

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

To: The Commission

**PETITION FOR RECONSIDERATION**

The Television Station Group, comprised of the undersigned station groups, respectfully submits this Petition for Reconsideration of the Commission’s *Second Report and Order* in the above-captioned proceeding,<sup>1</sup> particularly the requirement to disclose sensitive rate information in the online political file. The Television Station Group’s core concern is the requirement in the *Second Report and Order* that the specific spot-by-spot rate information for political spots already made available to the public in hard copy at stations’ local public files must be made available immediately and for everybody to see on the FCC’s website.

The Television Station Group does not generally object to (1) the scope of the Commission’s disclosure requirements, (2) its goal generally to make stations’ public file materials, including their political materials, available to the public on the FCC’s website, or (3) the retention of the present public file requirements. It is, however, concerned that the

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<sup>1</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Second Report and Order*, FCC 12-44, 77 FED. REG. 27631 (rel. April 27, 2012) (“*Second Report and Order*”).

*Second Report and Order*'s requirement to disclose on the world-wide web sensitive pricing information is not in the public interest (and is not contemplated by the Bipartisan Campaign Reform Act ("BCRA" or the McCain-Feingold bill), which is the basis for the political file requirements). It is axiomatic that disclosure of price information is anti-competitive and disrupts markets -- in this case, not only the local political advertising marketplace but also the local commercial advertising marketplace more generally, because stations' political ad rates, by law, must be based on commercial advertising rates (and based on their most favorable rates during the political "windows").

The Television Station Group here proposes an alternative (summarized in the Attachment) that would achieve effective and appropriate transparency concerning television stations' political files, yet would also avoid the adverse consequences of the spot-by-spot rate disclosure requirements adopted in the *Second Report and Order*.

## **I. THE RATIONALE FOR RECONSIDERATION.**

The Television Station Group and others explained their concerns to the Commission two months before the Commission adopted its *Second Report and Order*, and it submitted an alternative proposal to the FCC.<sup>2</sup> On March 15, the Television Station Group filed a letter adding further detail to this proposal, in response to various queries from the Commission's staff.<sup>3</sup> In addition, the Television Station Group, the National Association of

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<sup>2</sup> See Letter from Mary Jo Manning, on behalf of Barrington Broadcasting Co. *et al.*, to William T. Lake, Chief, Media Bureau, FCC, MM Docket No. 00-168 *et al.* (Feb. 15, 2012). Since that time, LIN Television Corporation has joined the Television Station Group.

<sup>3</sup> See Letter from Mary Jo Manning, Jonathan Blake, and Wade Hargrove, on behalf of Barrington Broadcasting Co. *et al.*, to Marlene H. Dortch, Secretary, FCC, MM Docket No. 00-168 *et al.* (March 15, 2012). News Corporation submitted another alternative proposal in April. See Letter from Maureen A. O'Connell, Senior Vice President, Regulatory and Government Affairs, News Corp., to Marlene Dortch, Secretary, FCC, MM Docket No. 00-168 *et al.* (April 19, 2012).

Broadcasters, the ABC, CBS, NBC, Fox, and Univision television station groups, and all of the state broadcasters associations, filed with the FCC an expanded “consensus proposal” on April 20.<sup>4</sup> In connection with all three filings, various industry participants met with Commission representatives, out of a desire to reach a solution that would be responsive to the objectives of the notice of proposed rulemaking (that was the forerunner to the *Second Report and Order*), but that would not entail the adverse consequences of the *Second Report and Order*. The heart of these broadcaster proposals was to retain all the current station, hard-copy file requirements, but to add a requirement that stations post online at the FCC aggregated information about political advertising time sold on their stations -- a proposal that would better serve the Commission’s interest in enhanced transparency.

The Commission declined to adopt these alternative proposals in the *Second Report and Order*.<sup>5</sup> Reconsideration of that decision would be in the public interest because these alternative proposals — and the new one described in this Petition — would provide a robust online data-set concerning the political file, including *more* information about *more* kinds of political advertising than is required to be placed in the political file today (or placed online under the *Second Report and Order*). The Commission’s objectives would be better served by some version of these alternative proposals than the requirements in the *Second Report and Order*. Reconsideration of that decision would enable the Commission to more deliberatively assess whether this is the case and at the same time to avoid the adverse consequences of online disclosure of per-spot rate information.

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<sup>4</sup> See Letter from Jonathan D. Blake, on behalf of Barrington Broadcasting Co. *et al.*, to Marlene Dortch, Secretary, FCC, MM Docket No. 00-168 *et al.* (April 20, 2012); Letter from Jonathan D. Blake to Marlene Dortch, Secretary, FCC, MM Docket No. 00-168 *et al.* (May 2, 2012).

<sup>5</sup> *Second Report and Order* at fn. 177.

At the Commission's open meeting at which it adopted its *Second Report and Order*, it appeared that the Commission may not have had adequate opportunity to dig deeply into these alternative proposals. For its part the Television Station Group continues to stand ready to work with the Commission to achieve a win-win solution that achieves the goal of transparency without disruptive, anti-competitive effects in the commercial and political advertising marketplaces.

**II. THE DESIRABILITY OF CONSIDERING AN OPTION THAT PROVIDES FOR MORE DISCLOSURE AND AVOIDS THE HARMS OF THE REQUIREMENTS IN THE SECOND REPORT AND ORDER.**

In the interest of reaching a win-win solution, the Television Station Group proposes that the Commission consider its modified proposal for online political file disclosure, the specifics of which are summarized in the Attachment. This proposal has several advantages over the requirements adopted in the *Second Report and Order*, including: (1) online disclosure of useful aggregated information on spending by or about candidates that is not currently required to be disclosed; (2) broader disclosure of information on political issue ads generally, not just the limited category of issues for which disclosure is required under the BCRA (the McCain-Feingold bill); (3) avoidance of online disclosure of competitively sensitive pricing information among competitors — which is a major defect of the *Second Report and Order* requirements; (4) online disclosure of specific, relevant, and useful information that will facilitate analysis by the general public, researchers, journalists, and scholars; and (5) clarification that the proposed alternative would be available on an “opt in” basis, meaning that individual broadcasters could instead elect to comply with the requirements contained in the *Second Report and Order* if they have concerns with respect to the Television Station Group's proposal.

**1. More Useful Information about Expenditures by and about Candidates.**

The *Second Report and Order* requires television stations to post on the FCC's website the rates charged for ads placed by candidates or placed by other parties that concern candidates. The Television Station Group's proposal would require that television stations continue to make this information available in hard-copy in their local political files. *In addition*, the Television Station Group's proposal would require, on an opt-in basis (see p. 8 below), that television stations post on the FCC's website the aggregate amount of money spent by the sponsor on the station. This online disclosure also would include the name of the candidate; the office for which the candidate is running; information about the sponsoring entity, and the begin and end dates for the schedule ordered by the buyer.

This expansion of the information to be made available on the FCC's website would provide the public, academic and other researchers, and journalists with relevant, useful information on political advertising — information that is not readily available in stations' hard-copy political files and aggregated information that would not be disclosed under the requirements of the *Second Report and Order*. Our discussions with journalists confirm that this information is what they most wish to have and is what is most lacking in the requirements adopted in the *Second Report and Order*.<sup>6</sup>

The Television Station Group's proposal would continue to require that all information about spots by or concerning candidates be placed in stations' *local* public files. As is currently the case, the filing of this information would be done as soon as possible. But,

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<sup>6</sup> Journalists and scholars do not generally need or want spot-by-spot rate information. Candidates can be interested in spot-by-spot rate information in order to assure that they receive rates that are consistent with legal requirements, but neither the record in this proceeding nor the *Second Report and Order* demonstrate that the present system is inadequate to serve this goal.

because the process of aggregating purchases for posting on the FCC's website could take a little more time, the Television Station Group's proposal would require that the posting of this proposed required information on the FCC website take place (i) every other day during the lowest unit charge periods, (ii) every day during the last seven days before the election and (iii) once a week, outside the lowest unit rate periods.

**2. Disclosure about a Broader Range of Issue Ads.** Currently, BCRA imposes political file requirements only on certain types of issue ads (often called "BCRA issue ads"), specifically only ads addressing political issues of "national importance." Thus, the *Second Report and Order* requirements do *not* apply to spots concerning *state* or *local* issues, including ballot propositions and referenda, or other issues that are not political matters of *national* importance. The Television Station Group is willing to have the online disclosure requirements apply to political issue ads generally, not just to those covered by BCRA.

**3. Disclosure of Particularly Useful Information Under the Group's Aggregation Proposal and Avoidance of Anti-Competitive Rate Disclosures that Would Disrupt Markets.** The aggregated expenditure information would be publicly disclosed on the FCC's website for both candidate and issue advertising. Aggregated information is not presently required to be collected or disclosed to the public. The Television Station Group believes that it is information that scholars, journalists, and the public generally would be particularly interested in — far more so than spot-by-spot rate information. Also, the per-spot rate information that the *Second Report and Order* requires to be disclosed on the FCC's website would entail the broad dissemination of sensitive price information and will have serious anti-competitive and market disruptive consequences in both the commercial and political advertising marketplaces. The competition concerns are heightened because cable television operators, satellite television

operators, and other non-broadcast competitors for advertising are not similarly required to disclose their per-spot rates on the FCC's website.<sup>7</sup>

The *Second Report and Order* expressed concern about the implementation and impact of the online political file requirements, and the separate statements of individual Commissioners also reflected a genuine and immediate concern about worldwide rate disclosure. The Commission adopted two measures in response to these legitimate concerns. First, it limited this requirement for the first two years to affiliates of the ABC, CBS, NBC, and FOX networks in the top-50 markets. Second, the Commission stated that it would review the real-world experience under this requirement after one year. Both measures were well-meaning and we appreciate their intent. But they are palliatives, not solutions, for the problem of disclosure of sensitive pricing information.

It has been estimated that a large majority of political expenditures are on stations that fall within the Big Four affiliate, top-50 market category.<sup>8</sup> As a result, the market disruption and anticompetitive consequences of the FCC's requirement would not be confined to a small sampling of stations or markets. Also, by the terms of the *Second Report and Order*, the requirements would automatically go into effect for all other television stations after two years, unless the Commission took affirmative steps to un-do this requirement.

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<sup>7</sup> Notably, while stations are currently required to place letters from the public into their hard-copy public files, the *Second Report and Order* expressly exempts these documents from being posted on the Internet. Because of the potential anti-competitive aspects of posting highly sensitive rates (both lowest unit charge and other rates) on the World Wide Web, by the same rationale, Petitioners' alternative proposal to exclude such information should be adopted.

<sup>8</sup> The Commission asserted that such stations "garner[] the vast majority of political advertising time and money" ("roughly 60 percent of the total television political advertising dollars spent in each major election cycle"). See *Second Report and Order* at para. 48.

4. **Opt-In.** While the Television Station Group proposal would not require online disclosure of spot-by-spot rate information, in other important areas it would require stations to provide more useful information than they are required to provide under the *Second Report and Order* (namely, aggregated expenditure information and information concerning issue ads not covered by BCRA). Stations that are not willing to provide this information online would not be required to do so; instead, they could choose to comply with the *Second Report and Order* requirements. This feature would enable individual broadcasters to avoid having to make disclosures that go beyond existing legal requirements and would help insulate this alternative from challenge on these grounds.

\* \* \*

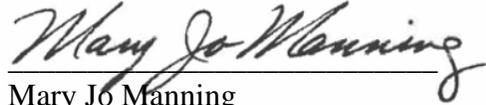
The most compelling reasons for the Commission to reconsider its *Second Report and Order* are the importance of the need to strike an appropriate balance between transparency and avoiding the anticompetitive consequences of spot-by-spot rate disclosures, and to provide information that is most helpful to public discourse and decision-making on important political matters. Unfortunately, the premise underlying the *Second Report and Order* — that all existing public file requirements for political spots must be carried over to the FCC’s website — arbitrarily constrained a comprehensive consideration of alternative approaches, such as those submitted by the Television Station Group, which would provide more useful information and avoid public interest harms. Reconsideration would allow the Commission to focus on these proposals free of the presumption that it is desirable that all of the information required to be placed in stations’ hard-copy files today should be posted on the FCC’s website.

For the reasons discussed herein, the Television Station Group respectfully requests that the Commission reconsider the *Second Report and Order*.

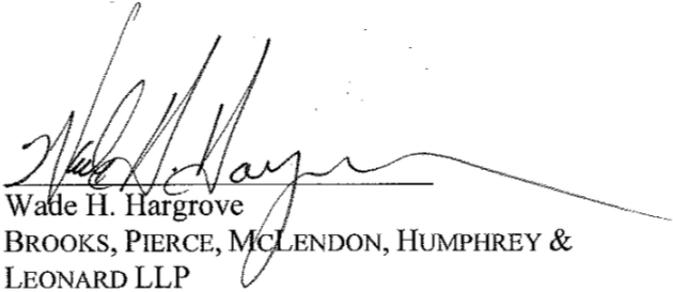
Respectfully submitted,

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COX MEDIA GROUP  
DISPATCH BROADCAST GROUP  
THE E.W. SCRIPPS COMPANY  
GANNETT BROADCASTING  
HEARST TELEVISION INC.  
LIN TELEVISION CORPORATION  
MEREDITH BROADCASTING GROUP  
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**Online Political File Proposals**

Television stations would upload to the FCC's website information about:

- broadcast material sponsored by candidates or their committees;
- broadcast material about candidates; and
- political issues (*including state and local political issues*).

What would be provided:

- the aggregate amount of money spent on the station by the sponsor (stations would provide a separate report for subsequent spot buys);
- the name of the candidate on whose behalf the purchase was made (if applicable);
- the name of the candidate discussed in the broadcast material (if applicable);
- the office for which the candidate is running (if applicable);
- the issue to which the broadcast material refers (if applicable);
- information about the sponsoring entity, as provided by the sponsor; and
- the beginning and end dates for the spots ordered by the buyer.

Stations would update the FCC's website about new orders (or cancellations):

- every other day during the lowest unit charge periods;
- every day during the last seven days before the election; and
- once a week, outside the lowest unit rate periods.