

**Before the
Federal Communications Commission
Washington, D.C. 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)	
)	

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)¹ replies to various commenters in the above-captioned proceeding requesting comment on video and audio service providers' public file obligations.² We agree with the numerous broadcasters participating in this proceeding that urged the Commission, should it adopt the proposed rules requiring radio stations to place their public files online, to incorporate its proposed exemptions, with a simple clarification noted by several commenters. As the record overwhelmingly shows, the adoption of reasonable exemptions for noncommercial educational and small commercial stations will facilitate the transition of the diverse universe of 15,432 radio stations to the online environment. NAB also continues to urge the Commission to ensure parity in its regulation of various providers' online public files. Finally, we observe there is no basis for

¹ The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission 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).

the Commission to change course and impose a standardized, one-size-fits-all online political file on widely disparate television and radio stations.

I. The Record Supports Exemptions For Small Stations And Noncommercial Educational Stations

The record is clear that noncommercial educational (NCE) radio stations and all radio stations with fewer than *at least* five full-time employees³ lack adequate staffing and resources to properly maintain an online public/political file, and that such a requirement would divert resources away from stations' service to local communities.⁴ Small radio stations also often lack an online presence, computer resources and Internet access and infrastructure.⁵ We agree with these commenters and fully support a permanent exemption

³ Other parties have urged the Commission to consider a higher employee threshold for exemptions. These commenters have shown that, in a number of instances, stations with more than five employees, but less than 10-20, face similar challenges. See Joint Comments of Named State Broadcasters Associations at 6; Comments of KERM, Inc. at 3; Comments of Mentor Partners, Inc. at 3; MB Docket No. 14-127, filed Mar. 16, 2015.

⁴ See, e.g., Comments of Central Park Church of God at 2 ("It is likely that time and resources now spent in community outreach and participation may decrease as attention is diverted towards administrative filing requirements."); Comments of Seton Hall University (WSOU-FM) at 2 ("Should the Commission require NCE radio stations to maintain an online public file, the cost to maintain such an electronic file would consume much needed funds that would otherwise be used for public interest programming."); Joint Comments of Local and Regional Small Radio Broadcasters at 7 ("[N]o matter how long the phase-in period, there is simply no way for the smallest of stations – stations with fewer than five full-time employees – to 'budget for' these costs when they are often already finding it nearly impossible to make ends meet."); Comments of Eagle Bluff Enterprises at 1 ("[T]he end result is that the FCC will unwittingly cause a diminishment of service to the very constituencies to which they pledge to serve and protect."); Comments of Sean Troland, Christian Ministries, Inc. at 1 (noting that it operates 13 frequencies in Vermont with less than five-full time staff and could not afford to hire additional staff for additional regulatory compliance); MB Docket No. 14-127, filed Mar. 16, 2015.

⁵ See, e.g., Comments of Star Educational Media Network Inc. at 1 ("Many noncommercial broadcast stations already lack a robust online presence due to limited resources and requiring these stations to maintain an online public file would mean diverting scarce funds away from programming and ministry teaching in order to ensure regulatory compliance."); Comments of National Public Radio at 2 (noting that native American, Alaska and remote NCE stations have challenges with a "lack of computer equipment, telecommunications infrastructure and Internet access," which pose significant challenges to online public file compliance); Joint Comments by the Moody Bible Institute of Chicago, Houston Christian Broadcasters, et al., at 5 (noting that Big River Public Broadcasting

from any mandatory online public file requirement for NCE radio stations, as well as for all commercial radio stations with fewer than *at least* five full-time employees.⁶

We further agree with LeSEA Broadcasting Corporation and the University of Northwestern-St. Paul⁷ that eligibility for exemptions from any new online public file rules should be determined on an *individual station basis*, focused on a station's community of license.⁸ This makes sense because public file obligations are, by and large, handled by personnel employed by each particular station, rather than throughout a market or across an entire station group. In addition, determining eligibility for exemptions on an individual station basis is the simplest and clearest approach for both the Commission and regulated entities. Thus, the Commission should clarify that any small station exemption will be based on a per-station calculation, and that any radio station that does not have *at least* five or more full-time employees will be exempt from any online public file requirements.

II. The Commission Should Continue To Ensure Regulatory Parity For Online Public File Requirements

The National Cable & Telecommunications Association (NCTA) and the American Cable Association (ACA) have asked for separate forbearances to the online public/political file requirements. As discussed below, the Commission should either summarily reject such

Corporation, Inc., operates several NCE stations with “essentially non-existent, internet access.”), MB Docket No. 14-127, filed Mar. 16, 2015.

⁶ See *NPRM* at ¶ 69. The Commission should carefully consider the comments of those parties urging a higher employee level for exemptions and determine whether such a higher threshold would be appropriate.

⁷ Comments of LeSEA Broadcasting Corporation at 2; Comments of University of Northwestern-St Paul at 4-5, MB Docket No. 14-127, filed Mar. 16, 2015.

⁸ See 47 C.F.R. §§ 73.3526(a) & (b)(1); 73.3527(a) & (b)(1).

requests, or afford *all* regulated entities subject to online public file requirements the same regulatory treatment.

NCTA argues that because of the “volume” of political and other public file material its members have already uploaded to electronic databases, and due to the investment in their online infrastructure, cable operators should be able to link to their existing electronic and/or online files, rather than upload their files to the Commission’s centralized online public file database.⁹ Broadcasters have similarly dedicated significant resources to online public file infrastructure. A number of broadcasters have contracted with third-party vendors for their public file compliance (e.g., BroadcastSource1), and have been awaiting the Commission’s final interface to ensure that its database can be compatible with third-party web hosting entities.¹⁰ We again urge the Commission to complete this interface as soon as possible.

Similarly, ACA argues that because “third-party advertising insertion vendors” insert political advertisements into cable systems, its members should be able to provide a link to a website for political file information provided by those third-party vendors, in lieu of uploading political file material to the Commission’s website.¹¹ We note that broadcast licensees entering into time brokerage agreements remain responsible for ensuring

⁹ NCTA Comments at 5-6, MB Docket No. 14-127, filed Mar. 16, 2015. Despite NCTA’s claims about the “volume” of cable operators’ public/political file materials, cable’s share of political advertising revenue, while increasing, remains smaller than broadcast TV’s share, and cable public inspection files are only about half the size of television station files. See *NPRM* at n.125; 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>

¹⁰ See *NPRM* at ¶ 23; Comments of NAB at 13, MB Docket No. 14-127 filed Mar. 16, 2015. See also Comments of Missouri and California Broadcasters Associations, MB Docket No. 14-127, at 6-9, filed Aug. 28, 2014.

¹¹ ACA Comments at 15-16, MB Docket No. 14-127, filed March 16, 2015.

compliance with the political broadcasting regulations and maintenance of their stations' political files, regardless of the fact that the broker provides programming and sells the commercial spots in that brokered time.¹² Were the Commission to consider NCTA's or ACA's request, it therefore must, as a matter of regulatory parity, allow television and radio broadcast licensees the opportunity to post their political files to a third-party website and provide an appropriate link.

Moreover, we agree with TV Broadcasters that cable operators should not be excused from posting their channel lineups and geographic information online. Such information is readily available in electronic form, and it would be a *de minimis* burden for multichannel video programming distributors to place online.¹³

III. Sunlight Foundation Sheds No New Light In This Proceeding

Sunlight Foundation's brief comments echo its earlier positions that it: (1) wants a standardized political file; and (2) does not support any exemptions for any entities for online public files for any reasons. Its comment do, however, entertain some phase-in period for radio stations with five or fewer employees, based on political advertising revenue.¹⁴ The Commission should not adopt these proposals.

¹² See *Political Programming Policies*, 7 FCC Rcd 678, 698 (1991); 47 C.F.R. § 73.3555 note j (time brokerage agreements must include a certification by the licensee of the brokered station that it remains in control of the station's programming, personnel and finances).

¹³ See Comments of TV Broadcasters at 1-2, MB Docket No. 14-127, filed Mar. 16, 2015; *cf.* NCTA Comments at 8 (noting that channel lineups are available in "paper format," on operator websites or on FCC Form 325). Consumers have a clear interest in viewing MVPDs' channel lineups. We also agree with TV Broadcasters that a central repository for information, including headend location information, would help reduce staff burdens in ensuring MVPD and broadcaster compliance with retransmission consent and must-carry rules.

¹⁴ Comments of Campaign Legal Center, Common Cause and the Sunlight Foundation, MB Docket No. 14-127, filed Mar. 16, 2015 (Sunlight Foundation).

First, as noted in other proceedings, the standardization of broadcast station political files has already been addressed and rejected by the Commission. Specifically, in the Second Report and Order, the Commission stated:

“We reiterate that we are merely changing the form of disclosure to the public of information already required to be in the public file. We are making no changes to the political advertising sales process. Rather, we expect stations to continue handling political ad sales in whatever way is most convenient to them.”¹⁵

In addition, when adopting the online political file requirements for television stations, the Commission clearly allowed licensees flexibility. Indeed, the Commission determined that “[t]o facilitate broadcasters’ use of the online file, we will create and propagate subfolders for candidates and will provide stations with the ability to create additional subfolders and subcategories *in compliance with their own practices.*”¹⁶ The Commission thus already has appropriately decided that online political files should not be standardized across all stations of all types, but should instead reflect stations’ own sales, business and recordkeeping practices. Sunlight Foundation has offered no basis for changing course here.

Second, it would be wholly impractical to base any radio station’s future online public/political file obligations upon the level of its past political advertising revenue. Some radio stations with fewer than five full-time employees, for example, may have had higher political advertising revenues in 2014 due to competitive gubernatorial and/or Senate races that will not be repeated in 2016, and may or may not be repeated in future election cycles. The substance or the timing of public/political file obligations should not vary depending on

¹⁵ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, 27 FCC Rcd 4535, 4556 (2012).

¹⁶ *Id.* at 4565-66 (emphasis added).

the vagaries of political races in a station's locality. The Commission, moreover, would have to undertake a substantial auditing of radio stations' political advertising revenues to determine what threshold would be appropriate for exempting stations from any online public/political file requirements. Not only would a proper audit be resource intensive, but it also could take years to complete.

The Commission has proposed generally reasonable time frames and rationally-based exemptions for implementing any new online public/political file requirements for radio stations of various types. 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.¹⁷ Thus, the Commission should summarily reject Sunlight Foundation's unjustified, overly complicated and impracticable requests, and instead adopt clear exemptions and timeframes, along the lines of those proposed in the *NPRM*.

IV. Conclusion

For the reasons stated above and in NAB's more detailed initial comments, we urge the Commission to (1) ensure regulatory parity among entities with online public and political file requirements, and (2) exempt NCE radio stations and all commercial radio

¹⁷ *NPRM* at ¶ 69, n.186.

stations with fewer than *at least* five full-time employees *at each station* from any new online file 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 horizontal line extending from the end of the name.

**NATIONAL ASSOCIATION OF
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