

June 1, 2001

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FCC MAIL ROOM

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Office of the Secretary
445-12th Street, SW
Room TW-B204
Washington, DC 20554

Dear Ms. Roman Salas,

Enclosed please find an original and three copies of an "Emergency Petition for Reconsideration."

Please date stamp and return one of the copies to me in the enclosed, postage-paid envelope.

Sincerely,

Jack L. Messmer
Executive Editor

No. of Copies rec'd 012
List A B C D E

ORIGINAL

Before the
Federal Communications Commission
Washington, DC 20554

RECEIVED

JUN 04 2001

FCC MAIL ROOM

In the Matter of)	
)	
1998 Biennial Regulatory Review --)	
Streamlining of Mass Media Applications,)	MM Docket No. 98-43
Rules, and Processes)	
)	
)	
Policies and Rules Regarding)	MM Docket No. <u>94-149</u>
Minority and Female Ownership of)	
Mass Media Facilities)	

Emergency Petition for Reconsideration

Radio Business Report (RBR), by its Executive Editor, hereby requests that the Commission take emergency action to suspend all electronic application processing under the Mass Media Bureau's Consolidated Database System (CDBS).

In its Report and Order adopted October 22, 1998¹ the Commission mandated that electronic filing be phased in over a six-month period. As one of the joint commenters², RBR had heartily supported the effort to bring the Mass Media Bureau's filing system into the electronic age.

While the Commission's intent was to streamline application processing and improve public access to public documents, the reality has been quite the opposite. Implementation was repeatedly delayed and it wasn't until last year that the phase-in began. Now that 30 months have elapsed from the Report & Order, the CDBS system is plagued with problems which delay filings and prevent public access to public documents. In short, CDBS has failed and should be shut down until its problems are corrected or it can be replaced by a new electronic filing system which actually works.

RBR regularly reports on each and every Form 314 and Form 315 application filed with the Commission. Since phased-in use of CDBS for attachments as well as forms began early this year, RBR has encountered

¹ Report & Order FCC 98-281

² See Comments of Radio & Records et al.

repeated difficulties in obtaining station sale contracts and other attachments, which are public documents under the Commission's rules³. Since widespread CDBS use began in March 2001, RBR has compiled a list of 52 applications⁴ in the CDBS system which were either lacking required attachments or had damaged files attached which could not be accessed by the public, neither via the Internet nor on the terminals in the Commission's Public Reference Room.

In each and every case, RBR has made repeated requests for access to the missing or damaged documents. While the Mass Media Bureau and Reference Room staffs have tried to accommodate those requests, the backlog of incomplete filings is growing faster than the problems can be addressed. As of June 1, 2001, only 18 of the missing documents had been located and made accessible, either as CDBS links or paper printouts.

The CDBS problems have also created a situation whereby the Commission is regularly violating its own rules. As of June 1, 2001, the Commission had granted six applications⁵, although the public documents associated with those applications had not been made available for public review prior to grant. Even after the improper grants, only one of the six missing documents was located and provided to RBR.

As a user of the public access system for CDBS, RBR has no direct knowledge of problems with the system for submitting applications to CDBS for processing. However, our staffers have heard repeated complaints from attorneys, law firm staffers and Commission staffers about problems with CDBS submissions. In many cases, applicants have been resorting to sending CD-ROM or paper copies to the Mass Media Bureau because the CDBS system will not accept electronic attachments. Although the

³ Report & Order FCC 98-281 released November 25, 1998, paragraph 41 ("We note commenters' assessment of the public interest benefits concerning sales price data, and will accordingly continue to require that contracts submitted for retention in the public reference room disclose sales price.")

⁴ See Exhibit A

⁵ WQEW, #29024, BTC-20010301AAA (no attachments to CDBS filing, but a paper copy of the contract was provided to RBR on May 1, 2001, 12 days after the April 19 grant date); WFAL (now changed to WGRX), #62205, BTCH-20010301AAJ (no attachments); KUJ, #35718, BAL-20010223AAI (no attachments); WJHW, #89183, BAPH-20010302AAZ (contract attachment opens as 410 pages of gibberish); KWBC, #40912, BAL-20010403AAR (contract attachment does not include price/consideration information as required by FCC rules—as checked on 5/30/01 there is no longer any link at all); KEWE, #50710, BAL-20010405ABR (contract attachment won't open)

Commission's Internet site claims that the attachment problem was resolved on May 2, 2001⁶, numerous filings made through May 31, 2001 carried statements that the contract was attached, yet there were no attachments to the filings available to the public via the CDBS system. RBR has no reason to doubt that these required documents have been submitted, but a large and growing number of them have never been associated with the proper filings and made available to the public as the Commission's rules require.

Rather than streamlining the application system, it is apparent that the CDBS system has slowed down processing. Applicants, attorneys and Commission staffers are having to repeat work and search for missing materials. Routine requests for documents from journalists, researchers and other members of the public have become wild goose chases, using up large quantities of Commission staff time—often with no success. The public is being denied access to public documents on a daily basis and the Commission has granted no fewer than six applications where required public access to documentation never occurred.

Accordingly, RBR respectfully requests emergency action by the Commission to immediately halt the use of the CDBS system and prohibit the Mass Media Bureau from re-implementing electronic filing until such time as a reliable system for filing electronic applications is in place and public access to public documents is guaranteed.

Respectfully submitted,

RADIO BUSINESS REPORT

By: 
Jack L. Messmer
Executive Editor

Radio Business Report
6208-B Old Franconia Road
Alexandria, VA 22310

Phone: (703) 719-9500
Fax: (703) 719-7910

June 1, 2001

⁶ See Exhibit B

EXHIBIT A

GRANTED incomplete electronic filings

WQEW, #29024, BTC-20010301AAA (no attachments)—**received** 5/1/01
WFAL (now changed to WGRX), #62205, BTCH-20010301AAJ (no attachments)
KUJ, #35718, BAL-20010223AAI (no attachments)
WJHW, #89183, BAPH-20010302AAZ (contract attachment opens as 410 pages of gibberish)—document received from the FCC on 5/29/01 was the Form 301, rather than the requested contract from Form 314
KWBC, #40912, BAL-20010403AAR (contract attachment does not include price/consideration information as required by FCC rules—as checked on 5/30/01 there is no longer any link at all)
KEWE, #50710, BAL-20010405ABR (contract attachment won't open)

PENDING incomplete electronic filings

WNOP, #15881, BAL-20010321AAA (no contract attachment)—**received** 5/9/01
KJAA, #24161, BAL-20010319ABD (contract attachment won't open)—**received** 5/9/01
KJJY, #22882, BALH-20010319AAJ (contract attachment won't open)—**received** 5/9/01
WRNO (shortwave), #73963, BALIB-20010327ACK (no attachments)
WASN, #74164, BAL-20010404AAA (no attachments)—**received** 5/30/01
KKUB, #7331, BAL-20010330ABU (no attachments)—**received** 5/30/01
KLFC, #70362, BALED-20010330ABR (no attachments) —documents received 5/29/01 did not include the "Asset Purchase Agreement" referred to in the original electronic filing, just some minor amendments.
WTAL, #55330, BAL-20010321AAP (contract attachment won't open)—**received** 5/30/01
KTMK, #2910, BALH-20010416AAA (no attachments)—**received** 5/9/01
KTFS, #33542, BAL-20010409AAW (contract attachment does not include price/consideration information as required by FCC rules, engineering attachment will not open)
KIML, #24212, BTC-20010418AAN (no attachments)—**received** 5/30/01
WRAB, #2552, BAL-20010418AAP (no attachments) —**received** 5/29/01
KEAL, #68769, BALH-20010420AAH (no attachments)—**received** 5/1/01
KAPR, #68768, BAL-20010420AAK (no attachments)—**received** 5/1/01
WAUX, #61389, BAL-20010423AAF (no attachments)—**received** 5/30/01
KMLK, #85169, BALH-20010423AAW (no attachments) —**received** 5/29/01
WBNZ, #14646, BALH-20010425AAH (no attachments)
WFMW, #60880, BTC-20010423AAL (no attachments) —**received** 5/29/01
KSXY, #16257, BTCH-20010419AAY (no attachments) —**received** 5/29/01
KRSH, #72925, BAPH-20010419AAX (no attachments) —**received** 5/29/01
KGRP, #43711, BALH-20010419AAV (no attachments)—**received** 5/29/01
WAUX, #61389, BAL-20010423AAF (no attachments)
KUNC, #68219, BALED-20010501ABB (no attachments)
WFRN, #53650, BTC-20010427AAJ (no contract)
WAJF, #70707, BAL-20010504AAL (no attachments)
KPIX, #35482, BALH-20010501ACT (contract attachment won't open)
WAVF, #13890, BTCH-20010504AAE (price/consideration information redacted in violation of the FCC's rules)
KSRO, #22881, BTC-20010504AAV (price/consideration information redacted in violation of the FCC's rules)
KPMO, #31596, BAL-20010508AAU (contract attachment won't open)
KTGE, #65375, BAL-20010507AAO (no attachments)
KHNZ, #54968, BALH-20010507AAR (no attachments)
KEOR, #3651, BAL-20010509AAF (no attachments)
KSUB, #61384, BAL-20010508AAH (no attachments)
KZNZ, #69623, BALH-20010508AAJ (no attachments)
WFAD, #53612, BAL-20010511AAE (no attachments)
WTVY-FM, #73639, BTCH-20010509AAD (all attachments bad)
WCOP, #67210, BAL-20010510AAM (no attachments)
KAYH, #79130, BALED-20010517ABD (no attachments)
WNKN, #48707, BALH-20010525ACV (no attachments)

WPEP, #61601, BAL-20010525ABM (contract attachment won't open)
WEZU, #60646, BAL-20010523AAH (no attachments)
KTRX, #88041, BTCH-20010522AAA (no attachments)
KVLL, #68129, BAL-20010521AAG (no attachments)
WHST, #2985, BALH-20010530ABT (no attachments)
WGZO, #49910, BALH-20010525AAS (no attachments)
WABN, #36981, BAL-20010521ABF (no attachments)

EXHIBIT B

(Print-out from FCC Internet site)



FEDERAL COMMUNICATIONS COMMISSION

E-Filing & Public Access Systems

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Broadcast Radio & Television Electronic Filing System (CDBS)
[[main](#) | [alternate](#)]

Status Report: System Available

Date: 05/02/01 - 12:39:10

Subject: The CDBS System is Operational

Message: The application attachment problem has been resolved.

[Return to E-File Home Page](#)

Federal Communications Commission
fccinfo@fcc.gov | [More Contact Information](#) | [Web Site Policies, Notices & Privacy Statement](#)

EXHIBIT C

Declaration of Jack L. Messmer

I, Jack L. Messmer, do hereby declare, certify and state as follows:

1. I am Jack L. Messmer, Executive Editor of Radio Business Report, a nationally recognized trade publication for the radio broadcasting industry. Radio Business Report has been published on a weekly basis for 18 years. As part of its news coverage, Radio Business Report regularly reports on radio station sales applications filed with the Federal Communications Commission.
2. I am familiar with the Federal Communications Commission's Report and Order FCC 98-281 adopted on October 22, 1998 and released November 25, 1998. I was personally involved in formulating the joint comments filed in the subject proceeding by Radio Business Report and its joint commenters, which are referred to in the Report and Order as "Radio & Records et al."
3. I have personal knowledge of the problems with gaining access to public documents referred to in the accompanying "Emergency Petition for Reconsideration." Specifically, I have personally viewed the CDBS filing for each of the 52 referenced incomplete applications via the Internet. I have personally reported each of the deficiencies to Konrad Herling of the FCC's Mass Media Bureau via email. I have repeatedly instructed Mona Wargo, the FCC Research Consultant for Radio Business Report, to request the missing documents in the Commission's Public Reference Room and to check the Commission's public files for each station to see if any paper copies of the missing documents can be located. On April 27, 2001, I sent a letter to Roy Stewart, Chief, Mass Media Bureau, and Bill Kline, Chief, Reference Operations Division, detailing the difficulties that I and my staff had encountered with the CDBS filings. I included with that letter a list of the incomplete electronic applications as of that date—22 applications, including two which had been granted. A copy of that letter and list is attached herewith as Exhibit D.

I hereby declare, certify and state that the foregoing is true and correct to the best of my knowledge, information and belief.


Jack L. Messmer

Executed on June 1, 2001

EXHIBIT D

(Letter to Roy Stewart and Bill Cline)

R B R

April 27, 2001

Roy Stewart, Chief
Mass Media Bureau
Room 2 C337
445 12th Street, S.W.
Washington, DC 20554

Bill Cline, Chief
Reference Operations Division
CY-B533
445 12th Street, S.W.
Washington, DC 20554

Dear Roy and Bill,

I am concerned about the breakdown of processes between your two operations in providing public access to material filed in conjunction with Applications for Assignment of License and Applications for Transfer of Control.

In recent days, two applications have been granted without any public access to the documentation. Both applications were filed electronically, but without any electronic attachments. The CDBS database does not indicate that any amendment was ever filed for either application, nor have any paper amendments shown up in the FCC's Public Reference Room. My researcher has requested the documents, but has been told there are none. Yet, both have been granted. These two improperly granted applications are WQEW, #29024, BTC-20010301AAA and WFAL (now changed to WGRX), #62205, BTCH-20010301AAJ.

This is just the tip of a growing iceberg. Attached is a list of 19 additional cases where incomplete applications have been filed, *RBR* has requested the missing documentation and we have been told that there is nothing available. Unreadable attachments remain in the CDBS system and paper supplements, if they exist, are not being made available to us as the Commission's rules require.

After repeated fruitless trips by his staff in search of documents which do not exist or cannot be located, Bill Cline this week posted a memo in the FCC's Public Reference Room telling people not to request documents related to electronic filings and that if there is no electronic link, there is no paper copy either. This is obviously an incorrect assumption, Bill, but I do understand your frustration.

The current situation cannot continue. It amounts to the FCC staff creating repeated violations of the Commission's own rules requiring public access to filings.

I would suggest, ideally, that the Mass Media Bureau insist that all Form 314 and 315 filings be either 100% electronic or 100% paper—no mixed filings, which is where the biggest problem appears to lie. Also, applications should not be put on public notice until they are complete. The purpose of public notice is to provide the public with 30 days to review the entire application. Starting the clock early while the parties finish up a half-baked deal (some of which never are completed) violates the spirit, if not the letter, of the Commission's rules.

CDBS is great when it works, but the public access system—which, after all, was the impetus for creating CDBS—seems to fall apart whenever a required attachment is missing or damaged.

Stewart/Cline
4/27/01
Page 2

It goes without saying that applications which have not undergone the required public scrutiny should never be granted, and under the Commission's rules may not be granted. Yet, as I have already noted, this has happened at least twice this month.

I hope the two of you can come up with a solution to restore public access to public documents at the FCC.

I look forward to hearing from you.

Sincerely,



Jack L. Messmer
Executive Editor
Radio Business Report
6208-B Old Franconia Road
Alexandria, VA 22310

Phone: 703-719-9500
Fax: 703-719-7910
Email: jmessmer@rbr.com

Attachment: list of incomplete CDBS applications

GRANTED incomplete electronic filings

WQEW, #29024, BTC-20010301AAA (no attachments)

WFAL (now changed to WGRX), #62205, BTCH-20010301AAJ (no attachments)

PENDING incomplete electronic filings

KUJ, #35718, BAL-20010223AAI (no attachments)

WNOP, #15881, BAL-20010321AAA (no contract attachment)

KJAA, #24161, BAL-20010319ABD (contract attachment won't open)

KJJY, #22882, BALH-20010319AAJ (contract attachment won't open)

Construction permit BPH-19971120ME for Bainbridge, GA, #89183, BAPH-20010302AAZ (contract attachment opens as 410 pages of gibberish)

WRNO (shortwave), #73963, BALIB-20010327ACK (no attachments)

WASN, #74164, BAL-20010404AAA (no attachments)

KKUB, #7331, BAL-20010330ABU (no attachments)

KLFC, #70362, BALED-20010330ABR (no attachments)

WTAL, #55330, BAL-20010321AAP (contract attachment won't open)

KWBC, #40912, BAL-20010403AAR (contract attachment does not include price/consideration information as required by FCC rules)

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KTFS, #33542, BAL-20010409AAW (contract attachment does not include price/consideration information as required by FCC rules, engineering attachment will not open)

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WRAB, #2552, BAL-20010418AAP (no attachments)

KEAL, #68769, BALH-20010420AAH (no attachments)

KAPR, #68768, BAL-20010420AAK (no attachments)

WAUX, #61389, BAL-20010423AAF (no attachments)

KMLK, #85169, BALH-20010423AAW (no attachments)

CERTIFICATE OF SERVICE

This is to certify that I, Jack L. Messmer, have filed by US Mail, postage pre-paid, the foregoing Emergency Petition for Reconsideration with the Federal Communications Commission on the First day of June, 2001, and that a copy has been served by way of US Mail, postage pre-paid, upon each of the following:

Chairman Michael Powell
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

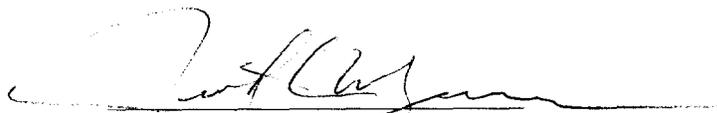
Commissioner Gloria Tristani
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Commissioner Kathleen Abernathy
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Commissioner Michael Copps
Federal Communications Commission
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Roy Stewart, Chief
Mass Media Bureau
Federal Communications Commission
Room No. 2 C337
445 12th St., SW
Washington, DC 20554

Bill Cline, Chief
Reference Operation Division
Federal Communications Commission
Room CY-B533
4455 12th St., SW
Washington, DC 20554



Jack L. Messmer