STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI

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

For the past three years, the FCC has been working to harness the power of digital technologies to make public information more accessible to the public.

As part of this effort to promote transparency, we've been transitioning filings and comments and recordkeeping from paper to the Internet – everything from common-carrier tariffs to broadcaster renewal and station modification applications. We stream online all of our Commission meetings, hearings and workshops, and we've developed innovative and informative digital tools like the interactive National Broadband Map and Spectrum Dashboard.

Consistent with this effort, the Commission's Information Needs of Communities report recommended last year moving television broadcaster public files physical filing cabinets to virtual Internet access. These files contain information, for example, about children's programming, equal employment opportunities, and political advertising. Public disclosure of this information is required by law and part of the public's basic contract with broadcasters in exchange for use of the spectrum and other benefits.

The INC report was authored by Steve Waldman, a highly respected former journalist and Internet entrepreneur, and it was widely praised for its thoughtfulness and fair-minded proposals for our changing world.

The Order on which we're voting today implements the INC report recommendation – so that the public file will be accessible not just to people who can trek to broadcasters' studios, but to anyone with Internet access.

In filing supporting comments, the deans of leading journalism schools describe this as: "representing in a specific instance the overall spirit of the current FCC, which has not chosen to try to reinstitute strict regulation of broadcasting content, but, instead, has strongly promoted the use of the Internet to give citizens access to information."

Editorial writers have called our proposal "an excellent idea". I call it common sense.

It fulfills the core intent of the public file rules: to provide the public access to the information in the "public file".

It not only enhances transparency and informs the public; it also drives efficiency and cost-savings, since our Order would allow broadcasters to shift completely from paper to digital.

But despite broad support for this proposal, it has been met with an evolving series of critiques from opponents of online disclosure.

First, we were told that the public file is already readily available; no need to change a thing. But when FCC staff went to Baltimore to experience what the public experiences, they found that it took 61 hours to retrieve information from the public files at eight stations, and they were quoted copying costs of close to $1,700.

The next argument was that moving public file information online would be technically infeasible. That's a hard argument to sustain when businesses are routinely digitizing their papers and systems, and indeed in other contexts urging the FCC to move to electronic filings.

Another objection was burden and cost. But the record reveals the unsurprising fact that businesses, including broadcasters, are moving from paper to digital every day. And our staff's cost-benefit analysis demonstrates that the claimed costs and burdens were dramatically overstated.

Indeed, while there will be very modest transition costs, once the transition is complete it will save money for broadcasters.

Meanwhile, the broad public benefits of transparency and disclosure are substantial.

Once it became clear that the proposed reforms would make public information much more accessible, that it can be done easily, and in a way that ultimately saves money, opponents of the proposal focused on the political file. They asked that the Commission exclude the political file from the general obligation of online disclosure.

That does acknowledge that an important question here is not: why include political files in online disclosure, but rather: why adopt a special exemption from disclosure for political file?

Proponents of this special exception offered a few arguments for this. First, that information about political spending should be handled exclusively by the FEC. But this is contrary to the plain language of the law.

In the Bipartisan Campaign Reform Act of 2002, Congress explicitly amended the Communications Act to require broadcasters to make the "political record … available for public inspection," and the Act states that "the Commission" – the Federal Communications Commission – "shall prescribe appropriate rules and regulations" to implement the political record provision. This was largely codified by rules the FCC already had in place. The FCC's role here is clear, essential, and longstanding.

That brings us to the latest objection – that online disclosure would cause commercial harm. Opponents have argued that the rates broadcasters charge for political advertising are commercially sensitive and should, in effect, be censored from the public file as it appears online. But, one, Congress explicitly requires broadcasters to disclose this information to the public; two, broadcasters already do; and three, competitors and customers already have access to this information and are already reviewing it where they have an economic incentive to do so.

The argumentation here perhaps is not a surprise. After the Bipartisan Campaign Reform Act became law in 2002, the National Association of Broadcasters and others sued to invalidate the political file provisions. They fought it to the Supreme Court, and they lost.

The Supreme Court in that case explicitly rejected all of the largely similar arguments. On the burden and cost-benefit argument, for example, the Supreme Court described the annual costs of the political file provisions overall as "a few hundred dollars at most," calling that "a microscopic amount compared to the many millions of dollars of revenue broadcasters receive from candidates who wish to advertise".

The Supreme Court also said the political file requirements "will help make the public aware of how much money candidates may be prepared to spend on broadcast messages."

Thus the Supreme Court has confirmed that an important purpose of the political file requirement was informing the public, not just candidates.

And in last year's *Citizen United* case, the Supreme Court said that the Internet enhances the accountability benefits of disclosure requirements.

Others have looked at the arguments of opponents of online disclosure and found them wanting. Bloomberg View analyzed the burden and jobs arguments and concluded that "neither is credible." The New Republic examined the position of the opponents of political file disclosure and concluded: "the arguments they offer are so flimsy they collapse on inspection."

Late last Friday, a group of broadcasters submitted a proposal.

They described it as a compromise. But stakeholders who had argued for online disclosure did not support the new proposal.

The key feature of that proposal, and others that were offered in recent days, was to censor from online access information that Congress explicitly required to be made public.

Somewhat ironically, the proposal would also be significantly more burdensome on broadcasters than the plan that opponents had earlier said was too burdensome – because it would require both the maintenance of paper files *and* the submission of separate newly created information.

Our staff carefully analyzed this proposal and other proposals made, and concluded that they were not workable.

Now, I recognize that some leaders in the broadcasting industry agree that moving files online makes sense, and I appreciate the efforts by some to forge a solution that could have broad support inside and outside the industry. I particularly appreciate the efforts of a small group of broadcasters and their representatives who have been working on this valiantly since we started working on the INC report. Similarly, members of the journalism and public interest communities have also worked hard to identify mechanisms to even better inform the public.

As technologies advance and markets evolve, I look forward to engaging with all stakeholders on ways to harness technology to ensure that the goals of the public file provisions of the Communications Act are met effectively and efficiently in the 21st century.

Today, we have before us a straightforward issue.

In 2002, Congress required that certain specified information be made available to the public, and it did so because of the public benefits that flow from transparency. The statute specifically says *all* the information in the political file must be made "available for public inspection."

The question in front of us is whether, in the 21st Century, "available for public inspection" means stuck in office filing cabinets, or available online.

Or as one person put it: "Who can be against mom, apple pie and the American way of transparency?"

I thank my colleagues for their input, and I thank Commission staff who have worked so hard on this item. In particular, I want to thank Sherrese Smith in my office, whose outstanding leadership, policy and legal skills, and energetic resolve were essential to today's Order. I'd also like to thank Bill Lake, Holly Saurer, and the Media Bureau staff who have done a tremendous job on this item.