



December 15, 2015

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: American Cable Association Notice of Ex Parte Presentation; Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees, MB Docket No. 14-127

Dear Ms. Dortch:

On December 11, 2015, Ross Lieberman, Senior Vice President, Government Affairs, American Cable Association (“ACA”) and the undersigned met with Kim Matthews and Holly Sauer of the Media Bureau’s Policy Division to discuss issues concerning the expansion of online public file obligations to cable operators in the above-referenced proceeding.¹ Consistent with its filed comments, ACA reiterated the need for the Commission to minimize burdens on smaller cable operators as it moves the contents of cable system public files to an online database maintained by the Commission by preserving public file exemptions cable operators with small systems have traditionally enjoyed and by granting a safe harbor to cable operators that reasonably rely on third parties to upload certain documents on their behalf into the online database.²

During the meeting, ACA stressed the need to retain the existing exemption from the public file requirement that allows cable systems serving between 1,000 and 5,000 subscribers to produce certain records upon request, in lieu of including these records in their public file.³ Eliminating this long-standing exemption for small systems would impose undue compliance burdens on operators with few employees and a smaller number of subscribers over which to spread fixed costs⁴ – facts that justified the adoption of the “upon request” exemption for operators of these systems in the first place.⁵ The imposition of these additional burdens would

¹ 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 (rel. Dec. 18, 2014) (“NPRM”).

² *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, MB Docket No. 14-127, Comments of the American Cable Association at 4-14, 18-19 (filed Mar. 16, 2015) (“ACA Comments”); Reply Comments of the American Cable Association at 3-9 (filed Apr. 15, 2015) (“ACA Reply Comments”).

³ Systems with more than 1,000 subscribers but fewer than 5,000 subscribers must only provide sponsorship identification, EEO records, commercial records for children’s programming, proof-of-performance test data, and signal leakage logs and repair records upon request. 47 C.F.R. § 76.1700(a).

⁴ See ACA Comments at 5-9; ACA Reply Comments at 3-8.

⁵ See *1998 Biennial Regulatory Review – Streamlining of Cable Television Services Part 76 Public File and Notice Requirements*, Report and Order, 14 FCC Rcd 4653, ¶ 25 (1999).

be above and beyond simply uploading to an online database content already in a system's public file, which is inconsistent with the Commission's primary goal in this proceeding of making available online the public file that resides in a physical form in cable systems headends.⁶ It is also incongruous with the Commission's earlier adoption of online public file obligations for broadcasters, which did not result in any new public file obligations for broadcasters.⁷ For all of these reasons, the Commission should retain the "upon request" exemption.

Additionally, ACA discussed the need for the Commission to grant a safe harbor to cable systems that reasonably rely on third parties to upload certain documents on their behalf into the online public file database. ACA explained that the public interest would benefit from permitting third parties to upload files for individual cable systems (with their authorization) because third parties, in some cases, could upload the files into online database, thereby making them available to the public, more quickly and at lower cost, especially for smaller operators.⁸ This is particularly true with respect to documents that must be immediately updated and placed into a cable system's political file,⁹ and documents showing that programming complies with the Commission's children's advertising limits.¹⁰ However, ACA explained that the benefits of allowing third party uploading could be denied the public if a small cable operator, based on reasonable expectations that a third party would upload the documents on their behalf in compliance with the Commission's rules, must nonetheless accept the risk of an enforcement action, including forfeiture, if its reasonable reliance proves misplaced after the fact. To this end, ACA recommended adoption of a safe harbor for smaller operators that rely on certifications of compliance from third parties similar to the safe harbor used in by the Commission in its implementation of the CALM Act.¹¹ Specifically, smaller operators should

⁶ See NPRM, ¶ 2 (discussing the Commission's "modernization effort" and the process of expanding the online file to other media entities).

⁷ See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, ¶ 81 (2012) ("[W]e believe it inadvisable to impose new reporting requirements at the same time stations are transitioning to the online public file. We wish to ensure that this Second Report and Order, in all major respects, involves changing only the form of disclosure and location of material already required to be included in the public file.").

⁸ ACA noted the importance of the Commission designing the online upload application so that third parties can upload files for individual cable systems (with their permission), and so that systems receive notice via email when files are updated on their behalf. It should also permit third parties to do batch uploading for multiple cable systems.

⁹ Many small cable operators do not individually sell and insert their own local advertising (including political advertising), but rather contract with third parties, such as Comcast Spotlight, Time Warner Cable, or Viamedia, for this purpose. ACA explained that under such arrangements, the cable operator has no direct relationship with the advertiser and obtains the documentation that must be included in their public inspection file from these third party cable advertising vendors.

¹⁰ Most small and medium-sized cable operators purchase their national programming through the National Cable Television Cooperative ("NCTC") and do not have direct relationships with these programming vendors. In many instances, NCTC secures for and makes available to its members the documentation that the programming complies with the Commission's children's advertising limits that must be included in cable operators' public file.

¹¹ ACA Comments at 14-16; ACA Reply Comments at 8-9. See also *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, Report and Order, 26 FCC Rcd 17222, ¶ 45 (2011) ("Specifically, we find that, in order to be in the safe harbor for the commercials inserted by these third parties, the station or MVPD, regardless of size, must acquire a certification from the third party that all commercials it is inserting comply with the RP, and that it is inserting those commercials into the programming transmitted by the station or MVPD such that they comply with the RP. Just as with

be permitted to rely on a certification from the third party that records will be posted to the online public file on time and kept in compliance with the Commission's rules. To qualify for safe harbor protection, the operator must have no reason to believe the certification is false and, if noncompliance is discovered, must take steps to ensure that the noncompliance is remedied. ACA explained that once an operator becomes aware that the third party has a pattern or practice of not timely posting and keeping in compliance with the Commission's rules, the operator would no longer be entitled to safe harbor protections for that third party's actions.

Participants also discussed other ways of minimizing the burdens associated with the move to an online public file.¹² In addition, participants discussed the benefits of delayed compliance deadlines to permit the cable online public file database to be rolled out, tested and made fully operational, and for operators, particularly smaller operators, to determine how best to comply with their new online public file obligations.

If you have any questions, or require further information, please do not hesitate to contact me directly.

Sincerely,



Barbara Esbin
Counsel to the American Cable Association

cc: Kim Matthews
Holly Sauer

embedded commercials, in response to a FCC Letter of Inquiry, a station or MVPD must have no reason to believe that the certification is false, and perform a spot check of the inserted commercials without providing notice to the third-party inserter to determine, going forward, whether the inserted commercials in fact comply, and take steps to ensure that any discovered noncompliance is remedied.”).

¹² These topics include eliminating the need for an operator to retain its onsite file for public inspection; permitting operators to provide a link to their channel lineups rather than upload the lineups to the online public file; the Commission taking it upon itself to upload to the online public file records cable operators are required to file electronically with the Commission, such as EEO files; reducing the scope of records to be uploaded by clarifying certain aspects of current cable public file rules and requiring that headend location information be uploaded based on zip codes rather than census blocks; and designing the database so that a single upload can populate multiple files. See ACA Comments at 18-21; NCTA Comments at 4-6 (recommending that the database be designed so that a single upload can populate multiple files).