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Marlene Dortch
Secretary,
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Docket 14-127

Expansion of Online Public File
Obligations to Cable and Satellite TV
Operators and Broadcast and Satellite
Radio Licensees

Dear Ms. Dortch:

Campaign Legal Center, Common Cause, the Sunlight Foundation and Public Citizen (CLC, *et al.*) respectfully wish to reiterate their support for the adoption of rules extending current online public file requirements to cable operators, DBS providers and radio and satellite radio licensees. They also call upon the Commission to insure that public data uploaded pursuant to these rules be in a machine-readable format.¹ This submission addresses a few issues that have been raised in last-minute *ex parte* presentations.

¹See CLC, *et al.* March 16, 2015 Comments at 1-2, CLC, *et al.* April 14, 2015 Reply Comments at 7-8.

The National Association of Broadcasters has recently reiterated its request that stations with five or fewer employees be exempted from any online filing requirement. It also advocates a relaxed phase-in period for stations with 11 or fewer employees.²

As CLC, *et al.* explained at pages 4-5 of their April 14, 2015 Reply Comments, the number of employees is no longer a useful measure of the true size and significance of a radio or TV station. In particular, because of the increasingly common use of JSAs, SSAs, time brokerage and similar arrangements, it is often the case that radio stations with substantial audiences in major markets are staffed by other licensees and technically have as few as two full-time employees. (Unfortunately, and incongruously, since the Commission has not required the filing of most of the relevant contracts, the Commission has no idea exactly which stations are engaged in such arrangements.) Thus, CLC, *et al.* have argued for a revenue-based test to determine if smaller radio stations should be exempt. However, if the Commission does wish to use a test based on employment, in cases where there is an SSA, JSA, time brokerage or other agreement, the exemption should be based on the total number of employees engaged in the operation of stations licensed to both parties to such agreements.

With respect to the appropriate phase-in period for smaller stations, the same total employee test should apply. Indeed, there is significant doubt if there is a need for a long phase-in period at all. Actual experience with the online public file requirement for television licensees has shown that, far from creating additional burdens, the online public file rules have actually reduced burdens on licensees by obviating the need to accommodate in-person visitors, provide copies, etc.

The American Cable Association (ACA) has reiterated and expanded its argument that cable operators which have outsourced their advertising sales to third parties should not be held liable for the errors made by those entities.³ However, Section 315(c) of the Communications Act makes plain that cable operators are “licensees” for purposes of that provision. It is a fundamental principle of the Communications Act that licensees may not delegate their public interest responsibilities. While cable operators are certainly free to contract with third parties to carry out these duties, the ultimate duty of compliance is upon them and not on the third parties. As such, the Commission cannot and should not immunize them from liability for non-compliance with the Communications Act or Commission rules.

ACA has also sought to raise the floor for exemption from the public file obligations from 1,000 subscribers to 2,500 subscribers. The Commission did not propose lifting the floor or solicit comment upon it; accordingly, ACA’s request is outside

²See, e.g., January 15, 2016 National Association of Broadcasters Ex Parte Notice.

³See January 11, 2016 American Cable Association Ex Parte Notice.

the scope of this proceeding. In any event, it is unjustified. ACA has submitted no information which could support the view that compliance with these requirements has proven to be excessively burdensome and certainly has not demonstrated that the cost to the public of losing access to important information is outweighed by the benefit of exempting additional cable systems.

To the extent that ACA appears to suggest that cable systems which operate on a “by request” system do not have to maintain political files, it is simply wrong, and there is no basis for the Commission changing its rules to relieve any cable operator currently obligated to have political files of the obligation to keep them. And, as already discussed, changing to an online filing system actually reduces their burdens.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew Jay Schwartzman". The signature is written in a cursive, flowing style.

Andrew Jay Schwartzman
Counsel to CFC, *et al.*