

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**JOINT COMMENTS IN RESPONSE TO
FURTHER NOTICE OF PROPOSED RULEMAKING**

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Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Dakota Broadcasters Association, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Rhode Island Broadcasters Association,

South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, Wyoming Association of Broadcasters, (collectively, the “State Associations”), by their attorneys in this matter, hereby file their Joint Comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Further Notice of Proposed Rulemaking* released on October 27, 2011, in the above-referenced proceeding.¹

BACKGROUND AND SUMMARY

Through these Joint Comments, the State Associations are continuing their participation in this proceeding which examines, among other things, whether the Commission should require television stations to migrate the bulk of their paper-based local public inspection files to the Internet.² The State Associations are pleased that the Commission is proposing to exclude from its online public inspection file proposals the multitude of letters and emails that television stations receive from the public. The State Associations are also pleased that the Commission has agreed to allow television stations to host their public inspection files on the FCC’s own website. However, as urged in their earlier Joint Comments,³ the State Associations still maintain that every television station should have the option of using the FCC’s website or its own website, with appropriate links to the FCC’s website, for their station’s online public

¹ See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Order on Reconsideration and Further Notice of Proposed Rulemaking, MB Docket 00-168, FCC 11-162 (rel. Oct. 27, 2011) (“*FNPRM*”).

² See, e.g., State Associations Joint Comments filed May 12, 2008; State Associations Joint Petition for Reconsideration filed April 14, 2008; State Associations Joint Reply to Opposition to Petition for Reconsideration filed June 12, 2008; and State Associations Joint Comments filed December 18, 2000.

³ See, generally, State Associations Joint Comments filed May 12, 2008.

inspection file. Furthermore, as detailed herein, the State Associations have serious concerns with other aspects of the Commission's online public inspection file proposal.

The State Associations are concerned that the Commission's apparent focus in this proceeding has changed, and they submit inappropriately so, from the FCC's longstanding emphasis on encouraging *local* dialogues between local residents and their local stations about their programming service to a new emphasis on oversight of television stations by *non-local*, and in fact, *distant* researchers and public advocacy groups that have no local ties to or personal knowledge of the individual communities served by local television stations.

Adding to the State Associations' concerns is the Commission's proposal to require television stations to place their *political files* online, including forcing stations in effect to standardize how they respond to the various types of political time requests. The State Associations also have concerns with the Commission's proposal to expand substantially the types of "sponsors" that must be identified on the lists that stations have long been required to maintain in their public files. Not only will each of these proposed new requirements be extraordinarily burdensome, the State Associations fear that these proposals reflect a new "gotcha" regulatory attitude of the Commission and that researchers, public advocacy groups and the Commission will play "stop watch" roulette if station political files go online or if the list of a television station's "sponsors" is expanded. Given that the base fines for violations of the FCC's political file and public inspection file rules are \$9,000 and \$10,000, respectively,⁴ the FCC will have a strong incentive to encourage the filing of "stop watch" complaints as well as to make adverse "willful or repeated" findings notwithstanding the good faith efforts of broadcasters.

⁴ 47 C.F.R. § 1.80.

For the reasons detailed herein, the State Associations urge the Commission not to adopt an online political file requirement or to expand the types of sponsorships that must be listed by television stations in their public inspection files. In the alternative, the Commission should defer a decision on whether to adopt an online political file requirement for television stations pending the outcome of its action with respect to replacing FCC Form 355. If the Commission intends to adopt an online public inspection file requirement for television stations, it should nevertheless conduct a pilot program before finalizing any online public inspection file rule as well as provide a reasonable phase-in period for compliance. Furthermore, with the adoption of an online public inspection file requirement, the Commission should remove as unnecessary the public file certification question from its application for renewal of broadcast licenses on FCC Form 303-S, as well as reduce the base forfeiture amount for public inspection file violations which will become even more arbitrary and capricious in an online public file world.

Lastly, to acknowledge the high priority of dialogues between local viewers and local stations, the Commission should require all persons and organizations having complaints about a station's programming to certify, in any complaint, objection or petition filed with the Commission, that they have already made their concerns known, in writing or by email, to the affected station(s) and that they have not received either any response from the station(s) or a satisfactory response (along with the reasons why the response was not satisfactory) before the FCC will consider the matters contained in the person's or organization's complaint, objection or petition.

DISCUSSION

I. THE FCC SHOULD NOT ADOPT OR, IN THE ALTERNATIVE, SHOULD DEFER A DECISION ON WHETHER TO ADOPT, AN ONLINE “POLITICAL FILE” REQUIREMENT FOR TELEVISION STATIONS

In an about-face from its 2007 *Report and Order*,⁵ the Commission is now proposing that the contents of a television station’s political inspection file be made a part of a station’s online public inspection file. In addition, the Commission is proposing that the contents of those files be sorted and uploaded under a uniform coding system. The State Associations submit that the Commission should not require television stations to maintain the contents of their political files on any website. In the alternative, the Commission should defer a decision on whether to impose such a requirement pending the outcome of its *Notice of Inquiry* proceeding.⁶

It is significant that, in its *Report and Order*, the Commission determined that the political file should be *excluded* from any online posting requirement after “determining that the burden of placing a station’s political file online outweighed the benefit of posting this information, which is most heavily used by candidates and their representatives [footnote omitted].”⁷ The full Commission went on to conclude that:

The Commission determined that the frequent requests for access by campaigns and the need for stations to update the file frequently during an election season made an online requirement inappropriate. The Commission also reasoned that political campaigns generally have greater resources than individual viewers and, therefore, visiting stations would tend to be less burdensome for campaigns organizations.⁸

Notwithstanding these factual and legal “determinations” and the good and valid reasoning on which the Commission based its *Report and Order* decision to exclude the political

⁵ *In the Matter of Standardized and Enhanced Disclosure Requirements for Broadcast Licensee Public Interest Obligations*, Report and Order, 23 FCC Rcd 1274 (2007) (“*Report and Order*”)

⁶ *See Standardizing Program Reporting Requirements for Broadcast Licensees*, Notice of Inquiry, MB Docket No. 11-189, FCC 11-169 (rel. November 14, 2011) (“*NOI*”).

⁷ *FNPRM*, at ¶ 22.

⁸ *Report and Order*, at ¶¶ 19-20.

file from any online public inspection file requirement, the Commission in its *FNPRM* has done an about-face. Its conclusion is based largely on its newly found “understanding” that “the vast majority of television stations handle political advertising transactions electronically, through e-mails and a variety of software applications.”⁹ However, that understanding, even if it were accurate (which it is not), is irrelevant to the underlying question regarding the increased burdens the FCC’s proposals will require of television broadcasters. The Commission should not require the political file to be posted online because it will add substantial new burdens on television broadcasters and such action has not been shown by candidates or their committees to be necessary.

As the Commission is aware, a station’s political file must be very frequently updated during election periods. Developing a system of uploading, organizing, and timely updating the public file online will present a very significant challenge, especially given that maintaining the political file is already a *manually* intensive burden on broadcasters. As Hearst Television Inc. (“Hearst”) demonstrated in a recent *ex parte* filing with the Commission:

the Commission’s proposals with respect to the political file and sponsorship identification would result in average costs to stations ranging from \$30,000 to \$120,000-\$140,000 per station per year. Hearst has estimated that, should the proposals be adopted without modification, it would be required to ... [hire an additional employee] to handle political file compliance....¹⁰

Simply put, when viewed over the expanse of the television broadcast industry, the burdens and expense associated with maintaining a station’s political file online will be staggering.¹¹

⁹ *FNPRM*, at ¶ 23.

¹⁰ Hearst Letter to Marlene H. Dortch, MB Docket 00-168 (December 13, 2011) (“Hearst Letter”).

¹¹ Based on an informal survey of the State Associations member television stations, the costs associated with maintaining stations’ political files online is very real. Indeed, many member television stations indicated that it would be necessary for them to hire at least one additional employee in order to comply with the political file aspects of the rule alone.

Hearst has attempted to estimate the costs and other burdens associated with converting stations' political files into electronic format and posting them in an online political file. The results make clear that these costs and burdens will be enormous for individual stations and for the television broadcast station industry as a whole. Considerable expense and personnel time would be involved in gathering, scanning, and posting all of a television station's political documentation. The tasks associated with the FCC's proposals would be particularly burdensome during an election season when the "political file" portion of the online public file would need to be updated frequently, and often numerous times throughout a given day. Undoubtedly, these costs would fall even more heavily on smaller television stations.

The State Associations strongly urge the Commission to exempt the "political file" from any general requirement to post a station's public file on the FCC's website. The Commission's rules currently require a station's political file to include all requests for time made by or on behalf of local, state and federal political candidates.¹² In the *FNPRM*, the Commission indicates that its rules currently require that political records be placed in the political file "as soon as possible" and that "as soon as possible means immediately absent unusual circumstances."¹³ The Commission goes on to tentatively conclude that stations should "be required to upload the same records to their online political file 'immediately absent unusual circumstances.'"¹⁴ Given that, as a practical matter, television stations' political files must be updated often throughout the day during a busy election season, it goes without saying that the

¹² See 47 C.F.R. § 73.3526(e)(6). The political file contains a complete record of all requests for airtime by or on behalf of candidates, with a notation showing how each request was handled, including (i) the schedule of time purchased; (ii) the classes of time purchased; (iii) the rates charged; and (iv) when each spot actually aired. 47 C.F.R. § 73.1943(a). Political campaigns and their media advertising buyers (and not members of the general public) are unquestionably the most interested in this information, with particular interest in availing themselves of the statutorily-required "equal opportunities" for the "use" of the station and the "lowest unit charge of the station" for each class and time period. 47 U.S.C. § 315(a) & (b).

¹³ *FNPRM*, at ¶ 23.

¹⁴ *Id.*

proposed “immediately absent unusual circumstances” requirement to post records online would be unduly burdensome for all television stations and that the hardest hit would be stand-alone and smaller market television stations. The Commission also fails to take into account that political advertising requests are by their very nature often “last minute” and “end of the day” type requests, making the FCC’s proposed goal of “near real-time upload” compliance with an online political file rule extremely difficult if not impossible to accomplish.

Apart from the burdensome time and expense of initially uploading the documents to the FCC’s website and of continuing to do so during political season, the Commission also wants stations to upload the requests for political time that they have received and the dispositions thereof on a uniform, “subfolders” or “subdivisions” catalogue basis.¹⁵ That further requirement is completely unworkable because it does not take into consideration all the ways that a station can be responsive to political time requests or the ways that individual stations manually or electronically code their responses to political time requests for traffic purposes. In that regard, the Commission’s catalogue approach also fails to take into account that there is no industry standard for managing trafficking data. Many television stations use their own in-house trafficking software while many others use the products of outside vendors. According to Larry Keene, CEO of the Traffic Directors Guild of America, there are at least fourteen different television trafficking software providers. These include BroadView Software, Broadway Systems, Counterpoint Traffic Software-Networks, Gabriel, Myers Pro-Track, OSI - Optimal Solutions, Inc., Paradigm®, Pilat, SintecMedia, Summit Software Systems, VCI-Video Communications, VT-Visual Traffic Software, and WideOrbit, among others. The vendors use a variety of different software packages. Consequently, the political file information that would

¹⁵ *FNPRM at ¶ 24.*

have to be uploaded will vary greatly in form depending on the television station and the specific software and vendor used.

At bottom, the Commission's online political file proposal attempts to impose a form of standardization, where none is appropriate or possible, among thousands of television stations nationwide. Such an attempt is indicative of intrusive, unduly burdensome, bureaucratic, governmental rule making. Furthermore, the proposal bespeaks a "gotcha" approach to governmental regulations. The Commission stated in this proceeding that "[O]ur rules currently require that [political time request] records be placed in the political file 'as soon as possible' and 'as soon as possible means immediately absent unusual circumstances.'"¹⁶ The unpredictability of political buys, ongoing operational needs, and tight staffing limitations already make the job of complying with the political file requirements very difficult. Adding an online requirement for the political file will make compliance even more difficult to achieve on a day-in and day-out basis during busy election sessions.

In that regard, the State Associations are concerned that researchers, public advocacy groups and the Commission will play "stop watch" roulette if the political files were to go online. Given that the base fines for violations of the FCC's political file and public inspection file rules are \$9,000 and \$10,000, respectively,¹⁷ the FCC will have a strong incentive to find at least technical shortcomings in every television station's efforts to comply with the mechanics of a new online political file requirement. The filing of "stop watch" complaints and the issuance of adverse "willful or repeated" findings for technical nonconformance can be expected notwithstanding the good faith efforts of staff-constrained broadcasters.

¹⁶ *FNPRM*, at ¶. 23.

¹⁷ 47 C.F.R. § 1.80.

At a minimum, the Commission should defer a decision on whether to adopt an online political file requirement for television stations until its *NOI* proceeding has been concluded. Otherwise, the Commission would be putting the cart before the horse. In that *NOI*, the Commission has opened for comment whether and the extent to which data on, *inter alia*, local electoral-related programming should be tallied and made publicly available.¹⁸ Depending upon the outcome of that proceeding, the Commission may very well conclude that certain programming data relating to local elections is sufficient and therefore television stations should not also be required to upload and maintain their political files online. Accordingly, the Commission should avoid prejudging the outcome of the it *NOI* as relates to political candidate/local election data by, at a minimum, deferring consideration of the online political file proposal.

Finally, as a factor militating against the online political file proposal, the Commission should take into consideration the fact that a station's political file stands as a very limited exception to the principle that a station's commercial transactions are appropriately private matters of arms length negotiations between the station and its advertising customers.¹⁹ Moreover candidates and their representatives have had, for decades, more than adequate access to the information that they need to conduct their business with stations. There is absolutely *no* evidence of widespread complaints about the availability or sufficiency of the information contained in these paper-based political files. In addition, the rights of these candidates under the Communications Act and the FCC's political time regulations are personal to them. If any of them has a concern about how they are treated, these sophisticated parties know their rights and

¹⁸ See *NOI*, at ¶¶ 22-29.

¹⁹ The State Associations also have concerns about disparate treatment between television broadcasters and MVPDs which are otherwise required to maintain public inspection files; the Commission is not proposing to require those MVPDs to upload their files onto the Internet in the same manner.

how to enforce them. In short, placing political files online is not necessary for candidates to continue to enjoy their full rights under applicable provisions of the Communications Act and the FCC's rules and regulations.

II. THE FCC SHOULD NOT EXPAND THE TYPES OF "SPONSORSHIPS" TO BE LISTED IN AN ONLINE PUBLIC INSPECTION FILE

At the present time, the Commission's rules require broadcast stations, in addition to providing the requisite on-air sponsorship identification, to maintain a list of the chief executive officers or members of the executive committee or of the board of directors of a corporation, committee, association or other unincorporated entity, or other entity, that has paid for or furnished a certain type of program material that is aired: material that is political or matter involving a controversial issue of public importance.²⁰ Such lists must be kept in the public file for a period of two years.²¹

Similarly, Section 504 of the Bipartisan Campaign Reform Act of 2002 ("BCRA")²² requires broadcast stations to make publicly available a complete record of requests to purchase broadcast air time "made by or on behalf of a legally qualified candidate for public office" or to air a "message relating to any political matter of national importance." Television licensees must keep records under BCRA that include "the name of the person purchasing the time, the name address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person."²³ The information must be placed in the station's political file and be maintained for two years.

²⁰ See 47 C.F.R. § 73.1212(e)

²¹ *Ibid.*

²² Pub. L. 107-155, 116 Stat. 81 (March 27, 2002).

²³ *Id.* at 84.

If these regulatory burdens were not enough, in its *FNPRM* the Commission is proposing to expand those requirements “to include all sponsorships that require a special on-air disclosure.”²⁴ Under that proposal, a multitude of sponsorship identifications, now required to be disclosed only on-air, would needlessly have to be listed in the online public file, again increasing the burden on television broadcasters. As the Hearst Letter demonstrates, it is estimated that three employees would be required to ensure compliance with the FCC’s new sponsorship identification proposals.²⁵ Hearst estimates that the “political file and sponsorship identification [requirements] would result in average costs to stations ranging from \$30,000 to \$120,000-\$140,000 per station per year.”²⁶ Given these additional burdens, the Commission should not expand the current requirement that stations maintain a list of sponsors of material which already requires the disclosure of the principals behind sponsors of matter that is political, including any political matter of national importance or that involves a controversial issue of public importance.

III. THE FCC SHOULD CONDUCT A PILOT PROGRAM BEFORE ADOPTING ANY ONLINE PUBLIC INSPECTION FILE RULE AND PROVIDE A PHASE-IN FOR COMPLIANCE

The Commission should conduct a pilot program before adopting any requirement that television stations maintain online public inspection files. There is too much uncertainty relating to: the categories of documents to be scanned and uploaded; the total number of documents to be uploaded; the design of the Commission’s website; the capacity of the Commission’s servers to accommodate all of the documents for easy uploading and easy viewing; the time and expense it

²⁴ *FNPRM*, at ¶ 34.

²⁵ Hearst Letter, at 2.

²⁶ *Id.*

will take stations to scan and upload all of the required documents; the costs for stations to maintain back-up files to “prove” that their documents were uploaded when required; *etc.*

On top of that, the Commission is not even sure how many “small business” television stations will be affected by this new requirement. Based on the Commission’s most recent public accounting as of September 30, 2011, 1,782 commercial and noncommercial full power television stations, 492 Class A television stations, and 2,068 low power television stations have been authorized by the Commission.²⁷ The Commission has recently estimated that *more than* 1,000 commercial television stations (let alone noncommercial educational television stations) may qualify as “small businesses.”²⁸ In the record of this proceeding, it was estimated that the paper-based public inspection file of a typical commercial television contains more than 25,000 to 45,000 pages of documents.²⁹ Based on that estimate, if only 1,000 “small business” television stations were to upload the contents of their current public inspection files onto the FCC’s website, the staff of these stations, in the aggregate, would have to scan a conservative estimate of between **25 to 45 million** pages of documents and upload them onto the Commission’s server. That process alone would take thousands upon thousands of man-hours for scanning and uploading the required documentation. And those time estimates assume no uploading problems caused by the Commission’s own technical infrastructure.

The FCC will gain valuable experience and insights if it conducts a pilot program involving the licensees of representative large, medium and small market commercial and noncommercial educational television stations, and their trade association representatives, in the

²⁷ FCC News Release, *Broadcast Station Totals as of September 30, 2011* (rel. November 3, 2011).

²⁸ See *Amendment of Parts 73 and 74 of the commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Second Report and Order, 26 FCC Rcd 11227, at ¶ 13 (July 15, 2011).

²⁹ See Comments of The Walt Disney Company, on behalf of itself and its subsidiary, ABC, Inc. (December 18, 2000). Tellingly, this estimate did not account for the years remaining in station’s terms of license or the pages that would be added during those years. *Id.*

re-design of the FCC’s website and in the experimental uploading of certain paper-based public files of sample television stations. Given the number of current unknowns that exist with respect to the Commission’s online public file proposal, and the data points that will be obtained from such a program, a pilot program, in the unique context of this proceeding, is an indispensable predicate for the Commission being able to carry out its statutory obligations under the Paperwork Reduction Act of 1995, as amended (the “PRA”).³⁰

The PRA was enacted “to minimize the federal paperwork burden”³¹ by eliminating regulatory burdens “which are found to be unnecessary and thus wasteful”³² To comply with the OMB regulations promulgated under the *PRA*, the FCC must evaluate any information collection requirement in a very specific way. Among other things, this review must include:

- An evaluation of the need for the collection of information.³³
- A “specific, objectively supported estimate of the burden.”³⁴
- An evaluation of whether and to what extent the burden can be reduced.³⁵
- *A test of the collection through a **pilot program**, if appropriate.*³⁶
- A plan for the efficient and effective management and use of the information, including necessary resources.³⁷

Consequently, the Commission is required to proceed in a very measured way by utilizing a pilot program before making a final decision whether to adopt an online public inspection file requirement.

The FCC exhibited that kind of measured, cautious approach when it decided to conduct a 45-day *public trial* of Telcordia Technologies’ TV band database system to determine whether

³⁰ Pub. L. No. 104-13.

³¹ 44 U.S.C. § 3501(1) (Supp. V 1981).

³² S.Rep. No. 930, 96th Cong., 2d Sess. 3, *reprinted in* 1980 U.S. Code Cong. & Ad. News 6241, 6243.

³³ 5 C.F.R. § 1320.8(a)(1).

³⁴ *Id.* at § 1320.8(a)(4).

³⁵ *Id.* at § 1320.8(a)(5).

³⁶ *Id.* at § 1320.8(a)(6) (emphasis added).

³⁷ *Id.* at § 1320.8(a)(7).

“the database can successfully identify unused spectrum or ‘white spaces’ in the TV band and register facilities entitled to interference protection....”³⁸ The State Associations further note the calamitous problems that occurred when the FCC first inaugurated its nationwide deadline for the online filing of Biennial Ownership Reports by commercial radio and television stations, and recently again under its December 1, 2011, deadline. The FCC had to grant numerous extensions of time due to software and server capacity issues at the FCC’s end. Had the Commission conducted a pilot program of its Biennial Ownership Report form filing process with actual regulatees, many of the problems encountered could have been minimized if not eliminated altogether. In short, the State Associations submit that there is no acceptable alternative to involving the subjects of this proposed future regulation early on and in testing an online public inspection file program during the formative stages of the rule making.

IV. IF THE FCC ADOPTS AN ONLINE PUBLIC INSPECTION FILE RULE, IT SHOULD REMOVE THE PUBLIC FILE CERTIFICATION FROM ITS RENEWAL OF BROADCAST LICENSE FORM 303-S AND REDUCE THE BASE FORFEITURE AMOUNT FOR PUBLIC FILE VIOLATIONS

If the Commission is to avoid the “gotcha” regulatory thrust of a new online public inspection file requirement, it must do at least two things: (1) remove the renewal of license application public file certification question contained in FCC Form 303-S,³⁹ and (2) reduce substantially the base forfeiture amount for public inspection file violations.⁴⁰

As a logical matter, the basis for the public file renewal application certification disappears once a station’s public inspection file goes online. The reason is that the Commission, and indeed everyone with access to the Internet, is able to access the public file

³⁸ Communications Daily, December 6, 2011, at 7.

³⁹ The current public file certification language of FCC Form 303-S is as follows: “Licensee certifies that the documentation, required by 47 C.F.R. Sections 73.3526 or 73.3527, as applicable, has been placed in the station’s public inspection file at the appropriate times.” FCC Form 303-S, Section III, Question 3.

⁴⁰ The base forfeiture amount for a violation of the public file rule is \$10,000. *See* 47 C.F.R. § 1.80.

information 24/7. Thus, everyone will be able to assess whether the public file contains all documents required and whether each document was placed in the public file by the pertinent deadline. Accordingly, if the Commission adopts an online public file requirement for television stations, it should instruct all television stations filing applications for renewal of license after the new requirement becomes effective to disregard the public file certification question until revised FCC Form 303-S has been approved.

As a second matter, the State Associations submit that the base fine amount for a public inspection file violation has long been arbitrary and capricious, and becomes even more plainly so where a television station's public file exists online. The base fine should be lowered substantially as a matter of principle. The \$10,000 amount is inexplicably higher than the base fines for violations of a patently more egregious kind.⁴¹ Furthermore, once a station's public inspection file exists on the FCC's website or on its own website (as the case may be), the station cannot prevent anyone from accessing the public file, thereby eliminating the most serious type of violation associated with the public inspection file. Even if the Commission were to substantially reduce the base fine amount, it would retain the discretion to make upward adjustments based, for example, on how long the station delayed in moving its public file onto the FCC's website or its own website, on the nature and number of the documents still not in the online public file, or the amount of time that certain types of documents were not in the online

⁴¹ This base forfeiture amount is the same amount as for such egregious violations as where a party attempts to purposefully deceive the Commission ("Misrepresentation/lack of candor") and where public safety is at stake ("Failure to comply with prescribed lighting and/or marking.") *Id.* Moreover, the base forfeiture dollar amount is *more* than for any of "Unauthorized substantial transfer of control" (\$8,000), "Violations of rules relating to distress and safety frequencies" (\$8,000), "False distress communications" (\$8,000), "EAS equipment not installed or operational" (\$8,000), "Fraud by wire, radio or television" (\$5,000), "Using an unauthorized frequency" (\$4,000), and the "Failure to respond to Commission communications" (\$4,000), among others. The State Associations respectfully submit that under these circumstances, there is simply no reason for the Commission not to substantially reduce the base forfeiture amount for public inspection file violations, whether or not it decides to go forward with its online public file proposals.

public file.⁴² Because the worst type of public file-related violation can no longer occur under an online public file regime, the Commission should establish a much lower base fine for any online public file violations, possibly reserving a high fine for a station that has not cooperated in moving its public file online.

V. THE COMMISSION SHOULD RE-EMPHASIZE THE "LOCAL DIALOGUE" PREMISE FOR PUBLIC INSPECTION FILES AND REQUIRE COMPLAINANTS, OBJECTORS AND PETITIONERS TO DEMONSTRATE THEIR EFFORTS TO BEGIN SUCH DIALOGUE BEFORE THE FCC WILL CONSIDER THEIR POSITIONS

The State Associations are concerned that the Commission's apparent focus in this proceeding has changed, and inappropriately so, from the FCC's longstanding emphasis on encouraging *local* dialogues between local residents and their local stations to a new emphasis on oversight of television stations by *non-local*, and, in fact, *distant* researchers and public interest groups that have no personal knowledge of or legitimate ties to the communities served by local television stations.

The Commission's long-standing purpose in adopting its public inspection file rules⁴³ has been to provide members of the *local* viewing and listening public with convenient access to certain information about the station's operations so that members of the *local* viewing and listening public can "engage in an active dialogue with broadcast licensees regarding broadcast service."⁴⁴ For that reason, stations have been required to maintain their public files at their

⁴² The Commission's public inspection file rule gives stations the option to remove documents from the public file after certain periods of time depending upon the type of document. That "option" should not be turned into a mandatory requirement under any new online public inspection file requirement. The public is not prejudiced by having more documents available for review. Furthermore, any removal requirement will inevitably end up consuming the FCC's processes with litigation over the reasons why a station believed that the documents should retain in the online public file.

⁴³ See generally, 47 C.F.R. § 73.3526.

⁴⁴ *FNPRM*, n. 4.

main studios open to members of the general public, without the need for prior appointments, during normal business hours, including during lunch time.⁴⁵

Broadcast stations are required to serve the *local* public interest by airing programming responsive to the evolving needs, interests and problems of the people who reside within their respective *local* communities of license and surrounding *local* service areas. Distant Washington policymakers and distant researchers and organizations are unqualified arbiters of what those evolving needs, interests and problems are or will be, and what editorial judgments need to be made in deciding what programming is or will be responsive to those evolving local needs, interests and problems. Accordingly, the Commission should emphasize in this proceeding the importance of members of the public first bringing to the attention of their local stations any questions or concerns about a local station's programming or operations. This will better ensure that the FCC's historical goal of "active dialogues" will begin and end at the local level, ideally without the need for governmental intervention from D.C. where every such intervention, and threat of intervention, chills the First Amendment rights of broadcasters to the ultimate detriment of the people those broadcasters serve.

Allowing television stations, as an option, to place their public inspection files on their own websites would be an important "first step statement" in emphasizing the importance of local dialogues in lieu of governmental interventions. An important second step would be for the FCC to require all persons and organizations having a complaint about a station's programming to certify, in any complaint, objection or petition filed with the FCC, that they have notified the television station of their concerns, in writing or by email, and that the station has either not responded or its response has not satisfied the complainant, before the FCC will consider the

⁴⁵ See 47 C.F.R. § 73.3526(c)(1).

