall short of their obligations or engage in outright violations of FCC rules, the public’s ability to alert the FCC by filing complaints or petitions to deny the renewal of a station’s broadcast license is essential. Without ready access to relevant information contained in broadcast public files, the licensing system would be undermined and the goals of the Communications Act would be subverted.

II. An Online Public File Requirement Would Better Effectuate The Goals Of Communications Act, While Reducing Burdens On The Public And On Broadcasters

The public file is critical to ensuring that the broadcast system functions in a manner consistent with the public interest, convenience and necessity.²⁰ Yet for too long, access to the public file has been anything but convenient for the public. The FCC’s current public file rules must be updated to reflect technological developments that can help to minimize public file

¹⁸ *1998 Main Studio R&O*, 13 FCC Rcd at ¶54.

¹⁹ *Id.* (Discussing the FCC decision to eliminate the requirement that stations include in their renewal applications any information about their program efforts); *see also Radio Broadcast Services: Revision of Applications for Renewal of License of Commercial and Noncommercial AM, FM, and Television Licensees*, Report and Order, 49 Rad. Reg. 2d (P & F) 740 (1981), *recons.*, Memorandum Opinion and Order, 50 Rad. Reg. 2d (P & F) 704 (1982), *aff’d sub nom. Black Citizens for a Fair Media v. FCC*, 719 F.2d 407 (D.C. Cir. 1983).

²⁰ 47 U.S.C. § 307(c)(1).

burden on both the public and on licensees. The Coalition is pleased that the Commission has proposed to bring the public file into the digital age by replacing paper files with an online public file hosted on the Commission's website.²¹ Putting the public file online advances the twin goals of encouraging public involvement in monitoring stations' performance and promoting dialogue between stations and their communities. It also likely would diminish many of the burdens associated with broadcasters' maintenance of paper files.²²

A. Members Of The Public Currently Face Unnecessary And Unjustifiable Obstacles To Accessing The Public File

By putting the public file online, the FCC can remove unnecessary impediments that currently hinder or dissuade members from viewing broadcast public files.

Broadcaster public files currently must be maintained at the licensee's main studio. When the Commission adopted its current public file requirements in 1984,²³ its rulemaking was limited by the realities of the time. The most reasonable place to provide the public with access to a station's public file was the station itself. But given the prevalence of electronic data processing tools, and more importantly, the rise of the internet, this is no longer the case. Unfortunately, the Commission's public file rules have not been updated to account for these technological developments.

²¹ FNPRM at ¶16. See also *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age*, FCC Staff Report, GN Docket 10-25 (rel. June 9, 2011) at 348 (suggesting that that broadcasters make their the public files available via the Internet, thereby returning to "the original purpose of the 'public inspection file' rules, which was to allow the 'public' to 'inspect' this important information.")

²² See discussion *infra* at Section II(B)&(C).

²³ See *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 FCC 2d 1075 (1984).

Broadcasters that dismiss efforts to improve access to their files frequently claim that the public “seldom if ever inspects the[se] files.”²⁴ To the contrary, it is more accurate to suggest that members of the public manage to inspect the file *in spite* of the obstacles they may face in doing so. The infrequency of public visits that broadcasters may perceive is, if anything, a testament to the difficulties of accessing the public file

For example, the breadth of many broadcast service areas, as well as an expanded area in which broadcast licensees may locate their main studios, means that a broadcaster’s public file may be located outside of the station’s community of license.²⁵ Even assuming the main studio is located within a broadcaster’s service territory, a member of the public may have to travel dozens of miles to access the file. What is more, because the public may only visit a station’s public file during business hours, an individual would have to take off work in order to participate in a meaningful and informed conversation about broadcast service in her community.

Not only is access to a station’s public file limited by geography, there is also evidence that some stations do not provide adequate access to the public onsite. Just recently, the FCC cited and fined broadcasters for “failing to provide adequate access to station’s public inspection

²⁴ CommLaw Blog, *Public Inspection File Rule: FCC Asks If It’s Really Necessary* (April 17, 2011) available at: <http://www.commlawblog.com/2011/04/articles/broadcast/public-inspection-file-rule-fcc-asks-if-its-really-necessary/index.html>.

²⁵ In 1999 the Commission adopted a rule that permits stations to locate their main studios at any location that is either within the principal community contour of any station, of any service, that is licensed to its community of license; or within 25 miles from the reference coordinates of the center of its community of license, whichever it chooses. See *1998 Main Studio R&O*, 13 FCC Rcd at ¶7, *recon. granted in part*, 14 FCC Rcd 11113 (1999). Stations may provide accommodations to public file requesters if their main studio is located outside the community of licensee. *Id.* at 11119, ¶13.

files.”²⁶ Similarly, the National Hispanic Media Coalition (NHMC) has relayed some of the difficulties it has faced in obtaining access to the public files of KRCA, a Spanish-language station in Los Angeles. Initially station staff did not know how to respond a request to view the public inspection file and had to locate other employees to permit access to the file. When NHMC staff finally gained access to public file, they found the file itself to be incomplete and in disarray. Many of the documents and records were incorrectly filed and were difficult to locate. Because the volume and disorder of information in the file made it impossible for NHMC staff to read through it all in one day, they asked for a copy of the public file, and were informed that the copy would be made at Kinko’s at NHMC’s expense and had to be picked up at the station the following week. KRCA estimated that the printing costs would be in the \$200 range, but the bill came out to \$357.

These impediments of geography, recalcitrant station staff, limited station hours, and copying costs are easily alleviated by technological developments and the relative ubiquity of internet access. Online posting of broadcaster public files would enable the public to have greater access to stations’ public file information by providing 24-hour access to this information and address the problems citizens currently encounter in trying to review a station’s public file.

Nor would citizens be the sole beneficiaries of these transparency measures. Policymakers, researchers, journalists, and watchdog groups with an interest in the information contained in the public files can likewise access this information via the internet. Accordingly,

²⁶ *In the Matter of KHNL/KMGB License Subsidiary, LLC and HITV Subsidiary Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 2011 WL 5910495 (Nov. 25, 2011) (“KNHL/KMGB Order”).

PIPAC agrees with the Commission's conclusion that limiting online access to only those viewers that reside within a station's service territory is unjustified.²⁷

Such a restriction would severely curtail legitimate access to data by researchers and policy makers located outside a station's DMA. Moreover, there is no residence restriction for citizens who currently wish to inspect the public file at a station's physical location, nor is there any legitimate reason to impose such a restriction for the online file. Imposing such a residence verification restriction is antithetical to the very purpose of the public inspection file, which is to facilitate access to information, not hinder it by erecting unnecessary and unjustifiable hurdles.

B. Online Posting Of The Public File Will Reduce File Maintenance Burdens On Broadcast TV Stations

Not only would online posting of the public file facilitate community and research access to its contents, it also would reduce many of the burdens associated with maintenance of paper files, as well as staff time dedicated to updating and supervising onsite public access to the file. Many broadcasters already voluntarily upload their public file documents to their own websites, presumably because it is simple and cost-effective to do so.²⁸ Many broadcasters that do not currently make public file documents available online still maintain these files in electronic format and currently must print them out to put them in the public inspection file. By eliminating the paper filing requirement for many of these documents and replacing it with an online posting requirement, broadcasters could simply upload the very same documents in electronic format and save themselves the trouble of printing them out and filing hard copies. Moreover, because the

²⁷ FNPRM at ¶19 and n. 53 (citing proposals submitted by the National Association of Broadcasters and Joint Broadcasters in petitions for reconsideration).

²⁸ See *PIPAC Letter* at Appendix B.

FCC proposes to host broadcasters' public inspections files on its own website, the burden on broadcasters would be diminished even further.

For example, with regard to political files, placing such information online will reduce the burden on broadcasters who often receive multiple daily in-person requests to access this information during an election season. Political candidates and campaigns "make heavy use of the file and require quick access to [this] material" during the campaign season.²⁹ If the contents of the political file were online, candidates and their staff would have immediate access to information regarding unit charges in each locale and would not have to send representatives to the station daily during the campaign season. By the same token, putting this information online would minimize disruptions to station operations and the burden on station staff that must field a significant amount of phone calls during the campaign season, as well as chaperone in-person requests to inspect the political file.

C. The Commission Should Further Reduce The Burden On Broadcasters By Minimizing Duplicate Filings

The Commission's adoption of an online file requirement can further reduce existing filing burdens by eliminating duplicate filings of documents that must currently be submitted to the FCC and maintained in the paper public file. The Commission notes that some documents currently in the public file must also be filed with the FCC and are already available online to the public through the Consolidated DataBase System.³⁰ To minimize duplicate filing by broadcasters, the Commission has concluded that the FCC will itself import and update such

²⁹ 2007 R&O, 23 FCC Rcd at 1282, ¶19.

³⁰ FNPRM at ¶12.

information into each broadcaster's online public file.³¹ Broadcasters will be "responsible for only those items not otherwise filed with the Commission or available on the Commission's website."³² To this end, the online public file will generate substantial filing efficiencies for broadcasters, while creating a centralized information source for the public.

However, we note that many citizens are likely to visit their local television broadcasters' websites for information. Thus, to fully apprise the public of this resource, broadcasters who maintain their own websites should be required to provide a prominently displayed "public file" link on the main page of their websites directing the public to the FCC webpage for the public files.

III. The Integrated Online Public File Should Contain Documents And Data That Will Help The Public More Effectively Assess Broadcasters' Service To The Community And Compliance With FCC Rules And Policies

The Coalition strongly supports the Commission's proposal to create an integrated public file to be hosted online by the Commission.³³ We commend the Commission for taking on the increased burden and responsibility for hosting such files itself, thereby maximizing access to information while easing the overall burden on the public and on broadcasters.

In addition to proposing to modernize the public file, the Commission also seeks comment on what information should be included in the online posting requirement so as to maximize public access to critical data on how broadcasters are fulfilling their duties as licensees. With the exception of duplicate documents currently filed with the FCC,³⁴ the Commission has concluded tentatively that the online public file should include major

³¹ *Id.* at ¶16.

³² *Id.*

³³ *Id.* at ¶¶15-19.

³⁴ *See infra* at Section II(C).

components of the existing public file,³⁵ including the political file, which the Commission previously excluded from the online requirement when it adopted the 2007 R&O.³⁶ In addition to existing components of the public file, the Commission has sought comment on two proposed online disclosures: (1) sharing agreements³⁷ and (2) sponsorship identification records.³⁸

By and large, the Coalition agrees with many of the Commission’s conclusions regarding what content should constitute the online public file. We address specific items and proposals in turn below.

A. The Commission Should Include Broadcasters’ Political Files In The Online Public File Requirement

In the FNPRM, the Commission proposes including broadcasters’ political files in the unified online public file. The Coalition strongly supports that proposal, as well as the Commission’s conclusion that “the public is entitled to ready access to these important files.”³⁹

Congress directed the FCC to promote political discourse through broadcast regulations designed to provide access and opportunity to the public airwaves by candidates for office. Specifically, sections 312 and 315 of the Communications Act provide for the license revocation of any broadcaster for failure to allow “reasonable access” to a broadcast station by a legally qualified federal candidate⁴⁰ and require broadcast licensees to maintain a “political record” containing information on when and under what terms broadcasters make airtime available for

³⁵ FNPRM at ¶14. For list of current public file requirements, *see id.* at ¶12.

³⁶ 2007 R&O, 23 FCC Rcd at 1281-2, ¶19-20.

³⁷ FNPRM at ¶35.

³⁸ *Id.* at ¶¶33-34.

³⁹ *Id.* at ¶23.

⁴⁰ 47 U.S.C. § 312(a)(7).

electoral candidates or for the communication of “a message relating to any political matter of national importance.”⁴¹

The FCC has numerous rules designed to further this congressional mandate.⁴² To provide transparency and to promote enforcement of these rules, the FCC requires stations to maintain publicly available political files with information on candidate requests for airtime, rates charged, and airtime given away for free.⁴³ Broadcasters must also make their political files available to citizens through the public inspection file,⁴⁴ as well as provide the following information regarding how electoral issues are presented and how political influence is exerted over the airwaves:

- 1) A record of all requests for broadcast times made by or on behalf of a candidate for public office, as well as the “disposition” of such requests, including the “schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.”⁴⁵
- 2) A record of any free time provided for use by or on behalf of candidates for public office.⁴⁶
- 3) 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 that pays for or furnishes broadcast content involving a

⁴¹ 47 U.S.C. § 315(e).

⁴² See, e.g., 47 C.F.R. §73.1212 (sponsorship identification rules); 47 C.F.R. §73.1941 (equal opportunities for legally qualified candidates); 47 C.F.R. §73.1942 (airtime rate limitations for legally qualified candidates); 47 C.F.R. §73.1944 (reasonable access for legally qualified candidates).

⁴³ *Broadcast by Candidates for Public Office*, 3 Fed. Reg. 1691 (July 12, 1938).

⁴⁴ 47 C.F.R. § 73.3526(e)(6).

⁴⁵ *Id.* §73.1943(a).

⁴⁶ *Id.* §73.1943(b).

“political matter or matter involving the discussion of a controversial issue of public importance.”⁴⁷

While political campaigns and candidates for office have an immediate and often short term need to access this information, the public and researchers have an equally important ongoing interest in the contents of the file to determine how and to whom broadcasters have allowed use of the public airwaves for political means. This interest extends beyond the duration of a single election. For example, the public has an interest in determining how a broadcaster has performed compared to other election cycles, as well as compared to the performance of other broadcasters. The information contained in the political file furthers the Congressional goals embodied in sections 312 and 315 by enabling citizens to “verify that licensees have complied with their obligations relating to use of their facilities by candidates for political office.”⁴⁸ Such information can also be “used by the public to assess money expended and time allotted to a political candidate and to ensure that equal access was afforded to other legally qualified candidates.”⁴⁹

Moreover, the information contained in the public file can play an important role in shedding light on the sources of paid political content. Reports suggest that political ad spending doubled between 2008 and 2010 from \$2 billion to more than \$4 billions dollars, with local broadcast and radio commanding over 70 percent of the political advertising dollars for 2010.⁵⁰ Increasingly, third-party groups are purchasing broadcast advertising time to influence the

⁴⁷ *Id.* §73.1212(e). The list requirement dictated by section 73.1212(e) is part of the FCC’s broader “sponsorship identification” rules which stem from section 317 of the Communications Act.

⁴⁸ 1998 Main Studio R&O, 13 FCC Rcd at ¶54.

⁴⁹ *Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, 73 Fed. Reg. 13541, 13542 (Mar. 13, 2008).

⁵⁰ Steve McClellan, “Political Ad Spending to Soar,” ADWEEK (Aug. 23, 2010) <http://www.adweek.com/news/advertising-branding/political-ad-spend-soar-102848>.

outcomes of federal, state, and local elections. The Center for Responsive Politics estimates that outside groups spent close to \$300 million in 2010, as compared to less than \$69 million in 2006.⁵¹

Frequently, these third party groups go by names that obscure the true interests and sources of funding behind their political messages. The Supreme Court in *McConnell v. FEC* acknowledged the phenomenon of issue advertising by deceptively named groups:

[S]ponsors of such ads often used misleading names to conceal their identity. “Citizens for Better Medicare,” for instance, was not a grassroots organization of citizens, as its name might suggest, but was instead a platform for an association of drug manufacturers. And “Republicans for Clean Air,” which ran ads in the 2000 Republican Presidential primary, was actually an organization consisting of just two individuals--brothers who together spent \$25 million on ads supporting their favored candidate.⁵²

As a result of these trends, voters have a greater need to know the true sponsors of advertisements supporting or opposing particular candidates, ballot initiatives, or policy proposals. There are measures the Commission could and should take to ensure that the public knows who is paying to persuade them to take – or not take – certain actions at the ballot box. For example, the FCC can require more meaningful disclosure of financial interests in such ads themselves, as members of the PIPA Coalition have proposed.⁵³

But, in the absence of more direct Commission attention to this problem, some of the information contained in the political file can play an important (albeit supplementary) role in promoting transparency of the sources of these ads. The Commission’s rules require broadcasters

⁵¹ Center for Responsive Politics Report: Politicians & Elections, Outside Spending, <http://www.opensecrets.org/outsidespending/index.php>.

⁵² *McConnell v. FEC*, 540 U.S. 93, 128 (2003).

⁵³ See, e.g., *Amendment of 47 CFR §73.1212*, Petition for Rulemaking of Media Access Project (Mar. 22, 2011).

to retain records of purchasers of air time for content that touches upon a political matter or matter involving the discussion of a controversial issue of public importance. Moreover, the FCC requires stations to maintain a publicly available 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” that pays for or furnishes the political ad in question.⁵⁴ The identities of the executives of a group made available through the public file can help to reveal the true interests behind the purchases of advertising time and provide a critical transparency mechanism for citizens and other interested parties.

Despite the utility and importance of ready public access to this information, when the FCC adopted the 2007 R&O it decided to exempt television broadcaster political files from the online posting requirement, reasoning that “the burden of placing this material on the Internet outweighs the benefits” because of the high frequency of updates during “peak periods of election season.”⁵⁵ However, as the Commission now acknowledges, “the vast majority of television stations handle political advertising transactions electronically, through e-mails and a variety of software applications. As a result, requiring them to make this information publicly available online appears to impose far less of a burden than previously thought.”⁵⁶ Indeed, as the Commission properly concludes in the FNPRM,

[r]equiring stations to place the public files online would presumably have the opposite effect, reducing, rather than expanding, disruptions to operations at the station as station personnel would no longer have to process requests for access to this information in person, as they are currently required to do. Instead of accommodating each candidate or their campaign representatives personally on a frequent basis, an online

⁵⁴ 47 C.F.R. §73.1212(e).

⁵⁵ 2007 R&O, 23 FCC Rcd at 1281, ¶20.

⁵⁶ FNPRM at ¶23.

requirement would allow a station to upload the most up-to-date information periodically for all interested parties.⁵⁷

1. The Commission Can Facilitate Navigation Of The Online Political File Through The Use Of Subfolders Reflecting Categories of Political Advertising

The Commission seeks comment on methods of organization that would make political file information more easily accessible to public while minimizing the burden on licensees.⁵⁸ In particular the Commission asks whether it should create “federal, state, and local subfolders for each station’s political file” hosted by the Commission.⁵⁹

The Coalition commends the FCC for its efforts to maximize the utility and ease of navigation of the public file, and the political file in particular. We believe that clear labeling and organization of public file documents would enable members of the public to navigate the file more easily. Specifically, we encourage the FCC to organize portions of the political file into sub-folders or sub-categories so that individuals can search for information based on type and/or sponsor of political advertisements. For example, the FCC could create subcategories that divide political advertising information based on whether it pertains to a federal, state, or local race, or whether it pertains to an “issue” advertisement.⁶⁰ The divvying up of advertisement categories within the online political file will better enable the public, researchers, and watchdog groups to reveal the true interests behind the purchases of advertising time as well as track how often, to

⁵⁷ *Id.* at n.68.

⁵⁸ *Id.* at ¶24.

⁵⁹ *Id.*

⁶⁰ An “issue” advertisement, as distinct from an electoral advertisement, is one that involves “a political matter or matter involving the discussion of a controversial issue of public importance,” 47 C.F.R. §73.1212(e), but does not advocate for or against a candidate for political office. The disclosure requirements dictated by section 73.1212(e) is part of the FCC’s broader “sponsorship identification” rules which stem from section 317 of the Communications Act.

whom, and on what terms broadcasters have offered use of the public’s airwaves for political purposes.

B. The Commission Should Require Broadcasters To Submit Sharing Agreements As Part Of Their Online Public Files

In the FNPRM, the Commission seeks comment on whether it should require broadcasters to submit copies of all “sharing agreements” currently in effect to be hosted in the online public file.⁶¹ Broadly speaking, sharing agreements are “contracts between licensees where one licensee provides certain station related services to another station, including administrative, sales, and/or programming support.”⁶²

The Coalition strongly supports the inclusion and disclosure of these arrangements. The Commission currently requires commercial television stations to put copies of time brokerage agreements (also know as local marketing agreements or “LMAs”) and joint sales agreements (“JSAs”) (with confidential information redacted) in their public inspection files.⁶³ In requiring public access to these documents the Commission has acknowledged the role of the public file in ensuring that brokerage agreements comply with FCC rules and policies, stating that the public file requirement “will subject LMAs to sufficient scrutiny by competitors, the public, and the Commission.”⁶⁴

Broadcasters’ use of other resource sharing arrangements, be they shared services agreements, news sharing agreements, or joint operating agreements, raises many of the same

⁶¹ FNPRM at ¶35

⁶² *Id.*

⁶³ 47 C.F.R. §73.3527(e)(14) & (16).

⁶⁴ *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry; and Reexamination of the Commission's Cross-Interest Policy*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 1097, ¶49 (2001).

implications that the Commission has acknowledged with regard to LMAs and JSAs. Moreover, the combination of several agreements, which standing alone might be acceptable, may raise concerns in the aggregate.⁶⁵ Consequently, public access to agreements that may affect control of the station and production of local news and other programming is an important part of oversight and licensing processes. The Commission’s recent report on the Information Needs of Communities (“INC Report”) found that some stations have been outsourcing their news production or engaging in other forms of cooperative newsgathering.⁶⁶ Similarly, the Radio and Television News Directors Association reports that local stations are increasingly airing local news programs or segments produced by other television stations – including their in-market competitors.⁶⁷ Frequently, broadcasters enter into sharing agreements to combine their entire stations operations, including advertising sales and retransmission consent negotiations.⁶⁸ In some cases, broadcasters that cannot merge under the FCC’s media ownership rules have entered into sharing agreements with competing stations, whereby a TV station’s entire roster of local programming is provided by – and identical to – the local programming of a competitor.⁶⁹ To this end the FCC has recently conceded that the “net effect” of some types of sharing agreements may be “clearly at odds with the purpose and intent of duopoly rule.”⁷⁰

When local broadcasters re-run news produced by their ostensible in-market competitors, it decreases competition in local programming and undermines diversity of viewpoints and

⁶⁵ See, e.g. *Shareholders of the Ackerly Group*, 17 FCC Rcd 10828, 10841, ¶31 (2002).

⁶⁶ *INC Report* at 96-97.

⁶⁷ PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF NEWS MEDIA: LOCAL TV, <http://stateofthedia.org/2010/local-tv-summary-essay/news-investment/>.

⁶⁸ See Free Press, *Outsourcing the News: How covert consolidation is destroying newsrooms and circumventing media ownership rules* (June 2011) <http://www.savethenews.org/sites/savethenews.org/files/Outsourcing%20the%20News.pdf>.

⁶⁹ *Id.*

⁷⁰ KHNL/KMGB Order, 2011 WL 5910495, ¶23.

coverage of different issues. Broadcasters remain ultimately responsible for the content and the nature of programming aired by their stations,⁷¹ and viewers have a vested interest in the amount, quality and content of programming offered by local broadcasters, as well ensuring that licensees are not covertly circumventing the FCC ownership rules through sharing arrangements. Agreements between local broadcasters to jointly negotiate cable retransmission fees or sell local advertising may implicate similar competitive concerns. However, unless such agreements are available in the public file, it is exceedingly difficult for members of the public, or the Commission, to learn whether particular programming is generated by a station itself or is a product of an agreement with another entity, including other local broadcasters. Excluding sharing agreements from the online public file requirement would deprive the public of the very information it needs to unearth abuses or outright violations of FCC rules, and to even to establish a *prima facie* case in complaints to the FCC.

C. The Commission Should Require Broadcasters To Submit Sponsorship Identification Records As Part of Their Online Public Files

Pursuant to a recommendation of the Information Needs of Communities Report, the FCC asks whether it should require licensees to submit a record of any “pay for play” news and information programming in the online public file.⁷² Specifically, the INC Report suggests that when a broadcaster airs news or information programming that would require an on-air

⁷¹ See, e.g., *Petition for Issuance of Policy Statement or Notice of Inquiry on Part-Time Programming*, Policy Statement, 48 Rad. Reg. 2d (P & F) 763, 109, ¶3 (1980) (a licensee retains “ultimate responsibility for programming broadcast over his facility.”).

⁷² FNPRM at ¶34; See also *INC Report* at 348-9. The Coalition has also advanced a similar proposal in earlier submission to the FCC. See *PIPAC Letter* at 5.

disclosure under the FCC sponsorship identification rules, the licensee should also post a record of that relationship in the online public file.⁷³

PIPAC supports the FCC's proposal that all sponsorship identification information that is currently required to be disclosed on-air should be documented in online public file.⁷⁴ This requirement, while not unduly burdensome to broadcasters, will greatly benefit the public. This increased disclosure will help to address the shortcomings of fleeting, on-air disclosures which are currently required and will provide valuable information that is otherwise difficult, if not impossible, to collect. By instituting this proposal the Commission will afford viewers the opportunity to view sponsorship information that they may miss during the live airing of a program. Additionally, the information will be useful for journalists, academics and watchdog groups who aggregate this information in order to track the prevalence of payola in the market.⁷⁵

The Commission has consistently maintained that “[l]isteners are entitled to know by whom they are being persuaded.”⁷⁶ To that end, disclosure rules were enacted to ensure that the public is “clearly informed that it is hearing or viewing matter[s] which [have] been paid for.”⁷⁷

Sponsorship identification requirements date back to Radio Act of 1927 provisions requiring

⁷³ *INC Report* at 349.

⁷⁴ While a number of Coalition members believe that the Commission's current standards for sponsorship identification are insufficient and under-inclusive, *see, e.g. Sponsorship Identification Rules*, Comments of Free Press, filed MB Dkt. 08-90 (Nov. 21, 2008), we are not proposing any changes to the substance of the current requirements for on-air identification of payola. We are merely proposing that, if broadcaster currently provides on-air sponsorship identification, it should also maintain a publicly available written record of the arrangement in the online public file.

⁷⁵ Steve Waldman, “Why journalists should weigh in on FCC disclosure rules — while there's still time, POYNTER (Dec.13, 2011) <http://www.poynter.org/latest-news/top-stories/155900/why-journalists-should-weigh-in-on-the-fcc-disclosure-rules-while-theres-still-time/>.

⁷⁶ *Applicability of Sponsorship Identification Rules*, Public Notice, 40 FCC 141, 141 (1963) (1963 Sponsorship I.D. Notice”) *as modified*, 40 Fed. Reg. 41936 (Sept. 9, 1975).

⁷⁷ *Liability of Midwest Radio Television, Inc.*, 49 FCC 2d 512, 515 (1974) (citing *National Broadcasting Company*, 27 FCC 2d 75 (1970)).

broadcasters to inform their audiences when they air “pay-for-play” content.⁷⁸ Since 1934 the Congress and the FCC have, on several occasions, amended these provisions and reminded broadcasters of their disclosure duties in order to further the goal of keeping the public informed.⁷⁹

The sponsorship disclosure rules set forth by 47 U.S.C. §317 require that “[a]ll matter broadcast by any radio station for which money, service, or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person...”⁸⁰ Section 508 requires broadcasters to seek information that their employees have received consideration for airing specific content and for employees to report receiving such consideration up the chain of command so that broadcasters become aware of these sponsorship deals and can disclose them as required.⁸¹

Section 73.1212 of the Commission’s rules implements Section 317 for broadcasters and further requires sponsorship disclosure when the use of the material involves “an identification of any person, product, service, trademark or brand name beyond an identification reasonably

⁷⁸ Radio Act, § 19, ch. 169, 44 Stat. 1162 (1927).

⁷⁹ In 1960 Congress adopted and amended these sponsorship identification rules and put forth 27 examples of the types of consideration which, if provided to broadcasters in exchange for airing certain content, would trigger a requirement that the broadcaster disclose that the material was sponsored. Pub. L. 86-752, § 8(a), 74 Stat. 895 (1960). In 1963 and 1975 the Commission added an additional 9 examples to the previous 27 that Congress provided. These examples were promulgated in order to create clear guidelines for broadcasters and once again ensure the public was kept informed of sponsorship agreements. *1963 Sponsorship I.D. Notice*, 40 FCC 141 *as modified*, 40 Fed. Reg. 41936 (Sept. 9, 1975); *See also Access 1 New Jersey License Company, LLC.*, 26 FCC Rcd 3978, 3982 (Mar. 24, 2011).

⁸⁰ 47 U.S.C. §317(a)(1).

⁸¹ *Id.* at §508.

related to the use of such service or property on the broadcast.”⁸² The rules generally require broadcasters to “clearly disclose to members of their audience the nature, source, and sponsorship of the material that they are viewing.”⁸³

Despite these requirements, the Commission notes in the FNPRM that the nature of current on-air disclosures is “fleeting.”⁸⁴ Current disclosure rules call for announcements to be made only once during programming and for those announcements to remain on-screen only long enough that they may be read or heard by an average viewer.⁸⁵ But as members of this coalition have pointed out, “[m]ost TV broadcasters relegate sponsorship identification disclosures to a miniscule, fast moving scroll at the end of the program credits.”⁸⁶ In practice, the vast majority of “disclosures are hard to locate [on the screen], difficult to decode, [appear at] inconvenient times, [and are]... too small and presented for too short a time to read.”⁸⁷

1. A Written Sponsorship Identification Record Can Help Mitigate Some Of The Problems With Current On-Air Disclosures

The Coalition supports requiring broadcasters to place all currently-required sponsorship disclosures in their online public file. We note at the outset that, while a useful supplement, online disclosure is not a complete cure for insufficient on-air disclosure; nor can it cure violations by broadcasters that fail outright to provide requisite payola disclosures under the FCC

⁸² 47 C.F.R. 73.1212(a)(2).

⁸³ *Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators*, Public Notice, 20 FCC Rcd 8593 (2005).

⁸⁴ FNPRM at ¶34.

⁸⁵ *INC Report* at 279.

⁸⁶ *Letter from Corie Wright, On behalf of Free Press, to Julius Genachowski, Chairman of the FCC*, filed MB Dkt. 08-90 (Sept. 27, 2010) at 2.

⁸⁷ *Sponsorship Identification Rules*, Reply Comments of Commercial Alert, MB Doc. No. 08-90 at 10-11 (Nov. 21, 2008).

rules. However, it can provide additional and enhanced notice of sponsorship arrangements, which will better serve the purpose and goals of the Communications Act and the FCC's attendant regulations.

Though an online record of pay-for-play cannot completely remedy un-disclosed or under-disclosed payola, it can provide a number of important benefits to the public, broadcasters, and the Commission. First, public access to this information will be increased, which will help to keep viewers informed of the identities of those who seek to persuade them. A viewer who believes she has seen sponsored content, but for any number of reasons may have missed the on-air disclosure, will be able to check a broadcaster online file to see if the program contained sponsored material, and if so, from whom.

To this end, listing sponsorship information online may lead to fewer or fewer inaccurate payola complaints being filed with the FCC. If a viewer believes that a broadcaster has omitted a disclosure, she can check the online file to see if such a disclosure was actually made. Additionally, because a written record permits more specific disclosure (as opposed to the disclosure in the end credits of a full-length program), broadcasters should list the specific portion of the program was sponsored in each case. Clear disclosure could help the public understand what portions of a program were sponsored, thus forestalling complaints that arise out of a misunderstanding of which portion of the program was sponsored and which was not. To the extent that a complaint regarding un- or under-disclosed payola is warranted, members of the public will be able to present more targeted information for consideration, while diminishing the frequency of frivolous or unfounded complaints. Accordingly, because we believe that an online sponsorship identification records can help to clarify the grounds – or lack of – for filing a payola violation complaint, PIPAC proposes that these records remain in the online public file

for a period of five years following the air-date of the content in question. This period represents the statute of limitations on FCC enforcement actions pursuant to 28 U.S.C. §2462.⁸⁸

Finally, we believe that such disclosure will have the ancillary, though no less important, benefit of encouraging research and dialogue regarding the growing use of sponsored material, particularly in news and information programming. Academics and watchdog groups looking to analyze sponsorship agreements of broadcasters would be able to gain access to this information for study. A written record of sponsorship identifications will allow interested parties to compare and contrast information accumulated over a number of years and could have a significant role in helping these groups collect data on the extent and frequency of sponsored content, which would otherwise prove elusive

2. An Online Sponsorship Identification Requirement Would Not Be Unduly Burdensome For Broadcasters.

The proposed online disclosure requirement would not place a heavy burden on broadcasters. Broadcasters must already collect and disclose sponsorship identification information. Indeed, the Radio Television Digital News Association (RTDNA) notes that many broadcasters promote a policy in which they aim to “clearly disclose the origin of information and label all materials.”⁸⁹ Online disclosure can help broadcasters further this goal without incurring a significant additional burden, or requiring them to alter broadcast programming in any way.

⁸⁸ §2462 provides that “[e]xcept as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.”

⁸⁹ *Use of Video News Releases by Broadcast Licensees and Cable Operators*, Comments of The Radio-Television News Directors Association, filed MB. Dkt. 05-171, at 10 (June 22, 2005).

The Commission’s proposal does not call for additional disclosures that would require any alteration to the content that broadcasters air on television. Broadcasters would merely be required to document their disclosures in their online public file. And, because they must already maintain these records to comply with existing rules, the posting of the records in the online public file would not be onerous.

Even if the act of placing sponsorship information online creates some additional burden, it is clearly outweighed by the benefits discussed above. The Commission has previously held that “[b]roadcasters are licensed to act as trustees for a valuable public resource and, in view of the public’s paramount right to be informed, some administrative burdens must be imposed on the licensee in this area. These burdens simply ‘run with the territory.’”⁹⁰ Given the benefits to the public of posting this information online, we believe that any additional burden incurred by the online posting requirement is more than justified.

D. The Commission Should Require Broadcasters To Continue To Maintain And Submit Issues/Programs Lists In Their Online Public Files Until The Commission Adopts A Replacement Standardized Form

The FCC proposes requiring broadcasters to place the quarterly issues/programs list in the unified online public file.⁹¹ However, the Commission notes – and the Coalition agrees – that the issues/programs lists “suffer from several drawbacks.”⁹² Consequently, the FCC has opened a separate proceeding seeking input on replacing the current requirement with a standardized reporting mechanism. The Coalition supports the Commission efforts to improve and standardize

⁹⁰ *Amendment of the Commission’s ‘Sponsorship Identification’ Rules*, Report and Order, 52 FCC 2d 701, 709, ¶24 (Apr. 25, 1975).

⁹¹ FNPRM at ¶29.

⁹² *Standardized Reporting NOI* at ¶10.

how broadcasters report on programming that serves their communities of license and we have submitted a proposal and sample form to meet this goal.⁹³

Though we acknowledge that the issues/programs lists are not the most effective mechanism, at present they remain the only way that broadcasters disclose whether and how they are providing community responsive programming. These lists still have utility and remain an important and necessary component of public oversight of local broadcasters. Accordingly, the Coalition agrees with the Commission that “broadcasters should be required to post to their online public file, on a quarterly basis, their issues/programs lists required under current rules, until the Commission replaces the issues/programs list with a new standardized form.”⁹⁴ We also commend the Commission for its commitment to address replacing the issues/programs with an improved reporting mechanism “in an expedited fashion.”⁹⁵

E. If The Commission Exempts Public Letters From The Online Public File, It Should Retain Copies Of Correspondence For Inspection At The Station

In the FNPRM, the FCC proposes exempting public correspondence from the online public file requirement, citing potential privacy and other concerns.⁹⁶ The Coalition is cognizant of the privacy concerns raised by the Commission and broadcasters, though we emphasize the importance of continued access to correspondence from the public, which frequently provides direct insight into how a licensee has served its community.

We believe that there is a compromise position that would balance concerns over privacy and burden, with the public’s interest in viewing comments (both complimentary and critical)

⁹³ See *PIPAC Letter* at 4 and sample form at <http://www.savethenews.org/sample-form>.

⁹⁴ *Id.* at ¶29.

⁹⁵ *Id.*

⁹⁶ *Id.* at ¶25.

from fellow community members. To this end, the Coalition proposes excluding public e-mail from the electronic disclosures in the public file. However, to alert members of the public to letters and emails, we propose that broadcasters disclose the total number of letters available at the station in the previous quarter and for the current licensing period, and a notice that these materials are available for public viewing at the main studio consistent with existing public file rules.

IV. The FCC Should Maximize Accessibility And Usability Of Public File Data By Posting Documents In Searchable Formats

The Commission seeks comment on how best to ensure that the online public files are made available “according to the principles advocated by experts on transparency: in standardized, machine readable and structured formats.”⁹⁷ The Coalition concurs with the FCC’s view that public file information should ultimately be made available in “a structured or database-friendly format that can be aggregated, manipulated, and more easily analyzed.”⁹⁸ The Coalition urges the FCC to take all reasonable measures to expedite the creation of an advanced database, while encouraging utility of existing files in the interim.

The FCC can accelerate the implementation of an advanced database by requiring all documents uploaded after the rules in this proceeding are adopted to be filed in a standardized, searchable format. The database itself should be searchable by text within the documents, and also by station, state, date, element of the public file and any other metadata. Furthermore, to realize the full benefits of access and use of data contained in the online public files for research purposes, the database should provide both an easy-to-use graphic interface as well as an

⁹⁷ *INC Report* at 348.

⁹⁸ FNPRM at ¶37.

application programming interface (API) both of which permit searching and downloading of the documents and meta data *en mass*.

While the implementation of an advanced database is the ultimate goal, in the FNPRM the Commission observes that converting broadcasters' existing records into the requisite formats will take time. To avoid postponing the benefits of access to the online public file, the FCC proposes not to require broadcasters "to alter the form of documents already in existence prior to posting them to the online public file at this time."⁹⁹

Submission of documents in non-searchable, non-machine readable format is a less than ideal solution. Nevertheless, the Coalition believes the proposal reflects a reasonable trade-off between the goal of maximizing data searchability and analysis and the need to expedite access to broadcasters' online public files. That said, the FCC can make the most of this interim situation by encouraging broadcasters to submit current documents in searchable formats, to the extent they are available. A number of commonly available document formats (such as Word, .Txt, PDF or .odf) can be searched. Moreover, these formats can be converted easily into a PDF that can be processed by an optical character recognition tool such that the contents of the document can be loaded into a searchable database.¹⁰⁰ Broadcasters commonly use such formats as part of their existing record maintenance protocols. As such, filing documents in their native electronic format – as opposed to scanning paper files into formats that cannot be searched – would be both easier to submit and more database-friendly. Specifically, if a required record already exists in a searchable format, the Commission should require it to be submitted in that

⁹⁹ *Id.*

¹⁰⁰ For example <http://www.resourcespace.org/> a free and open source software package could be integrated with an OCR processing tool such as <http://live.gnome.org/OCRFeeder> to easily deliver this functionality.

form. To the extent that a broadcaster currently maintains an existing record *only* in a non-searchable format, we urge the Commission to use an optical character recognition tool to permit searching within documents to the maximum extent possible.

Conclusion

For the reasons stated above, the Public Interest Public Airwaves Coalition urges the Commission to move expeditiously in adopting and implementing public file modernization policies that will increase the accessibility and usability of information that broadcasters are required to make available in their public files.

Respectfully Submitted,

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