

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)
) **MB Docket No. 10-103**
MMB DATA COLLECTION REVIEW)

To: The Secretary
Attn: Chief, Media Bureau

COMMENTS

David Tillotson, an attorney who has practiced Communications law for more than 25 years, submits that the Commission’s rules which require commercial and non commercial broadcast stations to maintain public files, Sections 73.3526 and 73.3527 (the “Public File Rules”) have long since outlived whatever usefulness they may have had at the time they were originally conceived; and that they impose significant burdens on broadcasters, including not insignificantly the risk of substantial fines for violations of the rules, without in any way furthering any “public interest” goal; and that they should, therefore, be abolished.¹ Commenter’s reasons for maintaining that various categories of

¹ In January 2006 Commenter filed a Petition for Rulemaking proposing that the Commission initiate a rule making proceeding to determine whether the Public File Rules serve any valid purpose and, if they do not, to abolish them. The Petition was assigned a number, RM-11332, and put on Public Notice and more than 30 comments were filed, all but one supporting the Petition, but the Petition was ignored. Before filing the Petition, Commenter had sent a copy of a draft to his clients and asked for them to comment on whether the Petition should be filed. Of the clients who responded, all strongly supported filing the petition. Here are some examples of the comments in support of filing that were received:

It's a good idea on the petition. [WXXX] went on the air in ... 1972. To my knowledge in the 33 1/2 years the station has been on the air, we have had ONE request to see the public file by a member of the public.

I think your petition for rulemaking is a great idea. I have always thought that issues/programs lists were worthless. One of our stations is a news/talk station. 100% of its programming is satellite delivered. We air conservative talk and news because that's what we think our area needs and wants to hear. Coming up with an issues/programs list is a real chore for that station and not once have I ever had anyone other than an FCC inspector ask to see it. Our other station is a Catholic talk station. 100% of its programming is satellite delivered. Since we are part of an association of similar Catholic stations that air the same satellite-delivered programs, we have the

documents that broadcasters are required to keep in a public file serve no useful purpose are set forth below:

1. Issues and Programs Lists²

The requirement that broadcast stations prepare and maintain issues/programs lists is predicated upon certain assumptions that the Commission has made about the usefulness, indeed “importance,” of such lists to the Commission and the public which have never been examined. Petitioner submits based upon his extensive experience in representing broadcast licensees in licensing proceedings that the assumptions underlying the requirement that stations create and maintain issues/programs lists are demonstrably false.

The Commission’s rationale for requiring stations to create and maintain issues/programs lists was recently articulated by the Chief, Media Bureau, in *Faith Christian Music Broadcast Ministries, Inc., Station WYRV*, DA 05-3088, released December 1, 2005 (the “WYRV case”). In that case, the Chief, Media Bureau “strongly disagreed” with a licensee’s contention that its failure to place issues and programs lists in its station’s public file caused no harm to the public because “the public has no interest whatsoever in the content of radio station issues and programs lists” and cited the

association write our issues/programs list for us. Still, not one person other than an FCC inspector has ever asked to see them. So why, then, do we continue to have to write them? Especially in this day and age with the internet, cell phones, and other very convenient ways to communicate, who will take the time and trouble to go into a station's studio to look at its public file? I can't imagine why anyone would.

On balance I agree with your petition and support it as it is an outdated rule in today's real world whose only purpose is to create work for the station and to create a trap for the FCC to levy fines for paperwork nobody ever reads (other than you and/or your diligent clients) like, hopefully, us.

² The requirement that broadcast stations place quarterly “issues/programs lists” in their public files is discussed first because it is the most onerous of the public file requirements in that (i) it requires broadcast licensees to retain extensive records and compile those records into reports solely for the purpose of placing them in their public files and (ii) the Commission imposes substantial fines for the slightest compliance failure.

standard Commission litany as to why issues/programs lists are of great public importance. According to the Chief, Media Bureau, “issues/programs lists provide both the Commission and the listening public with important information concerning the extent to which a station has met the needs and interests of its community during the prior license term, and therefore, whether license renewal is warranted.” The Chief, Media Bureau further asserted that the information in issues/programs lists enables the public “to meaningfully participate at [sic] the station’s renewal process.” However, as the Commission does not require that licensees submit their issues/programs lists to it, the Commission cannot possibly derive any information, important or not, from the lists. Moreover, in view of the fact that the Commission has no requirements as to how much time broadcast stations must devote to public service programming and no means by which to judge whether a station’s public service programming meets some minimal requirement of actually serving the public interest, a review by the Commission as to whether and how issues/programs lists assist the public in participating in the renewal process would be appropriate. In this regard, Petitioner challenges the Commission to cite a single instance in the nearly 20 years since the requirement that stations maintain issues/programs lists was adopted wherein the Commission has asked a broadcaster to submit its issues/programs lists for review, let alone used information contained in the issues/programs lists (or lack thereof) as a basis for refusing to renew a station’s license or granting only a short term renewal.

In the WYRV case, the Chief, Media Bureau also cited the fact that “the Media Bureau has made enforcement of the public file rule a priority” as a justification for assessing substantial fines for violations of the public file rule and especially the

requirement that stations create and maintain issues/programs lists, quoting itself as having stated that “[t]he public file provides citizens with important information about the broadcasters’ service to their communities.” If Petitioner is correct that issues/programs lists do not provide any meaningful information to the public about a “broadcasters’ service to their communities,” the Media Bureau’s limited resources could be better spent focusing on other priorities.

Reading the Chief, Media Bureau’s assertions about why issues/programs lists are important regulatory tools, Petitioner wonders whether the Chief, Media Bureau has ever actually seen an issues/programs list. Petitioner has. Some actually do reflect substantive community issues and programming which would appear to address such issues. Whether such information is of any value to the public is an open question which Petitioner urges the Commission to consider in a rule making proceeding. Most issues/programs lists, however, are very thin on both issues and programming, a consequence of the fact that most broadcast stations today are, in the prophetic words of a former Chief of then Broadcast Bureau “commercial jukeboxes” which simply do not broadcast any substantive public affairs/public service programming and which are not seriously expected by the Commission to do so. The reality is that ever since the Commission substituted the requirement that licensees place issues/programs lists in their public files for a requirement that licensees submit specific information establishing that they had broadcast programming to serve the public interest in their renewal applications, the public has been effectively shut out of the renewal process. Asserting that issues/programs lists provide a means by which the public can participate in the renewal

process in a “meaningful way” or that they “provide citizens with important information about . . . service to their communities,” will not make it so.

2. The Station’s Current Authorization/ Pending Applications/Ownership Reports

All pending applications and except for stations with very old, unmodified licenses, every station’s current authorization is available at the Commission’s CDBS public access website. As access to the web is nearly universal, there is no reason to require documents which are filed with the Commission and are readily available via the web to be kept in a public file.

3. Citizen’s Agreements.

The requirement that citizen’s agreements be kept in public files arose in the era when citizen’s groups were active in challenging license renewal applications and stations entered into agreements with such groups in order to get them to refrain from filing a renewal challenge or to withdraw such a challenge if filed. The era of citizens groups challenging using the threat of a challenge to a broadcast license renewal to extract programming or other promises from a licensee has long since passed. Moreover, assuming that a station were to enter into a “citizens agreement,” it is hard to imagine what public interest objective is served by requiring a copy of the agreement to be placed in the public file, especially since the Commission has never evinced sufficient interest in such agreements as to require that they be filed with it.

4. Contour Maps

One only needs to ask the question “How does requiring stations to keep their contour maps in a public file assist the public?” to realize that the requirement is of no practical value to the public.

5. Political File

Petitioner concedes that requiring broadcast stations to maintain a political file does serve the valid objective of enabling candidates and their supporters monitor and secure broadcast station compliance with the political advertising rules.

6. Equal Employment File

Anyone who is familiar with the type of documents that broadcasters are required to prepare in order to document their compliance with the Commission’s EEO Rule would surely agree that it is difficult to imagine how these documents would be of any interest or use to members of the public. In a rulemaking notice, the Commission should indicate what purpose it believes is served by requiring EEO compliance documents to be placed in public files so that broadcasters and the public can comment as to whether the Commission’s assumptions about the usefulness of the documents to the public are valid.

7. Letters and E-mail from the Public

Again the question is simply: does requiring letters and e-mails from the public to be placed in a station’s public file serve any useful purpose? Petitioner is confident that if the Commission were to ask this question it will learn that the answer is clearly “no.”

8. The Public and Broadcasting

This document can and should be made available to the public on the FCC’s website.

9. Local Public Notice Announcements

The local public notices concerning the filing of a station's license renewal application serve the purpose of notifying listeners of the license renewal filing and petition to deny date. However, putting a copy of the notices with the dates and times that they were broadcast serves no purpose other than to generate fines for the Commission if the licensee fails to put the required documentation concerning the notices in the public file.

10. Time Brokerage and Joint Sales Agreements

While it is easy to imagine why the Commission might have an interest in reviewing time brokerage and joint sales agreements (for example to see whether they constitute an unauthorized transfer of control and are consistent with the multiple ownership rules), it is difficult to imagine how such documents would be of any interest, let alone use, to members of the public. Rather than merely assume that the public receives some benefit from the requirement that this sort of document be kept in a station's public file, the Commission should ask whether the assumption is true.

11. Children's Television Programming Reports.

These Reports are extensive and time consuming to complete. It is virtually a certainty that members of the public rarely if ever inspect these reports, and if a member of the public were to inspect the reports, it is hard to imagine what use the member of the public would make of the information gathered. Commenter recognizes that the Commission is able to use the information in the reports to determine whether television stations are complying with their obligations with respect to programming for children, but Commenter is not aware that the Commission actually uses the reports for this

purpose. If it does, the purpose would be served by requiring that the Reports be filed with the Commission and the Commission could make these reports available to the public at its website.

12. Class A TV continuing eligibility

Information as to whether a low power television station continues to be eligible for Class A TV status would appear to be of interest to the Commission, but it is not likely that the public would have any particular interest in it.

Conclusion

For the reasons set out above, Commenter respectfully submits that the Commission should abolish the Public File Rules on the grounds that they serve no useful purpose, either for the public or the Commission and, therefore, the cost of maintaining such files cannot be justified.

Respectfully submitted,



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Date: July 14, 2010