

Before the
Federal Communications Commission
Washington, D.C. 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)
)

REPORT AND ORDER

Adopted: January 28, 2016

Released: January 29, 2016

By the Commission: Chairman Wheeler and Commissioners Clyburn, Rosenworcel, and O’Rielly approving and issuing separate statements. Commissioner Pai approving in part and concurring in part and issuing a separate statement.

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I. INTRODUCTION

1. In this *Report and Order*, we expand the list of entities that will be required to post their public inspection files to the FCC’s online database. In 2012, the Commission adopted online public file rules that required broadcast television stations to post public file documents to a central, FCC-hosted online database rather than maintaining paper files locally at their main studios.¹ Our goals were to modernize the procedures television broadcasters use to inform the public about how they are serving their communities, to make information concerning broadcast service more accessible to the public, and, over time, to reduce the cost of broadcasters’ compliance.² This *Report and Order* continues our modernization effort by requiring cable operators, satellite TV (also referred to as “Direct Broadcast Satellite” or “DBS”) providers, broadcast radio licensees, and satellite radio (also referred to as “Satellite Digital Audio Radio Services” or “SDARS”) licensees to post their public file documents to the FCC-hosted online database as well. By including these services in our transition to an online public file, we continue our effort to harness the efficiencies made possible by digital technology to make public file information more readily available to the public, while at the same time minimizing the burden on covered entities of maintaining the file.

2. As the Commission has stated, this modernization of the public inspection file is “plain common sense.”³ The evolution of the Internet and the spread of broadband infrastructure have transformed the way society accesses information today. It is no longer reasonable to require the public to travel to a station or headquarters’ office to review the public file and make paper copies when a centralized, online file will permit review with a quick, easy, and almost costless Internet search. Moreover, an online file will permit searches by the public without requiring assistance from station or headquarters’ staff, further reducing the burden of maintaining the public file.

3. As we proposed in the *Notice of Proposed Rulemaking* (“*NPRM*”) in this proceeding,⁴ we take the same general approach to transitioning cable, DBS, broadcast radio, and SDARS to the online file that the Commission took with respect to television broadcasters, phasing-in and otherwise tailoring the requirements as appropriate for the different services. We also take similar measures to minimize the effort and costs entities must undertake to move their public files online. Specifically, we require entities to upload to the online file only those public file documents that are not already on file with the Commission or that the Commission does not currently maintain in its own database. In order to reduce

¹ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012) (“*Second Report and Order*”).

² *Id.* at 4536, ¶ 1.

³ *Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Notice of Proposed Rulemaking, 29 FCC Rcd 15943, 15949, ¶ 14 (2014) (“*NPRM*”). See also *Second Report and Order*, 27 FCC Rcd at 4540, ¶ 10.

⁴ See *NPRM*, 29 FCC Rcd at 15950, ¶ 17.

the cost of transitioning to the online file, we follow the approach we took with respect to television stations and exempt existing political file material from the online file requirement and require only that political file documents be uploaded on a going-forward basis. In order to ease the transition to the online file for broadcast radio stations, particularly those with small staffs and limited financial resources, we commence the transition to the online file with commercial stations in top 50 markets with 5 or more full-time employees. We delay for two years, until March 1, 2018, all online file requirements for all other radio stations. With respect to smaller cable systems, we exempt systems with fewer than 1,000 subscribers from all online public file requirements given that they are exempt from most public file requirements. In addition, we delay for two years, until March 1, 2018, the requirement that cable systems with between 1,000 and 5,000 subscribers commence uploading new political file material to the online file.

4. With minor exceptions, we do not adopt new or modified public inspection file requirements in this proceeding. Our focus is simply to adapt our existing public file requirements to an online format in a manner that appropriately reflects the differences among the services and that minimizes the burden for all affected entities.

II. BACKGROUND

5. One of a broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license.⁵ To ensure that stations meet this obligation, the Commission relies on viewers and listeners as an important source of information about the nature of a station's programming, operations, and compliance with Commission rules. To provide the public with access to information about station operations, the Commission's rules have long required television and radio broadcast stations to maintain a physical public inspection file, including a political file, at their respective stations or headquarters and to place in the file records that provide information about station operations.⁶ The purpose of the public inspection file requirement is to "make information to which the public already has a right more readily available, so that the public will be encouraged to play a more active part in dialogue with broadcast licensees."⁷

6. The requirement that broadcasters maintain documents for public inspection dates back to 1938, when the Commission promulgated its first political file rule.⁸ That initial rule was essentially identical to our current political file regulation in its requirement that the file be available for public

⁵ *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 FCC 2d 1075, 1091-92, ¶32 (1984); *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, 22 FCC Rcd 10344, 10390, ¶ 116 (2007).

⁶ See 47 C.F.R. §§73.3526, 73.3527, 73.1943. Every permittee or licensee of an "AM, FM, TV or Class A TV station" in the commercial and noncommercial educational broadcast services must maintain a public inspection file. The material required to be retained in the public inspection file is substantially similar for radio and television stations, with some differences. Among other materials, both television and radio licensees must retain FCC authorizations, license applications, ownership reports, issues/programs lists, time brokerage agreements, and joint sales agreements. Unlike television licensees, however, radio licensees do not have children's programming obligations or limitations on commercial time in children's programming and are not required to retain records in the file related to compliance with these obligations. In addition, television and radio stations must retain a political file as part of their public inspection files. See 47 C.F.R. §§ 73.3526(e)(6), 73.3527(e)(5). The political file chiefly consists of "a complete and orderly record...of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted. The 'disposition' includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased." 47 C.F.R. § 37.1943(a).

⁷ *Commission's Rules Relating to Inspection of Records*, Report and Order, 4 R.R. 2d 1664 (1965), *recon. granted in part and denied in part*, Memorandum Opinion and Order, 6 R.R.2d 1527 (1965).

⁸ See 3 Fed. Reg. 1691 (1938).

inspection and include both candidate requests for time and the disposition of those requests, including the charges made for the broadcast time.⁹ In 1965, following action by Congress to allow greater public participation in the broadcast licensing process, the Commission adopted a broader public inspection file rule to enable local inspection of broadcast applications, reports, and related documents.¹⁰ The Commission noted that Congress' actions "zealously guarded the rights of the general public to be informed"¹¹ and that the Commission's goal was to make "practically accessible to the public information to which it is entitled."¹²

7. Cable, DBS, and SDARS entities also have public and political file requirements modeled, in large part, on the longstanding broadcast requirements.¹³ In 1974, the Commission adopted a public inspection file requirement for cable, including a requirement to retain political file material, noting that, "[i]f the public is to play an informed role in the regulation of cable television, it must have at least basic information about a local system's operations and proposals."¹⁴ The Commission also noted that "[r]equiring cable systems to maintain a public file merely follows our policy for broadcast licensees and is necessary for similar reasons"¹⁵ and that "[t]hrough greater disclosure we hope to encourage a greater interaction between the Commission, the public, and the cable industry."¹⁶ With respect to DBS providers, the Commission adopted public and political inspection file requirements in 1998 in conjunction with the imposition of certain public interest obligations, including political broadcasting and children's television requirements, on those entities.¹⁷ DBS providers were required to "abide by political file obligations similar to those requirements placed on terrestrial broadcasters and cable systems" and were also required to maintain a public file with records relating to other DBS public interest obligations.¹⁸ Finally, the Commission imposed equal employment opportunity and political broadcast

⁹ *Id.*

¹⁰ *Commission's Rules Relating to Inspection of Records*, 4 R.R.2d at ¶ 2 (1965). These new requirements were adopted following Congress' 1960 amendment of Sections 309 and 311 of the Communications Act of 1934, which allowed greater public participation in broadcast licensing. 47 U.S.C. §§ 309 (Application for License) and 311 (Requirements as to Certain Applications in Broadcasting Service).

¹¹ *Commission's Rules Relating to Inspection of Records*, 4 R.R.2d at ¶ 9 (1965).

¹² *Id.* at ¶ 12. In determining that stations must maintain a local file in addition to the information made available to the public at the Commission's offices in Washington, D.C., the Commission noted that "the existence hundreds, and in some cases thousands, of miles away of a voluminous public file is of little practical value in providing interested persons with the kind of information needed for them to participate...as Congress intended." *Id.* at ¶ 10.

¹³ Section 315 of the Communications Act, as amended by the Bipartisan Campaign Reform Act of 2002, applies political advertising rate disclosure and public file requirements to broadcast stations, cable systems, and DBS operators. See 47 U.S.C. § 315.

¹⁴ *Amendment of Part 76 of the Commission's Rules and Regulations Relative to Obligations of Cable Television Systems to Maintain Public Inspection Files and Permit System Inspections*, Report and Order, 48 F.C.C.2d 72, ¶ 1 (1974).

¹⁵ *Amendment of Part 76 of the Commission's Rules and Regulations Relative to Obligations of Cable Television Systems to Maintain Public Inspection Files and Permit System Inspections*, Notice of Proposed Rulemaking, 45 F.C.C.2d 669, ¶ 2 (1974).

¹⁶ *Id.* at 672, ¶ 13.

¹⁷ *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, 13 FCC Rcd 23254 (1998), Sua Sponte Reconsideration, 19 FCC Rcd 5647 (2004).

¹⁸ *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, 19 FCC Rcd at 5661, ¶ 35.

requirements on SDARS licensees in 1997, noting that the rationale behind imposing these requirements on broadcasters applies also to satellite radio.¹⁹

8. In 2002, Congress adopted the Bipartisan Campaign Reform Act (“BCRA”)²⁰ which amended the political file requirements in Section 315 of the Communications Act of 1934.²¹ The amendments apply to broadcast television and radio, cable, DBS, and SDARS.²² BCRA essentially codified the Commission’s existing political file obligations by requiring that information regarding any request to purchase advertising time made on behalf of a legally qualified candidate for public office be placed in the political file.²³ In addition, BCRA expanded political file obligations by requiring that television, radio, cable, DBS, and SDARS entities also place in the political file information related to any advertisements that discuss a “political matter of national importance,” including the name of the person or entity purchasing the time and a list of the chief executive officers or members of the executive committee or of the board of directors of any such entity.²⁴

A. Online Public File

9. In 2012, the Commission replaced the decades-old requirement that commercial and noncommercial television stations maintain public files at their main studios with a requirement to post most of the documents in those files to a central, online public file hosted by the Commission.²⁵ As noted above, the Commission’s goals were to modernize the procedures television broadcasters use to inform the public about how they are serving their communities, make information concerning broadcast service more accessible to the public, and reduce broadcasters’ cost of compliance. The television online public file rules were the culmination of a more than decade-long effort to make information regarding how a television broadcast station serves the public interest “easier to understand and more accessible,” “promote discussion between the licensee and its community,” and “lessen the need for government involvement in ensuring that a station is meeting its public interest obligation.”²⁶

¹⁹ See *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, 12 FCC Rcd 5754, 5791-92, ¶¶ 91-92 (1997) (“*SDARS Order*”). While this item did not expressly refer to political file requirements, SDARS licensees were required to comply with 47 U.S.C. § 315, *id.* at ¶ 92, which was amended in 2002 to include public file requirements. Moreover, Section 315 requires entities to afford equal opportunities to candidates for public office, and maintenance of a political file is integral to the implementation of the equal access requirement. The Commission also noted in the *SDARS Order* that it had a pending rulemaking proposing revisions to its EEO rules and that satellite radio licensees would be required to comply with the current EEO rules and any changes adopted when the rulemaking was completed. See *SDARS Order*, 12 FCC Rcd at 5791, ¶ 91. The Commission later clarified that SDARS licensees must comply with the same EEO requirements as broadcast licensees, including the public file requirements. See *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, 23 FCC Rcd 12348, 12426, ¶ 174, and note 551 (2008) (“*XM-Sirius Merger Order*”).

²⁰ Pub. L. No. 107-155, 116 Stat. 81 (2002).

²¹ 47 U.S.C. §315.

²² See 47 U.S.C. §315(c)(1) (defining the term “broadcasting station” to include a “community antenna television system,” which includes cable television) and 47 U.S.C. §335(a)(extending Section 315 obligations to DBS). See also *supra* note 19 (noting that SDARS licensees must comply with 47 U.S.C. § 315).

²³ See 47 U.S.C. §315(e)(1)(A).

²⁴ See 47 U.S.C. §315(e)(1)-(2).

²⁵ *Second Report and Order*, 27 FCC Rcd 4535 (2012).

²⁶ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Notice of Proposed Rulemaking, 15 FCC Rcd 19816 (2000).

10. Based on commenter suggestions, in the *Second Report and Order* the Commission determined that each television station's entire public file would be hosted online by the Commission.²⁷ The Commission took a number of steps to minimize the burden of the online file on stations. Broadcasters were required to upload only those items required to be in the public file but not otherwise filed with the Commission or available on the Commission's website. Any document or information required to be kept in the public file and that is required to be filed with the Commission electronically in the Consolidated Data Base System ("CDBS") is imported to the online public file and updated by the Commission.²⁸ In addition, television stations were not required to upload their existing political files to the online file; rather, stations were required only to upload new political file content on a going-forward basis.²⁹ Because of privacy concerns, television stations also were not required to upload letters and emails from the public to the online file; rather, they must continue to retain them in a correspondence file at the main studio.³⁰

11. In addition, to smooth the transition for both television stations and the Commission and to allow smaller broadcasters additional time to begin posting their political files online, the Commission phased-in the new political file posting requirement. Stations affiliated with the top four national networks (ABC, NBC, CBS, and Fox) and licensed to serve communities in the top 50 Designated Market Areas ("DMAs") were required to begin posting their political file documents online starting August 2, 2012, but other stations were exempted from posting their political file documents online until July 1, 2014.³¹ In the *Second Report and Order*, the Commission also rejected several proposals in the *FNPRM* to increase public file requirements in conjunction with implementation of the online file.³² Rather, the Commission determined that stations would be required to place in their online files only material that is already required to be placed in their local files.³³

²⁷ *Second Report and Order*, 27 FCC Rcd at 4540, ¶ 11. Subject to exceptions discussed *infra*, stations were required to upload new public file documents to the online database starting August 2, 2012. Stations were given six months from this date to upload documents that were already in their public inspection file that were required to be uploaded to the online file, with the exception of political file material, discussed *infra*. The six-month deadline was February 4, 2013. See Public Notice, *Television Broadcast Stations Reminded of the Upcoming Public Inspection File Deadline*, DA 13-120, rel. January 30, 2013.

²⁸ *Second Report and Order*, 27 FCC Rcd at 4540, ¶ 11. We note that CDBS is currently being upgraded and replaced with a system known as LMS ("Licensing and Management System"). See *Media Bureau Announces Completion of First Phase of Licensing and Management System for Full Power TV Stations*, Public Notice, DA 14-1386 (rel. Sept. 29, 2014). In this *NPRM*, CDBS and LMS are used interchangeably.

²⁹ *Second Report and Order*, 27 FCC Rcd. at 4541, ¶ 11. Existing political files must continue to be maintained locally at the station, however, until the end of the two-year retention period. See 47 C.F.R. §§ 73.3526(a)(3), (e)(6) and 73.1943(c).

³⁰ *Second Report and Order*, 27 FCC Rcd at 4541, ¶ 11.

³¹ *Id.* at 4536-7, ¶ 3.

³² *Id.* at 4573-5, ¶¶ 81-84 (declining to adopt new disclosure obligations with respect to sponsorship identifications and shared services agreements).

³³ *Id.* at 4541, ¶ 11. The National Association of Broadcasters ("NAB") filed a petition for review of the *Second Report and Order* with the U.S. Court of Appeals for the District of Columbia Circuit. *Nat'l Assoc. of Broadcasters v. FCC*, No. 12-1225 (D.C. Cir. May 21, 2012). NAB sought an emergency stay of the *Second Report and Order* from the FCC and the D.C. Circuit Court of Appeals; both requests were denied. *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, 27 FCC Rcd 7683 (2012); *Order, Nat'l Assoc. of Broadcasters v. FCC*, No. 12-1225 (D.C. Cir. July 27, 2012). On June 11, 2012, the Television Station Group filed a petition for reconsideration of the *Second Report and Order*. See *Petition for Reconsideration, Television Station Group*, MM Docket Nos. 00-168 and 00-44 (June 11, 2012). On January 18, 2013, NAB filed an unopposed motion to hold further proceedings in the case before the D.C. Circuit in abeyance pending (1) FCC action on the petition for reconsideration and (2) the Commission's opening of a notice and

(continued....)

12. The Commission stated in the *Second Report and Order* that it was deferring consideration of whether to adopt online posting requirements for radio licensees and multichannel video programming distributors (“MVPDs”) until it had gained experience with online posting of public files of television broadcasters.³⁴ The Commission noted that starting the online public file process with the much smaller number of television licensees, rather than with all broadcasters and MVPDs, would “ease the initial implementation of the online public file.”³⁵

B. Petition for Rulemaking and Notice of Proposed Rulemaking

13. In July 2014, the Campaign Legal Center, Common Cause, and the Sunlight Foundation (collectively, “Petitioners” or “CLC *et al.*”) filed a joint Petition for Rulemaking requesting that the Commission initiate a rulemaking to expand to cable and satellite systems the requirement that public and political file documents be posted to the FCC’s online database.³⁶ The Petitioners argued that cable and satellite services have increasingly become outlets for political advertising and that the ability of satellite television providers to sell household-specific “addressable advertising” would likely accelerate that trend.³⁷ Petitioners asserted that moving the television public file online has resulted in “unquestionably substantial” public benefits, which would also occur if cable and satellite systems were required to upload their public and political files online.³⁸ In addition, Petitioners argued that television broadcasters experienced few problems moving to the online file, and cable and satellite systems would also likely not be burdened by the online filing requirement.³⁹

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comment period concerning these rules, prior to July 1, 2013, to consider whether changes to the requirements are warranted, which the Commission committed to doing in the *Second Report and Order*. On February 12, 2013, the Court granted NAB’s motion to hold proceedings in abeyance. *Order, Nat’l Assoc. of Broadcasters v. FCC*, No. 12-1225 (D.C. Cir. February 12, 2013). On June 25, 2013, the Media Bureau released a public notice seeking comment on the online political file and the petition for reconsideration. See Public Notice, *Media Bureau Seeks Comment on Online Political File and Petition for Reconsideration Filed by the Television Station Group*, 28 FCC Rcd 9052 (2013). On February 10, 2015, following a request from NAB, the court dismissed NAB’s petition for review. On March 19, 2015, the Television Station Group withdrew its petition for reconsideration. See Email from Kathleen Kirby to Holly Saurer, March 19, 2015, in MM Docket No. 00-168.

³⁴ *Second Report and Order*, 27 FCC Rcd at 4537, ¶ 3.

³⁵ *Id.* at 4586, ¶ 111. In response to the *FNPRM*, a group of public television licensees requested that the Commission permit NCE radio stations, or at least those licensed to the same entity as, or under common control with, an NCE-TV station, to maintain their public inspection files online on the Commission’s website on a voluntary basis. See Joint Reply Comments of Public Television Licensees, MM Docket Nos. 00-168 and 00-44, filed Jan. 17, 2012, at 10-11 (arguing that such permission would allow co-owned and operated NCE-TV and radio stations to avoid having to maintain both online files with the Commission and other physical files at their main studios). While the Commission declined to grant this request, it stated that “as we and the broadcasting industry gain more experience with the online public file we will revisit the possibility of allowing stations not required to use the online public file to use it on a voluntary basis.” *Second Report and Order*, 27 FCC Rcd at 4586, ¶ 112. In addition, the Commission delegated to the Commission staff “the authority to allow (but not require) radio stations to voluntarily post their public files at such time the staff determines that such an option is feasible and desirable.” *Id.* To date, the Commission staff has not made this option available to radio stations, instead focusing initially on ensuring that the database was functioning smoothly for television stations and was capable of handling the increase in volume once the online file was expanded to include all television stations as well as other users.

³⁶ See Campaign Legal Center, *et al.*, Petition for Rulemaking, MB Docket No.14-127, at 1 (July 31, 2014) (“Petition for Rulemaking”).

³⁷ *Id.* at 1-2.

³⁸ *Id.* at 6.

³⁹ *Id.* at 8.

14. On August 7, 2014, the Media Bureau issued a *Public Notice* seeking comment on the Petition for Rulemaking and, in addition, on whether it should initiate a rulemaking to expand online public file obligations to broadcast radio stations.⁴⁰ After reviewing the comments filed in response to the *Public Notice*, the Commission issued the *NPRM* in this proceeding proposing to expand the online file to cable operators, DBS providers, and broadcast and satellite radio licensees.

III. DISCUSSION

15. The rules we adopt today will modernize the outdated procedures for providing public access to cable, DBS, broadcast radio, and SDARS public files in a manner that avoids imposing unnecessary burdens on these entities. By taking advantage of the efficiencies made possible by digital technology, we will make information that cable, DBS, and broadcast and satellite radio licensees are already required to make publicly available more accessible while also reducing costs both for the government and the private sector. The Internet is an effective, low-cost means of maintaining contact with, and distributing information to, viewers and listeners. Placing the public file online will permit 24-hour access from any location, thereby improving access to information about how cable, satellite, broadcast radio, and SDARS entities are serving their communities and meeting their public interest obligations. Maintaining this information online will also either eliminate or substantially reduce the number of public visits to stations or headquarters offices to view public file material, reducing the burden on staff who would otherwise have to assist during these visits and enabling entities to improve security and minimize risks to employees. As the Commission has stated previously, the public benefits of posting public file information online, while difficult to quantify with exactitude, are unquestionably substantial.⁴¹

16. Expansion of the online public file to cover more services is particularly important with respect to improving access to political files. While broadcast television remains the dominant medium for political advertising,⁴² the quantity of such advertising on cable and satellite television continues to increase,⁴³ and the advent of technological advances such as addressable advertising is likely to further this trend.⁴⁴ Political advertising on radio is also on the rise.⁴⁵ Adding cable, satellite TV, and broadcast and satellite radio political file material to the existing online file database will facilitate public access to

⁴⁰ See *Commission 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, DA 14-1149, MB Docket No. 14-127 (rel. Aug. 7, 2014) (“*Public Notice*”).

⁴¹ See *NPRM*, 29 FCC Rcd at 15951, ¶ 15. See also *Second Report and Order*, 27 FCC Rcd at 4542, ¶ 13.

⁴² See Patrick O’Connor, *TV Remains King in Political Ad Spending*, Wall Street Journal (Aug. 30, 2015), available at <http://www.wsj.com/articles/tv-remains-king-in-political-ad-spending-1440978256> (citing a report from Borrell Associates showing that 85% of TV ad spending in the 2014 mid-term elections went to spots on broadcast TV).

⁴³ See Elizabeth Wilner, *Local TV Broadcast Spend: Starting to Settle?*, The Cook Political Report (Sept. 9, 2014), available at <http://cookpolitical.com/story/7784>. See also Elizabeth Wilner, *The Fragmenting future of the political TV ad*, Kantar (May 13, 2015), available at <http://us.kantar.com/public-affairs/politics/2015/future-of-political-tv-advertising/>; Ronald Grover and Lisa Richwine, *Cable wins in midterm election, growth slower for TV stations*, Reuters (Nov. 4, 2014), available at <http://www.reuters.com/article/2014/11/04/us-usa-elections-advertising-idUSKBN0IO14920141104>; Meg James, *DirecTV, Dish Network to vie for Political Cash With Customized Ads*, Los Angeles Times (Aug. 19, 2014), available at <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-political-ads-satellite-directv-dish-network-20140819-story.html#page=1>.

⁴⁴ Addressable TV advertising technologies permit advertisers to selectively direct ads to certain consumers within a common program or navigation screen based on geographic, demographic or other attributes associated with the consumer(s) exposed to the ad. Such technologies permit advertisers to target specific kinds of consumers more efficiently.

⁴⁵ See Kathy Crosett, *Radio Benefitting from Political Ad Spending*, Media Sales Today (May 29, 2014), available at <http://mediasalestoday.com/radio-benefiting-political-ad-spending/>.

disclosure records for all these services and allow the public to view and analyze political advertising expenditures more easily in each market as well as nationwide.

17. Similar to the approach we took to transitioning television stations to the online file, we take steps here to minimize the effort and cost that all entities must undertake to move their public files online. Entities will be required to upload to the online file only documents that are not already on file with the Commission or that the Commission maintains in its own database. Any document or information required both to be kept in the public file and to be filed with the Commission electronically in Commission databases such as CDBS or the Cable Operations and Licensing System (“COALS”) database will be imported to the online public file and updated by the Commission.⁴⁶ In addition, entities being added to the online file will not be required to upload their existing political files to the online file; rather, they will be required only to upload new political file content on a going-forward basis. We note that the size of the political file likely correlates with an entity’s political advertising revenues.⁴⁷ Accordingly, entities with little or no political advertising revenues will likely have few obligations under our rules, while entities with more documents in their political files will likely also have greater political advertising revenues.

18. Some commenters responding to the *NPRM* argue that the goal of the public inspection file requirements is to make documents available to members of the public in the station’s community of license and that requiring these documents to be placed online will encourage the filing of complaints by individuals unconnected to the local community.⁴⁸ While we agree that the public file is first and foremost a tool for community members, it is also a tool for the larger media policy community.⁴⁹ As the Commission stated in the *Second Report and Order*, public advocacy groups, journalists, and researchers act in part as surrogates for a portion of the viewing public in evaluating and reporting on broadcast stations’ performance.⁵⁰ Easy access to public file information will also assist the Commission, Congress, and researchers as they fashion public policy recommendations relating to media issues.⁵¹ For this reason, we also reject the suggestion of NAB that the Commission focus its enforcement efforts on complaints submitted by actual viewers and listeners about the public files of their local stations and decline to consider public file complaints from entities unrelated to the licensee’s local community.⁵² The Commission will consider and fairly evaluate any complaint related to our public inspection file rules. Our primary goal, however, is to improve access to public information file material.

A. Online File Capacity and Technical Issues

19. The Commission has taken a number of steps to ensure that the online file will be capable of accommodating the significant increase in network traffic as well as the volume of public file material that will result from the expansion of online filing requirements. We recognize that adding cable, DBS,

⁴⁶ CDBS, which contains broadcast station information and filings as well as certain cable, DBS, and SDARS EEO materials, is in the process of being migrated to an improved filing system, LMS, which is already connected to the online file. In addition, the Commission recently completed the creation of an interface between the online file database and the Commission’s COALS database, which contains cable system information and filings.

⁴⁷ See *Second Report and Order*, 27 FCC Rcd at 4550, ¶ 32.

⁴⁸ See, e.g., Joint NCE Commenters at 6-7. These commenters argue that this would be particularly unfair to NCE radio stations that lack the financial resources to defend against these complaints. *Id.*

⁴⁹ See *Second Report and Order*, 27 FCC Rcd at 4545, ¶ 18.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See NAB Comments at 15. NAB requests that the Commission issue a further notice to consider whether its complaint procedures and enforcement policies relating to online public files should be revised. See also Kenneth Benner Comments at 1 (arguing generally that the public inspection files are of little interest to the public and serve as an overused means for the issuance of FCC fines).

broadcast radio, and SDARS to the online file will greatly increase the number of users of the file and the volume of material that must be uploaded. We also recognize that there is likely to be a heavy demand on the online file during certain filing windows and in peak political seasons, when many broadcast stations take new advertising orders and modify existing orders on a daily basis. The improvements we have made to the operation of the online file will facilitate use of the database by members of the public as well as by the entities required to maintain an online file, including existing TV station users.

20. Technical improvements to the online file. The Commission has made several technical improvements to the online file database. First, the Commission has finished the transition to cloud-based computing solutions for purposes of managing the online public file database. Cloud computing technology will not only ensure that we maintain sufficient capacity to store the increased number of public file materials in the database, it will also permit us to increase network capacity during times of high demand to relieve network congestion and avoid delays or backups in uploading documents to the database. As the Commission stated in the *Second Report and Order*, cloud-based computing will permit the Commission to implement an online public file that is highly available, scalable, and eliminates user wait times associated with processing documents after upload.⁵³ Second, as requested by NCTA,⁵⁴ the Commission has added to the database the ability to place a document in multiple files using a single upload. This functionality should greatly facilitate maintenance of the online file, especially for cable operators or station group owners that place similar documents in the public file for multiple cable systems or broadcast stations.⁵⁵ Third, when entities move a document from one folder to another in the online file, the database will now display both the date the document was first uploaded to the online file as well as the date it was moved to a different online file location. This will permit entities to move files within the online file if, for example, the file was initially placed in the wrong folder or the entity is creating new or different subfolders for purposes of improving the organization of the file, while maintaining a record of the date the document was first uploaded to the online file.⁵⁶ Fourth, the database now will permit entities easily to delete files and empty folders when documents in the file are past their retention period or the entity wishes to delete them for another reason. Entities will be able to select one or more files and/or folders for deletion at one time, permitting them to efficiently remove documents from the online file.

21. Finally, as advocated by a number of commenters,⁵⁷ the Commission has completed the development and implementation of an application programming interface (“API”) that can connect the online file database to third-party web hosting services and that will permit such services to efficiently load documents into the online file on behalf of client broadcast stations and other entities. We recognize that third-party web hosting services may offer valuable assistance to entities in uploading documents to the online file and otherwise maintaining the file, particularly smaller entities that may choose to outsource this effort because of cost savings and other resource constraints.⁵⁸ The Media Bureau and the Office of the Managing Director will provide further information about the API in the near future and will conduct one or more demonstrations. The API library will also be made available for testing by covered

⁵³ *Id.* at 4577, ¶ 90.

⁵⁴ *See, e.g.*, NCTA Comments at 4.

⁵⁵ NCTA notes that public file material common, or substantially similar, throughout a cable operator’s footprint includes documents pertaining to a cable operator’s attributable programming interests and those demonstrating compliance with the commercial limits in children’s television. Materials common across a designated market area (“DMA”) may include EEO reports, documents pertaining to fulfillment of must-carry requirements, channel lineups, and political filings. *Id.* at note 4.

⁵⁶ *See* LeSEA Comments at 5-6 (advocating the addition of this feature to the online database).

⁵⁷ *See, e.g.*, Comments of Broadcast1Source at 1-2, NAB at 13, NCTA at 5, ACA at 16, 18, and Missouri and California Broadcasters Associations at 6. *See also* Reply Comments of NAB at 4 and NCTA at 5.

⁵⁸ *See NPRM*, 29 FCC Rcd at 15954, ¶ 23 and *Second Report and Order*, 27 FCC Rcd at 4566, ¶ 61.

entities and their third-party service providers prior to the effective date of the online filing requirements adopted in this proceeding. While we recognize the benefits that web hosting services may provide in assisting entities in uploading materials to the online file, we emphasize that each entity remains responsible for ensuring that its own online public file is complete. We reject ACA's suggestion that we provide a safe harbor to entities that choose to rely on a third party to assist with the online file.⁵⁹ While entities are free to enter into contractual arrangements with third parties to upload information into the online file, and to require as part of those arrangements that the third party ensure compliance with the FCC's rules, we decline to relieve entities of their responsibility to ensure that their own online public file is complete and otherwise complies with our rules.⁶⁰ While we decline to provide a safe harbor for entities that choose to engage a third party to assist with the online file, we note that our primary goal in this proceeding is to improve access to public file information. Our enforcement efforts initially will be focused on ensuring that entities understand and comply with the online file requirements adopted herein, rather than on imposing fines for minor failures to comply with the rules, particularly during the period when entities being added to the online file are becoming familiar with online filing.

22. Links to other websites. With the exception of the channel lineup information that cable systems must retain in the online file,⁶¹ we will not permit entities to provide a link in the online file to an alternative online location where political file or other public file material may be maintained in lieu of uploading documents to the Commission's database. NCTA states that some cable operators have invested considerable time and resources in establishing electronic political files that can be adapted for use by the public.⁶² NCTA and ACA urge the Commission to permit entities to provide a link in the online file to these existing electronic political files rather than uploading political file documents to the Commission's database.⁶³ We decline this request. The Commission's online file database is intended to serve as a single source of public file material for entities required to use the file, and not as a collection of links to other websites. The online database is organized with folders and subfolders that provide a consistent display of public file material for entities in each service. Members of the public who access the online file will be able to locate documents more easily if they are organized in a similar manner for each service. We agree with CLC *et al.* that allowing entities to substitute a link to another website, which may follow a different organizational structure, instead of uploading documents to the online file, would likely make the file more confusing, harder to navigate, and less useful to the public.⁶⁴ With respect to channel lineups, however, we believe it is appropriate to permit cable operators that maintain a lineup on their own website to provide a link to that existing online lineup in lieu of also maintaining a lineup in the Commission's online file database. The channel lineup consists of fewer documents than the political file and there is less risk of confusion to the public if lineups are organized in different formats by different cable operators. Operators may elect to provide channel lineup information both in the Commission's online file as well as on their own websites, but will not be required to do so.

⁵⁹ See ACA Comments at 14-18. According to ACA, many small and medium-sized cable operators rely on third-party advertising insertion companies to sell advertising, including political advertising, across multiple cable systems and to insert commercials on the system. Cable operators rely on these vendors to provide documentation of political advertisement sales for placement in the public file. *Id.* at 15. ACA also states that many small and medium-sized cable operators use a single buying group, the National Cable Television Cooperative ("NCTC"), to negotiate their national programming deals and make available the information needed from programmers for the public file, including documentation that the programming complies with the children's advertising limits. *Id.* at 17.

⁶⁰ NAB notes that broadcasters participating in time brokerage agreements remain responsible for compliance with the FCC's public file and other rules regardless of the fact that the broker provides programming and sells the commercial spots in that brokered time. See NAB Reply Comments at 4-5.

⁶¹ See, *infra*, ¶ 60.

⁶² See NCTA Comments at 5-6.

⁶³ *Id.* See also ACA Comments at 16.

⁶⁴ See CLC *et al.* Reply Comments at 6.

23. We will permit those entities that maintain their own electronic public and/or political files to include in the Commission's online database a link to that private file database, in addition to uploading to the Commission's database the materials required to be retained in the online public file. Such links would provide a further source of public file information that could prove to be a useful supplement to the information available on the Commission's online database. Entities that choose to include a link to their own electronic public or political file database in the Commission's online file, however, must ensure that the Commission's online database is current and complete. With the exception of cable channel lineup information, entities may not rely on information in another online location to meet their obligation to post information to the Commission's online database.

24. Filing windows. We decline at this time to extend or otherwise alter our current filing windows, as advocated by several commenters.⁶⁵ We are confident that the online file will be capable of handling the increased number of filers and the volume of material required to be uploaded as a result of the expansion of the Commission's online database. In addition, we are not convinced that extending the period of time in which documents must be placed in the online file will result in filings that are more evenly spread out over the filing window. Instead, we believe such a change may simply shift the heaviest volume of filings to a different last-minute filing period. We may reconsider expanding or otherwise altering filing windows at a later time if we believe that such efforts will either assist filers in maintaining a complete, up-to-date online file or help avoid congestion in the online database.

25. Orderly online files. Consistent with our requirement for television stations, we will require that cable, DBS, broadcast radio, and SDARS entities maintain orderly public files⁶⁶ and remove expired contracts when and if replacement agreements are uploaded.⁶⁷ While we otherwise do not require that files that are past their retention period or otherwise out-of-date be deleted, we urge all entities to actively manage their online files to ensure that they do not become so overgrown with out-of-date documents that it is difficult to access relevant materials.⁶⁸ We decline LeSEA's request that the Commission automatically delete files from the database that are past the mandatory retention period.⁶⁹ We believe that the licensee, operator, or service provider is in the best position to know which records in its own public inspection file are current and which should be deleted or replaced. The Commission will take no action under the public file rules based on any public file document that is outside the mandatory retention period.

B. Political File

26. As proposed in the *NPRM*,⁷⁰ cable operators, broadcast radio licensees, DBS operators, and SDARS entities will not be required to upload their existing political files to the online file. Instead, as we require with television licensees, these entities will be permitted to maintain locally those documents already in place in their political file at the time the new rules become effective, and upload documents to the online political file only on a going-forward basis. Existing political file material must

⁶⁵ See, e.g., Named State Broadcasters Associations Comments at 13-14 (urging us to expand the traditional 10-day filing window for many broadcast reports to a 30-day window). Among other arguments, this commenter contends that a 10-day window contains only 6-8 business days, or fewer during holiday periods, and that some stations may need to file multiple reports in a window. See also NAB Comments at 11-13 (proposing that the Commission extend and stagger the filing windows for quarterly issues/programs lists and children's television program reports from 10 days to 20 days for TV stations, and from 10 days to 30 days for radio stations) and Torres Law Group Reply Comments at 7 (supporting an extension of the 10-day filing window for non-political file material).

⁶⁶ See *Second Report and Order*, 27 FCC Rcd at 4582, ¶ 102.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See LeSEA Comments at 6.

⁷⁰ See *NPRM*, 29 FCC Rcd at 15955, ¶ 26.

be retained in the local political file at the station, cable system, or DBS or SDARS headquarters' office for the remainder of the two-year retention period, unless entities voluntarily elect to upload these materials to the online file.⁷¹ Given this limited two-year retention period, exempting the existing political file from the online database will require entities to continue to maintain this file locally for only a relatively short period of time after the effective date of the online political file requirements established in this order. Thus, exempting the existing political file from online posting will reduce the initial burden of moving public files online.⁷² In addition, as discussed below, with respect to smaller cable systems (those with between 1,000 and 5,000 subscribers) we are delaying for two years, until March 1, 2018, the requirement that they commence uploading new political file material to the online file.⁷³ We also delay all online file requirements until March 1, 2018 for radio stations with fewer resources, which we define as all NCE stations, commercial stations in markets below the top 50 or outside all radio markets, and commercial stations in the top 50 markets with fewer than five full-time employees.⁷⁴ We believe that providing these entities with additional time to complete their transition to the online file will ease implementation for these smaller entities and also give the Commission time to address any concerns that may arise as larger entities commence using the online file.

27. Consistent with our current political file rules, and as proposed in the *NPRM*,⁷⁵ we will require that new political file materials be uploaded to the online file “immediately absent unusual circumstances.”⁷⁶ The contents of the political file are time-sensitive.⁷⁷ Therefore, it is essential that there be no delay in posting political file materials to the online file.⁷⁸ In addition, consistent with our approach to the television online file, we will create and propagate subfolders for federal and state candidate ad purchases, as appropriate, as well as issue ads that relate to a political matter of national importance. We will also provide entities with the ability to create additional subfolders and subcategories in compliance with their own practices.⁷⁹

C. Voluntary use of the online public file

28. As we proposed in the *NPRM*,⁸⁰ we will permit entities that are temporarily exempt from part or all online public file requirements to upload material to the online public file voluntarily before the delayed effective date of their online file requirement. For example, an NCE broadcast radio station that

⁷¹ See *infra* ¶ 28.

⁷² See *Second Report and Order*, 27 FCC Rcd at 4557-58, ¶ 44.

⁷³ See *infra* ¶ 53. We exempt cable systems with fewer than 1,000 subscribers from all online file requirements, as these systems have few public file requirements and are not required to retain a political file. See *infra* ¶ 50.

⁷⁴ See *infra* ¶ 83.

⁷⁵ See *NPRM*, 29 FCC Rcd at 15955, ¶ 26.

⁷⁶ See 47 C.F.R. §§ 73.1943(c), 76.1701(c), 25.701(d)(2) (requiring that records be placed in the political file “as soon as possible” and stating that “as soon as possible means immediately absent unusual circumstances”).

⁷⁷ For example, a candidate has only one week from the date of his or her opponent’s appearance to request equal opportunities. See 47 C.F.R. §§ 73.1941(c), 76.205(c), 25.701(b)(4)(iii).

⁷⁸ As noted above, in addition to other political file requirements, 47 U.S.C. § 315(e) requires television, radio, cable, DBS, and SDARS entities to place in the political file information related to any advertisements that discuss a “political matter of national importance,” including the name of the person or entity purchasing the time and a list of the chief executive officers or members of the executive committee or of the board of directors of any such entity. See 47 U.S.C. § 315(e)(1)-(2). See also *supra* ¶¶ 7-8. Information on these issue ads will need to be included in the online political file just as it currently needs to be included in the local political file. See *Second Report and Order*, 27 FCC Rcd at 4556, ¶ 41, note 129 and at 4572, ¶ 79, note 244.

⁷⁹ See *Second Report and Order*, 27 FCC Rcd at 4565-66, ¶¶ 60-61.

⁸⁰ See *NPRM*, 29 FCC Rcd at 15962, ¶ 49 and at 15970, ¶ 70.

is not required to commence using the online file until March 1, 2018, as discussed below, could elect voluntarily to commence using the online file prior to this date.⁸¹ We will also permit entities to elect voluntarily to upload to the online file existing political file material that would otherwise be required to be retained in the entity's local public file until the end of the two-year retention period.⁸² To avoid any confusion regarding the location and completeness of the public and political file, any entity that voluntarily elects to commence using the online file early must ensure that the online file contains all new public file material on a going-forward basis, including all new political file material. That is, all new public and political file material must be uploaded to the online file on a going-forward basis commencing on the date the entity elects to transition to the online file. The online file database will require users to indicate that they have transitioned to the online file.

D. Back-up Files

29. As proposed in the *NPRM*,⁸³ cable, DBS, broadcast radio, and SDARS entities will not be required to maintain back-up copies of all public file materials. Instead, as we do for the existing television online file, an entity may request that the Commission create a mirror copy of its public file to ensure that, if the data in the online file are compromised, the file can be reconstituted using the back-up copy. If the Commission's online file becomes temporarily inaccessible for the uploading of new documents, we will require entities to maintain those documents and upload them to the file once it is available again for upload.

30. As proposed in the *NPRM*⁸⁴ and consistent with the approach we take with respect to television broadcasters,⁸⁵ however, we will require cable, DBS, broadcast radio, and SDARS entities to make back-up files for the political file available to the public to ensure that they can comply with their statutory obligation to make that information available to candidates, the public, and others immediately. Entities will be required to make these backups available only if and during such rare times as the Commission's online public file is unavailable. To minimize any burden caused by this requirement, entities may choose to meet the political file back-up requirement by periodically downloading a mirror copy of the public file, including the political file, housed on the FCC's database. To ensure that the political file is complete, entities that choose this option must retain any political file records that have not yet been uploaded to the FCC's online file database or that were uploaded after their last download of a mirror copy of the online public file.

31. These back-up files may be retained either in paper or electronic form at the entity's local public file location.⁸⁶ Alternatively, entities may elect to make these back-up political files accessible to the public online via the entity's own website. Cable operators or other entities with their own electronic political files may elect to use these files as a back-up in the event the Commission's online database is unavailable.⁸⁷

⁸¹ We are thus effectively granting now the previous request that radio stations not required to file be permitted to do so voluntarily. See *supra* note 35. Entities will be permitted to commence uploading material to the online public file 30 days after the Commission announces in the Federal Register that OMB has completed its review of this Order under the Paperwork Reduction Act ("PRA") and approved the collection. See *infra* ¶ 41.

⁸² See Verizon Comments at 4-5 (requesting that the Commission allow entities to post their existing political file documents to the online file database).

⁸³ See *NPRM*, 29 FCC Rcd at 15956, ¶ 30. See also *Second Report and Order*, 27 FCC Rcd at 4578-79, ¶ 92-94.

⁸⁴ See *NPRM*, 29 FCC Rcd at 15956, ¶ 30.

⁸⁵ See *Second Report and Order*, 27 FCC Rcd at 4579-80, ¶ 95-96.

⁸⁶ Public file materials retained locally must be made available to the public during regular business hours. See 47 C.F.R. §§ 73.3526(c)(1), 73.3527(c)(1), and 76.1700(b)(redesignated 76.1700(e) in Appendix B).

⁸⁷ See NCTA Comments at 14, note 56 (noting that a cable system with its own electronic political file would not need an additional back-up political file).

32. In the event the Commission's online file becomes temporarily inaccessible, we will require DBS and SDARS entities to make their back-up political files available to the public through the entity's choice of either an online method, via the entity's own website, or by answering questions and accommodating requests for copies of political file materials made by telephone. Copies requested by telephone may be sent by fax, email, or mail, at the caller's request. If a requester prefers access by mail, the DBS or SDARS entity may require the individual requesting documents to pay for photocopying.⁸⁸ We believe it is necessary to require DBS and SDARS entities to provide alternative means to access back-up political file documents, either online or by telephone, as these entities provide service nationwide and are required to maintain only one public and political file for the entire U.S. at their headquarters office, making in-person access very difficult. This requirement for online or telephone access will apply only to DBS and SDARS back-up political file materials during times when the Commission's online database is unavailable. Accordingly, we do not believe this requirement will be unduly burdensome.⁸⁹

E. Format

33. As proposed in the *NPRM*,⁹⁰ cable, DBS, and broadcast and satellite radio entities will be required to upload any electronic documents to the online file in their existing format to the extent feasible. The Commission will display the documents in both the uploaded format and in a pdf version. If a required document already exists in a searchable format, documents must be uploaded in that format to the extent technically feasible.

34. We decline at this time to implement a standard format for the online file, including for political advertising data, as requested by CLC *et al.*⁹¹ While we recognize the benefits of mandating that documents be uploaded to the online file in a format that makes this information searchable and more easily analyzed,⁹² our primary focus at this time is to transition the remaining entities with public inspection file obligations to the Commission's online file database so that this material will be more accessible to the public. As discussed above, the Commission has made a number of upgrades to its online file database to accommodate additional users and make the file easier to use. We will continue to prioritize these and other efforts to ensure that the database is reliable and user-friendly before considering further improvements.

⁸⁸ This cost allocation is consistent with the current rule applicable to DBS providers responding to telephone inquiries for copies of political file materials. See 47 C.F.R. § 25.701(d)(3).

⁸⁹ As discussed below, with respect to political file materials made available online by DBS providers, we eliminate, as a general matter, the current requirement that DBS providers respond to telephone inquiries regarding the contents of those files, as well as requests for copies of those political file documents. See *infra* ¶ 72. With respect to existing political file materials, DBS providers may elect voluntarily to upload those materials to the FCC's online public file. If existing political file documents are made available in the FCC's online public file, DBS providers will not be required to respond to telephone requests for copies of those political file documents. With respect to back-up political files, during times when the FCC's online database is unavailable DBS providers have the option to either make those materials available online on their own website or respond to telephone inquiries and requests for copies regarding those materials.

⁹⁰ See *NPRM*, 29 FCC Rcd at 15956-57, ¶ 31.

⁹¹ CLC *et al.* urges the Commission to implement a standard format for political advertising data noting that, among other benefits, such a system would enable efficient analysis of political file documents and allow the creation of software for the online political file that could streamline the filing process for stations. See CLC *et al.* Comments at 2. See also Torres Law Group Reply Comments at 8 (urging the Commission to explore standardization of document uploads, file organization, and nomenclature and suggesting the Commission investigate ways to make documents sortable by category, title, or name).

⁹² See *Second Report and Order*, 27 FCC Rcd at 4575-76, ¶ 85.

F. Announcements and Links

35. We will require cable operators, DBS providers, and broadcast and satellite radio licensees that have websites to place a link to the online public file on their home pages, consistent with our proposal in the *NPRM* and our requirement for television stations.⁹³ This link must connect to the first page of the entity's online public file. We will also require entities that have websites to include on their home page contact information for a representative who can assist any person with disabilities with issues related to the content of the public file.⁹⁴

36. As proposed in the *NPRM*,⁹⁵ we will not require cable, DBS, broadcast radio, or SDARS entities to make on-air announcements regarding the change in location of their public file. Consistent with the approach taken with respect to television stations in the *Second Report and Order*,⁹⁶ we will require broadcast radio stations, however, to revise their on-air pre- and post-filing renewal announcements to reflect the availability of a station's renewal application on the Commission's website.⁹⁷

G. EEO materials

37. As we proposed in the *NPRM*,⁹⁸ we will continue to require that cable, DBS, and broadcast and satellite radio entities make their EEO materials available on their websites, if they have one. Similar to our requirements for television stations,⁹⁹ these entities may fulfill this website posting requirement by providing, on their own website, a link to the EEO materials on their online public file page on the Commission's website.¹⁰⁰ The link to EEO materials must be a direct link to such materials on the FCC's website, and not simply a link to the first page of the entity's online public file. As discussed above, all entities that have websites must also place a link to the first page of their online public file on the home page of their website.¹⁰¹ We decline the request of Named State Broadcasters Associations that this link to the first page of the online public file replace the separate link to an entity's online file EEO materials.¹⁰² The requirement that entities maintain a link to their EEO materials on their websites, if they have one, was established to facilitate meaningful public input, as the public has a "right to participate in the process of monitoring and enforcing our EEO Rule, which directly impacts them."¹⁰³

H. Local public inspection file

38. Entities that have fully transitioned to the online public file -- that is, entities that have uploaded all public file material to the FCC's online file database including all political file material required to be retained in the public file-- and that also provide online access to back-up political file

⁹³ See *NPRM*, 29 FCC Rcd at 15957, ¶ 32 and *Second Report and Order*, 27 FCC Rcd at 4585, ¶ 109.

⁹⁴ See *NPRM*, 29 FCC Rcd at 1597, ¶ 32. The same requirement applies to television stations. See *Second Report and Order*, 27 FCC Rcd at 4585, ¶ 110.

⁹⁵ See *NPRM*, 29 FCC Rcd at 15957, ¶ 32.

⁹⁶ See *Second Report and Order*, 27 FCC Rcd at 4585, ¶ 108.

⁹⁷ See 47 C.F.R. § 73.3580 (as revised here in Appendix B) (changing the text of the announcements to indicate that applications and other public file materials are available on the FCC's website).

⁹⁸ See *NPRM*, 29 FCC Rcd at 15957, ¶ 34.

⁹⁹ See *Second Report and Order*, 27 FCC Rcd at 4568-69, ¶ 69.

¹⁰⁰ ACA supports this approach. See *ACA Comments* at 3, 19.

¹⁰¹ See, *supra*, ¶ 35.

¹⁰² See *Comments of Named State Broadcasters Associations* at 16.

¹⁰³ See *Second Report and Order*, 27 FCC Rcd at 4572, ¶ 77 (citing *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, 17 FCC Rcd 24018, ¶ 140 (2002), *recon pending*).

material via the entity's own website when the FCC's online database is temporarily unavailable, will not be required to maintain a local public file.¹⁰⁴ This option is not available to commercial broadcast licensees who must continue to retain a correspondence file that cannot be made available online for privacy reasons.¹⁰⁵

39. NTCA, Verizon, and DIRECTV request that we clarify that entities do not need to maintain a local public inspection file once they have fully transitioned to the online file.¹⁰⁶ We note that, unlike commercial broadcast stations who must retain a correspondence file at the station, cable, DBS, and SDARS entities will have fully transitioned to the online file once the retention period for existing political files expires. As discussed above, however, all entities must maintain a back-up file for the political file in the event the online file becomes unavailable and make this back-up file available to the public.¹⁰⁷ As discussed above, we will permit entities to retain back-up political file materials either in paper or electronic form at their local file location or make such materials available to the public online via the entity's own website. Entities with their own websites must indicate clearly on that website either the website or physical address of their back-up political files. Entities that have fully transitioned to the online file and that make their back-up political file materials available online will not be required to maintain a local public file.

40. We will require all cable and DBS operators and broadcast and satellite radio licensees to provide information in the online public file about the individual who may be contacted for questions about the file.¹⁰⁸ This information must be provided when the operator or licensee first establishes its online public file and should be updated if and when staffing or location changes occur. In addition, entities that have not fully transitioned to the FCC's online public file – that is, entities that do not post online all public and political file material required to be maintained in the public inspection file - and that do not also provide online access via their own websites to back-up political file materials must also provide information in the FCC's online public file about the location of the entity's local public file. This information is necessary to inform the public of the location of the existing political file (until its retention period expires) and/or the location where the public can access back-up political file materials in the event the Commission's database is unavailable. All commercial broadcast licensees must include information in the FCC's online file about the location of their local public file so the public is aware of the location of the correspondence file retained by these broadcasters.

I. Compliance Dates

41. New Public File Materials. In order to facilitate a smooth transition to the online public file, we will provide entities a period of time after the effective date of the online file requirements adopted in this order to begin uploading files. Cable systems with 1,000 or more subscribers, DBS providers, SDARS licensees, and commercial radio broadcast stations in the top 50 markets with five or

¹⁰⁴ In lieu of providing information in the FCC's online file regarding the location of the local public file, these entities will be permitted to instead indicate in the online file that all public file materials are maintained online and provide the website address of the back-up political file materials. Cable entities that have fully transitioned to the online file and that maintain back-up political files on their own websites will not be required to make copies of public file records available upon request made in person. See 47 C.F.R. § 76.1700(e) (redesignated as § 76.1700(g) in Appendix B).

¹⁰⁵ See *NPRM*, 29 FCC Rcd at 15971, ¶ 74 and *Second Report and Order*, 27 FCC Rcd at 4565, ¶ 62. See also *infra* ¶ 94. The Commission will initiate a proceeding to consider whether to eliminate the correspondence file requirement for commercial broadcasters. Unlike commercial broadcasters, cable operators, DBS providers, and SDARS licensees are not required to maintain correspondence from the public in the public inspection file.

¹⁰⁶ See NCTA Comments at 13-14, Verizon Comments at 4-5, and DIRECTV Comments at 6-7. See also NCTA Reply Comments at 5.

¹⁰⁷ See, *supra*, ¶ 30.

¹⁰⁸ See *NPRM*, 29 FCC Rcd at 15957, ¶ 33.

more full-time employees will be required to begin using the online public file 30 days after the Commission announces in the Federal Register that OMB has completed its review of this Order under the Paperwork Reduction Act (“PRA”) and approved the collection.¹⁰⁹ Commencing on this effective date, these entities must begin uploading new public file materials to the Commission’s online public file database and, with the exception of cable systems with between 1,000 and 5,000 subscribers, these entities must also upload new political file material to the Commission’s online file. Entities will not be permitted to commence uploading material to the online file prior to this effective date. We decline NAB’s request that we give radio stations 60 days from the effective date to commence uploading new public file material.¹¹⁰ Only commercial radio broadcast stations in the top 50 radio markets with 5 or more full-time employees are required to commence uploading documents to the online file beginning 30 days after the effective date of this Order. We believe these larger radio stations have the necessary resources to be able to commence using the online file within this time frame without imposing an undue burden.

42. In recognition of their more limited resources, we provide more time for smaller entities to transition to the online file. Thus, as discussed further below, commercial broadcast radio stations in the top 50 markets with fewer than five full-time employees, all commercial broadcast radio stations in markets below the top 50 and outside all radio markets, and all NCE broadcast radio stations will not be required to begin uploading new public and political file material to the online file until March 1, 2018.¹¹¹ In addition, cable systems with 1,000 or more but fewer than 5,000 subscribers will not be required to commence uploading new political file material to the online file until March 1, 2018.¹¹² Cable systems with fewer than 1,000 subscribers are exempt from all online filing requirements.¹¹³

43. Existing Public File Materials. We will give cable systems with 1,000 or more subscribers, DBS providers, SDARS licensees, and commercial radio broadcast stations in the top 50 markets with five or more full-time employees six months from the effective date of the rules (*i.e.*, six months after the Commission publishes a notice in the Federal Register announcing OMB approval under the PRA as discussed above) to complete the process of uploading to the online file their existing public file materials, with the exception of existing political files.¹¹⁴ This approach is similar to that taken by the Commission in the *Second Report and Order* to transition television stations to the online public file.¹¹⁵ Entities will be permitted to begin uploading existing public file materials immediately on the effective date, at the same time that they must begin posting new materials to the online public file on a going-forward basis. These entities must complete the process of uploading the existing public file -- but not the existing political file, which is not required to be transitioned to the online file -- within six months of the effective date. We believe that giving these entities six months to upload existing files will provide adequate time and flexibility to complete this process.

¹⁰⁹ Pub. L. No. 104-13. The Commission will publish a notice in the Federal Register regarding the paperwork burdens adopted in this Order. The OMB review process will then commence.

¹¹⁰ See NAB Comments at 7.

¹¹¹ See, *infra*, ¶ 83.

¹¹² See, *infra*, ¶ 53.

¹¹³ See, *infra*, ¶ 50. These systems have relatively few public file requirements and are not required to retain a political file.

¹¹⁴ NAB and NCTA agree that we should provide entities at least six months to complete the transition to the online public file. See NAB Comments at 7 and NCTA Comments at 12.

¹¹⁵ See *Second Report and Order*, 27 FCC Rcd at 4580-81, ¶ 98.

J. Waiver

44. While we do not believe online posting of the public file, including prospective posting of the political file, will impose an unreasonable burden on the vast majority of entities subject to the rules adopted in this Order, we recognize that there may be a few entities for which the transition to an online public inspection file may prove especially difficult. In this regard, we note that some small radio stations in remote locations may not have access to reliable Internet service or may be without Internet access altogether.¹¹⁶ In addition, there may be rare instances in which a small radio station or cable operator faces undue economic or other resource limitations that make the transition to the online public file especially challenging. If an entity believes that the transition to the online file will impose an undue hardship, it may seek a waiver of the requirements adopted in this order.¹¹⁷ An entity seeking a waiver should provide the Commission with information documenting the economic hardship the station would incur in complying with online file requirements, its technical inability to do so, or such other reasons as would warrant waiver under our general waiver standards.¹¹⁸

K. Requirements and Issues Unique to Each Service

45. Because each service for which we are implementing online public file requirements is unique, we address each service separately below. We address any service-specific issues raised in the *NPRM* and by commenters, and also address the manner in which we will phase-in online file requirements for each service.

1. Cable Public Inspection File**a. Current rules**

46. The FCC's rules regarding records to be maintained by cable systems distinguish between records that must be retained for inspection by the public and those that must be made available to Commission representatives or local franchisors only.¹¹⁹ The rules also impose different recordkeeping requirements based on the number of subscribers to the cable system. Operators of cable systems with fewer than 1,000 subscribers are exempt from many public inspection file requirements, including the political file, sponsorship identification, EEO records, and records regarding children's commercial programming.¹²⁰ Operators of systems with between 1,000 and 5,000 subscribers must provide certain

¹¹⁶ See Joint Comments of Native Public Media and National Federation of Community Broadcasters at 6-7. These commenters note that, in some communities where broadband is theoretically available, actual access may be hampered by high latency, slow dial-up speeds, or unreliable coverage. *Id*

¹¹⁷ See 47 C.F.R. § 1.3.

¹¹⁸ See *Second Report and Order*, 27 FCC Rcd at 4559, ¶ 50 (permitting television stations to seek a waiver of online political file requirements under the Commission's general waiver standard). As discussed below, we are phasing-in the online file requirements for radio beginning with commercial stations in the top 50 Nielsen Audio markets with 5 or more full-time employees. See, *infra*, ¶ 83. We delay online filing for all other radio stations for approximately two years, until March 1, 2018. *Id*. In the event a commercial radio station with between 5 and 10 full-time employees, otherwise required to transition to online filing in the first group, finds the transition especially difficult, the Commission will give careful consideration to requests by these stations for additional time to commence online filing. The Commission also will be favorably inclined to grant requests for additional time to commence online filing from very small radio stations with fewer than five full-time employees, as these stations may have limited resources and, therefore, find the transition to the online file particularly challenging.

¹¹⁹ For example, information about complaints must "be made available for inspection by the Commission and franchising authorities, upon request." 47 C.F.R. § 76.1713. See also discussion of proof-of-performance test data and signal leakage logs and repair records, *infra*, ¶ 65.

¹²⁰ See 47 C.F.R. § 76.1700(a). The rules do not exempt cable systems serving 1,000 or fewer subscribers from the requirement to maintain records regarding the channels delivered to subscribers, the designation and location of the cable system's principal headend, the broadcast television stations carried in fulfillment of mandatory carriage requirements, the nature and extent of any attributable interests the cable operator has in video programming

(continued....)

information “upon request” but must also “maintain for public inspection” a political file,¹²¹ while operators of systems having 5,000 or more subscribers must “maintain for public inspection” a political file and records regarding, among other things, sponsorship identification, EEO, and advertisements in children’s programming.¹²² The rules state that the public inspection file must be maintained “at the office which the system operator maintains for the ordinary collection of subscriber charges, resolution of subscriber complaints, and other business or at any accessible place in the community served by the system unit(s).”¹²³

47. Cable system political file requirements are similar to those for broadcast stations. The political file must contain a “complete and orderly record...of all requests for cablecast time made by or on behalf of a candidate for public office” including the disposition of such requests.¹²⁴ The file must also show the “schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.”¹²⁵ With respect to certain issue advertisements, the file must disclose the name of the purchasing organization and a list of the board of directors.¹²⁶ These records must be filed “immediately absent unusual circumstances,” and must be retained for at least two years.¹²⁷

b. Online public file requirements

(i) Content required to be maintained in the online file

48. As discussed above, consistent with the rules we adopted for television broadcasters and that we adopt for other entities, we will require that cable operators upload to the online public file all documents and information that are required to be in the public file but which are not also filed in COALS or maintained by the Commission on its own website. The Commission will import these latter documents or information into the online public file itself. As noted in the *NPRM*,¹²⁸ the only document that cable operators file with the Commission that must also be retained in their public inspection file is the EEO program annual report, which the Commission will upload to the online file. We will require cable systems with 1,000 or more subscribers to upload to the online file other material currently required to be maintained for public inspection.

49. While cable systems with 1,000 or more subscribers but fewer than 5,000 subscribers are currently required to provide certain materials to the public only “upon request,” as proposed in the *NPRM* we will also require these systems to place these materials in the online public file to facilitate public access to these materials, except as clarified in subsection (ii) below. The documents these systems are currently required to make available “upon request” are those required by 47 C.F.R. §§ 76.1701 (sponsorship identification), 76.1702 (EEO records available for public inspection), 76.1703 (commercial records for children’s programming), 76.1704 (proof-of-performance test data), and 76.1706 (signal leakage logs and repair records).¹²⁹ We disagree with NCTA that moving from an “upon request”

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services, and, for open video system operators, the list of qualified video programming providers who have requested carriage. See 47 C.F.R. §§ 76.1705, 76.1708, 76.1709, 76.1710, 76.1712.

¹²¹ 47 C.F.R. § 76.1700(a).

¹²² *Id.*

¹²³ 47 C.F.R. §76.1700(b).

¹²⁴ 47 C.F.R. §76.1701(a).

¹²⁵ *Id.*

¹²⁶ 47 C.F.R. §76.1701(d).

¹²⁷ 47 C.F.R. §76.1701(c).

¹²⁸ See *NPRM*, 29 FCC Rcd at 15959, ¶ 41.

¹²⁹ See 47 C.F.R. § 76.1700(a). Systems with 1,000 or more subscribers but fewer than 5,000 subscribers must also maintain for public inspection a political file pursuant to 47 C.F.R. § 76.1701.

regime to an affirmative requirement to upload documents to the online file for these systems represents a burdensome change in regulation.¹³⁰ While our current rules do not require that these records be maintained at a particular local site, cable operators must make this information “promptly available once a request is received.”¹³¹ Our decision to require instead that these records be maintained in the online file does not materially alter the burden of maintaining these records and making them available upon request and is consistent with our transition to an online public file regime.

50. Exemption from all online file requirements for small cable systems. As we proposed in the *NPRM*, we will exempt cable systems with fewer than 1,000 subscribers from all online public file requirements. As noted above, these systems have far fewer public file requirements than larger systems and are not required to maintain a political file. NCTA and ACA support this exemption from online public file requirements.¹³² We decline, however, to adopt ACA’s proposal that we extend to cable systems with fewer than 2,500 subscribers the same public file exemptions currently applicable to cable systems with fewer than 1,000 subscribers and, in addition, exempt systems with fewer than 2,500 subscribers from all online public file requirements.¹³³ It is beyond the scope of this proceeding to consider expanding the number of cable systems that are exempt from current public inspection file requirements. Our goal is simply to adapt our existing public file requirements to an online format, while clarifying and streamlining certain requirements as necessary. We also decline to adopt ACA’s proposal that we exempt systems with fewer than 15,000 subscribers and not affiliated with a multichannel video programming distributor (“MVPD”) serving more than ten percent of all MVPD subscribers from the requirement to maintain their public inspection files in the online database and instead permit these systems to make information in these files available upon request.¹³⁴ These entities must retain records in order to be able to make them available upon request, and we believe any additional burden resulting from a requirement that they instead be posted online is minimal and is outweighed by the benefit of making information more readily accessible without requiring members of the public to make a specific request for records from each system. We also believe ACA’s proposal would confuse the public about the location of public file materials.

51. We believe that the cumulative impact of the online file requirements will not prove overly burdensome to cable systems, particularly in light of the clarification we make below that proof-of-performance and signal leakage information is exempt from the public file. While we recognize that systems may incur some initial costs in transitioning to the online public file, we believe these costs will be minimal. We also believe that, over time, entities will benefit from the lower costs of posting documents electronically to the online file as opposed to maintaining records at the system level.¹³⁵ In addition, moving information to the online database will reduce the burden on staff at the cable system who would otherwise be required to respond to requests to view public file information. As discussed

¹³⁰ See NCTA Comments at 15.

¹³¹ *1998 Biennial Regulatory Review – Streamlining of Cable Television Services Part 76 Public File and Notice Requirements*, Second Report and Order, 16 FCC Rcd 19773, 19775, ¶ 6.

¹³² See NCTA Comments at 15 and ACA Comments at 1. Torres Law Group urges the FCC to review the current rules exempting operators with fewer than 1,000 subscribers from political file requirements. See Torres Law Group Reply Comments at 11.

¹³³ See ACA Comments at 4, 7-10 and Reply Comments at 4-5.

¹³⁴ See ACA Comments at 2, 10-14 and Reply Comments at 7-8.

¹³⁵ We also note that, as indicated in the *NPRM*, the staff estimates that cable public files are 50% as large as television public files. See, *NPRM*, 29 FCC Rcd at 15953, ¶22, note 71. Unlike television broadcasters, cable operators are not required to place in the public inspection file issues/programs lists, citizen agreements, contour maps, ownership reports and related materials, children’s television programming reports, or letters and emails from the public.

above, any system for which the transition to online filing would impose an undue hardship may request a waiver.¹³⁶

52. Political file. Consistent with the approach we adopted for television broadcasters, cable operators will not be required to upload their existing political files to the online file; rather, they will be permitted to maintain existing material in their physical political file and upload documents to the online political file only on a going-forward basis. This approach will minimize the burden of transitioning to the online file for cable operators while providing convenient access to the information most likely to be of interest to the public.

53. Delay in political file requirements for small cable systems. To smooth the transition for cable operators and the Commission and to allow smaller cable systems additional time to begin posting their political files online, as proposed in the *NPRM* we will phase in the political file posting requirements for small cable systems.¹³⁷ For the next two years, we will require only systems with 5,000 or more subscribers to post their new political file documents online. We temporarily exempt other cable systems from posting their political documents to their online public file until March 1, 2018. NCTA supports delaying for two years the requirement to post new political file material online for smaller cable systems,¹³⁸ and this delay is also consistent with the additional time we gave smaller television stations to begin posting political files online in the *Second Report and Order*.¹³⁹

54. We believe that it is appropriate to commence online political file requirements with larger cable systems with more subscribers as these systems are more likely to have the resources needed to address any implementation issues, should they arise. Allowing other systems additional time to begin uploading the political file will ease implementation for these smaller systems and also give the Commission time to address any concerns that may arise as larger cable systems transition to the online file. Applying this delay in online political file requirements to cable systems with fewer than 5,000 subscribers establishes a threshold that is clear and easy to implement. As discussed above, this 5,000 subscriber threshold is currently used in the public file rules to provide regulatory relief from certain recordkeeping requirements.¹⁴⁰ Cable systems are therefore familiar with the use of this threshold in the context of public file requirements, which should help avoid confusion regarding which systems are eligible for the temporary exemption.

55. As an alternative to the 5,000 subscriber cutoff, we sought comment in the *NPRM* on whether we should instead define “small cable system” for purposes of the temporary exemption from the online political file requirement as a system with fewer than 15,000 subscribers that is not affiliated with a larger operator serving more than 10 percent of all MVPD subscribers.¹⁴¹ While NCTA supports this latter definition,¹⁴² we believe the 5,000 subscriber cutoff is both less complicated, as it does not require calculation of the total number of MVPD subscribers as well as the percentage served by any multi-system operator, and easier to administer and implement as systems are already familiar with this cutoff in connection with public inspection file requirements. While more systems will transition to the online

¹³⁶ See, *supra*, ¶ 44.

¹³⁷ See *NPRM*, 29 FCC Rcd at 15961-62, ¶ 48.

¹³⁸ See NCTA Comments at 13.

¹³⁹ See *Second Report and Order*, 27 FCC Rcd at 4558, ¶ 46.

¹⁴⁰ See, *supra*, ¶ 46.

¹⁴¹ See *NPRM*, 29 FCC Rcd at 15961-62, ¶ 48. The Commission used this definition for purposes of determining eligibility for a streamlined financial hardship waiver in the CALM Act *Report and Order*. See *In the Matter of Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, 26 FCC Rcd 17222, 17254 (2011).

¹⁴² See NCTA Comments at 13.

political file in the first phase under the 5,000 subscriber threshold than the alternative definition supported by NCTA, we do not believe this transition will be unduly burdensome as it applies only prospectively to new political file material. Systems will not be required to upload any of their existing political file documents. We believe that uploading new political file material to the online file will not prove significantly more burdensome than maintaining paper files, and will prove less burdensome over time as operators become more familiar with the online file.

56. Geographic information. We will require cable operators, when first establishing their online public file, to provide a list of the five-digit ZIP codes served by the cable system. Cable operators with more than one physical system identifier (“PSID”) will be required to identify the ZIP code(s) served by each PSID. As discussed in the *NPRM*,¹⁴³ the Commission currently lacks precise information about the geographic areas served by cable systems, and we believe that providing information about ZIP codes served will make the information in the online file, and especially the political file, more useful to subscribers, advertisers, candidates, and others. While we proposed in the *NPRM* to require operators to provide information regarding both the ZIP codes and Designated Market Areas (“DMAs”) served by each system, we will require only ZIP code information at this time. ZIP codes correlate to geographic areas that are easily identified by the Commission and the general public.¹⁴⁴ In addition, zip code areas are smaller than DMAs, providing more granular data to users of the online file. Information about ZIP codes served should also be relatively easy for operators to obtain from their billing records. We note that operators will be required to identify the ZIP codes served by each cable system only when they first establish their public files on the Commission’s database, and to update this information only to reflect changes. Therefore, we do not believe this requirement will be unduly burdensome.

57. We reject the suggestion of NCTA and ACA that, instead of requiring cable operators to upload information about the geographic area served by the system, the FCC instead import that information from FCC Form 322 (Cable Community Registration).¹⁴⁵ The communities identified on Form 322 often do not correspond to locations with defined political and/or geographic boundaries. In addition, while Form 322 does contain information about counties served by each system, this information is not as granular as ZIP code data, which is not available on Form 322. We also decline Verizon’s suggestion that we refer to franchise areas in the online file, as we believe this information is less likely to be recognizable by the public than ZIP codes.¹⁴⁶ While we understand that video providers may not provide service throughout each ZIP code where they provide some service,¹⁴⁷ ZIP code data is still more specific and familiar to the public than community or franchise data and will improve the overall quality of the information available to the public and the Commission in the online file about the areas served by cable systems.

58. We sought comment in the *NPRM* on whether, in lieu of ZIP code or DMA data, we should instead require cable operators to provide information about the census block(s) or census tract(s) served by each system.¹⁴⁸ We do not require cable operators to provide this information. While Census

¹⁴³ See *NPRM*, 29 FCC Rcd at 15962, ¶ 50.

¹⁴⁴ See, e.g., <http://www.unitedstateszipcodes.org/> (listing all ZIP codes nationwide, with a map of each ZIP code and a list of the cities in each ZIP code).

¹⁴⁵ See NCTA Comments at 9-11 and ACA Comments at 20. See also NCTA Reply Comments at 1-2 and ACA Reply Comments at 14.

¹⁴⁶ See Verizon Comments at 4 (suggesting that the Commission post geographic service areas only by franchise area, specific communities served, or DMA).

¹⁴⁷ *Id.*

¹⁴⁸ See *NPRM*, 29 FCC Rcd at 15962, ¶ 50. A census block is the smallest geographic unit used by the United States Census Bureau for tabulation of data nationwide. Census blocks are typically bounded by streets, roads, or creeks. Census blocks are grouped into block groups, which are grouped into census tracts. See <http://blogs.census.gov/2011/07/20/what-are-census-blocks/>.

Block or Census Tract data is both more granular and less subject to change than ZIP codes, we believe the added burden on operators to provide this information outweighs the benefit to consumers.¹⁴⁹

59. Cable employment units. We will also require cable operators, when first establishing the online public file for each cable system, to identify the employment unit number or numbers associated with each system. This information is required to permit the Commission to associate EEO reports filed with the Commission, which are identified by employment unit number, with the system or systems covered by each report and employment unit. As cable operators will be required to provide this information only when they first establish the online public file and when any updates are required, we do not believe this requirement will be unduly burdensome.

60. Channel lineups. We will require cable operators either to upload information regarding their current channel lineup to the online file, and keep this information current, or provide a link in their online file to the channel lineup maintained by the operator. While we recognize that cable systems may currently provide channel lineup information to subscribers in various ways in addition to putting it in the public file,¹⁵⁰ we decline to eliminate the requirement that such information also be made available in the online public file, as advocated by NCTA and ACA.¹⁵¹ Our focus in this proceeding is moving our current public file requirements to an online format rather than changing our underlying disclosure requirements. We agree with NCTA and ACA, however, that we should allow operators the option of including a link in the online public file to their own online channel lineups in lieu of uploading channel lineups to the online file.¹⁵² This option will ease the burden on cable operators who maintain their channel lineups on their own websites and will help ensure that the channel lineup information accessible through the online public file is up to date. Although we decline to permit entities generally to include in the online file a link to another online location rather than uploading documents to the online file,¹⁵³ we will make an exception for channel lineups because cable systems have an incentive to present this information in a usable format on their own websites, and requiring them to upload a pdf to our website is unlikely to aid those seeking this information.¹⁵⁴ We emphasize that cable systems may take advantage of the option of including a link to the cable system's channel lineup in the online file in lieu of uploading the lineup only if the link is made available to all members of the public.

61. Headend location information. Our rules currently require the operator of every cable television system to maintain in the public inspection file the "designation and location of its principal headend."¹⁵⁵ As we proposed in the *NPRM*,¹⁵⁶ we will not require cable operators to include principal headend location information in the online public file. Instead, operators will have the option to instead

¹⁴⁹ NCTA and ACA both oppose requiring cable systems to provide Census Tract or Census Block information in the online public file. See ACA Comments at 4, 20-21 and NCTA Comments at 9-10. ACA argues that the better alternative is to require ZIP code information. See ACA Comments at 21.

¹⁵⁰ NCTA notes that, in addition to the public file, consumers currently can find channel lineup information in on-screen electronic programming guides, guide channels, cable operator and third-party websites and apps, and paper lineups provided by cable operators. See NCTA Comments at 8.

¹⁵¹ See NCTA Comments at 7-8 and ACA Comments at 3, 19.

¹⁵² See NCTA Comments at 8 and ACA Reply Comments at 10-11.

¹⁵³ See, *supra*, ¶ 22.

¹⁵⁴ See NCTA Comments at 8 (arguing that consumers looking for current channel lineup information can look to a number of sources, including on-screen electronic program guides and cable operator and third-party websites).

¹⁵⁵ 47 C.F.R. § 76.1708 (requiring cable operators to "maintain for public inspection the designation and location of its principal headend"). If an operator changes the designation of its principal headend, this rule also requires that the new designation be included in the public file.

¹⁵⁶ See *NPRM*, 29 FCC Rcd at 15963, ¶ 53.

continue to retain this information in their local public file.¹⁵⁷ In comments filed in response to the *Public Notice*, NCTA asked that we consider whether we should exclude headend location information from the online public file as it is of little interest to the general public and revealing this information in a centralized database available to Internet users “raises potentially serious security risks.”¹⁵⁸ While we reserve judgment as to whether there are valid security concerns associated with posting the location of the principal headend online, we agree that the general public is unlikely to be interested in this information and, therefore, will permit operators who prefer to retain this information locally rather than posting it online to do so. We remind operators who choose not to post principal headend location information to the Commission’s online public file that the local file where this information is retained must be made available for public inspection at any time during regular business hours.¹⁵⁹

62. Commercial limits in children’s programming. We decline to adopt NCTA’s request that we revise our public file rules to permit cable operators to provide documentation regarding compliance with the commercial limits in children’s programs only in the event of a complaint.¹⁶⁰ NCTA’s proposal is beyond the scope of this proceeding, which is intended to adapt our current public file rules to an online format rather than changing underlying requirements. While we recognize that our current rules require cable operators operating multiple systems carrying the same children’s programs to retain in their files similar commercial limits information for these systems, we believe the transition to the online public file will significantly reduce the burden of complying with this aspect of the current children’s television rules. As discussed above, the Commission has upgraded the online file database to permit entities to populate multiple files using a single upload.¹⁶¹ This feature will permit cable operators to use a single upload to post required commercial limits documentation to the online file for multiple cable systems, making compliance with the commercial limits rules easier in the online database than in the current local public file regime. In addition, as discussed above, entities are free to negotiate with third-party vendors for assistance in uploading documents to their online public inspection file using the API interface.¹⁶² This flexibility will permit entities to meet their online public file obligations in the most cost-efficient manner possible.

63. FCC Form 325. We invited comment in the *NPRM* on whether the Commission should make FCC Form 325 (Annual Cable Operator Report) available in the online public file. That form is filed annually by cable systems with 20,000 or more subscribers. We decline to include FCC Form 325 in the online file at this time as these forms are not currently required to be included in the public inspection file.

64. State and local public file requirements. We decline to adopt Verizon’s request that we preempt public file requirements imposed pursuant to agreements between a cable operator and state and local franchising authorities.¹⁶³ While such agreements may require cable operators to maintain a local file with content that may duplicate or differ from that required by the FCC’s public file requirements, we do not believe it is appropriate in this proceeding to preempt such local or state requirements.¹⁶⁴ We will, however, enable entities to add a separate folder to their FCC online file for content that is required to be

¹⁵⁷ Operators who choose not to include the location of the principal headend in the online file must include a notation in the online file that this information is available in the cable system’s local public file.

¹⁵⁸ NCTA Comments, filed August 28, 2014, at 7-8. *See also* ACA Comments at 19 and Reply Comments at 12-13.

¹⁵⁹ *See* 76.1700(b) (redesignated 76.1700(e) in Appendix B).

¹⁶⁰ *See* NCTA Comments at 7. *See also* ACA Reply Comments at 14-15.

¹⁶¹ *See, supra*, ¶ 20.

¹⁶² *See, supra*, ¶ 21.

¹⁶³ *See* Verizon Comments at 2-3

¹⁶⁴ However, we do not preclude potential future consideration of such preemption.

retained by the operator for public inspection pursuant to a franchising agreement. Cable operators may choose to take advantage of this option in order to maintain in a single location all materials required to be made available to the public, pursuant to either the FCC's rules or franchising requirements. Any material uploaded to the online file solely for purposes of compliance with state or local franchise requirements must be placed in a separate folder that is clearly labeled by the operator to distinguish it from FCC public and political file materials. Entities may not place materials solely intended to comply with franchise requirements in the same folder(s) used for FCC online public and political file materials, as this could be confusing to users of the online file. However, by creating this option, we are not changing any obligations that local franchising authorities may have imposed with respect to local inspection files. If the franchising authority has a requirement to maintain a local file that would not be satisfied by posting those documents to the FCC's online file, the cable operator must continue to maintain such a local file in compliance with the franchising agreement unless the franchising authority allows it to move those files online.

(ii) Clarification and reorganization of the cable public inspection file rules

65. Proof-of-performance and signal leakage information. We clarify that proof-of-performance and signal leakage information does not need to be retained in the public inspection file or uploaded to the online file. This material must be maintained and made available to the Commission and franchisor, however, upon request. We noted in the *NPRM* that the current recordkeeping rules regarding this information are unclear. While Section 76.1700(a), which sets out cable recordkeeping requirements, includes "proof-of-performance test data" and "signal leakage logs and repair records" in the list of items either to be made available "upon request" (for systems with 1,000 or more but fewer than 5,000 subscribers) or to be maintained in the public inspection file (for systems with 5,000 or more subscribers), the rule sections specifically addressing these requirements require only that this information be maintained for inspection by the Commission and local franchisor.¹⁶⁵ We agree with NCTA and ACA that proof-of-performance and signal leakage information is highly technical and unlikely to be of interest to the general public and does not need to be retained in the public inspection file or be made available online.¹⁶⁶ We will, however, continue to require that systems retain this information and make it available to the Commission and franchisor upon request.

66. Reorganization of 47 C.F.R. Section 76.1700. As proposed in the *NPRM*,¹⁶⁷ we are reorganizing Section 76.1700 of the rules both to reflect the online public file requirements adopted in this Order and to clarify cable public inspection file requirements. The cable recordkeeping requirements are currently spread over several rule sections in Part 76, Subpart U (Documents to be Maintained for Inspection),¹⁶⁸ with some requirements contained in a separate rule subpart.¹⁶⁹ While Section 76.1700

¹⁶⁵ Section 76.1704 states that proof-of-performance test data "shall be maintained on file at the operator's local office" and "made available for inspection by the Commission or the local franchisor, upon request." 47 C.F.R. § 76.1704(a). See also 47 C.F.R. § 76.1717 (Compliance with technical standards) (requiring operators to show "on request by an authorized representative of the Commission or the local franchising authority" that the system complies with the FCC's technical standards). With respect to signal leakage logs and repair records, Section 76.1706 states that cable operators "shall maintain a log" with information about the leakage which "shall be made available to authorized representatives of the Commission upon request." 47 C.F.R. § 76.1706.

¹⁶⁶ See NCTA Comments at 11, ACA Comments at 4, and ACA Reply Comments at 9. See also NCTA Comments, filed August 28, 2014, at 7.

¹⁶⁷ See *NPRM*, 29 FCC Rcd at 15963-64, ¶ 55.

¹⁶⁸ See 47 C.F.R. §§ 76.1700 (Records to be maintained by cable system operators), 76.1701 (Political file), 76.1702 (Equal employment opportunity), 76.1703 (Commercial records on children's programs), 76.1704 (Proof-of-performance test data), 76.1705 (Performance tests (channels delivered)), 76.1706 (Signal leakage logs and repair records), 76.1707 (Leased access), 76.1708 (Principal headend), 76.1709 (Availability of signals), 76.1710 (Operators interests in video programming), 76.1711 (Emergency alert system (EAS) tests and activation), 76.1712

(continued....)

currently cross references many of these recordkeeping requirements, it does not cite them all.¹⁷⁰ The revised rule Section 76.1700 in Appendix B cross references all cable public recordkeeping requirements and more clearly addresses which records must be maintained in the public inspection file, and therefore uploaded to the Commission's online file, versus those that must be made available only to the Commission or franchising authority. We believe this limited reorganization and clarification of the cable public inspection file rules will make them easier to locate and understand.

2. DBS Public Inspection File

a. Current rules

67. DBS providers are required to maintain a public inspection file containing four categories of information: information regarding compliance with the carriage obligation for noncommercial programming (the "noncommercial set-aside"); information regarding compliance with the commercial limits in children's programming; certain EEO materials; and a political file. With respect to the noncommercial set-aside, the rules require that DBS providers "keep and permit public inspection of a complete and orderly record of," among other things, measurements of channel capacity, a record of entities to whom noncommercial capacity is being provided, the rates paid by the entity to whom capacity is provided, and a record of entities requesting capacity and the disposition of those requests.¹⁷¹ With respect to compliance with the children's programming commercial limits, DBS providers airing children's programming must maintain records sufficient to verify compliance with the rules and "make such records available to the public."¹⁷² With respect to EEO materials, DBS operators are required to maintain in their public file EEO reports and certain EEO program information.¹⁷³

68. DBS providers are also required to "keep and permit public inspection of a complete and orderly political file" and to "prominently disclose the physical location of the file and the telephonic and electronic means to access" it.¹⁷⁴ The file must include, among other things, records of "all requests for DBS origination time" and the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased for each request.¹⁷⁵ These records must be placed in the file "as soon as possible" and must be retained for at least two years.¹⁷⁶ Unlike broadcasters and cable systems, DBS providers must "make available via fax, e-mail, or by mail upon telephone request, photocopies of documents in their political files and shall assist callers by answering questions about the contents of their political files."¹⁷⁷

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(Open video system (OVS) requests for carriage), 76.1713 (Complaint resolution), 76.1714 (FCC rules and regulations), 76.1715 (Sponsorship identification), 76.1716 (Subscriber records and public inspection file), and 76.1717 (Compliance with technical standards).

¹⁶⁹ See 47 C.F.R. § 76.630 (Compatibility with consumer electronics equipment).

¹⁷⁰ For example, Section 76.1700 does not reference the requirements in Sections 76.630 or 76.1707 - 76.1716.

¹⁷¹ See 47 C.F.R. § 25.701(f)(6).

¹⁷² See 47 C.F.R. § 25.701(e)(3).

¹⁷³ See 47 C.F.R. § 25.601

¹⁷⁴ 47 C.F.R. § 25.701(d).

¹⁷⁵ 47 C.F.R. § 25.701(d)(1)(i).

¹⁷⁶ 47 C.F.R. § 25.701(d)(2).

¹⁷⁷ 47 C.F.R. § 25.701(d)(3). See also *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992*, 19 FCC Rcd 5647, 5661-62, ¶ 35 (2004).

b. Online public file requirements

69. Similar to our existing online public file requirements for television stations and the requirements we adopt for cable, broadcast radio, and satellite radio entities, we will require DBS providers to upload to the online file only material that is not already on file at the Commission.¹⁷⁸ Similar to cable operators, the only document that DBS providers file with the Commission that must also be retained in their public inspection files is the EEO program annual report,¹⁷⁹ which the Commission will upload to the online file. DBS operators will be required to post to the online file channel capacity measurements and other records related to the use of and requests for noncommercial capacity, records related to compliance with children's commercial limits, certain EEO materials, and new political file material.

70. We do not believe that requiring DBS providers to upload this material to the online file will be onerous. As compared to television and radio broadcasters and cable operators, DBS providers have the fewest number of public file requirements. We believe that the transition to an online file is particularly important for DBS because of that service's nationwide reach.¹⁸⁰ Each DBS provider is required to maintain only one public and political file for the entire U.S. at its headquarters, making in-person access very difficult.¹⁸¹ Moving this material to the online database will facilitate access to the public file by viewers nationwide. We believe also that maintaining an online file hosted by the Commission will prove to be more efficient and less expensive over time than maintaining a local file, particularly as it will likely reduce the number of instances in which DBS providers must assist callers requesting materials from the political file as these callers will be more easily able to access the online file directly and download any material themselves.

71. Consistent with our approach for television stations and the rules we adopt for cable, broadcast radio, and satellite radio entities, we will not require DBS providers to upload their existing political files to the FCC's online file but will permit them to maintain existing material in their physical political file and upload documents to the online political file only on a going-forward basis.¹⁸² DBS providers must begin uploading new public and political file material to the online public file 30 days after the Commission announces in the Federal Register that OMB has completed its review of this Order under the Paperwork Reduction Act ("PRA") and approved the collection.¹⁸³ These entities will have six months from the effective date of the rules (*i.e.*, six months after the Commission publishes a notice in the Federal Register announcing OMB approval under the PRA) to complete the process of uploading existing public file materials to the online file,¹⁸⁴ with the exception of existing political files which entities are permitted, but not required, to upload to the Commission's online public file.

72. We will eliminate the requirement that DBS providers honor requests by telephone for copies of political file materials if those materials are made available online.¹⁸⁵ Thus, with respect to

¹⁷⁸ DIRECTV supports this approach. *See* DIRECTV Comments at 3-4.

¹⁷⁹ 47 C.F.R. §§ 25.601, 76.1702.

¹⁸⁰ *See* Petition for Rulemaking at 7. There are currently only two U.S. DBS operators. *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 28 FCC Rcd 10496, 10507, ¶ 27 (2013). DIRECTV is the largest DBS provider and second largest MVPD, serving almost 20 million subscribers. DISH Network is the second largest DBS provider and third largest MVPD, with over 14 million subscribers. *Id.*

¹⁸¹ DIRECTV's public inspection file is located at its headquarters office in Englewood, Colorado and DISH Network's file is at its headquarters in El Segundo, California.

¹⁸² DIRECTV supports this approach. *See* DIRECTV Comments at 2-3.

¹⁸³ *See, supra*, ¶ 41.

¹⁸⁴ *See, supra*, ¶ 43.

¹⁸⁵ *See NPRM*, 29 FCC Rcd at 15966, ¶ 60.

existing political file materials not required to be posted to the FCC's online database, DBS providers must continue to answer telephone inquiries regarding those materials, as well as requests for copies, unless they elect to post those existing political files to the FCC's online database. In addition, as discussed above, if the FCC's online public file database is temporarily unavailable, we will require DBS providers to make their back-up political files available to the public by, at their own choice, either an online method, via the entity's own website, or by answering questions and accommodating requests for copies of political file materials made by telephone.¹⁸⁶ Copies requested by telephone may be sent by fax, email, or mail, at the caller's request. If a requester prefers access by mail, the DBS or SDARS entity may require the individual requesting documents to pay for photocopying. We believe it is appropriate to require DBS providers to provide access to political file documents either online or by telephone as these entities provide service nationwide making in-person access to these files difficult for most subscribers. As all current political file materials must be posted online to the FCC's database on a going-forward basis, we believe the number of telephone requests for other materials is likely to be limited. In addition, DBS providers have the option to provide online access to existing and back-up political file materials in lieu of responding to telephone inquiries regarding these materials. Therefore, we believe these measures will reduce the overall burden on DBS providers both of maintaining and providing access to the political file.

73. We sought comment in the *NPRM* on how DBS political files should be organized, particularly with respect to advertisements shown on a local or hyper-local basis.¹⁸⁷ We agree with DIRECTV that DBS providers should have the flexibility to organize their political files in any manner that reasonably allows users to view their contents.¹⁸⁸ DBS providers offer advertisers the option to purchase advertising both nationwide and locally, and we will permit these entities to create folders for the political file that reflect the manner in which ads were purchased and shown.

74. DIRECTV notes that the political file rules require DBS providers to include in the political file a significant amount of information about certain political ad buyers and, in some cases, the nature of the issue being advertised.¹⁸⁹ According to DIRECTV, some political advertising buyers have refused to provide this information.¹⁹⁰ DIRECTV requests that the Commission clarify that political advertisers must present DBS providers with sufficient information to comply with the political file requirements.¹⁹¹ We remind DBS providers, as well as other entities subject to our political broadcasting rules, that they are responsible for ensuring that their political files are complete and accurate as required by the Communications Act and the Commission's rules.¹⁹²

3. Broadcast Radio Public Inspection File

a. Current rules

75. The public inspection file rules for radio broadcasters are generally similar to those for television broadcasters. Every permittee or licensee of an AM or FM station in the commercial or noncommercial educational broadcast service must maintain a public inspection file containing, among

¹⁸⁶ Similarly, DBS providers who choose not to make existing political file materials (those not otherwise required to be posted to the FCC's online public file database) available online must answer any telephone inquiries regarding those materials, as well as any requests for copies.

¹⁸⁷ See *NPRM*, 29 FCC Rcd at 15967, ¶ 60.

¹⁸⁸ See DIRECTV Comments at 5.

¹⁸⁹ See 47 C.F.R. § 25.701(d). See also DIRECTV Comments at 5.

¹⁹⁰ See DIRECTV Comments at 5.

¹⁹¹ *Id.*

¹⁹² See 47 U.S.C. § 315(e) and 47 C.F.R. §§ 73.3526(e)(6), 73.3527(e)(5), 73.1943, 76.1701, 25.701(d). See also *supra* ¶¶ 7-8 and note 19.

other things, FCC authorizations, applications, contour maps, ownership reports, EEO materials, issues/programs lists, and time brokerage (also known as “local marketing”) and joint sales agreements.¹⁹³ The file must be maintained at the station’s main studio.¹⁹⁴

76. Radio stations are required to maintain a political file as part of their public inspection file.¹⁹⁵ The political file must contain a “complete and orderly record” of requests for broadcast time made by or on behalf of a candidate for public office.¹⁹⁶ The file must also show the “schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.”¹⁹⁷ With respect to issue advertisements, stations must disclose the name of the purchasing organization and a list of the board of directors.¹⁹⁸ These records must be filed “as soon as possible, meaning immediately, absent unusual circumstances,” and must be retained for at least two years.¹⁹⁹

b. Online public file requirements

(i) Content required to be maintained in the online file

77. We will require radio broadcast licensees to upload to the online public file all documents and information that are required to be in the public file but that are not also filed in CDBS (or LMS) or otherwise maintained by the Commission on its own website. Thus, radio stations must upload citizen agreements,²⁰⁰ certain EEO materials,²⁰¹ issues/programs lists,²⁰² local public notice announcements,²⁰³

¹⁹³ See 47 C.F.R. §§ 73.3526, 73.3527. Unlike television broadcasters, radio broadcasters do not have children’s educational programming obligations or limits on the amount of commercial time in children’s programming and, therefore, are not required to maintain records in the public file concerning compliance with these obligations. Commercial radio stations must maintain letters and emails from the public, see 47 C.F.R. § 73.3526(e)(9), but noncommercial radio stations do not. Noncommercial stations must, however, retain lists of donors supporting specific programs. See 47 C.F.R. § 73.3527(e)(9). Applicants for a construction permit for a new broadcast station must also maintain a public inspection file. See 47 C.F.R. §§ 73.3526(a)(1), 73.3527(a)(1).

¹⁹⁴ Radio stations that maintain a main studio and public file outside the community of license must take extra steps to assist members of the public by identifying, and mailing copies of, documents in the file. See 47 C.F.R. §§ 73.3526(c), 73.3527(c).

¹⁹⁵ 47 C.F.R. §§ 73.3526(e)(6), 73.3527(e)(5), 73.1943. Although noncommercial broadcast stations are prohibited by Section 399B of the Communications Act, 47 U.S.C. § 399B, from accepting paid political and issue advertising, they are required to maintain a political file for documenting any candidate “uses” that would trigger “equal opportunities” under the Act. In addition, noncommercial stations must maintain a record in the political file of any candidate requests for free or furnished time. See 47 C.F.R. § 73.1943.

¹⁹⁶ 47 C.F.R. §73.1943(a).

¹⁹⁷ *Id.*

¹⁹⁸ 47 C.F.R. §73.1212(e). See also *supra* note 78.

¹⁹⁹ 47 C.F.R. §73.1943(c).

²⁰⁰ See 47 C.F.R. § 73.3526(e)(3). The Commission defines a citizen agreement as “a written agreement between a broadcast applicant, permittee, or licensee, and one or more citizens or citizen groups, entered for primarily noncommercial purposes” dealing with issues such as proposed programming and employment practices. *Id.* at Note.

²⁰¹ See 47 C.F.R. §§ 73.3526(e)(7), 73.3527(e)(6), 73.2080. For example, in addition to EEO forms that must be filed with the Commission and that the Commission will upload to the online public file, radio stations with five or more full-time employees are required to place in their public file an EEO public file report. See 47 C.F.R. § 73.2080(c)(6).

²⁰² See 47 C.F.R. §§ 73.3526(e)(12), 73.3527(e)(8). Radio stations must place in the public file “every three months a list of programs that have provided the station’s most significant treatment of community issues during the preceding three month period.” *Id.*

time brokerage agreements,²⁰⁴ joint sales agreements,²⁰⁵ materials related to FCC investigations or complaints (other than investigative information requests from the Commission),²⁰⁶ and any new political file material. The Commission will import to the online file documents and information required to be in the public file that are electronically filed in CDBS (or LMS), including authorizations, applications and related materials, ownership reports and related materials, EEO Reports, The Public and Broadcasting manual, and Letters of Inquiry and other investigative requests from the Commission, unless otherwise directed by the inquiry itself.

78. FCC Form 302-AM. FCC Form 302-AM (Application for AM Broadcast Station License) is available for paper filing only, unlike the application for FM station licenses (FCC Form 302-FM) which must be filed electronically.²⁰⁷ We will permit AM stations that must retain Form 302-AM in their public inspection file to choose either to retain the form locally for public inspection or upload the form themselves to the Commission's online database. NAB urges the Commission to upgrade its database to reduce the unequal burden on AM stations that are unable to file forms electronically. We are working on upgrading our broadcast licensing database, including FCC Form 302-AM, but we will not make changes to the filing requirements in this item. Our focus is on moving the public inspection file to the Commission's online database; other broadcast licensing database improvements are beyond the scope of this proceeding.

79. Political file. As proposed in the *NPRM*,²⁰⁸ and consistent with the approach we adopted for television broadcasters and that we adopt here for other entities, broadcast radio licensees will not be

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²⁰³ See 47 C.F.R. §§ 73.3526(e)(13), 73.3527(e)(10). These are announcements required to be aired pursuant to 47 C.F.R. § 73.3580(h).

²⁰⁴ See 47 C.F.R. §§ 73.3526(e)(14). The Commission defines "time brokerage" as "the sale by a licensee of discrete blocks of time to a 'broker' that supplies the programming to fill that time and sells the commercial spot announcements in it." 47 C.F.R. § 73.3555 Note 2 (j).

²⁰⁵ See 47 C.F.R. §§ 73.3526(e)(16). The Commission defines a "joint sales agreement" as "an agreement with a licensee of a 'brokered station' that authorizes a 'broker' to sell advertising time for the 'brokered station.'" 47 C.F.R. § 73.3555 Note 2 (k).

²⁰⁶ See 47 C.F.R. §§ 73.3526(e)(10), 73.3527(e)(11). These rules require stations to include in the public file "material having a substantial bearing on a matter which is the subject of an FCC investigation or complaint to the FCC of which the applicant, permittee, or license has been advised." *Id.* Similar to the approach we took with respect to television stations, subject to any disclosure limitation included in a Commission inquiry itself or directed by the staff, the online public file must include Letters of Inquiry ("LOI"), any supplements thereto, and any other correspondence from the Commission commencing an investigation, materials related to such inquiries, licensee responses to these Commission inquiries, and any documents – including Commission orders – terminating or concluding the investigation or imposing penalties as a result of the investigation. See *Second Report and Order*, 27 FCC Rcd at 4570-71, ¶ 74. Unless directed to the contrary by the Commission (in an LOI or otherwise), stations will be responsible for uploading any materials related to a Commission investigation or inquiry that they generate or possess (such as responses to LOIs and relevant documents related to an investigation). To reduce burdens on stations, the Commission, as it deems appropriate, will post to the online public file any material that it originates relating to an investigation, such as LOIs and other investigative requests. *Id.* The Commission will also post to the online public file any complaint or complaints that it possesses and that underlie an investigation, if doing so is feasible, will not interfere with or obstruct an investigation and disclosure is consistent with any privacy concerns that publication might raise. *Id.* Stations should retain in the local correspondence file complaints that have not prompted an LOI or other investigative request, whether filed with the Commission or submitted only to the station. *Id.* at 4571, ¶ 75. When there are circumstances in investigatory and enforcement contexts that would weigh against the disclosure of Commission investigations and related materials, the Commission or the staff may inform a licensee that an LOI or request for information or other material related to a particular investigation need not be placed in the public file or uploaded to the online public file. *Id.* at 4570-71, ¶ 74.

²⁰⁷ See NAB Comments at 11.

²⁰⁸ See *NPRM*, 29 FCC Rcd at 15968, ¶ 65.

required to upload their existing political files to the online file, but instead will be permitted to maintain existing material in their local political file and upload documents to the online political file only on a going-forward basis. This approach will minimize the burden of transitioning to the online file.

80. Delay in implementation for stations with fewer resources. In light of the unique economic circumstances faced by radio broadcasters, we believe it is appropriate to implement the online public file by imposing requirements, at first, only on stations with more resources.²⁰⁹ Some radio commenters expressed opposition to the Commission's proposal to include radio broadcasters in the online file.²¹⁰ Some argue that the radio industry already faces significant economic challenges as the result of competition from other services that would be exacerbated by the imposition of further regulatory requirements.²¹¹ Others question the need to expand the online file to radio, noting the limited number of requests radio stations receive to view the public file,²¹² or noting that the Petition for Rulemaking did not address broadcast radio and advocated only that cable operators and DBS providers be added to the online file.²¹³

81. Most radio commenters focus in particular on the impact on small stations, including small NCE stations, of including broadcast radio stations in the online file. In general, these commenters argue that many radio stations are very small with limited financial and other resources, face constant economic pressure, and would find the transition to the online file very burdensome.²¹⁴ Several commenters argue that all small radio stations should be exempt from the online file, either permanently²¹⁵ or at least initially.²¹⁶ The Named State Broadcasters Associations argue that adding radio to the online file is more complex than adding television as broadcast radio operators are less

²⁰⁹ See *NPRM*, 29 FCC Rcd at 15968, ¶ 66.

²¹⁰ See, e.g., Joint NCE Comments at 1-2.

²¹¹ See, e.g., Comments of Local and Regional Small Radio Broadcasters at 3 and Max Media at 1-2.

²¹² See KERM Comments at 3 (one request to view the public file in 35 years of operation) and Skycountry Broadcasting Comments at 1 (3 requests to view the public file in 54 years).

²¹³ See Comments of Radio Training Network at 2 (suggesting that the Commission focus first on adding cable and DBS to the online file database given the magnitude of the resources required to add more than 15,000 radio stations to the Commission's database).

²¹⁴ See, e.g., Blount Masscom Comments at 2.

²¹⁵ See NAB Comments at 2 (urging the Commission to permanently exempt all NCE radio stations and commercial stations with fewer than five full-time employees from mandatory online filing requirements). See also Missouri and California Broadcasters Associations Comments at 4, Allan Hampton Comments at 1, Central Park Church of God Comments at 2, Eagle Bluff Enterprises Comments at 2 and National Religious Broadcasters Reply Comments at 9-10. But see CLC *et al.* Comments at 4 (opposing any categorical exemption from online file requirements for radio except for NCE stations with fewer than five employees) and Torres Law Group Reply Comments at 12 (arguing against any permanent exemption from online political file obligations for small radio stations).

²¹⁶ See Joint Comments of Local and Regional Small Radio Broadcasters at 4, 7 (arguing that the Commission should permanently exempt radio stations with fewer than 5 full-time employees from the online file and at least indefinitely exempt small and NCE radio stations until after commercial stations in larger markets have transitioned to online filing); Comments of Native Public Media and National Federal of Community Broadcasters at 4 (arguing that the Commission should indefinitely exempt both NCE stations and stations with fewer than five full-time employees from online filing at least until after other stations have completed their transition to the online public file); and Max Media Comments at 2 (Commission should wait to see what happens when large market radio stations convert to the online file and then issue a further notice to gather information about that experience).

homogeneous than TV operators, with far greater variation in staffing, the number of stations jointly operated, and the size of the audience and community served.²¹⁷

82. With respect to NCE radio stations, many commenters advocate that all such stations be permanently exempt from online filing.²¹⁸ Many NCE radio commenters argue that these stations are prohibited from accepting paid political and issue advertising, making access to their political file records less necessary than for commercial stations.²¹⁹ Others contend that NCE stations often have more limited financial resources and smaller staffs than commercial stations and rely on donations for the majority of their funding, making the burden of transitioning to the online file particularly challenging.²²⁰ NPR argues that mandating online public filing is not necessary for public radio licensees to be responsive to their community of license because they rely on support from listeners and local foundations and businesses and therefore have a direct stake in airing programming that their communities will value and support.²²¹ If NCE stations are not exempt from online filing, the Educational Media Foundation argues they should be in the last group of stations required to transition to the online file so that any issues with the online filing process can be resolved before NCEs are required to utilize scarce resources in uploading online files.²²²

83. As we proposed in the NPRM, we will commence online public file requirements for radio with commercial stations in markets 1 through 50, as defined by Nielsen Audio (formerly Arbitron), that have five or more full-time employees.²²³ We will delay all mandatory online filing for other radio

²¹⁷ See Named State Broadcasters Associations Comments at 4. See also First Dallas Media Comments at 2 (arguing that NCE radio staffs and budgets are appreciably smaller than those of NCE TV stations, increasing the burden of compliance with an online public file requirement).

²¹⁸ See Comments of NPR at 6, Local and Regional Small Radio Broadcasters at 4, Bethel Baptist Church at 1, University of Northwestern-St. Paul at 2, First Dallas Media at 1, Rio Grande Bible Institute at 2, Star Educational Media Network at 1, Colorado State University – Pueblo at 1, Centenary College at 1, Seton Hall University at 1, Christian Broadcasting Services at 1, Hilo Christian Broadcasting at 1, Araiza Revival Ministries at 1. See also Reply Comments of National Religious Broadcasters at 6 and NAB at 2-3.

²¹⁹ See Comments of NPR at 4, Radio Training Network at 2, Joint NCE Commenters at 2-3, Educational Media Foundation at 1, Bethel Baptist Church at 4, University of Northwestern-St. Paul at 3, Rio Grande Bible Institute at 3, Star Educational Media Network at 3, Christian Ministries at 1, Colorado State University – Pueblo at 3, Araiza Revival Ministries at 4. But see Reply Comments of Torres Law Group at 13 (arguing that NCE stations should not be exempt from the online political file as they will have few political file documents to upload thereby making the burden of compliance minimal).

²²⁰ See, e.g., NPR Comments at 2-3 (noting that financial contributions from listeners represents more than 1/3 of a typical public radio station's budget, the single largest source of station revenue, and that support from listeners, local businesses and foundations collectively exceeds 60% of a public radio station's budget on average); Joint NCE Commenters at 3 (arguing private, non-profit licensees are especially reliant upon the generosity of listeners as they do not receive public funding from NPR, CPB, or other governmental or quasi-governmental entity), and University of Northwestern-St. Paul Comments at 3 (noting that UNWSP is not eligible for grants from CPB and is therefore even more reliant on donations to fund station operations). Several college/university NCE stations noted that student-run NCE stations often operate on modest funding that comes solely from a portion of a student activity fund or a university/college appropriation. See Colorado State University – Pueblo at 2, Centenary College at 2, Seton Hall University at 2.

²²¹ See NPR Comments at 2-3.

²²² See Educational Media Foundation Comments at 4.

²²³ *Id.* at 15969-70, ¶ 69. The market ranking are available at: <http://www.nielsen.com/content/dam/corporate/us/en/docs/nielsen-audio/populations-rankings-fall-2015.pdf> We will define a full-time employee for purposes of radio online public file requirements in the same way that term is defined in our EEO rules and policies; that is as “a permanent employee whose regular work schedule is 30 hours per week or more.” 47 C.F.R. § 73.2080(e)(1). Pursuant to this definition, volunteers, interns, temporary employees, certain owners, and part-time employees regularly working fewer than 30 hours per week are not

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stations for approximately two years, until March 1, 2018.²²⁴ Commencing on this date, all NCE radio stations, all commercial stations in markets below the top 50 as well as those outside all markets,²²⁵ and all commercial top 50 market stations with fewer than five full-time employees must begin placing all new public and political file material in the online file. In addition, as of this date, these stations must have placed all their existing public file material in the online file, with the exception of their existing political file material. Stations transitioning to the online file in the second wave will have approximately two years in which to upload their existing public file material to the online file. Accordingly, we do not believe these stations need an additional six months beyond the March 1, 2018 transition date in which to upload existing public file material.²²⁶

84. We decline to permanently exempt any category of radio stations from online filing. All broadcasters have public and political inspection file requirements, and we believe that all these files should ultimately be moved to the Commission's online database to improve accessibility and, over time, reduce the covered entities' administrative costs of maintaining these files. We note that, unlike small cable systems which are exempt from the political file as well as other public file requirements, small radio stations are not exempt from the political file requirement. We also decline to categorically exempt part of the public inspection file from online filing, as proposed by some commenters, with the exception of the existing political file and the correspondence file. NAB argues that, if we decide not to permanently exempt NCE stations and commercial stations with fewer than 5 full-time employees from mandatory online filing, we should require only the prospective uploading of all public file materials, and not just political file materials.²²⁷ Other commenters propose that radio stations be required only to post their political files online, and not the rest of the public file, thereby providing improved access to political file information while conserving station resources.²²⁸ We decline to adopt these alternative approaches to the online file for radio stations. With respect to existing public file documents other than political file documents, many of these documents do not change over time, so exempting these materials from the online public file would deprive online users from access to certain materials permanently. Our experience to date with television stations suggests that most entities will not encounter undue difficulties in completing the transition to online filing. While we recognize that some radio broadcasters face significant economic and other resource constraints, we believe that most radio stations will be capable of completing the transition to the online file and are more likely to reap benefits over time in terms of reduced administrative costs if they post their entire public and political files online. Stations that face

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considered full-time employees. *See Review of the Commissions Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018 (2002).

²²⁴ NAB supports tolling mandatory online file requirements for at least two years for smaller stations. *See* NAB Comments at 7, 10.

²²⁵ *See* Comments of Missouri and California Broadcasters Associations at 2 (noting that, in Missouri, two-thirds of radio stations are outside all markets). Nielsen Audio currently has 272 rated markets in the U.S. Radio stations not licensed to or located within these markets are "outside all markets." *See* <http://www.nielsen.com/content/dam/corporate/us/en/docs/nielsen-audio/populations-rankings-fall-2015.pdf>.

²²⁶ As discussed above, *see, supra*, ¶ 44 and note 118, the Commission will give careful consideration to requests for additional time to commence online filing from commercial radio stations with between 5 and 10 full-time employees, as these stations may have fewer resources than larger stations and, therefore, may find the transition to online filing particularly challenging. For the same reason, the Commission will be favorably inclined to grant requests for additional time to commence online filing from very small radio stations with fewer than five full-time employees.

²²⁷ *See* NAB Comments at 10. *See also* First Dallas Media at 5.

²²⁸ *See* Comments of LeSEA at 4, Blount Masscom at 2-3. *See also* Reply Comments of the Torres Law Group at 6 (proposing that all operators and licensees upload their political files first).

unique economic or other impediments that make transitioning to the Commission's online file especially difficult may request a waiver.

85. We believe that commencing online file requirements with commercial stations in the top 50 markets with 5 or more full-time employees will ensure that the first group of radio stations to transition to the online file will have sufficient financial and staff resources to address any implementation issues that may arise. Commenters who addressed this issue generally agreed that it is reasonable to phase in online filing for radio stations starting with larger, commercial stations in the top 50 markets.²²⁹ We believe that it is appropriate to delay online filing for other radio stations as they are likely to have fewer financial and other resources and may need additional time to prepare for their transition to the online file. As we discussed in the *NPRM*, radio stations with fewer than 5 full-time employees are exempt from many EEO requirements, including the requirement to file FCC Form 396 (Broadcast Equal Employment Opportunity Program Report).²³⁰ We believe that defining the class of small radio stations based on this EEO exemption makes sense as it is a standard with which stations are already familiar and it provides a clear, bright line test for determining which stations are temporarily exempt from online filing. In addition, information regarding the stations that are exempt from certain EEO requirements is readily available to the Commission and the public, as this information is filed with the FCC and is available on the FCC's website.²³¹ Commercial stations in the top 50 radio markets that are required to file FCC Form 396 and comply with other EEO requirements pursuant to our EEO rules and policies²³² are the stations that must transition to the online file in the first wave of radio stations.

86. The 5 full-time employee threshold in our EEO rules applies to station employment units. A station employment unit is defined as "a station or a group of commonly owned stations in the same market that share at least one employee."²³³ We will apply the 5 full-time employee threshold for purposes of the temporary exemption from radio online file requirements to station employment units. Thus, where a radio station is commonly owned with one or more other radio or television stations in the same market that share at least one employee, and the station employment unit has five or more full-time employees, each radio station in the group will be considered to exceed the threshold for the temporary exemption from the online public file. While some commenters urge us to apply the 5 full-time employee standard on a per station rather than a per employment unit basis,²³⁴ we believe it is appropriate to apply the standard to employment units, as employment units with 5 or more full-time employees may already share the task of maintaining the public inspection file for all stations in the unit and will be able to share the task of uploading documents to the online file for these stations.²³⁵

²²⁹ See, e.g., NAB Comments at 6. *But see* Reply Comments of Torres Law Group at 12 (arguing that we should phase-in online file requirements for radio by requiring stations in the top 100 markets to upload their political files first).

²³⁰ See 47 C.F.R. § 73.2080(d).

²³¹ *Id.* All radio stations, including those with fewer than five full-time employees, must file a Broadcast Equal Employment Opportunity Program Report (FCC Form 396) with their renewal application. See 47 C.F.R. § 73.2080(f)(1). Stations identify on this form whether the station has five or more full-time employees. These forms are available on the FCC's website at www.fcc.gov.

²³² *Id.* See also *Review of the Commissions Broadcast and Cable Equal Employment Opportunity Rules and Policies, Second Report and Order and Third Notice of Proposed Rulemaking*, 17 FCC Rcd 24018 (2002), *recon pending*.

²³³ 47 C.F.R. § 73.2080(e)(2).

²³⁴ See, e.g., Comments of LeSEA at 2-3, University of Northwestern-St. Paul at 4-5, First Dallas Media at 4. See also NAB Reply Comments at 3.

²³⁵ See CLC *et al.* Reply Comments at 5 (supporting applying the five or more employee standard to station employment units).

87. We reject the suggestion that we instead use a ten or fifteen-employee threshold for purposes of the temporary exemption from online public file requirements.²³⁶ The commenters that advocate a standard based on a larger number of employees argue generally that this approach better reflects the economic reality of radio versus television broadcasting and will better protect against adverse impacts to smaller radio stations.²³⁷ We believe, however, that a top-50 market commercial station with a staff of five or more full-time employees will have sufficient resources to be able to manage the transition to the online public file in the first wave of radio stations. Stations that face undue economic or other impediments to the transition may request a waiver. We also reject CLC *et al.*'s suggestion that, instead of delaying online file requirements for all commercial radio stations with fewer than five full-time employees, we instead only exempt such stations that earn only a nominal amount of revenue from political advertising per year.²³⁸ A revenue-based standard would be more complicated and difficult to enforce as well as less transparent than the simpler five full-time employee standard. We also believe that the number of station employees is likely reflective of the station's revenues and profitability, making an employee based standard a good proxy for the station's financial capacity to transition to the online file. Moreover, we expect that stations with fewer resources also have less voluminous political files.

88. We will permit radio stations that are not required to transition to the online file until March 1, 2018 voluntarily to transition to the online file before that date. As discussed above,²³⁹ entities that choose to transition to the online file early must upload all new public and political file documents to the online file on a going-forward basis. All commenters who addressed this issue agree that radio stations that are exempt from online filing should be permitted to use the online file voluntarily.²⁴⁰ We agree with NPR that many NCE radio station licensees may choose to move to the online file voluntarily in lieu of continuing to maintain a physical public inspection file "because they see it as increasing transparency" and because they believe online filing will be "a less costly and administratively easier task compared to maintaining paper-based public files."²⁴¹

89. Contour map and main studio information. The Commission will create contour maps for the online file for both AM and FM stations based on existing data. Radio stations are currently required to include in their public inspection files "any service contour maps submitted with any application" together with "any other information in the application showing service contours and/or main studio and transmitter location."²⁴² While we sought comment in the *NPRM* on whether we should require AM

²³⁶ See Comments of Named State Broadcasters Associations Comments at 9-10 (arguing that a ten-employee standard would be more appropriate as a staff of this size has sufficient resources to maintain the online file, even for multiple stations in a market each of which has its own online file) and KERM at 3 (advocating that the Commission exempt stations with fewer than 15 employees from the online public file). See also Reply Comments of NC, Ohio, and VA Association of Broadcasters at 1-2 (supporting the Named State Broadcasters Associations 10-employee standard).

²³⁷ See Reply Comments of NC, Ohio, and VA Association of Broadcasters at 3.

²³⁸ See CLC *et al.* Comments at 4-5 and Reply Comments at 5.

²³⁹ See, *supra*, ¶ 28.

²⁴⁰ See Comments of NAB at 5, NPR at 6, Local and Regional Small Radio Broadcasters at 6, Named State Broadcasters Associations at 10-13, and Max Media at 4.

²⁴¹ NPR Comments at 5. We decline, however, a request to provide broadcasters with specific incentives to move their public files online. See, e.g., Palm Harbor Radio Comments at 1-2 (arguing that NCE radio stations that move their files online should be relieved from routine on-site inspections).

²⁴² See 47 C.F.R. §§ 73.3526(e)(4), 73.3527(e)(3). These rules require radio stations to retain in the public inspection file "[a] copy of any service contour maps, submitted with any application tendered for filing with the FCC, together with any other information in the application showing service contours and/or main studio and transmitter location (State, county, city, street address, or other identifying information). These documents shall be retained for as long as they reflect current, accurate information regarding the station." *Id.*

stations to upload contour maps to the online file given the complexities of AM contour mapping,²⁴³ we conclude that it is not necessary to require AM stations to upload contour maps. Instead, the Media Bureau will create contour maps for purposes of the online file for both AM and FM stations.

90. As we proposed in the *NPRM*,²⁴⁴ we will require stations to provide information to the online file regarding the location of the station's main studio. The Commission's rules do not currently require the reporting of this information, and it is not included on contour maps. We believe that information regarding the location of the main studio will help members of the public to engage in an active dialogue with radio licensees regarding their service, which is one of the goals of this proceeding. This information is also necessary to inform the public of the location of the correspondence file²⁴⁵ and existing political file (until its retention period expires in two years), both of which will be publicly available at the station. In addition, back-up political files will be available at the main studio (unless placed on a station website) if the online file database becomes unavailable. Therefore, consistent with the approach we took with respect to television stations,²⁴⁶ we will require broadcast radio stations to include in the online public file the station's main studio address and telephone number, and the email address of the station's designated contact for questions about the public file. In addition, stations with a main studio located outside of their community of license must list the location of the correspondence file and existing political file, as well as the required local or toll free number.²⁴⁷

91. Donor Lists. NCE stations are required to retain in the public inspection file lists of donors supporting specific programs.²⁴⁸ As we proposed in the *NPRM*²⁴⁹ and as we required for television broadcasters in the *Second Report and Order*,²⁵⁰ we will require noncommercial radio broadcasters to include donor lists in their online public files. A number of NCE radio commenters argued that donor lists should not be included in the online file in order to protect the privacy of supporters of noncommercial radio broadcasting.²⁵¹ National Religious Broadcasters and other commenters argue generally that donors will be less likely to contribute if their names are made public online rather than only in the local public file.²⁵² National Religious Broadcasters also argues that donors to these stations could become targets of unwanted attention or even crime if donor information is available online.²⁵³

²⁴³ See *NPRM*, 29 FCC Rcd at 15970, ¶ 72.

²⁴⁴ See *NPRM*, 29 FCC Rcd at 15970-71, ¶ 73.

²⁴⁵ See, *infra*, ¶ 94.

²⁴⁶ See *Second Report and Order*, 27 FCC Rcd at 4568-9, ¶ 69.

²⁴⁷ Comments requesting that we revisit prior Commission decisions regarding the main studio rules are beyond the scope of this proceeding. See Comments of Warren Kozireski at 1-2 and Dennis Jackson at 1-2.

²⁴⁸ See 47 C.F.R. § 73.3527(e)(9).

²⁴⁹ See *NPRM*, 29 FCC Rcd at 15971-72, ¶ 75.

²⁵⁰ See *Second Report and Order*, 27 FCC Rcd at 4540, ¶ 11 and at 4546, ¶ 21.

²⁵¹ See, e.g., Comments of Native Public Media and National Federation of Community Broadcasters at 5, Educational Media Foundation at 3-4, Allan Hampton at 1, Radio Training Network at 3, Bethel Baptist Church at 4, University of Northwestern-St. Paul at 5, First Dallas Media at 5, Rio Grande Bible Institute at 4, Star Educational Media Network at 3, Colorado State University-Pueblo at 4, Centenary College at 3, Seton Hall University at 3, Christian Broadcasting Services at 3, Araiza Revival Ministries at 4, Central Park Church of God at 2. See also Reply Comments of National Religious Broadcasters at 3-4.

²⁵² See Reply Comments of National Religious Broadcasters at 3-4. See also Comments of Allan Hampton at 1, Radio Training Network at 3, and University of Northwestern-St. Paul at 5-6.

²⁵³ See Reply Comments of National Religious Broadcasters at 3-4.

92. We are not persuaded that making donor information available online will affect contributions to noncommercial radio programming or create significant problems for donors. NCE television stations have been posting donor lists in their online public files and have not reported any problems. The benefits of placing the public file online, thereby facilitating public access to this information, are substantial, and we decline to exclude donor lists from this requirement on the basis of unsubstantiated claims of commercial harm. We are not requiring broadcasters to make any information publicly available that stations are not already required to make public.²⁵⁴ Moreover, unlike letters from the public, donor lists do not contain personal information other than the name of the donor. They are not required to include information about the amounts contributed, the donor's address or email, or other potentially sensitive information. Thus, we do not believe that requiring that the list of donor names be posted online, rather than maintained at the station, raises fundamental privacy concerns.²⁵⁵ Nonetheless, we recognize the concerns expressed by the National Religious Broadcasters. To the extent a licensee fears that online disclosure of donor information with respect to particular programs could discourage a donor from making contributions to the station or subject donors to unwanted attention or crime, the licensee may seek a waiver of the online posting requirement.²⁵⁶

93. National Religious Broadcasters also argues that mandatory Internet posting of the identity of donors to NCE radio stations raises First Amendment concerns.²⁵⁷ They argue that many NCE stations rely on a talk format and carry programming addressing political or social issues that are unpopular or controversial.²⁵⁸ According to National Religious Broadcasters, the First Amendment has been held to require, in some instances, protection of the privacy of persons who support certain social or political causes, particularly from Internet disclosure.²⁵⁹ We disagree that the First Amendment requires that information regarding donors to specific NCE programs be excluded from the online file. Making such already-public records available via the Internet does not change the existing requirement that donors be disclosed in the public file; it only changes how they are disclosed. The donor list provides the only complete information regarding program sponsorship on noncommercial stations, public disclosure

²⁵⁴ See *Second Report and Order*, 27 FCC Rcd at 4553, ¶ 38.

²⁵⁵ Under the *Privacy Act of 1974*, as amended, 5 U.S.C. 552a, federal agencies are required to have a System of Records Notice (SORN) for an information system that contains information about individuals, e.g., "personally identifiable information" (PII). A SORN is a description of how the information system will collect, maintain, store, and use the PII. The FCC created a SORN in connection with the TV online file, see 77 FR 32111 (May 31, 2012), and will revise that document to cover the entities added to the online file in this Order.

²⁵⁶ As with any of our rules, stations may request a waiver of the requirement to post donor information to the online public file under our general waiver standards. See 47 C.F.R. § 1.3. Waivers of the requirement to post donor lists to the online public file will be provided, on a program by program basis to stations that submit a showing that meets the general waiver standards. Any such waiver granted by the Commission will be limited to two years. A party may seek a renewal of the waiver after the two-year period. Stations who seek a waiver of the requirement to include information regarding the donors to particular programs in the online file are not required to post this donor information to the online file but may instead retain this information in the station's local public file until Commission review of the waiver request (and any further judicial review) is complete. Information regarding donors supporting particular programs must at all times be retained either in the online file or, if a waiver request has been filed or has been granted or is still under review, in the local public file. If donor information is not included in the online public file the station must include a notation in the online file that this information is available in the station's local public file.

²⁵⁷ See Reply Comments of National Religious Broadcasters at 6-9.

²⁵⁸ *Id.*

²⁵⁹ *Id.* at 8-9.

of which is premised on the basic concept that the public is entitled to know by whom they are being persuaded.²⁶⁰

(ii) **Content exempt from the online file**

94. Letters from the public. We will exempt letters and emails from the public from the online file and instead require broadcast radio stations to retain such material at the station in a correspondence file. This is the approach we took with respect to television stations in the *Second Report and Order*²⁶¹ and the approach we proposed to take with respect to radio broadcasters in the *NPRM*.²⁶² In the *Second Report and Order*, the Commission determined that including letters and emails from the public in the online file could risk exposing personally identifiable information and that requiring stations to redact such information prior to uploading these documents would be overly burdensome.²⁶³ The Commission determined that letters and emails from the public should be maintained at the station's main studio either in a paper file or electronically on a computer.²⁶⁴ Further, the Commission clarified that, as required under the current public inspection file rules, this file should include all letters and emails from the public regarding operation of the station unless the letter writer has requested that the letter not be made public or the licensee feels that it should be excluded due to the nature of its content.²⁶⁵ Finally, the Commission determined that it would not require stations to retain social media messages in their correspondence file.²⁶⁶ We will apply these same determinations to radio broadcasters.

95. Named State Broadcasters Associations urges us to consider eliminating the requirement that broadcasters retain letters from the public in the public inspection file, noting that this requirement does not apply to cable operators.²⁶⁷ This commenter argues that if a station could move its entire public file online and eliminate the need to host a local public file and ensure public access to it, the overall burden of maintaining the public inspection file would be reduced.²⁶⁸ Consistent with our decision regarding the television correspondence file,²⁶⁹ we decline to eliminate in this proceeding the requirement that commercial radio stations retain correspondence from the public, as our focus is on moving the public file to an online regime and not on changing its underlying requirements. While we recognize that our decision to require a correspondence file to be retained locally will prevent stations from realizing the

²⁶⁰ See *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, Memorandum Opinion and Order, 90 FCC 2d 895, 901, note 18 (1982), clarified on other grounds, 97 FCC 2d 255 (1984).

²⁶¹ *Id.* at 4565, ¶ 62. Commercial radio stations are required to retain such material in the public inspection file. See 47 C.F.R. § 73.3526(e)(9).

²⁶² See *NPRM*, 29 FCC Rcd at 15971, ¶ 74.

²⁶³ In particular, the Commission stated its concern that requiring correspondence to be placed in the online public file might result in violations of the Children's Online Privacy Protection Act (COPPA), which prohibits posting children's personally identifiable information online. The Commission stated that, because letters and emails from the public can account for a substantial amount of the content of a station's public file, requiring stations to review these documents for compliance with COPPA before uploading them could pose a burden. See *Second Report and Order*, 27 FCC Rcd at 4567, ¶ 63.

²⁶⁴ See *Second Report and Order*, 27 FCC Rcd at 4565, ¶ 62.

²⁶⁵ *Id.* at 4567, ¶ 64.

²⁶⁶ *Id.* at 4568, ¶ 66.

²⁶⁷ See Named State Broadcasters Associations Comments at 11-12.

²⁶⁸ *Id.* at 12.

²⁶⁹ See *Second Report and Order*, 27 FCC Rcd at 4567, ¶ 64. As noted above, however, the Commission will initiate a separate proceeding to consider whether to eliminate the correspondence file requirement for commercial broadcasters. See, *supra*, note 105.

full cost savings of moving their public files online, as a practical matter stations appear to receive few requests to view letters from the public,²⁷⁰ relieving to some extent the impact of the requirement to retain a local correspondence file.

4. Satellite Radio Public Inspection File

a. Current rules

96. Licensees in the satellite radio service are required to maintain a public file with two categories of material. First, SDARS licensees are required to comply with EEO requirements similar to those imposed on broadcasters, including the requirement to file EEO reports and to maintain those reports in their public file together with other EEO program information.²⁷¹ Second, satellite radio licensees are required to maintain a political file. In addition, SiriusXM, the current, sole U.S. SDARS licensee, is required to retain a third category of material in the public file. SiriusXM made a voluntary commitment to make capacity available for noncommercial educational and informational programming, similar to the requirement imposed on DBS providers, in connection with its merger application.²⁷² As part of its approval of the merger, the Commission required that the merged entity reserve channels for educational and informational programming, offer those channels to qualified programmers, and comply with the public file requirements of section 25.701(f)(6) of the Commission's rules, which sets forth public file requirements for the noncommercial set-aside for DBS providers.²⁷³

b. Online public file requirements

97. As we proposed in the NPRM, we will treat satellite radio licensees in the same manner as television, cable, DBS, and broadcast radio entities by requiring them to upload to the online file only material that is not already on file at the Commission. The only documents that DBS providers file with the Commission that must also be retained in their public inspection files are EEO forms 396 and 397. The Commission will upload these documents to the online file. We do not believe that requiring SDARS licensees to upload other public file materials to the online file will be unduly burdensome as the number of public file requirements for this service is fewer than for other services discussed in this item and because the current, sole U.S. SDARS licensee has ample financial resources to comply with this online file requirement. We also believe that, as with DBS, the transition to an online file is particularly important for satellite radio because of that service's nationwide reach and the fact that the current licensee maintains only one public and political file for the entire U.S., making in-person access very difficult.

98. With respect to the political file, we will treat satellite radio similar to DBS, as they are both nationwide services with few licensed service providers. Similar to the requirement we adopt for the DBS political file²⁷⁴ and consistent with our approach for television stations, cable systems, and radio broadcasters, SDARS licensees will not be required to upload their existing political files to the online file but will instead be permitted to maintain existing material in their physical political file, and upload documents to the online political file only on a going-forward basis. SDARS licensees must begin uploading new public and political file material to the online public file 30 days after the Commission announces in the Federal Register that OMB has completed its review of this Order under the Paperwork Reduction Act ("PRA") and approved the collection.²⁷⁵ These licensees will have six months from the

²⁷⁰ *Id.* (noting that "[i]f every part of the [public] file is moved online except Letters from the Public, it's hard to imagine anyone ever visiting a station solely for the thrill of reading its mail." (emphasis in original)).

²⁷¹ *See XM-Sirius Merger Order*, 23 FCC Rcd at 12426, ¶ 174 and note 551.

²⁷² *See XM-Sirius Merger Order*, 23 FCC Rcd at 12413, ¶ 140.

²⁷³ *Id.* at 12415, ¶ 146.

²⁷⁴ *See, supra*, ¶ 71.

²⁷⁵ *See, supra*, ¶ 41.

effective date of the rules (*i.e.*, six months after the Commission publishes a notice in the Federal Register announcing OMB approval under the PRA) to complete the process of uploading existing public file materials to the online file,²⁷⁶ with the exception of existing political files which entities are permitted, but not required, to upload to the Commission's online public file.

99. As discussed above, if the FCC's online public file database is temporarily unavailable, we will require SDARS licensees to make their back-up political files available to the public by, at their own choice, either an online method, via the entity's own website, or by answering questions and accommodating requests for copies of political file materials made by telephone.²⁷⁷ We believe it is appropriate to require SDARS licensees to provide access to political file documents either online or by telephone as these entities provide service nationwide making in-person access to these files difficult for most subscribers. As we are requiring that all current political file materials be posted online on the FCC's database on a going-forward basis, we believe the number of telephone requests for other materials is likely to be limited. In addition, SDARS licensees have the option to provide online access to back-up political file materials in lieu of responding to telephone inquiries regarding these materials. Finally, similar to our decision regarding the organization of DBS political files,²⁷⁸ we will permit SDARS licensees the flexibility to organize their political files in any manner that reasonably allows users to review their contents and reflects how ads were purchased and shown.

5. Open Video System operators

100. We decline at this time to require Open Video System ("OVS") operators to use the Commission's online public inspection file. We noted in the *NPRM* that OVS operators have several public file obligations and sought comment on whether these entities should be required to make this information available in the online public file.²⁷⁹ No commenters addressed this issue. We may revisit the issue of OVS use of the online file at a later time.

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Act Analysis

101. As required by the Regulatory Flexibility Act of 1980 ("RFA"),²⁸⁰ the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), attached hereto as Appendix C, relating to this Report and Order.

B. Paperwork Reduction Act Analysis

102. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13. It will be submitted to the Office of Management and Budget ("OMB") for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought

²⁷⁶ See, *supra*, ¶ 43.

²⁷⁷ Copies requested by telephone may be sent by fax, email, or mail. If a requester prefers access by mail, the SDARS licensee may require the individual requesting documents to pay for photocopying.

²⁷⁸ See, *supra*, ¶ 73.

²⁷⁹ See *NPRM*, 29 FCC Red at 15958, ¶ 36. For example, OVS operators are required to maintain a file with certain EEO materials as well as information regarding qualified video programming providers that have requested carriage. See 47 C.F.R. §§ 76.1510, 76.1702.

²⁸⁰ The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Congressional Review Act

103. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

V. ORDERING CLAUSES

104. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 303(r), 315, and 335 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 315, and 335 this Report and Order **IS ADOPTED**.

105. **IT IS FURTHER ORDERED** that the requirement that cable systems with 1,000 or more subscribers, DBS providers, SDARS licensees, and large market commercial radio stations with five or more full-time employees place their new public inspection file documents on the Commission-hosted online public file **SHALL BE EFFECTIVE** 30 days after the Commission publishes a notice in the Federal Register announcing OMB approval. These entities will be responsible for placing existing public file documents into the Commission-hosted online public file within six months after the Commission published a notice in the Federal Register announcing OMB approval. Entities will not be required to place in the online public file existing political file material. Cable systems with 1,000 or more subscribers but fewer than 5,000 subscribers will not be required to place new political file material in the Commission's online file until March 1, 2018. In addition, until March 1, 2018, all NCE radio broadcast stations, commercial radio broadcast stations in the top 50 markets with fewer than five full-time employees, and all commercial radio broadcast stations in markets below the top 50 or outside all markets are exempt from all requirements to place public file materials in the online public file. As of March 1, 2018 these entities must place all existing public file material in the online public file, with the exception of existing political file material, and must begin placing all new public and political file material in the online file. Commercial broadcast radio licensees must continue to retain letters and emails from the public in the local public file and will not be permitted to upload those materials to the online public file.

106. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Report and Order including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

107. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this Report and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A
List of Commenters

Comments filed in response to the NPRM

American Cable Association (“ACA”)
Araiza Revival Ministries, Inc. (WVGW-FM)
Bethel Baptist Church (WYTJ-FM)
Blount Masscom, Inc., et al.
Broadcast1Source
Campaign Legal Center, Common Cause, and the Sunlight Foundation (“CLC, *et al.*”)
Centenary College (WNTI-FM)
Central Park Church of God
Christian Broadcasting Services, Inc.
Christian Ministries, Inc.
Colorado State University-Pueblo (KTSC-FM)
DIRECTV, LLC
Eagle Bluff Enterprises
Educational Media Foundation
First Dallas Media, Inc.
Gray Television, Inc., Media General, Inc., Meredith Corporation, Raycom Media, Inc. (“TV Broadcasters”)
Hilo Christian Broadcasting, Inc.
Allan Hampton
Dennis Jackson
KERM, Inc.
Warren Kozireski
LeSEA Broadcasting Corporation
Local and Regional Small Radio Broadcasters
Max Media LLC
Mentors Partners, Inc.
Missouri & California Broadcasters Associations
Moody Bible Institute of Chicago, Houston Christian Broadcasters, Inc., Augusta Radio Fellowship Institute, Inc., The Praise Network, Inc., The Sister Sherry Lynn Foundation, Inc., Faith Broadcasting, Inc., Native American Christian Voice, Inc., Alabama Christian Radio, Inc., Ondas De Vida Network Inc., Big River (Alaska) Public Broadcasting Corporation, Inc., Revival Christian Ministries, Inc., Central Illinois Radio Fellowship, Inc., Ross Bible Church, Grace Baptist Temple Church, Life on the Way Communications Inc., The United Houma Nation, Good News Media, Inc., Northwestern Illinois Radio Fellowship, Inc., Camp Peniel, Inc., B. Jordan

Communications Corporation, Alaska Village Missions, Inc., Talkeetna Community Radio, Inc., Yukon Wireless, Inc., Biblical Ministries Worldwide, and the Hammock Educational and Environmental Community Services Association (“Joint NCE Commenters”)

National Association of Broadcasters (“NAB”)

National Cable and Telecommunications Association (“NCTA”)

National Public Radio (“NPR”)

Native Public Media and National Federation of Community Broadcasters

Palm Harbor Radio, Inc.

Radio Training Network, Inc.

Rio Grande Bible Institute, Inc.

Seton Hall University (WSOU-FM)

Sky Country Broadcasting

Star Educational Media Network, Inc.

University of Northwestern-St. Paul

Reply Comments filed in response to the *NPRM*

ACA

Kenneth Benner

CLC, *et al.*

Jensen Hwa

NAB

National Religious Broadcasters

NCTA

North Carolina, Ohio, and Virginia Associations of Broadcasters (“NC, Ohio, and VA Associations”)

Torres Law Group

APPENDIX B

Final Rules

Part 25 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 25 – SATELLITE COMMUNICATIONS

1. The Authority citation for Part 25 continues to read as follows:

AUTHORITY: Interprets or applies sections 4, 301, 302, 303, 307, 309, 319, 332, 705, and 721 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309, 319, 332, 705, and 721, unless otherwise noted.

2. Section 25.601 is amended to read as follows:

§ 25.601 Equal employment opportunities.

Notwithstanding other EEO provisions within these rules, an entity that uses an owned or leased Fixed-Satellite Service or Direct Broadcast Satellite Service or 17/24 GHz Broadcasting-Satellite Service facility (operating under this part) to provide video programming directly to the public on a subscription basis must comply with the equal employment opportunity requirements set forth in part 76, subpart E, of this chapter, if such entity exercises control (as defined in part 76, subpart E, of this chapter) over the video programming it distributes. Notwithstanding other EEO provisions within these rules, a licensee or permittee of a direct broadcast satellite station operating as a broadcaster, and a licensee or permittee in the satellite DARS service, must comply with the equal employment opportunity requirements set forth in part 73.

3. Section 25.701 is amended by revising the section heading and paragraphs (d), (e)(3), and (f)(6) to read as follows:

§ 25.701 Other DBS Public interest obligations.

* * * * *

(d) Political file. Each DBS provider shall maintain a complete and orderly political file.

(1) The political file shall contain, at a minimum:

(i) A record of all requests for DBS origination time, the disposition of those requests, and the charges made, if any, if the request is granted. The “disposition” includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased; and

(ii) A record of the free time provided if free time is provided for use by or on behalf of candidates.

(2) All records required to be retained by this section must be placed in the political file as soon as possible and must be retained for a period of two years. After the effective date of this section, DBS providers shall place all new political file material required to be retained by this section in the online file hosted by the Commission.

(e) * * *

(3) DBS providers airing children's programming must maintain in the online file hosted by the Commission records sufficient to verify compliance with this rule. Such records must be maintained for a period sufficient to cover the limitations period specified in 47 U.S.C. 503(b)(6)(B).

(f) * * *

(6) *Public file.* (i) In addition to the political file requirements in §25.701, each DBS provider shall maintain in the online file hosted by the Commission a complete and orderly record of:

(A) Quarterly measurements of channel capacity and yearly average calculations on which it bases its four percent reservation, as well as its response to any capacity changes;

(B) A record of entities to whom noncommercial capacity is being provided, the amount of capacity being provided to each entity, the conditions under which it is being provided and the rates, if any, being paid by the entity;

(C) A record of entities that have requested capacity, disposition of those requests and reasons for the disposition.

(ii) All records required by subparagraph (i) of this paragraph shall be placed in the online file hosted by the Commission as soon as possible and shall be retained for a period of two years.

(iii) Each DBS provider must also place in the online file hosted by the Commission the records required to be placed in the public inspection file by §25.701(e) (commercial limits in children's programs) and by §25.601 and 47 C.F.R. Part 76, Subpart E (equal employment opportunity requirements) and retain those records for the period required by those rules.

(iv) Each DBS provider must provide a link to the online public inspection file hosted on the Commission's website from the home page of its own website, if the provider has a website, and provide on its website contact information for a representative who can assist any person with disabilities with issues related to the content of the public files. Each DBS provider also must include in the online public file hosted by the Commission the address of the provider's local public file, if the provider retains documents in the local public file that are not available in the Commission's online file, and the name, phone number, and email address of the provider's designated contact for questions about the public file.

* * * * *

4. New section 25.702 is added to read as follows:

§ 25.702 Other SDARS Public interest obligations.

(a) *Political broadcasting requirements.* The following political broadcasting rules shall apply to all SDARS licensees: 47 C.F.R. §§ 73.1940 (Legally qualified candidates for public office), 73.1941 (Equal opportunities), 73.1942 (Candidate rates), and 73.1944 (Reasonable access).

(b) *Political file.* Each SDARS licensee shall maintain a complete and orderly political file.

(1) The political file shall contain, at a minimum:

(i) A record of all requests for SDARS origination time, the disposition of those requests, and the charges made, if any, if the request is granted. The “disposition” includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased; and

(ii) A record of the free time provided if free time is provided for use by or on behalf of candidates.

(2) SDARS licensees shall place all records required by this section in the political file as soon as possible and shall retain the records for a period of two years. After the effective date of this section, SDARS licensees shall place all new political file material required to be retained by this section in the online public file hosted by the Commission.

(c) *Public inspection file.* Each SDARS applicant or licensee must also place in the online public file hosted by the Commission the records required to be placed in the public inspection file by 47 C.F.R. §§ 25.601 and 73.2080 (equal employment opportunities (EEO)) and retain those records for the period required by those rules.

Each SDARS licensee must provide a link to the public inspection file hosted on the Commission’s website from the home page of its own website, if the licensee has a website, and provide on its website contact information for a representative who can assist any person with disabilities with issues related to the content of the public files. Each SDARS licensee also must include in the online public file the address of the licensee’s local public file, if the licensee retains documents in the local public file that are not available in the Commission’s online file, and the name, phone number, and email address of the licensee’s designated contact for questions about the public file.

* * * * *

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 73 – RADIO BROADCAST SERVICES

5. The Authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334, 336, and 339.

6. Section 73.1943 is amended by revising paragraph (d) to read as follows:

§ 73.1943 Political File.

* * * * *

(d) Location of the file. A licensee or applicant must post all of the contents added to its political file after the effective date of this subsection in the political file component of its online public file hosted by the Commission. A station must retain in its political file maintained at the station, at the location specified in Section 73.3526(b) or 73.3527(b), all material required to be included in the political file and added to the file prior to the effective date of this subsection, unless the station elects voluntarily to place these materials in the Commission’s online public file. The online political file must be updated in the same manner as subsection (c).

7. Section 73.3526 is amended by revising paragraph (b) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(b) Location of the file. The public inspection file shall be located as follows:

(1) For radio licensees temporarily exempt from the online public file hosted by the Commission, as discussed in paragraph (b)(2), a hard copy of the public inspection file shall be maintained at the main studio of the station, unless the licensee elects voluntarily to place the file online as discussed in paragraph (b)(2). For all licensees, letters and emails from the public, as required by paragraph (e)(9), shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

(2) (i) A television station licensee or applicant, and any radio station licensee or applicant not temporarily exempt as described in this paragraph, shall place the contents required by paragraph (e) of its public inspection file in the online public file hosted by the Commission, with the exception of letters and emails from the public as required by paragraph (e)(9), which shall be retained at the station in the manner discussed in paragraph (b)(1); and the political file as required by paragraph (e)(6), as discussed in paragraph (b)(3). Any radio station not in the top 50 Nielsen Audio markets, and any radio station with fewer than five full-time employees, shall continue to retain the public inspection file at the station in the manner discussed in paragraph (b)(1) until March 1, 2018. However, any radio station that is not required to place its public inspection file in the online public file hosted by the Commission before March 1, 2018 may choose to do so, instead of retaining the public inspection file at the station in the manner discussed in paragraph (b)(1).

(ii) A station must provide a link to the public inspection file hosted on the Commission's website from the home page of its own website, if the station has a website, and provide contact information on its website for a station representative that can assist any person with disabilities with issues related to the content of the public files. A station also is required to include in the online public file the station's main studio address and telephone number, and the email address of the station's designated contact for questions about the public file. To the extent this section refers to the local public inspection file, it refers to the public file of an individual station, which is either maintained at the station or on the Commission's website, depending upon where the documents are required to be maintained under the Commission's rules.

(3) (i) A licensee or applicant shall place the contents required by paragraph (e)(6) of its political inspection file in the online public file hosted by the Commission. Political inspection file material already in existence 30 days after the effective date of this provision, if not placed in the online public file hosted by the Commission, shall continue to be retained at the station in the manner discussed in paragraph (b)(1) until the end of its retention period.

(ii) Any television station not in the top 50 DMAs, and any station not affiliated with one of the top four broadcast networks, regardless of the size of the market it serves, shall continue to retain the political file at the station in the manner discussed in paragraph (b)(1) until July 1, 2014. For these stations, effective July 1, 2014, any new political file material shall be placed in the online file hosted by the Commission, while the material in the political file as of July 1, 2014, if not placed in the Commission's website, shall continue to be retained at the station in the manner discussed in paragraph (b)(1) until the end of its retention period. However, any station that is not required to place its political file in the online file

hosted by the Commission before July 1, 2014 may choose to do so, instead of retaining the political file at the station in the manner discussed in paragraph (b)(1).

(iii) Any radio station not in the top 50 Nielsen Audio markets, and any radio station with fewer than five full-time employees, shall continue to retain the political file at the station in the manner discussed in paragraph (b)(1) until March 1, 2018. For these stations, effective March 1, 2018, any new political file material shall be placed in the online public file hosted by the Commission, while the material already existing in the political file as of March 1, 2018, if not placed in the online public file hosted by the Commission, shall continue to be retained at the station in the manner discussed in paragraph (b)(1) until the end of its retention period. However, any station that is not required to place its political file on the Commission's website before March 1, 2018, may choose to do so, instead of retaining the political file at the station in the manner discussed in paragraph (b)(1).

(4) The Commission will automatically link the following items to the electronic version of all licensee and applicant public inspection files, to the extent that the Commission has these items electronically: authorizations, applications, contour maps; ownership reports and related materials; portions of the Equal Employment Opportunity file held by the Commission; "The Public and Broadcasting"; Letters of Inquiry and other investigative information requests from the Commission, unless otherwise directed by the inquiry itself; Children's television programming reports; and DTV transition education reports. In the event that the online public file does not reflect such required information, the licensee will be responsible for posting such material.

* * * * *

8. Section 73.3527 is amended by revising paragraph (b) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(b) Location of the file. The public inspection file shall be located as follows:

(1) For radio licensees, a hard copy of the public inspection file shall be maintained at the main studio of the station until March 1, 2018, except that, as discussed in paragraph (b)(2)(ii), any radio station may voluntarily place its public inspection file in the online public file hosted by the Commission before March 1, 2018, if it chooses to do so, instead of retaining the file at the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

(2) (i) A noncommercial educational television station licensee or applicant shall place the contents required by paragraph (e) of its public inspection file in the online public file hosted by the Commission, with the exception of the political file as required by paragraph (e)(5), which may be retained at the station in the manner discussed in paragraph (b)(1) until July 1, 2014. Effective July 1, 2014, any new political file material shall be placed in the online public file hosted by the Commission, while the material in the political file as of July 1, 2014, if not placed in the Commission's online public file, shall continue to be retained at the station in the manner discussed in paragraph (b)(1) until the end of its retention period. However, any noncommercial educational station that is not required to place its political file in the online public file hosted by the Commission before July 1, 2014 may choose to do so instead of retaining the political file at the station in the manner discussed in paragraph (b)(1).

(ii) Beginning March 1, 2018, noncommercial educational radio station licensees and applicants shall place the contents required by paragraph (e) in the online public inspection file hosted by the

Commission. For these stations, effective March 1, 2018, any new political file material shall be placed in the Commission’s online public file, while the material in the political file as of March 1, 2018, if not placed in the Commission’s online public file, shall continue to be retained at the station in the manner discussed in paragraph (b)(1) until the end of its retention period. However, any radio station that is not required to place its public inspection file in the online public file hosted by the Commission before March 1, 2018, may choose to do so, instead of retaining the public inspection file at the station in the manner discussed in paragraph (b)(1).

(iii) A station must provide a link to the online public inspection file hosted by the Commission from the home page of its own website, if the station has a website, and provide contact information for a station representative on its website that can assist any person with disabilities with issues related to the content of the public files. A station also is required to include in the online public file hosted by the Commission the station’s main studio address and telephone number, and the email address of the station’s designated contact for questions about the public file. To the extent this section refers to the local public inspection file, it refers to the public file of an individual station, which is either maintained at the station or on the Commission’s website, depending upon where the documents are required to be maintained under the Commission’s rules.

(3) The Commission will automatically link the following items to the electronic version of all licensee and applicant public inspection files, to the extent that the Commission has these items electronically: authorizations; applications; contour maps; ownership reports and related materials; portions of the Equal Employment Opportunity file held by the Commission; and “The Public and Broadcasting.”

* * * * *

9. Section 73.3580 is amended by revising paragraphs (d)(4)(i) and (ii) to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

* * * * *

(d) * * *

(4) * * *

(i) Pre-filing announcements. During the period and beginning on the first day of the sixth calendar month prior to the expiration of the license, and continuing to the date on which the application is filed, the following announcement shall be broadcast on the 1st and 16th day of each calendar month. Stations broadcasting primarily in a foreign language should broadcast the announcements in that language.

Radio announcement: On (date of last renewal grant) (Station's call letters) was granted a license by the Federal Communication Commission to serve the public interest as a public trustee until (expiration date).

Our license will expire on (date). We must file an application for renewal with the FCC (date four calendar months prior to expiration date). When filed, a copy of this application will be available for public inspection at www.fcc.gov. It contains information concerning this station's performance during the last (period of time covered by the application). Individuals who wish to advise the FCC of facts relating to our renewal application and to whether this station has operated in the public interest should

file comments and petitions with the FCC by (date first day of last full calendar month prior to the month of expiration).

Further information concerning the FCC's broadcast license renewal process is available at (address of location of the station's public inspection file) or may be obtained from the FCC, Washington, DC 20554.

Television announcement: On (date of last renewal grant) (Station's call letters) was granted a license by the Federal Communication Commission to serve the public interest as a public trustee until (expiration date).

Our license will expire on (date). We must file an application for renewal with the FCC (date four calendar months prior to expiration date). When filed, a copy of this application will be available for public inspection at www.fcc.gov. It contains information concerning this station's performance during the last (period of time covered by the application).

Individuals who wish to advise the FCC of facts relating to our renewal application and to whether this station has operated in the public interest should file comments and petitions with the FCC by (date first day of last full calendar month prior to the month of expiration).

Further information concerning the FCC's broadcast license renewal process is available at (address of location of the station) or may be obtained from the FCC, Washington, DC 20554.

* * * * *

(ii) Post-filing announcements. During the period beginning of the date on which the renewal application is filed to the sixteenth day of the next to last full calendar month prior to the expiration of the license, all applications for renewal of broadcast station licenses shall broadcast the following announcement on the 1st and 16th day of each calendar month. Stations broadcasting primarily in a foreign language should broadcast the announcements in that language.

Television announcement: On (date of last renewal grant) (Station's call letters) was granted a license by the Federal Communications Commission to serve the public interest as a public trustee until (expiration date).

Our license will expire on (date). We have filed an application for renewal with the FCC.

A copy of this application is available for public inspection at www.fcc.gov. It contains information concerning this station's performance during the last (period of time covered by application).

Individuals who wish to advise the FCC of facts relating to our renewal application and to whether this station has operated in the public interest should file comments and petitions with the FCC by (date first day of last full calendar month prior to the month of expiration).

Further information concerning the FCC's broadcast license renewal process is available at (address of location of the station) or may be obtained from the FCC, Washington, DC 20554.

Radio announcement: On (date of last renewal grant) (Station's call letters) was granted a license by the Federal Communications Commission to serve the public interest as a public trustee until (expiration date).

Our license will expire on (date). We have filed an application for renewal with the FCC.

A copy of this application is available for public inspection at www.fcc.gov. It contains information concerning this station's performance during the last (period of time covered by application).

Individuals who wish to advise the FCC of facts relating to our renewal application and to whether this station has operated in the public interest should file comments and petitions with the FCC by (date first day of last full calendar month prior to the month of expiration).

Further information concerning the FCC's broadcast license renewal process is available at (address of location of the station's public inspection file) or may be obtained from the FCC, Washington, DC 20554.

* * * * *

Part 76 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

10. The Authority citation for Part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

11. Section 76.630 is amended by revising paragraph (a)(2) to read as follows:

§ 76.630 Compatibility with consumer electronics equipment.

(a) * * *

(2) Requests for waivers of this prohibition must demonstrate either a substantial problem with theft of basic tier service or a strong need to scramble basic signals for other reasons. As part of this showing, cable operators are required to notify subscribers by mail of waiver requests. The notice to subscribers must be mailed no later than 30 calendar days from the date the request for waiver was filed with the Commission, and cable operators must inform the Commission in writing, as soon as possible, of that notification date. The notification to subscribers must state:

On (date of waiver request was filed with the Commission), (cable operator's name) filed with the Federal Communications Commission a request for waiver of the rule prohibiting scrambling of channels on the basic tier of service. 47 CFR 76.630(a). The request for waiver states (a brief summary of the waiver request). A copy of the request for waiver shall be available for public inspection at www.fcc.gov.

Individuals who wish to comment on this request for waiver should mail comments to the Federal Communications Commission by no later than 30 days from (the date the notification was mailed to subscribers). Those comments should be addressed to the: Federal Communications Commission, Media Bureau, Washington, DC 20554, and should include the name of the cable operator to whom the comments are applicable. Individuals should also send a copy of their comments to (the cable operator at its local place of business).

Cable operators may file comments in reply no later than 7 days from the date subscriber comments must be filed.

* * * * *

12. Section 76.1700 is revised to read as follows:

§ 76.1700 Records to be maintained by cable system operators.

(a) *Public inspection file.* The following records must be placed in the online public file hosted by the Commission, except as indicated in § 76.1700(a)(6) and 76.1700(d) and except that the records listed in 76.1700(1) (political file) that are in existence 30 days after the effective date of this provision, if not placed in the online file, shall continue to be retained at the system and made available to the public in the manner discussed in paragraph (e) of this section until the end of the retention period. In addition, any cable system with fewer than 5,000 subscribers shall continue to retain the political file at the system in the manner discussed in paragraph (e) of this section until March 1, 2018. For these systems, effective March 1, 2018, any new political file material shall be placed in the online file hosted by the Commission, while the material in the political file as of March 1, 2018, if not placed on the Commission's website, shall continue to be retained at the system in the manner discussed in paragraph (e) of this section until the end of its retention period. However, any system that is not required to place its political file on the Commission's website before March 1, 2018 may choose to do so, instead of retaining the political file at the system in the manner discussed in paragraph (e) of this section.

(1) Political file. All requests for cablecast time made by or on behalf of a candidate for public office and all other information required to be maintained pursuant to §76.1701;

(2) Equal employment opportunity. All EEO materials described in §76.1702 except for any EEO program annual reports, which the Commission will link to the electronic version of all systems' public inspection files;

(3) Commercial records on children's programs. Sufficient records to verify compliance with §76.225 in accordance with §76.1703;

(4) Performance tests (channels delivered). The operator of each cable television system shall maintain a current listing of the cable television channels which that system delivers to its subscribers in accordance with §76.1705;

(5) Leased access. If a cable operator adopts and enforces written policy regarding indecent leased access programming, such a policy shall be published in accordance with §76.1707;

(6) Principal headend. The operator of every cable system shall maintain in its public inspection file the designation and location of its principal headend in accordance with §76.1708. Cable systems may elect not to post this information to the Commission's online file but instead retain this information in their local public file maintained in the manner discussed in paragraph (e) of this section;

(7) Availability of signals. The operator of every cable television system shall maintain a list of all broadcast television stations carried by its system in fulfillment of the must-carry requirements in accordance with §76.1709;

(8) Operator interests in video programming. Cable operators shall maintain records regarding the nature and extent of their attributable interests in all video programming services as well as information regarding their carriage of such vertically integrated video programming services on cable systems in which they have an attributable interests in accordance with §76.1710;

(9) Sponsorship identification. Whenever sponsorship announcements are omitted pursuant to §76.1615(f) of subpart T, the cable television system operator shall maintain a list in accordance with §76.1715;

(10) Compatibility with consumer electronics equipment. Cable system operators generally may not scramble or otherwise encrypt signals carried on the basic service tier. Copies of requests for waivers of this prohibition must be available in the public inspection file in accordance with §76.630.

(b) *Information available to the franchisor.* These records must be made available by cable system operators to local franchising authorities on reasonable notice and during regular business hours, except as indicated in § 76.1700(d).

(1) Proof-of-performance test data. The proof of performance tests shall be made available upon request in accordance with §76.1704;

(2) Complaint resolution. Cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. Aggregate data based upon these complaints shall be made available for inspection in accordance with §76.1713.

(c) *Information available to the Commission.* These records must be made available by cable system operators to the Commission on reasonable notice and during regular business hours, except as indicated in § 76.1700(d).

(1) Proof-of-performance test data. The proof of performance tests shall be made available upon request in accordance with §76.1704;

(2) Signal leakage logs and repair records. Cable operators shall maintain a log showing the date and location of each leakage source in accordance with §76.1706;

(3) Emergency alert system and activations. Every cable system shall keep a record of each test and activation of the Emergency Alert System (EAS). The test is performed pursuant to the procedures and requirements of part 11 of this chapter and the EAS Operating Handbook. The records are kept in accordance with Part 11 and §76.1711 of this chapter;

(4) Complaint resolution. Cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. Aggregate data based upon these complaints shall be made available for inspection in accordance with §76.1713;

(5) Subscriber records and public inspection file. The operator of a cable television system shall make the system, its public inspection file, and its records of subscribers available for inspection upon request in accordance with §76.1716.

(d) *Exceptions to the public inspection file requirements.* The operator of every cable television system having fewer than 1,000 subscribers is exempt from the online public file and from the public record requirements contained in §76.1701 (political file); §76.1702 (EEO records available for public inspection); §76.1703 (commercial records for children's programming); §76.1704 (proof-of-performance test data); §76.1706 (signal leakage logs and repair records); §76.1714 (FCC rules and regulations); and §76.1715 (sponsorship identification).

(e) *Location of records.* Public file material that continues to be retained at the system shall be retained in a public inspection file maintained at the office in the community served by the system that the system

operator maintains for the ordinary collection of subscriber charges, resolution of subscriber complaints, and other business and, if the system operator does not maintain such an office in the community, at any accessible place in the communities served by the system (such as a public registry for documents or an attorney's office). Public file locations will be open at least during normal business hours and will be conveniently located. The public inspection file shall be available for public inspection at any time during regular business hours for the facility where they are kept. All or part of the public inspection file may be maintained in a computer database, as long as a computer terminal capable of accessing the database is made available, at the location of the file, to members of the public who wish to review the file.

(f) *Links and contact and geographic information.* A system must provide a link to the public inspection file hosted on the Commission's website from the home page of its own website, if the system has a website, and provide contact information on its website for a system representative who can assist any person with disabilities with issues related to the content of the public files. A system also is required to include in the online public file the address of the system's local public file, if the system retains documents in the local file that are not available in the Commission's online file, and the name, phone number, and email address of the system's designated contact for questions about the public file. In addition, a system must provide on the online public file a list of the five digit ZIP codes served by the system. To the extent this section refers to the local public inspection file, it refers to the public file of a physical system, which is either maintained at the location described in paragraph (e) or on the Commission's website, depending upon where the documents are required to be maintained under the Commission's rules.

(g) *Reproduction of records.* Copies of any material in the public inspection file that is not also available in the Commission's online file shall be available for machine reproduction upon request made in person, provided the requesting party shall pay the reasonable cost of reproduction. Requests for machine copies shall be fulfilled at a location specified by the system operator, within a reasonable period of time, which in no event shall be longer than seven days. The system operator is not required to honor requests made by mail but may do so if it chooses.

* * * * *

13. Section 76.1702 is amended by revising paragraph (a) to read as follows:

§ 76.1702 Equal employment opportunity.

(a) Every employment unit with six or more full-time employees shall maintain for public inspection a file containing copies of all EEO program annual reports filed with the Commission pursuant to §76.77 and the equal employment opportunity program information described in paragraph (b) of this section. These materials shall be placed in the Commission's online public inspection file(s), maintained on the Commission's database, for each cable system associated with the employment unit. These materials shall be placed in the Commission's online public inspection file annually by the date that the unit's EEO program annual report is due to be filed and shall be retained for a period of five years. A headquarters employment unit file and a file containing a consolidated set of all documents pertaining to the other employment units of a multichannel video programming distributor that operates multiple units shall be maintained in the online public inspection file(s), maintained on the Commission's database, for every cable system associated with the headquarters employment unit.

* * * * *

14. Section 76.1709 is amended by revising paragraphs (a) and (b) to read as follows:

§76.1709 Availability of signals.

(a) The operator of every cable television system shall maintain for public inspection a file containing a list of all broadcast television stations carried by its system in fulfillment of the must-carry requirements pursuant to §76.56. Such list shall include the call sign, community of license, broadcast channel number, cable channel number, and in the case of a noncommercial educational broadcast station, whether that station was carried by the cable system on March 29, 1990.

(b) Such records must be maintained in accordance with the provisions of §76.1700.

(c) A cable operator shall respond in writing within 30 days to any written request by any person for the identification of the signals carried on its system in fulfillment of the requirements of §76.56.

* * * * *

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (“RFA”),¹ an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the *Notice of Proposed Rulemaking* (“NPRM”) in MB Docket 14-127.² The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA.³ We received no comments specifically directed toward the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Second Report and Order

2. One of a television broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license. To ensure that stations meet this obligation, the Commission relies on viewers and listeners as an important source of information about the nature of a station's programming, operations, and compliance with Commission rules. To provide the public with access to information about station operations, the Commission's rules have long required television and radio broadcast stations to maintain a physical public inspection file, including a political file, at their respective stations or headquarters and to place in the file records that provide information about station operations.⁴ Cable operators, satellite TV (also referred to as “Direct Broadcast Satellite” or “DBS”) providers, broadcast radio licensees, and satellite radio (also referred to as “Satellite Digital Audio Radio Services” or “SDARS”) licensees also have public and political file requirements modeled, in large part, on the longstanding broadcast requirements.⁵

3. In 2012, the Commission adopted online public file rules for broadcast television stations that required them to post public file documents to a central, FCC-hosted online database rather than maintaining the files locally at their main studios.⁶ Our goal was to modernize the procedures television

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² See *NPRM* at Appendix C.

³ *Id.* at ¶ 1.

⁴ See 47 C.F.R. §§ 73.3526, 73.3527, 73.1943. Every permittee or licensee of an “AM, FM, TV or Class A TV station” in the commercial and noncommercial educational broadcast services must maintain a public inspection file. The material required to be retained in the public inspection file is substantially similar for radio and television stations, with some differences. Among other materials, both television and radio licensees must retain FCC authorizations, license applications, ownership reports, issues/programs lists, time brokerage agreements and joint sales agreements. Unlike television licensees, however, radio licensees do not have children's programming obligations or limitations on commercial time in children's programming and are not required to retain records in the file related to compliance with these obligations. In addition, television and radio stations must also retain a political file as part of their public inspection files. See 47 C.F.R. §§ 73.3526(e)(6), 73.3527(e)(5). The political file chiefly consists of “a complete and orderly record...of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted. The ‘disposition’ includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.” 47 C.F.R. § 37.1943(a).

⁵ Section 315 of the Communications Act, as amended by the Bipartisan Campaign Reform Act of 2002, applies political advertising rate disclosure and public file requirements to broadcast stations, cable systems, and DBS operators. See 47 U.S.C. § 315.

⁶ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012) (“*Second Report and Order*”).

broadcasters use to inform the public about how they are serving their communities, to make information concerning broadcast service more accessible to the public and, over time, to reduce the cost of broadcasters' compliance.⁷ This *Report and Order* extends our modernization effort to include the public file documents that cable operators, satellite TV (also referred to as "Direct Broadcast Satellite" or "DBS") providers, broadcast radio licensees, and satellite radio (also referred to as "Satellite Digital Audio Radio Services" or "SDARS") licensees are required to maintain. By including these services in our transition to an online public inspection file regime, our goal is to continue our effort to harness the efficiencies made possible by digital technology to make public file information more readily available while at the same time minimizing the burden of maintaining the file.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. No comments were filed in response to the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁸ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁰ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹¹ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

6. *Cable Companies and Systems.* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.¹² Industry data shows that there were are currently 660 cable operators.¹³ Of this total, all but ten cable operators nationwide are small under

⁷ *Id.* at 4536, ¶ 1.

⁸ 5 U.S.C. § 603(b)(3).

⁹ 5 U.S.C. § 601(6).

¹⁰ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

¹¹ 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

¹² 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection And Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, MM Docket No. 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, ¶ 28 (1995).

¹³ NCTA, Industry Data, Number of Cable Operators and Systems, <http://www.ncta.com/Statistics.aspx> (visited October 13, 2014). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. *See Annual Assessment of the Status of*

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this size standard.¹⁴ In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹⁵ Current Commission records show 4,629 cable systems nationwide.¹⁶ Of this total, 4,057 cable systems have less than 20,000 subscribers, and 572 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

7. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."¹⁷ There are approximately 54 million cable video subscribers in the United States today.¹⁸ Accordingly, an operator serving fewer than 540,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.¹⁹ Based on available data, we find that all but ten incumbent cable operators are small entities under this size standard.²⁰ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.²¹ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

8. *Direct Broadcast Satellite (DBS) Service*. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, Wired Telecommunications Carriers,²² which was developed for small wireline

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Competition in the Market for Delivery of Video Programming, MB Docket No. 12-203, Fifteenth Report, 28 FCC Rcd 10496, 10505-6, ¶ 24 (2013) ("15th Annual Competition Report").

¹⁴ See SNL Kagan, "Top Cable MSOs – 12/12 Q"; available at <http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc>.

¹⁵ 47 C.F.R. § 76.901(c).

¹⁶ The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on October 10, 2014. A cable system is a physical system integrated to a principal headend.

¹⁷ 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

¹⁸ See NCTA, Industry Data, Cable's Customer Base, <http://www.ncta.com/industry-data> (visited October 13, 2014).

¹⁹ 47 C.F.R. § 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

²⁰ See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

²¹ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 C.F.R. § 76.901(f).

²² See 13 C.F.R. § 121.201, 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. *By*

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businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.²³ Census data for 2007 shows that there were 3,188 firms that operated for that entire year.²⁴ Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.²⁵ Therefore, under this size standard, the majority of such businesses can be considered small entities. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled “Cable and Other Program Distribution.” As of 2002, the SBA defined a small Cable and Other Program Distribution provider as one with \$12.5 million or less in annual receipts.²⁶ Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network.²⁷ Each currently offers subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined under the superseded SBA size standard would have the financial wherewithal to become a DBS service provider.

9. *Radio Broadcasting.* The SBA defines a radio broadcast station as a small business if such station has no more than \$38.5 million in annual receipts.²⁸ Business concerns included in this industry are those “primarily engaged in broadcasting aural programs by radio to the public.”²⁹ According to review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of November 26, 2013, about 11,331 (or about 99.9 percent) of the then number of commercial radio stations (11,341) have revenues of \$35.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial radio stations to be 4,090.³⁰ The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. These stations rely primarily on grants and contributions for their operations, so we will assume that all of these entities qualify as small businesses. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.³¹ This estimate, therefore, likely

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exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” (Emphasis added to text relevant to satellite services.) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²³ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

²⁴ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ5; available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

²⁵ *Id.*

²⁶ See 13 C.F.R. § 121.201, NAICS code 517510 (2002).

²⁷ See 15th Annual Competition Report, 28 FCC Rcd at 10507, ¶ 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id.* at 10507, 10546, ¶¶ 27, 110-11.

²⁸ 13 C.F.R. § 121.201, 2012 NAICS code 515112.

²⁹ U.S. Census Bureau, 2012 NAICS Definitions: 515112 Radio Broadcasting, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515112&search=2012> (last visited October 13, 2014).

³⁰ See *Broadcast Station Totals as of September 30, 2015*, FCC News Release, October 9, 2015.

³¹ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both.” 13 C.F.R. § 121.103(a)(1).

overstates the number of small entities that might be affected, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

10. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also, as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

11. *Satellite Radio.* The rules proposed in this *NPRM* would affect the sole, current U.S. provider of satellite radio (“SDARS”) services, XM-Sirius, which offers subscription services. XM-Sirius reported revenue of \$3.8 billion in 2013 and a net income of \$377 million.³² In light of these figures, we believe it is unlikely that this entity would be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

12. The rule changes adopted in the *Report and Order* affect reporting, recordkeeping, or other compliance requirements. Cable, DBS, broadcast radio, and SDARS entities are currently required to maintain a “local” copy of their public inspection files. The *Report and Order* requires these entities to submit documents, including political file materials, for inclusion in an online public file hosted on the Commission’s website. Items in the public file that are required to be filed with the Commission will be automatically imported into the entity’s online public file. Entities will only be responsible for uploading to the online file items that are not required to be filed with the Commission under any other rule. The *Report and Order* also excludes some items from the online public file requirement, such as the existing political file, which must continue to be maintained locally until the end of the retention period unless voluntarily uploaded to the online file. Office staff will be able to upload documents to the online file in most cases; no professional skills will generally be necessary to perform that task.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

13. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³³

14. The *Report and Order* includes a number of measures designed to minimize the effort and cost entities must undertake to move their public files online. Specifically, we require entities to upload to the online file only public file documents that are not already on file with the Commission or that the Commission maintains in its own database. We also exempt existing political file material from the online file requirement and require only that political file documents be uploaded on a going-forward basis. In addition, with only minor exceptions – requiring cable operators to provide information about

³² See <http://investor.siriusxm.com/releasedetail.cfm?ReleaseID=823023>.

³³ 5 U.S.C. § 603(c)(1)-(c)(4).

the geographic areas they serve and the employment units associated with each cable system, clarifying the documents required to be included in the cable public file, and requiring cable, DBS, broadcast radio, and SDARS entities to provide certain location and contact information for their local file – we do not adopt new or modified public inspection file requirements in this proceeding. Our goal is to adapt our existing public file requirements to an online format. While we recognize that entities may incur a modest, one-time transitional cost to upload some portions of their existing public file to the online database, we believe this initial expense will be offset by the public benefits of online disclosure. We also believe that, over time, entities will benefit from the lower costs of sending documents electronically to the Commission as opposed to creating and maintaining a paper file at the local or headquarters' office or main studio and assisting the public in accessing it.

15. In addition, with respect to radio licensees the *Report and Order* commences the transition to an online file with commercial stations in larger markets with five or more full-time employees, while postponing for two years all online file requirements for other radio stations. This delay will give these stations additional time to familiarize themselves with the online filing requirements and will permit them to spread out their transition to the online file over a period of two years. The *Report and Order* also exempts small cable systems temporarily from the requirement to commence uploading new political file material to the online public file and exempts very small cable systems from all requirements to upload documents to the Commission's online database.

16. Overall, we believe that the *Report and Order* appropriately balances the interests of the public against the interests of the entities who will be subject to the rules, including those that are smaller entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

17. None.

**STATEMENT OF
CHAIRMAN THOMAS E. WHEELER**

Re: Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees, MB Docket No. 14-127.

One of the most consistent themes of the Commission's recent agenda has been updating rules to reflect advances in technology in order to unleash new benefits for the American people. The FCC's "public file" rules offer a clear example of this principle in practice. Today, the Commission takes another step to modernize this pro-transparency policy for the digital age.

For decades, the Commission has required broadcasters, cable operators, DBS providers, and satellite radio licensees to maintain public inspection files, which disclose community-relevant information such as political advertising sold and data on ownership and equal employment opportunities. But there's a catch. For too long, the public could barely access the "public" file. It was maintained only on paper in file cabinets at the actual radio and TV stations. In the Internet era, that doesn't make any sense.

In 2012, the FCC took the first step to fix this problem. It adopted rules moving television station's paper public files online. Rather than being squirreled away in a file cabinet, the information is available online in a central, Commission-hosted database. TV broadcasters of all sizes completed their transition to the online file in July 2014. In December 2014, the Commission proposed to extend this policy by expanding the online public file database to include cable, DBS, broadcast radio, and satellite radio companies.

The Order adopted today finalizes that transition by requiring the remaining media services to join the TV station colleagues and post their public file documents to the FCC's online database.

To be clear, this Order includes no new disclosure requirements. It does nothing more than move the documents these companies are required to keep in paper, online. All information that the public already had access to will now just be available to the public via a different medium.

Our action is also cognizant that these companies have varied levels of resources, so we take common-sense steps to lessen the burden on the smallest of these companies by giving them more time to upload their materials.

This move to an online public file will not only make accessing the file much more convenient for members of the public, it will actually lower long-term costs for industry. The public will be able search the file without requiring assistance from station or headquarters staff, reducing the burden of maintaining the public file.

The evolution of the Internet and the expansion of broadband infrastructure have transformed the way society accesses information today. Today's action keeps pace with these changes and takes advantage of this progress.

Thank you to the Media Bureau for their work on this item.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees, MB Docket No. 14-127.

When I voted four years ago to make public files that were then stored in broadcast television station headquarters available over a Commission-hosted online public file platform, I said that “‘disclosure’ and ‘transparency’ inspire confidence, increase the public’s trust, and convey good faith. The American people not only want those things,” my statement read, “they *demand* them, and that is the basis for my approval of this item.”

Those expressions for me are just as true today as when I said them then, which is why I support the expansion of online public file obligations to include radio broadcasters, cable companies and satellite radio and television properties.

Our experience with the television online file transition has been, in a word, positive. At my request, the television online file migration was evaluated one year after the largest stations transitioned, and what we found, was that there was no reason to delay the transition for smaller stations. Broadcasters saw the online database as easy to use and reliable, but most importantly, the public has found it incredibly valuable, judging by the almost 12 million visits to the hosted site since then.

With this as a backdrop, the time has come for the remaining media entities to transition their public files online. Radio, cable, and satellite providers will be phasing into the online system in the same manner as we did for television stations. Once again, we will start with the larger stations and systems, giving smaller entities additional time, and if past is prologue, all providers should be at ease. The FCC listened to television broadcasters while it developed a system that is not only user friendly, it kept the burden of this online shift low. Our IT professionals should be commended for their diligent work in this regard.

Today, we are once again simply modernizing the procedures of the existing public file requirements by moving from reams of papers and files stored in offices to the Internet, which has quickly shown to minimize the burdens on users while ensuring public access to valuable information.

But not all of our stations and systems live in an online connected world, so for those properties that remain on the other side of the digital divide, provisions are in place for you to seek a waiver of this rule, giving additional time to join those of us who take being online for granted.

Today’s item balances the needs of the public with the burdens imposed on the regulated, but it is not accidental that the main beneficiary of this online database is the American public. We rely on them as our primary source when it comes to a station’s programming, operations and compliance with the Commission’s rules and they will always be an integral part of our democratic fabric. So if the FCC can be instrumental in giving the public enhanced tools to do so, then we must make it so.

I want to thank the Media Bureau for their work on this item, especially Kim Matthews and Mary Beth Murphy.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees, MB Docket No. 14-127.

We live in the information age. As a result, we demand—and expect—all sorts of data and intelligence to be available at our fingertips virtually anytime, anywhere. So it strikes me as pretty retrograde that this Commission still has on its books a requirement that radio, cable, and satellite providers can keep their public files on paper, in dusty file cabinets locked in the information practices of the past. This kind of requirement may have made sense in the *Mad Men* era, but it makes no sense in the digital age.

Today we update our public file practices so that across the board those who are required to maintain these records can file them in a Commission-hosted, cloud-based online system. This is the right thing to do. This is the modern thing to do. It has my full support.

**STATEMENT OF
COMMISSIONER AJIT PAI
APPROVING IN PART AND CONCURRING IN PART**

Re: Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees, MB Docket No. 14-127.

Parsons, Kansas is a world away from San Francisco. And yet, thanks to TuneIn, I was able to listen to my hometown radio station, KLKC 1540 AM, while driving around the Bay Area earlier this month. I happened to visit TuneIn during my trip, and I learned how its app allows you to stream over 100,000 radio stations from across the country and around the world. I've also used KLKC's own app to listen to the station's livestream.

This is just one example of a broader trend in media: the amount of content available online is exploding. Last year, the Commission took account of this change when we modified our contest rules to permit broadcasters to disclose the material terms of contests on a publicly accessible website. And today, we further recognize the digital revolution by requiring cable operators, DBS providers, and broadcast and satellite radio companies to post their public files online.

In the digital age, it doesn't make sense for hardcopies of these documents to gather dust in forlorn file cabinets. When I've visited radio stations, I've inspected some public files. And when I do, I'm usually told that I'm one of the few people who has ever done so.

By posting the public file online, we will make it much easier for the American people to access that information. No longer will you have to make a special trip to see a public file. You will now be able to access the file where you want, when you want, and on the Internet-connected device you want. Indeed, with today's decision, one could say that we are helping to put the "public" back in the public file.

Of course, posting documents online isn't costless. So throughout this proceeding, I have been particularly concerned about the impact of new requirements on small cable operators and radio stations. Although the FCC doesn't go as far as I would have preferred in this regard, it does cut them some slack. In particular, we exempt cable systems with fewer than 1,000 subscribers from all online public file requirements. And we make clear that the Commission will give serious consideration to waiver requests filed by very small radio stations (that is, those with less than five employees).

We also made progress in two areas where I otherwise had qualms about posting information online. First, I believe that including the specific location of cable headends in the online file would raise unnecessary security concerns without providing any benefit to the public. I am therefore pleased that my colleagues agreed with my request to remove such information from the online public file.

Second, I have serious reservations about requiring noncommercial educational (NCE) stations to include lists of donors supporting specific programs in their online public file. Numerous NCE stations told the Commission that posting those names online would discourage people from making donations. As the National Religious Broadcasters put it, "donors may choose to refrain from contributing either because they do not wish to have their privacy violated, or because they fear retaliation for supporting noncommercial radio stations that take unpopular or controversial positions (or who broadcast talk shows that do), or possibly both."

The point about retaliation is one that I take very seriously. Recently, it has become disturbingly common for people with unpopular or controversial positions to be harassed, shouted down, or intimidated. Some have even lost their jobs or seen their businesses boycotted. I do not believe that the FCC should do anything that could enable this kind of bullying. It principally serves to chill public debate and impoverish the marketplace of ideas, and it is unbecoming of a nation that cherishes its First Amendment freedoms.

Now, I have no doubt some will shrug off this concern because it rarely seems to harm people whose views they agree with. But when this deliberate indifference is reinforced by a government

mandate, it effectively leaves us with the Orwellian notion that “all viewpoints are equal, but some are more equal than others.” And it ignores our nation’s history. For example, in the landmark 1958 case of *NAACP v. Alabama*, the U.S. Supreme Court rebuffed the State of Alabama’s attempt to require the NAACP to disclose the names and addresses of its Alabama members, an effort that was clearly designed to discourage Alabamians from supporting the civil rights organization.

For these reasons, I do not believe that NCE stations should be required to post their donor lists online. Unfortunately, there wasn’t majority support for that position. But we were able to agree on a process that allows NCE stations to seek waivers of this requirement if they believe that posting donors’ names online would discourage financial support for particular programs. Critically, an NCE station filing such a waiver request would not have to post donor lists to its online file until after the Commission and the courts have finished reviewing that request. This ensures that any NCE station will get full and fair consideration of its position (if it so desires) before donor names are published online.

To be sure, this outcome isn’t ideal. But we stand in far better stead than we did three weeks ago. And since the online public file requirement will not take effect until 2018, it’s also my hope that the Commission will revisit this question before it is implemented.

In short, I agree with most of this *Order*. Where I do not, we’ve been able to improve it. I am therefore voting to approve in part and concur in part.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees, MB Docket No. 14-127.

As my colleagues have highlighted, moving the required public inspection files online should benefit regulated entities and the public alike, providing better access to information while eventually reducing the cost of compliance. I have been an advocate of using the power of the Internet in many ways to make life a little easier for all parties who want to participate in Commission proceedings, and this order should ultimately help achieve that goal.

For some of our regulatees, placing all of their public files online will not only reduce costs, it will also enhance the security of their facilities, since they will no longer need to maintain a local, physically accessible public file. A few months ago, I wrote about the potential impact of this major security loophole specifically on broadcasters. Unlike cable and satellite operators, commercial broadcast licensees will not have the immediate option of transitioning to an online-only public file, due to the Commission's rule pertaining to the correspondence file that arguably cannot be made available online for privacy reasons. I very much appreciate the Chairman's attention to this important issue and commitment to move forward on a proposal to eliminate correspondence file requirements so that broadcasters, too, can have an online-only option for public file requirements. I also appreciate his willingness to address a similar security issue for cable headend locations.

Likewise, I think we need to be very careful not to expose NCE station donors to potential privacy and security risks, and asked that these donor lists be exempted from online public files. While not willing to go that far, the Chairman did allow for a waiver process, which I hope will ultimately serve as a real option to provide some protection where there is any indication it is warranted. No one should construe my willingness to allow this here to be applicable for any future situations.

I have frequently shared my concerns about the need for more rigorous cost-benefit analysis in the Commission's work, and this item raised some similar concerns. Some of my suggestions on this front were included here, but I will revisit this issue in the future.