

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
) MB Docket No. 14-127
Expansion of Online Public File Obligations to)
Cable and Satellite TV Operators and)
Broadcast and Satellite Radio Licensees)
)

To: The Commission

COMMENTS OF MAX MEDIA LLC

Max Media LLC,¹ by its attorneys, hereby submits Comments in response to the Federal Communications Commission’s (“FCC” or the “Commission”) *Notice of Proposed Rulemaking* released on December 18, 2014, in the above-captioned proceeding.²

I. Radio Stations Operate Under Significant Economic Pressures.

As the Commission is well aware, the radio industry is subject to significant economic challenges as the result of competition from an ever-growing multitude of substitute services – most notably, satellite and internet radio. Accordingly, any decision by the Commission to impose additional regulatory requirements on radio stations, such as mandatory online public files, would result in even more pressure on radio operators – and on station employees who are

¹ Through its subsidiaries and affiliates, Max Media LLC (“Max Media”) manages and operates 36 commercial radio stations in Colorado, Illinois, Missouri, North Carolina, Pennsylvania and Virginia. The majority of Max Media’s radio stations serve small radio markets.

² 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, 29 FCC Rcd. 15943 (rel. Dec. 18, 2014) (“NPRM”). A summary of the NPRM was published in the Federal Register on February 13, 2015 setting March 16, 2015, as the deadline for comments, 80 FR 8031 (Feb. 13, 2015).

often already pushed to their limits. In fact, mandating online public files for radio stations would take the Commission in precisely the opposite direction of its own pledge to actively reduce regulatory burdens.³

II. Expansion of Online Public Files to Smaller Market Commercial Radio Stations Should be Entirely Voluntary.

In the NPRM, the Commission has proposed to require online public files for commercial radio stations in the 50 largest Nielsen Audio radio markets but to delay mandatory online public file requirements for all other radio stations.⁴ The Commission has, however, unnecessarily and prematurely proposed that this delay only last for a pre-determined and pre-set period of two years.⁵

Max Media urges the Commission to refrain from precipitately setting a fixed two-year transition period for radio stations outside the top 50 markets at this early stage of the rulemaking proceeding. Instead, the Commission should monitor the transition to online files by stations in the top 50 markets and then make a decision for other stations based on tangible information gathered from that experience.

³ The Commission has pledged to carry out President Obama's mandate to independent regulatory agencies to make their "regulatory program[s] more effective or less burdensome in achieving the regulatory objectives." *Presidential Executive Order 13579, Regulation and Independent Regulatory Agencies*, available at www.whitehouse.gov/the-press-office/2011/07/11/executive-order-regulation-and-independent-regulatory-agencies. In expressing his support for the President's Executive Order, then-FCC Chairman Julius Genachowski stated: "Since my first day as Chairman, I have made regulatory reform a top priority, improving FCC processes and decisions to support innovation, economic growth, and America's global competitiveness . . . Shortly after the President's initial Executive Order, I directed FCC staff to follow the spirit of the Order. We had already conducted retrospective reviews, and incorporated cost-benefit analysis into our decision-making." See www.whitehouse.gov/blog/2011/07/11/president-s-executive-order-improving-and-streamlining-regulation-independent-regula.

⁴ *NPRM* at ¶ 69.

⁵ *Id.*

In responding to an August 2014 Public Notice seeking comment on whether or not to launch this very rulemaking, the Commission has already acknowledged that “the majority of commenters addressing [the issue of whether to extend the online file requirement to radio] either objected to extending the online filing requirement to radio and/or argued that the Commission should carefully consider the financial burden on struggling radio stations as well as the technical and financial challenges to the FCC that would be posed by expanding the online file to include radio.”⁶ As the Commission is already well aware, “many radio stations are very small and have limited financial resources and small staffs”⁷ and “many small stations already face significant economic challenges simply to stay on the air.”⁸

While the Commission noted in the NPRM that similar concerns were raised when the Commission nonetheless decided to require online files for small television stations, the Commission has explicitly recognized that the “concerns regarding the potential cost of an online public file requirement carry more weight, particularly for very small radio stations, which may struggle financially and have fewer resources than small television stations.”⁹ Nonetheless, the Commission has proposed in the NPRM to treat small market radio stations to the same two-year phase-in period that was previously applied to small market television stations.

There is little to be gained from such a hasty decision. Instead, the Commission should wait to see what comes of requiring large market radio stations to convert to online public files

⁶ NPRM at ¶ 12 (footnote omitted). *See also 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, 29 FCC Rcd. 9556 (rel. Aug. 7, 2014).

⁷ *Id.* at ¶ 19 (footnote omitted).

⁸ *Id.*

⁹ *Id.* at ¶ 20.

and then issue a further notice to gather information about that experience.¹⁰ Additionally, by making the transition to online public files available immediately for all radio stations on a voluntary basis, the Commission will be able to monitor and collect information about how the transition impacts those smaller stations that choose to voluntarily transition their public files.

While Max Media supports the Commission's proposal to permit small market stations to voluntarily transition to an online public file,¹¹ the logical extension of the Commission's own proposal to not require small market stations "to participate until [the Commission has] gained some experience with the inclusion of stations with greater resources" leads to the conclusion that the Commission should wait until it can gather valuable feedback regarding that experience and only then assess the delicate balance between the benefit of online public files and the financial burdens specific to small market radio stations.

III. Conclusion.

Max Media is a proud radio broadcaster. However, any effort by the Commission to needlessly and hastily impose mandatory online public file requirements on small market radio

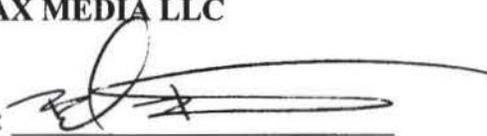
¹⁰ It should not be assumed that the transition to online public files for radio stations will be similar to that experienced by television stations. Not only are the economics of television and radio quite different but the transition for radio is likely to be unique given the sheer number of radio stations that will be added to the FCC's online system. According to the Commission's latest data, there are 15,432 licensed radio stations compared to 2,216 (including Class A) licensed television stations. See *News Release*, Broadcast Station Totals as of December 31, 2014 (Jan. 7, 2015), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-331381A1.pdf. Additionally, it is likely that there has not yet been enough time to gather information regarding the full impact on smaller television stations of transitioning to online public files because it was not until July 1, 2014 – little more than eight months ago – that smaller market television stations were required for the first time to upload documents to their political files. See *Public Notice*, Media Bureau Reminds Television Broadcasters of July 1, 2014 Online Political File Deadline (April 4, 2014), available at www.apps.fcc.gov/ecfs/document/view?id=7521096823.

¹¹ *NPRM* at ¶¶ 29, 68, 70 and 71.

stations would have the inevitable impact of diverting already severely limited resources away from radio stations and away from the core mission of serving their communities.

Respectfully submitted,

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