

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Expansion of Online Public File Obligations)	MB Docket No. 14-127
To Cable and Satellite TV Operators and)	
Broadcast and Satellite Radio Licensees)	
)	

**COMMENTS OF CAMPAIGN LEGAL CENTER, COMMON CAUSE,
THE SUNLIGHT FOUNDATION**

Campaign Legal Center, Common Cause, and the Sunlight Foundation (CLC *et al.*) file these reply comments in the above-captioned proceeding. The FCC must act quickly to ensure the online filing requirement is in place by the next major election. CLC *et al.* comment specifically on the issues below.

I. The FCC should not require complaints to be filed by local residents.

In its comments, the NAB argues the FCC should open a new proceeding to determine whether to “focus its enforcement efforts on complaints submitted by actual viewers and listeners about the public files of their local stations.”¹ It claims this local emphasis is supported by “Commission decisions dating back to the adoption of the local public file rule in 1965,” citing the *1965 Order* implementing the public file requirement and the *1999 Main Studio Order*.² The FCC should not adopt such an artificial requirement.

First, broadcasters have specific public file content requirements. If a broadcaster is not putting required information in its public file, it should not matter who brings that malfeasance to

¹ National Association of Broadcasters (NAB) Comments, at 15.

² *Id.* at 14 (citing *Records of Broadcast Licensees, Report and Order*, 4RR2d 1664 (1965) (“1965 Order”) and *Review of the Commission’s Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations, Memorandum Opinion and Order*, 14 FCCRcd 11113 (1999) (“Main Studio Order”).

the FCC's attention. The FCC has to consider all arguments irrespective of the mechanism through which it receives the information:

[r]egardless of the formal status of a party, or the technical merits of a particular petition, the FCC should not close its eyes to the public interest factors raised by material in its files. We have noted that, as a general matter, the federal regulatory agencies should construe pleadings filed before them so as to raise rather than avoid important questions. They should not adopt procedures that foreclose full inquiry into broad public interest questions, either patent or latent.³

In fact, the FCC should *encourage* members of the public who notice public file violations to file a complaint with the FCC. Many local citizens will be unfamiliar with public and political file laws requiring stations to disclose certain political information, but an enterprising non-local resident may be able to cure that deficiency to all the public's benefit by filing a complaint. Broadcasters raised a similar argument in 1965 when they sought to limit access to the public files to "parties in interest" and those with "legitimate" interests in the file.⁴ The FCC rejected those arguments because the public has a right to be informed of broadcasters' activities and even non-parties are allowed to file informal objections.⁵ The FCC should take the same view here. Narrowing who can file a complaint will simply allow broadcasters to further evade filing requirements and harm the public.⁶

Second, the context and uses of the public file are evolving. In 1965, the primary purposes of the file were to inform the public about broadcaster activities and to increase public

³ *Retail Store Employees Union, Local 880, Retail Clerks International Association, AFL-CIO v. Federal Communications Commission*, 436 F.2d 248, 254 (D.C. Cir. 1970) (footnotes omitted) (internal quotation marks omitted). *See also MG-TV Broadcasting Co. v. FCC*, 408 F.2d 1257, 1265 (D.C. Cir. 1968) ("Issues brought to the Commission's attention may not be so cavalierly disregarded.").

⁴ *1965 Order*, ¶7.

⁵ *Id.* ¶8-9

⁶ *See* Section V, *infra*, about how a standard data format would mitigate the NAB's concerns.

participation in licensing proceedings.⁷ Explicit goals of the recent effort to put the public files online have been to allow “24-hour access from any location, without requiring a visit to the site...thereby improving access to information about how [television and radio providers] are serving their communities and meeting their public interest obligations,” and to “facilitate public access to disclosure records...and allow the public to view and analyze political advertising expenditures in each market as well as nationwide.”⁸ Similarly, “placing the political file online will enable candidates, as well as the public, journalists, educators, and the research community, to identify and investigate those sponsoring political advertisements.”⁹ In contrast, the *Main Studio Order* explicitly did not consider these collateral benefits—they were “beyond the scope” of that proceeding and were not addressed.¹⁰

People outside the local broadcaster area can be harmed by public file violations. Non-local journalists and academics have sought public file access for important research that benefits policymaking and public awareness at the state and national level. For instance, Jeff Kummer of the Des Moines Register used the files to report on statewide midterm election spending in 2014.¹¹ Tom Bullock also tracked statewide advertising expenditures with the public file data in North Carolina.¹² It would be unreasonable to deprive these people, and all other non-local

⁷ *Id.* ¶3.

⁸ NPRM, ¶¶15-16.

⁹ *Enhanced Disclosure, Second Report and Order*, 27 FCCRcd 4535, ¶16 (2012) (“*Enhanced Disclosure Order*”).

¹⁰ *Main Studio Order*, 14 FCCRcd at 11120.

¹¹ Jason Noble & Jeff Kummer, *\$13.8 Million Spent so Far on TV Ads in Senate Race*, Des Moines Register (Oct. 1, 2014), <http://www.desmoinesregister.com/story/news/politics/2014/09/21/iowa-senate-joni-ernst-bruce-braley-tv-ad-spending/15997593>.

¹² *E.g.*, Tom Bullock, *Who’s Spending the Most for Your Vote? Tracking NC Senate Race*, WFAE (Oct. 3, 2014), <http://wfae.org/post/whos-spending-most-your-vote-tracking-nc-senate-race>.

residents who may use the files, of the ability to complain to the FCC to ensure accurate data is disclosed. To do so would frustrate the proceeding's goals.

The FCC should not take a step backward by allowing only local citizens to file complaints.

II. Confusion and inconsistency in the comments provides further evidence that a revenue-based exemption from the online public file requirement for radio stations and cable systems is most appropriate.

Many comments expressed confusion and concern over the definition of the proposed station-employee-based exemption for radio stations, including whether it applies by station or by station employment unit (SEU),¹³ what happens when staff fluctuates,¹⁴ what constitutes “full-time,”¹⁵ and how many employees is the right number?¹⁶ Other commenters expressed similar concerns for the small cable operator exemptions: should the FCC exempt from the public file requirement all cable stations with fewer than 1000 subscribers or 2500 subscribers, and should the FCC exempt from *online* requirement cable operators with 15,000 subscribers or fewer?¹⁷

CLC *et al.* reiterates that the online file is supposed to be more efficient than the physical public file.¹⁸ It is questionable whether radio stations and cable operators truly incur any additional burden by filing online, especially because the database already exists and is ready to be used. To the extent stations incur any additional burden, their ability to handle the burden is

¹³ *E.g.*, Named State Broadcaster Association (NSBA) Comments, at 7-8.

¹⁴ *Id.* at 8.

¹⁵ Grant County Broadcaster Comments, at 1.

¹⁶ NSBA proposed 10 employees. NSBA Comments, at 9. Mentor Partners proposed 25 employees. Mentor Partners Comments, at 6.

¹⁷ ACA Comments, at 1-2; National Cable and Telecommunications Association Comments, at 13.

¹⁸ *Enhanced Disclosure Order*, at ¶29 (2012) (“in many instances, using the online public file will be less burdensome”).

more likely proportional to the revenue generated from advertising than number of station employees.

The inconsistent comments indicate that whatever employee threshold the FCC chooses, it will be relatively arbitrary and not necessarily based on a station's ability to file. For instance, stations with four employees may have plenty of capacity to place their public file online depending on revenue, yet it would not have to under the proposed rule. On the other hand, a station with five employees may incur substantial burden in uploading files online, yet would not be exempt. Both situations frustrate the purposes of the proceeding, which is, in part, to make the public files generally available without causing significant burdens on stations.

All this confusion and concern can be avoided by implementing CLC *et al.*'s suggestion of using political ad revenue as the determining factor.¹⁹ Advertising revenue allows the station to hire temporary workers or pay overtime for the compliance work required to provide this public benefit. This measure alleviates the need for the FCC to attempt to tie ability to comply with number of station employees.

If the FCC decides to use number of full-time employees as a proxy for whether a station should comply with the online political file, it should take into account whether that station has a JSA, SSA, or similar agreement with other stations. In that case, all employees at those stations should be combined and that number should be applied to *each* station.²⁰ Similarly, the "five or fewer" metric should apply to SEUs, not separately to each station.

¹⁹ CLC *et al.* Comments, at 4.

²⁰ For example, if two four-employee stations in the same market operate under sharing agreements, then both stations would have to comply because the FCC would view both stations as having eight employees.

III. All broadcasters, cable operators, and DBS providers should use the FCC's database, not their own.

ACA argues that cable operators should be provided flexibility regarding the use of third party advertisers and buying groups.²¹ Part of this suggestion includes allowing third parties to link to other locations that would provide the required information.²² CLC *et al.* oppose any proposal that does not require all operators to use and upload files to the same system.

First, it is most logical to have all stations use and upload files to the same system. This provides continuity across the board for users of the database and reduces the likelihood of confusion caused by forcing users to leave the main FCC site to a third party site. Third party sites will likely have different layouts and may be less reliable.

Second, it is logistically difficult to enforce the filing and disclosure rules when a third party provides the disclosures. Responsibility for a broken link resulting from link-rot, or incomplete or incorrect information, would be unclear. The ACA suggests cable operators using third parties receive safe harbor status. That suggestion appears to absolve *all* parties of liability because the FCC's public file obligation is a *cable operator* obligation. If the cable operator is ultimately responsible, having to repeatedly check whether third parties continue to host the required information amounts to an additional burden on cable operators. Requiring cable operators (and all other stations) to maintain their own files in the online database is the best solution.

While CLC *et al.* appreciate the efforts that some cable operators have undergone to create their own online public files prior to this NPRM, it is time to homogenize the different systems into one, easily-manageable system for use by all operators and citizens.

²¹ ACA Comments, at 14-18.

²² *Id.* at 16.

IV. To the extent the FCC finds it necessary to allow waivers, it should do so only in truly exceptional circumstances and should impose a shot-clock on its reviews of those waivers.

Some commenters suggest, again, that the FCC entertain waiver requests.²³ CLC *et al.* urge that waivers be allowed in only truly extraordinary circumstances, such as when the radio station has no access to an Internet connection. Moreover, the FCC should act quickly on waiver applications. The FCC should impose a short shot clock, no longer than 60 days, during which the FCC would have time to make a decision on whether a waiver is appropriate. If the FCC, for some reason, does not make a final decision on the waiver request before the shot clock period ends, the waiver request would be automatically denied. If no action instead resulted in a de facto waiver, the public's access to important information would be undermined.

V. The FCC needs to require formatted political data.

CLC *et al.* reiterate their support for opening a new proceeding to improve the quality of the political data stored in the online public file.²⁴ When the FCC first required online filing for broadcasters, it stated “[w]e agree that certain information in the public file would be of much greater benefit to the public if made available in a structured and database-friendly format that can be aggregated, manipulated, and more easily analyzed; *this continues to be our ultimate goal.*”²⁵ The FCC's own *Information Needs of Communities Report* stated “[i]t matters greatly how [government data is] organized. It needs to be put out in standardized, machine-readable, structured formats that make it easy for programmers to create new applications.”²⁶ It is now time to begin working toward that goal.

²³ NAB Comments, at 10; Native Public Media/NFCB Comments, at 8; Local and Regional Small Radio Broadcasters Comments, at 8.

²⁴ CLC *et al.* Comments, at 1-2.

²⁵ Enhanced Disclosure Order, ¶85 (emphasis added).

²⁶ *Information Needs of Communities Report*, at 350-51, available at http://transition.fcc.gov/osp/inc-report/The_Information_Needs_of_Communities.pdf (see pp. 350-352 for more benefits of transparent and standardized data).

It has been over eighteen months since the Public Interest, Public Airwaves Coalition, the Sunlight Foundation, and the Center for Effective Government provided the FCC with a specific suggestion for data format.²⁷ Those comments proposed a simple form and showed how the form would transform the data into electronic format (JSON).²⁸ That form is still available for the FCC to view at <http://assets.sunlightfoundation.com/fcc-political-form/index.html>. Requiring formatted data reduces errors, ensures all information required by statute and the FCC's rules is disclosed, and protects against overdisclosure of information.²⁹ In fact, a standard format would largely satisfy the NAB's concerns about non-local residents filing complaints because the form would prevent erroneous filings. Despite these and other benefits, the FCC has not proposed to change the data format. CLC *et al.* strongly urge the FCC to revisit this issue because it is critical to making the information meaningful and useful. With an exponentially increasing volume of data, it is unrealistic to rely on volunteer efforts to aggregate the data.

Some broadcasters view the online public file as overly burdensome because of a lack of public demand.³⁰ On the other hand, requiring a standardized data format opens up new possibilities for the aggregation and study of political ad spending, which would exponentially increase demand because the data would be immensely valuable.

Conclusion

The FCC must act quickly to ensure the public files are online by the next election, and should not artificially limit the identity of public file complainants. It must also ensure that the public files are as complete as possible, where all stations and operators use the same system, and where stations are exempt only when they truly cannot handle the more efficient online

²⁷ PIPAC Comments, at 15-24, MB Dkt. 00-168 (Aug. 26, 2013).

²⁸ *Id.* at 22.

²⁹ *Id.* at 23.

³⁰ *E.g.*, KERM, Inc. Comments, at 3.

public file. It should allow waivers only in extraordinary circumstances, and should establish a short shot-clock for those waiver applications. Last, the FCC should explore adopting a standardized format for electronic political files.

Respectfully submitted,

/s/

Eric G. Null
Angela J. Campbell
Andrew Jay Schwartzman
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, NW
Suite 312
Washington, DC 20001
(202) 662-9535

Dated: April 14, 2015

Counsel for CLC et al.