

**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) MB Docket No. 14-127
Broadcast and Satellite Radio Licensees)

To: Office of the Secretary
Attn: The Commission

**COMMENTS OF THE MISSOURI AND CALIFORNIA
BROADCASTING ASSOCIATIONS**

The Missouri Broadcasters Association and the California Broadcasters Association (the “Associations”) hereby submit their comments in response to the Commission’s Notice of Proposed Rulemaking in the captioned matter, FCC 14-209, released December 18, 2014 (the “NPRM”).¹ In 2012, the Commission required television stations to post their public inspection files to the FCC’s on-line database.² Among other things, the NPRM proposes to extend that requirement to most radio stations. For the reasons presented below, the Associations submit that such a requirement will be unduly burdensome on smaller radio stations and is premature.³

The Second Report contemplated that implementation of the on-line public file requirement for television would be easy and uncomplicated and dismissed industry concerns. Yet the NAB has reported a variety of problems in the adoption stage of the television online

¹ In a subsequent Public Notice, DA 15-245, released February 23, 2015, the Commission set March 16, 2015 as the due date for comments.

² *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Second Report and Order*, 27 FCC Rcd 4535 (2012) (“*Second Report*”).

³ The NPRM also proposes extending the on-line public file requirement to cable operators, satellite TV providers and satellite radio. The Associations will confine their remarks to the direct interests of their members and therefore comment only on the NPRM’s proposal to extend the online filing requirement to radio.

requirement.⁴ Unfortunately, the actual experience of the Associations' television members has proven otherwise.⁵

Television is in a far better position than radio to minimize coordination issues and deal with the additional workload required to upload and manage online public and political files. There is an enormous difference between the two industries. Compared to television, radio presents far more serious small business concerns. With over 15,000 radio stations nationwide, there are nearly ten times more radio stations to feed data into the system. More specifically, according to BIA Media Access Pro, in Missouri there are 400 radio stations, compared to 48 television stations. Of the 400 stations, only 36%, or 145, are in BIA-recognized markets. Thus a preponderance – nearly two-thirds – are outside of all markets. Those 255 stations are located in 140 towns and 79 counties, an average of less than two stations per town and barely more than three stations per county. In such small markets with limited staff, aggravated by the difficulty in attracting new talent to small market radio stations, a new staffing requirement is too onerous to be justified.

For radio stations today, and most acutely for stations in smaller markets, counties or cities, the overriding problem is simply a lack of staff. With additional competition from new forms of digital media, many have found smaller staffing to be the only path to maintain viability. Many of the Associations' member radio stations are operated with very small staffs; some as few as two or three persons, including part-time. Many responsibilities that once were staffed separately now are being multi-tasked by a single employee.

To demonstrate the severity of this staffing problem, an analysis of Missouri and California radio stations was performed using BIA data as found in BIA Media Access Pro.⁶

⁴ *Second Report, supra*, at ¶¶ 25-32. ADD CITATION

⁵ Admittedly, the imposition on our members' staff time resulting from the rule has been limited to only 48 Missouri television stations and 107 California television stations out of the 1,800 television stations serving the U.S. Yet, this is a significant sample and can be considered representative of experiences on a nation-wide basis.

BIA reports indicate that in Missouri 281, and in California 539, radio stations report that a single person holds more than one of the following positions, or one or more of the following positions is listed as unfilled: Traffic Director, Sales Manager, Program Director, General Manager. Small markets are particularly revenue-challenged. While the cost of physical station operation is about the same regardless of location, BIA reports also show that the average annual revenue for radio stations outside of all markets in Missouri is about \$389,000, only about 19% of the revenue produced in rated markets. In California the average revenue is even less, about \$359,000, or about 12% of the revenue produced in its rated markets. [UPDATE WITH NATIONAL BIA DATA??]

The NPRM suggests that the burden on small radio stations will be minimal, as the obligation may be temporarily deferred and even then existing materials will only need to be uploaded once over a period of months.⁷ Yet, the real crunch will be felt during the political advertising season, which seems to begin earlier and extend longer each election cycle. The FCC requires that political files be updated immediately in order to be useful.⁸ Small stations lack the daily presence of technologically-sophisticated staff but rather rely on the expertise of occasional help by volunteers and others to deal with technology issues. Indeed, as the NPRM recognizes, many remote stations lack reliable Internet service and even Internet access.⁹ Thus compliance with a requirement to constantly update political files is well beyond the capacity of many small

⁶ BIA Media Access Pro is a program known to the FCC. A description can be found at: <http://www.biakelsey.com/Broadcast-Media/Media-Access-Pro/>

⁷ NPRM, at ¶ 71.

⁸ *Second Report, supra*, at n. 177.

⁹ NPRM, at ¶ 67.

stations (and their budgets to redress the problem). While this may sound incredible to major market governmental officials, it is the reality of small market radio operation.¹⁰

A related concern is that small stations invariably are thoroughly plugged into their communities to the extent that uploading relevant public file information to the FCC website would be superfluous – everyone in the community knows what’s on their local stations and the physical public file is already readily available to everyone locally, and so no useful purpose would be served in spreading it across the country (or around the world) on the internet. For example, in Nevada, Missouri (2010 population: 8,386) Harbit Communications is licensed the community’s only local radio stations. Nevada is 60 miles from Joplin and 75 miles from either Springfield or Kansas City MO. It is in a county with a total population of only 21,159. The two stations, an AM/FM combo, are a classic “mom-and-pop” operation that has two program-length local public affairs programs each week plus a weekly interview with the city manager. The two stations have six full-time employees, all of whom perform multiple responsibilities. The “Pop” owner is the general manager, sales manager, morning radio host and play-by-play announcer for the local school sports teams. All other major functions, traffic director, program director, promotions manager are also multi-tasked on its few employees. The licensee reports that adding another formalized requirement such as the online public file would both be superfluous for the community and would take time and resources away from the essential function of serving the community with its only outlet for local programming and local information.

On that basis, the Associations submit that for small radio broadcasters the intangible speculative benefits of maintaining on-line files are outweighed by the difficulty and cost of compliance with this burden on staff and resources that invariably will result in service losses

¹⁰ In his concurring statement to the NPRM, Commissioner Pai addressed this very point – that a remote AM station he visited had neither the bodies nor bandwidth to handle such regulatory requirements.

that will disserve the public interest. Consequently, such stations should be permanently exempted from any such requirement.¹¹

That, in turn, leads to the Associations' other related major concern. If an online public file requirement is imposed on radio, the industry will be in need of help from the outside, and the Commission must be sure that such facilities are in place, available and tested before imposing the staffing requirements implicated by such a new rule. In the *Second Report* the Commission recognized that encouraging and accommodating hosting services would allow for greater station efficiencies.¹² It delegated to staff the authority to incorporate such efficiencies, and instructed them to cooperate with the development of such hosting services and to incorporate them in the Commission's online system. The staff was also delegated authority to design, add to, or adjust the features of the online public file, as needed. To date, that plan has not worked. Already, many television stations have been stuck with staffing requirements they had hoped to avoid.¹³

An example of this failure is Broadcast1Source which set out to create a hosting service as envisioned by the FCC, as noted above. The Associations both participate with Broadcast1Source, which already has a successful EEO compliance program. Its ePIF service is intended to simplify online public file compliance for all broadcasters, most particularly individual or small group-owned stations that, as the Commission recognized, do not possess "the dedicated IT resources to resolve issues that may arise with implementation" as well as smaller market stations, about whom the Commission itself expressed concern. Based on its

¹¹ As with EEO outreach obligations, a station's qualification for this exemption could be measured as a function of full-time staff and market size. To the extent that any otherwise exempt station believes that its resources and needs would be better served by maintaining its inspection file on-line, it should have the flexibility to do so.

¹² *Second Report, supra*, at ¶61. This was further reflected at ¶ 23 of the NPRM.

¹³ Indeed the problem even afflicts large groups. For example, when the same, identical file must be uploaded for every station in the group, it must be individually uploaded to each station's file on-line by hand. There is no FCC facility to accomplish this task for all stations using only one upload.

own rationale, the staff has a Commission-imposed obligation to work with such a new hosting service.

But problems arose and persist. The FCC staff advised Broadcast1Source to develop its hosting service using API interface. Although ostensibly nearly complete, all necessary functions still do not work. After more than two years of intensive development and significant capital expense, bugs in the API remain and have no imminent prospect of being solved.¹⁴ Without such hosting services, radio broadcasters – especially those in small markets who can least afford it – will have to face staffing and training problems they are unprepared for and which unnecessarily add to their costs in an increasingly competitive multi-media world and diminish their ability to provide community service in areas in which it is most needed.

A related problem is whether the FCC's online public file database is capable of smoothly handling the uploading of what would be tens of millions of pages of new documents onto its online database. As noted above, there are ten times as many radio stations as television. Granted, the Commission has worked to make its system more reliable, but it has recognized its own vulnerability by requiring that broadcasters maintain their own separate backup of the political file in the event that the Commission's system breaks down.¹⁵ The FCC database experienced some breakdowns even when serving only large-market, top-four television network stations. Now, with all television stations already using the system, before any further expansion is contemplated it is incumbent on Commission staff to perform tests and convincingly demonstrate system reliability that can withstand 15,000 new radio station users.

¹⁴ The Associations are hopeful that Broadcast1Source will submit their own comments in this proceeding and detail their extensive efforts in attempting to craft an efficient, workable hosting service. As a result of the inability of this program to launch, many small television stations that had to go online this past July had planned to reduce their staff burden by using ePIF but were unable to do so, and had to retool their compliance strategy.

¹⁵ *Second Report, supra*, at ¶ 96.

In sum, extending the online public file requirements to radio is vastly premature. The burden it would impose on both small market stations and larger groups that must coordinate the files of many stations across markets and nationwide will be large and will presents more severe problems than were expected with television and which television has, in fact, experienced. Prior to implementing such an action the Commission first should act promptly to fully enable hosting services that can ease the burden and provide expertise and assistance that is not available at the local level of many stations. The Commission also should exempt those categories of stations whose staffing size, resources and/or markets indicate that their burdens of compliance will outweigh anticipated public benefits.

Based on the foregoing, the Associations believe the time has not come to add radio to the online public file requirement. The Associations urge the Commission to proceed cautiously and only after adequate preparation before considering whether to extend the online public/political file requirements to the more than 15,000 radio stations nationwide.

Respectfully submitted,

**THE MISSOURI AND CALIFORNIA
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