

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters (NAB)¹ hereby replies to comments jointly filed in this proceeding by the Public Interest Public Airwaves Coalition (PIPAC) and other advocacy organizations.² PIPAC asks the Commission to impose on all television broadcast stations precisely the sort of one-size-fits-all political advertising sales reporting and recordkeeping processes that the Commission declined to adopt in its *Order* establishing the online public/political file system.³ PIPAC bases its request for reversal on a misguided view of the Commission as an overseer of campaign finance disclosures, and also underappreciates the burdens that its proposal would impose on local television stations, particularly those in smaller markets. Micromanagement of the format of stations' records simply is not necessary to fulfill Congress' mandate that

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the FCC and other federal agencies, and the courts.

² Comments of Public Interest Public Airwaves Coalition, Sunlight Foundation, and Center for Effective Government, MM Docket No. 00-168 (Aug. 26, 2013) (PIPAC Comments).

³ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket No. 00-168, Second Report and Order, 27 FCC Rcd 4535, 4553, 4555-56 (2012) (*Order*).

broadcasters make political advertising information “available for public inspection.”⁴ The Commission should reject proposals to impose standardization requirements that are unmoored from the political file’s intended purpose and that are designed to conscript station personnel to serve as advocacy groups’ research assistants.

I. The Standardization Proposal Ignores the Political File’s Intended Purpose.

PIPAC’s proposal to impose standardized reporting requirements on TV stations fails to appreciate the FCC’s limited role in the realm of political spending disclosures. The purpose of the Commission’s political file rule always has been to assist in implementing broadcasters’ statutory obligations. When the Commission first promulgated a political file rule in 1938, it did so under the authority of Section 315 of the Communications Act and as part of a package of rules governing the equal opportunities requirement established by that section.⁵ When Congress later codified the political file requirement, it did so by incorporating that requirement into Section 315, which today sets out the reasonable access, equal opportunities and lowest unit charge obligations.⁶

The broader goals promoted by PIPAC — including “help[ing] to inject facts into the debate over campaign financing”⁷ — are part of the Federal Election Commission’s core mission, which is why that agency maintains a complex system to collect campaign finance reports from political candidates and advertisers across the board.⁸ In contrast,

⁴ 47 U.S.C. § 315(e)(1).

⁵ 3 Fed. Reg. 1691-92 (1938); *see also Order*, 27 FCC Rcd at 4537 (identifying this notice as the FCC’s first promulgation of a political file rule). At the time, Section 315 was limited to providing legally qualified candidates with equal opportunities rights. *See* June 19, 1934, ch. 652, § 315, 48 Stat. 1088.

⁶ *See* 47 U.S.C. § 315.

⁷ PIPAC Comments at 7.

⁸ *See* PIPAC Comments at 16-17.

although TV stations' maintenance of a publicly available political file may well promote those goals, these broader objectives are ancillary to the political file's intended purpose. Stations' existing political file records effectively serve their intended purpose of providing the information needed for candidates to exercise their statutory rights. No additional burdens on broadcasters can be justified by the bare desire to amplify the political file's ancillary benefits. PIPAC's standardization proposal relies on just such a desire.

To the extent PIPAC's proposal touches on the political file's actual intended purpose, the proposal is a grossly disproportionate means of serving PIPAC's goals of reducing political file errors and making it easier to monitor stations' compliance with the political file requirements.⁹ If implemented as scheduled, political file information for all TV stations in all markets will be available online beginning in July 2014, allowing anyone in any location to review the contents of a station's political file and whether it has been uploaded promptly.¹⁰ Concerns with a station's political file are best addressed on a case-by-case basis and do not justify imposing new uniform reporting requirements on the entire TV broadcast industry.

⁹ See *id.* at 13-15.

¹⁰ As noted in NAB's initial comments, NAB has filed a Petition for Review in the U.S. Court of Appeals for the District of Columbia Circuit, which remains in abeyance pending completion of this comment cycle and the Commission's decision regarding the Television Station Group's reconsideration petition. See Order, *Nat'l Assoc. of Broadcasters v. FCC*, No. 12-1225 (D.C. Cir. February 12, 2013). NAB's comments herein are without prejudice to this appeal. Nothing in these comments affects NAB's arguments before the D.C. Circuit that the FCC lacks statutory authority to require online political files and that the Order's asymmetric, broadcast-only public and political file requirements are arbitrary and capricious.

II. The Imposition of Standardized Political Advertising Sales Reporting Requirements Is Not Warranted.

In justifying the decision to require stations to post their political files online — a reversal of the position the Commission took in its 2007 Report and Order in this proceeding — the 2012 *Order* relied on the Commission’s decision not to require the type of standardized reporting PIPAC now asks the Commission to impose.¹¹ Broadcasters had noted that stations’ political advertising sales take place through a variety of channels, including phone, fax, in-person sales, and a variety of electronic traffic-management systems.¹² The Commission nonetheless concluded that the burdens posed by an online political file would be acceptable because many of the required records “originate as or are reduced to electronic files and would thus be relatively easy to upload,” while other files could “be easily scanned and uploaded.”¹³

In rejecting “broadcasters’ burden arguments that are based on the fact that existing electronic traffic management systems may not be programmed to allow stations to upload documents directly to a database,” the Commission stated that, under the rules adopted in the *Order*, “broadcasters will not need to change the software in their traffic systems to post documents to our online public file.”¹⁴ In short, the Commission determined that the benefits of an online political file requirement would outweigh its burdens in large part because the burdens on stations would *not* include buying new

¹¹ See *Order*, 27 FCC Rcd at 4546, 4551-53.

¹² *Id.* at 4552.

¹³ *Id.* at 4552-53.

¹⁴ *Id.* at 4553.

software or otherwise materially changing their political sale processes or recordkeeping practices.

In essence, PIPAC now seeks reconsideration of that decision, arguing that the Commission should require stations to submit political file information in a standardized, one-size-fits-all format that does not rely on scanning and uploading existing documentation, but rather would require station personnel to prepare additional paperwork — immediately¹⁵ — for every political sale. PIPAC argues that this uniform reporting process is intended to make it easier for researchers and other parties to analyze political spending data and to “relieve[]” groups “such as Sunlight Foundation and ProPublica ... of having to recruit volunteers to enter the data into their own data bases.”¹⁶ Instead, PIPAC would shift these burdens — which PIPAC contends are significant¹⁷ — to broadcasters, who would have to retype information related to each individual sales order into something like PIPAC’s proposed “demonstration form.” Stations — including small market stations — should not be required to absorb these burdens merely to facilitate the research of private advocacy groups.¹⁸

¹⁵ *Order*, 27 FCC Rcd at 4562.

¹⁶ PIPAC Comments at 11-13, 23.

¹⁷ *See id.* at 12-13.

¹⁸ NAB member stations have reported that PIPAC’s demonstration form would require significant additional data entry because it could not flow through from stations’ traffic systems or from political broadcasting agreements (such as NAB’s political broadcasting form or stations’ own agreements), which are often scanned or faxed to stations. Local stations also noted that amendments to PIPAC’s form would apparently need to be generated each time an existing order was changed, which happens frequently with political advertisers. Our members expressed concerns about the increase in personnel time during very busy political advertising seasons, both for data entry and proofing/reviewing to ensure accurate inputting of data into the proposed standardized form under serious time constraints.

To be sure, PIPAC implicitly concedes that stations could not realistically implement this manual data-entry process at scale, given the volume of political advertising; rather, “[i]t is expected that this form would serve as a template for a fully electronic filing process, rather than a form that individual broadcasters fill out,” in the same way that third-party vendors developed and sold software designed to prepare and submit FEC filings.¹⁹

In other words, PIPAC is asking the Commission to reverse the *Order’s* assessment of the extent to which stations’ internal sales and recordkeeping practices should be driven by the political file requirement and its ancillary uses to researchers investigating political expenditures or advocates in the debate over campaign financing.²⁰ The *Order* determined that stations could rely on their existing documentation, without the need to purchase new traffic software, so long as stations’ political files contain the required information and remain orderly. In contrast, PIPAC would require all stations to complete a new set of forms for each order or to alter their existing traffic systems, all for the sole purpose of complying with a new, standardized political file requirement.

As the Smaller Market TV Groups note in their submission in this docket, implementing this requirement would impose substantial costs, not only for the time spent by station personnel but also for the necessary training, sales material redesigns, and software development.²¹ Nothing in the record justifies imposing these costs, whether on

¹⁹ PIPAC Comments at 16, 22.

²⁰ *Id.* at 7.

²¹ Reply Comments of Smaller Market TV Groups, MM Docket No. 00-168 (Sept. 23, 2013).

smaller market stations or otherwise, nor is there any basis for PIPAC's assertion that its proposal "would have the effect of reducing broadcasters' paperwork burden."²²

III. Conclusion

PIPAC's proposed imposition of an entirely new recordkeeping system on local television stations — which is directly contrary to the *Order's* burden analysis on this very point — is unwarranted. It is unnecessary to serve the political file's intended purpose, unjustified by the record, needlessly burdensome, and exceeds the scope of the *Public Notice's* request for comment on steps that could make the online political file database more "user-friendly" or facilitate access and review of database material.²³ The Commission accordingly should reject PIPAC's proposal to impose standardized political file reporting requirements on all TV stations in all markets.

Respectfully submitted,

NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, NW
Washington, DC 20036
(202) 429-5430



Jane E. Mago
Jerianne Timmerman

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²² PIPAC Comments at 24.

²³ *Media Bureau Seeks Comment on Online Political File and Petition For Reconsideration Filed by the Television Station Group*, MM Docket No. 00-168, Public Notice, DA 13-1440, at ¶ 6 (MB June 25, 2013) (*Public Notice*).