

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Amendment of Section 73.3613 of the)	MB Docket No. 18-4
Commission’s Rules Regarding Filing of)	
Contracts)	
)	
Modernization of Media Regulation)	MB Docket No. 17-105
Initiative)	

COMMENTS OF
OFFICE OF COMMUNICATION, INC. OF THE UNITED CHURCH OF CHRIST
MEDIA ALLIANCE
NATIONAL ORGANIZATION FOR WOMEN FOUNDATION
COMMUNICATIONS WORKERS OF AMERICA
COMMON CAUSE
BENTON FOUNDATION
MEDIA COUNCIL HAWAII
PROMETHEUS RADIO PROJECT
MEDIA MOBILIZING PROJECT

Office of Communication, Inc. of the United Church of Christ, Media Alliance, National Organization for Women Foundation, Communications Workers of America, Common Cause, Benton Foundation, Media Council Hawai`i, Prometheus Radio Project, and Media Mobilizing Project (“UCC *et al.*”),¹ by their attorneys, the Institute for Public Representation, respectfully submit these comments in response to the Federal Communication Commission’s (“FCC” or “Commission”) January 30, 2018, Notice of Proposed Rulemaking concerning the Commission’s

¹ Each of these organizations has or represents members of the listening and viewing public who participate in broadcast license renewals and transfers, among other things. They would be adversely affected if their access to the information in public files is limited or restricted as this would impair their ability to participate in those proceedings.

paper filing requirements for contracts relating to the ownership and operation of broadcast stations.

UCC *et al.* do not altogether oppose modernization of the Commission's filing rules so long as the changes do not diminish the Commission and public's ability to evaluate the ownership and control of stations. However, as discussed below, in several respects, the Commission's proposals go beyond mere modernization by denying prompt access to certain important ownership documents and contracts. Specifically, UCC *et al.* oppose allowing licensees to meet their Section 73.3613 requirements using their online public files, in lieu of the paper filing requirement, unless the Commission requires licensees to file actual copies of these documents in their public files within 30 days of their execution. The current public file rules, in Sections 73.3526 and 73.3527, allow licenses and permittees to either include copies of such documents in their online public inspection files *or* to maintain an up-to-date list of these documents in their public files with a requirement to provide a copy of the documents to requesting parties within 7 days.

UCC *et al.* also do not oppose the Commission's proposal to apply the Section 73.3613 allowance for redaction of confidential or proprietary information for joint sales agreements ("JSAs") and time brokerage agreements ("TBAs") to all Section 73.3613 documents, but in all cases, the Commission should make clear that licensees must not redact information that is not confidential or proprietary and is actually necessary to effectively evaluate these agreements.

I. The Commission should require broadcasters to file actual copies of Section 73.3613 documents in their online public files within 30 days.

UCC *et al.* disagree with the Commission's tentative conclusion that the existing public file rules are sufficient to satisfy the Commission's and the public's information needs.

Amending the public file rules to require filing actual copies within 30 days is necessary to

guarantee the public's access to these documents absent the Section 73.3613 paper filing requirement.

Section 73.3613 of the FCC rules covers contracts and documents relating to ownership and operation of broadcast stations,² and is designed to serve the public interest by keeping both the public and the Commission informed of the ownership and control of broadcast stations and of licensees' compliance with the Commission's ownership regulations.³ Under the rule, each licensee or permittee of a broadcast station must file paper copies of certain contracts and other documents, such as network affiliation agreements, JSAs, TBAs, and shared service agreements ("SSAs") with the Commission within 30 days after execution.⁴ The current public file rules, codified in 47 CFR §§73.3526 and 73.3527, however, allow broadcasters to choose to only maintain an up-to-date list, and not the actual text, of such documents in their online public file. In addition, the public file rules do not contain a specific timeframe for filing or updating the documents, as does Section 73.3613.

The unhindered public access to the actual copies of documents related to a broadcast station's ownership, control, and operation is essential for the public to exercise its right under the Communications Act. It is well-established that the public's interest in the broadcast industry "is direct and their responsibilities important."⁵ The Communications Act protects the public's unassailable rights to participate in broadcast licensing by requiring the Commission to grant a

² See 47 CFR §73.3613.

³ See, e.g., Filing of Contracts, Broadcast Licensees and Permittees, 18 Fed. Reg. 3495, 3495-96 (June 18, 1953).

⁴ 47 CFR §73.3613.

⁵ *Office of Communication of United Church of Christ v. F.C.C.*, 359 F.2d 994, 1003 (D.C. Cir. 1966) (citing FCC, *Television Network Program Procurement*, H.R. No. 281, 88th Cong., 1st Sess. 20 (1963)).

station license only “if public convenience, interest, or necessity will be served thereby”⁶ and by allowing the public to file a petition to deny a broadcast application.⁷ Only the actual copies of these documents, would enable the public and the FCC to effectively monitor station owners, and challenge and deny license renewals when necessary.

This information should be readily available for review. The Commission should not place the burden on the public and itself to have to request specific documents and follow up on those requests should a station owner be unresponsive. In addition, in preparing a petition to deny, time is of the essence to meet the deadlines established by statute.

Requiring the filing of actual copies in their public files is still less burdensome than the existing rules. Under the existing rules, broadcasters have to file paper copies of all these documents with the Commission within 30 days, while the proposed modification would allow them to easily upload these documents in their public file along with all the other documents they are required to upload. If anything, the financial and labor cost for each station owner would be reduced, because the station would not need to deal with copy requests.

The Commission should continue to ensure that it and the public have access to the most current versions of these documents soon after execution. Ownership contracts can be executed and modified at any time. Since the Commission first adopted the 30-day timeframe for filing documents related to ownership and control in the late 1930s,⁸ the requirement has never been challenged or changed in later proceedings. This deadline enables the public to evaluate agreements in time enough to halt implementation before harm to the public cannot be undone.

⁶ 47 U.S.C. §§307(a), 309(a), 310(d).

⁷ *Id.* at §309(d).

⁸ *See* Rules Governing the Filing of Information, Contracts, Periodic Reports, etc., 4 Fed. Reg. 3516 (Aug. 3, 1939).

Outdated information in the file could also mislead interested parties and impair their ability to determine whether licensees fall short of their public interest obligations.

Simply expecting broadcasters to “actively maintain” their online public files, as expected under the existing rules,⁹ is not sufficient. Absent a bright-line rule, many stations routinely and blatantly evade disclosure by protracted delay in disclosure. In February 2018, UCC *et al.* inspected the online public files for first one hundred television stations (as listed by FCC ID) affiliated with the Fox network. Twenty-four stations have not filed any ownership-related contract or list pursuant to Section 73.3526(e)(5). Twenty-four other stations filed actual copies of agreements, but at least eighteen of the agreements are expired, and there is no indication that the agreements were renewed or if they were, whether they were modified. The remaining fifty-two stations filed document lists, but in most cases, the agreements listed were either expired or did not include an expiration date. It is therefore particularly important for the Commission to retain the 30-day timeframe for filing to protect the public access to the most recent and accurate information.

II. The Commission should clarify that broadcasters can only redact information that is actually confidential or proprietary in Section 73.3613 documents.

Although UCC *et al.* do not oppose the Commission’s tentative conclusion to allow redaction of confidential and proprietary information for all Section 73.3613 documents, they strongly encourage the Commission to clarify what constitutes “confidential” and “proprietary” information and how station owners can make and indicate redactions to ensure that the public obtains necessary information to evaluate these documents.

⁹ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations et al.*, Second Report and Order, 27 FCC Rcd 4535, 4582 (2012).

Some broadcasters redact information that is not confidential or proprietary, thereby depriving the public a meaningful review. Of the JSAs UCC *et al.* reviewed from 30 stations, the amount of redaction varied greatly. There was no consistency as to what constitutes confidential or proprietary information, indicating that some stations are clearly redacting information that does not fit the Commission's exception. For example, WGMB-TV (FCC ID: 12520) redacted the term length for its JSA, so interested parties could not determine when the agreement terminates. WBFF (FCC ID: 10758) cut out two provisions in the Scope of Services. WVUE-DT (FCC ID: 4149) redacted an entire section on Employment and Operational Agreements. These are all highly relevant pieces of information regarding actual control and management.

Moreover, it is important for the Commission to specify how station owners can indicate redactions. The Commission or any member of the public who reviews these documents should know what is redacted to be able to judge whether the redaction is appropriate. However, some broadcasters' current practice is to obliterate or remove an entire paragraph including the headings, which gives the reviewing party no idea what was redacted.¹⁰ Sometimes, it is even difficult to notice that something is redacted when the broadcasters just delete a sentence or a paragraph without clear indication that those items were redacted in the filed copy. The Commission should provide some guidance to standardize the practice and to make sure that redaction would not be a hurdle for the public to access information.

Conclusion

The accessibility to broadcast stations' documents relating to ownership and control is necessary and important for the Commission to ensure compliance with its rules and for the

¹⁰ See *e.g.*, Joint Sales Agreement between WVUE, LLC, and Louisiana Media Company, LLC (Dec. 12, 2013).

public to exercise its right to participate in licensing proceedings. The availability of actual copies of the documents within 30 days is an indispensable component of the public's right to access. Redaction should be limited to confidential and proprietary information to avoid the deprivation of a meaningful public review. UCC *et al.* therefore urge the Commission to require that stations file actual copies of Section 73.3613 documents in their online public file within 30 days after execution and clarify what can be redacted and how that information can be redacted.

Respectfully submitted,

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* These comments were drafted primarily by Yuan Tian, a law student in the Institute for Public Representation Communications & Technology Clinic.