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August 28, 2014

VIA ELECTRONIC DELIVERY

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW, TW-A325
Washington, DC 20554

Re: **MB Docket No. 14-127**

Dear Ms. Dortch,

On behalf of the 50 State Broadcasters Associations identified below (collectively, “the State Associations”), we are pleased to provide our comments in response to the Commission’s Public Notice released August 7, 2014, on the subject of online public inspection and political files.¹ We limit our comments to the following request made by the Commission: “We also seek comment on whether the Commission should initiate a rulemaking proceeding to require broadcast radio stations to use the [Commission’s] online public file, and on an appropriate time frame for such a requirement.”² The State Associations believe that there are several threshold issues that the Commission should consider and resolve before it reaches a decision on whether to initiate such a rule making that would expand the current online public/political file requirements to broadcast radio stations.³

¹ See *Media Bureau Seeks Comment on Petition for Rulemaking Filed by the Campaign Legal Center, Common Cause and the Sunlight Foundation Seeking Expansion of Online Public File Obligations to Cable and Satellite TV Operators, Bureau Also Seeks Comment on Expanding Online Public File Obligations to Radio Licensees*, Public Notice, MB Docket No. 14-127, DA 14-1149 (Aug. 7, 2014).

² *Id.* at 1.

³ If the Commission were to initiate such a proceeding, the State Associations would intend to participate.

Discussion

A. The FCC Should Act on the Petition Filed by the Three Public Interest Organizations *Before* Considering Whether to Extend the Current Online Public/Political File Requirements to Radio Stations

The FCC's Public Notice was issued in explicit response to a Petition for Rulemaking filed by The Campaign Legal Center, Common Cause and the Sunlight Foundation (the "Joint Petitioners") seeking to extend the current online political file requirement for television to cable and satellite systems (the "Petition").⁴ Accordingly, it is reasonable to assume that, by limiting their request to pay-TV providers, the Joint Petitioners recognized the substantial burden that would be placed on the Commission's resources and online filing system if it were to extend the current online public/political file requirements to more than 15,000 broadcast radio stations at the same time that the Commission extended those requirements to pay-TV providers.

As we all know, the FCC faces significant budget challenges and has been forced to do more with less. Given its budget limitations, it is logical and prudent that the FCC would want to address the more pressing issues raised by the Joint Petitioners, before expanding the scope of the current proceeding to include radio. Such a measured, sequential, experiential approach makes eminent sense given the complexities of the radio marketplace. First, there are substantially more radio stations in the United States than there are television stations or pay video outlets. Indeed, there are only two satellite distributors in the United States and relatively few large cable operators. Compare this to the more than 15,000 local radio stations of various sizes and power operating in a myriad of different local communities throughout the United States. In short, radio is not as homogeneous as compared to pay TV. For example, radio stations range in size from the traditional "mom and pop" station to stations owned by large companies. Radio markets are not as clearly defined as television markets. Every locality in the United States is assigned to a specific DMA by Nielsen. In many areas of the country radio markets are less defined, covering broad geographic areas that are outside defined markets. Moreover, the economics of radio vary considerably. The economic challenges facing small stations in rural markets may be significantly different from stations in large metropolitan areas. In short, designing and implementing an online public/political file requirement that will work for the radio industry will require an enormous amount of the Commission's time and resources. Given these factors, undoubtedly it would be more advantageous for the Commission to address the issue of extending the political file requirements to pay TV services before embarking on the more complex task of considering an online public/political file requirement for the diverse radio industry.

⁴ *Ibid.*

B. The Commission Has a Responsibility to Provide Reasonable Assurance of The Adequacy of its Online Filing System to Handle Expected Broadcast Radio Station Online Filings Taking Into Account the Experiences Gleaned from All Broadcast Television and Pay-TV Online Public/Political File Submissions.

Given the quantum difference between, on the one hand, having 1,800 television stations upload the contents of their main studio-based public inspection files onto the Commission's online public file database, and, on the other hand, having more than 15,000 radio stations do so, the question asks itself: will the Commission's online public file database be capable of smoothly handling the uploading of what would be millions of pages of new documents onto its online database, on top of the ongoing filings by television stations and the pay-TV providers? We recognize that the Commission has continued to take steps generally to make its systems more resilient in response to technical failures or when its systems are simply overwhelmed by the number of filings in a particular time frame, but such technical obstacles continue to be inherent in the Commission's aging filing systems.

To its credit, in response to various technical problems in its filing systems, the Commission has often proactively extended filing deadlines for a specific type of filing where it becomes aware that the filing system is faltering under the weight of a significant filing deadline. The most recent example of the Commission proactively working around the limitations of its online filing systems is ongoing, where the Commission has taken extraordinary steps to accommodate the large number of filings being made in connection with the Open Internet rule making proceeding.⁵ However, this "during play" sort of deadline accommodations due to the practical limitations of any electronic filing system can be disruptive (i.e., a last-minute filing extension is of benefit only to those who become aware of it, as other filers continue to overload the system trying to beat a no longer valid deadline), and can unintentionally lead filers that are having unique problems in filing into believing that it is the result of a wide spread problem that will cause the FCC to extend the filing deadline. The filer therefore waits to file in hopes that the seeming general technical problem with the filing system is fixed by the FCC and the deadline extended. The result is a late filing, which in the case of broadcast stations, will have to be reported as much as eight years later in their license renewal applications.

In addition, deadline accommodations due to system technical limitations also tend to arise when a problem occurs with a particular type of filing having a single common deadline (e.g., ownership reports or Open Internet comments). In the case of online public inspection files, a variety of filing types are involved, which may have a single deadline or closely spaced deadlines. Historically, the FCC's ability to spot these types of disruptions,

⁵ See *In the Matter of Protecting and Promoting the Open Internet, et al.*, Notice of Proposed Rulemaking, GN Docket No. 14-28, et al.

or to take extraordinary actions to extend deadlines, etc., is far more limited when a subset of filings or filers is affected. However, the adverse impact on that particular filer of a missed deadline is the same.

Accordingly, before commencing a Notice of Proposed Rulemaking regarding an online radio public inspection file requirement, the State Associations encourage the FCC to not only expend the necessary resources to beef up its filing systems to minimize technical problems for the massive influx of documents that would be involved. In this regard, the Commission should examine potential technical demands placed on its system that may be associated with extending the political file requirements to pay TV systems. In other words, the system will face challenges resulting from filings by existing TV stations, new challenges if the FCC extends political file requirements to pay TV systems, and enormous additional challenges if public file requirements are applied to more than 15,000 radio stations. There are numerous technical details that need to be considered. For example, the FCC may want to adopt broader filing windows to at least reduce the number of filings flowing through the electronic front door of the Commission *on any one day*. For example, broadcast stations typically have only a ten day window (and pragmatically, an even shorter window than that since preparation of the document to be filed takes a significant portion of those ten days) to file their quarterly documents, like Quarterly Programs/Issues Lists, or in the case of TV stations, documents and certifications related to children's television.

Expanding the traditional 10-day filing window for many broadcast reports to a 30-day filing window would reduce greatly the amount needing to be filed on any one day, particularly when you consider that at least five business days are consumed in drafting the reports (particularly where they are reviewed by counsel). Depending on whether the ten-day filing period has one or two weekends in it (and in one quarter each year, the July 4 holiday), the actual filing window is really only 1 to 3 days. The result is that preparation of the reports may be rushed, and both radio and TV stations are all filing their various reports on the same few days. Moving to a thirty-day filing window would place less stress on the filing system while providing broadcasters more time to prepare their reports and to work around individualized technical problems in filing (*i.e.*, no more panicked calls to the FCC filing staff at 4:00 P.M. Pacific Time on the last business day of the filing window only to find that everyone on the East Coast has already gone home).

At bottom, the demands on the FCC's technical system will not be fully known until the FCC has decided whether to extend its political rules to pay TV systems and if so has gained sufficient real time experience with such filings.

Conclusion

Based on the foregoing, the State Associations urge the Commission to proceed cautiously, guided by its cumulative experiences with current and expected television station filings as well as with an actual track record of pay-TV provider filings. Only after

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New Jersey Broadcasters Association
New Mexico Broadcasters Association
New York State Broadcasters Association, Inc.
North Carolina Association of Broadcasters
North Dakota Broadcasters Association
Ohio Association of Broadcasters
Oklahoma Association of Broadcasters
Oregon Association of Broadcasters
Pennsylvania Association of Broadcasters
Radio Broadcasters Association of Puerto Rico
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
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