

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

In the Matter of)	
)	
Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations)	MM Docket No. 00-168
)	
Extension of the Filing Requirement For Children’s Television Programming Report (FCC Form 398))	MM Docket No. 00-44
)	

COMMENTS OF THE ASSOCIATION OF PUBLIC TELEVISION STATIONS AND THE PUBLIC BROADCASTING SERVICE

The Association of Public Television Stations (“APTS”)¹ and the Public Broadcasting Service (“PBS”)² fully support the Commission’s objectives — announced in its Further Notice of Proposed Rulemaking (“FNPRM”) in the above-referenced proceedings — “to make information concerning broadcast service more accessible to the public by taking advantage of current technology” and to “reduce the compliance burdens” on commercial and noncommercial educational stations.³ We further agree that hosting much of the public inspection file on the Commission’s website will improve the public’s access to information that helps facilitate

¹ APTS is a non-profit organization whose membership comprises the licensees of nearly all the nation’s CPB-qualified noncommercial educational television stations. The APTS mission is to support the continued growth and development of a strong and financially sound noncommercial television service for the American public.

² PBS, with its nearly 360 member stations, offers all Americans — from every walk of life — the opportunity to explore new ideas and new worlds through television and online content. Each month, PBS reaches 124 million people through television and 20 million people online, inviting them to experience the worlds of science, history, nature, and public affairs; to hear diverse viewpoints; and to take front row seats to world-class drama and performances.

³ Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, *Order on Reconsideration and Further Notice of Proposed Rulemaking*, MM Docket No. 00-168, at ¶ 1 (rel. Oct. 27, 2011) (“FNPRM”).

dialogue between broadcast stations and the communities they serve, in a manner that “will be more efficient for the public and less burdensome for broadcasters.”⁴

To avoid the imposition of unnecessary compliance burdens on public television stations, however, APTS and PBS urge the Commission to amend its proposal in four limited, but important, respects. Specifically, the Commission should: (1) require stations to make electronic back-up copies available to the Commission, not the public, if the Commission’s public file database is compromised in a manner that results in a station’s public file materials being deleted; (2) refrain from requiring television stations to remove materials from the Commission’s website once they are no longer required to be retained under the Commission’s rules; (3) allow stations to rely on online notices to inform the public about the online availability of the public file; and (4) confirm that it is not imposing new obligations on noncommercial educational stations to include copies of letters and e-mails from the public in their public inspection files.

I. STATIONS SHOULD BE REQUIRED TO MAKE BACK-UP COPIES AVAILABLE TO THE COMMISSION, IF NECESSARY, RATHER THAN MAKING SUCH COPIES PUBLICLY AVAILABLE.

The Commission proposes to require stations to retain electronic copies of all of the public file items for back-up purposes.⁵ While the Commission appropriately concludes that stations should not have to make these electronic back-up copies generally available to the public as an alternative to the Commission-hosted online public file, the proposal goes on to provide that stations would need to make these back-up copies available to the general public in “the unlikely event that the Commission’s online public file database were to become unavailable or

⁴ *Id.* at ¶ 16.

⁵ *Id.* at ¶ 18.

disabled.”⁶

As the Commission properly recognized, the proposed rules would advance the goals of increasing transparency while minimizing burdens on broadcasters precisely because much of the public file would be moved to the Commission’s website “in lieu of [stations] maintaining all of the documents in paper files or electronic format available at their main studios.”⁷ In our experience, broadcasters should be able to retain electronic back-up copies of the public file documents that they submit to the Commission without undue burden or expense. However, requiring stations to make these back-up copies available to the public whenever the Commission’s database is down or is unexpectedly disabled would eliminate the efficiencies gained by having the Commission host the public file online and would impose unnecessary burdens on stations. Such an approach, in effect, would force stations to continue maintaining a separate public file on site in order to comply with the Commission’s rules at a moment’s notice. This result is precisely what the Commission is trying to avoid.⁸

To achieve the Commission’s goals, APTS and PBS urge the Commission to revise its proposal to make clear that, in the unlikely event the Commission’s public file database becomes unavailable or is disabled in a manner that compromises the station’s public file materials, the station need only resubmit electronic back-up copies to the Commission so that the Commission can fully restore the station’s public file online. In such circumstances, we presume the Commission would undertake best efforts to bring the public file back online as quickly as possible — just as it has done for its other online public databases — to ensure that the public remains informed. The Commission is in a much better position than broadcasters, especially

⁶ *Id.*

⁷ *Id.* at ¶ 14.

⁸ *Id.* at ¶ 2.

public television stations, to undertake this task. Of course, to the extent a station's public file information is lost or compromised in the process, stations would be willing and able to provide, within a reasonable amount of time after receiving notice from the Commission, back-up copies of any information that it previously had uploaded for inclusion in its online public file.

II. THE COMMISSION SHOULD NOT COMPEL STATIONS TO REMOVE MATERIALS THAT ARE NOT REQUIRED FROM THE COMMISSION'S WEBSITE.

The Commission proposes to require stations to remove "items that are no longer required to be retained under our rules."⁹ For certain items, such as where information is imported from other Commission databases, it would be more efficient for the Commission to automatically replace the old materials at the time the new materials are imported into the public file database. Requiring stations to monitor the Commission's public file database to determine when new materials are added and old materials can be removed is inefficient and overly burdensome.

In addition, given that the purpose of the public file is to promote the disclosure of information by stations, it would be antithetical to that goal if the Commission began to punish stations for sharing information above and beyond the required information. Such an approach would subject stations to conflicting objectives because stations would be expected both to increase disclosure so the public is informed of the station's broadcast services and to decrease disclosure by immediately removing materials that are not strictly required to be included in the public file. While the Commission may not want stations to be over inclusive in their public file disclosures, it should avoid introducing contradictory objectives in its regulations.

⁹ *Id.* at ¶ 17.

Moreover, APTS and PBS are concerned that this requirement could increase the risk of inadvertent violations of the Commission's rules, unnecessarily subjecting stations to penalties or forfeitures. For example, a number of the public file items must be retained until the Commission takes final action. Station employees might have a difficult time determining when an action is "final" or might not immediately know to update the online public file any time the Commission issues an applicable decision. At a minimum, the Commission should clarify that stations will not be subject to any penalty or forfeiture if they fail to remove materials that are no longer required to be retained under the Commission's rules.

III. THE COMMISSION SHOULD ALLOW STATIONS TO RELY ON ONLINE NOTICES TO INFORM THE PUBLIC ABOUT THE ONLINE AVAILABILITY OF THE PUBLIC FILE.

APTS and PBS are encouraged that the Commission is updating its rules to take advantage of current technology. Consistent with this goal, we believe it is appropriate for stations to notify the public about the "existence, location, and accessibility of the station's public inspection file," as proposed in the FNPRM, but stations should have the option of making this announcement on their websites without also having to make on-air announcements.¹⁰ On-air announcements are an ineffective means to inform the public about the online public file because they are fleeting and not all of the individuals within the community may be watching at the moment they are aired. In contrast, a notice on the station's website is much more likely to be found by persons who are interested in accessing an online public file to learn more about the station. In addition, an online notice can provide more detail than an on-air announcement and can explain exactly which materials are available on the Commission's website and which are located at the station's main studio.

¹⁰ *Id.* at ¶ 40.

Although the Commission's goals are best achieved through online notices, if the Commission decides that a standardized on-air announcement is necessary, APTS and PBS urge the Commission to require that such announcements be made for no more than two months after the revised rules take effect.¹¹ This period would be long enough to inform viewers about the changes in the Commission's rules, while minimizing the burden on stations.

IV. THE COMMISSION SHOULD CONFIRM THAT NONCOMMERCIAL EDUCATIONAL STATIONS ARE NOT REQUIRED TO RETAIN LETTERS AND E-MAILS IN THEIR PUBLIC INSPECTION FILES.

The proposed rules contained in Appendix B of the FNPRM for noncommercial educational stations appear to include an inadvertent reference to the commercial television requirement that stations retain copies of letters and e-mails from the public in their public inspection files.¹² The requirements for what commercial and noncommercial educational stations must include in their public files are different in important ways. For example, while noncommercial educational stations must include donor lists in their public files, unlike commercial stations, they are not required to make copies of letters and e-mails from the public generally available.¹³ To avoid any confusion that the Commission could have intended to require noncommercial educational stations to begin retaining letters and e-mails from the public in their public inspection files, we encourage the Commission to correct this unintentional error.

¹¹ To be clear, APTS and PBS are only proposing a phase out of any new on-air public file announcement requirements; the other station identification requirements contained in Section 73.1201 of the Commission's rules and the public file announcement requirements contained in Section 73.3580(f)(9) would remain unaltered.

¹² See FNPRM, Appendix B (amending Section 73.3527(b)(i) to state "For television licensees, letters and emails from the public, as required by subsection (e)(9) below, shall be maintained at the main studio of the station" and Section 73.3527(b)(ii) to state "A television station licensee or applicant shall place the contents of its public inspection file on the Commission's website, with the exception of letters and emails from the public, which will be retained at the station in the manner discussed in subsection (i) above").

¹³ Compare 47 C.F.R. § 73.3526(e) (requiring commercial stations to include letters and e-mails from the public in the public file), with § 73.3527(e) (requiring noncommercial educational stations to include donor lists in the public file). Notably, the reference in the proposed rules to subsection (e)(9) refers to the current donor list requirement.

CONCLUSION

Public television stations are proud of the important services they provide to their local communities and are committed to making sure information concerning their broadcast services is accessible to the public. APTS and PBS agree with the Commission that transitioning from paper to online public files hosted on the Commission's website has the potential to improve access to such information while creating efficiencies and reducing costs. As explained in these comments, however, we encourage the Commission to make just a few adjustments to its proposed rules to ensure that these objectives can be fully achieved.

Respectfully submitted,

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