

**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

**JOINT COMMENTS OF
LOCAL AND REGIONAL SMALL RADIO BROADCASTERS**

Asian American Broadcasting, LLC, Four R Broadcasting, Inc., MBC Grand
Broadcasting, Inc., North County Communications, LLC, Power Valley Communications, Inc.,
Quinnipiac University, Southern Community Services, Inc., Texas Public Radio, and United
Ministries (collectively, the “Local and Regional Small Radio Broadcasters”),¹ by their

¹ Asian American Broadcasting, LLC, is the licensee of commercial AM station KFXN(AM), serving the local Hmong community in Minneapolis, MN.

Four R Broadcasting, Inc., is the licensee of commercial FM stations KDCD(FM) and KMDX(FM), both serving the community of San Angelo, TX.

MBC Grand Broadcasting, Inc., is the licensee of five commercial radio stations (three FM and two AM) licensed to Grand Junction, CO – KKVT(FM), KMGJ(FM), KMOZ-FM, KNZZ(AM), and KTMM(AM). MBC Grand Broadcasting, Inc., is also the licensee of three additional commercial radio stations serving the communities surrounding Grand Junction – KSTR-FM, Montrose, CO; KGLN(AM), Glenwood Springs, CO; and KNAM(AM), Silt, CO.

North County Communications, LLC, is the licensee of stand-alone commercial AM station KPRL(AM) serving the community of Paso Robles, CA. KPRL is the only AM radio station licensed to serve Paso Robles.

Power Valley Communications, Inc. is the licensee of commercial FM station WADI(FM) serving the community of Corinth, MS.

(continued . . .)

attorneys, hereby submit these Joint 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. Small Radio Stations Operate Under Significant Economic and Regulatory Pressures.

The Local and Regional Small Radio Broadcasters represent a diverse group of radio station licensees serving very different corners of the United States. Four licensees operate stand-alone radio stations – a commercial AM on the West Coast, a commercial FM in New England, and two FM stations in the South, one commercial and one noncommercial. Another two licensees operate regional groups of stations – one, a regional cluster of noncommercial FM radio stations in Texas, the other a group of commercial AM and FM stations in Western Colorado. Another licensee operates non-commercially in Western Colorado,³ as well as a stand-alone noncommercial FM in the Mid-Atlantic. Finally, one of the licensees is a private

Quinnipiac University is the licensee of noncommercial FM station WQAQ(FM) and commercial AM station WQUN(AM), both serving the community of Hamden, CT. WQAQ and WQUN are the only two radio stations licensed to serve Hamden.

Southern Community Services, Inc., is the licensee of noncommercial FM station WOWL(FM) serving the community of Burnsville, MS. WOWL is the only radio station licensed to serve Burnsville.

Texas Public Radio is the licensee of five noncommercial FM radio stations – KSTX(FM), San Antonio, TX; KPAC(FM), San Antonio, TX; KTXI(FM), Ingram, TX; KTPR(FM), Snyder, TX; and KVHL(FM), Llano, TX. Texas Public Radio has also been issued a construction permit for new noncommercial FM station KTPD(FM), Del Rio, TX.

United Ministries is the licensee of three noncommercial radio stations serving Grand Junction, CO and its surrounding communities – KJOL(AM), Grand Junction, CO; KJOL-FM, Montrose, CO; and KJYE(AM), Delta, CO. United Ministries is also the licensee of noncommercial FM radio station WBMR(FM) serving the community of Telford, PA.

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).

³ All of this licensee’s stations are operated on a noncommercial basis even though its AM stations are not licensed as noncommercial educational stations by the FCC.

New England university that operates from its campus both a noncommercial FM and a commercial AM station.

Despite this diversity, the Local and Regional Small Radio Broadcasters have one thing in common – they are small independently owned radio station operators, and they all serve their local, often very small, communities. In fact, all but one of the commercial stations operated by the Local and Regional Small Radio Broadcasters serves a Nielsen Audio market ranked below 150.

As small independently owned radio broadcasters, all of the Local and Regional Small Radio Broadcasters are subject to competition for listeners from an ever-growing array of substitute services – most notably, satellite and internet radio. Many local and regional small stations face significant economic challenges simply to stay on the air. Beyond these economic challenges, small radio stations are also subject to significant FCC regulations – often the same exact regulations as those applicable to larger market stations owned by huge conglomerates – resulting in increased operating costs.

Any decision by the Commission to impose additional regulatory requirements for small radio stations such as mandatory online public files would result in even more pressure on local radio operators – and on station employees who are often already pushed to their limits. Simply put, the costs associated with online public files will have a disproportionate budgetary and human impact on small radio operators since the size of a station's public file is rarely proportional to the size of the station itself. Any mandatory online public file requirement would

take the Commission in precisely the opposite direction of its own pledge to reduce the already significant burdens imposed on small radio stations.⁴

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

In the NPRM, the Commission has proposed to delay mandatory online public file requirements for three categories of radio stations: (1) stations located in Nielsen Audio markets 51 and below; (2) noncommercial educational stations; and (3) stations with fewer than five full-time employees.⁵ The Commission has, however, unnecessarily and prematurely proposed that this delay only last for a pre-determined and pre-set period of two years.⁶

The Local and Regional Small Radio Broadcasters urge the Commission to refrain from hastily setting a fixed two-year transition period at this early stage of the rulemaking proceeding. Instead, the Commission should indefinitely exempt small and noncommercial stations. The Commission should then monitor the transition to online files by commercial radio stations in the top 50 markets and, at some point in the future, make a decision for small and noncommercial stations based on concrete information gathered from that experience.

⁴ In fact, 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.

⁵ *NPRM* at ¶ 69.

⁶ *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.”⁷ As the Commission is already well aware, “many radio stations are very small and have limited financial resources and small staffs”⁸ and “many small stations already face significant economic challenges simply to stay on the air.”⁹ 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.”¹⁰ Nonetheless, the Commission has proposed in the NPRM to treat noncommercial and small market radio stations to the same two-year phase-in period that was previously applied to small television stations.

There simply is no rush. Instead, the Commission should wait to see what comes of requiring large market commercial radio stations to convert to online public files and then issue a

⁷ 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).

⁸ *Id.* at ¶ 19 (footnote omitted).

⁹ *Id.*

¹⁰ *Id.* at ¶ 20.

further notice of proposed rulemaking to gather information about that experience.¹¹

Additionally, by making the transition to online public files available immediately for all radio stations on a voluntary basis, the Commission will also be able to monitor and collect information about how the transition impacts those smaller and noncommercial stations that choose to voluntarily transition their public files. Moreover, because several large radio group owners operate stations in markets both large and small, there will likely be many smaller stations that voluntarily transition to online public files and these stations will also serve as a useful testing ground for determining the financial impact.

While the Local and Regional Small Radio Broadcasters support the Commission's proposal to permit noncommercial and small stations to voluntarily transition to an online public file,¹² the logical extension of the Commission's own proposal to not require noncommercial and small 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 noncommercial and small radio stations.

¹¹ 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.

¹² *NPRM* at ¶¶ 29, 68, 70 and 71.

III. Any Station Exempt from the Commission's EEO Recordkeeping Requirements Should Automatically Be Exempt From the Online Public File Requirements.

Small radio stations with fewer than five full-time employees are exempt from nearly all of the FCC's EEO program requirements.¹³ It has been this way for decades, and for good reason – “such stations have limited personnel and financial resources to carry out those requirements.”¹⁴ Although, as discussed above, the Commission has proposed to delay the online public file requirements for all but the large commercial radio stations operating in markets 1 through 50, it has also asked whether certain radio stations should be permanently excluded from the online file requirements, such as stations with fewer than five full-time employees.¹⁵

The Local and Regional Small Radio Broadcasters urge the Commission to permanently exempt stations with fewer than five full-time employees from mandatory online public files. The “fewer than five full-time employees” standard is a tried-and-true bright-line test that has proved workable in the EEO context. Although the Commission has suggested a delayed transition might be sufficient to “assist small stations to budget for any initial cost to upload documents to the file and any extra staff time required for this effort,”¹⁶ no matter how long the phase-in period, there is simply no way for the smallest of stations – stations with fewer than five full-time employees – to “budget for” these costs when they are often already finding it nearly impossible to make ends meet.

¹³ See with 47 C.F.R. § 73.2080(d).

¹⁴ See *Report and Order* in MM Docket Nos. 98-204 and 96-16, 15 FCC Rcd 2329, 2381 (2000).

¹⁵ *NPRM* at ¶ 69.

¹⁶ *Id.*

IV. Any Expansion of Online Public Files to Radio Stations Should Include a Clear Waiver Policy.

In the NPRM, the Commission indicates that one of its goals in expanding the online file to radio is to “ultimately, reduce the burden” and “reduce the cost” of maintaining a public inspection file. It follows then that if a station can show that the cost of transitioning and maintaining an online public file is materially greater than the cost of maintaining a paper public inspection file that the Commission should waive the requirement on a case-by case basis.¹⁷ By explicitly announcing that the Commission will waive the online public file requirements for any station that can make a showing that maintaining an online public file would impose an unreasonable burden as a result of either undue economic hardship or as a result of technical impediments, the Commission would be able to mitigate any risk that the online public file requirements could become the proverbial “straw that breaks the camel’s back” for an already struggling small station teetering on the edge of going dark.¹⁸

IV. Conclusion.

The Local and Regional Small Radio Broadcasters are local community radio operators. They are proud members of their communities and it is their honor to provide service to their communities through quality radio programming. However, any effort by the Commission to needlessly and hastily impose mandatory online public file requirements on noncommercial and

¹⁷ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (a waiver of the Commission’s regulations is appropriate when an underlying purpose of the rule would not be served, or would be frustrated by application of the rule to the instant case).

¹⁸ Not only do many small radio stations serve economically struggling communities but these same communities are often lagging behind the rest of the nation in broadband rollout, thus creating a challenge for stations that would be required to upload large files to the Commission’s public file database. Moreover, there would be marginal benefit – outweighed by significant economic cost – in making station public files available online in communities where listeners have limited Internet access.

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

Respectfully submitted,

**LOCAL AND REGIONAL SMALL
RADIO BROADCASTERS**

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