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Ms. Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
Washington, DC 20554

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

Dear Ms. Dortch,

The Missouri Broadcasters Association and the California Broadcasters Association (the “Associations”) hereby submit their comments in response to the Commission’s Public Notice released August 7, 2014, calling for comments on the Petition For Rulemaking of the Campaign Legal Center, Common Cause and the Sunlight Foundation to expand the Commission’s online public file to cable and satellite TV. The Media Bureau also added its own request for comment on expanding the online filing obligation to radio licensees.¹ The Associations will confine their remarks to the direct interests of their members and therefore, comment only on the Bureau’s proposal to extend the online filing requirement to radio.

The Associations’ members’ experience with online public files so far has not been as easy as had been hoped. The problems will be significantly greater if extended to the far more numerous and smaller-staffed radio industry. Support hosting services that could lighten the

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).

burden have not been able to launch due to problems with the FCC's own API based online public file system.

Our television members all are now subject to the online public file requirement. Their experience in implementing and maintaining their online public file has not been as nearly as easy or uncomplicated as had been hoped and predicted in Commission statements. Admittedly, the imposition on our members' staff time resulting from the rule has been limited to only 48 Missouri television stations and 107 California television stations out of the 1,800 television stations serving the U.S. Yet, this is a significant sample and can be considered representative of experiences on a nation-wide basis. Even so, television is in a far better position to minimize coordination issues and deal with the additional workload required to upload and manage the online public and political files, notwithstanding problems and glitches with the system.

There is an enormous difference when it comes to radio. With nearly ten times more radio than television stations nationwide, and multiple ownership rules that allow larger local and national group ownership that has resulted in far less local staff per station than is typical for television, the plight of radio stations is likely to be even more seriously and adversely affected by an online public file requirement. While this could be true in both large and small markets, it would be most severely felt in smaller markets. The rule should not be extended to radio without a comprehensive analysis as required by Paperwork Reduction Act of 1995 targeted to addressing the impact on small market radio stations. The Commission recognized this need when adopting the online public file for television stations, as it then asked for comments on the

effects on small business concerns with fewer than 25 or fewer employees.² Clearly, the same inquiry is required before imposing this burden on radio, where the impact is likely to be far more severe.

Compared to television, radio presents far more serious small business concerns. With over 15,000 radio stations nationwide, there are nearly ten times more radio stations to feed data into the system. According to BIA Media Access Pro, in Missouri there are 400 radio stations, compared to 48 television stations. Of the 400 stations, only 36%, or 145, are in BIA-recognized markets. Thus, a preponderance of the stations are outside of all markets. Those 255 stations are located in 140 towns and 79 counties, an average of less than two stations per town and barely more than three stations per county. In such small markets with limited staff, aggravated by the difficulty in attracting new talent to small market radio stations, a new staffing requirement is too onerous to be justified.

California has a similar ratio of radio to television stations – 926 to 107. Of the 926 radio stations, 453 - about 50% - are outside of all BIA-listed markets or in markets above the top 100. 173 of those are outside all markets and in 27 unique counties and 86 cities, accounting for about 6 stations per county but only two per city or town.

For all radio stations today, but most acutely for stations in smaller counties or cities, the overriding problem is simply a lack of staff. Today many of our member radio stations are operated with very small staffs; some as few as two or three, with many responsibilities that once were staffed separately now being multi-tasked onto a single employee. With additional

² Paperwork Reduction Act Analysis, *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations* (Second Report and Order), 27 FCC Rcd 4535 (2012), at 4587, ¶114.

competition from new forms of digital media, many have found smaller staffing to be the only path to maintain viability.

To demonstrate the severity of the staffing problem, BIA reports indicate that in Missouri 281, and in California 539, radio stations report that a single person holds more than one of the following positions, or one or more of the following positions is listed as unfilled: Traffic Director, Sales Manager, Program Director, General Manager. Small markets are particularly revenue-challenged. While the cost of physical station operation is about the same regardless of location, BIA reports also show that the average annual revenue for radio stations outside of all markets in Missouri is about \$389,000, only about 19% of the revenue produced in rated markets. In California the average revenue is even less, about \$359,000, or about 12% of the revenue produced in its rated markets.

For example, a Harbit Communications, small market Missouri radio station licensee, in Nevada, Missouri, 2010 population 8,386 has the community's only local radio stations. Nevada is 60 miles from Joplin and 75 miles from either Springfield or Kansas City MO. It is in a county with a total population of only 21,159. The two stations, an AM FM combo, are a classic "mom-and-pop," that has two program length local public affairs programs each week plus a weekly interview with the city manager. Everyone in community knows what's on their local stations and the physical local public file is already readily available to everyone in the community. There is no further useful purpose in making it useful across the country (or around the world) on the internet. The two stations have six full-time employees, all of whom perform multiple responsibilities. "Pop" is the general manager, sales manager, morning radio host and play-by-play announcer for the local school sports teams. All other major functions, traffic director, program director, promotions manager are also multi-tasked on employees. To make

sure its EEO reports are properly prepared, this licensee employs a hosting service, Broadcast1Source, for its EEO1Source service. The licensee reports that adding another formalized requirement such as the online public file would be superfluous for the community and just another administrative burden to take time and resources away from the important business of serving the community with local programming and local information.

Indeed, if an online public file requirement is imposed on radio, the industry will be in need of help from the outside, and the Commission must be sure that such facilities are in place, available and tested before imposing the staffing requirements implicated by such a new rule. In its comments to the original online Public File proposal in MM Docket 00-168, the NAB voiced its concern that a rigid standardized FCC-created structure would expand the burdens on broadcasters by interfering with systems that are already in use and tailored to a station's own circumstances. Implicit in that concern was also the need for additional staff, or staff time, to assure compliance. In later comments, NAB continued to argue that the burden would be most onerous on local television stations, particularly those in smaller markets.

As predicted by NAB, the burden on television stations has not been minimal. The NAB noted that posting glitches occurred that required FCC staff attention to repair, including a number of instances where uploaded PDF political files would not appear or open. There have been outages of the online public file system, as reported by the trade press.³ To minimize such disruptions and to eliminate or reduce the diversion of staff time required to resolve such glitches, as well as the additional time requirements for simple uneventful file maintenance, the

³ "Broadcast," Communications Daily (Aug. 22, 2012). NAB members reported a number of other technical difficulties with the online public file system, particularly with the importing of information and FCC forms into the public file database.

NAB urged the Commission to provide broadcasters with flexibility and to allow “third-party Web-based hosting” services to facilitate broadcasters’ use of the online file.⁴

Responding directly to NAB’s concern, the FCC agreed in the *Second Report and Order* that encouraging and accommodating hosting services would allow for greater station efficiencies. It delegated to staff the authority to incorporate such efficiencies, and instructed them to cooperate with the development of such hosting services and to incorporate them in the Commission’s online system. The staff was also delegated authority to design, add to, or adjust the features of the online public file, as needed. To date, that plan has not worked and many television stations are stuck with staffing requirements they had hoped to avoid. The problem even afflicts large groups. For example, when the same, identical file must be uploaded for every station in the group, it must be individually uploaded to each station’s file on-line by hand. There is no FCC facility to accomplish this task for all stations using only one upload.

An example of this failure is Broadcast1Source⁵ which set out to create a hosting service as envisioned by the NAB and the FCC, as noted above. Its ePIF service is intended simplify online public file compliance for all broadcasters, most particularly individual or small group-owned stations that, as the Commission recognized, do not possess “the dedicated IT resources to resolve issues that may arise with implementation” as well as smaller market stations, about

⁴ Paperwork Reduction Act Analysis, *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations* (Second Report and Order), 27 FCC Rcd 4535 (2012) at 4565, ¶61.

⁵ See: www.Broadcast1Source.com Broadcast1Source was originally formed to assist ten State Broadcaster Associations whose members felt overwhelmed by the FCC’s then new EEO rules, to develop a computerized EEO compliance and record keeping facility. In anticipation of new electronic public file requirements, Broadcast1Source created ePIF for broadcasters for management of the electronic public file and compliance with FCC rules.

whom the Commission itself expressed concern.⁶ Based on its own rationale, the staff has a Commission-imposed obligation to work with such a new hosting service. Both MBA and CBA participate with Broadcast1Source.

As envisioned by the NAB and the FCC, a hosting service would better enable broadcasters to devote their human resources to public interest activities, including broadcast programming. But problems arose. The FCC staff advised Broadcast1Source to develop its hosting service using API interface. Although nearly complete, all necessary functions still do not work, due to two remaining bugs in the FCC API that have been a problem for nearly two years. Many small television stations that had to go online this past July had planned to reduce their staff burden by using ePIF but were unable to do so, and had to retool their compliance strategy. Without such services, small and large radio broadcasters alike will have to face staffing and training problems they are unprepared for and which unnecessarily add to their costs in an increasingly competitive multi-media world.

Moreover, hosting services can be even more important for automated quality control and document management when small stations with limited staff are required to post sensitive information online for the entire world to see with a click of a mouse. As the NAB has noted⁷,

The 2012 election cycle also showed that even small mistakes can have big consequences. For example, some media buyers had large sums of money stolen from their bank accounts after some stations, in accordance with their long-standing political file practices, uploaded images of payment checks to their online political files.⁸ As one report observed, “[w]hen the FCC set up the online

⁶ Second Report and Order, at ¶48, p. 4559

⁷ NAB Comments in Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MM Docket No. 00-168, August 26, 2013

⁸ Peter Overby, “Thieves Target Political Ad Consultants On New FCC Site,” NPR, available at <http://www.npr.org/blogs/itsallpolitics/2013/03/28/175570650/political-ad-consultants->

database, nobody – not the ad buyers, the stations or the FCC itself – realized” that long-term practices needed to change. Similar or other unintended consequences may become more common as the number of stations posting their political files increases dramatically.

An automated capability to cull out sensitive, unnecessary information, or at least one that would allow centralized review prior to loading in the online FCC filing system, would be a valuable safety net against such problems.

Finally, we take notice of the points made in a contemporaneous filing with other state broadcaster associations that questions whether the Commission’s online public file database is capable of smoothly handling the uploading of what would be tens of millions of pages of new documents onto its online database. Granted, the Commission has worked to make its system more reliable, but it has recognized its own vulnerability by requiring that broadcasters maintain their own separate backup of the political file in the event that the Commission’s system breaks down. As noted above, the database has experienced some breakdowns already while serving only large-market, top-four television network stations. Now, with all television stations already using the system, before any further expansion is contemplated it is incumbent on Commission staff to perform tests and convincingly demonstrate system reliability that can withstand 15,000 new radio station users.

In sum, extending the online public file requirements to radio is vastly premature, at least at this time. The burden it would impose on both small market stations and larger groups that must coordinate the files of many stations across markets and nationwide will be large and

targeted-by-criminals-on-new-fcc-site (March 28, 2013). Tens of thousands of dollars were diverted to accounts across the country and the world. Womble Carlyle, Client Alert, “Pilfered Funds & The FCC’s Online Political Public File Rule: The Law of Unintended Consequences” (March 14, 2013).

presents much different problems, than were to be expected with television and which television has, in fact, experienced. If such an action is contemplated, at the very least, the Commission should act promptly to fully enable hosting services that can ease the burden and provide expertise and assistance that is not available at the local level of many stations. Based on the foregoing, the State Associations believe the time has not come to add radio to the online public file requirement. The Associations urge the Commission to proceed cautiously and only after adequate preparation before considering whether to extend the online public/political file requirements to the more than 15,000 radio stations nationwide.

Respectfully Submitted,

WOMBLE CARLYLE SANDRIDGE & RICE
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