

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

In the Matter of

Expansion of Online Public File Obligations
To Cable and Satellite TV Operators and
Broadcast and Satellite Radio Licensees

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MB Docket No. 14-127

**JOINT COMMENTS OF THE
NAMED STATE BROADCASTERS ASSOCIATIONS
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING**

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SUMMARY

The State Associations continue to support the Commission's proposal to extend the online public file requirements to cable and satellite TV providers, at a minimum to ensure better regulatory parity with broadcast TV stations, which are already required to have an online public file containing competitively sensitive information. The Commission's extension of an online file requirement to broadcast radio, however, is qualitatively and quantitatively different, and the Commission must acknowledge and address those differences in adopting any such requirement.

There are exponentially more broadcast radio stations than broadcast TV stations, and even the tiniest broadcast radio stations are required to maintain much more public file material than cable or satellite providers. Moreover, radio station staffs tend to be much smaller than those of TV stations, and usually operate multiple radio stations in a market. As a result, moving radio station public files online will vastly increase the stresses on the Commission's filing systems while requiring smaller station staffs to upload and maintain multiple public files online.

The State Associations therefore commend the Commission for recognizing that from both the Commission's perspective and the perspective of radio licensees, a phased-in approach beginning with larger stations in top-50 markets combined with exemptions for certain types of stations is appropriate. This will best accomplish the goal of moving radio public files online where it can be done without harm to the station or its audience, but not where the burden would be too great.

Having said that, the State Associations believe that the proposed "fewer than five full-time employees" exemption threshold borrowed from the Commission's EEO rule is too low to prevent significant harm to many stations, including, for example, a typical AM/FM combo attempting to maintain two online public files with just five employees that are already stretched

thin. The State Associations therefore urge the Commission to instead adopt as its exemption standard the “ten or fewer” threshold designed by the FCC in the EEO context specifically to protect small radio stations with limited staff and resources from harmful regulatory burdens. In addition to the Commission having previously found this to be the appropriate threshold in similar circumstances, there are numerous advantages to applying it here, not the least of which is ensuring that radio stations unable to bear the added burden are not forced to choose between having an online public file and survival.

The State Associations also support the Commission’s proposal to permit exempt stations to voluntarily move their public file online, and urge the Commission to take steps in the near future to incentivize exempt stations to make that voluntary move. The best way of doing this is to create rules that ensure an online public file is a way of reducing, rather than increasing, the overall regulatory burden on a radio station, and these comments contain a number of suggestions in that regard.

Additionally, the Commission must take steps to carefully assess and strengthen its filing systems to withstand the stresses that adding thousands of radio station public files will cause, while also taking steps to alleviate the more extreme filing burdens on that system. One of the simplest ways to accomplish this is to extend the Commission’s current ten-day filing windows to thirty days, helping to spread out station filings so that everyone isn’t routinely having to file on the same few days as everyone else.

Finally, the State Associations agree with the Commission that this proceeding should not be used to create new or expanded public inspection file requirements, but should instead focus on implementing online public file requirements that are practical, functional, and most importantly, not harmful to smaller stations and the audiences they serve.

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Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Carolina Association of Broadcasters, North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Radio Broadcasters Association of Puerto Rico,

Rhode Island Broadcasters Association, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters (collectively, the “State Associations” or “Associations”), by their attorneys in this matter, hereby file these Joint Comments in response to the Commission’s Notice of Proposed Rulemaking released December 18, 2014 in the above captioned proceeding.¹

INTRODUCTION

The State Associations are pleased to provide these Joint Comments in response to the Commission’s proposal to implement online public file obligations for cable and satellite TV operators and broadcast and satellite radio licensees. Consistent with the State Associations’ comments submitted in response to the FCC’s *Public Notice* released August 7, 2014,² the State Associations believe that expansion of the online public file requirement can be done in a productive way as long as the Commission first evaluates and successfully resolves a number of threshold issues that are discussed below.

¹ See *Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Notice of Proposed Rulemaking, MB Docket No. 14-127, FCC 14-209 (rel. Dec. 18, 2014) (the “NPRM”).

² See *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*, Comments of the 50 State Broadcasters Associations, MB Docket No. 14-127 (filed Aug. 28, 2014) (“Public Notice Comments”). The Public Notice Comments are herein incorporated by reference.

DISCUSSION

I. Extending the Online Public File Requirements to Cable and Satellite TV Providers Is a Step Toward Regulatory Parity

The State Associations support the Commission’s proposal to extend the online public file requirement beyond broadcast TV to providers of cable and satellite TV service. When the Commission adopted online public inspection file rules for broadcast TV stations in 2012, it decided that “starting the online public file process with the much smaller number of television licensees, rather than with all broadcasters and MVPDs, would ‘ease the initial implementation of the online public file.’”³ In August 2014, the FCC issued a *Public Notice*⁴ seeking comment on a Petition⁵ that urged expanding the online public file requirement to cable and satellite video providers, and received no comments opposing that expansion. The State Associations continue to believe that regulatory parity among video providers is appropriate in this regard, particularly given the disadvantage currently faced by broadcast TV stations whose competitive information is now freely available online via the content of their online political files.

An agency must “provide adequate explanation before it treats similarly situated parties differently.”⁶ As all TV broadcasters have now fully transitioned to an online public file,⁷ there is no longer a reasoned basis for treating the public files of cable and satellite TV providers differently than those of broadcast TV licensees. While some cable trade associations have argued that broadcast and cable are not similarly situated because they do not share all disclosure

³ *NPRM* ¶ 10.

⁴ *See Commission 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, DA 14-1149, MB Docket No. 14-127 (rel. Aug. 7, 2014) (“*Public Notice*”).

⁵ *See Campaign Legal Center, et al., Petition for Rulemaking*, MB Docket No. 14-127 (July 31, 2014).

⁶ *Blanca Tel. Co. v. FCC*, 743 F.3d 860 (D.C. Cir. 2014).

⁷ *NPRM* ¶ 13.

obligations,⁸ this actually weighs in favor of extending the online public file requirement to cable systems, as they have fewer documents to upload, reducing the burden of moving their public files online.⁹ Indeed, small cable systems are already exempt from many of the public file requirements faced by larger cable providers, including the requirement to have a political file, the most challenging aspect of maintaining an online public file.¹⁰ As to satellite providers, they are few and very large, making an online public file far less burdensome to them than to individual broadcast TV stations.

II. Applying an Online Public File Requirement to Broadcast Radio Stations Poses Unique and Significant Challenges

As the *NPRM* acknowledges, the complexities of the radio marketplace make extending online public file requirements to broadcast radio licensees uniquely more difficult than applying them to broadcast TV.¹¹ There are exponentially more radio stations in the United States than there are TV stations, with the FCC's last count being 15,432 radio stations, compared to only 2,216 full power and Class A TV stations.¹² Beyond the sheer number of stations, broadcast radio operations are not as homogenous as broadcast TV, with far greater variation in staffing, the number of stations jointly operated, and the size of the audience/community served. For example, the economic and staffing challenges faced by small radio stations in rural markets are

⁸ See *Commission 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*, Reply Comments of National Cable & Telecommunications Association, MB Docket No. 14-127 (filed Sept. 8, 2014).

⁹ See *NPRM* at n.125 (“Unlike television broadcasters, cable operators are not required to place in the public inspection file issues/programs lists, citizen agreements, contour maps, ownership reports and related materials, children’s television programming reports, or letters and emails from the public.”).

¹⁰ See *id.* ¶ 38 (explaining that “[o]perators of cable systems with fewer than 1,000 subscribers are exempt from many public inspection file requirements, including the political file, sponsorship identification, EEO records, and records regarding children’s commercial programming.”); see also *id.* ¶¶ 45-46 (proposing to exempt smaller cable systems from all online public file requirements “either permanently or initially”).

¹¹ See *id.* ¶ 19.

¹² FCC NEWS, *Broadcast Station Totals as of December 31, 2014* (Jan. 7, 2015), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-331381A1.pdf.

far different than those faced by large radio stations in urbanized areas, and more different still from those faced by many TV stations.

Unlike the situation with cable systems of varying sizes, the public file requirements are identical for all radio stations, whether they are in the largest or tiniest market.¹³ As a result, the burden imposed by moving the file online is directly connected to the size of the station's staff. Moving and maintaining the file online requires the expenditure of scarce resources while not relieving the station of any of its other obligations, preventing the station from repurposing its existing resources for the task. Because the FCC is understandably hesitant due to privacy concerns to have stations upload Letters from the Public to an online public file,¹⁴ stations moving public files online must continue to allocate staff resources to hosting a local public file, making the file available at any time during normal business hours, including lunch hours, when a member of the public might randomly walk through the door, and the added security issues of handling impromptu visits by individuals whose only threshold test for admission is that they asked to see the public file. For these stations, an online public file merely brings additional burdens with no countervailing reduction of existing regulatory burdens.

While that may be an unfortunate but workable situation for radio stations with large staffs, smaller stations may lack the extra resources to divert to maintaining an online public file; most staffers are already doing three jobs, and any sickness or disability among the station's staff can already be challenging to work around. In recognition of this, and as is discussed below in more detail, the State Associations agree with the Commission that smaller radio stations should be exempted from any online public file requirement, but that the Commission should take steps

¹³ See 47 C.F.R. § 73.3526(e) (requiring TV and radio stations to maintain the same materials, including license applications, ownership reports, issues/program lists, time brokerage agreements/joint sales agreements, and a political file).

¹⁴ *NPRM* ¶ 74 and n.194.

that will encourage such stations to voluntarily upload and maintain their public files online if they have the technical and personnel resources to do it. Given the vast differences in how radio stations are staffed, managed, and operated across the country, this approach will maximize the availability of radio station public files online where a station is able to accomplish it without harming itself or its service to the public. A “one size fits all” approach won’t work, and is particularly inappropriate where there are many factors other than purely staff size that will determine a station’s ability to simultaneously provide programming and service to the public while maintaining an online public file.

III. If the FCC Implements Online Public File Requirements for Broadcast Radio, It Should Exempt Certain Radio Stations

Recognizing some of the difficulties outlined above, the Commission has proposed to temporarily exempt some broadcast radio stations from the online file requirement, and has asked (i) how it should define the category of stations eligible for exemption and (ii) whether it should permanently exclude certain radio stations.¹⁵ For its part, the FCC has suggested beginning implementation of the online public file requirements with radio stations in the top-50 markets that have five or more full-time employees, and delaying implementation for all other radio stations for two years.¹⁶

A. The FCC Should, Consistent With Its EEO Midterm Report Exemption Standard, Exempt Stations With Ten or Fewer Full-time Employees

If the Commission moves forward in implementing an online public file for radio, the State Associations support the Commission’s suggestion of a phased-in approach beginning with

¹⁵ *Id.* ¶ 69.

¹⁶ *Id.*

larger stations in the top-50 markets. In addition, the Commission has proposed exempting, at least temporarily, stations with fewer than five full-time employees:

With respect to radio stations with fewer than five full-time employees, as noted above our rules exempt these stations from many EEO requirements. One advantage of tying an exemption for small radio stations to this EEO exemption is that information regarding the stations that are exempt from EEO requirements is readily available to the public, as this information is filed with the FCC and is available via the FCC's website.¹⁷

While the State Associations agree that exemption of smaller radio stations is appropriate, they respectfully suggest that a “fewer than five” standard is far too low for a number of reasons.

First, to the extent the Commission bases the proposed public file exemption on its EEO exemption, the State Associations note that the EEO exemption is not a “per station” exemption, but is based on the number of full-time employees in a “Station Employment Unit” (“SEU”), which represents the employees of multiple stations as long as there is at least one common employee among them.

One of the principal ways radio differs from TV is that a radio SEU may operate as many as eight local radio stations and maintain their respective public files. If the Commission actually intends to apply a “fewer than five” test to SEUs rather than to individual stations, the proposed exemption fails to correlate the need for an exemption with the size of the burden being imposed on those station employees. For example, even a simple AM/FM combo has twice the number of public files to maintain as a typical TV station, but would be expected to maintain double the public files with a fraction of a TV station's staff—as few as five under the Commission's proposal. As the Commission itself notes in the *NPRM*, “[t]he public inspection

¹⁷ *Id.* ¶ 69.

file rules for radio broadcasters are generally similar to those for television broadcasters.”¹⁸ There is no basis to believe that a five-person staff operating two, three, or even four radio stations has the excess capacity to maintain two, three, or four online public files.

Second, by selecting such an artificially low number without regard to the size of the burden being imposed or the station resources available to meet it (e.g., two stations with only two employees each that also share a janitor, creating a non-exempt five-employee SEU), the Commission would unnecessarily create a host of problems, such as:

- (1) What happens when one of those employees suddenly quits or is temporarily disabled, depriving the station of 50% of its workforce that was watching over its local public file while also maintaining an online public file?
- (2) How should the Commission treat an SEU that fluctuates between four and five employees? To say that once an AM/FM combo hits five employees it must always maintain two public files online is not practical if the SEU subsequently drops back to four employees.
- (3) Given that, as the *NPRM* itself notes,¹⁹ SEUs report whether they have five or more full time employees only once every eight years at license renewal time, how can the FCC or the public accurately assess whether the Commission’s proposed exemption applies to a station?

Fortunately, the Commission need not try to design a complex exemption standard that attempts to take all of these facts and concerns into account, as it has already designed an appropriate exemption standard that would be both workable and practical in this context. The Commission was on the right track in suggesting that a numerical approach is the most practical and simple exemption standard. The flaw, particularly if the Commission’s proposed standard is five employees per SEU rather than per station, is that it cuts far too close to the bone, assuming

¹⁸ *Id.* ¶ 61.

¹⁹ *Id.* at n.186.

excess capacity that may not be there, or that may be lost to small changes in circumstances, opening it up to all of the problems listed above.

Instead, the Commission should utilize its “other” EEO exemption standard—that used in determining whether filing a Midterm EEO Report or doubling the number of EEO outreach credits required of an SEU would be too burdensome—of having ten or fewer full-time employees.²⁰ In originally adopting this exemption standard, the Commission stated:

[W]e believe that small staff stations warrant some additional relief from the EEO Rule adopted in this Report and Order because, as argued by some commenters, such stations have limited personnel and financial resources to carry out those requirements. In particular, we believe stations that are part of employment units with five to ten employees, the smallest staff stations subject to our EEO program requirements, would encounter these difficulties to such an extent that additional relief for these stations from EEO program requirements is warranted.²¹

These same concerns apply here, making the ten-employee exemption the more appropriate one to import into this proceeding from the Commission’s EEO rule. For a typical AM/FM combo, this exemption standard would:

- (1) be closer to the “five employees per station public file” seemingly envisioned by the original *NPRM* proposal;
- (2) greatly reduce issues with disabled or resigning employees, as dropping from eleven employees to ten is far less devastating than dropping from five to four, particularly where an SEU is operating multiple stations;
- (3) reduce the need for the Commission to over-engineer the treatment of stations whose staffs fluctuate above and below the chosen threshold, as an SEU dropping from eleven to ten full-time employees will hopefully be able to maintain one or more public files that were uploaded when the SEU still had more than ten employees, but an SEU dropping from five to four may not, particularly where multiple public files are involved;
- (4) create a more usable standard, as radio stations with more than ten full-time employees file FCC Form 396 at license renewal time *and* Form 397 (the EEO

²⁰ See *Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Report and Order, 15 FCC Rcd 2329 ¶ 126 (2000).

²¹ *Id.*

Midterm Report) at the midpoint of the license term, making information regarding whether a station qualifies for the exemption easier to obtain and more timely, as it is updated every four years rather than every eight years;

- (5) harmonize the logic behind the Commission's EEO and public file exemptions, as it is difficult to argue that the burden of filing an EEO Midterm Report once a license term is greater than that involved in uploading and perpetually maintaining multiple online public files (in this regard, note that an SEU with more than ten full-time employees files a single Midterm Report on behalf of all of the SEU's stations, whereas here the SEU would have to upload and maintain an online public file for each of those stations); and
- (6) acknowledge the distinction between TV and radio by perfectly mirroring the Commission's requirements for the filing of EEO Midterm Reports, which are filed by all TV station SEUs, but only by radio SEUs with more than ten full-time employees.²²

In short, drawing on the Commission's existing ten-employee exemption threshold is both pragmatic and consistent with the Commission's desire to avoid imposing regulatory obligations that strain staff resources.²³ For these and the further reasons discussed below, the State Associations believe these exemptions should not be temporary, but should remain in place until a station's SEU rises above ten full-time employees. The basis for the exemption is the burden an online public file would impose on smaller station SEUs, and that burden will not be any less at a future date.

B. The State Associations Support the Commission's Proposal to Allow Exempted Stations to Voluntarily Maintain Their Public Files Online

Although adopting any exemption will reduce the number of radio stations *required* to post public file material online, the State Associations believe that some stations below the

²² 47 C.F.R. § 73.2080(f)(2).

²³ The State Associations also support exempting stations with little to no broadband access, for whom the Commission recognizes the online file requirements will pose significant challenges. See *NPRM* ¶ 67. Uploading vast quantities of files would be very challenging, if not impossible, for stations with slow, limited, or no Internet connectivity. This burden outweighs any benefit to the public, as listeners in these stations' communities of license are likely to have similar limits on their Internet access.

exemption threshold may still wish to voluntarily maintain their public file online. For this reason, the State Associations support the Commission's proposal to permit that result.

Because of the wide variety of radio station operations and personnel, any exemption threshold is necessarily a somewhat blunt instrument for separating stations that can realistically maintain an online public file from those that cannot. The best approach for all parties is therefore to select an exemption threshold that ensures station public service, and indeed station viability, are not threatened, while incentivizing exempt stations to voluntarily move their public file online if they can.

Of course, making the Commission's public file database as functional and user-friendly as possible is one obvious way of persuading smaller stations that they will be able to withstand a move online, and the Commission is to be commended for its efforts in that regard. Similarly, although beyond the scope of this particular proceeding, the State Associations encourage the Commission to better adapt the public file to an online world by eliminating portions that are either redundant with publicly available FCC records or which raise special concerns in an Internet world. In this regard, the State Associations particularly encourage the FCC to consider moving forward to eliminate the requirement that broadcasters retain "Letters from the Public" in the public file—a requirement that, notably, does not apply to cable operators.²⁴ As the Commission noted in the *NPRM*, "including these documents in the online file could risk exposing personally identifiable information and . . . requiring stations to redact such information prior to uploading these documents would be overly burdensome."²⁵ Absent from this discussion but of equal concern to stations is the potential liability from posting a letter online

²⁴ See *NPRM* at n.125 ("Unlike television broadcasters, cable operators are not required to place in the public inspection file . . . letters and emails from the public.").

²⁵ *NPRM* ¶ 74.

and failing to redact everything the letter writer considers private, or otherwise violating privacy law.

As a result, the Commission doesn't want stations posting these letters unredacted, and stations don't want the burden or liability of attempting to redact each and every letter. Moreover, when the Internet allows members of the public to electronically review everything in the Commission's records about a station on the Internet and file complaints by email, it's hard to imagine that random letters from the public sequestered at a station's main studio are of much interest or consequence to the public. If every part of the file is moved online except Letters from the Public, it's hard to imagine anyone *ever* visiting a station solely for the thrill of reading its mail. Still, station personnel must remain eternally vigilant for that one person who might show up to look at what will be the last vestige of a station's local public file.²⁶

And that's the problem. If a station could move its public file online and eliminate the need to allocate scarce staff resources to hosting a local public file and ensuring ready public access to it, many would move online on the theory that the resources saved could be repurposed to maintaining the online public file. From the Commission's point of view, eliminating something of as questionable utility as Letters from the Public would be a small price to pay to encourage every other part of the public file to be moved online. However, as long as this single requirement effectively forces stations to maintain a local public file regardless of whether they also have an online public file, the burden of maintaining both files will for many small stations be a bridge too far.²⁷

²⁶ 47 C.F.R. § 73.3526(c)(1) ("The file shall be available for public inspection at any time during regular business hours.").

²⁷ See *NPRM* ¶ 18 (recognizing that limiting online file requirements to certain components of the public file would require entities to upload certain documents and maintain others in the local public file, thereby potentially imposing a greater burden than moving all documents to the online file over time).

The State Associations therefore support the Commission’s proposal to allow stations to voluntarily move their public files online, and encourage the Commission to take the additional steps necessary to make that a viable, and better yet, attractive choice. Encouraging stations to voluntarily move their public files online advances the FCC’s goal of reducing the “need for the public to visit the affected entities, which will enable such entities to improve security and minimize risks to employees,”²⁸ striking the proper balance between accommodating legitimate concerns and achieving the Commission’s goal of making more material available online.

IV. Expanding Online Filing Windows Would Mitigate the Increased Stress on the FCC’s Systems Contemplated by the *NPRM*

The *NPRM* recognizes that expanding the online public file to broadcast radio will greatly increase the number of filers and the volume of material uploaded.²⁹ In particular, the *NPRM* highlights the example raised in the National Association of Broadcasters’ (“NAB”) prior comments, which notes that “there could be more than 17,500 broadcast entities uploading quarterly issues/programs lists on the same four dates in a year.”³⁰

For these reasons, the State Associations continue to urge the Commission to expand the traditional 10-day filing window for many broadcast reports to a 30-day filing window to reduce stress on the FCC’s systems and the filers trying to use them.³¹ Curiously, the *NPRM* suggests that extending the filing deadline is unlikely to alleviate stress on the database because such an extension would “merely shift[] the heavy volume to a different” last-minute filing period.³²

²⁸ *Id.* (seeking comment on ways to further reduce the burdens of the public file and limit visits to the affected entities).

²⁹ *NPRM* ¶ 22.

³⁰ *Id.* (citing NAB Comments at 4-5).

³¹ See Public Notice Comments at 4.

³² *NPRM* at n.75.

However, that and the Commission's observation that "the vast majority of filings occur in the last two business days before a deadline"³³ disregard a number of obvious facts, including: (1) the reports at issue require stations to report on events occurring as late as the day before the ten-day filing window commences; (2) the reports typically take about a week to create, given the need for coordination among multiple parties and the time needed to review the reports for accuracy; (3) a ten-day filing window contains only 6-8 business days; (4) for two of the four quarters every year, holidays (July 4 and New Year's Day) further reduce the number of business days to 5-7; and (5) stations may need to file multiple reports in that window. As a result, the fact that most filings are made on the last two business days is not a sign of procrastination that would affect a longer filing window, *but occurs precisely because the filing window is only ten calendar days long*.

Moreover, even if the benefit actually were marginal, the *NPRM* suggests no harm from it, particularly when balanced against the benefit of allowing stations to prepare filings in an orderly manner rather than just filing what can be filed in the time allotted. Stated simply, longer filing windows are the low hanging fruit when looking for ways the FCC's systems can better withstand the massive online public file expansion contemplated in the *NPRM*.

V. Before Implementing an Online Public File Requirement for Radio, the Commission Should Carefully Assess and Strengthen Its Online Public File Systems

Moving from the low hanging fruit to a little farther up the tree, as the State Associations noted in their earlier Public Notice Comments,³⁴ before the Commission subjects its filing systems to the immense increase in filings contemplated by the *NPRM*, the Commission should carefully review and strengthen those systems to ensure they are up to the task under any

³³ *Id.*

³⁴ See Public Notice Comments at 4.

reasonable worst case analysis. In that regard, the Commission should assess the ability of its hardware and software to handle political filings in the upcoming 2016 elections. During the last presidential election in 2012, only the largest TV stations in the largest markets were maintaining an online political file, and only for the last few months of the election cycle. A greatly expanded number of filers maintaining online records for an entire election season in 2016 will put far greater stress on the system than was experienced in 2012.

Even under those lighter loads, the NAB noted in its earlier comments that “[f]or the past two years, television broadcasters have faced congestion bandwidth in uploading files during peak periods.”³⁵ The Commission itself has recognized “that there is likely to be a heavy demand on the online file during peak political seasons, when many broadcast stations take new advertising orders and modify existing orders on a daily basis.”³⁶ If the FCC cannot provide reasonable assurances that its systems are able to accommodate 2,216 TV stations uploading political files, it certainly should not endeavor to expand that burden on its systems by many thousands of radio stations until it has taken all available steps to ensure those systems are up to the task.

VI. The FCC Should Not Use This Proceeding to Expand Public File Requirements

Lastly, the State Associations agree with the Commission that this is not a proceeding in which the FCC should adopt expanded public inspection file requirements.³⁷ To that end, the State Associations submit that to the extent the FCC proposes to require licensees with websites to post a link to their online public file (if they have one), that link should replace the link to the

³⁵ See *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*, Comments of NAB at 5, MB Docket No. 14-127 (filed Aug. 28, 2014).

³⁶ *NPRM* ¶ 22.

³⁷ *Id.* ¶ 18.

EEO report that stations are already required to place on their websites. As the Commission proposes, this link should continue to satisfy the stations' EEO report disclosure obligations since those reports can be found in a station's online public file.

CONCLUSION

For the foregoing reasons, the State Associations support the Commission's proposal to extend the online public file requirements to cable operators and satellite TV providers. However, the State Associations urge the FCC to consider the unique challenges that broadcast radio stations will encounter in transitioning to an online public file. Should the FCC implement an online public file requirement for broadcast radio, it should, consistent with these comments, make appropriate exemptions and allow exempt stations the opportunity and incentives to voluntarily move their public files online when it is plausible for them to do so. The Commission should also take steps to strengthen its filing systems to withstand the stresses an expanded online public file requirement will bring.

Respectfully submitted,

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