



GEORGETOWN LAW
INSTITUTE FOR PUBLIC REPRESENTATION

Directors
Hope M. Babcock
Angela J. Campbell
Aderson Francois
Benton Senior Counselor
Andrew Jay Schwartzman
Staff Attorneys
Yael Bromberg
Peter DeMarco
Chris Laughlin*

600 New Jersey Avenue, NW, Suite 312
Washington, DC 20001-2075
Telephone: 202-662-9535
Fax: 202-662-9634

August 4, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Filed electronically via ECFS

Re: Modernization of Media Regulation, MB Docket No. 17-105, Reply to Comments
Proposing Changes to the FCC's Public File Requirements

Dear Ms. Dortch:

The undersigned organizations strongly oppose proposals to eliminate or reduce the utility of online public inspection files required by FCC rules §73.3526 (commercial television) §73.3527 (noncommercial television), and 76.1700 (MVPDs). Having public files hosted on the FCC's website has greatly increased public access to important information. This information is needed to ensure that broadcasters and MVPDs are serving their communities and meeting their public interest obligations under the Communications Act. Further, the Commission cannot eliminate the requirement that broadcasters file quarterly issues/programs lists (I/P lists) without adopting an effective alternative process for the public to learn how stations are serving their communities.

Existing public file requirements ensure the public has easy access to important, useful, and comprehensive information about broadcasters and MVPDs.

The Commission substantially reduced filing burdens on broadcasters and MVPDs when it modernized the public file requirements in 2012 and 2016.¹ Specifically, instead of requiring each station and MVPD to maintain a paper public inspection file at its main studio or headquarters, the Commission decided to host an online database on its own website.² It explained that its hosting of the public file addressed “concerns expressed by many broadcasters about the burden of hosting files online themselves” and would ultimately reduce costs for stations. While the Commission acknowledged that stations would incur costs uploading the files initially, those “transitional costs would involve only a one-time burden on broadcasters that . . . is outweighed by the significant benefits of transitioning the public file online.”³ The Commission also reduced burdens on stations by only requiring them to upload items then required to be in the public file but not otherwise filed with the Commission or available on the Commission’s website.⁴ These items include I/P lists, children’s television commercial limits records, donor lists for NCEs, local public notice announcements, and joint sales agreements.⁵

Now, some commenters request that the Commission eliminate the online public file requirement altogether, reduce the amount of information they must file, or allow them to post the information on their own websites.⁶ The Commission should reject these requests.

The online public file has worked as intended, permitting the public “to review the online public file of any station, and quickly navigate to where each category of documents is found, because each station’s online public file will be organized in the same format.”⁷ Many of the undersigned organizations regularly use this database to research and analyze how these entities are serving their communities and meeting their obligations under Commission rules.⁸ The political file in particular is important because it “further[s] the First Amendment’s goal of an informed electorate that is able to evaluate the validity of messages and hold accountable the interests that disseminate political advocacy.”⁹ As anticipated, these files are used by

¹ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, 27 FCC Rcd 4535 (2012); *Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, 31 FCC Rcd 526 (2016).

² 31 FCC Rcd at 526

³ 27 FCC Rcd at 4546.

⁴ *Id.* at 4540.

⁵ *Id.*

⁶ Verizon at 6-8; Public Broadcasting at 12-13; Brantley Broadcast Associates, et al. at 22.

⁷ 27 FCC Rcd at 4542.

⁸ For example, Campaign Legal Center and others have filed complaints about television stations’ failure to provide adequate information about political broadcasts. *See Complaints Involving the Political Files* 32 FCC Rcd 74 (set aside by 32 FCC Rcd 1091).

⁹ 27 FCC Rcd at 4543.

“candidates, as well as the public, journalists, educators, and the research community, to identify and investigate those sponsoring political advertisements.”¹⁰

Thus, the claims of some commenters that no one uses the public files are unfounded. Since the Commission hosts the files on its website, stations and MVPDs may simply be unaware of how often they are used by the public. Moreover, commenters that argue the Commission should eliminate the online public file because the information in it is already available elsewhere on the FCC website are either misinformed or unfamiliar with what the Commission rules actually require. For example, Public Broadcasting at 12 “suggest[] that valid questions exist as to why any information still needs to be uploaded by a station to the FCC’s online public file (as opposed to the FCC itself simply making documents and information about a station available for public view).” In fact, §73.3527(b)(3) explicitly provides that the Commission will automatically link documents to the public inspection files that have already been filed by noncommercial stations electronically with the Commission.¹¹

Verizon, in particular, misapprehends the purpose of the online public inspection files. It says that MVPD websites and other sources provide more extensive and useful information for consumers such as channel line-ups, service plans and prices, and news about the company and its service to the community.¹² However, the purpose of the online public inspection files is not to provide scheduling information but to verify that MVPDs are meeting their obligations under Commission rules. The public file contains information about MVPDs that is not available elsewhere, such as political files and documentation of compliance with the children’s advertising limits. Thus, the Commission should not entertain Verizon’s request to eliminate public file requirements for MVPDs.

The Commission should also reject the suggestion of some companies that the public files could be made available on their own websites.¹³ Adopting this suggestion would represent a step backwards. One of the major advantages of having the Commission host the online files is that it enables members of the public to find the information they need all in one place. In addition, adopting this suggestion would make it even more costly for the media companies, at least according to record evidence broadcasters themselves submitted. The Commission had originally considered requiring television stations to make the contents of their public inspection files available on their own website or their state broadcasters’ association site.¹⁴ But the Commission later decided to host the online public files due to estimates from the state broadcaster associations that it would “save broadcasters more than \$24 million in first-year costs, and almost \$14 million in annual costs thereafter.”¹⁵ Especially given that the media companies have already incurred the initial cost of uploading parts of their public files,

¹⁰ *Id.*

¹¹ There is a similar provision for commercial stations in §73.3526(b)(4), and the Commission links EEO program annual reports for MVPDs, §76.1700(a)(2), which are the only documents they file with the Commission that must also be retained in their public files, 31 FCC Rcd at 545.

¹² Verizon at 6.

¹³ See Brantley Broadcast Associates, et al. at 22.

¹⁴ 27 FCC Rcd at 4543.

¹⁵ *Id.*

broadcasters' earlier claims suggest that it could be very costly for media companies—as well as inconvenient for the public—to require them to maintain public files on their own websites.

The Commission cannot eliminate issues/programs lists without establishing an alternative way for the public to obtain the information necessary to file a petition to deny.

A number of commenters, such as Nexstar at 10-11 and Public Broadcasters at 12-13, focus on the issue/programs lists. The Commission required stations to maintain “illustrative” I/P lists in the 1980s when it eliminated program log requirements.¹⁶ The DC Circuit reversed this aspect of the Commission’s decision, finding that without logs and with only illustrative I/P lists, the public lacked any means, short of constant monitoring, to gauge a station’s overall public service performance.¹⁷ It found that “[s]uch a dearth of information is hardly conducive to encouraging the public participation envisioned by the Congress and by this court as essential to the formulation of an informed regulatory policy.”¹⁸ In particular, the court was concerned that the Commission placed “near-total reliance on petitions to deny as the means to identify licensees that are not fulfilling their public interest obligations” while “simultaneously . . . depriv[ing] interested parties and itself of the vital information needed to establish a prima facie case in such petitions.”¹⁹ On remand, the Commission made “only cosmetic improvements” that were again reversed by the DC Circuit.²⁰ Thereafter, the Commission established the I/P list requirement that exists today.

The significance of these cases is that the Commission cannot eliminate I/P lists without establishing a process that allows the public to obtain the information necessary to participate in the licensing process. Public Broadcasters at 12 say they are “not aware of any circumstance in which the Commission determined that a station did or did not serve the public interest in its programming during a license term based on the information in these exhaustively compiled lists.” However, the attorneys at IPR are aware of several licensing proceedings in which I/P lists were used as evidence. They also counsel community groups that are concerned about a station’s service to consult these lists.

Some of the undersigned organizations have previously expressed concern that the formats used by some stations for their I/P lists are not as informative as they could be.²¹ As a result, they supported replacing the I/P lists with a streamlined, standardized disclosure that utilized composite weeks for reporting programming responsive to community issues (i.e., local news, civic affairs, and electoral affairs).²² But until the Commission adopts this or another meaningful alternative to I/P lists, it cannot eliminate them.

For these reasons, we urge the Commission to reject industry proposals to eliminate or reduce the usefulness of the online public files.

¹⁶ *United Church of Christ v. FCC*, 707 F.2d 1413, 1441 (D.C. Cir. 1983).

¹⁷ *Id.* at 1441.

¹⁸ *Id.* at 1441.

¹⁹ *Id.* at 1441-42.

²⁰ *United Church of Christ v. FCC*, 779 F.2d 702, 704 (D.C. Cir. 1985).

²¹ See Comments of Public Interest Public Airwaves Coalition (PIPAC), *Standardized Program Reporting Requirements for Broadcast Licensees*, MB Docket No. 11-189 (Jan. 27, 2012).

²² *Id.* at 5, 6.

Respectfully submitted,

/s/

Chris Laughlin
Angela J. Campbell
*Counsel for United Church of Christ,
Office of Communications, Inc.*

Cheryl Leanza
Policy Advisor
United Church of Christ,
Office of Communications, Inc.

Kevin Taglang
Executive Editor
Benton Foundation

Brendan Fischer
Director of Federal & FEC Reform
Campaign Legal Center

Matt Wood
Policy Director
Free Press

Meredith McGehee
Chief of Policy, Programs & Strategy
Issue One

Carmen Scurato
Director, Policy & Legal Affairs
National Hispanic Media Coalition

Michael Calabrese
Director, Wireless Future Program
Open Technology Institute at New America