

## SUPPORTING STATEMENT

### A. Justification:

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

On October 27, 2011, the Commission adopted a *Further Notice of Proposed Rulemaking* (“FNPRM”) in MM Docket 00-168, FCC 11-162, *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*. The FNPRM proposed to largely replace the decades-old requirement that commercial and noncommercial television stations maintain a paper public file at their main studios with a requirement to submit documents for inclusion in an online public file to be hosted by the Commission.

On April 27, 2012, the Commission adopted a *Second Report and Order* in MM Docket 00-168, FCC 12-44, *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*. This *Second Report and Order* adopted the FNPRM proposal that commercial and noncommercial television stations be required to maintain a public inspection file to be located on the Commission’s website instead of being maintained in the public file at the station.

The FNPRM proposed a few changes from the existing public file requirements, and the *Second Report and Order* adopted most but not all of those proposals. First, the FNPRM sought comment on ways to streamline the information required to be kept in the file, and proposed that letters and emails from the public should be excluded from the online posting requirement, and instead be retained at the station in a correspondence file. The *Second Report and Order* adopted this exemption.

The FNPRM also proposed that a few items should be added to the online public file. First, we proposed that stations will need to include their main studio location in the online public file. Second, we proposed that sponsorship identifications, now disclosed only on-air, also be disclosed in the online public file. The FNPRM also proposed to require disclosure of online of shared services agreements, some of which currently need to be included in the public file.<sup>1</sup> The FNPRM noted that the increased burdens imposed by including these new items will be offset in part by reducing burdens by placing the public file online in a database to be hosted by the Commission. The *Second Report and Order* declined to adopt new requirements, instead limiting this proceeding to merely transferring the existing public file online.

Because more than a third of the required contents of the public file have to be filed with the Commission in our Consolidated DataBase System (“CDBS”) under current rules, we proposed in the FNPRM that we would import and update any information that must already be filed with the Commission electronically in CDBS to each station’s public file, which will be part of a database of all television station public files on the

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<sup>1</sup> See 47 C.F.R. § 73.3526(e)(14)(requiring the retention of time brokerage agreements) and 73.3526(e)(16)(requiring the retention of joint sales agreements).

Commission's website. We anticipated that this would create efficiencies for broadcasters, since they must currently upload such filings to CDBS and then also ensure that the same documents are included in the public file kept at the station. Under the proposed mechanism, broadcasters would be responsible for uploading only those items not otherwise filed with the Commission or available on the Commission's website. Under the proposed rules, television stations would need to link to the public inspection file hosted on the Commission's website from the home page of its own website, if the station has a website. The *Second Report and Order* adopted this approach.

On November 22, 2011, the Commission submitted the *FNPRM's* proposed information collection requirements for collection 3060-0214 to OMB for review and approval. We now seek final approval for the information collection requirements that are contained in this collection, based on the final rules that were adopted in FCC 12-44.

The Commission first adopted a public inspection file requirement more than 40 years ago.<sup>2</sup> The public file requirement grew out of Congress' 1960 amendment of Sections 309 and 311 of the Communications Act of 1934.<sup>3</sup> Finding that Congress, in enacting these provisions, was guarding "the right of the general public to be informed, not merely the rights of those who have special interests,"<sup>4</sup> the Commission adopted the public inspection file requirement to "make information to which the public already has a right more readily available, so that the public will be encouraged to play a more active part in dialogue with broadcast licensees."<sup>5</sup> In return for their exclusive use of public spectrum, broadcasters must operate and program their stations in the "public interest, convenience and necessity."<sup>6</sup> This means that all stations must be responsive and accountable to their local community of license. The manner in which broadcasters communicate with their communities is a core function of their role as licensees. Specific items in the public file, listed below, include items that provide station information to the public, like ownership reports, contour maps, citizens agreements, EEO reports and quarterly lists of programs that the stations believe addressed important issues in their community. Access to the public inspection file allows the public to monitor a station's public interest performance. The information provided in a station's public file enables citizens to engage in an informed dialog with their local stations or to file complaints or petitions to deny the renewal of a station's license.<sup>7</sup> Comments, complaints, and petitions to deny filed by the viewing public have long

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<sup>2</sup> *Report and Order in Docket No. 14864*, 4 R.R.2d 1664, 1667 (1965); recon. granted in part and denied in part 6 R.R.2d 1527 (1965)

<sup>3</sup> 47 U.S.C. §§ 309,311.

<sup>4</sup> *Report and Order in Docket No. 14864*, 4 R.R.2d at 1666 (*citing, e.g.*, Senate Report No. 690, 86<sup>th</sup> Cong., 1<sup>st</sup> Sess., to accompany S. 1898, "New Pre-Grant Procedure" (Aug. 12, 1969) page 2).

<sup>5</sup> *Report and Order in Docket No. 14864*, 4 R.R.2d 1664, 1667 (1965); recon. granted in part and denied in part 6 R.R.2d 1527 (1965).

<sup>6</sup> 47 U.S.C. § 307(c)(1), 309(a).

<sup>7</sup> *Office of Communication of United Church of Christ v. FCC*, 359 F.2d 994, 1009 ( D.C. Cir., 1966).

been a part of the regulatory and the renewal process.<sup>8</sup> As part of the Commission's license renewal process, the Commission does not routinely monitor every aspect of stations' compliance with Commission rules; rather, it depends on viewers and listeners to provide information about whether stations are meeting their public interest obligations.

**The following Information Collection Requirements are Part of This Collection and Have Been Approved By OMB:**

**47 CFR Sections 73.3526(a) and 73.3527(a)** require that licensees and permittees of commercial and noncommercial educational (NCE) broadcast stations<sup>9</sup> maintain a local public inspection file. The contents of the file vary according to type of service and status. A separate file shall be maintained for each station for which an application is pending or for which an authorization is outstanding. The public inspection file must be maintained so long as an authorization to operate the station is outstanding. The *Second Report and Order* did not change these requirements.

**47 CFR Sections 73.3526(b) and 73.3527(b)** require that the public inspection file be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio. This *Second Report and Order* changes this subsection to require commercial and noncommercial television stations to maintain their public inspection file on an online public file to be hosted by the Commission, instead of being maintained at the main studio of the station, with the exception of letters and emails from the public, which will continue to be maintained at the station.

**47 CFR Sections 73.3526(c) and 73.3527(c)** require the licensee/permittee to make the file available for public inspection at any time during regular business hours. All or part of this file may be maintained in a computer database as long as a computer terminal is made available to members of the public. Materials in the public file must be made available for review, printing or reproduction upon request.

Licensees that maintain their main studios and public file outside their communities of license<sup>10</sup> are required to mail a copy of "The Public and Broadcasting"<sup>11</sup> to anyone requesting a copy. Licensees shall be prepared to assist members of the public in identifying the documents they may want to be sent to them by mail. The *Second Report and Order* did not change these requirements.

**47 CFR Sections 73.3526(d) and 73.3527(d)** require an assignor to maintain the public inspection file

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<sup>8</sup> See *Deregulation of Radio*, Second Report and Order, 96 FCC 2d 930 (1984).

<sup>9</sup> These stations are licensed to nonprofit educational organizations for use in the advancement of educational programs.

<sup>10</sup> Every broadcast station is permitted or licensed to a designated community, the needs and interests of which the station primarily serves. The station is required to place a signal of a certain strength over the entirety of its community of license, and is required to provide programming to serve its community of license. See, e.g., 47 U.S.C. § 307(b); 47 C.F.R. §§ 73.24(i), 73.315(a).

<sup>11</sup> This manual provides a brief overview of the regulation of broadcast radio and television.

until such time as the assignment is consummated. At that time, the assignee is required to maintain the file. The *Second Report and Order* did not change these requirements.

**47 CFR Sections 73.3526(e) and 73.3527(e)** specify the contents of the public inspection files. Separate rule sections not subject to this information collection require the creation and submission to the Commission of many of the items that must be retained in the public inspection file. As such, the burden estimates for creation and submission of these documents are calculated in other information collections. The burden estimates included in this information collection pertain only to making these items publicly available. We have listed below some of the relevant information collections pertaining to the creation and submission of such documents. The *Second Report and Order* did not change these requirements. The documents to be retained in the public inspection files are as follows:

- (a) A copy of the current FCC authorization to construct or operate the station, as well as any other documents necessary to reflect any modifications thereto or any conditions that the FCC has placed on the authorization;
- (b) A copy of any application tendered for filing with the FCC, together with all related material, and copies of Initial Decision and Final Decisions in hearing cases. If petitions to deny are filed against the application, a statement that such a petition has been filed shall be maintained in the file together with the name and address of the party filing the petition [Application for Construction Permit for Commercial Broadcast Station (OMB control number 3060-0027, FCC Form 301; Application for New Commercial or Noncommercial Educational Broadcast Station License (OMB control number 3060-0029, FCC Form 340); Application for Consent to Assignment of Broadcast Station Construction Permit or License, FCC Form 314; Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, FCC Form 315; Section 73.3580, Local Public Notice of Filing of Broadcast Applications (OMB control number 3060-0031)];
- (c) For commercial broadcast stations, a copy of every written citizen agreement;<sup>12</sup>
- (d) A copy of any service contour maps, submitted with any application, together with any other information in the application showing service contours and/or main studio and transmitter location;
- (e) A copy of the most recent, complete Ownership Report (FCC Form 323) filed with the FCC for the station, together with any statements filed with the FCC certifying that the current Report is accurate [Ownership Report for Broadcast Station (OMB control number 3060-0010, FCC Form 323); Ownership Report for Noncommercial Educational TV, FM or Standard Broadcast Station (OMB control number 3060-0084, FCC Form 323-E)];

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<sup>12</sup> A citizen agreement is an agreement between a licensee and one or more citizens that deal with goals or proposed practices that affect station operations in the public interest in areas such as - but not limited to - programming and employments.

- (f) A political file of records required by 47 CFR Section 73.1943 concerning broadcasts by candidates for public office [Section 73.1942, Candidates Rates, 76.206, Candidates Rates, Section 76.1611, Political Cable Rates and Classes of Time (OMB control number 3060-0501)];
- (g) An Equal Employment Opportunity File required by 47 CFR Section 73.2080 [Broadcast EEO Program Report, FCC Form 396 (OMB control number 3060-0113); Multi-Channel Video Program Distributor EEO Program Annual Report, (OMB control number 3060-1033, FCC Form 396-C)].
- (h) A copy of the most recent edition of the manual entitled "The Public and Broadcasting;"
- (i) For commercial broadcast stations, all written comments and suggestions (letters and electronic mail) received from the public regarding operation of the station;
- (j) Material having a substantial bearing on a matter which is the subject of an FCC investigation or complaint to the FCC of which the applicant/permittee/licensee has been advised;
- (k) For commercial radio and TV broadcast stations and non-exempt NCE broadcast stations, a list of programs that have provided the station's most significant treatment of community issues. This list is kept on a quarterly basis and contains a brief description of how each issue was treated;
- (l) For commercial TV broadcast stations, records sufficient to permit substantiation of the station's certification, in its license renewal application, of compliance with the commercial limits on children's television programming. The records must be placed in the public file quarterly. The FCC Form 398, Children's Television Programming Reports, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children must be placed in the public file quarterly [Children's Television Programming Report (OMB control number 3060-0754, FCC Form 398)];
- (m) For NCE stations, a list of donors supporting specific programs. The list is to be retained for two years from the date of the broadcast of the specific program supported, and will be reserved for sponsors/underwriters of specific programming;
- (n) Each applicant for renewal of license shall place in the public file a statement certifying compliance with the pre-filing and post-filing local public notice announcements. These statements shall be placed in the public file within 7 days of the last day of broadcast [Section 73.3580, Local Public Notice of Filing of Broadcast Applications (OMB control number 3060-0031)];
- (o) Commercial radio and TV licensees who provide programming to another licensee's station, pursuant to time brokerage agreements, are required to keep copies of those agreements in their public inspection files, with confidential information blocked out where appropriate;

(p) Commercial TV stations must make an election between retransmission consent and must-carry status once every three years. Television stations that fail to make an election will be deemed to have elected must-carry status. This statement must be placed in the station's public inspection file. This rule codifies Section 325(b)(3)(B) of the Communications Act of 1934, as amended [Section 73.1601, Deletion of Repositioning of Broadcast Signals; Section 76.1617, Initial Must-Carry Notice; and Sections 76.1697 and 76.1708, Principal Headend (OMB control number 3060-0649)];

(q) NCE television stations requesting mandatory carriage on any cable system pursuant to 47 CFR Section 76.56 shall place in its public file the request and relevant correspondence; and

(r) Commercial radio and TV licensees who have entered into joint sales agreements must place the agreements in the public inspection file, with confidential and propriety information blocked out where appropriate.

(s) Full-power commercial and noncommercial educational ("NCE") TV broadcast stations are required to retain in their public inspection file a copy of their FCC Form 388 – DTV Consumer Education Quarterly Activity Report on a quarterly basis. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. These Reports shall be retained in the public inspection file for one year. Broadcasters must publicize in an appropriate manner the existence and location of these Reports.

**47 CFR Sections 73.1212(e), 73.1943 and 76.1701** require licensees of broadcast stations and every cable television system to keep and permit public inspection of a complete record (political file) of all requests for broadcast and cablecast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the system of such requests, and the charges made, if any, if the request is granted. The disposition includes the schedule of time purchased, when the spots actually aired, the rates charged, and the classes of time purchased. Also, when free time is provided for use by or on behalf of candidates, a record of the free time provided is to be placed in the political file as soon as possible and maintained for a period of two years. 47 CFR Sections 73.1212(e) and 76.1701 also require that, when an entity sponsors broadcast or cablecast material that concerns a political matter or a discussion of a controversial issue of public importance, a list must be maintained in the public file of the system that includes the sponsoring entity's chief executive officers, or members of its executive committee or of its board of directors. The *Second Report and Order* changes 73.1943 to indicate that commercial and noncommercial television stations will maintain their public inspection file on an online public file to be hosted by the Commission on a going-forward basis. [Sections 73.1212, 76.1615 and 76.1715, Sponsorship Identification (OMB control number 3060-0174); Section 73.1942, Candidates Rates, 76.206, Candidates Rates, Section 76.1611, Political Cable Rates and Classes of Time (OMB control number 3060-0501)].

The personally identifiable information (PII) in this information collection is in part covered by the

**OMB Control Number: 3060-0214**

**May 2012**

**Title: Sections 73.3526 and 73.3527, Local Public Inspection Files; Sections 76.1701 and 73.1943, Political Files**

system of records notice (SORN), FCC/MB-1, "Ownership of Commercial Broadcast Stations," 74 FR 59978 (2009). The Commission is currently drafting a Privacy Impact Assessment (PIA) for the records covered by this SORN.

The Commission has also prepared a second system of records notice, FCC/MB-2, "Broadcast Station Public Inspection Files," that will cover the PII contained in the broadcast station public inspection files to be located on the Commission's website. The Commission is also drafting a PIA for the records covered by this SORN.

Statutory authority for this collection of information is contained in Sections 151, 152, 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended.

**2. Indicate how, by whom and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

The public and FCC use the information in the public file to evaluate information about the broadcast licensee's performance, to ensure that broadcast stations are addressing issues concerning the community which it is licensed to serve and to ensure that stations entering into time brokerage agreements comply with Commission policies pertaining to licensee control and to the Communications Act and the antitrust laws.<sup>13</sup> Placing joint sales agreements in the public inspection file facilitates monitoring by the public, competitors and regulatory agencies.

Television broadcasters are required to send each cable operator in the station's market a copy of the election statement applicable to that particular cable operator. Placing these retransmission consent/must-carry elections in the public file provide public access to documentation of station's elections which are used by cable operators in negotiations with television stations and by the public to ascertain why some stations are/are not carried by the cable systems.

Maintenance of political files by broadcast stations and by cable television systems enables 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 for public office.

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<sup>13</sup> *In the Matter of Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Report and Order, 14 FCC Rcd 12559, 12601 (1999); [Revision of Radio Rules and Policies, Report and Order, 7 FCC Rcd 2755, 2789 \(1992\)](#), [recon., Memorandum Opinion and Further Notice of Proposed Rule Making, 7 FCC Rcd 6387 \(1994\)](#), [further recon., Second Memorandum Opinion and Order, 9 FCC Rcd 7183 \(1994\)](#).

**Title: Sections 73.3526 and 73.3527, Local Public Inspection Files; Sections 76.1701 and 73.1943, Political Files**

The FCC Form 388 – DTV Consumer Education Quarterly Activity Report retained by broadcast stations in their public inspection files is used by the public and FCC to evaluate broadcasters' consumer education efforts on the DTV Transition.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

The changes adopted in the *Second Report and Order* involve automated, electronic collection techniques. Currently, broadcast licensees have the option of maintaining all or part of their public file, including their political file in a computer database rather than in paper files. Therefore, instead of having to print all items and placing them in the public file, a station may store materials on a computer that is available to the public. This existing electronic option is not an on-line public file requirement, since the materials do not need to be available via the Internet. The changes adopted in the *Second Report and Order* will require television licensees to instead post their “electronic” public files on the Commission’s website, making the public files available over the Internet.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in item 2 above.**

No other agency imposes a similar information collection on the respondents. There are no similar data available.

**5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

This information collection does not impose any significant economic impact on a substantial number of small businesses/entities. However, any entity can request a waiver of the Commission’s rules, under 47 C.F.R. § 1.3, which allows the Commission to waive rules where good cause has been shown.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

If the information contained in the public file were not retained on a regular basis, the Commission and the public would not have timely information to evaluate a broadcaster's public service record. For example, the retransmission consent/must-carry election statements placed in the public file provide information not available elsewhere. As to the political files, if the required documentation was not retained, the public and competing legally qualified candidates running for public office would not have access to records to verify that equal rates and access were made available to all candidates.

**7. Explain any special circumstances that cause an information collection to be conducted in a manner: requiring respondents to report information to the agency more often than quarterly; requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; requiring respondents to submit more than an original and two copies of any document; requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

With the exception of the political file, there are no special circumstances that require respondents to report information more than quarterly. The Communications Act and the Commission's rules require that broadcasters place information into the political file "as soon as possible."<sup>14</sup> The Commission has long interpreted "as soon as possible" to mean "immediately absent unusual circumstances."<sup>15</sup> Therefore, consistent with the existing political file rules and statute, the *Second Report and Order* requires that stations must upload records to their online political file "immediately absent unusual circumstances."<sup>16</sup> Whether maintained at the station or online, the contents of the political file are time-sensitive.<sup>17</sup> A candidate has only seven days from the date of his or her opponent's appearance to request equal opportunities for an appearance.<sup>18</sup>

There are no special circumstances that require a written response in fewer than 30 days of receipt, or submit more than an original and two copies of any document.

With respect to proprietary trade secrets and confidential information, the Commission has instituted procedures to protect the confidentiality of any such information to the extent permitted by law. For example, licensees are explicitly authorized to redact information from contracts for the joint sale of advertising time that is confidential or proprietary in nature. See 73.3526(e)(16).

While the Commission has instituted procedures to protect confidential information, much of the public file is not confidential. A copy of the current FCC authorization to construct or operate the station must be retained in the public file until replaced by a new authorization. Applications tendered for filing shall be retained until final action has been taken on the application, except that applications for a new construction permit granted pursuant to a waiver showing shall be retained for as long as the waiver is in effect. A copy of contour maps shall be retained for as long as they reflect current, accurate information regarding the station. License renewal applications granted on a short-term basis shall be retained until final action has been taken on the license renewal application filed immediately following the shortened license term.

<sup>14</sup> 47 U.S.C. § 315(e)(3); 47 C.F.R. § 73.1943(c).

<sup>15</sup> Section 73.1943(c) of the Commission's rules provides that "[a]ll records required by this paragraph shall be placed in the political file as soon as possible . . . . As soon as possible means immediately absent unusual circumstances." 47 C.F.R. § 73.1943(c).

<sup>16</sup> *Second Report and Order* at ¶ 55.

<sup>17</sup> See 47 C.F.R. § 73.1943(c).

<sup>18</sup> See 47 C.F.R. § 73.1941(c).

Citizen agreements shall be retained for the term of the agreement. Ownership Reports and related materials shall be retained until a new, complete Ownership Report is filed with the FCC. The licensee need not retain a copy of the contracts listed in the Ownership Report so long as the licensee maintains an up-to-date list of such contracts in the file and provides copies of any contracts to requesting parties within 7 days. Political files required by Sections 73.1943 and 76.1701 shall be retained for a period of 2 years. A copy of the 1998 edition of the manual entitled "The Public and Broadcasting" must be retained at all times. Material relating to an FCC investigation or complaint must be retained until notified in writing that the material may be discarded. Donor lists must be retained for two years. The certifications of compliance with the pre-filing and post-filing local public notice announcements of the filing of applications for renewal of license shall be retained for as long as the application to which it refers. Time brokerage agreements<sup>19</sup> and joint sales agreements<sup>20</sup> must be retained as long as the contract or agreement is in force.

Letters and electronic mail messages issues/program lists, and records concerning commercial limits and Children's Television Programming Reports must be retained until final action has been taken on the station's next license renewal application. Television station's must-carry/retransmission election statements shall be retained for the duration of the three-year election period to which the statement applies.

These retention periods are necessary to provide the public and the FCC timely information to evaluate the station's performance during its entire license term or over the life of a contract.

**8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information prior to submission to OMB.**

The Commission published a notice in the *Federal Register* seeking public comment on the information collections contained in this supporting statement, *see* 76 FR 72144, published November 22, 2011. Four parties filed comments.

Three parties - the Sunlight Foundation, the Public Interest Public Airwaves Coalition, and the Brennan Center for Justice at NYU School of Law – each filed comments in support of the information collection. These commenters noted that the proposed item would modernize the public file, and would facilitate public access to the files.<sup>21</sup> As the Public Interest Public Airwaves Coalition discusses, stations currently must maintain the public inspection file and make it available to anyone who visits the stations during

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<sup>19</sup> "Time brokerage," also known as "local marketing," is the sale by a broadcast licensee of discrete blocks of time to a "broker" that supplies the station with programming to fill that time and sells the commercial spot announcements in that block. Confidential information in these agreements may be redacted. *See also* 47 CFR § 73.3613(d)(1).

<sup>20</sup> A Joint Sales Agreement is an agreement authorizing a broker to sell advertising time for the brokered station in return for a fee paid to the licensee. *See also* 47 CFR § 73.3613(d)(2).

<sup>21</sup> Public Interest Public Airwaves Coalition Comments at 2-5; Brennan Center Comments at 1; Sunlight Foundation Comments at 1.

normal business hours.<sup>22</sup> Members of the public may have to travel dozens of miles to access the file, and may have to take off work in order to do so.<sup>23</sup> The Public Interest Public Airwaves Coalition provides several examples of instances where some stations do not provide adequate access to members of the public who wish to review the file.<sup>24</sup> Members of the public seeking copies of items in the file are also required to pay for such copies, which can be costly.<sup>25</sup> Commenters also note that online posting of the public file will facilitate access to its contents, and will also reduce many of the burdens associated with maintenance of paper files, as well as station staff time dedicated to updating and supervising onsite public access to the file.<sup>26</sup>

NAB filed Comments opposing the collection. While NAB recognizes that “advances in digital and IP technologies make it more feasible to host a significant portion of television stations’ public inspection files online,”<sup>27</sup> it argues that the Commission should take further steps to minimize burdens on stations. Specifically, it argues that the Commission should not require stations to place their political file online, or impose new requirements with respect to shared services agreements and sponsorship identifications.<sup>28</sup> NAB also argues that the Commission should implement a pilot program or working group in order to evaluate all of the factors that will go into the online public file and develop a specific estimate of burden.<sup>29</sup> Each of these arguments is addressed below.

### **Political File**

The supporting commenters stressed the importance of placing the political file online, noting that the public has a strong interest in its contents and it can help inform citizens about the political marketplace.<sup>30</sup> These commenters noted that this information cannot be found in information filed with the Federal Election Commission or elsewhere.<sup>31</sup> NAB responded that placing the political file online will be unduly burdensome, as this information must be uploaded immediately, and the communication can take several

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<sup>22</sup> Public Interest Public Airwaves Coalition Comments at 5.

<sup>23</sup> *Id.* at 6.

<sup>24</sup> *Id.* at 7-10

<sup>25</sup> *Id.* at 10.

<sup>26</sup> *Id.* at 12.

<sup>27</sup> NAB Comment at 3-4.

<sup>28</sup> NAB Comments at Section III.

<sup>29</sup> NAB Comments at 7.

<sup>30</sup> Public Interest Public Airwaves Coalition Comments at 17-20; Brennan Center Comments at 1-2; Sunlight Foundation Comments at 1. The Sunlight Foundation also urged that the contents of the political file be made available to the public on a centralized, searchable, sortable database. Sunlight Foundation Comments at 2-3. The Commission declined to require such a database at this time, agreeing with commenters that converting the files to this format would take time and money, and the online public file should not be delayed in order to make all of the material in it available in such a manner. The Commission determined that broadcasters would not need to undertake the burdens of altering the form of documents already in existence prior to posting them to the online public file, and determined that such a finding a reasonable trade-off between maximizing searchability and the need to expedite access to broadcasters’ online public files. *Second Report and Order* at ¶ 85. The Public Interest Public Airwaves Coalition agrees that this is a reasonable trade-off as well. Public Interest Public Airwaves Coalition Comments at 15-16.

<sup>31</sup> Brennan Center Comments at 2-3; Sunlight Foundation Comments at 1.

forms.<sup>32</sup> NAB discusses the burden estimates provided by other commenters in response to the Commission's *FNPRM*, including assertions that moving the political file online will double staffing needs, and require stations to expend hundreds of hours uploading existing political files.<sup>33</sup> It also discusses concerns that the upload process will experience delays and difficulties, given the amount of data involved.<sup>34</sup> In response to these concerns, the Commission tailored the requirements in the *Second Report and Order* to minimize the costs of moving the political file online.<sup>35</sup>

First, the Commission exempted all stations from having to upload their existing political files. The Commission explained that because many stations' existing political files are large, and the retention period for the political file is shorter than for other portions of the public file, it would not require stations to incur the cost of upload their existing political files to the online public file. Rather, stations are required to upload political file documents only prospectively.<sup>36</sup>

Second, to better ensure that the Commission can accommodate television broadcasters' online filings and to limit any unforeseen start-up difficulties to those stations that are best able to address them, the Commission decided to phase-in the political file online posting requirement.<sup>37</sup> For the next two years, only stations that are affiliated with the top four national networks (ABC, NBC, CBS and Fox) and that are licensed to serve communities in the top 50 Designated Market Areas ("DMAs") are required to post political file documents online. All other stations are exempt from posting their political file documents to their online public file until July 1, 2014.<sup>38</sup> In addition, the Media Bureau will issue a Public Notice no later than July 1, 2013 to seek comment on the impact of this posting requirement, to enable us to consider whether any changes should be made before it takes effect for the other stations.<sup>39</sup>

Third, the Commission agreed with commenters to the *FNPRM* that it is essential that stations are able to upload public file documents, and particularly political files, efficiently, and that the online public file should be able to handle many stations uploading documents at the same time even during an election season.<sup>40</sup> The *Second Report and Order* discusses what it is doing to ensure this, and why upload issues in other contexts are not pertinent to the online public file.<sup>41</sup> The *Second Report and Order* also notes that the Commission has begun utilizing scalable cloud-based IT architecture

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<sup>32</sup> NAB Comments at 9. *But see* Public Interest Public Airwaves Coalition Comments at 21-22 ("It is insupportable to allow broadcasters' inexplicable and obdurate choice to rely on outmoded and inefficient methods of maintaining their files to thwart the Commission's attempts to make the political file.")  
more accessible to the public.

<sup>33</sup> NAB Comments at 10-12.

<sup>34</sup> NAB Comments at 6.

<sup>35</sup> *Id.* at ¶¶ 19-23.

<sup>36</sup> *Id.* at ¶ 2.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *See Second Report and Order* at ¶ 91.

<sup>41</sup> *Id.*

solutions to enhance the agency’s capabilities, and will do so here as well.<sup>42</sup>

In adopting its final requirements, the Commission weighed the costs and benefits of placing the political file online, and addressed the burden estimates provided in the record.<sup>43</sup> NAB discusses comments that were filed in response to the *FNPRM* which argue that two stations have estimated that the time involved in completing political ad buys will “essentially double” in an online environment, at a cost of \$80,000 per station.<sup>44</sup> NAB also discusses another *FNPRM* commenter assertion that just to upload the political file will be a full-time position.<sup>45</sup> In the *Second Report and Order*, the Commission found unpersuasive the argument that the time required to assemble the online political file will double or quadruple.<sup>46</sup> Instead of photocopying documents and placing them in a paper public file, stations will now upload to the online public file documents already stored in electronic format or scan paper documents (a process akin to photocopying) and upload the electronic versions. Given that the requirement to drag and drop the files into the Commission’s online public file will *replace* the requirement to photocopy and walk the documents to the local file, the Commission determined that fulfilling this requirement will not take substantially more time and may take less time to accomplish than existing practices.<sup>47</sup> Moreover, NAB fails to consider that the time involved in uploading documents electronically should decrease substantially with time as station personnel become more accustomed to this process.

NAB also discusses a comment that was filed in response to the *FNPRM* which argues that the proposed online public file, and specifically the political file and sponsorship identification requirements, would require each station to hire one to three employees at an average cost of \$30,000 to \$140,000 per station per year.<sup>48</sup> The Commission disagreed, determining that because the requirement to upload the files will replace rather than add to the existing file requirements, stations will be able to assign these responsibilities to existing staff, rather than hire additional staff.<sup>49</sup> The Commission failed to see how this requirement, which should involve no more effort than maintaining paper copies or electronic files at the station, could legitimately result in the need to hire three additional staff members, even in the heat of an election when the political file is most active.<sup>50</sup> The Commission also noted that because the size of the political file appears to roughly correlate with a station’s political advertising revenues, stations with little or no revenue will have little to no obligations under these rules, and stations with larger numbers of pages to upload will tend to have similarly large

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<sup>42</sup> *Id.*

<sup>43</sup> See *Second Report and Order* at ¶¶ 24-32.

<sup>44</sup> NAB Comments at 10.

<sup>45</sup> NAB Comments at 11.

<sup>46</sup> See *Second Report and Order* at ¶ 30.

<sup>47</sup> *Id.* See also Public Interest Public Airwaves Coalition Comments at 25-26 (“An online political file would not add to [broadcaster] responsibilities – rather such a requirement would help streamline and standardize these current filing practices to the benefit of both broadcasters and the public.”)

<sup>48</sup> NAB Comments at 11.

<sup>49</sup> *Second Report and Order* at ¶ 31.

<sup>50</sup> *Id.*

income associated with those pages.<sup>51</sup> When balanced against the revenues earned from political advertising – which brought broadcasters an estimated \$2.29 billion in 2010 and are expected to bring in even more in 2012 – the costs of complying with the online posting requirement seemed even less significant. The Commission’s review of political files from markets across the country generally reflected that stations receive political advertising revenues of thousands of dollars per page of political file that must be uploaded.<sup>52</sup> The Commission also agreed with commenters to the *FNPRM* who had noted that ad buyers, candidates, and the public must today undertake burdens to obtain information about the political file, including traveling from station to station to obtain political file information, as discussed above.<sup>53</sup> Given this, the Commission determined that the cost savings and benefits provided to the public outweighed the minimal costs placed upon broadcasters.

### **New Requirements**

NAB also argues that the Commission should not add new record retention requirements with respect to shared services agreements and sponsorship identifications, generally arguing that such requirements will be unduly burdensome with little benefit to the public.<sup>54</sup> Agreeing with NAB’s position, the Commission declined to adopt any new disclosure obligations with respect to sponsorship identifications and shared services agreements in the *Second Report and Order*.<sup>55</sup> The Commission determined that it was inadvisable to impose new reporting requirements at the same time stations are transitioning to the online public file, choosing instead to ensure that the *Second Report and Order*, in all major respects, involves changing only the form of disclosure and location of material already required to be included in the public files.<sup>56</sup>

### **Pilot Program**

Finally, NAB urges the Commission to establish a working group and/or pilot program in order to evaluate carefully all of the many factors that will go into the online public file.<sup>57</sup> NAB asserts that it is only through this process that the Commission will be able to develop a “specific, objectively supported estimate of burden.”<sup>58</sup> The Commission declined to adopt a pilot program in the *Second Report and Order*.<sup>59</sup> The Commission has been exploring for more than 10 years the best way to make broadcasters’ public files more accessible. A broad group of commercial and noncommercial broadcasters participated in every phase of the Commission’s proceeding. The Commission

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<sup>51</sup> *Second Report and Order* at ¶ 32.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> NAB Comments at 12-15. The Public Interest Public Airwaves Coalition supported these new record-keeping requirements, generally arguing that these records would provide the public with valuable information regarding sponsorships that are difficult to view over-the-air, and agreements that that may be affecting the quality, amount and independence of local news and information available in the community Public Interest Public Airwaves Coalition Comments at 26-35.

<sup>55</sup> *Second Report and Order* at ¶81-84.

<sup>56</sup> *Second Report ant Order* at ¶ 81.

<sup>57</sup> NAB Comments at 7.

<sup>58</sup> *Id.*, citing 5 C.F.R. § 1320.8(a)(4).

<sup>59</sup> *Second Report ant Order* at ¶ 105.

determined that a working group or pilot program is not necessary to ensure that the process of implementing an online public file is successful, and could unduly delay its implementation.<sup>60</sup> The Commission is undertaking rigorous testing of the online public file to ensure a smooth user experience, and will provide opportunities for user testing and education before stations are required to upload their online public files.<sup>61</sup> The rules will require stations simply to upload information to a Commission-hosted online public file, a process similar to uploading applications to the FCC's CDBS system – which licensees have been doing for more than ten years. As discussed above, only 200 stations, or approximately 11% of all stations, will be required to upload their political files for the first two years. While this is not a pilot program, this smaller group of stations, which as major-network affiliates are generally likely to be relatively capable and sophisticated users of technology, can assist in meeting NAB's stated goal of addressing implementation issues and technical challenges as they arise. Commission staff will be dedicated to assisting stations with any issues they may confront after implementation of the online public file.<sup>62</sup> The Commission will also explore the option of providing user or peer support groups to help stations identify and work through implementation issues. Such support groups can assist the Commission in identifying whether any issues are common to many users, or station-specific.<sup>63</sup>

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

No payment or gift was provided to the respondent.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation or agency policy.**

Most of the documents comprising the public file consist of materials that are not of a confidential nature. See Response to Question 7 describing those materials. With respect to any such documents that may contain proprietary trade secrets and confidential information, the Commission has instituted procedures to protect the confidentiality of any such information to the extent permitted by law. For example, licensees are explicitly authorized to redact information from contracts for the joint sale of advertising time that is confidential or proprietary in nature, and the proposal to require other shared services agreements also allows for the redaction of information that is confidential or proprietary in nature.

Respondents complying with the information collection requirements may request that the information they submit be withheld from disclosure. If confidentiality is requested, such requests will be processed in accordance with the Commission's rules, 47 CFR § 0.459.

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<sup>60</sup> *Id.* at ¶ 105.

<sup>61</sup> *Id.* at ¶ 106.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

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Should respondents submit any PII as part of the information collection requirements, the FCC has an existing system of records, FCC/MB-1, “Ownership of Commercial Broadcast Stations,” that may partially cover this PII, as noted in Questions 1 and 11. In addition, the Commission has prepared a second system of records notice, FCC/MB-2, “Broadcast Station Public Inspection Files,” that will cover the PII contained in the broadcast station public inspection files to be located on the Commission’s website. The Commission is also drafting a PIA for the records covered by this SORN.

**11. Provide additional justification for any questions of a sensitive nature.**

This information collection does not address any private matters of a sensitive nature. Any PII that is submitted as part of the information collection requirements may be covered in part by the system of records notice, FCC/MB-1, as noted in Questions 1 and 10. In addition, the Commission will redact any other personal information before it becomes available for public inspection, at the request of the submitter.

The Commission has also prepared a second system of records notice, FCC/MB-2, “Broadcast Station Public Inspection Files,” that will cover the PII contained in the broadcast station public inspection files to be located on the Commission’s website. The Commission is also drafting a PIA for the records covered by this SORN.

**12. Provide estimates of the hour burden of the collection of information. The statement should: indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance.**

The public burden is estimated as follows. These estimates are consistent with the *Second Report and Order*, which determines that having the Commission host stations’ public file information will ultimately reduce costs for stations – compared to the existing local file requirements.

<b>Respondents</b>	<b>Number of Respondents/ Responses</b>	<b>Respondent’s Hourly Burden</b>	<b>Total Annual Burden</b>	<b>Hourly In-House Cost</b>	<b>Annual In-House Cost</b>
<b>Local Public Inspection Files:</b>					
<i>(1) General Maintenance</i>					
<b>Commercial Radio Stations</b>	11,317	52 hours	588,484 hrs.	\$15.54/hr.	\$9,145,041
<b>Noncommercial Education Radio</b>					

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<b>Respondents</b>	<b>Number of Respondents/ Responses</b>	<b>Respondent's Hourly Burden</b>	<b>Total Annual Burden</b>	<b>Hourly In- House Cost</b>	<b>Annual In- House Cost</b>
<b>Stations</b>	<b>3,712</b>	<b>104 hours</b>	<b>386,048 hrs.</b>	<b>\$15.54/hr.</b>	<b>\$5,999,186</b>
<b>Commercial TV Stations</b>	<b>1,367</b>	<b>50 hours</b>	<b>68,350 hrs.</b>	<b>\$15.54/hr.</b>	<b>\$1,062,159</b>
<b>Noncommercial Educational TV Stations</b>	<b>396</b>	<b>45 hours</b>	<b>17,820 hrs.</b>	<b>\$15.54/hr.</b>	<b>\$276,923</b>
<b>Class A Television Stations</b>	<b>473</b>	<b>50 hours</b>	<b>23,650 hrs.</b>	<b>\$15.54/hr.</b>	<b>\$367,521</b>
<i>(2) Community_Issue List</i>					
<b>Commercial Radio Stations</b>	<b>11,317</b>	<b>52 hours</b>	<b>588,484 hrs.</b>	<b>\$26.00/hr.</b>	<b>\$15,300,584</b>
<b>Commercial TV Stations</b>	<b>1,367</b>	<b>52 hours</b>	<b>71,084hrs.</b>	<b>\$26.00/hr.</b>	<b>\$1,848,184</b>
<b>Class A Television Stations</b>	<b>473</b>	<b>52 hours</b>	<b>24,596 hrs.</b>	<b>\$26.00/hr.</b>	<b>\$639,496</b>
<i>(3) Commercial Limits</i>					
<b>Commercial TV Stations</b>	<b>1,367</b>	<b>26 hours</b>	<b>35,542 hrs.</b>	<b>\$26.00/hr.</b>	<b>\$924,092</b>
<b>Class A Television Stations</b>	<b>473</b>	<b>26 hours</b>	<b>12,298 hrs.</b>	<b>\$26.00/hr.</b>	<b>\$319,748</b>
<i>(4) Must Carry/Retransmission Consent</i>					
<b>Noncommercial Educational TV stations</b>	<b>396</b>	<b>50 hours</b>	<b>19,800 hrs.</b>	<b>\$26.00/hr.</b>	<b>\$514,800</b>
<b>Commercial TV Stations</b>	<b>1,367</b>	<b>50 hours</b>	<b>68,350 hrs.</b>	<b>\$26.00/hr.</b>	<b>\$1,777,100</b>

Respondents	Number of Respondents/ Responses	Respondent's Hourly Burden	Total Annual Burden	Hourly In- House Cost	Annual In- House Cost
Class A Television Stations	473	50 hours	23,650 hrs.	\$26.00/hr.	\$614,900
<i>Political Files:</i> <sup>64</sup>					
Commercial Broadcast Stations	13,157	15 hours	197,355hrs.	\$26/hour	\$5,131,230
Noncommercial Broadcast Stations	4,108	1 hour	4,108 hrs.	\$26/hour	\$106,808
Low Power TV	2,001	1 hour	2,001 hrs.	\$26/hour	\$52,026
Cable Systems	5,292	5 hours	26,460 hrs.	\$18/hour	\$476,280
<b>TOTALS:</b>	<b>59,056</b>		<b>2,158,080 hours</b>		<b>\$44,556,078</b>

**Total Number of Annual Respondents: 24,558 Licensees/Permittees/Cable Operators**

**Total Number of Annual Responses: 59,056 (responses)**

**Total Annual Burden Hours: 2,158,080 Hours**

**Total Annual "In-house" Cost: \$44,556,078**

<sup>64</sup> These figures represent a combined annual hourly burden average among all stations in the listed categories. We note that annual burden hours at individual stations will vary widely as the amount of candidate time purchased at the station--information for which must be placed in the political file--will vary based upon how attractive a station's/system's demographics/format are to political buyers and where a particular year falls in the four-year presidential election cycle. This cycle includes: the presidential election year--presidential primaries and general elections for president, 435 seats in the House of Representatives and one third of the U.S. Senate seats; the so-called "mid-term" election year--primaries and general elections for all seats in the House of Representatives and one third of the U.S. Senate seats; and two years with elections which deal almost entirely with state and local elections, with perhaps an occasional special federal election. We note that every year in the cycle would have some state and local elections.

**13. Provide estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in items 12 and 14).**

- (a) Total annualized capital/startup costs: 2,236 respondents<sup>65</sup> x \$394.56<sup>66</sup>= \$882,236.16 (rounded to \$882,236.00)
- (b) Total annual costs (O&M): None
- (c) Total annualized cost requested: \$882,236.00

**14. Provide estimates of annualized costs to the Federal government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), any other expenses that would not have been incurred without this collection of information.**

The Commission estimates that the initial outlay to enhance the Consolidated Database System and create the online public file database will be approximately \$500,000, and that annual costs will be approximately 30 percent of the initial costs, or \$150,000, for IT operations and general attributable overhead.

**15. Explain the reasons for any program changes or adjustments reported for this information collection.**

The estimates have been modified to reflect comments received in response to the *Federal Register* seeking public comment on the information collections contained in this supporting statement (see 76 FR 72144, published November 22, 2011); the *Second Report and Order* as adopted; and the Commission's cost/benefit analysis.

In question 12, the total annual respondents and responses have been modified to reflect changes in station totals. The total annual burden hours have been modified to reflect the decision in the *Second Report and Order* not to add new retention requirements, and our review of public files for stations in Baltimore, Maryland. In particular, our review of non-commercial television files led us to substantially decrease the number of general maintenance hours for such stations. We have decreased the general maintenance burdens for other television stations as well, and may decrease them further after stations have completed their transition to the online public file. In question 13, we have revised the total annualized capital/startup costs in accordance with our review of television station public files in the Baltimore DMA.

Therefore, this collection has program changes/decreases to the annual burden hours of 18,735. Also,

<sup>65</sup> This number of respondents was calculated as follows: 1,367 commercial TV station + 396 noncommercial educational TV stations + 473 class A TV stations = 2,236 respondents.

<sup>66</sup> As part of the cost benefit analysis of the *Second Report and Order*, the Commission reviewed all of the television public files for the Baltimore DMA. This review indicated that stations, on average, may need to spend \$394.56 in one-time capital costs in order to out-source the scanning of the existing public files. While stations may choose to scan and upload these files in-house at lower costs, for purposes of this information collection, we are assuming that stations will choose to out-source this work.

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there are program changes/increases to the annual cost burden of 882,236 which are due to the requirements that were adopted in FCC 12-44.

**16. For collections of information whose results will be published, outline plans for tabulation and publication.**

The data will not be published.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection (IC), explain the reasons that display would be inappropriate.**

OMB approval of the expiration date of the information collection will be displayed at 47 C.F.R. Section 0.408.

**18. Explain any exceptions to the Certification Statement.**

On November 22, 2011, the Commission published a notice in the *Federal Register* seeking public comment on the information collections contained in this supporting statement. See 76 FR 72144. In the notice, the following numbers were published: the number of respondents as 25,422, the number of responses as 59,833, the annual burden hours as 2,158,909 and the annual cost as \$801,150.00. With this submission to OMB, these figures are modified as follows: 24,558 respondents, 59,056 responses, 2,158,080 hours and \$882,236.00 in costs. There are no other exceptions to the Certification Statement.

**B. Collections of Information Employing Statistical Methods**

No statistical methods are employed.