

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

In the Matter of )  
Expansion of Online Public File Requirements: ) MB Docket No. 14-127  
Campaign Legal Center, Common Cause and )  
Sunlight Foundation )  
Petition for Rulemaking )

**COMMENTS OF  
THE NATIONAL ASSOCIATION OF BROADCASTERS**

**I. INTRODUCTION**

The National Association of Broadcasters (NAB)<sup>1</sup> submits these comments in response to the *Public Notice* in the above-captioned proceeding.<sup>2</sup> On July 31, 2014 the Campaign Legal Center, Common Cause and the Sunlight Foundation (hereinafter “Petitioners”) formally requested that the FCC initiate a rulemaking to expand to cable and satellite systems the requirement that public and political files be posted to the FCC’s online database.<sup>3</sup> In addition to seeking comment on Petitioners’ request, the

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<sup>1</sup> 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.

<sup>2</sup> 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 Notice*, MB Docket No. 14-127 (rel. Aug. 7, 2014) (Notice).

<sup>3</sup> See In the Matter of Requiring Cable and Satellite Systems to File Their Physical Public Files in the FCC-Hosted Online Database, Petition for Rulemaking, filed by The

Media Bureau also seeks comment on whether it should initiate a rulemaking to require radio broadcast stations to utilize the online public file database and if so, what would be an appropriate timeframe for such a requirement. Notice at 2. As discussed below, broadcasters wholly support regulatory parity between video providers' online public and political file requirements. With regard to extending these requirements to radio, we note that because of the sizable and diverse nature of the radio industry there are some implementation challenges that will require careful consideration and perhaps phased implementation.

## II. **DISCUSSION**

### **A. Cable and DBS Public and Political Files**

NAB fully supports the Petitioners' proposal to extend online public and political file requirements to all video services. The rate disclosure and public file requirements of Section 315 of the Communications Act, as amended by the Bipartisan Campaign Reform Act of 2002, apply not only to broadcast stations, but also to cable systems and direct broadcast satellite (DBS) operators as well.<sup>4</sup> There is no reasoned basis for treating the public/political files of cable and DBS providers differently.

As NAB stated in 2011 when the Commission proposed to require TV stations to post their public files online, there could be potentially very real marketplace distortions if competitively sensitive information is available online for one group of participants in the advertising market (*e.g.*, local broadcast TV stations), and not others (*e.g.*, cable

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Campaign Legal Center, Common Cause and the Sunlight Foundation (July 31, 2014) (Petition).

<sup>4</sup> See 47 C.F.R. § 76.1701 (cable political file requirement); 47 C.F.R. § 25.701(d) (DBS political file rule).

and satellite providers).<sup>5</sup> Indeed, as Petitioners note, political spending on local cable increased 37.3 percent from 2010 to the 2012<sup>6</sup> – the same year that the top four affiliated television stations in the 50 largest markets were required to post their political files online. And local cable political spending is expected to further increase in 2014 to between \$680 and \$800 million,<sup>7</sup> the same year that all television broadcast stations were required to begin posting their political files online.

While these increases in local cable political advertising may or may not be directly attributable to the Commission’s current disparate online political file requirements, they clearly show the importance of regulating similarly situated entities in a comparable manner. Here, both TV broadcasters and cable operators are required to maintain a public file, including a political file available for public inspection.<sup>8</sup> DBS operators are also required to keep a political file available for public inspection.<sup>9</sup> The courts “have long held that an agency must provide adequate explanation before it

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<sup>5</sup> See In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MM Docket Nos. 00-168 and 00-44, Comments of the National Association of Broadcasters (Dec. 22, 2011) at 7.

<sup>6</sup> Petition at 1, *citing* Elizabeth Wilner, “On Points:” *Local Cable Could Claim 25% of Political TV Ad Spending in 2014*, Cook Political Report (Oct. 20, 2013), <http://cookpolitical.com/story/6381>. See also Meg James, *Direct TV, Dish Network to vie for political cash with customized ads*, LA Times (Aug. 20, 2013) <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-political-ads-satellite-directv-dish-network-20140819-story.html#page=1> (describing the partnership between DBS and D2 Media Sales to sell targeted spots to candidates and ballot measure organizers).

<sup>7</sup> *Id.*, note 2.

<sup>8</sup> 47 C.F.R. § 76.1701(a)-(d).

<sup>9</sup> 47 C.F.R. § 25.701(d).

treats similarly situated parties differently.”<sup>10</sup> NAB sees no rational basis for requiring all television broadcasters, but not their competitors in the video marketplace, to disclose online public and political file materials, including sensitive advertising rate information.

We also agree with Petitioners that extending the online public/political file requirements to cable and satellite systems would be fairly simple because the database already has been created. Petition at 8. The Commission should therefore act expeditiously to proceed with a rulemaking to require all cable and DBS systems to post their public and political files online.

### **B. Broadcast Radio Station Public and Political Files**

Turning to broadcast radio stations, NAB notes that there are significantly more logistical and practical issues to be addressed. We submit that these issues must be fully vetted in any future Notice of Proposed Rulemaking. With better knowledge, the Commission can tailor an implementation schedule and possible exemptions to fit the diverse nature of the radio industry.

As of June 30, 2014, there were 15,425 licensed AM, FM commercial and FM educational stations.<sup>11</sup> This is over 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 and DBS, could place a strain on the Commission’s existing database, particularly during high volume filing times. For example, broadcast stations (radio and television) are required to place in their public files (or in the case of television stations, upload to the online public file) a

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<sup>10</sup> *Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164, 1172 (D.C. Cir. 1994).

<sup>11</sup> *Broadcast Station Totals as of June 30, 2014*, FCC News Release, July 9, 2014.

quarterly issues/program report on the 10<sup>th</sup> of the month of January, April, July, and October. See 47 C.F.R. § 73.3526(e)(11)(i); § 73.3526(e)(12) and § 73.3527(e)(8).<sup>12</sup> Having 17,639 broadcast entities upload on the same four dates, as well as requiring all entities to keep their political files current, could severely constrain the Commission's online public file database on these filing dates.

Indeed, during peak political seasons, such as the upcoming fall mid-term election, many radio and television stations are taking advertising orders (and modifying existing orders) on a daily basis until the November 4 election. For the past two years, television broadcasters have faced congestion bandwidth in uploading files during peak periods. For this reason we urge the Commission to consider (1) increasing its online capacity to accommodate the significant increase in network traffic; and (2) consider ways to stagger filings as well as utilize a phase-in approach for broadcast radio stations (also discussed below) to relieve network congestion.

Any possible Notice of Proposed Rulemaking should also consider that among the 15,425 licensed full power radio stations, the level of station staffing and access to the necessary resources to manage and maintain an online public file varies dramatically from station to station, market to market. Differences include, but are not limited to: number of employees; whether a station has automated its advertising traffic services; whether it has in-house computing resources; whether the station has in-

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<sup>12</sup> 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).

house broadband capacity; and, importantly, whether the station facility is located in an area that even has Internet access.<sup>13</sup>

In adopting the 2012 Online Public File Order, the Commission delayed the requirement for the uploading of the online political file for smaller TV stations, noting that it was “appropriate to require stations with a greater market reach to undertake this time-sensitive transition first, as they will be more likely to have dedicated resources to address any implementation issues that arise, if necessary.”<sup>14</sup> The Commission should seek comment on a similar phased-in approach for the public file generally, and political file particularly, to allow small and medium market radio stations, as well as smaller radio station groups and single-owner stations, additional time to transition. In addition, the FCC should inquire about appropriate exemptions from the online requirement. For example, in an area where neither the station nor many of its listeners have Internet access, placing the public file online would make little sense.

Finally, while the first stage of the transition to online public files may have occurred without major mishap, uploading and maintaining of a public file, including the political file, is in no measure a small undertaking. Particularly for smaller entities such as small television stations, the resources required to immediately update political files,

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<sup>13</sup> There are some radio stations that are located in remote locations (for example, Alaska, Maine, and areas of the Southwest) that do not have access to reliable Internet service or, alternatively, do not have any Internet access.

<sup>14</sup> In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, *Second Report and Order*, 27 FCC Rcd 4535, 4558 (2012).

as required by Commission rules,<sup>15</sup> has been significant.<sup>16</sup> When Commission website congestion leads to delays in uploading files, the FCC's own help desk routinely recommends that stations wait until off-hours to upload documents – unfortunately, such solutions could further strain a small radio or television station's already limited employee resources, even on a temporary basis.<sup>17</sup> For these reasons, we urge the Commission to seek comment on whether and how it can structure rules to account for these practical problems.

### III. **CONCLUSION**

Broadcasters fully support the Commission moving towards regulatory parity among video programmers in their online public and political file requirements. To that end, we urge the Commission expedite a rulemaking to require cable and satellite systems to post their public and political files on the Commission's website. Should the Commission move forward with a rulemaking to require broadcast radio stations to post their public and political files online, we ask that the Commission consider the issues raised above, including the number of database participants and their disparity of resources, and propose a phase-in for radio broadcasters to facilitate

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<sup>15</sup> The Commission interprets the Communications Act political file requirements for updating files "as soon as possible" to mean "immediately, under normal circumstances." Codification of the Commission's Political Programming Policies, 7 FCC Rcd 678, 698 (1991) See also 47 U.S.C § 315(e)(3); 47 C.F.R. § 1943(c).

<sup>16</sup> For stations with 5 or fewer employees, 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.). We anticipate that radio broadcasters will also face similar challenges should the Commission proceed with an online public file requirement for broadcast radio stations.

<sup>17</sup> We commend the Media Bureau staff for working closely with stations and NAB so that technical problems associated with uploading political files could be addressed.

the transition to an online system and appropriate exemptions from any new requirements.

Respectfully submitted,

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

**NATIONAL ASSOCIATION OF  
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