

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS

The Public Interest Public Airwaves Coalition,¹ whose members include Campaign Legal Center, Common Cause, Free Press, the Benton Foundation,² and the Office of Communication, Inc. of the United Church of Christ, by their attorneys, the Institute for Public Representation, together with the Sunlight Foundation and the Center for Effective Government (collectively “PIPAC”), reply to comments filed by the National Association of Broadcasters (“NAB”) and Gray Television, Inc. (“Gray”) in response to the Public Notice, *Media Bureau Seeks Comment on Online Political File and Petition for Reconsideration* filed by the Television Station Group, DA 13-1440, June 25, 2013. PIPAC strongly opposes delaying the compliance date for the remaining stations to post their political files online, and urges the Commission to deny the pending petition for reconsideration.

¹ PIPAC would like to thank Georgetown Law student Jacob Itzkowitz for helping to draft these reply comments.
² 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.

Introduction

In the *Second Report and Order*, the Commission required that broadcast television stations place their political files online in stages: the affiliates of the four major networks in the top 50 DMAs were required to comply by August 2, 2012, and all other television stations were required to comply by July 1, 2014.³ The Order explained that “Commission staff will gain experience with the process of assisting the smaller first wave of broadcasters transitioning to the online political file. This will enable staff to more efficiently assist the larger number of stations that will transition later, who may need enhanced support because of their more limited IT resources.”⁴ The Commission also stated that the Media Bureau would put out a Public Notice by July 2013 to “give commenters – including the initial group of stations to use the online political file, stations that have yet to transition, and members of the public that review the online political file – an opportunity to provide the Commission with information regarding the impact and utility of the online political file,” and to give the Commission the opportunity “to consider whether any changes should be made before the requirement takes effect for the other stations.”⁵

As promised, the Media Bureau issued a Public Notice on June 25, 2013. In addition to seeking comment on how the process went for the broadcasters that filed and on the data’s usefulness to the public, it sought comment on a Petition for Reconsideration filed by some station owners calling themselves the Television Station Group.

Despite many dire predictions made in previous comments that requiring stations to upload their public files would “greatly strain already severely taxed station resources,”⁶ *no*

³ Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement for Children’s Television Programming Report, Second Report and Order, 27 FCC Rcd. 4535, at ¶¶ 3, 48 (2012) (“Second Report and Order”).

⁴ *Id.* at ¶ 48.

⁵ *Id.* at ¶ 49.

⁶ Comments of the Joint Broadcasters, MM Docket No. 00-168 (Dec. 22, 2011), at 3. This comment claimed that “the burden of compliance would be substantial . . . *on average*, 100 hours [per week] in complying . . . at least a

station currently subject to the rules even filed comments in response to the Public Notice. Indeed, the NAB observed, based on the experience of the more than 200 stations that were required to post their political files online, that “the posting of political files for these stations can be characterized as uneventful.”⁷ NAB does not seek to delay the compliance date for the remaining stations, but it does ask the Commission to delay deciding the pending petition for reconsideration until all stations have had an opportunity to post their political files online. Gray is the only commenter that has asked the Commission to delay implementing the compliance date for stations not affiliated with the top four networks or outside the top 50 DMAs. PIPAC strongly opposes both of these requests.

I. The Commission Should Not Delay the Compliance Date

PIPAC strongly opposes any delay in requiring the remaining stations to place their political files online, as such a delay would be unnecessary and harmful to the public. If maintaining the online political file had caused significant burdens for broadcast stations, they surely would have made that unequivocal in their initial comments. However, only one company, Gray, which owns television stations in thirty small and mid-sized markets that were not yet required to upload their political files, complains about the *potential* burdens of online filing. The Commission has already considered concerns similar to Gray’s, and correctly concluded that the significant benefits to the public outweighed the limited costs to broadcasters.⁸ Thus, Gray’s comments should be rejected as an untimely petition to reconsider the *Second Report and Order*.

Should the Commission nonetheless consider Gray’s comments on the merits, it should reject Gray’s request to indefinitely postpone the compliance date. Gray cites only a single

six-fold increase in time stations would have to devote to maintain the file.” *Id.* at 15; *see also, e.g.* Comments of the National Association of Broadcasters, MM Docket No. 00-168 (Jan. 17, 2012), at 7.

⁷ Comments of the National Association of Broadcasters, MM Docket No. 00-168 (Aug. 26, 2013) (“NAB”), at 3.

⁸ *See* Second Report and Order, at ¶¶ 24-31.

example to support its claim that filing online would be burdensome. During the 2012 election, an employee at WSAW, located in the Wausau, Wisconsin market, spent more than 30 hours per week managing and updating the political file with the station's roughly 370 original ad orders.⁹ Gray argues that time spent uploading ad information is time spent away from other important tasks.

What Gray does not disclose is how much money it made from these ads. It appears that between January 1, 2012, and April 25, 2012 alone, well before the general election, WSAW earned \$1.17 million in political ad revenue.¹⁰ Indeed, political advertising spending has vastly increased broadcast station revenues across the board, with an overall increase in political ad revenue of 38% from 2010 to 2012.¹¹ For broadcast stations specifically, presidential spending on political ads grew 65% from 2008 to 2012.¹² For example, Journal Communications reported that in the third quarter 2012, its broadcast revenue increased by 25%, driven primarily by political and issue advertising. The same political spending contributed to an 11% increase in overall revenues.¹³ Thus, even assuming it were true that maintaining an online political file is more time-consuming than a paper file, stations' revenue increases resulting from political ad spending would more than cover additional marginal expenses.¹⁴

⁹ Comments of Gray Television, Inc., MM Docket No. 00-168 (Aug. 26, 2013), at 4.

¹⁰ *Interactive Map: Political Advertising Spending with Wisconsin Television Stations*, Sheboygan Press (May 3, 2012), <http://www.sheboyganpress.com/interactive/article/99999999/WIS08/120503126/Interactive-map-Political-advertising-spending-Wisconsin-television-stations>. For a breakdown of spending, see *Search Wisconsin Campaign Advertising Costs by Political Organization, Market or Television Station*, Green Bay Press Gazette (July 30, 2012), <http://www.greenbaypressgazette.com/article/99999999/WIS0110/399992313/Search-Wisconsin-campaign-advertising-costs-by-political-organization-market-television-station?appSession=61466959344218>.

¹¹ Michael Malone, *TVB: Stations Grab 80% of '12 Political Spend*, Broadcasting & Cable (Jan. 17, 2013), http://www.broadcastingcable.com/article/491403-TVB_Stations_Grab_80_of_12_Political_Spend.php.

¹² *Id.*

¹³ Journal Communications Reports Third Quarter 2012 Results, Journal Communications (last visited Sept. 20, 2013), <http://phx.corporate-ir.net/phoenix.zhtml?c=145779&p=irol-newsArticle&ID=1749923>.

¹⁴ As PIPAC et al. argued in initial comments, adopting our proposal for collecting machine-readable data could actually reduce burdens on broadcast stations.

To support its request to delay compliance, Gray quotes language from the *Second Report and Order* to the effect that smaller stations “generally have smaller political files than the affiliates in the top 50 DMAs, and therefore the public will not be deprived of online access to substantial amounts of political file information.”¹⁵ This language is taken out of context. The Commission was simply explaining its choice to implement the requirement in two stages. The Commission recognized the value of having the political files for all stations easily accessible to the public in an online database, which is why it decided to require that *all* stations post this information beginning on July 1, 2014.

PIPAC has described some of the many benefits to the public that resulted from having political files available online.¹⁶ Any delay in the compliance date for the remaining stations would be harmful to the public, especially because so much of 2014 political ad spending will likely take place in smaller media markets outside the top 50.¹⁷ Pivotal Senate contests are occurring in many states without top 50 media markets, such as West Virginia, Kentucky, Arkansas, New Hampshire, Alaska, and South Dakota, while only three hotly contested states (North Carolina, Louisiana, and Virginia), have top 50 markets.¹⁸ Indeed, smaller states often see more political advertising on television because the cost of the ad time is comparatively cheaper, enabling candidates and groups to afford and buy more time. For example, from October 1 to 21, 2012, outside groups spent only \$3.3 million at Montana television stations, an amount much

¹⁵ Comments of Gray, at 5 (quoting Second Report and Order, ¶ 48).

¹⁶ Comments of PIPAC, MM Docket No. 00-168 (Aug. 26, 2013), at 3-11.

¹⁷ See Paul Blumenthal, *2014 Senate Campaign Spending Surges As Super PACs Start Early*, Huffington Post (July 2, 2013), http://www.huffingtonpost.com/2013/07/02/2014-senate-campaign-spending-super-pac_n_3530471.html; Mark Fratrik, *Here's What TV Advertisers Think*, N.Y. Times (July 16, 2013), <http://www.nytimes.com/roomfordebate/2013/07/16/state-politics-vs-the-federal-government/advertisers-say-national-state-and-local-politics-matter>.

¹⁸ John Giokaris, *2014 Senate Elections: Here is the Republican Roadmap to Victory*, Policymic.com (Jan. 2013), <http://www.policymic.com/articles/23623/2014-senate-elections-here-is-the-republican-roadmap-to-victory>; *Local Television Market Universe Estimates*, TVB (Sept. 22, 2012), http://www.tvb.org/media/file/TVB_Market_Profiles_Nielsen_Household_DMA_Ranks2.pdf (note that WV, KY, AR, AK, NH, and SD do not have top-100 media markets).

less than many other states.¹⁹ Yet, the stations aired 25,211 ads on the state's Senate race, the highest number in any state during that time period.²⁰ Citizens that reside in Montana and other similar places should be able to determine how much money is being spent and by whom on political races and issues.

Additionally, an increasing proportion of television advertising is taking place on stations that are not affiliates of the top four networks.²¹ For example, both candidates spent approximately equal amounts on English and Spanish television ads in the 2012 Arizona Senate campaign.²² With this growth in ads outside of ABC, CBS, NBC, and Fox, requiring the remaining stations to post their political file online is essential to providing a complete picture of political advertising spending.

It is essential for all stations – including smaller market stations as well as non-network affiliates – to post political files online so that the public can get an accurate and complete account of political spending nationwide. The Commission should not delay the compliance date for the remaining stations.

II. The Commission Should Deny the Petition for Reconsideration

No commenter supported the petition for reconsideration filed by the Television Station Group seeking to file aggregate data in lieu of disclosing specific ad buys. Thus, the Commission should deny the petition for the reasons stated in PIPAC's comments.²³

¹⁹ Brendan Sasso, *Local Television Stations in Swing States Cash in on Deluge of Political Ads*, Hill (Oct. 28, 2012), <http://thehill.com/blogs/hillicon-valley/technology/264413-local-tv-stations-cash-in-on-deluge-of-political-ads>.

²⁰ *Id.*

²¹ United States Hispanic Chamber of Commerce, https://www.usfcc.com/_data/n_0001/resources/live/Speak-Our-Language-USHCC-Press-Release.pdf; *but see* Jordan Fabian, *Do More Spanish-Language Ads Mean More Votes for Romney*, ABC News, Oct. 1, 2012, http://abcnews.go.com/ABC_Univision/Politics/mitt-romney-spanish-language-ad-spending-surges-obama/story?id=17365251).

²² Sean Peick, *Carmona, Flake Campaigns spend Combined \$228,000 on Spanish-Language Advertising in Phoenix*, Cronkite News, Nov. 13, 2012, <http://cronkitenewsonline.com/2012/11/carmona-flake-campaigns-spend-combined-228000-on-spanish-language-advertising-in-phoenix/>.

²³ Comments of PIPAC, MM Docket No. 00-168 (Aug. 26, 2013), at 24-25.

The Commission should also deny NAB's request to "keep the reconsideration petition under consideration until stations of all sizes and types in all markets have experienced at least one election cycle with the online political file requirement."²⁴ The NAB's concern that these stations may experience difficulty is purely speculative. Should problems arise, the Commission need not keep this proceeding open to address them. A request to unreasonably delay consideration of pending petitions for reconsideration is, in reality, an effort to keep this proceeding and the attendant litigation open despite the fact that petitioners have no evidence to support their claims of harm. Therefore, the Commission should deny the petition for reconsideration.

III. The Commission Should Require Cable and Satellite Operators to Post Their Public Files Online

PIPAC agrees with NAB that cable and satellite providers should also be required to post their public files (including political files) online. Thus, PIPAC urges the Commission to take steps necessary to get all political files online. However, there is no reason to delay the compliance dates of the existing rules for broadcast television stations while the Commission conducts these proceedings.

Conclusion

The online posting of political files has worked well and provided substantial benefits to the public. These benefits could be increased by adopting PIPAC's proposals for a searchable database. Under no circumstances, however, should the Commission delay the compliance dates

²⁴ Comments of NAB, MM Docket No. 00-168 (Aug. 26, 2013), at 6-7.

for the remaining television stations.²⁵ The Commission should also deny the petition for reconsideration and require cable and satellite operators to post their public files online.

Respectfully Submitted,

/s/

Eric G. Null*
Angela J. Campbell
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, DC 20001
(202) 662-9535

*Counsel for the Public Interest, Public
Airwaves Coalition*

Matthew Wood
Andrew Jay Schwartzman
Jennifer Yeh
Free Press
1025 Connecticut Ave. NW, Suite 1110
Washington, D.C. 20036
(202) 265-1490

Gavin Baker
Center for Effective Government
2040 S St. NW, 2nd Fl.
Washington, DC 20009
(202) 234-8494

Lisa Rosenberg
Kathy Kiely
Sunlight Foundation
1818 N St. NW, Suite 300
Washington, DC 20036
(202) 742-1520

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²⁵ Of course, the Commission could continue to grant waivers where the station can demonstrate undue hardship. See, e.g., Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Memorandum Opinion and Order, MM Docket No. 00-168 (Jan. 31, 2013).

* Admitted to the New York bar only; DC bar membership pending. Practice supervised by members of the DC bar.