

**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)

To: Federal Communications Commission

COMMENTS OF EDUCATIONAL MEDIA FOUNDATION

Educational Media Foundation (“EMF”), by its attorneys, hereby submits its comments in the above-referenced proceeding. The Federal Communications Commission (the “Commission”) has asked for comment on its *Notice of Proposed Rulemaking* (“NPRM”) where the Commission proposes “to expand to cable operators, satellite TV providers, broadcast radio licensees, and satellite radio licensees the requirement that public inspection files be posted to the FCC’s online database.”¹ EMF is perhaps the largest noncommercial broadcaster in the country, holding licenses for more than 300 full-power noncommercial educational broadcast radio stations (“NCE”) operating in communities large and small across the country. EMF believes NCE radio stations should be exempt from the rules proposed in the *NPRM*, as NCE stations do not routinely engage in political broadcasting, the motivating factor in adopting these obligations. If not fully exempted, their compliance should be only required after the technologies and practices of the online public file have been perfected by other broadcasters,

¹ *Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Notice of Proposed Rulemaking, 29 FCC Rcd 15943 (2014) (the “NPRM”).

and even then, certain aspects of the public file rules applicable to NCE stations should not be applied to the online file.

While it has been EMF's experience that the public file of its stations are rarely if ever accessed, and thus there does not appear to be a great public demand for the public file of radio stations to be placed online, if the proposals set forth in the *NPRM* are in fact adopted for broadcast radio licensees, NCE stations should be permanently exempt. The FCC has proposed to begin online filing requirements with commercial radio stations in Nielsen Audio defined markets 1-50 that have five or more full time employees.² All other radio stations would be required to begin online filing two years after the initial implementation date, except NCEs and stations with fewer than 5 full time employees.³ While that proposal to exempt NCEs and small stations with fewer than 5 full time employees is temporary in nature, EMF believes those stations should be permanently exempted from the online public file requirements.

According to the *NPRM*, one of the motivating reasons underlying the proposals to adopt the rules set forth in the *NPRM* is the public availability of the political files of cable and satellite systems.⁴ Certainly, public disclosure and transparency may be particularly important as applied to political file reporting. However, exempting NCE licensees from the online filing requirements would not inhibit public access to political files as NCEs typically do not have substantial political files to maintain, as there are no reasonable access obligations for such broadcasters and noncommercial broadcasters typically do not sell any broadcast time to political candidates. Thus, political disclosure is not a motivating force in mandating online public files for noncommercial stations.

² See *NPRM* ¶ 69.

³ *Id.*

⁴ The Campaign Legal Center, Common Cause and the Sunlight Foundation Petition for Rulemaking, filed July 31, 2014.

Any new obligations required of NCE licensees will place a financial burden on the NCE stations that is unique. It is important to note that changes to procedures at NCE stations often have greater impact due to smaller budgets and limited personnel. As the Commission noted in the *NPRM* “concerns regarding the potential cost of an online public file requirement carry more weight, particularly with very small radio stations, which may struggle financially and have fewer resources than small television stations.”⁵ In addition, the Commission has many times recognized that noncommercial broadcasters, whose principal funding comes directly from their listeners, are often limited in their resources. For this reason, in many cases, the Commission has exempted NCE stations from certain regulatory burdens that could impose additional costs on these stations, or it has minimized their regulatory burdens knowing that some costs may prove difficult for the noncommercial broadcaster to meet. They operate their nonprofit businesses with the need to weigh choices between competing demands for their resources just like any commercial broadcaster – yet they do so in a world where these choices are perhaps even more difficult, as their flexibility to find a means to pay for the costs imposed by any choice is more limited by their status as a noncommercial, nonprofit licensee.

In addition, the nature of some of the information in the NCE public file argues for exempting these stations from any new requirements. The FCC must recognize the unique information provided in the public file of NCE stations, and how crucial it is to protect the privacy of supporters of noncommercial broadcasting. The current rules require that NCE stations place in their public file lists of donors who provide support to particular programs. Just as those who submit letters to the public inspection file of television stations may not expect that their names be made available on the Internet, donors to specific programs on NCE stations may not expect that the fact of their donations will be available to anyone anywhere in the world with

⁵ *NPRM* ¶ 20.

an Internet connection. One can almost imagine how such donors could become the target of unscrupulous individuals trolling the Internet for the names of unsuspecting donors. This information, while available in a station's physical file, is much more likely to be the subject of abuse if it is broadly disseminated on the Internet. The Commission does not want to give NCE donors any reason to be hesitant about supporting noncommercial radio. The protection of the privacy of these supporters is just one more reason to permanently exempt NCE licensee from the online public file requirements.

In order to comply with the Commission's rules, all broadcast stations, commercial, noncommercial, big and small must file a Broadcast Equal Employment Opportunity Program Report (FCC Form 396) with their renewal application.⁶ As a result, the information required to be filed by broadcast stations regarding compliance with the equal employment opportunity rules is already available to the public online. Thus, the exemption of NCE licensees from the public online filing requirement will have no impact on the availability of EEO information to the public.

If, however, the Commission fails to permanently exempt NCE stations from the online public file requirement, NCEs should be the last stations required to maintain online files. It is critical to solve any issues with the online filing process before requiring NCEs to utilize resources in uploading online files. NCEs will be able to benefit from this experience in reducing costs when their time comes to implement any rules that may be adopted. In addition, in crafting rules for NCE stations, the Commission needs to carefully assess the unique obligations for public file compliance for noncommercial stations, and adopt rules that protect privacy rights of donors and others involved in the noncommercial broadcasting community.

⁶ See 47 C.F.R. § 73.2080(f)(1).

The burdens on noncommercial stations are great, and changing procedures can be a challenge. Thus, as set forth above, EMF requests the Commission permanently exempt NCE broadcast radio stations from the proposed online public file obligations.

Respectfully submitted,

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