

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Expansion of Online Public File Obligations	)	MB Docket No. 14-127
To Cable and Satellite TV Operators and	)	
Broadcast and Satellite Radio Licensees	)	
	)	

**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

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March 16, 2015

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I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ responds to the *Notice of Proposed Rulemaking* in the above-captioned proceeding requesting comment on various video and audio service providers' public file obligations.² This *NPRM* follows an earlier Public Notice seeking comment on expanding the Commission's online public file requirements beyond only broadcast TV licensees to additional entities, including cable and satellite TV operators, as well as broadcast and satellite radio licensees.³

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 *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licenses*, Notice of Proposed Rulemaking, 29 FCC Rcd 15943 (2014) (*NPRM*).

³ *Media Bureau Seeks Comment on Petition for Rulemaking Filed by the Campaign Legal Center, Common Cause and the Sunlight Foundation Seeking Expansion of Online Public File Obligations to Cable and Satellite TV Operators: Bureau Also Seeks Comment on Expanding Online Public File Obligations to Radio Licensees*, Public

As discussed in detail below, broadcasters wholly support regulatory parity between video providers' online public and political file requirements. The Commission in this proceeding must similarly ensure regulatory parity between any online public file obligations of audio service providers.

With regard to extending online public and political file requirements to broadcast radio, we appreciate that the *NPRM* took into account the diverse nature, size and staffing of radio stations, as previously raised in this proceeding.⁴ If the Commission adopts its proposed rules to require radio stations to transition to online public files, NAB concurs with many of the *NPRM*'s implementation time frames and exemptions from online requirements. In particular, we strongly urge the Commission to permanently exempt all noncommercial educational radio stations and commercial stations with fewer than five full-time employees from mandatory online file requirements. NAB also agrees with the *NPRM* that the public interest is best met if the FCC phases in the transition to online public files for radio stations with five or more full-time employees outside the top 50 markets. While proposed to transition more rapidly, those radio stations in the top 50 markets with five or more full-time employees

Notice, MB Docket No. 14-127 (rel. Aug. 7, 2014) (Public Notice). On July 31, 2014, the Campaign Legal Center, Common Cause and the Sunlight Foundation (hereinafter "Petitioners") had requested that the FCC initiate a rulemaking to expand to cable and satellite systems the requirement applicable to broadcast TV licensees that public and political files be posted to the FCC's online database. See *Requiring Cable and Satellite Systems to File Their Physical Public Files in the FCC-Hosted Online Database*, Petition for Rulemaking (July 31, 2014) (Petition). In addition to seeking comment on the Petition, the Media Bureau in its Public Notice also sought comment on whether to initiate a rulemaking to require radio broadcast stations to utilize the online public file database.

⁴ See, e.g., Comments of the National Association of Broadcasters, MB Docket No. 14-127, at 4-7 (Aug. 28, 2014) (NAB Comments).

must be given at least six months to complete the uploading of their existing public file materials, much like the transition period the Commission established for broadcast television stations. Additionally, NAB offers several modest proposals to (1) ease congestion on the FCC's online filing system during high volume filing windows; (2) reduce the unequal burden on AM stations in the uploading of contour maps; and (3) ensure compatibility between the FCC's online public file database and third-party web hosting entities.

Finally, NAB observes that the fundamental purpose of the public file is to provide information to local viewers and listeners about a station's service to its local community. NAB recognizes that questions about the basic purposes of stations' public files, and how those purposes should influence the FCC's enforcement policies and procedures in an era of online accessibility, have not been raised in the current *NPRM*. As discussed below, however, NAB recommends that the Commission issue a further notice examining how the FCC's complaint procedures and enforcement priorities relating to public files also should be updated in light of the growth of broadband.

II. BROADCASTERS FULLY SUPPORT REGULATORY PARITY BETWEEN VIDEO PROVIDERS' PUBLIC FILE REQUIREMENTS

NAB agrees with the Commission that there is no reason its online public and political file requirements applicable to broadcast TV stations should not extend to cable and satellite television operators. These companies are already required to maintain public files, including, specifically, political files.⁵ The courts "have long held that an

⁵ See 47 C.F.R. § 76.1701 (cable political file requirement); 47 C.F.R. § 25.701(d) (DBS political file rule); see *also* 47 C.F.R. § 76.1700 (cable public inspection records); 47 C.F.R. §§ 25.70(e) & (f); 25.601; 76.1702 (other DBS public file requirements).

agency must provide adequate explanation before it treats similarly situated parties differently.”⁶

NAB sees no rational basis for requiring all television broadcasters, but not their competitors in the video marketplace, to disclose online their public and political file materials, including sensitive advertising rate information. Extending the online public file requirements to cable and satellite operators should be relatively simple because the Commission has already created the necessary database. Moreover, as the Commission observes, cable public inspection files are only about *half the size* of television station files because they do not contain nearly as many elements.⁷ The uploading of these more limited cable public file materials should not unduly burden cable operators. The Commission should accordingly adopt its proposal to extend its online public file requirements to cable and satellite operators.

III. ANY FCC RULES REQUIRING RADIO STATIONS TO PLACE THEIR PUBLIC AND POLITICAL FILES ONLINE MUST INCLUDE SIGNIFICANT ACCOMMODATIONS FOR SMALLER STATIONS

As an initial matter, the Commission must impose online public and political file obligations for satellite radio if it determines to impose those requirements on terrestrial broadcast radio stations. There is no rational basis for imposing additional disparate regulations on radio broadcasters, but not to their competitors in the audio marketplace.

⁶ *Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164, 1172 (D.C. Cir. 1994).

⁷ Quarterly issues/programs lists, citizen agreements, contour maps, ownership reports and related materials, children’s television programming reports and letters and emails from the public are not included in cable operators’ public files. *NPRM* at fn. 125. The absence of these documents in cable operators’ public files demonstrates the disparate regulatory burdens on broadcast stations. It is particularly notable that cable operators’ public files do not include letters and emails from the public, given widespread reports about consumer dissatisfaction with some MVPDs’ services.

The same rationale for placing online broadcast radio stations' public files applies equally to satellite radio licensees.

A. Reasonable Time Frames Are Essential For An Orderly Transition To Online Public Files, Including For Larger Stations In The Top 50 Markets

As of December 31, 2014, there were 15,432 licensed AM, FM commercial and FM educational stations.⁸ The disparity of station resources and personnel among these thousands of radio stations is significant. For some stations, the person tasked with maintaining the public file may also be the on-air talent, the sales manager, as well as the IT "professional." Other station groups may have the resources to centralize online file operations, and, in fact, a small subset of stations have begun to post their information online on a voluntary basis. Thus, at the outset, we agree with the Commission that those radio stations choosing to transition voluntarily to an online system should be permitted to do so.⁹

NAB also agrees with the Commission that the five-employee level relevant for compliance with many of the FCC's Equal Employment Opportunity requirements is a logical threshold for establishing time frames and exemptions for radio stations' online public and political file obligations. As the *NRPM* notes, information as to whether a station has five or more full-time employees is readily available via the FCC's website.¹⁰ The five-employee threshold is also generally appropriate for evaluating burdens on station personnel, particularly during busy election seasons when many political

⁸ *Broadcast Station Totals as of December 31, 2014*, FCC News Release (Jan. 7, 2015).

⁹ *NPRM* at ¶ 68.

¹⁰ *NPRM* at ¶ 69, n.186.

agreement forms or contracts must be uploaded to online political files in very short time periods to comply with the FCC's immediacy requirements.¹¹

We urge the Commission to take a measured approach in implementing any online public file requirement it ultimately may adopt for radio stations, whatever their size. Consistent with the FCC's rules for TV online public files, NAB agrees with proposals: (1) for the Commission to port over to stations' online files all public file documents that are also maintained by the Commission (either on CDBS or its successor LMS);¹² (2) not to require stations to upload letters and email from the public to their online files;¹³ and (3) to require the uploading of political file materials only on a going-forward basis, so no radio station will need to place their existing political file documents online.¹⁴ These proposals will help reduce unnecessary burdens on radio stations.

The Commission's proposed timetable sets forth generally reasonable benchmarks. We agree that, should the FCC require radio stations to place their public files online, commercial radio stations with five or more full-time employees in the 50 largest radio markets, as defined by Nielsen Audio, should transition before smaller stations. The Commission should make clear, however, the different time frames for beginning to upload *new* public file materials and for uploading stations' far more

¹¹ The Commission interprets the requirements for updating political files "as soon as possible" to mean "immediately, under normal circumstances." *Codification of the Commission's Political Programming Policies*, Report and Order, 7 FCC Rcd 678, 698 (1991). See also 47 U.S.C § 315(e)(3); 47 C.F.R. § 73.1943(c).

¹² *NPRM* at ¶ 63.

¹³ *Id.* at ¶ 74.

¹⁴ *Id.* at ¶ 65.

extensive *existing* public file materials. Consistent with its requirements for TV station online public files, the Commission should allow radio stations six months following announcement of OMB approval of any new online requirements to complete their uploading of existing public file documents into the FCC-hosted online file.¹⁵ A shorter time period, such as 60 days after announcement of OMB approval, should be sufficient for stations to begin complying with requirements to place new public file documents online.¹⁶ NAB suggests a similar distinction between existing and new public file materials should apply to any other radio stations that may, in time, be required to place their public files online.

B. Radio Stations With Five Or More Full-Time Employees Outside The Top 50 Markets Should Be Given Significantly More Time To Comply With Any Online Public File Requirement

The Commission proposes a two-year transition period for radio stations outside the top 50 markets with five or more full-time employees to comply with any new online public file obligations.¹⁷ Such a two-year period would be consistent with the Commission's tolling of the requirement for smaller market TV stations to place their political files online, where the FCC found it "appropriate to require stations with a greater market reach to undertake this time-sensitive transition first, as they will be more

¹⁵ See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4587 ¶ 116 (2012) (*Second Report and Order*).

¹⁶ The Commission made the requirement for TV stations to place new public file material online effective 30 days after OMB approval. *Id.* It would be reasonable for the Commission to make any similar rule for radio stations effective 60 days after OMB approval, given the more limited personnel and financial resources of most radio stations.

¹⁷ *NPRM* at ¶ 69.

likely to have dedicated resources to address any implementation issues that arise, if necessary.”¹⁸ A similar approach is appropriate here.

We stress that the proposed transition period for smaller market stations appears reasonable only so long as those stations have *reliable* Internet access at the time the rules become effective. Some radio stations located in remote areas, such as Alaska, Maine and parts of the Southwest, do not have access to reliable Internet service or, alternatively, do not have any Internet access.¹⁹ The Commission also should establish a clear process for radio stations in these smaller markets to seek waivers based on undue burden, technical infeasibility and other relevant factors.

C. Radio Stations With Fewer Than Five Full-Time Employees and Non-Commercial Educational (NCE) Stations Should Be Permanently Exempt From Mandatory Online Public File Requirements

NAB supports a permanent exemption to any mandatory online public file requirement for non-commercial educational stations, as well as all commercial stations with fewer than five full-time employees.²⁰ The differences between a large radio station (or station group), and a smaller one include, but are not limited to: the number of employees²¹; the level of financial resources²²; whether a station has automated its

¹⁸ *Second Report and Order*, 27 FCC Rcd at 4558.

¹⁹ NAB Comments at 6, n.13. According to Native Public Media, uploading public files would be technically impossible for many Native NCE radio stations due to the lack of broadband access. Comments of Native Public Media, MB Docket No. 14-127, at 2, 6 (Aug. 28, 2014).

²⁰ *NPRM* at ¶ 69.

²¹ Previous commenters stressed the very limited staff at many radio stations, especially those in smaller markets. See, e.g., Comments of the Missouri and California Broadcasters Associations, MB Docket No. 14-127, at 3-4 (Aug. 28, 2014).

²² See *id.* at 4 (comparing disparate revenues earned by stations in different sized markets).

advertising traffic services; whether it has in-house computing resources; whether the station has in-house broadband capacity; and, importantly, whether the station facility is located in an area that even has Internet access. Stations with fewer than five full-time employees have extremely constrained resources and often struggle to manage day-to-day operations, including complying with FCC reporting and other requirements, maintaining station technical operations, working with local advertisers, timely responding to candidate requests, and, of course, responding to their local communities.²³

Many small radio stations rely on volunteers or part-time employees to ensure day-to-day operations are met. For example, a college radio station (whether commercial or noncommercial) may have only one or two full time employees, and must rely on temporary, volunteer students to assist in fulfilling current FCC requirements. To impose the additional burden of uploading online public file materials simply does not serve the public interest. Similarly, imposing additional administrative obligations on NCE stations would divert their limited (and frequently listener provided) financial and other resources away from their primary mission, contrary to the public interest.²⁴ NAB further observes that if any small commercial or NCE radio station determines that

²³ NAB's small television station members report that the daily maintenance of the online political file has necessitated a reallocation of assignments and employee priorities (including coverage of local events, social media presence, etc.).

²⁴ See, e.g., Comments of Native Public Media at 4. To the extent that the Commission supports placing radio stations' public files online stems from a desire to place political files online, we note that NCE radio stations generally do not maintain political files, or at least not substantial ones. Under federal law, noncommercial stations are in fact exempt from "reasonable access" requirements for federal candidates. 47 U.S.C. § 312(a)(7).

transitioning to an online public file actually would be more cost effective than maintaining a traditional public file, as the Commission asserted in the television context,²⁵ then these radio stations would be free to voluntarily upload their public file materials to the FCC's online database.

Should the Commission decide not to permanently exempt these two classes of stations, NAB proposes the following. First, the Commission should require only the prospective uploading of all public files materials, not just political file materials, to reduce the burdens on these smaller stations. Second, it should consider a longer phase-in period, such as three to five years, determined by market size. Finally, the Commission should entertain waiver exemptions due to undue economic burden, technical feasibility and other relevant factors.²⁶

D. The Commission Should Modernize Its AM Contour Maps And FCC Form 302-AM

All radio stations are required to include service contour maps submitted with any FCC applications in their public files. The Commission intends to create and port over from its existing database FM contour maps but asks whether it should require AM

²⁵ *Second Report and Order*, 27 FCC Rcd at 4549.

²⁶ For example, Section 613(d)(3) of the Communications Act permits video programming providers or program owners to petition the FCC for an exemption from the closed captioning rules based on a showing that compliance would be "economically burdensome." 47 U.S.C. § 613(d). Here too the Commission should grant exemptions if complying with an online public file requirement would be unduly burdensome, for economic or technical reasons, for very small and NCE radio stations. *See supra* p.8 & n.19 (discussing lack of reliable Internet access in some areas of the country).

stations to upload their contour maps because of “the complexities of AM contour mapping.”²⁷

NAB believes this is an opportune time for the Commission to upgrade its database to reduce undue and unequal burdens on AM stations, including with regard to contour mapping. We note that FCC Form 302-AM, Application for AM Broadcast Station License, is available for paper filing only, unlike the application for FM station licenses (Form 302-FM), which must be filed electronically. Modernizing the FCC’s mapping capabilities should enable the FCC to update Form 302-AM to allow electronic filing, thereby ensuring that additional information can be located on the Commission’s website and permitting the Commission to port over AM stations’ contour maps from its database to stations’ online public files, as it already is able for FM and TV stations. In the interim, we propose that AM stations in the Top 50 rated markets upload their contour maps on a voluntary basis. This approach should facilitate the Commission’s goals of modernizing and increasing the accuracy of its database and of reducing unnecessary burdens on AM stations.²⁸

E. The Commission Should Extend And Stagger Its Filing Windows For Both Radio And Television Stations

There are currently 15,432 radio stations, more than seven fold the number of full power and Class A television stations that already have placed their public inspection files online. Thus, the sheer number of radio and television stations, along with cable

²⁷ *NPRM* at ¶ 72.

²⁸ See *Revitalization of the AM Radio Service*, Notice of Proposed Rulemaking, 28 FCC Rcd 15221, 15224-25 (2013) (initiating this rulemaking to consider options for revitalizing the AM band in addition to previous Commission measures “designed to . . . reduce regulatory and technical burdens on AM broadcasters.”)

(over 5,200 entities) and DBS, could significantly strain the Commission's existing database, particularly during high volume filing periods. For example, both radio and television stations are required to place in their public files a quarterly issues/programs report by the 10th of the month in January, April, July and October.²⁹ Having 17,648 broadcast entities upload documents on the same days would likely severely constrain the Commission's online public file database on those filing dates, especially during busy election seasons.

Indeed, during peak political seasons, many broadcast stations are taking advertising orders (and modifying existing orders) on a daily basis. For the past two years, television broadcasters have faced congestion bandwidth in uploading files during peak periods. While we appreciate the Media Bureau's continued efforts to alleviate these delays, including identifying glitches in the online file software, they can be significant. For example, when congested, a single .pdf file can take 30 minutes to several hours to load.

For these reasons, NAB joins the State Broadcast Associations in recommending that the Commission broaden the relevant filing windows,³⁰ and also suggest that the Commission stagger the windows for radio and television. Specifically, we propose that the Commission extend the filing for both the quarterly issues/programs lists and the Children's TV Program Reports to a 20-day window for TV stations (filing deadline

²⁹ See 47 C.F.R. § 73.3526(e)(11)(i); § 73.3526(e)(12) and § 73.3527(e)(8). Additionally, on these same dates television stations must file their quarterly children's television commercial limits and children's television programming reports online. See 47 C.F.R. § 73.3526(e)(11)(ii)-(iii).

³⁰ See Comments of 50 State Broadcasters Associations, MM Docket No. 14-127, at 4 (Aug. 28, 2014).

would be on the 20th day of each quarter) and a 30-day window for radio stations (filing issues/program lists on the 30th day of each quarter). This staggered approach for radio and television stations would relieve database network congestion in a simple and straightforward manner.

F. The Commission Should Ensure Its Database Is Compatible With Private Web Hosting Facilities

We appreciate the Media Bureau's continued efforts to establish an interface between the online public file database and private web hosting services, such as emerging services that can facilitate multiple uploads of documents.³¹ As the Commission notes, however, its work on the interface is incomplete.³²

While we understand the challenges associated with web-based security, we strongly urge the Commission to continue working to ensure that its goals of increasing efficiency and reducing burdens on smaller entities can be met.³³ Additionally, stations are examining modernization of their political advertising forms and may convert those to a web-based format. It is therefore imperative that the Commission's online public file system be compatible with private web-hosting services. We urge the Commission to expedite its final work in this area before extending online public file requirements to thousands of radio stations.

³¹ See Comments of Missouri and California Broadcasters Associations, MB Docket No. 14-127, at 6-9 (Aug. 28, 2014).

³² *NPRM* at ¶ 23.

³³ See *NPRM* at ¶ 23; *Second Report and Order* at ¶ 61.

IV. THE COMMISSION SHOULD CONSIDER REFORMING ITS COMPLAINT PROCEDURES AND ENFORCEMENT POLICIES RELATING TO ONLINE PUBLIC FILES TO REMAIN FOCUSED ON THE CONCERNS OF LOCAL VIEWERS AND LISTENERS

The fundamental purpose of the *local* public inspection file is to provide information to *local* viewers and listeners about a *local* station's service to its *local* community of license.³⁴ Commission decisions dating back to the adoption of the local public file rule in 1965 make this abundantly clear.³⁵

The Commission, however, has not yet examined how this basic purpose of the local public file should influence its enforcement policies and procedures in an era of online accessibility. NAB recognizes that these issues have not been raised in the current *NPRM*. We accordingly recommend that the Commission issue a further notice considering how its complaint procedures and enforcement priorities relating to public files should be reformed in the Internet age to remain focused on the concerns of local viewers and listeners.

³⁴ Indeed, the FCC's rules are entitled "*Local* public inspection file of commercial stations" and "*Local* public inspection file of noncommercial educational stations." 47 C.F.R. §§ 73.3526, 73.3527 (emphases added).

³⁵ *Records of Broadcast Licensees*, Report and Order, 4 RR2d 1664, ¶¶ 2, 12, 14 (1965). See also *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Memorandum Opinion and Order, 14 FCC Rcd 11113, 11119-20 (1999) (although stations with main studios located outside their communities of license generally were required to honor any requests for public file documents made by telephone, the FCC expressly limited this telephone request rule to require the mailing of public file documents *only to individuals within the geographic service area of the station*; this limitation was consistent with "ensuring the continued access of *local* viewers and listeners of each station") (emphasis added).

Specifically, given the public inspection file's purpose to provide locally-relevant information to local consumers, NAB urges the Commission to focus its enforcement efforts on complaints submitted by actual viewers and listeners about the public files of their local stations. Declining to consider public file complaints submitted from persons or entities unrelated to local communities of license would be consistent with the long-standing purpose of local public files. It would also reduce spurious allegations against stations, discourage the filing of mass electronic complaints made possible by today's technology, and conserve the FCC's limited resources for addressing valid and more locally relevant complaints. In short, NAB believes the Commission should formally examine how its own enforcement priorities, particularly with regard to stations' public/political files, should be reformed to reflect the concerns of local viewers and listeners, rather than the agendas of national advocacy groups unrelated to local communities.³⁶

³⁶ In this regard, it is illuminating that in the 2014 election cycle, the only formal complaints against television stations with online public and political files were not made by local citizens, elected officials or political candidates who had purchased advertising time on local stations; rather, they were two sets of complaints filed by the Sunlight Foundation, a national advocacy organization, and its counsel for alleged omissions in issue advertising disclosures. See *Campaign Legal Center and Sunlight Foundation File FCC Complaints Against Broadcasters Nationwide for Failure to Disclose Required Information on Political Ads*, Press Release (May 1, 2015) (11 separate broadcast stations complaints filed); see also Letter from Robert L. Baker, FCC, to Andrew Jay Schwartzman, Institute for Public Representation, *et al.*, DA 14-1267 (Sept. 2, 2014) (dismissing the public interest groups' complaints against two stations for failure to provide a sufficient showing that stations had violated sponsorship identifications rules as required by 47 C.F.R. § 73.1212(e) and Section 317 of the Act).

V. CONCLUSION

Broadcasters fully support the Commission moving towards regulatory parity among video service providers in their public file requirements. There is no rational basis for requiring broadcast TV stations, but not cable and satellite operators, to post their public and political files on the FCC's website. Similarly, if the Commission ultimately requires radio stations to post their public and political files online, there is no reasoned basis to exclude satellite radio from such requirements.

Any FCC rules requiring radio stations to place their public files online must include significant accommodations, particularly for stations outside the largest markets, small stations and NCE stations. All radio stations, regardless of their size or market, must be afforded sufficient time to complete the uploading of their existing public file materials. The Commission should delay for at least two years the transition to online public files for stations outside the top 50 markets with five or more full-time employees, as the *NPRM* proposes. NAB strongly urges the Commission to permanently exempt NCE stations and all stations with fewer than five full-time employees from mandatory online public file obligations. For the reasons stated above, imposing additional burdens on these radio stations would not serve the public interest.

Finally, NAB requests the Commission to issue a further notice to consider whether its complaint procedures and enforcement policies relating to online public files are properly focused on the concerns of local viewers and listeners. The transitioning of

local public inspection files from paper to a digital environment does not alter the fundamental purpose of public files in our system of locally-licensed broadcast stations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ann West Bobeck". The signature is stylized, with a large, looped initial "A" and a long horizontal line extending from the middle of the name.

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