Washington State Association of Broadcasters
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August 24, 2021

Washington Public Disclosure Commission
PO Box 40908
Olympia, WA 98504-0908

Via US Mail and Email: digitaladrules@pdc.wa.gov

Dear Sir or Madam,

Thank you for the opportunity to offer testimony on the Public Disclosure Commission's Digital Political Advertising Disclosure rules.

The Washington State Association of Broadcasters ("WSAB") represents the 333 commercial radio stations, 125 public/non-commercial radio stations and 29 commercial and non-commercial television stations across the state. These broadcast stations are located in small, medium and large markets, from rural to metropolitan areas. The WSAB offers Political Broadcasting webinars for our members in our state on an annual basis (at no-charge), addressing all facets of the process, but most importantly recordkeeping.

While the WSAB supports transparency, the Public Disclosure Commission's ("PDC") present rules are troublesome to broadcasters on several levels:

1) Broadcast radio and television stations – as regulated by the FCC - have migrated their Public Inspection File to an online platform hosted by the FCC (which bears all costs associated with hosting public files). Political advertising records must be maintained "*in the Commission's online public file, until the end of the **two-year** retention period."*[1]
2) Broadcast radio and television stations no longer have an obligation to offer public access to its studio facility, as the FCC eliminated Main Studio requirements in 2017 (see Report and Order FCC 17-137, attached);
3) Duplicative record keeping, particularly as required by WAC 390-18-050, creates excessive expense for radio and television broadcasters including administrative, equipment and electronic storage costs.

Further, free, over-the-air radio and television broadcasters are regulated by the Federal Communications Commission ("FCC") and that agency has issued a Notice of

[1] https://publicfiles.fcc.gov/about-station-profiles/

Proposed Rule Making (seeking) Revision to Political Program and Recordkeeping Rules (NPRM FCC-21-91 – attached).

Broadcasters began transitioning their Public Inspection File – which contains political advertising records – to an online platform hosted by the FCC in 2012 and completed the migration in March 2018. The FCC, in its Report and Order of December 18, 2014, noted that one of the many benefits of online public files was *"expansion of the online public file to more media is particularly important with respect to improving public access to political files."*[2] Further, the Commission absolved broadcasters of keeping a duplicate paper file at its studio location. *"Consistent with the approach the Commission took in the Second Report and Order,"* the FCC wrote *"we propose that cable, DBS, and broadcast and satellite radio entities not be required to maintain back-up copies of all public file materials. Instead, as we do for the television online file, the Commission itself will create a mirror copy of each public file daily to ensure that, if the data in the online public file are compromised, the file can be reconstituted using the back-up copy."*[3] This action was adopted by the FCC on December 17, 2014.

The FCC requires broadcasters to retain their political advertising records in their Public Inspection File for two years.[4] The PDC's requirement under WAC 390-18-050 is five years. This inconsistency places an extraordinary burden on broadcasters and the PDC requirement needs to be reduced to two years, consistent with FCC rules.

For the record, the following information is required to be placed in the Political File of the broadcast station's online FCC Public Inspection File:

For candidates:[5]

- Whether a request to purchase time was accepted or rejected;
- If the request was accepted, the rate charged to the candidate;
- The date and time the spots are scheduled to be aired;
- The class or classes of time (daypart or program) purchased;
- In the case of a candidate request, the name of the candidate, authorized committee, and treasurer of the committee;
- After the spots have run, the specific times at which the spots were actually aired;
- If there were unpaid (i.e., free) "uses" by a political candidate outside of an exempt program, information about the time, date and length of time the candidate appeared on the station;
- If there is a "use" of a station other than in a purchased advertising spot (e.g., if an on-air employee of a station becomes a candidate), the date and time of that use, its duration and the fact that there was no consideration paid by the candidate should be noted in the file.

For Third Party Groups (Issues, etc.):[6]

- A record of each request to purchase time;
- Whether the request was accepted or rejected, in whole or in part;
- The rate charged to the third-party group, if the request was accepted;
- The date and time the spots are scheduled to be aired;
- The class or classes of time (daypart or program) purchased.

[2] FCC 14-209, Page 9
[3] NPRM FCC 14-209, Online Public File, Page 14
[4] https://publicfiles.fcc.gov/about-station-profiles/
[5] Wilkinson Barker Knauer, LLP Political Broadcasting 2020, Page 28
[6] Ibid, Page 29

- Name of candidate to which the spot refers, the office sought, or the issue to which the spot refers;
- The name of the sponsor of the ad, along with the name, address and phone number of a contact person for the sponsor, and a list of the sponsor's chief executive officers/board of directors;
- After the spots have run, the specific times at which the spots were aired;
  Note the requirement that you must identify in the public file the issue to which the issue ad refers.

While the FCC requires stations to identify the issue to which the political advertising purposes addresses, *it does not require the station to declare if the message supports or does not support the issue*.

The FCC *does not* require stations to include scripts of messages, or the message itself, in its political file.

Among the many reasons the FCC eliminated the main studio rule was that *"the need for community members to visit a station's local main studio to access its public inspection file is quickly becoming a relic of the past."*[7] As the WSAB has previously offered in public testimony, its member stations are unable to comply with WAC 390-18-050 Paragraph 3 (a) as technically, they are not required to make their studio available to the public. Additionally, given personal safety issues for employees of broadcast outlets (not to mention, the impacts of the Coronavirus Pandemic of the past 18 months) many stations have chosen to secure their facilities with no access to the public – which they are within their rights to do given the FCC's elimination of the main studio rule.

As many of our member stations also participate in the digital advertising space, the WSAB has urged them to maintain a "hard-copy" file of any digital political advertising orders that it accepts and to retain these documents pursuant to WAC 390-18-050. The dilemma they face is that it is not practical to make these documents available for public inspection as the FCC has eliminated the main studio rule. Broadcasters are also reluctant to allow access to their websites given cybersecurity concerns, the expense to maintain exclusive computer machines, firewalls, and other security precautions. The only variable cost broadcasters have – particularly as we emerge from the Pandemic – is labor. If we are required to host this data electronically it will most certainly lead to job losses – and we are confident that the PDC, nor elected officials, will want that blood on their hands.

As to the questions posed in the PDC's email of August 4, 2020 seeking input about Digital Political Advertising recordkeeping, the WSAB:

- Urges the PDC to require record keeping for digital advertising be *IDENTICAL* to that which the FCC requires of broadcasters for political advertising;
- Asks the PDC to recognize that the agent or agency placing advertising on behalf of a candidate or issue typically understands that placing political advertisements requires disclosure. They are familiar with broadcast reporting requirements and the utilization of the NAB's PB-18 Broadcast Advertising Forms (considered the standard for broadcast political advertising recordkeeping – a copy of which attached for your review);

[7] NPRM FCC 21-91, Main Studio Elimination, Page 1

- Urges the PDC to resist reinventing the wheel. Broadcasting is the most efficient and effective medium to advertise the messages of political candidates and issues, proven by the volume of advertisements placed at the local, state and federal level.

As the PDC's current rules regarding the Public Inspection of Records are incongruent with FCC rules – and further, *are outdated* - the Washington State Association of Broadcasters urges the Public Disclosure Commission to bring its record keeping requirements, including retention periods, in line with the FCC's Political Advertising recordkeeping provisions (including the Bipartisan Campaign Reform Act of 2002). Perhaps more importantly, we urge the PDC to ***immediately invest in and manage an open access platform on the PDC website*** (at its expense) so that it may replace outdated recordkeeping methods cited in WAC 390-18-050.

Should you have any questions, please don't hesitate to reach out to me at kshipman@wsab.org or 360-705-0774.

Thank you for your consideration.

Kindest Regards,

Keith Shipman
President & CEO

kbs
cc: Mark Allen, Mark Allen Government Relations (via email)
Rowland Thompson, Allied Daily Newspapers (via email)
Michael Fancher, Washington Coalition for Open Government (via email)
WSAB Board of Directors (via email)

Attachments: NAB PB-18 Forms
NPRM FCC-21-91 Revisions to Political…Recordkeeping (August 4, 2021)
NPRM FCC-14-209 Online Public File Obligations (December 17, 2014)
FCC 17-137 Main Studio Report & Order (October 24, 2017)
Wilkinson Barker Knauer, LLP Political Broadcasting 2020

POLITICAL

Broadcast Agreement Forms | PB-18

NAB
NATIONAL ASSOCIATION OF BROADCASTERS

NAB POLITICAL ADVERTISING AGREEMENT FORMS (PB-18)

TABLE OF CONTENTS

These political advertisement agreement forms have been designed to serve as actual contracts for the sale of political broadcast time and to satisfy FCC record retention requirements.

Produced by NAB's Legal Department and Published by the NAB Publications Department.

ISBN # 0-89324-381-7

Additional copies of the Political Agreement Forms in paper or electronic format are available through NAB Services, 1771 N Street, NW, Washington, DC 20036-2800. For price information, please visit www.nabstore.com.

POLITICAL BROADCAST ADVERTISEMENT FORMS PB-18

USING THE FORMS

IMPORTANT NOTE:

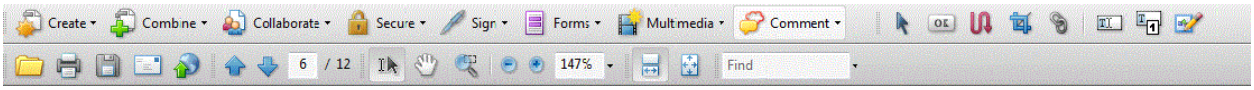
For the PB-18 Issues Form Only – If an Issue Advertiser certifies that the programming does not communicate "a message relating to any political matter of national importance," stations should review the programming to verify that no such messages are communicated in the programming. Stations have an independent obligation to disclose rates and times aired in the public file for programming relating to such matters, and they cannot rely solely on an advertiser's assessment of its own message.

Acrobat Reader XI

You must have version XI or higher of Adobe's Acrobat Reader to use these forms. If you do not have Adobe Reader XI or higher, you can download a free copy at: http://get.adobe.com/reader/

Acrobat Toolbar Functions

When you install the Acrobat Reader and view a fill-in form, you will see a toolbar at the top of the document like this:



You need to use only a few of these buttons to complete a fill-in form. The buttons you need to use are explained below:

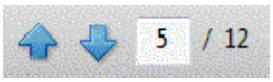
Pointer Tool

The **Pointer Tool** will most likely be pre-selected the first time you use Acrobat Reader. This tool allows you to fill in the forms on your desktop. This tool is selected when the cursor appears in the shape of an arrow like the one pictured on the button above.

With a fill-in form on the screen, move the pointer tool over a portion of the form to be filled in. You will notice that the pointer icon changes to a text icon, which looks like a capital I. This means that this is an area of the form that you are able to fill in using your keyboard. After you fill in that box, move your mouse to another field to fill it in. Note: you may also use the TAB button on your keyboard to advance to the next field. To mark a check box, move your pointer tool over a box and click your left mouse button. To unmark the box, move the cursor over the box and click again.

Zoom Tools

The **Zoom Tools** allow you to change the current view of the form displayed. Depending on your monitor size, you may need to use the + or - Zoom Tool to get a better view of the form. You can also type a percentage into the white box to select an exact percentage zoom.



Page Tools

The **Page Tools** help you navigate through the document. The number furthest to the right is the highest page number in the document. The number in the white box tells you what page you are currently on and you can edit that number to jump to a specific page. The arrow pointing upwards will move you one page forward on the current form, while the arrow pointing downwards will move you back one page on the current form.

Printing the Forms

To print a completed form, click on the print button: 

Saving the Forms

Acrobat Reader does not allow forms to be saved. Complete the entire form, review and print prior to closing the file. Closing the file will erase all information filled in.

AGREEMENT FORM FOR POLITICAL CANDIDATE ADVERTISEMENTS

(check applicable box)

☐ **FEDERAL CANDIDATE** ☐ **STATE/LOCAL CANDIDATE**

To Avail Themselves Of The Lowest Unit Charge During A Political Window, Federal Candidates Must Sign The Certification On Page 3

Station and Location:	**Date:**

I, _____,

being/on behalf of: _____,

a legally qualified candidate of the _____

political party for the office of: _____

in the _____

election to be held on: _____

do hereby request station time as follows:

Broadcast Length	Time of Day, Rotation or Package	Days	Class	Times per Week	Number of Weeks

Attach proposed schedule with charges (if available):

I represent that the payment for the above described broadcast time has been furnished by:

and you are authorized to announce the time as paid for by such person or entity. I represent that this person or entity is either a legally qualified candidate or an authorized committee/organization of the legally qualified candidate.

The name of the treasurer of the candidate's authorized committee is:

This station has disclosed to me its political advertising policies, including: applicable classes and rates; and discount, promotional and other sales practices (not applicable to federal candidates).

THIS STATION DOES NOT DISCRIMINATE OR PERMIT DISCRIMINATION ON THE BASIS OF RACE OR ETHNICITY IN THE PLACEMENT OF ADVERTISING.

To Be Signed By Candidate or Authorized Committee

Date	Signature

To Be Signed By Station Representative

☐ **Accepted** ☐ **Accepted in Part** ☐ **Rejected**

Signature	Printed Name	Title

FEDERAL CANDIDATE CERTIFICATION

In Order For Federal Candidates To Receive The Lowest Unit Charge During A Political Window, The Following Certification Is Required:

I, _____
(name of federal candidate or authorized committee) hereby certify that the programming to be broadcast (in whole or in part) pursuant to this agreement:

☐ **does** ☐ **does not**

refer to an opposing candidate (check applicable box). I further certify that for the programming that does refer to an opposing candidate:

(check applicable box)

☐ the radio programming contains a personal audio statement by the candidate that identifies the candidate, the office being sought, and that the candidate has approved the broadcast.

☐ the television programming contains a clearly identifiable photograph or similar image of the candidate for a duration of at least four seconds, and a simultaneously displayed printed statement identifying the candidate, that the candidate approved the broadcast, and that the candidate and/or the candidate's authorized committee paid for the broadcast.

_____
signature of candidate or authorized committee

_____ _____
printed name **date**

AGREED UPON SCHEDULE

(TO BE FILLED IN ONLY IF STATION DOES NOT ACCEPT ALL OF CANDIDATE'S REQUEST)

Broadcast Length	Time of Day, Rotation or Package	Days	Class	Times per Week	Number of Weeks

Attach proposed schedule with charges (if available):

AFTER AIRING OF BROADCASTS:

Attach invoices or Schedule Run Summary to this Form showing:

1) actual air time and charges for each spot;
2) the date(s), exact time(s) and reason(s) for Make-Good(s), if any; and
3) the amount of rebates given (identify exact date, time, class of broadcast and dollar amount for each rebate), if any.

Note: Because the FCC requires that the political file contain the actual times the spots air and the rates charged, that information should be included in the file as soon as possible. If that information is only generated monthly, the file should include the name of a contact person who can provide the times that specific spots aired and the rates charged. The FCC's online political files include a folder for "Terms and Disclosures." NAB suggests that, for stations subject to the online public file rule, the names of contact person(s) be placed in that folder.

AGREEMENT FORM FOR NON-CANDIDATE/ISSUE ADVERTISEMENTS

Station and Location:	**Date:**

I, _____
do hereby request station time concerning the following issue:

Broadcast Length	**Time of Day, Rotation or Package**	**Days**	**Class**	**Times per Week**	**Number of Weeks**

This broadcast time will be used by: _____

THIS PAGE MUST BE COMPLETED FOR PROGRAMMING THAT "COMMUNICATES A POLITICAL MATTER OF NATIONAL IMPORTANCE." FOR ALL OTHER ISSUE ADS, PLEASE GO TO PAGE 3.

Programming that "communicates a political matter of national importance" includes (1) references to legally qualified candidates (presidential, vice presidential or congressional); (2) any election to Federal office (*e.g.*, any references to "our next senator", "our person in Washington" or "the President"); and (3) a national legislative issue of public importance (*e.g.*, Affordable Care Act, revising the IRS tax code, federal gun control or any federal legislation).

Does the programming (in whole or in part) communicate "a message relating to any political matter of national importance?"
☐ Yes ☐ No

For programming that "communicates a message relating to any political matter of national importance," list the name of the legally qualified candidate(s) the programming refers to, the offices being sought, the date(s) of the election(s) and/or the issue to which the communication refers (if applicable):

I represent that the payment for the above described broadcast time has been furnished by (name and address):

and you are authorized to announce the time as paid for by such person or entity (hereinafter referred to as the "sponsor").

List the chief executive officers or members of the executive committee or the board of directors below (or attach separately):

For programming that "communicates a message relating to any political matter of national importance," attach Agreed Upon Schedule (Page 5)

THIS PAGE MUST BE COMPLETED FOR PROGRAMMING THAT <u>DOES NOT</u> "COMMUNICATE A POLITICAL MATTER OF NATIONAL IMPORTANCE"

I represent that the payment for the above described broadcast time has been furnished by (name and address):

and you are authorized to announce the time as paid for by such person or entity (hereinafter referred to as the "sponsor").

List the chief executive officers or members of the executive committee or the board of directors below (or attach separately):

TO BE COMPLETED FOR ALL ISSUE ADVERTISEMENTS

THIS STATION DOES NOT DISCRIMINATE OR PERMIT DISCRIMINATION ON THE BASIS OF RACE OR ETHNICITY IN THE PLACEMENT OF ADVERTISING.

The Sponsor agrees to indemnify and hold harmless the station for any damages or liability, including reasonable attorney's fees, that may ensue from the broadcast of the above-requested advertisement(s). **For the above-stated broadcast(s), the sponsor also agrees to prepare a script, transcript, or tape, which will be delivered to the station at least _____ before the time of the scheduled broadcasts.**

TO BE SIGNED BY ISSUE ADVERTISER (SPONSOR)

Date	Signature	Contact Phone Number

TO BE SIGNED BY STATION REPRESENTATIVE

☐ **Accepted** ☐ **Accepted in Part** ☐ **Rejected**

Signature	Printed Name	Title

AGREED UPON SCHEDULE

For All Issue Advertisements That Communicate a Message Relating to Any Political Matter of National Importance

Broadcast Length	Time of Day, Rotation or Package	Days	Class	Times per Week	Number of Weeks

Attach proposed schedule with charges (if available):

AFTER AIRING OF BROADCASTS:

Attach invoices or Schedule Run Summary to this Form showing:

(1) actual air time and charges for each spot;

(2) the date(s), exact time(s) and reason(s) for Make-Good(s), if any; and

(3) the amount of rebates given (identify exact date, time, class of broadcast and dollar amount for each rebate), if any.

Note: Because the FCC requires that the political file contain the actual time the rate for spots "communicating a political matter of national importance" air, that information should be included in the file as soon as possible. If that information is only generated monthly, the file should include the name of a contact person who can provide the times that and rates for specific spots aired. The FCC's online political files include a folder for "Terms and Disclosures." NAB suggests that, for stations subject to the online public file rule, the names of contact person(s) be placed in that folder.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Revisions to Political Programming and Record-Keeping Rules	)	MB Docket No. 21-293
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: August 3, 2021 **Released: August 4, 2021**

Comment Date: (30 days after date of publication in the Federal Register)
Reply Comment Date: (45 days after date of publication in the Federal Register)

By the Commission:

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), we propose to update our political programming and recordkeeping rules for broadcast licensees, cable television system operators, Direct Broadcast Satellite (DBS) service providers, and Satellite Digital Audio Radio Service (SDARS) licensees. While the agency has strived to update its guidance to reflect changes in law and campaign practices, it has not undertaken a formal review to update the political programming and recordkeeping rules since 1991.[1] Given the substantial growth of such programming in recent years,[2] the updates proposed in this item are intended to conform our rules with statutory amendments, increase transparency, and account for modern campaign practices.

[1] *Codification of the Commission's Political Programming Policies*, MM Docket No. 91-168, Report and Order, 7 FCC Rcd 678 (1991) (*1991 Political Programming Order*).

[2] John Haltiwanger, *Americans are Already Exhausted with the 2020 Election, and it's Just Getting Started. Other Countries Have Laws Limiting the Length of Campaigns* (Feb. 10, 2020), https://www.businessinsider.com/us-presidential-elections-are-absurdly-long-compared-rest-of-world-2020-2 (explaining that the 2020 U.S. Presidential election would last approximately 1,194 days); Karl Evers-Hillstrom, *Most Expensive Ever: 2020 Election Cost $14.4 Billion* (Feb. 11, 2021), https://www.opensecrets.org/news/2021/02/2020-cycle-cost-14p4-billion-doubling-16/ (2020 campaign spending doubled the amount in 2016).

2. We propose two revisions to our political programming and recordkeeping rules.[3] First, consistent with modern campaign practices, we propose to revise the definition of "legally qualified candidate for public office" to add the use of social media and creation of a campaign website to the existing list of activities that may be considered in determining whether an individual running as a write-in candidate has made a "substantial showing" of his or her bona fide candidacy.[4] Second, we propose to revise the Commission's political file rules to conform with the Bipartisan Campaign Reform Act of 2002 (BCRA), which included within the political file requirements any request for the purchase of advertising time that "communicates a message relating to any political matter of national importance" (i.e., issue ads) and specify the records that must be maintained.[5]

II. BACKGROUND

3. In addition to the First Amendment protections afforded to material aired by Commission licensees and regulatees, political programming receives additional, special protections. Congress has recognized the great importance of political programming in the United States by passing laws to ensure that those who run for elective office have access to broadcast and other platforms so that they may inform citizens of their positions on critical issues of the day.

4. *Political Programming Obligations*. Political programming obligations for certain Commission licensees and regulatees are set forth in sections 312(a)(7) and 315 of the Communications Act of 1934, as amended (Act).[6] Section 312(a)(7) requires broadcast licensees to give legally qualified candidates for federal office "reasonable access" to their facilities, or to permit them to purchase "reasonable amounts of time."[7] Section 312(a)(7) of the Act also applies to SDARS licensees[8] and DBS service providers,[9] but it is not applicable to cable system operators.[10] Under section 315(a), if a broadcast licensee permits one legally qualified candidate for a public office to use its station, it must

[3] Information in a station's political file is available to the public on the Commission-hosted website at https://publicfiles.fcc.gov/.

[4] 47 CFR §§ 73.1940(f), 76.5(q).

[5] Pub. L. No. 107-155, § 504, 116 Stat. 81 (2002) (codified at 47 U.S.C. § 315(e)).

[6] 47 U.S.C. §§ 312(a)(7), 315.

[7] 47 U.S.C. § 312(a)(7). Section 312(a)(7) states:

> The Commission may revoke any station license or construction permit —
>
> (7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station, other than a non-commercial educational broadcast station, by a legally qualified candidate for Federal elective office on behalf of his candidacy.

Id. *See* 47 CFR § 73.1944.

[8] *See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, IB Docket No. 95-91, Gen. Docket No. 90-357, Report and Order Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754, 5792, para. 92 (1997) (extending the political programming provisions in sections 312(a)(7) and 315 of the Act to SDARS licensees); 47 CFR § 25.702(a)-(b).

[9] *See Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, MM Docket No. 93-205, Report and Order, 13 FCC Rcd 23254 (1998) (*DBS Public Interest Obligations Report and Order*) (establishing rules applying the political programming rules in sections 312(a)(7) and 315 of the Act to DBS service providers, in accordance with section 335 of the Act), *recon. denied*, Memorandum Opinion and Order on Reconsideration of the First Report and Order, 19 FCC Rcd 5854 (2003) (*Order on Reconsideration*), *Order on Reconsideration vacated and superseded by* Second Order on Reconsideration of First Report and Order, 19 FCC Rcd 5647 (2004) (*DBS Public Interest Obligations Sua Sponte Reconsideration)*; 47 CFR § 25.701(b)-(d).

[10] *See 1991 Political Programming Order*, 7 FCC Rcd at 679, para. 4.

afford all other candidates for that office an "equal opportunity" to use the station.[11] Section 315(b) provides that, during certain periods before an election, legally qualified candidates are entitled to "the lowest unit charge of the station for the same class and amount of time for the same period."[12] The requirements in section 315 also apply to cable system operators,[13] SDARS licensees,[14] and DBS service providers.[15] The entitlements embodied in sections 312(a)(7) and 315 of the Act are available only to persons who have achieved the status of "legally qualified candidate."[16]

5. The Communications Act does not define the term "legally qualified candidate," and therefore the Commission has adopted a definition, as reflected in section 73.1940.[17] Generally, an individual seeking election (other than for President or Vice President) must publicly announce his or her intention to run for office,[18] must be qualified to hold the office for which he or she is a candidate,[19] and must have qualified for a place on the ballot or have publicly committed himself or herself to seeking election by the write-in method.[20] If seeking election by the write-in method, the individual, in addition to

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[11] 47 U.S.C. § 315(a). Section 315(a) states, in part:

> If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section.

Id. *See* 47 CFR §§ 73.1941, 76.205.

[12] 47 U.S.C. § 315(b). Specifically, section 315(b)(1) provides:

> The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed—
>
> (A) subject to paragraph (2), during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and
>
> (B) at any other time, the charges made for comparable use of such station by other users thereof.

Id. *See* 47 CFR §§ 73.1942, 76.206.

[13] Section 315(c) of the Act defines the term "broadcasting station" as including cable television systems and the terms "licensee" and "station licensee" as including cable operators. 47 U.S.C. § 315(c) ("For purposes of this section— (1) the term 'broadcasting station' includes a community antenna television system; and (2) the terms 'licensee' and 'station licensee' when used with respect to a community antenna television system mean the operator of such system.").

[14] *See supra* note 8.

[15] *See supra* note 9.

[16] While section 312(a)(7) applies only to legally qualified candidates for federal office, section 315 applies to all candidates for elective office, whether federal, state, or local.

[17] 47 CFR § 73.1940. Section 76.5(q) of the Commission's rules includes an identical definition of "legally qualified candidates for public office" used for purposes of the political programming rules governing cable systems. *Id*. § 76.5(q). The definition of "legally qualified candidates for public office" set forth in section 73.1940 also applies for purposes of the political programming obligations of DBS providers and SDARS licensees. *Id*. §§ 25.701(b)(1), 25.702(a).

[18] *Id*. § 73.1940(a)(1).

[19] *Id*. § 73.1940(a)(2).

[20] *Id*. §§ 73.1940(a)(3), 73.1940(b)(1), and 73.1940(b)(2).

being eligible under applicable law to be a write-in candidate, must make a "substantial showing" that he or she is a bona fide candidate for the office being sought.[21] Section 73.1940(f) of the Commission's rules specifies the requirements to demonstrate a "substantial showing" of a bona fide candidacy:

> The term "substantial showing" of a bona fide candidacy . . . means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, and establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his or her campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.[22]

6. *Political Recordkeeping Obligations*. The political recordkeeping requirements serve to reinforce the statutory protections for political programming. The Commission first adopted rules requiring broadcast stations to maintain public inspection files documenting requests for political advertising time more than 80 years ago.[23] It is crucial that stations maintain political files that are complete and up to date because the information in them directly affects, among other things, the statutory rights of opposing candidates to request equal opportunities under section 315(a) of the Act and present their positions to the public prior to an election.[24] Additionally, these files enable the public to verify that licensees have complied with their obligations relating to use of their facilities by candidates for political office and to obtain information about entities sponsoring candidate and issue advertisements.[25] The Commission also has applied political file rules to cable television system operators,[26] DBS providers,[27] and SDARS licensees,[28] finding that the rationale for imposing such requirements on broadcasters similarly applies to these entities.

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[21] *Id*. § 73.1940(b)(2).

[22] *Id*. § 73.1940(f).

[23] *See* 3 Fed. Reg. 1691 (1938).

[24] Pursuant to section 73.1941(c) of the Rules, candidates have one week from an opponent's initial "use" to request equal opportunities. 47 CFR § 73.1941(c). The term "use" means a positive, identifiable appearance by voice or likeness of a legally qualified candidate for public office, lasting four or more seconds in any program that is not exempt under section 73.1941(a)(1)-(a)(4) of the Commission's rules. *See Codification of the Commission's Political Programming Policies*, Memorandum Opinion and Order, 9 FCC Rcd 651 (1994); *Request by Carter/Mondale Reelection Committee, Inc, for Interpretive Ruling*, Letter Ruling, 80 FCC 2d 285 (Broadcast Bur., 1980); *Request of Oliver Products for Declaratory Ruling*, Memorandum Opinion and Order, 4 FCC Rcd 5953 (1989). The failure by a station to promptly upload information about each "use" denies requesting candidates the notice they need to assert their statutory rights to equal opportunities in a timely manner. *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket Nos. 00-168 and 00-44, Second Report and Order, 27 FCC Rcd 4535, 4562, para. 55 (2012).

[25] *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, MM Docket No. 97-138, Report and Order, 13 FCC Rcd 15691, 15716, para. 54 (1998). In order for the public to verify that licensees have complied with their obligations, the public can visit a particular station or other entity's political file on the Commission-hosted website https://publicfiles.fcc.gov/.

[26] *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*, Docket No. 19948, Report and Order, 48 FCC 2d 72, para. 1 (1974); 47 CFR § 76.1701.

[27] Section 335 of the Act imposes public interest obligations on DBS providers and requires the Commission, at a minimum, to apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to DBS providers. 47 U.S.C. § 335(a). The Commission adopted rules requiring DBS providers to abide by political file obligations similar to those requirements placed on terrestrial broadcasters and

(continued….)

7. In 2002, Congress enacted the BCRA, which amended section 315 of the Act.[29] The BCRA added new section 315(e) to codify the Commission's existing political file obligations by requiring that information regarding any request to purchase advertising time that "is made on behalf of a legally qualified candidate for public office" be placed in the political file.[30] In addition, the BCRA expanded the political file requirements to include any request to purchase political advertising time that "communicates a message relating to any political matter of national importance."[31] Specifically, section 315(e)(1) of the Act provides that:

> A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that –
>
> (A) is made by or on behalf of a legally qualified candidate for public office; or
> (B) communicates a message relating to any political matter of national importance, including –
>
> (i) a legally qualified candidate;
> (ii) any election to Federal office; or
> (iii) a national legislative issue of public importance.[32]

The BCRA, at section 315(e)(2) of the Act,[33] also specifies the kinds of records that must be maintained in political files, and it provides, at section 315(e)(3) of the Act, that "[t]he information required by [section 315(e)] shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years."[34]

III. DISCUSSION

A. "Substantial Showing" for Write-In Candidates

8. In order to update our rules to make them consistent with present-day campaign practices, we propose to amend sections 73.1940(f) and 76.5(q) of the Commission's rules to add the use of social media and creation of a campaign website to the list of activities that a broadcast licensee or cable operator may consider in determining whether an individual who is running as a write-in candidate has

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cable systems in order to assist in evaluations of compliance with the political programming rules and to enable competing candidates to review other candidates' advertising access and rates. *DBS Public Interest Obligations Report and Order*, 13 FCC Rcd at 23271, para. 41; *DBS Public Interest Obligations Sua Sponte Reconsideration*, 19 FCC Rcd at 5561, para. 35; 47 CFR § 25.701(d).

[28] *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, MB Docket No. 14-217, Report and Order, 31 FCC Rcd 526, 537-38, paras. 26-27 (2016) (*Expansion of Online Public File Obligations*); *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, MB Docket No. 07-57, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12415, para. 146 (2008); 47 CFR § 25.702(b).

[29] Pub. L. No. 107-155, § 504, 116 Stat. 81 (2002) (codified at 47 U.S.C. § 315(e)).

[30] 47 U.S.C. § 315(e)(1).

[31] *Id*.

[32] *Id*. § 315(e)(1). The reference to "licensee" in section 315(e)(1) includes broadcast licensees and cable system operators, SDARS licensees, and DBS service providers engaged in origination programming. *See* 47 CFR §§ 76.5(p), 76.1701, 25.701, 25.702.

[33] 47 U.S.C. § 315(e)(2).

[34] *Id*. § 315(e)(3). *See infra* para. 15.

made a "substantial showing" of his or her candidacy.[35] The proposed amendment would recognize both activities as among the practices that are now commonly associated with political campaigning.

9. Only those individuals who have achieved the status of "legally qualified candidate" are entitled to avail themselves of the benefits and privileges bestowed by the political programming rules, including the reasonable access,[36] equal opportunities,[37] and lowest unit charge provisions.[38] If seeking election by the write-in method, an individual, in addition to being eligible under applicable law to be a write-in candidate, must make a "substantial showing" that he or she is a bona fide candidate for the office being sought.[39]

10. Questions as to whether an individual who is running as a write-in candidate has made a "substantial showing" ordinarily arise when such individual approaches a broadcast station or cable system and makes a request to purchase time in furtherance of his or her candidacy or seeks to avail himself or herself of equal opportunities.[40] Sections 73.1940(f) and 76.5(q) define what it means to make a "substantial showing" by listing various activities that are commonly associated with political campaigning, including "making campaign speeches, distributing campaign literature, issuing press releases, [and] maintaining a campaign headquarters."[41]

11. At the time our current rules were drafted, social media and campaign websites did not exist. Media coverage of recent campaigns on the national, state, and local levels indicates that the use of social media has become an activity that bona fide candidates routinely use to solicit support, financial contributions, and votes.[42] Recent articles reveal that bona fide political campaigns use major social

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[35] 47 CFR § 73.1940(f), 76.5(q). As we explain above, the definition of "legally qualified candidates for public office" set forth in section 73.1940 also applies for purposes of the political programming obligations of DBS providers and SDARS licensees. *Id*. §§ 25.701(b)(1), 25.702(a). Thus, the analysis and discussion here as well as revisions to the definition in section 73.1940 would apply to these entities as well.

[36] 47 U.S.C. § 312(a)(7); 47 CFR § 73.1944.

[37] 47 U.S.C. § 315(a); 47 CFR §§ 73.1941, 76.205.

[38] 47 U.S.C. § 315(b); 47 CFR §§ 73.1942, 76.206.

[39] *Id*. §§ 73.1940(b)(2), 76.5(q)(2).

[40] 47 U.S.C. § 315(a).

[41] 47 CFR §§ 73.1940(f), 76.5(q)(5). The Media Bureau has long required that an individual claiming to be a "legally qualified candidate" by the write-in method bears the burden of demonstrating that he or she has made a "substantial showing" of a bona fide candidacy. *See, e.g.*, *Complaint of Michael Stephen Levinson*, 87 FCC 2d 433, 435 (Broadcast Bur. 1980) ("The burden is on [the potential candidates] to establish to the stations from which [they] seek broadcast time under Section 312 that [they] have 'engaged to a substantial degree in activities commonly associated with political campaigning.'"). Further, the Media Bureau has held that a broadcaster's or cable operator's determination as to whether a potential write-in candidate has satisfied the "substantial showing" requirement is entitled to deference, provided the determination is reasonable and made in good faith. *See Complaint by Michael Levinson Against Station WXXI-TV, Rochester, New York*, 1 FCC Rcd 1305 (MMB 1986) (*Michael Levinson*) ("This agency will review the licensee's decision only to determine if it was unreasonable or made in bad faith."); *Complaint of Douglas S. Kraegar Against Radio Station WTLB Utica, New York*, 87 FCC 2d 751, 753 (Broadcast Bur. 1980) ("A licensee has the discretion to make a good faith judgment as to the bona fide qualifications of a write-in candidate."). *Cf.*, *CBS, Inc. v. FCC*, 453 U.S. 367, 387 (1981) ("If broadcasters take the appropriate factors into account and act reasonably and in good faith, their decisions will be entitled to deference even if the Commission's analysis would have differed in the first instance.").

[42] *See, e.g.*, Lata Nott, *Political Advertising on Social Media Platforms* (June 26, 2020), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-in-2020/political-advertising-on-social-media-platforms/; Daniel Kreiss, Regina G. Lawrence, and Shannon C. McGregor, *In Their Own Words: Political Practitioner Accounts of Candidates, Audiences, Affordances, Genres, and Timing in Strategic Social Media Use*, 35 Pol. Commc'n 26, 12-13 (2018) (finding that each social media platform, with

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media platforms to advertise, connect with supporters, and fundraise[43] and that such engagement in social media use, for example, by creating a Twitter or Facebook account, typically increases donations for new politicians.[44] For instance, reports of the most recent election reflect that candidates garnered support by posting photographs and hosting chats on Instagram.[45] In addition, social media platforms enable political campaigns to build support by disseminating campaign updates[46] and targeting advertisements to potential voters,[47] and they provide sophisticated tools to regularly measure user engagement.[48]

12. In order that our rules reflect ordinary campaign practices, we propose to add the use of social media for the purpose of promoting or furthering a campaign for public office to the list of recognized campaign activities in sections 73.1940(f) and 76.5(q). We seek comment on this proposal and the types of campaign-related activities for which social media could be used in demonstrating a substantial showing of a bona fide candidacy. For instance, a candidate might use social media to raise funds, solicit votes, share policy positions, and engage in digital dialogues with voters. We note that we are not proposing that social media presence alone would be sufficient to support a status of "legally qualified candidate" but that it would be an additional indicator of activities commonly associated with political campaigning needed to make substantial showing of a bona fide candidacy.

13. We also propose to add creation of a campaign website to the list of recognized campaign activities in sections 73.1940(f) and 76.5(q). Recent articles indicate that campaign websites, like social media platforms, are used by candidates to connect to a wide audience of potential voters instantaneously and facilitate direct communication and fundraising.[49] Accordingly, we tentatively conclude that adding

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different audiences and capabilities, provides "a primary way for candidates to introduce themselves to vastly dispersed constituencies and build their support among potential volunteers, donors, and voters").

[43] *See, e.g.*, Maria Petrova, Ananya Sen, and Pinar Yildirim, *Social Media and Political Contributions: The Impact of New Technology on Political Competition*, Management Science, 7-8 (2020) (Petrova, *Social Media and Political Contributions*); Daniel Kreiss and Shannon C. McGregor, *Technology Firms Shape Political Communication: The Work of Microsoft, Facebook, Twitter, and Google with Campaigns During the 2016 U.S. Presidential Cycle*, 35 Pol. Commc'n, 158-59 (2018).

[44] Petrova, *Social Media and Political Contributions*, at 28.

[45] University of Pennsylvania Knowledge @ Wharton, *How Social Media Is Shaping Political Campaigns* (Aug. 17, 2020), https://knowledge.wharton.upenn.edu/article/how-social-media-is-shaping-political-campaigns/.

[46] *See* Petrova, *Social Media and Political Contributions*, at 5, 26-27 ("[M]ore frequent and more informative tweets (e.g., including links to websites, responding to news fast, or more anti-establishment Tweets) are associated with receiving higher contributions after adopting Twitter.").

[47] *See, e.g.*, Google Transparency Report Help Center, *Political Advertising on Google FAQs*, https://support.google.com/transparencyreport/answer/9575640#zippy=%2Cwhat-targeting-criteria-can-be-used-for-election-ads (last visited May 25, 2021); Snapchat Business Help Center, *Audience Insights*, https://businesshelp.snapchat.com/s/article/audience-insights?language=en_US&_ga=2.101326145.1539846222.1621879796-1506173507.1621879796 (last visited May 25, 2021).

[48] *See, e.g.*, Facebook Business Help Center, *About Breakdowns, Metrics, and Filtering in Ads Reporting*, https://www.facebook.com/business/help/264160060861852 (last visited May 25, 2021) (Ads Reporting allows advertisers to analyze demographic metrics including country, region, and designated market region); Google Ads Help, *About Measuring Geographic Performance*, https://support.google.com/google-ads/answer/2453994?hl=en (last visited May 25, 2021) (Report Editor generates reports, which can show performance of ads targeted by location).

[49] *See, e.g.*, Dick Morris, *Direct Democracy and the Internet*, 34 Loy. L.A. L. Rev. 1033 (2000); Diana Owen, *New Media and Political Campaigns*, The Oxford Handbook of Pol. Commc'n (2014). (since 2008, campaigns have used websites to incorporate interactive applications and link to their social media accounts); Elisa Shearer, Pew Research Center, *Candidates' Social Media Outpaces Their Websites and Emails As An Online Campaign News Sources* (2016), https://www.pewresearch.org/fact-tank/2016/07/20/candidates-social-media-outpaces-their-websites-and-
(continued….)

the creation of a campaign website to the list of recognized activities is justified for the same reasons provided in support of including use of social media. We again note that a website alone would not be sufficient to support a status of "legally qualified candidate" but that it would be an additional indicator of activities commonly associated with political campaigning needed to make substantial showing of a bona fide candidacy. We seek comment on this conclusion and the proposal.

14. Finally, we seek comment on whether other activities consistent with modern campaign practices, such as the use of digital marketing and advertising, should be added to the list of recognized campaign activities in sections 73.1940(f) and 76.5(q). If additional activities are included, should the substantial showing analysis involve any limiting factors, such as requiring that the marketing and advertising be directed toward persons in areas where votes are being solicited?

B. Implementation of the BCRA and Section 315 of the Act

15. We propose to revise the political file rules for broadcast licensees, cable operators, DBS providers, and SDARS licensees to bring them into conformity with the BCRA and section 315(e) of the Act.[50] As discussed above, in 2002, Congress enacted the BCRA, which, among other things, adopted new section 315(e) of the Act.[51] While the Commission has advised relevant parties consistent with the recordkeeping requirements embodied in section 315(e), the rules were not updated. Therefore, the changes that we are proposing today would conform our rules to the statutory requirements. Specifically, section 315(e)(1) codifies the requirement that information regarding any request to purchase advertising time that "is made on behalf of a legally qualified candidate for public office," also known as candidate ads, be placed in the political file. It also specifies that the political recordkeeping obligations include any request for the purchase of advertising time that "communicates a message relating to any political matter of national importance," also known as issue ads.[52] Section 315(e)(2) identifies the specific records that must be placed in political files for both candidate ads and issue ads that communicate a message relating to a political matter of national importance.[53] These records include:

> (1) whether the request to purchase broadcast time is accepted or rejected by the licensee;
> (2) the rate charged for the broadcast time;
> (3) the date and time on which the communication is aired;
> (4) the class of time that is purchased;
> (5) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);
> (6) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and
> (7) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.[54]

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emails-as-an-online-campaign-news-source/ (while candidates' social media posts outpace campaign websites as a source of online campaign news, campaign websites are also an important source of online campaign information).

[50] 47 U.S.C. § 315(e); 47 CFR §§ 25.701(d), 25.702(b), 73.1943, 76.1701.

[51] Pub. L. No. 107-155, §504, 116 Stat. 81 (2002) (codified at 47 U.S.C. § 315(e)).

[52] 47 U.S.C. § 315(e)(1)(a)-(b).

[53] *Id*. § 315(e)(2).

[54] *Id*. § 315(e)(2).

16. The Commission's political file rules for broadcast licensees, cable television system operators, DBS providers, and SDARS licensees currently require these entities to maintain for public inspection only those records that relate to requests for time by or on behalf of candidates for public office.[55] These rules make no mention of the obligation specified in section 315(e)(1)(B) of the Act to also maintain records of requests for time about issue ads that communicate a message relating to any political matter of national importance. Our rules therefore do not fully reflect all of the statutory requirements. We propose to revise the political file rules for these entities to conform with the language in sections 315(e)(1) and (e)(2) of the Act. Specifically, we propose to revise these rules to require these entities to maintain in their online political inspection files not only records of each request for advertising time that is made by or on behalf of a legally qualified candidate for public office, but also for each request for advertising time that "communicates a message relating to any political matter of national importance."[56] In addition, we propose to revise our rules to list the specific records that must be maintained in online political files for both candidate ads and issue ads, consistent with list enumerated in section 315(e)(2). These proposed revisions would implement Congress's directive in the BCRA and ensure our political recordkeeping rules reflect statutory requirements. We seek comment on this proposal.[57]

C. Cost-Benefit Analysis

17. Finally, we seek comment on the benefits and costs associated with adopting the proposed changes. In addition to any benefits to the public at large, are there also benefits to industry through clarification of the obligations on licensees and regulatees? We also seek comment on any potential costs that would be imposed on licensees and regulatees if we adopt the proposals contained in this NPRM. In this regard, we note that the proposed changes would largely conform our rules to the requirements of the statute. Comments should be accompanied by specific data and analysis supporting claimed costs and benefits.

IV. PROCEDURAL MATTERS

18. *Ex Parte Rules - Permit-But-Disclose*. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[58] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule

[55] 47 CFR §§ 25.701(d), 25.702(b), 73.1943, 76.1701.

[56] 47 U.S.C. § 315(e)(1)(B).

[57] We note that section 315(e)(3) of the Act provides that "[t]he information required by [section 315(e)] shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years." 47 U.S.C. § 315(e)(3). Our existing political file rules already include this requirement. 47 CFR §§ 25.701(d)(2), 25.702(b)(2), 73.1943(c), 76.1701(c). Therefore, we need not propose changes to these rules to implement section 315(e)(3).

[58] 47 CFR §§ 1.1200 *et seq.*

1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

19. *Filing Requirements—Comments and Replies*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[59]
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

20. *Initial Regulatory Flexibility Act Analysis*. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[60] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[61] A "small business concern" is one which:

[59] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

[60] 5 U.S.C. § 603.

[61] *Id*. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, 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).

(1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[62]

21. With respect to this Notice of Proposed Rulemaking, an Initial Regulatory Flexibility Analysis (IRFA) under the RFA is contained in Appendix B. Written public comments are requested on the IFRA and must be filed in accordance with the same filing deadlines as comments on this Notice of Proposed Rulemaking, with a distinct heading designating them as responses to the IRFA. In addition, a copy of this Notice of Proposed Rulemaking and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the Federal Register.

22. *Paperwork Reduction Act*. This document proposes new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

23. *People with Disabilities*. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

24. *Additional Information*. For additional information on this proceeding, please contact the Media Bureau's Political Programming staff: Robert Baker, at (202) 418-1417 or Robert.Baker@fcc.gov; Gary Schonman, at (202) 418-1795 or Gary.Schonman@fcc.gov; or Sima Nilsson at (202) 418-2708 or Sima.Nilsson@fcc.gov.

V. ORDERING CLAUSES

25. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 1, 4(i), 4(j), 303, 307, 312, 315, 335, and 403 of the Communications Act, 47 U.S.C §§ 151, 154(i), 154(j), 303, 307, 312, 315, 335, and 403, this Notice of Proposed Rulemaking **IS ADOPTED**.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[62] 15 U.S.C. § 632.

APPENDIX A

Proposed Rules

BOLD IS NEW LANGUAGE

The Federal Communications Commission proposes to amend Parts 25, 73, and 76 of Title 47 of the Code of Federal Regulations (CFR) as follows:

PART 25 — SATELLITE COMMUNICATIONS

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

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721.

2. Amend § 25.701(d) to read as follows:

§ 25.701 Other DBS Public interest obligations.

* * * * *

(d) ***Political File***.

(1) Each DBS operator engaged in origination programming shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that:

(i) is made by or on behalf of a legally qualified candidate for public office; or

(ii) communicates a message relating to any political matter of national importance, including:

(A) a legally qualified candidate;

(B) any election to Federal office; or

(C) a national legislative issue of public importance.

(2) Contents of record. A record maintained under this paragraph shall contain information regarding:

(i) whether the request to purchase broadcast time is accepted or rejected by the licensee;

(ii) the rate charged for the broadcast time;

(iii) the date and time on which the communication is aired;

(iv) the class of time that is purchased;

(v) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

(vi) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

(vii) in the case of any other request, the name of the person purchasing the time,

the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

(3) When free time is provided for use by or on behalf of candidates, a record of the free time provided shall be placed in the political file.

(4) All records required by this paragraph shall be placed in the online political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.

* * * * *

3. Amend § 25.702(b) to read as follows:

§ 25.702 Other SDARS Public interest obligations.

* * * * *

(b) **Political File.**

(1) Each SDARS licensee engaged in origination programming shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that:

(i) is made by or on behalf of a legally qualified candidate for public office; or

(ii) communicates a message relating to any political matter of national importance, including:

(A) a legally qualified candidate;

(B) any election to Federal office; or

(C) a national legislative issue of public importance.

(2) Contents of record. A record maintained under this paragraph shall contain information regarding:

(i) whether the request to purchase broadcast time is accepted or rejected by the licensee;

(ii) the rate charged for the broadcast time;

(iii) the date and time on which the communication is aired;

(iv) the class of time that is purchased;

(v) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

(vi) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

(vii) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

(3) When free time is provided for use by or on behalf of candidates, a record of the free time provided shall be placed in the political file.

(4) All records required by this paragraph shall be placed in the online political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.

* * * * *

PART 73 — RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309, 310, 334, 336, and 339.

2. Amend § 73.1940(f)(2) to read as follows:

§ 73.1940 Legally qualified candidates for public office.

* * * * *

(f) The term "substantial showing" of a bona fide candidacy as used in paragraphs (b), (d) and (e) of this section means evidence that the person claiming to be a candidate has:

(1) satisfied the requirements under applicable law to run as a write-in (such as registering, collecting signatures, paying fees, etc.); and

(2) has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his or her campaign manager), **creating a campaign website, and using social media for the purpose of promoting or furthering a campaign for public office.** Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

3. Amend § 73.1943 by revising paragraph (a), renumbering paragraph (b) as (c), adding new paragraph (b), and renumbering paragraph (c) as (d), to read as follows:

§ 73.1943 Political file.

(a) A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that:

(1) is made by or on behalf of a legally qualified candidate for public office; or

(2) communicates a message relating to any political matter of national importance, including:

(i) a legally qualified candidate;

(ii) any election to Federal office; or

(iii) a national legislative issue of public importance.

(b) Contents of record. A record maintained under paragraph (a) shall contain information regarding:

(1) whether the request to purchase broadcast time is accepted or rejected by the licensee;

(2) the rate charged for the broadcast time;

(3) the date and time on which the communication is aired;

(4) the class of time that is purchased;

(5) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

(6) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

(7) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

(c) * * *

(d) * * *

PART 76 — MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. 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.

2. Amend § 76.5(q)(5) to read as follows:

§ 76.5 Definitions.

* * * * *

(q) **Legally qualified candidate.**

* * * * *

(5) The term "substantial showing" of a bona fide candidacy as used in paragraph (q) (2), (3), and (4) of this section means evidence that the person claiming to be a candidate has:

(i) satisfied the requirements under applicable law to run as a write-in (such as registering, collecting signatures, paying fees, etc.); and

(ii) has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his or her campaign manager), **creating a campaign website, and using social media for the purpose of promoting or furthering a campaign for public office.** Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

* * * * *

3. Amend § 76.1701 by revising paragraph (a), renumbering paragraph (b) as (c), adding new paragraph (b), and renumbering paragraphs (c) and (d) as (d) and (e) to read as follows:

§ 76.1701 Political file.

(a) Every cable television system operator engaged in origination programming shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that:

(1) is made by or on behalf of a legally qualified candidate for public office; or

(2) communicates a message relating to any political matter of national importance, including:

(i) a legally qualified candidate;

(ii) any election to Federal office; or

(iii) a national legislative issue of public importance.

(b) Contents of record. A record maintained under paragraph (a) shall contain information regarding:

(1) whether the request to purchase broadcast time is accepted or rejected by the licensee;

(2) the rate charged for the broadcast time;

(3) the date and time on which the communication is aired;

(4) the class of time that is purchased;

(5) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

(6) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

(7) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

(c) * * *

(d) * * *

(e) * * *

APPENDIX B

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this NPRM. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. While the agency has strived to update its guidance to reflect changes in law and campaign practices, it has not undertaken a formal review to update the political programming and recordkeeping rules since 1991.[4] Given the substantial growth of political media messaging in recent years,[5] the updates proposed in this item are intended to conform our rules with statutory amendments, reflect existing practices and guidance,[6] and account for modern campaign practices.

3. Sections 312(a)(7) and 315 of the Communications Act of 1934, as amended (Act),set forth the political programming obligations of broadcast licensees and other Commission regulatees.[7]

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[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

[2] 5 U.S.C. § 603(a).

[3] *Id*.

[4] *Codification of the Commission's Political Programming Policies*, MM Docket No. 91-168, Report and Order, 7 FCC Rcd 678 (1991) (*1991 Political Programming Order*).

[5] John Haltiwanger, *Americans are Already Exhausted with the 2020 Election, and it's Just Getting Started. Other Countries Have Laws Limited the Length of Campaigns* (Feb. 10, 2020), https://www.businessinsider.com/us-presidential-elections-are-absurdly-long-compared-rest-of-world-2020-2 (explaining that the 2020 U.S. Presidential election would last approximately 1,194 days); Karl Evers-Hillstrom, *Most Expensive Ever: 2020 Election Cost $14.4 Billion* (Feb. 11, 2021), https://www.opensecrets.org/news/2021/02/2020-cycle-cost-14p4-billion-doubling-16/ (2020 campaign spending doubled the amount in 2016).

[6] The Commission has a longstanding practice of providing informal guidance to broadcasters and other regulatees regarding their political programming and related recordkeeping obligations and working with industry representatives to foster compliance.

[7] 47 U.S.C. §§ 312(a)(7), 315. The Commission has concluded that section 312(a)(7) does not apply to cable operators. *1991 Political Programming Order*, 7 FCC Rcd at 679, para. 4. Section 315(c) of the Act defines the term "broadcasting station" as including cable television systems and the terms "licensee" and "station licensee" as including cable operators. 47 U.S.C. § 315(c) ("For purposes of this section— (1) the term 'broadcasting station' includes a community antenna television system; and (2) the terms 'licensee' and 'station licensee' when used with respect to a community antenna television system mean the operator of such system."). Thus, the requirements of section 315 apply to cable operators as well as broadcast licensees. In 1997, the Commission extended the political programming provisions in sections 312(a)(7) and 315 of the Act to SDARS licensees. *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, IB Docket No. 95-91, Gen. Docket No. 90-357, Report and Order Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754, 5792, para. 92 (1997); 47 CFR § 25.702(a)-(b). In 1998, in accordance with section 335 of the Act, 47 U.S.C. § 335, the Commission established rules applying the political programming rules in

(continued….)

Section 312(a)(7) requires broadcast licensees to give legally qualified candidates for federal office "reasonable access" to their facilities, or to permit them to purchase "reasonable amounts of time."[8] Under section 315(a), if a broadcast licensee, cable operator, or other regulatee permits one legally qualified candidate for a public office to use its station, it must afford all other candidates for that office an "equal opportunity" to use the station.[9] Section 315(b) provides that, during certain periods before an election, legally qualified candidates are entitled to "the lowest unit charge of the station or cable system for the same class and amount of time for the same period."[10] The entitlements embodied in sections 312(a)(7) and 315 of the Act are available only to persons who have achieved the status of "legally qualified candidate."[11]

4. Section 73.1940 of the Commission's rules defines who is a "legally qualified candidate for public office."[12] Generally, an individual seeking election (other than for President or Vice President)

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sections 312(a)(7) and 315 of the Act to DBS service providers. *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, MM Docket No. 93-205, Report and Order, 13 FCC Rcd 23254 (1998) (*DBS Public Interest Obligations Report and Order*), *recon. denied*, Memorandum Opinion and Order on Reconsideration of the First Report and Order, 19 FCC Rcd 5854 (2003) (*Order on Reconsideration*), *Order on Reconsideration vacated and superseded by* Second Order on Reconsideration of First Report and Order, 19 FCC Rcd 5647 (2004) (*DBS Public Interest Obligations Sua Sponte Reconsideration)*; 47 CFR § 25.701(b)-(d).

[8] 47 U.S.C. § 312(a)(7). Section 312(a)(7) states:

> The Commission may revoke any station license or construction permit —
>
> (7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station, other than a non-commercial educational broadcast station, by a legally qualified candidate for Federal elective office on behalf of his candidacy.

Id. *See* 47 CFR § 73.1944.

[9] 47 U.S.C. § 315(a). Section 315(a) states, in part:

> If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section.

Id. *See* 47 CFR §§ 73.1941, 76.205.

[10] 47 U.S.C. § 315(b). Specifically, section 315(b)(1) provides:

> The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed—
>
> (A) subject to paragraph (2), during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and
>
> (B) at any other time, the charges made for comparable use of such station by other users thereof.

Id. *See* 47 CFR §§ 73.1942, 76.206.

[11] While section 312(a)(7) applies only to legally qualified candidates for federal office, section 315 applies to all candidates for elective office, whether federal, state, or local.

[12] 47 CFR § 73.1940. Section 76.5(q) of the Commission's rules includes an identical definition of "legally qualified candidates for public office" used for purposes of the political programming rules governing cable

(continued….)

must publicly announce his or her intention to run for office,[13] must be qualified to hold the office for which he or she is a candidate,[14] and must have qualified for a place on the ballot or have publicly committed himself or herself to seeking election by the write-in method.[15] If seeking election by the write-in method, the individual, in addition to being eligible under applicable law to be a write-in candidate, must make a "substantial showing" that he or she is a bona fide candidate for the office being sought.[16] Section 73.1940(f) of the Commission's rules specifies the requirements to demonstrate a "substantial showing" of a bona fide candidacy:

> The term "substantial showing" of a bona fide candidacy . . . means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, and establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his or her campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.[17]

5. The political recordkeeping requirements serve to reinforce the statutory protections for political programming. The Commission first adopted rules requiring broadcast stations to maintain public inspection files documenting requests for political advertising time more than 80 years ago.[18] It is crucial that stations maintain political files that are complete and up to date because the information in them directly affects, among other things, the statutory rights of opposing candidates to request equal opportunities under section 315(a) of the Act and present their positions to the public prior to an election.[19] Additionally, these files enable the public to verify that licensees have complied with their obligations relating to use of their facilities by candidates for political office and to obtain information about entities sponsoring candidate and issue advertisements.[20] The Commission also has applied political file rules to cable television system operators,[21] DBS providers,[22] and SDARS licensees,[23] finding

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systems. *Id*. § 76.5(q). The definition of "legally qualified candidates for public office" set forth in section 73.1940 also applies for purposes of the political programming obligations of DBS providers and SDARS licensees. *Id.* §§ 25.701(b)(1), 25.702(a).

[13] *Id*. § 73.1940(a)(1).

[14] *Id*. § 73.1940(a)(2).

[15] *Id*. §§ 73.1940(a)(3), 73.1940(b)(1), and 73.1940(b)(2).

[16] *Id*. § 73.1940(b)(2).

[17] *Id*. § 73.1940(f).

[18] *See* 3 Fed. Reg. 1691 (1938).

[19] Pursuant to section 73.1941(c) of the Rules, candidates have one week from an opponent's initial "use" to request equal opportunities. 47 CFR § 73.1941(c). The failure by a station to promptly upload information about each "use" denies requesting candidates the notice they need to assert their statutory rights to equal opportunities in a timely manner. *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket Nos. 00-168 and 00-44, Second Report and Order, 27 FCC Rcd 4535, 4562, para. 55 (2012).

[20] *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, MM Docket No. 97-138, Report and Order, 13 FCC Rcd 15691, 15716, para. 54 (1998).

[21] *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*, Docket No. 19948, Report and Order, 48 FCC 2d 72, para. 1 (1974); 47 CFR § 76.1701.

that the rationale for imposing such requirements on broadcasters similarly applies to these entities.

6. In 2002, Congress enacted the Bipartisan Campaign Reform Act (BCRA), which amended section 315 of the Act.[24] The BCRA added new section 315(e) to codify the Commission's existing political file obligations by requiring that information regarding any request to purchase advertising time that "is made on behalf of a legally qualified candidate for public office" be placed in the political file.[25] In addition, the BCRA expanded the political file requirements to include any request to purchase political advertising time that "communicates a message relating to any political matter of national importance."[26] Specifically, section 315(e)(1) of the Act provides that:

> A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that –
>
> (A) is made by or on behalf of a legally qualified candidate for public office; or
> (B) communicates a message relating to any political matter of national importance, including –
> (i) a legally qualified candidate;
> (ii) any election to Federal office; or
> (iii) a national legislative issue of public importance.[27]

The BCRA also specified the records that must be maintained in political files. Specifically, section 315(e)(2) requires licensees to place in their political files the following information:

> (A) whether the request to purchase broadcast time is accepted or rejected by the licensee;
> (B) the rate charged for the broadcast time;
> (C) the date and time on which the communication is aired;
> (D) the class of time that is purchased;
> (E) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);
> (F) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and
> (G) in the case of any other request, the name of the person purchasing the time, the

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[22] Section 335 of the Act imposes public interest obligations on DBS providers and requires the Commission, at a minimum, to apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to DBS providers. 47 U.S.C. § 335(a). The Commission adopted rules requiring DBS providers to abide by political file obligations similar to those requirements placed on terrestrial broadcasters and cable systems in order to assist in evaluations of compliance with the political programming rules and to enable competing candidates to review other candidates' advertising access and rates. *DBS Public Interest Obligations Report and Order*, 13 FCC Rcd at 23271, para. 41; *DBS Public Interest Obligations Sua Sponte Reconsideration*, 19 FCC Rcd at 5561, para. 35; 47 CFR § 25.701(d).

[23] *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, MB Docket No. 14.217, Report and Order, 31 FCC Rcd 526, 537-38, paras. 26-27 (2016); *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, MB Docket No. 07-57, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12415, para. 146 (2008); 47 CFR § 25.702(b).

[24] Pub. L. No. 107-155, § 504, 116 Stat. 81 (2002) (codified at 47 U.S.C. § 315(e)).

[25] 47 U.S.C. § 315(e)(1).

[26] *Id.*

[27] *Id.* § 315(e)(1).

> name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.[28]

Section 315(e)(3) of the Act provides that "[t]he information required by [section 315(e)] shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years."[29]

7. The NPRM proposes to revise the definition of "legally qualified candidate for public office" to add the use of social media and creation of a campaign website to the existing list of activities that may be considered in determining whether an individual running as a write-in candidate has made a "substantial showing" of his or her bona fide candidacy.[30] The NPRM also proposes to revise the Commission's political file rules to conform with BCRA's amendment to Section 315(e) of the Act, which included within the political file requirements any request for the purchase of advertising time that "communicates a message relating to any political matter of national importance" (i.e., issue ads) and specify the records that must be maintained.[31] Additionally, the proposed revisions would specify the records that must be maintained in political files.

B. Legal Basis

8. The proposed action is authorized under Sections §§ 151, 154(i), 154(j), 303(r), 307, 312, 315,335, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 307, 312, 315, 335, and 403.

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

9. 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 rule revisions, if adopted.[32] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[33] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act (SBA).[34] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field

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[28] *Id.* § 315(e)(2).

[29] *Id.* § 315(e)(3).

[30] 47 CFR §§ 73.1940(f), 76.5(q).

[31] Pub. L. No. 107-155, § 504, 116 Stat. 81 (2002) (codified at 47 U.S.C. § 315(e)).

[32] 5 U.S.C. § 603(b)(3).

[33] 5 U.S.C. § 601(6); *see infra* note 38 (explaining the definition of "small business" under 5 U.S.C. § 601(3)); *see* 5 U.S.C. § 601(4) (defining "small organization" as "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, 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(5) (defining "small governmental jurisdiction" as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register").

[34] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632(a)(1)). 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." *Id.*

of operation; and (3) satisfies any additional criteria established by the SBA.[35] Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

10. *Television Broadcasting*. This U.S. Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound."[36] These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.[37] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having $41.5 million or less in annual receipts.[38] According to the 2012 Economic Census (when the SBA's size standard was set at $38.5 million or less in annual receipts), 751 firms in the small business size category operated in that year. Of that number, 656 had annual receipts of $25 million or less, 25 had annual receipts between $25 million and $49,999,999 and 70 had annual receipts of $50 million or more.[39] Based on this data, we estimate that the majority of commercial television broadcast stations are small entities under the applicable size standard.

11. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,374.[40] Of this total, 1,263 stations (or 92%) had revenues of $41.5 million or less in 2019, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 30, 2020, and therefore these stations qualify as small entities under the SBA definition. In addition, the Commission estimates the number of noncommercial educational television stations to be 384.[41] The Commission does not compile and 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. There are also 386 Class A stations.[42] Given the nature of this service, the Commission presumes that all of these stations qualify as small entities under the applicable SBA size standard.

12. *Radio Broadcasting.* This U.S. Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public."[43] Programming may originate in the establishment's own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having $41.5 million or less in annual receipts.[44] According to Economic Census data for 2012 (when the SBA's size standard was set

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[35] 15 U.S.C. § 632(a)(1)-(2)(A).

[36] U.S. Census Bureau, 2017 NAICS Definitions, "515120 Television Broadcasting," http://www.census.gov./cgi-bin/sssd/naics/naicsrch.

[37] *Id*.

[38] 13 CFR § 121.201; 2012 NAICS code 515120.

[39] U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting). https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

[40] Broadcast Station Totals as of March 31, 2021, News Release (MB Apr. 5, 2021) (Mar. 31, 2021 Broadcast Station Totals), https://www.fcc.gov/document/broadcast-station-totals-march-31-2021.

[41] *Id*.

[42] *Id*.

[43] U.S. Census Bureau, 2017 NAICS Definitions, "515112 Radio Stations," http://www.census.gov./cgi-bin/sssd/naics/naicsrch.

[44] 13 CFR § 121.201; 2017 NAICS code 515112.

at $38.5 million or less in annual receipts), 2,849 firms in this category operated in that year.[45] Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more.[46] Based on this data, we estimate that the majority of commercial radio broadcast stations were small under the applicable SBA size standard.

13. The Commission has estimated the number of licensed commercial AM radio stations to be 4,546 and the number of commercial FM radio stations to be 6,682 for a total of 11,228 commercial stations.[47] Of this total, 11,266 stations (or 99%) had revenues of $41.5 million or less in 2019, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 30, 2020, and therefore these stations qualify as small entities under the SBA definition. In addition, there were 4,213 noncommercial, educational (NCE) FM stations. The Commission does not compile and 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.

14. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations[48] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of "small business" requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of "small business" is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

15. *Cable Companies and Systems (Rate Regulation Standard)* The Commission has also 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.[49] Industry data indicates that, of the 777 cable companies currently operating in the United States, 766 serve 400,000 or fewer subscribers.[50] Additionally, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[51] According to industry data, there are currently 4,336

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[45] U.S. Census Bureau, U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112 Radio Stations) https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~515112|.

[46] *Id.*

[47] Mar. 31, 2021 Broadcast Station Totals.

[48] "[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 the power to control both." 13 CFR § 21.103(a)(1).

[49] 47 CFR § 76.901(d). 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 Nos. 93-215 and 92-266, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, para. 28 (1995).

[50] *See* S&P Global Market Intelligence, *MediaCensus*, *Operator Subscribers by Geography: National Report, Subscribers by Operator*, https://platform.mi.spglobal.com/web/client?auth=inherit#industry/mediaCensusHome (last visited Jul. 28, 2020).

[51] 47 CFR § 76.901(c).

active cable systems in the United States.[52] Of this total, 3,650 cable systems have fewer than 15,000 subscribers.[53] Thus, the Commission believes that the vast majority of cable companies and cable systems are small entities.

16. *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 one 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."[54] As of 2019, there were approximately 48,646,056 basic cable video subscribers in the United States.[55] Accordingly, an operator serving fewer than 486,460 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.[56] Based on available data, we find that all but five cable operators are small entities under this size standard.[57] 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.[58] Therefore, 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.

17. *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. For the purposes of economic classification, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in the Wired Telecommunications Carriers industry.[59] The Wired Telecommunications Carriers 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 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.[60] The SBA determines that a wireline business is small if it has fewer

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[52] *See* S&P Global Market Intelligence, *MediaCensus*, *Operator Subscribers by Geography: Headend by Headend Report, Subscribers by Headend*, https://platform.mi.spglobal.com/web/client?auth=inherit#industry/mediaCensusHome (last visited Jul. 28, 2020).

[53] *Id.*

[54] 47 U.S.C. § 543(m)(2); *see also* 47 CFR § 76.901(e).

[55] S&P Global Market Intelligence, *U.S. Cable Subscriber Highlights, Basic Subscribers(actual) 2019*, *U.S. Cable MSO Industry Total, see also U.S. Multichannel Industry Benchmarks, U.S. Cable Industry Benchmarks, Basic Subscribers 2019Y, https://platform.marketintelligence.spglobal.com*.

[56] 47 CFR § 76.901(e).

[57] S&P Global Market Intelligence, *Top Cable MSOs as of 12/2019, https://platform.marketintelligence.spglobal.com*. The five cable operators all had more than 486,460 basic cable subscribers.

[58] 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(e) of the Commission's rules. *See* 47 CFR § 76.910(b).

[59] *See 2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017%20NAICS%20Search (last accessed Jul. 27, 2020).

[60] *Id.*

than 1,500 employees.[61] Economic census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[62] Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network.[63] According to industry data, DIRECTV and DISH serve 14,831,379 and 8,957,469 subscribers respectively, and count the third and fourth most subscribers of any multichannel video distribution system in the U.S.[64] Given the capital required to operate a DBS service, its national scope, and the approximately one-third share of the video market controlled by these two companies,[65] we presume that neither would qualify as a small business.

18. *Satellite Radio*. The rules proposed in this NPRM would affect the sole, current U.S. provider of satellite radio (SDARS) services, Sirius-XM, which offers subscription services. Sirius-XM reported revenue of $5.78 billion and a net income of $1.1 billion in 2018.[66] 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

19. *Reporting Requirements.* The NPRM does not propose any new or modified reporting requirements.

20. *Recordkeeping Requirements*. The NPRM proposes to revise the political file rules, consistent with the BCRA's amendment to section 315(e) of the Act, to reflect statutory requirements that broadcast licensees, cable television system operators, DBS providers, and SDARS licensees are obligated to maintain in their online political inspection files records of each request for advertising time that "is made on behalf of a legally qualified candidate for public office" and each request for advertising time that "communicates a message relating to any political matter of national importance" (i.e., issue ads). In addition, the NPRM proposes to list the specific records that must be maintained in political files.

21. *Other Compliance Requirements*. The NPRM proposes to revise the political programming rules to add the use of social media to the list of activities that a broadcast licensee or cable operator may consider in determining whether an individual who is running as a write-in candidate has made a "substantial showing" of his or her candidacy.

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

22. The RFA requires an agency to describe any significant alternatives that it has considered

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[61] 13 CFR § 121.201 (NAICS Code 517311).

[62] *See Information: Subject Series - Estab and Firm Size: Employment Size of Firms for the U.S.: 2012, 2012 Economic Census of the United States, TableID: EC1251SSSZ5*, https://data.census.gov/cedsci/table?q=EC1251&hidePreview=true&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&lastDisplayedRow=28# (last accessed Jul. 27, 2020) (NAICS Code 517110 applied at the time of the 2012 Economic Census).

[63] *See Communications Marketplace Report et al.*, GN Docket No. 18-231 et al., Report, 33 FCC Rcd 12558, 12597, paras. 50-51 (2018).

[64] *See* S&P Global Market Intelligence, *MediaCensus*, *Operator Subscribers by Geography: National Report, Subscribers by Operator*, https://platform.mi.spglobal.com/web/client?auth=inherit#industry/mediaCensusHome (last visited Jul. 31, 2020).

[65] *See* S&P Global Market Intelligence, *Global Multichannel Top Operators, U.S.*, https://platform.mi.spglobal.com/web/client?auth=inherit#industry/multichannelIndustryBenchmarks (last visited Jul. 31, 2020) (There were approximately 63,650,261 total multichannel subscribers in the U.S. in 2019).

[66] *See* https://s1.q4cdn.com/750174072/files/doc_financials/2019/ar/2fb89e07-9f09-4e20-be79-9e194d70cd5e.pdf.

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.[67]

23. The proposed revisions to the political file rules to implement the BCRA would largely codify existing Commission policy and guidance. Thus, we expect that these revisions, if adopted, would not impose significant new recordkeeping burdens on small entities. We also seek comment on possible modifications to the proposed revisions to the political file rules to lessen any burdens on small entities.

24. In addition, we anticipate that the proposal to add the use of social media to the list of activities that may be considered in determining whether an individual who is running as a write-in candidate has made a "substantial showing" of his or her candidacy would only benefit small entities by providing additional guidance on how to make such determinations.

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

None.

[67] *See* 5 U.S.C. § 603(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

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

NOTICE OF PROPOSED RULEMAKING

Adopted: December 17, 2014 **Released: December 18, 2014**

Comment Date: [30 days after date of publication in the Federal Register]
Reply Comment Date: [60 days after date of publication in the Federal Register]

By the Commission: Commissioner Pai issuing a separate statement.

TABLE OF CONTENTS

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking ("*NPRM*"), we propose to expand to 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 the requirement that public inspection files be posted to the FCC's online database. In 2012, we 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.[1] Our goal was 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] We initiate this proceeding to extend our modernization effort to include the public file documents that cable operators, DBS providers, and broadcast and satellite radio licensees are required to maintain. While the Commission first included only television broadcasters in its public file database to "ease the initial implementation of the online public file,"[3] television broadcasters have successfully transitioned to the online file over the past two years. Accordingly, we now believe it is appropriate to commence the process of expanding the online file to other media entities in order to extend the benefits of improved public access to public inspection files and, ultimately, reduce the burden on these other entities of maintaining these files.

II. BACKGROUND

2. One of a broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license.[4] 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.[5] 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."[6]

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[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] *Id*. at 4586, ¶ 111.

[4] *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).

[5] *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).

[6] *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).

3. The Commission promulgated its first political file rule in 1938.[7] That initial rule was essentially identical to our current political file regulation in its requirement that the file be available for public inspection and include both candidate requests for time and the disposition of those requests, including the "charges made" for the broadcast time.[8] 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.[9] The Commission noted that Congress' actions "zealously guarded the rights of the general public to be informed"[10] and that the Commission's goal was to make "practically accessible to the public information to which it is entitled."[11]

4. Cable, DBS, and SDARS entities also have public and political file requirements modeled, in large part, on the longstanding broadcast requirements.[12] In 1974, the Commission adopted a public inspection file requirement for cable, 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."[13] 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"[14] and that "[t]hrough greater disclosure we hope to encourage a greater interaction between the Commission, the public, and the cable industry."[15] 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 requirements, on those entities.[16] 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

[7] *See* 3 Fed. Reg. 1691 (1938).

[8] *Id.*

[9] *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).

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

[11] *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 also 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.

[12] 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.

[13] *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).

[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*, Notice of Proposed Rulemaking, 45 F.C.C.2d 669, ¶ 2 (1974).

[15] *Id*. at 672, ¶ 13.

[16] *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).

other DBS public interest obligations.[17] Finally, the Commission imposed equal employment opportunity and political broadcast requirements on SDARS licensees in 1997, noting that the rationale behind imposing these requirements on broadcasters also applies to satellite radio.[18]

5. In 2002, Congress adopted the Bipartisan Campaign Reform Act ("BCRA")[19] which amended the political file requirements in Section 315 of the Communications Act of 1934.[20] The amendments apply to broadcast television, cable, and DBS.[21] The 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.[22] In addition, the BCRA expanded political file obligations by requiring that television, cable, and DBS entities also place in the political file information related to any advertisements that discuss a "political matter of national importance," including in the case of an issue advertisement 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.[23]

A. Online Public File

6. 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.[24] 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."[25]

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[17] *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.

[18] *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, which was amended in 2002 to include public file requirements. *Id*. at ¶ 92. *See also*, *infra*, ¶ 5. In addition, the Commission 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*").

[19] Pub. L. No. 107-155, 116 Stat. 81 (2002).

[20] 47 U.S.C. §315.

[21] *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). Section 315 does not apply to other MVPDs.

[22] *See* 47 U.S.C. §315(e)(1)(A).

[23] *See* 47 U.S.C. §315(e)(1)-(2).

[24] *Second Report and Order*, 27 FCC Rcd 4535 (2012).

[25] *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Notice of Proposed Rulemaking, 15 FCC Rcd 19816 (2000). In 2000, the Commission tentatively

(continued....)

7. In June 2011, the Commission staff released "The Information Needs of Communities" Report ("*INC Report*"), a comprehensive report on the current state of the media landscape created by a working group including Commission staff, scholars, and consultants.[26] The *INC Report* discussed both the need to empower citizens to ensure that broadcasters serve their communities in exchange for the use of public spectrum, and the need to remove unnecessary burdens on broadcasters who aim to serve their communities. The *INC Report* recommended an online system for public inspection files in order to ensure greater public access.[27] The *INC Report* further suggested that governments at all levels collect and publish data in forms that make it easy for citizens, entrepreneurs, software developers, and reporters to access and analyze information to enable them to present the data in more useful formats,[28] and noted that greater transparency by government and media companies can help reduce the cost of reporting, empower consumers, and foster innovation.[29]

8. Based upon 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.[30] 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 DataBase System ("CDBS") is imported to the online public file and updated by the

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concluded that it should require television licensees to make the contents of their public inspection files, including a standardized form reflecting the stations' public interest programming, available on their stations' websites or, alternatively, on the website of their state broadcasters association. *Id.* at 19829, ¶ 31. In 2007, the Commission adopted a *Report and Order* implementing these proposals. *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Report and Order*, 23 FCC Rcd 1274 (2007) ("*2007 Report and Order*"). The Commission received several petitions for reconsideration of the *2007 Report and Order* from both industry petitioners and public interest advocates. Five parties also appealed the Order and several parties also opposed its "information collection" under the Paperwork Reduction Act ("PRA"). Because of the pending petitions for reconsideration, the Commission did not formally complete the PRA process, choosing instead to address the petitions for reconsideration; therefore, the rules adopted in the *2007 Report and Order* never went into effect. In October 2011, after receiving substantial opposition to the *2007 Report and Order*, the Commission vacated the Order and adopted a *Further Notice of Proposed Rulemaking* addressing only the online public file requirement and not issues related to replacement of the issues/programs list with a standardized form. *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations,* Order on Reconsideration and Further Notice of Proposed Rulemaking, 26 FCC Rcd 15788, 15792, ¶ 6 (2011) ("*Order on Reconsideration*" and "*FNPRM*").

[26] "The Information Needs of Communities: The Changing Media Landscape in a Broadband Age," by Steven Waldman and the Working Group on Information Needs of Communities (June 2011), available at www.fcc.gov/infoneedsreport. As noted in the *INC Report*, the views of the report "do not necessarily represent the views of the Federal Communications Commission, its Commissioners or any individual Bureaus or Offices." *Id*. at 362.

[27] *Id*. at 28, 348.

[28] *Id*. at 29, 351.

[29] *Id*. at 28, 360.

[30] *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 expired February 4, 2013. *See* Public Notice, *Television Broadcast Stations Reminded of the Upcoming Public Inspection File Deadline*, DA 13-120, rel. January 30, 2013.

Commission.[31] 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.[32] Because of privacy concerns, 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.[33]

9. 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.[34] 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.[35] 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.[36]

10. The Commission stated in the *Second Report and Order* that it was deferring consideration of whether to adopt online posting for radio licensees and multichannel video programming distributors ("MVPDs") until it had gained experience with online posting of public files of television broadcasters.[37] 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."[38] In response to the *FNPRM*, a group of public television

[31] *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. *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.

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

[33] *Second Report and Order*, 27 FCC Rcd at 4541, ¶ 11.

[34] *Id*. at 4536-7, ¶ 3.

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

[36] *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 comment period concerning these rules, prior to July 1, 2013, to consider whether changes to the requirements are warranted. 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).

[37] *Second Report and Order*, 27 FCC Rcd at 4537, ¶ 3.

[38] *Id*. at 4586, ¶ 111.

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.[39] 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."[40] 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."[41] 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 and was capable of handling the increase in volume once all television stations were required to use the online file beginning July 1, 2014.

B. Petition for Rulemaking

11. In July 2014, the Campaign Legal Center, Common Cause, and the Sunlight Foundation (collectively, "Petitioners" or "CLC") 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.[42] The Petitioners argue that cable and satellite services have increasingly become outlets for political advertising.[43] According to Petitioners, political spending on cable is projected to constitute as much as 25 percent of total projected political television spending in the 2014 election cycle.[44] Petitioners also assert that, due to advances in technology, satellite television providers are preparing to sell household-specific "addressable advertising," a feature that has attracted interest from advertising campaigns.[45] Petitioners assert that moving the television public file online has resulted in "unquestionably substantial" public benefits, which would also arise if cable and satellite systems were required to upload their public and political files online.[46] In addition, Petitioners argue 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.[47]

12. On August 7, 2014, the Media Bureau issued a *Public Notice* seeking comment on the Petition and, in addition, on whether it should initiate a rulemaking to expand online public file obligations to broadcast radio stations.[48] The National Association of Broadcasters ("NAB") filed

[39] *See* Joint Reply Comments of Public Television Licensees, MM Docket Nos. 00-168 and 00-44, filed Jan. 17, 2012, at 10-11. These commenters argued 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, should they choose to do so.

[40] *Second Report and Order*, 27 FCC Rcd at 4586, ¶ 112.

[41] *Id.*

[42] *See* Campaign Legal Center, *et al*., Petition for Rulemaking, MB Docket No.14-127, at 1 (July 31, 2014) ("Petition").

[43] *Id.*

[44] *Id*. at 1-2.

[45] *Id*. at 2.

[46] *Id*. at 6.

[47] *Id*. at 8.

[48] *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*").

comments supporting the extension of the online public file to cable and satellite providers, stating that there is "no rational basis" for requiring television broadcasters, but not their competitors in the video marketplace, to disclose public and political file material online.[49] The National Cable & Telecommunications Association ("NCTA") argued that, if the Commission were to open a proceeding to expand online file obligations, it should examine how to tailor any online posting requirements to minimize burdens on cable operators and avoid requiring them to upload files of little interest to the public.[50] With respect to radio, while CLC and the American Public Media Group supported the initiation of a rulemaking to require all radio stations to post their public and political files to the FCC's online database,[51] the majority of commenters addressing this issue either objected to extending the online filing requirement to radio[52] and/or argued that the Commission should carefully consider the financial burden on struggling radio stations as well as the technical and financial challenges to the FCC that would be posed by expanding the online file to include radio.[53] In addition, a number of commenters also argued that extending the online public file to radio at this time is premature[54] and that, at most, the Commission should first consider a voluntary online public file for radio before mandating online filing.[55]

III. DISCUSSION

13. We propose to adopt a phased-in approach to expanding the online file requirements to

[49] NAB Comments at 4. Several members of Congress also filed comments in support of the Petition. *See* Letter from Congresswoman Anna G. Eshoo, Congressman Henry A. Waxman, and Senator Bill Nelson to Chairman Tom Wheeler, Federal Communications Commission (September 18, 2014). *See also* Comments of Patrick Ruffini at 2 (noting that cable and satellite systems are likely to be the biggest beneficiaries of data-driven media political advertising in the coming years).

[50] *See* NCTA Comments at 2.

[51] *See* Comments of Campaign Legal Center, Common Cause, and Sunlight Foundation ("CLC") at 1 and Comments of American Public Media Group, Minnesota Public Radio, Southern California Public Radio and Classical South Florida (collectively "American Public Media") at 2-3.

[52] *See*, *e.g.*, Joint Comments of Local and Regional Small Radio Broadcasters ("Small Radio Broadcasters"), Comments of Blount Masscom, Inc., et al. ("Blount"), and Comments of LeSEA Broadcasting Corporation ("LeSEA") (all opposing the inclusion of radio stations in this proceeding). Several commenters also pointed out that the CLC Petition does not request that radio broadcasters be included in this proceeding. *See*, *e.g.*, Comments of Mentor Partners, Inc. ("Mentor") at 4 and 50 State Broadcasters Associations ("50 State Associations") at 2 (arguing that the Commission should first act on the CLC petition before considering whether to expand the online file to radio). LeSEA and Blount also argue that the Commission should open a separate docket related to radio stations rather than including that service in the same proceeding as cable and satellite. *See* Comments of LeSEA at 2 and Blount at 2.

[53] *See*, *e.g.*, NAB Comments at 2 (noting that because of the sizable and diverse nature of the radio industry there are implementation challenges that will require careful consideration and perhaps phased implementation). *See also* Comments of the Missouri and California Broadcasters Associations ("Missouri and California Associations") (urging the Commission to proceed cautiously and only after adequate preparation before considering whether to extend the online public/political file to the more than 15,000 radio stations nationwide) and 50 State Associations at 3 (questioning whether the Commission's online file database will be capable of smoothly handling the filings of millions of pages of new documents if the online file is expanded).

[54] *See*, *e.g.*, Comments of Native Public Media at 3 (noting that the Commission's online database has been in place for only two years and that smaller market television stations were only required to upload their political files less than two months ago), Small Radio Broadcasters at 5 (also noting that smaller market television stations were required to start uploading political file documents only recently), Mentor at 4 (noting that the Commission acknowledges in the *Public Notice* that it has only started to analyze the budget and technical issues involved in allowing radio licensees to upload documents to the online file voluntarily).

[55] *See*, *e.g.*, Comments of Native Public Media at 3, note 6 and Comments of Entertainment Media Trust ("EMT") at 4-5.

cable and DBS providers and broadcast and satellite radio entities. The implementation of the television online file represents a significant achievement in the Commission's ongoing effort to modernize disclosure procedures to improve access to public file material. Since it was launched on August 2, 2012, more than 650,000 documents have been successfully uploaded into the online file, and the site has generated close to six million page views. Despite initial concerns, NAB characterized the first wave of implementation as "uneventful."[56]As of July 1, 2014, all television broadcast stations have fully transitioned to the online file and, with this transition now complete, it is time to seek comment on expanding the online file to encompass cable, satellite, and radio public file material.

14. As the Commission stated in the *Second Report and Order*, this modernization of the public inspection file is "plain common sense."[57] 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 incur the substantial expense and inconvenience of traveling to a station or headquarters' office to review the public file and make paper copies when a centralized, online file would permit review with a quick and essentially costless Internet search.[58]

A. Benefits of Expanding the Online Public File

15. Our goal in this proceeding is to modernize the outdated procedures for providing public access to cable, DBS, radio, and SDARS files in a manner that avoids unnecessary burdens on these entities. By taking advantage of the efficiencies made possible by digital technology, we intend to make information that cable and DBS providers 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, without requiring a visit to the site where the paper file is maintained, thereby improving access to information about how cable, satellite, and radio entities are serving their communities and meeting their public interest obligations. As the Commission stated in the *Second Report and Order*, the public benefits of posting public file information online, while difficult to quantify with exactitude, are unquestionably substantial.[59]

16. Expansion of the online public file to more media is particularly important with respect to improving public access to political files. As Petitioners point out, political advertising is increasingly shifting from broadcast television to cable and satellite television, and the advent of technological advances such as addressable advertising are likely to further this trend. Political advertising on radio is also on the rise. According to CLC, political advertising expenditures on radio in 2012 ranked third behind spending on broadcast television and cable and could reach as high as 7 percent of overall spending on political advertising in 2014.[60] Adding cable, satellite television, and broadcast and satellite radio political file material to the existing television online database would facilitate public access to disclosure records for all these media and allow the public to view and analyze political advertising expenditures more easily in each market as well as nationwide.

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[56] NAB Comments at 3, *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket 00-168, filed Aug. 26, 2013. *But see* Comments of Missouri and California Broadcast Associations at 2 ("Our television members all are now subject to the online public file requirement. Their experience in implementing and maintaining their online public file has not been …nearly as easy or uncomplicated as had been hoped and predicted in Commission statements.")

[57] *Second Report and Order*, 27 FCC Rcd at 4540, ¶ 10.

[58] Moreover, an online file would permit many searches by the public without requiring assistance from the staff, further reducing the burden of maintaining the public inspection file.

[59] *Second Report and Order*, 27 FCC Rcd at 4542, ¶ 13.

[60] *See* CLC Comments at 1-2.

17. We propose to take the same general approach to transitioning cable, DBS, broadcast radio, and SDARS to the online file that the Commission took with television broadcasters, tailoring the requirements as necessary to the different services. We also propose to take similar measures to minimize the effort and cost entities must undertake to move their public files online. Specifically, we propose to require entities only to upload to the online file public file documents that are not already on file with the Commission or that the Commission maintains in its own database. We also propose to exempt existing political file material from the online file requirement and to require only that political file documents be uploaded on a going-forward basis.

18. With only minor exceptions – requiring cable operators to provide information about the geographic areas they serve, clarifying the documents required to be included in the cable public file, and requiring cable, DBS, broadcast radio, and SDARS entities to provide the location and contact information for their local file – we do not propose new or modified public inspection file requirements in this proceeding. Our goal is simply to adapt our existing public file requirements to an online format. We seek comment on this approach. While we propose to place the entire public file online, we invite comment on whether we should instead require only that certain components of the public file be placed on the Commission's online database. We note that limiting online file requirements to certain components of the public file would require entities to upload certain documents and maintain others in the local public file, thereby potentially imposing a greater burden than moving documents to the online file over time. We seek comment on these issues. One benefit of this proceeding, however, is to ensure that, within a short timeframe, there will be less need for the public to visit the affected entities, which will enable such entities to improve security and minimize risks to employees. We seek comment on these issues, including ways to further reduce the burdens of the public file and limit visits to the affected entities.

B. Expansion of the Online File to Broadcast Radio

19. While no commenter responding to the *Public Notice* opposed the extension of the online public file to cable or DBS providers,[61] as discussed above a number of commenters either opposed imposing online public file obligations on broadcast radio or urged the Commission carefully to consider a number of obstacles unique to radio before requiring radio stations to use the online file. In general, these commenters argue that many radio stations are very small and have limited financial resources and small staffs.[62] Some argue that, for many stations, the additional responsibility of maintaining an online file would take time and resources that would be better devoted to providing local programming and information.[63] Other commenters note that many small stations already face significant economic challenges simply to stay on the air[64] and might be unable to withstand any additional financial pressure an online public file obligation would impose.[65] Finally, some commenters argue that local radio listeners that might be interested in accessing the current public file can do so easily.[66] These commenters contend that moving the public file online would not improve access for current listeners but only encourage complaints from advocacy groups and that responding to these complaints would further strain stations'

[61] NCTA urged the Commission to consider streamlining certain current cable public file requirements prior to transitioning that service to the Commission's online database. *See* NCTA Comments at 6-8. We address those issues below. *See*, *infra*, ¶¶ 52-54.

[62] *See*, *e.g.*, Comments of Small Radio Broadcasters at 3, Missouri and California Associations at 3-4, and National Federation of Community Broadcasters ("NFCB") at 2.

[63] *See* Comments of Small Radio Broadcasters at 3 and NFCB at 2.

[64] *See* Comments of Small Radio Broadcasters at 2 and EMT at 3.

[65] *See* Comments of Small Radio Broadcasters at 12. These stations also argue that the costs associated with an online file would be disproportionately large for smaller stations as the size of a file is not related to station size or revenue. *Id*. at 3.

[66] *See* Comments of LeSEA at 2-3 and Blount at 3.

limited resources.[67]

20. In the television online public file proceeding, the Commission rejected similar arguments regarding the burden an online file requirement would pose and concluded that the benefits of the online file outweighed any potential burden.[68] The Commission also took a number of steps to minimize the costs of moving public files online,[69] most of which we propose to take in this proceeding as well. With respect to radio, we recognize that concerns regarding the potential cost of an online public file requirement carry more weight, particularly for very small radio stations, which may struggle financially and have fewer resources than small television stations. While we believe that moving toward an online public file makes sense in today's world for all entities that currently have public file requirements, we are committed to considering carefully all concerns raised in this proceeding with respect to potential online file requirements. With respect to broadcast radio licensees, as discussed further below, we propose to commence the transition to an online file with commercial stations in larger markets with five or more full-time employees, while postponing temporarily all online file requirements for other radio stations.[70] We believe that this approach addresses the concerns raised by commenters and will help ensure that the transition to the online file is not unduly burdensome.

21. We reject the argument that we should not expand the online file requirement to broadcast radio because doing so will benefit only non-local advocacy groups. Making the file available online will make it easier for the public generally to access the file, including local listeners, and will give the Commission and the public the information needed to evaluate whether stations are meeting their responsibilities to their local community.

C. Online File Capacity and Technical Issues

22. We recognize that adding cable, DBS, broadcast radio, and SDARS entities to the Commission's online file will greatly increase the number of users of the file and the volume of material that must be uploaded.[71] NAB notes that, if radio stations are required to use the online file, there could be more than 17,500 broadcast entities uploading quarterly issues/programs lists on the same four dates in a year.[72] In addition, we recognize that there is likely to be a heavy demand on the online file during peak political seasons, when many broadcast stations take new advertising orders and modify existing orders

[67] *Id*.

[68] *See Second Report and Order*, 27 FCC Rcd at 4547-50, ¶¶ 24-32.

[69] *Id*. at 4545-46, ¶¶ 19-23 (including not requiring stations to upload documents already on file at the Commission, exempting existing political file material from the online file, and declining to require that documents be posted in a particular format).

[70] As discussed further below, we also propose to exempt small cable systems temporarily from the requirement to commence uploading new political file material to the online public file, and we propose to exempt very small cable systems either permanently or at least initially from all requirements to upload documents to the Commission's online database. *See*, *infra*, ¶¶ 46, 48.

[71] The Commission's online database now hosts the public inspection files of approximately 2,200 broadcast television stations. As of October 10, 2014, there are 4,629 cable systems registered in the Commission's database (active PSIDS). There are also two DBS providers, one SDARS licensee, and 15,425 broadcast radio licensees. *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 28 FCC Rcd 10496, 10507, ¶ 27 (2013); *Broadcast Station Totals as of June 30, 2014*, FCC News Release, July 9, 2014. If the file were expanded to include all of these entities as proposed herein, it would need to accommodate over 20,000 additional public inspection files. The staff estimates that broadcast radio public inspection files are about 60% as large as those of television broadcasters, largely because radio stations do not have to maintain records related to children's television commercial limits, have fewer contracts in their public files, and have smaller political files. The staff also estimates that cable system files are about 50% as large as those of television broadcasters because cable systems have fewer public file obligations. We seek comment on these estimates.

[72] *See* NAB Comments at 4-5.

on a daily basis.[73] NAB urges the Commission to consider increasing its online capacity to accommodate the significant increase in network traffic that will occur when a large number of filings must be uploaded on the same date and consider ways to stagger filings to relieve network congestion.[74] Other commenters argue the Commission should consider expanding the traditional 10-day filing window for many broadcast reports to a 30-day filing window to place less stress on the database.[75] We seek comment on these proposals to stagger or otherwise alter filing deadlines and any other suggestions for ways in which the Commission could improve performance of its online public file database.

23. The Commission noted in the *Second Report and Order* that allowing the use of private web hosting services in connection with the online file would allow for greater station efficiencies.[76] As several commenters note, work to establish an interface between the online file database and web hosting services has not yet been finished.[77] Once work on this interface is completed, we anticipate that this would enable an entity to establish a link between its own privately-maintained electronic file database at the system or station to enable automatic synchronization with the database hosted at the FCC. We recognize that web hosting services could assist many entities with their obligation to maintain the online public file, particularly smaller entities, and continue to examine issues related to implementation of such services. We also intend to investigate adding the capability to permit entities to upload documents to multiple online files using a single upload.[78]

24. Television stations are not required to upload material to the online file that is already filed with the Commission or available on a Commission database, and we propose to take a similar approach with respect to cable, DBS, broadcast radio, and SDARS entities. Broadcast radio licensees, like television broadcasters, file material electronically with the Commission via CDBS (which is currently being migrated to LMS), which is already connected to the online public file. Filings and data concerning cable systems, however, are currently maintained in the Commission's Cable Operations and Licensing System ("COALS") database, which does not currently interface with the Commission's online file database. The Commission intends to create a connection between this database and the online file database as appropriate and plans to complete that process before the effective date of any cable online filing requirement that may be adopted in this proceeding.

D. Proposed Online File Rules for Cable, DBS, Broadcast Radio, and SDARS.

25. In general, we propose to adopt a similar approach with respect to cable, DBS, broadcast and satellite radio online file requirements as we did for the television online file. Specifically, we

[73] *Id*. at 5.

[74] *Id*. According to NAB, when website congestion leads to delays in uploading files, the FCC's help desk routinely recommends that stations wait until off-hours to upload documents. *Id*. at 7. *See also* Comments of Missouri and California Associations at 8 (arguing that it is incumbent on the Commission staff to perform tests and convincingly demonstrate system reliability before expanding the online file to more than 15,000 new radio station users).

[75] *See* Comments of 50 State Associations at 4. This commenter notes that, while the Commission often acts to extend filing deadlines when problems with online filing arise, this situation is disruptive as filers are unsure if the deadline will be extended in their situation and/or may not be aware of an extension until after the deadline passes. *Id.* at 3. However, we note that the vast majority of filings occur in the last two business days before a deadline; to the extent that extending a deadline merely shifts the heavy volume to a different two-day period, it is unlikely that the extension would alleviate stress on the database.

[76] *See Second Report and Order*, 27 FCC Rcd at 4566, ¶ 61.

[77] *See* Comments of Missouri and California Associations at 1-2, 6-7.

[78] Commenters also note that television stations today often have to upload the identical file into the online file individually for every station in a station group. The file does not permit this task to be accomplished using a single upload. *Id*. at 6.

propose that these entities' entire public files be hosted online by the Commission[79] and that entities be responsible for uploading only items now required to be in the public file but not otherwise filed with the Commission or available on the Commission's website. As with the television online file, we propose that the Commission itself upload to the online public file material that is already on file with the Commission or that currently resides in a Commission database.

26. Political file. With respect to the political file, we also propose that cable operators, broadcast radio licensees, DBS operators, and SDARS entities not be required to upload their existing political files to the online file. Instead, as we required with television licensees, we propose that these entities be permitted to maintain at the station those documents already in place in their political file at the time the new rules become effective, and only upload documents to the online political files on a going-forward basis. Under this proposal, existing political file material must be retained in the local political file at the station or cable system for the remainder of the two-year retention period. Exempting existing political file material from the online file will substantially reduce the burden of transitioning to the online public file while allowing online access to the political file material most likely to be of interest to the public. The retention period for the political file for cable, DBS, and radio is two years, similar to the political file retention period for television stations. Consequently, as the Commission noted in the *Second Report and Order*, exempting the existing political file will require entities to continue to maintain this file locally only for a relatively short period.[80] Consistent with the requirement we imposed on television broadcasters in the *Second Report and Order*, we also propose that, following the effective date of the new rules, cable, DBS, broadcast radio, and SDARS entities be required to upload new records to their online political file immediately absent unusual circumstances.[81] We seek comment generally on these proposals.

27. Organization. In light of the expansion of the online file we propose herein, we invite comment on any steps we might take to improve the organization of the online file and facilitate the uploading and downloading of material. With respect to the television online political file, the Commission designed an organizational structure of folders and subfolders that ensures that the contents of the files are orderly as required by our rules.[82] Each political file is first organized by year, then by type.[83] Beyond that, we "populated" some additional subfolders by creating folders for major races and jurisdictions.[84] The Commission then provided stations with the ability to create additional subfolders and subcategories for specific candidates, or other organizing structure, in compliance with their own practices. We intend to take the same approach in designing the online political file for cable, DBS, broadcast radio, and SDARS entities, and invite comment on this approach. We expect entities required to upload material to the online political file to do so in an organized manner so that candidates and members of public seeking information can easily navigate it.

28. Compliance dates. We intend to give entities sufficient time to familiarize themselves with the online public file before the effective date of any posting requirement. With respect to

[79] The Commission exempted letters and emails from the public from the online public file requirement, instead requiring that such material be maintained at the station in a correspondence file. *See Second Report and Order*, 27 FCC Rcd at 4565-66, ¶ 62. We propose herein to take the same approach with respect to radio stations' correspondence files. *See*, *infra*, ¶ 74.

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

[81] *Id*. at 4562, ¶ 55. *See also* 47 C.F.R. §§ 73.1943(c), 76.1701(c), (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").

[82] The Commission's rules require cable operators, DBS providers, and radio licensees to maintain "a complete and orderly" political file. *See* 47 C.F.R. §§ 73.1943(a), 76.1701(a), 25.701(d).

[83] The five types are federal, state, local, non-candidate issue ads, and terms and disclosures.

[84] For example, in the federal folders, we included subfolders for specific federal races, including President, U.S. House and U.S. Senate. And in the state folders, we included all of the states included within a station's contour.

documents required to be placed in the file on a "going forward" basis, television stations were required to begin using the online public file upon the effective date of the *Second Report and Order*, which was 30 days after the Commission announced in the Federal Register that OMB had completed its review under the Paperwork Reduction Act and had approved the information collection.[85] Should we follow the same timeline for documents required to be placed in the file on a "going forward" basis in this proceeding?

29. With respect to existing public file materials, we also seek comment on the amount of time we should provide entities to upload these documents to the online public file. Television stations were given six months from the effective date of the *Second Report and Order* to complete the uploading process.[86] Is this amount of time sufficient for cable, DBS, and broadcast and satellite radio? Should we adopt a staggered date by service (cable, DBS, broadcast radio, and SDARS) or by some other basis? Should any of these entities be given more time to upload existing files? We note that we propose below to temporarily exempt radio stations in smaller markets from online public file requirements, and seek comment on whether also to temporarily exempt stations with few employees. We propose to permit these stations to commence uploading material to the online file early on a voluntary basis. This would provide these radio stations with more time to upload existing public file material and to budget for any additional cost or staff resources necessary to accomplish this task.

30. Back-up files. In addition, consistent with the approach the Commission took in the *Second Report and Order*, we propose that cable, DBS, and broadcast and satellite radio entities not be required to maintain back-up copies of all public file materials.[87] Instead, as we do for the television online file, the Commission itself will create a mirror copy of each public file daily to ensure that, if the data in the online public 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. However, consistent with the approach taken with respect to television broadcasters, we propose that cable, DBS, and all radio entities be required to maintain local back-up files for the political file to ensure that they can comply with their statutory obligation to make that information available to candidates, the public, and others as soon as possible.[88] Stations will only be required to make these backups available if and during such rare times as the Commission's online public file is unavailable and the Commission has tools available to entities that will minimize any burden caused by this requirement .[89] We seek comment on this approach.

31. Format. The Commission determined in the *Second Report and Order* that it would not establish specific formatting requirements for documents posted to the online file[90] and we do not anticipate changes to that approach at this time. We propose to require cable, DBS, and broadcast and satellite radio entities to upload any electronic documents in their existing format to the extent feasible;

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[85] *See Second Report and Order*, 27 FCC Rcd at 4580, ¶ 97. *See also Effective Date Announced for Online Publication of Broadcast Television Public Inspection Files*, Public Notice, DA- 12-1057, MM Docket Nos. 00-168 and 00-44 (rel. July 3, 2012).

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

[87] *See Second Report and Order*, 27 FCC Rcd at 4578, ¶ 92.

[88] *Id. See also* 47 U.S.C. § 315(e)(3).

[89] Under our proposal, as with television stations, 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. To ensure that the political file is complete, entities that choose this option will be required to retain any political file records that have not been uploaded or were uploaded after their last download of a mirror copy of the online public file. *See Second Report and Order*, 27 FCC Rcd at 4580, ¶ 96.

[90] *Id*. at 4575, ¶ 85.

we will then display the documents in both the uploaded format and in a pdf version.[91] To the extent that a required document already exists in a searchable format, we propose to require these entities to upload the filing in that format to the extent technically feasible.[92] We seek comment on these proposals.

32. Announcements and links. Consistent with the Commission's approach in the *Second Report and Order*, we propose to 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.[93] We also propose that these entities that have websites 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] We do not propose that cable and DBS operators or broadcast or satellite radio stations be required to make on-air announcements regarding the change in location of their public file.[95] As required of television stations in the *Second Report and Order*,[96] however, we propose to require radio stations 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, as reflected in Appendix B. We invite comment on these proposals.

33. Location of public inspection file and designated contact information. As the Commission required with respect to television stations,[97] we also propose that cable and DBS operators and broadcast and satellite radio licensees be required to provide information in the online public file about the location of the local public file and the individual who may be contacted for questions about the file. This information would be provided when the operator or licensee first establishes its online public file, but should be updated if and when staffing or location changes occur. We believe this information is necessary to inform the public of the location of the existing political file (until its retention period expires in two years), which will be publicly available at the local public file location, as well as the correspondence folder retained by commercial broadcasters. We seek comment on this proposal.

34. EEO materials. In the *Second Report and Order*, we continued to require that television stations make their EEO materials available on their websites, if they have one,[98] and we propose to take the same approach in this proceeding with respect to cable operators, DBS providers, and broadcast and satellite radio licensees. Similar to television stations, we propose to permit these entities to 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.[99] We seek comment on this proposal.

35. No major changes to public file obligations. Finally, with only minor exceptions, we do not propose to impose new public file obligations on cable, DBS, or broadcast or satellite radio entities in connection with this transition to the online public file.[100] While we propose below a reorganization of

[91] *Id*. at 4576, ¶ 86.

[92] *Id.*

[93] *Id*. at 4585, ¶ 109.

[94] *Id*.

[95] *Id.*

[96] *Id.* at ¶ 108.

[97] *Id*. at 4568-9, ¶ 69.

[98] *See Second Report and Order*, 27 FCC Rcd at 4572, ¶ 77.

[99] *Id.*

[100] As discussed further below, we propose that cable operators provide geographic information to the online file database to help users identify the location of the system. This would be a one-time only filing requirement and the amount of information provided would be minimal. *See*, *infra*, ¶ 50. As discussed above, we also propose that cable and satellite providers and broadcast and satellite radio licensees provide information about the location of the local public file and the individual who may be contacted for questions about the file. *See*, *supra*, ¶ 33. This (continued....)

the existing cable public file rules for purposes of clarification and seek comment on other minor changes to those rules, our intention for purposes of the initial transition to a centralized, online file for cable operators, DBS providers, and broadcast and satellite radio licensees is to simply adapt our existing requirements to the online file format. We seek comment generally on these proposals.

36. OVS. We note that Open Video System ("OVS") operators have several public file obligations.[101] Should OVS operators be required to make this information available on the Commission's online public file database, or is it sufficient that this information be made available by the operator locally? How can we identify those entities that do not have Physical System IDs ("PSIDs") or facility ID numbers?

E. Requirements and Issues Unique to Each Service

37. Certain issues related to the online public file requirement are unique to each service. Accordingly, we address each service separately below and also address whether and how to phase-in certain requirements for each service.

1. Cable Public Inspection File

a. Current rules

38. 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.[102] 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.[103] Operators of systems with between 1,000 and 5,000 subscribers must provide certain information "upon request" but must also "maintain for public inspection" a political file,[104] 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 children's programming commercials.[105] 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)."[106]

(Continued from previous page) ———————————
information would also be provided when the entity first establishes its public file, and would require no further input unless and until the information changes.

[101] For example, OVS operators are required to maintain a file with certain EEO materials as well as information regarding qualified video programming providers who have requested carriage. *See* 47 C.F.R. §§ 76.1510, 76.1702, and 76.1712.

[102] 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*, ¶ 52.

[103] *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 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.

[104] 47 C.F.R. § 76.1700(a).

[105] *Id.*

[106] 47 C.F.R. §76.1700(b).

39. Cable system political file requirements are similar to those for television 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.[107] The file must also show the "schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased."[108] With respect to issue advertisements, the file must disclose the name of the purchasing organization and a list of the board of directors.[109] These records must be filed "immediately absent unusual circumstances," and must be retained for at least two years.[110]

b. Proposed online public file requirements

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

40. As discussed above, consistent with the rules we adopted for television broadcasters, we propose to 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 proposes to import these latter documents or information into the online public file itself.

41. We note that the only document that cable operators file with the Commission that must also be retained in their public inspection files is the EEO program annual report,[111] which we propose that the Commission upload to the online file. Cable operators are not required to maintain in their public inspection files documents similar to The Public and Broadcasting manual, which television and radio broadcasters must retain in their public files and which the Commission makes available to the online file for television stations and will make available to the online file for radio stations. Accordingly, as the Commission maintains very few documents cable operators must retain in their public inspection files, most documents in the cable online file will be required to be uploaded by cable operators themselves.

42. Certain information that must be included in cable operators' public files is collected through FCC Form 325 (Annual Cable Operator Report), which is filed annually by cable systems with 20,000 or more subscribers.[112] For example, operators must maintain at the "local office" a "current" listing of the cable television channels delivered to subscribers[113] and must "maintain for public inspection" a list of all broadcast television stations carried in fulfillment of the must-carry requirements.[114] Some of this information is also collected on FCC Form 325. Cable operators required to file the form are required to identify on the form whether a broadcast station is carried pursuant to must-carry obligations, but the form does not request all of the specific information about the system's must-carry channels that is required to be placed in the public file pursuant to 47 C.F.R. Section

[107] 47 C.F.R. §76.1701(a).

[108] *Id.*

[109] 47 C.F.R. §76.1701(d).

[110] 47 C.F.R. §76.1701(c).

[111] 47 C.F.R. § 76.1702.

[112] *See* 47 C.F.R. § 76.403. This group represents about 10 percent of all cable systems. Form 325 must be filed within 60 days after the date the Commission notifies the operator that the form is due. The Commission retains the authority to require Form 325 to be filed by a sampling of cable operators with less than 20,000 subscribers. *Id.*

[113] 47 C.F.R. § 76.1705 (Performance tests (channels delivered)).

[114] 47 C.F.R. §76.1709 (Availability of signals). This rule requires that the list of must-carry stations 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."

76.1709.[115] We invite comment on whether the Commission should make FCC Form 325 available in the online file for those systems required to file this form annually. We also invite comment on any other ways we can import to the online file information cable operators would otherwise be required to upload to the file themselves in order to reduce the burden on operators of uploading information to the online file.

43. NCTA requests that the Commission review the ongoing need for channel lineups to be placed in the public inspection file as this information is provided to consumers in paper format and, according to NCTA, is available on operators' websites.[116] We seek comment on this request. If most operators maintain this information electronically, we believe it would not be burdensome to require operators to upload this information to the online public file. We seek comment on this view. If we were to require all cable systems to upload channel lineups to the online file, should we require this information to be uploaded or updated annually or on some other schedule? To the extent an operator maintains the required information on a channel lineup its own website, we also seek comment on whether the operator should be permitted to provide a link directly to this channel lineup in lieu of uploading this information to the public file.

44. As discussed below, we propose to clarify our rules regarding proof-of-performance test data and signal leakage logs and repair data.[117] Specifically, we propose to make it clear in our rules that this information must be made available only to the Commission and, in the case of proof-of-performance test data, also to the franchisor, and not to the public. Accordingly, this information would not be required to be included in the online public inspection file, thereby reducing the amount of material cable operators would be required to upload to the file.

45. We propose that cable systems be required to upload other material currently required to be maintained for public inspection or made available to the public "upon request." For cable systems with 1,000 or more subscribers, this material would include new political file material,[118] sponsorship identification information,[119] commercial records on children's programs,[120] certain EEO materials,[121] leased access policy information,[122] records concerning operator interests in video programming,[123] and copies of requests for waiver of the prohibition on scrambling/encryption.[124] 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," we believe these systems should be required to place these materials in the online file as this will facilitate public access to these materials. We believe this requirement will be no more burdensome than placing the materials in a physical file and should be less

[115] Systems do not report on the form the broadcast television station's community of license, broadcast channel number, cable channel number, or for NCE stations whether the station was carried by the system on March 29, 1990. *See* 47 C.F.R. §76.1709(a).

[116] *See* NCTA Comments at 7.

[117] *See*, *infra*, ¶ 52.

[118] *See* 47 C.F.R. § 76.1701.

[119] *See* 47 C.F.R. § 76.1715.

[120] *See* 47 C.F.R. § 76.1703.

[121] *See* 47 C.F.R. § 76.1702.

[122] *See* 47 C.F.R. § 76.1707.

[123] *See* 47 C.F.R. § 76.1710.

[124] *See* 47 C.F.R. § 76.630.

burdensome over time.[125] We invite comment on this approach.

46. We also propose to exempt cable systems with fewer than 1,000 subscribers from all online public file requirements, either permanently or at least initially. As discussed above, these systems have far fewer public file requirements than larger systems and are not required to maintain a political file. Alternatively, we could exempt systems with fewer than 1,000 subscribers that maintain public file information on their own websites. We seek comment on these possible approaches and any other suggestions for ways we should provide regulatory relief to very small cable systems.

47. Political file. As discussed above, consistent with the approach we adopted for television broadcasters, we propose that cable operators not be required to upload their existing political files to the online file; rather, we propose that they be permitted to maintain existing material in their physical political file and only upload documents to the online political file on a going-forward basis. We believe 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, and invite comment on this proposal. We note that Time Warner Cable, which is not currently required to maintain its public file online, already posts its political files online to save costs and expedite access to this material.[126] We invite comment on whether there are any aspects of our current cable political file requirements that are unclear and that should be clarified in connection with our proposal to transition to an online political file.

48. To smooth the transition for both cable operators and the Commission and to allow smaller cable systems additional time to begin posting their political files online, we propose to phase-in the requirement to commence uploading political file documents to the online file for smaller cable systems. We invite comment on ways in which this phase-in period should be structured. One approach would be to start by requiring cable systems with 5,000 or more subscribers to post new political file materials online, while exempting systems with fewer than 5,000 subscribers for some period of time. As cable systems with fewer than 1,000 subscribers are exempt from all political file requirements, this temporary exemption would apply to systems with 1,000 or more subscribers but fewer than 5,000 subscribers. As discussed above, the rules currently exempt systems with fewer than 5,000 subscribers from some recordkeeping requirements,[127]and we invite comment on whether this 5,000 subscriber cutoff should also be used to provide regulatory relief in this context. Another approach would be to define "small cable system" for purposes of the exemption 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.[128] The Commission used this definition for purposes of determining eligibility for a streamlined financial

[125] As noted above, the staff estimates that cable public files are 50% as large as television public files. *See*, *supra*, 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.

[126] *See* Petition at 8 (citing Keenan Steiner, Time Warner Cable Posts its Political File Online, So Why the Fuss, NAB?, Sunlight Foundation (June 15, 2012), http://sunlightfoundation.com/blog/2012/06/15/time-warner-cable-already-posting-its-political-file-online?

[127] *See* 47 C.F.R. § 76.1700(a). The Commission reduced the public file requirements for systems with between 1,000 and 5,000 subscribers in 1999 to "provide regulatory relief." *1998 Biennial Regulatory Review – Streamlining of Cable Television Services Part 76 Public File and Notice Requirements*, Report and Order, 14 FCC Rcd 4653, 4665, ¶ 25 (1999) ("*1998 Biennial Review Order*").

[128] We note that in the *1998 Biennial Review Order* the Commission rejected a proposal to provide regulatory relief to systems with 15,000 or fewer subscribers that were owned by cable companies with 400,000 or fewer subscribers over all their systems. *1998 Biennial Review Order*, 14 FCC Rcd at 4665, ¶ 25. The Commission determined that, for purposes of the public inspection file requirements, regulatory relief was appropriately evaluated based on the number of subscribers in the particular community involved without reference to whether the same operator owns systems elsewhere. *Id*.

hardship waiver in the CALM Act *Report and Order*.[129] The Commission explained in that Order that it believed that the streamlined waiver "should be available only to those systems that are most likely to face financial hardships in complying with" the Commission's CALM Act requirements.[130] We invite comment on the appropriate definition of "small cable system" for purposes of the political file exemption and on the appropriate period of time we should exempt small systems from the requirement to commence posting political file material online. Should there be a means of providing the public with information regarding which systems' political files are included in the online file, and which are exempt, either temporarily or permanently?

49. While we are proposing to delay the transition to the online political file for small cable systems, we propose to allow these systems to commence uploading documents to the online political file on a voluntary basis at the same time that online political file requirements become effective for larger cable systems. In addition, if we were to decide to exempt systems with fewer than 1,000 subscribers from all online public file obligations, we propose to allow these systems to participate in the online file database on a voluntary basis. Regardless of whether we determine to delay or exempt small systems from online filing requirements, we believe it is appropriate to permit any system that desires to participate in the online database to do so voluntarily. We invite comment on this proposal.

50. Geographic information. We propose to require cable operators, when first establishing their online public file, to provide a list of the geographic areas served by the system. The Commission currently lacks precise information about the geographic areas served by cable systems and we believe that making this information available in the online public file will make the information in the file, and especially the political file, more useful to subscribers, advertisers, candidates, and others. We propose to require cable systems to provide information regarding the ZIP Codes served by the system and the Designated Market Area ("DMA") or areas it serves, and we seek comment on this proposal. We also seek comment on alternative proposals for collecting geographic information, such as Census Block or Census Tract information. We note that operators would have to provide this information when they first establish their public files on the Commission's database, and update it only to reflect changes. Therefore, we do not believe this requirement would be burdensome.

51. We also invite comment on any ways to facilitate access to the online database by consumers. Cable operators are currently required to maintain their public files on a per-system basis and we tentatively conclude that the same should apply to the online database.[131] However, as NCTA notes, cable public files cannot be organized by call sign and the analogous unit, a physical system identifier, is not readily known by consumers.[132] If we require cable operators to provide information on the geographic area served by the system, should we use that geographic information to help identify cable systems in the cable online file? Are there other ways in which systems can be identified to consumers so that they can quickly find the information they are seeking?

(ii) Clarification and streamlining of current recordkeeping requirements

52. NCTA argues that we should streamline cable public file requirements to avoid requiring cable operators to incur the cost of posting unnecessary material.[133] While we decline to undertake a

[129] *See In the Matter of Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, 26 FCC Rcd 17222, 17254, ¶ 54 (2011) ("*CALM Act Report and Order*").

[130] *Id.*

[131] As noted in paragraph 23, *supra*, to reduce administrative burdens, we plan to investigate allowing entities to upload documents that may be common across multiple stations or systems only once, placing such documents in the online file for each station or system whose file is required to contain the document.

[132] *See* NCTA Comments at 3-4 and NCTA Reply Comments at 2, note 5.

[133] *See* NCTA Comments at 6-8.

comprehensive review of cable public inspection file requirements in this proceeding, we seek comment on several issues raised by NCTA and propose to clarify certain requirements. First, NCTA asks that we eliminate the requirement that proof-of-performance and signal leakage information be retained in the public inspection file.[134] We note that the current recordkeeping rules regarding this information are unclear. While Section 76.1700(a), which sets out 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.[135] We agree with NCTA that this information is unlikely to be of interest to the general public and does not need to be made available online. Accordingly, we propose to clarify that this information must be maintained and made available to the Commission and franchisor upon request, but does not need to be maintained in the system's public inspection file or uploaded to the online file. We seek comment on this proposal.

53. Second, NCTA requests that the Commission evaluate whether it should exclude headend location information from any online public inspection file as it is of no interest to the general public and revealing this information in a centralized database available to Internet users "raises potentially serious security risks."[136] We propose to exclude headend location information from the online public file and seek comment on this proposal.

54. Third, NCTA requests that the Commission consider eliminating the current requirement that cable operators post certain EEO materials on the system's own website, if it has one, as these materials would be available on the Commission's online public file.[137] As discussed above, in the *Second Report and Order*, we continued to require that television stations make certain EEO materials available on their websites, if they have one, and we propose to take the same approach in this proceeding with respect to cable operators, DBS providers, and broadcast and satellite radio licensees.[138] Consistent with the rules for television stations, however, we propose to permit these entities to 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.[139]

(iii) Reorganization of the cable public inspection file rules

55. We believe that a limited reorganization and clarification of the public inspection file rules would make them easier to locate and understand. The public inspection file rules for broadcasters are contained in two rule sections that identify all public inspection file requirements for commercial and noncommercial educational broadcasters, with references to other rule sections as appropriate.[140] In

[134] *See* NCTA Comments at 7.

[135] 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.

[136] NCTA Comments at 7-8. *See* 47 C.F.R. § 76.1708 (requiring cable operators to "maintain for public inspection the designation and location of its principal headend").

[137] *See* NCTA Comments at 8.

[138] *See*, *supra*, ¶ 34.

[139] *Id.*

[140] *See* 47 C.F.R. §§ 73.3526 (commercial stations) and 73.3527 (noncommercial educational stations).

contrast, the cable recordkeeping requirements are spread over several rule sections in Part 76, Subpart U (Documents to be Maintained for Inspection),[141] with some requirements contained in a separate rule subpart.[142] While Section 76.1700 of the rules includes references to many of these recordkeeping requirements it does not cite them all.[143] Revising our rules to identify all cable recordkeeping requirements in a single rule section, with references to other sections as appropriate, would make these requirements easier to locate and facilitate compliance. Moreover, as confirmed by our discussion above regarding maintenance of proof-of-performance and signal leakage information, some of the current rules are confusing and inconsistent. We propose to revise Section 76.1700 to include references to all public inspection file requirements and to more clearly address which records must be maintained in the file versus those that must be made available to the Commission or franchising authority. We invite comment on these proposed revisions, which are set out in Appendix B.[144]

2. DBS Public Inspection File

a. Current rules

56. DBS providers are required to maintain a public 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.[145] 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."[146] With respect to EEO materials, DBS operators are required to maintain in their public file EEO reports and certain EEO program information.[147]

57. 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.[148] 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.[149] These records must be placed in the file "as soon as

[141] *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 (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).

[142] *See* 47 C.F.R. § 76.630 (Compatibility with consumer electronics equipment).

[143] For example, Section 76.1700 does not reference the requirements in Sections 76.630 or 76.1707 – 76.1716.

[144] *See* Appendix B (Proposed Rules).

[145] 47 C.F.R. §25.701(f)(6).

[146] 47 C.F.R. §25.701(e)(3).

[147] *See* 47 C.F.R. §§ 25.601, 76.71, 76.1702.

[148] 47 C.F.R. §25.701(d).

[149] 47 C.F.R. §25.701(d)(1).

possible" and must be retained for at least two years.[150] 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."[151] In 2004, the Commission explained that it was requiring

> DBS providers to abide by political file obligations similar to those requirements placed on terrestrial broadcasters and cable systems. Because DBS is a national service and each provider's headquarters is not necessarily readily accessible to most of its viewers and to candidates, we require DBS providers to make their political files available upon telephone or electronic request. They may provide access to the file by fax, e-mail, via Internet website access, or, if so requested, by mailing photocopies of the documents in their political files. We expect that DBS providers will assist callers by promptly answering questions about how to access the contents of the DBS providers' political files. DBS providers may require individuals requesting documents to pay for photocopying if the requester prefers delivery by mail, but the DBS provider must pay for postage. DBS providers are encouraged to put their political files on their respective web sites but must provide alternatives for individuals who do not have Internet access. In view of these requirements and expectations, we do not find it necessary to require that a provider maintain a public file in every community that receives its signal. We do, however, require, that DBS providers prominently disclose the toll-free telephone number and e-mail address of the department responsible for responding to requests for access to the political file. In addition, because DBS experience with the political broadcasting rules is relatively new, and to facilitate a future Staff Report, we will require that DBS providers maintain all requests for time from candidates or individuals on behalf of candidates, including general requests for availabilities and rate information. In addition, and for the same reasons, DBS providers will be required to retain information in their political files for four years, until 2006, and thereafter for two years, as is required of cable operators and terrestrial broadcast stations.[152]

b. Proposed online public file requirements

58. We propose to treat DBS providers in the same manner as television, cable, and broadcast and satellite radio entities by requiring them to upload to the online file only material that is not already on file at the Commission. 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,[153] which we propose that the Commission upload to the online file. Like cable operators, the other information DBS providers are required to maintain in their public inspection files is not currently filed with or maintained by the Commission. Accordingly, most material required to be kept in the online file would have to be uploaded by DBS providers themselves, which includes 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 political file material.

59. We do not believe that requiring DBS providers to upload this material to the online file would be onerous. As compared to television and radio broadcasters and cable operators, DBS providers

[150] 47 C.F.R. §25.701(d)(2).

[151] 47 C.F.R. §25.701(d)(3).

[152] *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992*, 19 FCC Rcd 5647, 5661-62, ¶ 35 (2004) (footnotes omitted).

[153] 47 C.F.R. §§ 25.601, 76.1702.

have the fewest number of public file requirements. In addition, there are currently only two U.S. DBS operators, each of which has sufficient financial resources to comply with any online file requirements we ultimately adopt in this proceeding.[154] We agree with Petitioners that the transition to an online file is particularly important for DBS because of that service's nationwide reach.[155] 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. While staff members must copy and mail public and political file documents upon request under the current rules, making this material available online would considerably improve public access. Moreover, we believe that, for DBS providers, 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 in light of the extra steps DBS providers are required to take to assist callers requesting materials from the file.

60. We tentatively conclude, consistent with our approach for television stations and our proposal herein for cable systems and broadcast radio licensees, that DBS providers should not be required to upload their existing political files to the online file but rather should be permitted to maintain existing material in their physical political file and only upload documents to the online political file on a going-forward basis. If we require DBS providers to upload their political files, we propose to eliminate the requirement that they mail photocopies of documents in that file to individuals requesting copies, as these materials would be available online Additionally, to the extent that political file materials relate to ads shown on a local or hyper-local basis, we seek comment on how DBS providers can indicate in their public files the area in which such ads were or will be shown. We also invite comment on whether there are any aspects of our current DBS political file requirements that are unclear and that should be clarified in connection with our proposal to transition to an online political file.

3. Broadcast Radio Public Inspection File

a. Current rules

61. 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 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.[156] The file must be maintained at the station's main studio.[157]

62. Radio stations must maintain a political file as part of the public inspection file.[158] The

[154] *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*.

[155] *See* Petition at 7.

[156] *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 station must also maintain a public inspection file. *See* 47 C.F.R. §§ 73.3526(a)(1), 73.3527(a)(1).

[157] Radio stations that maintain a main studio and public file outside its 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).

[158] 47 C.F.R. §§ 73.3526(e)(6), 73.3527(e)(5), 73.1943. Although noncommercial radio stations are prohibited by Section 399B of the Communications Act, 47 U.S.C. § 399B, from accepting paid political and issue advertising, (continued....)

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."[159] The file must also show the "schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased."[160] With respect to issue advertisements, stations must disclose the name of the purchasing organization and a list of the board of directors.[161] These records must be filed "as soon as possible, meaning immediately, absent unusual circumstances," and must be retained for at least two years.[162]

b. Proposed online public file requirements

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

63. As discussed above, consistent with the rules we adopted for television broadcasters we propose to require that radio broadcast licensees 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. Under this proposal, radio stations would be required to upload citizen agreements,[163] certain EEO materials,[164] issues/programs lists,[165] local public notice announcements,[166] time brokerage agreements,[167] joint sales agreements,[168] materials related to FCC investigations or complaints (other than investigative information requests from the Commission),[169] and any new political file material. We propose that any document or information required to be in the public file that is electronically filed with CDBS (or LMS) will be imported to the online file by the Commission. For radio broadcasters, under this proposal the documents the Commission would upload to the online file include authorizations, applications and related materials, contour maps, 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.

64. While all stations will have issues/programs lists and materials related to local public notice announcements, few will have time brokerage agreements and very few will have citizen agreements or materials related to an FCC investigation or complaint. While many stations will have political file material, in general we expect that these files will be smaller for radio stations than for television stations as fewer political advertisements air on radio.[170] In addition, radio stations with fewer

(Continued from previous page)
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.

[159] 47 C.F.R. §73.1943(a).

[160] *Id.*

[161] 47 C.F.R. §73.1212(e).

[162] 47 C.F.R. §73.1943(c).

[163] *See* 47 C.F.R. § 73.3526(e)(3).

[164] *See* 47 C.F.R. §§ 73.3526(e)(7), 73.3527(e)(6), 73.2080.

[165] *See* 47 C.F.R. §§ 73.3526(e)(12), 73.3527(e)(8).

[166] *See* 47 C.F.R. §§ 73.3526(e)(13), 73.3527(e)(10).

[167] *See* 47 C.F.R. §§ 73.3526(e)(14).

[168] *See* 47 C.F.R. §§ 73.3526(e)(16).

[169] *See* 47 C.F.R. §§ 73.3526(e)(10), 73.3527(e)(11).

[170] As noted above, total spending on political advertising on radio in 2012 ranked third behind broadcast television and cable television. *See*, *supra*, ¶ 16. Also, as noted above, the staff estimates that radio public files are 60% as large as television public files. *See*, *supra*, note 71.

than five full-time employees are exempt from many of the EEO recordkeeping requirements.[171] We seek comment on these issues.

65. Political file. As discussed above, consistent with the approach we adopted for television broadcasters and that we propose herein for cable operators, we propose that broadcast radio licensees not be required to upload their existing political files to the online file, but rather that they be permitted to maintain existing material in their local political file and only upload documents to the online political file on a going-forward basis. We believe this approach will minimize the burden of transitioning to the online file for radio licensees. We seek comment on this approach.

66. Delay in implementation for small market stations. We propose to implement the online public file for broadcast radio stations by imposing requirements, at first, only on stations with more resources. We propose to delay all mandatory online filing for other radio stations for some period of time. As discussed above, several commenters express concern about whether radio stations have sufficient resources to implement and maintain an online public file, particularly small stations with limited financial resources and small staffs.[172] Some commenters argue that we should postpone any consideration of moving to an online file for broadcast radio or, if we do adopt online file obligations for that medium in this proceeding, that we exempt smaller stations and/or NCE stations. Those advocating an exemption for NCE stations argue that many of these stations have very small staffs and limited resources and that compliance with an online requirement would create a severe financial and staffing hardship.[173] Ampers and NFCB also note that NCEs are prohibited from accepting funds from political candidates and organizations advocating on behalf of a candidate or political issue, making online access to the political file less important for these stations.[174] Other commenters argue that, in order to minimize the risk of online public file requirements becoming the "proverbial straw that breaks the camel's back" for already struggling small radio stations, the Commission should not require small stations to upload the contents of their existing public files, or at least should provide stations with an extended period of time during which they could incrementally add those materials to the online file.[175]

67. Another issue raised by radio commenters is the lack of computer or Internet access at some small, rural stations. According to NAB, some radio stations in remote locations, including Alaska, Maine, and areas of the Southwest, do not have access to reliable Internet service or even are without Internet access altogether.[176] Other stations have no in-house computing resources or broadband capacity.[177] According to Native Public Media, many Native-owned NCE radio stations operate on Tribal lands where broadband penetration rates are between five and 10 percent.[178] Moreover, according to these commenters, in communities where broadband is theoretically available actual access is often severely hampered by high latency, slow dial-up speeds, and unreliable coverage.[179] Native Public Media argues

[171] *See* 47 C.F.R. § 73.2080(d).

[172] *See*, *supra*, ¶ 19. According to Missouri and California Associations, because of the limited number of staff at smaller stations, a single employee is often required to take on tasks assumed by several employees at larger stations. *See* Comments of Missouri and California Associations at 3-5.

[173] *See* Comments of The Association of Minnesota Public Educational Radio Stations ("Ampers") at 1, and NFCB at 2, and WRTC, Trinity College at 1. CLC supports an exemption for NCEs with five or fewer employees. *See* CLC Reply Comments at 3.

[174] *See* Ampers Comments at 1and NFCB Comments at 2.

[175] *See* Small Radio Broadcasters Comments at 6-7.

[176] *See* NAB Comments at 5-6 and note 13.

[177] *See* NAB Comments at 5-6.

[178] *See* Native Public Media Comments at 6.

[179] *Id.*

that it would be difficult, if not impossible, to require stations facing these circumstances to upload large files to the Commission's online database.[180] In addition, these commenters argue that the cost of maintaining an online file would significantly outweigh the benefits in communities where listeners have limited Internet access.[181]

68. We recognize that some radio stations may face financial or other obstacles that could make the transition to an online public file more difficult. Accordingly, we believe that it is reasonable to commence the transition to an online public file for radio with stations with more resources while delaying, for some period of time, all mandatory online public file requirements for other stations. We propose that other stations be permitted to voluntarily transition to the online file early, but not be required to participate until we have gained some experience with the inclusion of stations with greater resources. Adding radio stations to the online file incrementally over time will give us more time to address any technical issues that may arise in connection with our online file database as the volume of users increases. Given the large number of radio stations and the volume of material they will be uploading to the online file, we believe it makes sense to proceed in stages to include radio stations in the Commission's online database.

69. We seek comment generally on this approach. Is it appropriate to temporarily exempt a certain category of radio stations from all online public file requirements or should we instead temporarily exempt some stations from only the online political file?[182] How should we define the category of stations that should be eligible for a temporary exemption? We note that, in the television online file proceeding, we implemented the online political file first with television stations in the top 50 DMAs that were also affiliated with the top four networks.[183] With respect to radio, however, network affiliation is not a useful way to identify stations with more resources. Accordingly, we propose to begin implementation of 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. We propose that these stations commence compliance with online public file requirements at the same time as cable, DBS, and SDARS entities. With respect to all other radio stations, we propose to delay all online public file requirements for two years.[184] This two-year delay is the same length of time we delayed, in the television online file proceeding, the implementation of political file obligations for television stations in smaller markets and those unaffiliated with the top four networks. We propose to initially exempt NCE radio stations as well as those with fewer than five full-time employees from the online public file to help ensure that we commence online file requirements for radio with stations with greater resources. With respect to radio stations with fewer than five full-time employees, as noted above our rules exempt these stations from many EEO requirements.[185] One advantage of tying an exemption for small radio stations to this EEO exemption is that information regarding the stations that are exempt from EEO requirements is readily available to the public, as this information is filed with the FCC and is available via the FCC's website.[186] We seek comment on this and any other possible approach to structuring the

[180] *Id.*

[181] *Id*. at 6-7.

[182] The Torres Law Group, PLLC ("TLG") supports including radio stations in larger markets or with a high number of listeners in the online political file initially and then gradually expanding the political file to smaller markets and, possibly, NCEs. *See* TLG Reply Comments at 4.

[183] *See*, *supra*, ¶ 9.

[184] Many radio stations are located outside recognized radio markets. *See* Comments of Missouri and California Associations at 3.

[185] *See*, *supra*, ¶ 64.

[186] 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. §

(continued....)

temporary delay in online file requirements for certain radio stations. We also seek comment on whether we should permanently exclude certain radio stations, such as NCEs and stations with fewer than five full-time employees, from all online public file requirements, rather than simply delaying implementation of online file requirements for these stations.

70. While we are proposing to delay the transition to the online public file for certain radio stations, we also propose to allow these stations to commence uploading all or part of their public file documents to the online file on a voluntary basis before the delayed effective date of any online file requirement for these stations.[187] As discussed above, public television licensees in the television online file proceeding requested that we allow NCE radio stations, or at least those licensed to the same entity as, or under common control with, an NCE television station, to maintain their public inspection files online on the Commission's website on a voluntary basis. Public television licensees argued that this would allow radio stations that were jointly owned or operated with television stations to avoid duplicative efforts from having to maintain two separate public file systems, involving some of the same documents. If we decide to delay implementation of online file requirements for all or some NCEs in this proceeding, we believe it is appropriate to allow them and any other smaller radio station to voluntarily transition to the Commission's online file early. We seek comment on this proposal.

71. We believe our proposal addresses many of the concerns raised regarding radio stations that may have fewer resources and, therefore, might find transitioning to the online file more burdensome. These stations would not be required to commence uploading documents to the Commission's database until stations with more resources have completed part or all of their transition to the online file. This delayed transition will assist small stations to budget for any initial costs to upload documents to the file and any extra staff time required for this effort. In the meantime, stations may commence uploading documents to the online database early on a voluntary basis.[188] We invite comment on this approach and on ways we can help ensure that permitting stations to commence uploading documents early on a voluntary basis is not confusing to members of the public trying to locate and access public file material.

(ii) Contour map and main studio information

72. 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."[189] We propose to have the Commission create contour maps for the online file based upon existing data. Given the complexities of AM contour mapping, we may not be able to use the same tools that we used to map TV contours and that we anticipate using to map FM contours.[190] We seek comment on ways to address this issue. Should AM stations be required to upload contour maps to the online file?

73. We also propose to require stations to provide information to the online file regarding the

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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.

[187] Stations would be required to maintain in their local public inspection file any documents required to be in the file that have not been uploaded to the Commission's online file database.

[188] This voluntary, early transition to the online file could commence after the effective date of the rules for larger radio stations.

[189] *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*.

[190] We expect to automate this process using existing data. *See* http://www.fcc.gov/encyclopedia/fm-service-contour-data-points.

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 would 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. In addition, we believe this information is necessary to inform the public of the location of the correspondence file[191] and existing political file (until its retention period expires in two years), both of which will be publicly available at the station. Therefore, consistent with the approach we took in the television station online file proceeding,[192] we propose to require 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, we propose that stations with a main studio located outside of their community of license be required to list the location of the correspondence file and existing political file, as well as the required local or toll free number. We seek comment on this proposal.

(iii) Letters from the public

74. In the *Second Report and Order*, the Commission exempted letters and emails from the public from the online public file and instead required that such material be maintained at the station in a correspondence file.[193] The Commission determined that including these documents 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.[194] 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.[195] 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.[196] Finally, the Commission determined that it would not require stations to retain social media messages in their correspondence file.[197] We propose to take the same approach with respect to broadcast radio stations and the letters and emails they receive from the public, and seek comment on this proposal.

(iv) Donor lists

75. NCE stations are required to retain in the public inspection file lists of donors supporting specific programs.[198] Native Public Media asks that, for the same reason the Commission excluded letters and emails from the public from the television online file requirement, donor lists also be excluded from

[191] *See*, *infra*, ¶ 74.

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

[193] *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).

[194] 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.

[195] *See Second Report and Order*, 27 FCC Rcd at 4565, ¶ 62.

[196] *Id*. at 4567, ¶ 64.

[197] *Id.* at 4568, ¶ 66.

[198] *See* 47 C.F.R. § 73.3527(e)(9).

any NCE online file requirements to ensure the privacy of donors.[199] In the *Second Report and Order* we required NCE television broadcasters to include donor lists in their online public files,[200]and we propose to take the same approach with respect to radio. We seek comment on this issue. Is there a reason to treat NCE radio station donor lists differently from NCE television station donor lists?

4. Satellite Radio Public Inspection File

a. Current requirements

76. Licensees in the satellite radio service are required to maintain a public file with two categories of material. First, as discussed above,[201] 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.[202] Second, also as discussed above,[203] 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.[204] 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 47 C.F.R. § 25.701(f)(6), which sets forth public file requirements for the noncommercial set-aside for DBS providers.[205]

b. Proposed online public file requirements

77. We propose to 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. We seek comment on this proposal. Similar to cable operators and DBS providers, the only document that SDARS entities file with the Commission that must be retained in the public inspection file is the EEO program annual report, which we propose that the Commission upload to the online file. We do not believe that requiring SDARS licensees to upload to the online file other material required to be maintained in the public file would be burdensome as the number of public file requirements for this service is fewer than for other services and entities discussed in this item and because the current, sole U.S. SDARS licensee has ample financial resources to comply with any online file requirement we ultimately adopt in this proceeding. We also believe that, similar to 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.

78. With respect to the political file, we propose to treat satellite radio similar to DBS, as they are both nationwide services with few licensed service providers. As we do with respect to the DBS political file herein,[206] we tentatively conclude, consistent with our approach for television stations and

[199] *See* Comments of Native Public Media at 4. This commenter also notes that NCE stations that receive grants from the Corporation for Public Broadcasting are required to protect the privacy rights of their donors. *Id.* (*citing* 47 U.S.C. § 396(k)(12)).

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

[201] *See*, *supra*, ¶ 4 and note 18.

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

[203] *See*, *supra*, ¶ 4 and note 18.

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

[205] *Id*. at 12415, ¶ 146.

[206] *See*, *supra*, ¶ 60.

our proposal herein for cable systems and radio broadcasters, that SDARS licensees should not be required to upload their existing political files to the online file but rather should be permitted to maintain existing material in their physical political file, and only upload documents to the online political file on a going-forward basis. In addition, to the extent that political file materials relate to ads shown on a local or hyper-local basis, we seek comment on how satellite radio licensees can indicate in their public files the area in which such ads were or will be shown.

IV. PROCEDURAL MATTERS

A. Ex Parte Presentations

79. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[207] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Initial Regulatory Flexibility Act Analysis.

80. The Regulatory Flexibility Act of 1980, as amended ("RFA"), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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 Small Business Administration (SBA).

81. With respect to this Notice, an Initial Regulatory Flexibility Analysis ("IRFA") under the Regulatory Flexibility Act[208] is contained in Appendix C. Written public comments are requested in the IFRA, and must be filed in accordance with the same filing deadlines as comments on the *NPRM*, with a distinct heading designating them as responses to the IRFA. The Commission will send a copy of this *NPRM*, including the IRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, a copy of this *NPRM* and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the *Federal Register*.

[207] 47 C.F.R. §§ 1.1200 *et seq.*

[208] *See* 5 U.S.C. § 603.

C. Paperwork Reduction Act Analysis.

82. This document contains proposed new or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements proposed in this document, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees

D. Comment Filing Procedures

83. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

    - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

    - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

84. *Additional Information:* For additional information on this proceeding, please contact Kim Matthews of the Media Bureau, Policy Division, Kim.Matthews@fcc.gov, (202) 418-2154.

V. ORDERING CLAUSES

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

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

87. **IT IS FURTHER ORDERED** that the Petition for Rulemaking filed by the Campaign Legal Center, Common Cause, and the Sunlight Foundation **IS GRANTED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters

Comments filed in MB Docket No. 14-127

50 State Broadcasters Associations ("50 State Associations")
American Public Media Group, Minnesota Public Radio, Southern California Public Radio, and Classical South Florida ("American Public Media")
Association of Minnesota Public Educational Radio Stations ("Ampers")
Blount Masscom, Inc., et al. ("Blount")
Campaign Legal Center, Common Cause, and Sunlight Foundation ("CLC")
Educational Media Foundation ("EMF")
Entertainment Media Trust ("EMT")
LeSEA Broadcasting Corporation ("LeSEA")
Local and Regional Small Radio Broadcasters ("Small Radio Broadcasters")
Martha Whitman
Mentor Partners, Inc. ("Mentor")
Missouri and California Broadcasters Associations ("Missouri and California Associations")
National Association of Broadcasters ("NAB")
National Cable & Telecommunications Association ("NCTA")
National Federation of Community Broadcasters ("NFCB")
Native Public Media
Patrick Ruffini

Reply Comments filed in MB Docket No. 14-127

Campaign Legal Center, Common Cause, and Sunlight Foundation ("CLC")
National Cable & Telecommunications Association ("NCTA")
Torres Law Group, PLLC ("TLG")

In addition, a number of individuals filed comments in this proceeding.

APPENDIX B

Proposed Rules

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

PART 73 – RADIO BROADCAST SERVICES

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

AUTHORITY: 47 U.S.C. 154, 303, 307, and 554.

2. Section 73.1943 is amended by revising § 73.1943(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. The online political file must be updated in the same manner as subsection (c).

3. Section 73.3526 is amended by revising § 73.3526(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 file, as discussed in paragraph (b)(2), a hard copy of the public inspection file shall be maintained at the main studio of the station. 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 on the online 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 [2 years following the effective date of the Report and Order in MB Docket No. 14-127]. However, any radio station that is not required to place its public inspection file in the online file hosted by the Commission before [2 years following the effective date of the Report and Order in MB Docket No. 14-127] 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 file hosted by the Commission. Political inspection file material in existence 30 days after the effective date of this provision 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 matter discussed in paragraph (b)(1) until [2 years following the effective date of the Report and Order in MB Docket No. 14-127]. For these stations, effective [2 years following the effective date of the Report and Order in MB Docket No. 14-127], 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 [2 years following the effective date of the Report and Order in MB Docket No. 14-127], if not placed in the online 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 [2 years following the effective date of the Report and Order in MB Docket No. 14-127] 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.

* * * * *

4. Section 73.3527 is amended by revising § 73.3527(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 [2 years following the effective date of the Report and Order in MB Docket No. 14-127] except that, as discussed in paragraph (b)(2)(ii), any radio station may voluntarily place its public inspection file online before [2 years following the effective date of the Report and Order in MB Docket No. 14-127] if it chooses 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 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 file hosted by the Commission, while the material in the political file as of July 1, 2014, if not placed on 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 noncommercial educational 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).

(ii) Beginning [2 years following the effective date of the Report and Order in MB Docket No. 14-127], 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 [2 years following the effective date of the Report and Order in MB Docket No. 14-127], any new political file material shall be placed on the Commission's website, while the material in the political file as of [2 years following the effective date of the Report and Order in MB Docket No. 14-127], if not placed in the online 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 radio station that is not required to place its public inspection file in the online file hosted by the Commission before [2 years following the effective date of the Report and Order in MB Docket No. 14-127] 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 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 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 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".

* * * * *

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

§ 73.3580 Local public notice of filing of broadcast applications.

(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

6. 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.

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

§ 76.630 Compatibility with consumer electronics equipment.

* * * * *

(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.

* * * * *

8. Section 76.1700 is amended by revising § 76.1700(a), (b), (c), (d), and (e), and by adding § 76.1700(f) and (g), 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(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 shall continue to be retained at the system and made available to the public in the manner discussed in paragraph (e) 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) until [2 years following the effective date of the Report and Order in MB Docket No. 14-127]. For these systems, effective [2 years following the effective date of the Report and Order in MB Docket No. 14-127], 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 [2 years following the effective date of the Report and Order in MB Docket No. 14-127], if not placed on the Commission's website, shall continue to be retained at the system in the manner discussed in paragraph (e) 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 [2 years following the effective date of the Report and Order in MB Docket No. 14-127] may choose to do so, instead of retaining the political file at the system. in the manner discussed in paragraph (e).

(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 at its local office 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 the designation and location of its principal headend in accordance with §76.1708;

(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*. Political 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 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 geographic areas 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 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.

* * * * *

9. Section 76.1709 is amended by revising (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.

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

PART 25 – SATELLITE COMMUNICATIONS

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

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, and 332.

11. 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.

12. Section 25.701 is amended by revising the title and § 25.701(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.
(3) DBS providers shall assist callers by answering questions about the contents of their political files.

(e)*Commercial limits in children's programs. (*1) No DBS provider shall air more than 10.5 minutes of commercial matter per hour during children's programming on weekends, or more that 12 minutes of commercial matter per hour on week days.
(2) This rule shall not apply to programs aired on a broadcast television channel which the DBS provider passively carries, or to channels over which the DBS provider may not exercise editorial control, pursuant to 47 U.S.C. 335(b)(3).
(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).

* * *

(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 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 the address of the provider's local public file and the name, phone number, and email address of the provider's designated contact for questions about the public file.

* * * * *

13. 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), 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 file hosted by the Commission.
(c)*Public inspection file*. Each SDARS applicant or licensee must also place in the online 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 and the name, phone number, and email address of the licensee's designated contact for questions about the public file.

* * * * *

APPENDIX C

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") concerning the possible significant economic impact on small entities of the policies and rules proposed in the *Notice of Proposed Rulemaking* ("*NPRM*"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").[2] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rule Changes

2. The *NPRM* proposes to expand to cable and Direct Broadcast Satellite ("DBS") operators and broadcast and satellite radio ("SDARS") licensees the requirement that public and political files be posted to the online public file database hosted by the Commission. In 2012, the Commission adopted online public file rules for broadcast television stations which required them to post public file documents to a central, FCC-hosted online database rather than maintaining the files locally at their main studios.[4] The Commission's goal was to modernize the procedures television broadcasters use to inform the public about how they are serving their communities by harnessing current technology to make information more accessible to the public and, over time, to reduce the cost of compliance.[5] We are initiating this proceeding to extend our modernization effort to include the public file documents required to be maintained by cable operators, DBS providers, broadcast radio licensees, and SDARS licensees. While the Commission first included only television broadcasters in its public file database to "ease the initial implementation of the online public file,"[6] television broadcasters have now successfully transitioned to the online file over the past two years. Accordingly, we now believe it is appropriate to commence the process of expanding the online file to other media in order to extend the benefits of improved public access to public inspection files and, ultimately, reduce the burden on these other entities of maintaining those files.

3. In general, the *NPRM* proposes to adopt a similar approach with respect to cable, DBS, and broadcast and satellite radio online file requirements as we did for the television online file. Specifically, we propose that these entities' entire public files be hosted online by the Commission[7] and that entities be responsible for uploading only items now required to be in the public file but not otherwise filed with the Commission or available on the Commission's website. As with the television

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *See id*.

[4] *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*").

[5] *Id*. at 4536, ¶ 1.

[6] *Id*. at 4586, ¶ 111.

[7] The Commission exempted letters and emails from the public from the television online public file requirement, instead requiring that such material be maintained at the station in a correspondence file. *See Second Report and Order*, 27 FCC Rcd at 4565-66, ¶ 62. The NPRM proposes to take the same approach with respect to radio stations' correspondence files.

online file, we propose that the Commission itself upload to the online public file material that is already on file with the Commission or that currently resides in a Commission database. With respect to the political file, we also propose that cable, DBS, broadcast radio, and satellite radio entities not be required to upload their existing political files to the online file. Instead, as we required with television licensees, we propose that these entities be permitted to maintain at the station those documents already in place in their political file at the time the new rules become effective, and only upload documents to the online political file on a going-forward basis. With respect to radio, the NPRM proposes to commence the transition to the online file with commercial stations in larger markets with five or more full-time employees. In addition, the item invites comment on whether to temporarily delay the requirement to upload new political file material to the online file for small cable systems.

B. Legal Basis

4. The proposed action is authorized pursuant to Sections 1, 2, 4(i), 303, 315, 317, 335, 601, 611, 651 and 653 of the Communications Act, 47 U.S.C. §§ 151, 152, 154(i), 303, 315, 317, 335, 601, 611, 651, and 653.

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

[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.

[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 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*").

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

[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 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

(continued....)

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 4,082.[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 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.

(Continued from previous page)
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] S*ee 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 June 30, 2014*, FCC News Release, July 9, 2014.

[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).

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.

12. *Open Video Systems*. The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.[33] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[34] OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers."[35] The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.[36] Census data for 2007 shows that there were 3,188 firms that operated for that entire year.[37] Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.[38] Therefore, under this size standard, we estimate that the majority of these businesses can be considered small entities.

[32] *See* http://investor.siriusxm.com/releasedetail.cfm?ReleaseID=823023.

[33] 47 U.S.C. § 571(a)(3)-(4); *see Implementation of Section 19 of the 1992 Cable Act and Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Thirteenth Report, 24 FCC Rcd 542, 606, ¶ 135 (2009) ("*13th Annual Competition Report*").

[34] *See* 47 U.S.C. § 573.

[35] *See* 13 C.F.R. § 121.201, 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined in part 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." U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers," at http://www.census.gov/cgi-bin/sssd/naics/naicsrch.

[36] 13 C.F.R. § 121.201; 2012 NAICS code 517110.

[37] 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.

[38] *Id*.

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

13. Certain rule changes proposed in the *NPRM* would affect reporting, recordkeeping, or other compliance requirements. Cable, DBS, radio, and SDARS entities are currently required to maintain a "local" copy of their public inspection files. The *NPRM* proposes to require that these files be maintained online in the database hosted by the Commission. Entities subject to this requirement would be required to upload certain documents currently maintained in their local files to the online database.

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

14. 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, standard; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[39]

15. The *NPRM* proposes a number of measures to minimize the effort and cost entities must undertake to move their public files online. Specifically, we propose to require entities only to upload to the online file public file documents that are not already on file with the Commission or that the Commission maintains in its own database. We also propose to exempt existing political file material from the online file requirement and to 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 the geographic areas they serve, clarifying the documents required to be included in the cable public file, and requiring cable, DBS, broadcast radio, and SDARS entities to provide the location and contact information for their local file – we do not propose new or modified public inspection file requirements in this proceeding. Our goal is simply 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. While we propose to place the entire public file online, we invite comment on whether we should instead require only that certain components of the public file be placed on the Commission's online database. We note that limiting online file requirements to certain components of the public file would require entities to upload certain documents and maintain others in the local public file, thereby potentially imposing a greater burden than moving documents to the online file over time.

16. In addition, with respect to radio licensees the *NPRM* proposes to commence the transition to an online file with commercial stations in larger markets with five or more full-time employees, while postponing temporarily all online file requirements for other radio stations. The *NPRM* also proposes to exempt small cable systems temporarily from the requirement to commence uploading new political file material to the online public file and proposes to exempt very small cable systems from all requirements to upload documents to the Commission's online database. Finally, the *NPRM* also seeks comment on whether we should exclude certain radio stations from all online public file requirements, rather than simply delaying implementation of certain requirements.

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

17. None.

[39] 5 U.S.C. § 603(c).

STATEMENT OF
COMMISSIONER AJIT PAI

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

I am pleased to support this Notice of Proposed Rulemaking. The Commission must modernize its rules to reflect the digital age in which we live, and moving more regulated entities' public files online is a step in the right direction. I also appreciate the incorporation of many of my suggestions for reducing regulatory burdens as a part of this effort.

Going forward, I intend to pay particular attention to the feedback we receive from small radio stations. For example, last year I visited KZPA, a radio station in remote Fort Yukon, Alaska (population: 583), eight miles north of the Arctic Circle. KZPA devotes its extremely limited resources to serving the local Alaska Native Gwich'in population. We should be sensitive to the fact that KZPA and many other stations like it just don't have the bodies and bandwidth to handle every regulatory requirement Washington might conjure. The FCC should do what it can to revitalize such stations, particularly struggling stations in the AM band, not add to their difficulties. I hope the Commission will embrace this spirit as we move forward in this proceeding.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Elimination of Main Studio Rule	)	MB Docket No. 17-106

REPORT AND ORDER

Adopted: October 24, 2017 **Released: October 24, 2017**

By the Commission: Chairman Pai, Commissioners O'Rielly and Carr issuing separate statements; Commissioners Clyburn and Rosenworcel dissenting and issuing separate statements.

I. INTRODUCTION

1. In this Report and Order (Order), we adopt our proposal to eliminate the Federal Communications Commission (Commission) rule that requires each AM, FM, and television broadcast station to maintain a main studio located in or near its community of license.[1] We also adopt our proposal to eliminate existing requirements associated with our main studio rule, including the requirement that the main studio have full-time management and staff present during normal business hours, and that it have program origination capability.

2. The Commission first adopted main studio requirements in 1939 to ensure that community members could provide their local broadcast stations with input and that stations could participate in community activities.[2] The record in this proceeding clearly demonstrates that a local main studio is no longer needed to fulfill these purposes. The record also shows that eliminating the main studio rule will produce substantial benefits. Broadcasters will be able to redirect the significant costs associated with complying with the main studio rule to programming, equipment upgrades, newsgathering, and other services to the benefit of consumers. Moreover, repealing the rule will encourage the launch of new broadcast stations in small towns and rural areas and help prevent existing stations in those areas from going dark.

3. Since 2014, broadcasters have been transitioning from local public inspection files, maintained at the station's main studio, to an online file hosted by the Commission.[3] This transition will be almost entirely complete by March 2018, when the last group of remaining radio stations to transition must begin using the online file.[4] Although our rules will permit some stations to maintain a small portion of their public file documents locally for a limited period of time, the need for community members to visit a station's local main studio to access its public inspection file is quickly becoming a relic of the past. While we take steps to ensure that community members will continue to have local access to public files when necessary, we find that the few circumstances in which broadcast stations may continue to maintain portions of their public files locally do not justify the existence of our main studio rule. Moreover, the record shows that community members are highly unlikely to visit a station's main

[1] 47 CFR § 73.1125(a)-(d).

[2] *See, e.g., Applications of the Tribune Company, Tampa, Florida, et al.*, 19 FCC 100, 148 (1954) ("The accessibility of the broadcast station's main studio may well determine in large part the extent to which the station (a) can participate and be an integral part of community activities, and (b) can enable members of the public to participate in live programs and present complaints or suggestions to the stations.").

[3] *See infra* Section III.E.

[4] *See id.*

studio for other purposes, with people instead choosing to contact their local stations through more efficient means such as the telephone, email, or social media.[5] Similarly, broadcast stations now interact with their communities of license via online means, and technology enables them to produce local news even without a nearby studio.[6] For all of these reasons, we adopt the tentative conclusion in the Notice of Proposed Rulemaking that the main studio rule and its associated requirements are now outdated and unnecessarily burdensome for broadcast stations, and should therefore be eliminated.[7]

II. BACKGROUND

4. When the Commission first adopted its main studio rules nearly 80 years ago,[8] it defined a "main studio" as "the studio from which the majority of [a station's] local programs originate, and/or from which a majority of its station announcements are made of programs originating at remote points."[9] In the 1970s, the Commission consolidated its previous main studio rules and adopted a single rule requiring each station to have a main studio that is reasonably accessible to its community of license.[10] The Commission subsequently relaxed this rule to provide broadcasters with more flexibility regarding the location of their main studios.[11] Section 73.1125(a) of the Commission's rules currently requires each AM, FM,[12] and television broadcast station to maintain a main studio that is located either: "(1) [w]ithin the station's community of license; (2) [a]t any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's community of license; or (3) [w]ithin twenty-five miles from the reference coordinates of the center of its community of license as described in § 73.208(a)(1)."[13]

5. In addition to the main studio rule itself, the Commission has adopted associated requirements pertaining to staffing and program origination capability. Specifically, the Commission has held that a main studio must have a "meaningful management and staff presence" to fulfill the main

[5] *See infra* Section III.A.

[6] *See infra* Section III.A, C.

[7] *Elimination of Main Studio Rule*, Notice of Proposed Rulemaking, 32 FCC Rcd 4415 (2017) (NPRM).

[8] *FCC Rules Governing Standard Broadcast Stations*, 4 Fed. Reg. 2714 (June 30, 1939) (*1939 Broadcast Station Rules*) (47 CFR §§ 3.12, 3.30, 3.31); *Classification of Television Stations and Allocation of Frequencies*, 11 Fed. Reg. 33 (Jan. 1, 1946) (adopting 47 CFR §§ 3.603, 3.604); *Amendment of Section 3.606 of the Commission's Rules and Regulations*, Sixth Report and Order, 17 Fed. Reg. 3905, 4061 (May 2, 1952) (adopting 47 CFR § 3.613), *on reconsideration*, 17 Fed. Reg. 7547 (Aug. 19, 1952).

[9] *1939 Broadcast Station Rules* (47 CFR § 3.12). "Main studio" is not currently defined in Commission rules.

[10] The Commission initially consolidated the main studio rules for AM, FM, and television stations into a single rule in 1979, and it has amended that rule multiple times since then. *See Regulations and Rules Oversight of the AM, FM, and TV Broadcast Rules,* 44 Fed. Reg. 69933 (Dec. 5, 1979).

[11] *See Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Report and Order, 2 FCC Rcd 3215 (1987) (*1987 Main Studio and Program Origination Order*).

[12] Although low-power FM (LPFM) stations have no main studio requirement, points are awarded under the service's comparative selection procedures to those applicants that pledge to locally originate at least eight hours of programming per day and to maintain a main studio with local origination capability. *See* 47 CFR § 73.872(b)(2), (3), and (4).

[13] 47 CFR § 73.1125(a). Section 73.1125(a) of the main studio rule applies to full-power commercial and non-commercial radio and television stations, and Section 73.1125(c) requires each Class A television station to maintain its main studio at a location within the station's predicted Grade B contour. *Id.* § 73.1125(a), (c). The main studio rule does not apply to: (1) AM boosters; (2) FM translators; (3) low-power television (LPTV) stations, TV translators, or TV boosters, *see* 47 CFR § 74.780; or (4) LPFM stations, *see* 47 CFR § 73.872(b) and *supra* n.12 (discussing LPFM stations that pledge to maintain a main studio).

studio's function,[14] which at a minimum requires "management and staff presence on a full-time basis during normal business hours."[15] This means that main studios must have at least two employees present on a full-time basis: one management-level employee and one staff member. The main studio is also subject to a program origination capability requirement, pursuant to which broadcasters are required to "equip the main studio with production and transmission facilities" and to ensure that the main studio has "continuous program transmission capability."[16] In 1987, the Commission repealed a rule requiring each broadcast station to originate more than 50 percent of its non-network programs from its main studio or other points within its community of license,[17] but a requirement to have program origination "capability" at the main studio remains in place. Both the staffing requirement and the program origination capability requirement are based on Commission precedent and have not been codified in our rules.

6. Each broadcast radio and television station is assigned to a community of license that it is obligated to serve, and the Commission has stated in the past that the existence of a main studio allowed stations to be accessible and responsive to their communities.[18] However, the agency also has recognized for many years that technological changes are obviating the need for main studio requirements. For example, when it relaxed the main studio rule in 1987, the Commission recognized that "[c]urrent broadcast technology and innovative production methods enable stations to present programming in numerous ways and from a diversity of locations."[19] Since that time, technological advancements have made it even easier for broadcasters to produce and transmit local programming without a local main studio.[20] For example, broadcasters are now able to cover local events, including severe weather or other emergencies, through the use of portable cellular devices.[21] The Commission further found in 1987 that "[r]esidents generally communicate with a station by telephone or mail, neither avenue dependent on locale."[22] Today residents often make use of additional options such as email, social media, or a station's own website to communicate with the station, rather than visiting the main studio in person.[23] In addition,

[14] *See Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026, para. 24 (1988) (*1988 Main Studio and Program Origination Reconsideration Order*).

[15] *Application for Review of Jones Eastern of the Outer Banks, Inc. Licensee, Radio Station WRSF(FM) Columbia, North Carolina*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616, n.2 (1991).

[16] *1988 Main Studio and Program Origination Reconsideration Order*, 3 FCC Rcd at 5026, para. 24; *see also University of San Francisco (Assignor) and Classical Public Radio Network LLC (Assignee), Application for Consent to Assignment of License Station KOSC(FM), San Francisco, CA*, Memorandum Opinion and Order, 30 FCC Rcd 10530, 10533-34, para. 6 (2015).

[17] *See 1987 Main Studio and Program Origination Order*, 2 FCC Rcd at 3218-19, paras. 39-43.

[18] *See, e.g.*, *Amendment of Parts 1 and 73 of the Commission's Rules and Regulations Pertaining to the Main Studio Location of FM and Television Broadcast Stations,* Report and Order, 27 FCC 2d 851, 852, para. 3 (1971); *1987 Main Studio and Program Origination Order*, 2 FCC Rcd at 3218, para. 36.

[19] *1987 Main Studio and Program Origination Order*, 2 FCC Rcd at 3218, para. 30.

[20] *See, e.g.,* Bryan Broadcasting Corporation *et al.* (Bryan Broadcasting *et al.*) Comments at 8; Florida Public Radio, Inc. (FPR) Comments at 2; Saga Communications, Inc. (Saga) Comments at 4-5; Univision Communications Inc. (Univision) Comments at 7, n.11.

[21] Bryan Broadcasting *et al.* Comments at 8.

[22] *1987 Main Studio and Program Origination Order*, 2 FCC Rcd at 3218, para. 32.

[23] *See, e.g.,* Actualidad Media Group, LLC (AMG) Comments at 2; Blackbelt Broadcasting Inc. (Blackbelt Broadcasting) Comments; Blount Masscom, Inc., *et al.* (Blount) Comments at 3; Bryan Broadcasting *et al.* Comments at 3; Cordillera Communications, LLC and Cox Media Group, LLC (Cordillera/Cox) Comments at 3-4; Farmworker Educational Radio Network, Inc. (FERNI) Comments at 4-5; Forum Communications Company (Forum) Comments at 5-6; Hubbard Broadcasting, Inc. (Hubbard) Comments at 4; Jackman Holding Company, LLC and Sebago Broadcasting Company, LLC (Jackman/Sebago) Comments at 2; Max Media LLC (Max Media) (continued….)

the Commission has adopted online public inspection file requirements for television and radio licensees and other entities.[24] As discussed below,[25] these new requirements dispense with the need for members of the public to visit a main studio in order to access a station's public file.[26]

III. DISCUSSION

7. We adopt the NPRM's proposal to eliminate the Commission rule requiring AM, FM, and television broadcast stations to maintain a local main studio.[27] We also adopt the proposal to eliminate the associated staffing and program origination capability requirements that apply to main studios.[28] To ensure that community members retain the ability to communicate with and obtain information regarding their local stations, we retain the existing requirement that broadcasters maintain a local or toll-free telephone number.[29] We also require stations to maintain any portion of their public file that is not part of the online public file at a publicly accessible location within the station's community of

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Comments at 4; MBC Grand Broadcasting, Inc. (MBC Grand) Comments at 4; Miller Media Group Comments; National Association of Broadcasters (NAB) Comments at 3; Nexstar Broadcasting, Inc. (Nexstar) Comments at 4; New Hampshire Public Radio, Inc. (NHPR) Comments at 3; Peninsula Communications, Inc. (Peninsula Communications) Comments; Saga Comments at 3-4; Starboard Media Foundation, Inc. (Starboard) Comments at 3; Mountain Licenses, L.P. *et al.* (TV Licensees) Comments at 2; Venture Technologies Group, LLC (Venture) Comments at 1; Eagle Bluff Enterprises (Eagle Bluff) Reply at 1.

[24] *See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012) (*Television Online Public File Order*); *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016) (*Expanded Online Public File Order*). *See also infra* Section III.E (discussing the online public inspection file requirements).

[25] *See infra* Section III.E.

[26] The majority of commenters in a 2015 proceeding seeking to revitalize the AM service supported changes to lessen the main studio requirements for certain AM stations. *See Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 30 FCC Rcd 12145, 12180, para. 88 (2015) (*AM Revitalization NOI*); *see also, e.g.*, Bemidji Radio, Inc. Comments, MB Docket No. 13-249, at 7 (Mar. 21, 2016); Blount Masscom, Inc., *et al.* Comments, MB Docket No. 13-249, at 1-4 (Mar. 15, 2016); McCarthy Radio Enterprises, Inc. Comments, MB Docket No. 13-249, at 18-24 (Mar. 21, 2016); Multicultural Media, Telecom and Internet Council Comments, MB Docket No. 13-249, at 5 (Mar. 21, 2016); National Association of Broadcasters Comments, MB Docket No. 13-249, at 7-13 (Mar. 21, 2016); Robert Bittner Comments, MB Docket No. 13-249, at 4 (Mar. 21, 2016); Starboard Media Foundation, Inc. Comments, MB Docket No. 13-249, at 1-4 (Mar. 10, 2016).

[27] 47 CFR § 73.1125(a)-(d); NPRM, 32 FCC Rcd at 4418, para. 6. Because we are eliminating the main studio rule, we need not address one commenter's argument that the current main studio rule is unenforceable under the Administrative Procedure Act. *See* The Presence Radio Network, Inc. and Saint Joseph Missions, d/b/a We Are One Body® Catholic Radio (TPRN/WAOB) Comments at 2. We also decline to address herein arguments that are outside the scope of this proceeding, which is limited to elimination of the main studio rule and the associated staffing and program origination capability requirements. *See, e.g.,* Kona Coast Radio, LLC (KCR) Comments at 5 (the Commission should consider changing its community of license requirements and should allow station owners to select the community they feel they best serve, regardless of technical compliance parameters); REC Networks (REC) Comments at 4, n.8 (as part of the NCE comparative review process, the Commission should award points to NCEs that pledge to maintain their main studios); Wolfpack Media LLC (Wolfpack Media) Comments at 2 (if the Commission eliminates the main studio rule, it also should restore strict station ownership limits).

[28] *See supra* para. 5; *see also* NPRM, 32 FCC Rcd at 4418, para. 6; Blount Comments at 2; Cumulus Media Inc. (CMI) Comments at 1; FPR Comments at 1; Dennis Jackson (Jackson) Comments at 1; Miller Media Group Comments; NAB Comments at 1; National Public Radio, Inc. (NPR) Comments at 2; Prime Time Christian Broadcasting, Inc. (Prime Time) Comments at 2; TV Licensees Comments at 1.

[29] *See infra* Section III.D.

license.[30] Finally, we make conforming edits to other Commission rules that are necessitated by the elimination of the main studio rule.[31]

A. Elimination of the Main Studio Rule

8. We agree with the vast majority of commenters[32] in this proceeding that the main studio rule should be eliminated. We are persuaded that eliminating the rule will result in significant cost savings for broadcasters and other public interest benefits. For example, the record shows that in some small towns and rural areas the cost of complying with the current main studio rule dissuades broadcasters from launching a station, even if the broadcaster has already obtained a construction permit for the station.[33] Eliminating the rule thus may lead to increased broadcast service in those areas. In addition, as commenters suggest, eliminating the main studio rule will provide broadcasters with the same flexibility as Internet radio stations and cable and satellite providers, none of which are subject to a main studio requirement.[34] While we recognize the importance of local broadcast television and radio stations as a source of news and information,[35] we agree with NAB that the record does not provide any "evidence that the physical location of a station's main studio is the reason local broadcasters are able to deliver content that meets the needs and interest[s] of their communities, or that the location and staffing of the studio has any relationship to the ability of a station to serve its local audience."[36]

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[30] *See infra* Section III.E.

[31] *See infra* Section III.F.

[32] *See, e.g.,* Brad Anderson (Anderson) Comments; Jonathan Appelbaum (Appelbaum) Comments at 1; Rene Bell (Bell) Comments at 2; Robert Bittner (Bittner) Comments; Blackbelt Broadcasting Comments; Blount Comments at 1; Beasley Broadcast Group, Inc., *et al.* (Broadcast Licensees) Comments at 1; Bryan Broadcasting *et al.* Comments at 1; Cornerstone Community Radio, Inc. (CCR) Comments at 1; Classic Broadcasting, Inc. (Classic Broadcasting) Comments at 2; CMI Comments at 1; Cordillera/Cox Comments at 1; Crawford Broadcasting Company (Crawford) Comments at 1; DeLaHunt Broadcast Group (DeLaHunt) Comments; FERNI Comments at 1; Joseph Fiorini (Fiorini) Comments; Forum Comments at 1; FPR Comments at 1; Great Plains Media (Great Plains) Comments; Garvey Schubert Barer's Media, Telecom and Technology Group (GSB's Media Group) Comments at 2; Houston Christian Broadcasters, Inc. (HCBI) Comments at 1; Hubbard Comments at 1; Jackman/Sebago Comments at 1; Jackson Comments at 1; Flinn Broadcasting Corporation *et al.* (Joint Commenters) Comments at 2; KCR Comments at 1; L.M.N.O.C. Broadcasting, L.L.C. (L.M.N.O.C.) Comments at 1; Max Media Comments at 2; MBC Grand Comments at 1; Miller Media Group Comments; Multicultural Media, Telecom and Internet Council, Inc. (MMTC) Comments at 1; Moody Bible Institute of Chicago (Moody) Comments at 1; NAB Comments at 1; Nexstar Comments at 1; National Federation of Independent Business (NFIB) Comments at 1; NPR Comments at 2; Thomas G. Osenkowsky (Osenkowsky) Comments at 1; Prime Time Comments at 2; Saga Comments at 1; Starboard Comments at 1; TPRN/WAOB Comments at 1; Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network (Trinity) Comments at 1; TV Licensees Comments at 1; Univision Comments at 1; Urban One, Inc. (Urban One) Comments at 1; Venture Comments at 1; James P. Wagner (Wagner) Comments at 2; WLOH Radio Company Comments; R. Morgan Burrow Jr. (Burrow) Reply at 1; Eagle Bluff Reply at 1. Contrary to the suggestion of Common Frequency, the ample record in this proceeding provides the Commission with sufficient information to proceed to this Order. *See* Common Frequency, Inc. (Common Frequency) Reply at 20-23 (asserting that before proceeding to an order the Commission should answer several questions, such as how a licensee will ensure that the station participates in the local community, and suggesting that the Commission seek further comments and conduct public hearings).

[33] *See, e.g.,* Bryan Broadcasting *et al.* Comments at 3; CCR Comments at 3; DeLaHunt Comments; Jackman/Sebago Comments at 2-3; KCR Comments at 1-2. *See also infra* para. 14 (noting that the cost savings may prevent some stations from going dark).

[34] *See* Bryan Broadcasting *et al.* Comments at 5-6; TPRN/WAOB Comments at 4; TV Licensees Comments at 2.

[35] *See* Free Press Comments at 6-7, 15, 23.

[36] NAB Reply at 2.

9. We affirm the tentative conclusion in the NPRM that technological innovations have rendered local studios unnecessary as a means for viewers and listeners to communicate with or access their local stations and to carry out the other traditional functions that they have served.[37] The record shows that it is exceedingly rare for a member of the public to visit a station's main studio,[38] with community members overwhelmingly choosing instead to communicate with stations through more efficient means such as email, station websites, social media, mail, or telephone.[39] This has been the case even more so since the Commission created the online public inspection file.[40] Once broadcasters fully transition to the online public file in early 2018, as discussed in more detail in Section III.E below, requiring stations to maintain a fully staffed main studio for purposes of providing access to the file will no longer be practical or justifiable.[41] It is also relevant that community members already participate in station shows from outside the main studio, for example by appearing via telephone or Skype.[42] As some commenters state, in-person visits from community members are now "unnecessary, if not obsolete," as a result of the "near ubiquity of remote communication."[43]

[37] *See* NPRM, 32 FCC Rcd at 4418, para. 6; AMG Comments at 2; Anderson Comments; Broadcast Licensees Comments at 1, 3; Bryan Broadcasting *et al.* Comments at 3-4; CCR Comments at 5; FERNI Comments at 2; FPR Comments at 3; GSB's Media Group Comments at 3; HCBI Comments at 2, 3; Jackman/Sebago Comments at 1; L.M.N.O.C. Comments at 2; Max Media Comments at 2; Miller Media Group Comments; Moody Comments at 2; NAB Comments at 1; Peninsula Communications Comments; Saga Comments at 2; Starboard Comments at 2; Univision Comments at 1; Urban One Comments at 2; Venture Comments at 1; Burrow Reply at 1; Eagle Bluff Reply at 1.

[38] *See, e.g.*, AMG Comments at 2; Blount Comments at 3; Broadcast Licensees Comments at 8; Bryan Broadcasting *et al.* Comments at 5, 7; Cordillera/Cox Comments at 2, 4; Forum Comments at 5; Jackman/Sebago Comments at 2; Joint Commenters Comments at 3; Miller Media Group Comments; McCarthy Radio Enterprises, Incorporated (MRE) Comments at 4; Nexstar Comments at 3-4; Prime Time Comments at 3; Trinity Comments at 3; TV Licensees Comments at 2; Venture Comments at 1; Eagle Bluff Reply at 1.

[39] *See, e.g.,* AMG Comments at 2; Blackbelt Broadcasting Comments; Blount Comments at 3; Bryan Broadcasting *et al.* Comments at 3; Cordillera/Cox Comments at 3-4; FERNI Comments at 4-5; Forum Comments at 5-6; FPR Comments at 2; Hubbard Comments at 4; Jackman/Sebago Comments at 2; Max Media Comments at 4; MBC Grand Comments at 4; Miller Media Group Comments; MMTC Comments at 5; NAB Comments at 2-3; Nexstar Comments at 4; NHPR Comments at 3; Peninsula Communications Comments; Saga Comments at 3-4; Starboard Comments at 3; TV Licensees Comments at 2; Venture Comments at 1; Eagle Bluff Reply at 1. Although broadcast licensees are obligated to serve "the public interest, convenience, and necessity," we find that "convenience" need not include reasonable physical access to the station's facilities in the community of license, contrary to the suggestion of one commenter, given how rarely community members today opt to access such facilities. *See* 47 U.S.C. § 309; James B. Potter Comments at 1.

[40] *See, e.g.,* Bell Comments at 1 (the existence of the online public file undermines the rationale for the main studio rule); Crawford Comments at 2; Great Plains Comments; Jackson Comments at 1; MMTC Comments at 3; NPR Comments at 9-10; Univision Comments at 6; Urban One Comments at 3; Eagle Bluff Reply at 2. *But see* Common Frequency Reply at 9-10 (asserting that few members of the public seek to view the public inspection file not because they are not interested in doing so, but because they do not know it exists).

[41] The Commission previously recognized that online public file requirements might alter its analysis of whether it should modify the main studio requirements. *See AM Revitalization NOI*, 30 FCC Rcd at 12181, para. 88. *See also* NPRM, 32 FCC Rcd at 4418, para. 6 (tentatively finding that "staffing sufficient to accommodate visits from community members no longer will be justified once broadcasters fully transition to online public inspection files"); 47 CFR §§ 73.3526 and 73.3527 (public inspection file requirements for commercial and NCE stations). As discussed below, however, we are taking steps to ensure that community residents will continue to have local access to public files in those cases when such access will remain necessary. *See infra* Section III.E.

[42] *See, e.g.,* AMG Comments at 2; Crawford Comments at 1; Univision Comments at 7, n.11.

[43] FERNI Comments at 4; GSB's Media Group Comments at 4; MBC Grand Comments at 4; NHPR Comments at 3. In addition, some commenters point to the legitimate public safety concerns that are associated with allowing

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10. We disagree with arguments that in the absence of a local main studio, the Commission will be unable to ensure that a station serves its local community.[44] Broadcast licensees still will be required to include in their public inspection files, on a quarterly basis, a list of those "programs that have provided the station's most significant treatment of community issues during the preceding three month period," including a brief description of each relevant program.[45] Further, as part of the broadcast station license renewal process, the Commission is required to find that "the station has served the public interest, convenience, and necessity" during its preceding license term.[46] In particular, "[o]ne of a television broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license."[47]

11. We also are not persuaded by contentions that broadcasters' local community involvement[48] or the provision of local news[49] will significantly decline if we eliminate the main studio rule. Broadcast commenters explain that they keep apprised of local needs and issues to distinguish themselves from their competitors, to gain popularity and thus advertising dollars or, in the case of noncommercial educational (NCE) stations, contributions, and to fulfill their public interest obligations.[50] Broadcasters will retain these incentives even in the absence of the main studio rule.[51] In addition, we agree with Univision that today, "providing service to, interacting with, and maintaining awareness of a community is not dependent upon locating a station's offices within certain arbitrary geographic boundaries imposed by the" main studio rule.[52] To the contrary, broadcasters can interact with local

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uninvited members of the public to visit a station's main studio. *See, e.g.,* Blount Comments at 3; Classic Broadcasting Comments at 1; Hubbard Comments at 3-4; Saga Comments at 3; Wagner Comments at 3.

[44] *See* Free Press Comments at 4, 18-20.

[45] *See* 47 CFR §§ 73.3526(e)(11)(i), 73.3526(e)(12), 73.3527(e)(8); MMTC Comments at 5; Starboard Comments at 5; TV Licensees Comments at 3.

[46] 47 U.S.C. § 309(k)(1).

[47] *Television Online Public File Order*, 27 FCC Rcd at 4537, para. 4.

[48] *See, e.g.,* Bruce Aleksander Comments; Common Frequency Reply at 5; David Crider, Ph.D. (Crider) Comments; Joe Donahue (Donahue) Comments; Free Press Comments at 18-19; Maynard R. Meyer Comments; Romar Communications Inc. (Romar) Comments at 5, 7-8; Brian Wheeler Comments; Wolfpack Media Comments at 1.

[49] *See, e.g.,* Free Press Comments at 12, 22; Max Lewis Comments; Joe Mlodzik Comments.

[50] *See, e.g.,* AMG Comments at 2; Bell Comments at 2; Bittner Comments; Broadcast Licensees Comments at 8; Bryan Broadcasting *et al.* Comments at 1-2 ("[C]ommunity service is the hallmark of the local broadcaster, and it is what distinguishes the broadcaster from all of the other competitors now squaring off against broadcasters in the media marketplace."); CMI Comments at 8; GSB's Media Group Comments at 3; Max Media Comments at 5; NAB Comments at 11; Nexstar Comments at 4; NPR Comments at 5; Peninsula Communications Comments; Saga Comments at 4; TV Licensees Comments at 2; Univision Comments at 1; Venture Comments at 1; Wagner Comments at 7. *But see* Free Press Comments at 21-22 (claiming that broadcasters today face limited competition and thus are less motivated to invest in coverage of their local communities, especially marginalized communities). We note that the main studio rule does not require broadcasters to provide coverage of their local communities; rather, the rule simply governs the permissible location of a station's main studio.

[51] The record suggests that not all stations will choose to eliminate their current main studios after the main studio rule is repealed. *See, e.g.,* Starboard Comments at 4. *But see* Romar Comments at 8-9 (claiming that if one local broadcaster operates without the overhead expense of a local main studio, other local broadcasters will be compelled to eliminate their local main studios as well to compete). Those stations that do choose to eliminate their current main studios likely will often maintain an office or studio that is convenient to their viewers or listeners, so that, among other things, community members can appear in person to serve as on-air guests or attend in-studio events, and so that contest prize winners can visit the station to retrieve their prizes. *See* Urban One Comments at 5.

[52] Univision Comments at 1. *See also* NPR Comments at 2 ("While the principle of localism remains as vital as ever, a regulatory obligation to maintain a main studio rule in any given place is no longer needed to preserve
(continued….)

community members by using technology such as social media,[53] and even without a local main studio, broadcasters can use modern technology to broadcast information about local events.[54] The main studio rule does not require broadcasters to provide any particular level of local coverage or involvement in the local community, and there is no evidence in the record that elimination of this rule will cause a decrease in such involvement or coverage.

12. We reject claims that the elimination of the main studio rule will have a negative impact on broadcasters' ability to broadcast emergency and time-sensitive information.[55] One commenter explains that in terms of "a station's ability to communicate time-sensitive or emergency information to the public," today telephone and Internet communications are more efficient than an in-person interaction at a local studio.[56] In furtherance of their obligation to serve their communities of license, commenters state that broadcasters will continue providing timely emergency information to their viewers and listeners.[57] Additionally, we note that the elimination of the main studio rule will not in any way alter a station's obligations to transmit emergency alerts received via the emergency alert system (EAS).[58]

13. Because we find that technological innovations have eliminated the need for a local main studio, the costs of complying with the main studio rule substantially outweigh any benefits.[59] Broadcasters detail the significant costs that they face under the main studio rule, including such expenses as: (a) rent, utilities, insurance, and maintenance costs for the studio itself; (b) equipment and transmission facilities; and (c) salaries, taxes, insurance, and benefits for the main studio's two full-time employees.[60] Broadcasters claim that main studio-related costs range from $20,000 per year to several

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localism, at least in the case of public radio. To the contrary, public radio stations are and, for a number of reasons will remain, inherently local program services and community institutions.").

[53] *See* AMG Comments at 2-3.

[54] *See, e.g.,* FPR Comments at 2.

[55] *See, e.g.,* Darryl Brown (Brown) Comments; Free Press Comments at 5, 15, 17; Common Frequency Reply at 17-18. While Free Press points to a 2002 train derailment in North Dakota as an example of the need for local television and radio staff to be available to relay emergency warnings, *see* Free Press Comments at 16-17, NAB explains that the station in question complied with the main studio rule and the problem was the failure of law enforcement personnel to properly activate the EAS. *See* NAB Reply at 8.

[56] Saga Comments at 4.

[57] *See, e.g.,* Forum Comments at 4; NPR Comments at 9; Starboard Comments at 4.

[58] *See, e.g.,* Bryan Broadcasting *et al.* Comments, Statement of Point Broadcasting Company at 2; Forum Comments at 4-5; Wagner Comments at 6. *But see* Romar Comments at 12 (arguing that elimination of the staffing requirements associated with the main studio rule will be harmful because EAS alerts are only broadcast once, so station personnel must be based in the main studio to provide further emergency information). As explained below, broadcasters already have processes in place to ensure that they are responsive to emergency situations. *See infra* Section III.D.

[59] This rationale for eliminating the main studio rule applies to all broadcast stations, and we thus will eliminate the rule in its entirety rather than eliminating it only for a certain subset of stations. *See* NPRM, 32 FCC Rcd at 4421, para. 14 (asking whether the Commission should "only eliminate the rule for a certain subset of stations, such as those that are located in small and mid-sized markets or those that have fewer than a certain number of employees," and asking whether there is "any reason to distinguish between our treatment of AM, FM, and television broadcast stations in this context"); Kevin Erickson Reply (arguing that the Commission should only ease the burden of complying with the main studio rule for student-run or college broadcast stations that may have trouble complying with the rule when school is not in session).

[60] *See, e.g.,* Blount Comments at 2; Broadcast Licensees Comments at 5; Hubbard Comments at 3; MMTC Comments at 2; MRE Comments at 3; NFIB Comments at 2; Prime Time Comments at 2-3; Starboard Comments at 2-3.

hundred thousand dollars per year.[61] One broadcaster states that it could consolidate main studios and save more than $10 million *annually*.[62] The main studio rule imposes significant and burdensome costs on broadcasters, particularly smaller broadcasters and NCE stations.[63]

14. The cost savings broadcasters may achieve following elimination of the main studio rule will enable them to allocate greater resources to local programming and other matters such as community outreach, newsgathering, equipment upgrades, and attracting new talent and personnel.[64] According to some commenters, such savings could even prevent some stations from going dark.[65] Stations will have the flexibility to operate studios in the most efficient manner, and some stations that are co-owned or jointly operated may find it to be more efficient for them to co-locate their studios.[66] We conclude that providing stations with the maximum flexibility by eliminating the main studio rule in its entirety is

[61] *See, e.g.,* Blount Comments at 2; Broadcast Licensees Comments at 5; Bryan Broadcasting *et al.* Comments at 6; Cordillera/Cox Comments at 5-6; Crawford Comments at 2; Hubbard Comments at 3; MRE Comments at 3; Prime Time Comments at 2-3; Starboard Comments at 3. Due to the specific information broadcasters have provided regarding costs of compliance with the current main studio rule and associated requirements, we are not persuaded by commenters' unsupported arguments that maintaining a local main studio "has never been *more* affordable" and that broadcasters do not need relief from the Commission in this regard. *See, e.g.,* Aurora Broadcasting (Aurora) Comments at 2; Free Press Comments at 13-14; Common Frequency Reply at 14.

[62] Trinity Comments at 4 (elimination of the main studio rule would enable Trinity to combine and consolidate several studios, leading to "a significant *annual* savings – $10.5-$13.5 million – which would be available for redeployment in additional and upgraded programming") (emphasis in original).

[63] *See, e.g.,* AMG Comments at 1; Anderson Comments; Bittner Comments; Blackbelt Broadcasting Comments; Broadcast Licensees Comments at 4; Crawford Comments at 2; Fiorini Comments; John Fox Comments; Great Plains Comments; GSB's Media Group Comments at 2; HCBI Comments at 2; Joint Commenters Comments at 4; L.M.N.O.C. Comments at 2; Miller Media Group Comments; Moody Comments at 2; NAB Comments at 8; NPR Comments at 7; Peninsula Communications Comments; Saga Comments at 3; Trinity Comments at 4; Venture Comments at 1. Some commenters claim, without evidence, that small and independent broadcasters will not benefit from the elimination of the main studio rule because they likely will not relocate their existing studios and will become unable to compete against consolidated multi-station broadcasters. *See* Free Press Comments at 5, 14; Common Frequency Reply at 17. *See also* Aurora Comments at 2 (arguing that, since the value of small market stations will artificially inflate as they become less expensive to operate, it will become more difficult for minority and small owners to purchase stations). The fact-based statements of small broadcasters in this proceeding, detailing the costs of compliance with the main studio rule and the potential benefits to them of the elimination of the rule, belie these claims. *See* NAB Reply at 6-7.

[64] *See, e.g.,* AMG Comments at 1; Bell Comments at 1; Broadcast Licensees Comments at 7; CMI Comments at 2, 8; Cordillera/Cox Comments at 5; FERNI Comments at 4; Forum Comments at 6; GSB's Media Group Comments at 3; Max Media Comments at 2; MBC Grand Comments at 3; Miller Media Group Comments; NAB Comments at 6-7; Nexstar Comments at 5; NPR Comments at 6; Saga Comments at 3; Starboard Comments at 3; Trinity Comments at 4; Urban One Comments at 3-4; Wagner Comments at 3-4; Eagle Bluff Reply at 2. *But see* Free Press Comments at 12 (arguing that broadcasters' current lack of spending on local news programming salaries belies any belief that eliminating the main studio rule will lead to more programming or community service); Common Frequency Reply at 12-13 (arguing that, despite broadcasters' statements that the cost savings will facilitate greater investment into programming and other matters, there is no proof that such a result will occur and it is contradictory to say that eliminating the staff stationed at local main studios will enable the station to spend more money on quality local broadcasting).

[65] *See* Blackbelt Broadcasting Comments.

[66] *See, e.g.,* AMG Comments at 1-2; Anderson Comments; Broadcast Licensees Comments at 7; FERNI Comments at 2; Max Media Comments at 2; NAB Comments at 5; Peninsula Communications Comments; Saga Comments at 3. Contrary to the suggestion of one commenter, we see no evidence in the record that any broadcast station would attempt to move its studio outside of this country, and we question whether doing so would be feasible or economical. *See* Brown Comments.

preferable to the more limited approaches proposed by some commenters,[67] which could still impose significant cost burdens on some stations and would not entirely address concerns that the costs of complying with the main studio rule are no longer justified today.

15. Eliminating the main studio rule and associated requirements is not inconsistent with section 307(b) of the Communications Act of 1934, as amended (the Act), which requires the Commission to "make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide for a fair, efficient, and equitable distribution of radio service to each of the same."[68] In the absence of the main studio rule, broadcast stations still will be licensed to a specific community of license, and they will be obligated to place a certain signal contour over that community.[69] As noted above, broadcasters also will remain subject to license renewal and quarterly issues/programs list requirements.[70] Moreover, programming designed to meet a community's needs and interests can be produced anywhere today.[71] For the reasons discussed herein, the record supports our finding that a local main studio is no longer necessary to ensure that broadcast stations serve their local communities,[72] and thus eliminating the main studio requirement will not prevent compliance with the distribution directive in section 307(b) of the Act.

16. We note that the Commission or Media Bureau has previously granted waivers of the main studio rule.[73] Our decision to eliminate the main studio requirement supersedes these waiver grants, including pledges that the licensees made in connection with those waivers, with one exception discussed in paragraph 26 below.[74] Accordingly, as of the effective date of the rules adopted in this Order, stations that have previously received a waiver of the main studio rule must comply with the Commission's rules, including the requirement to maintain a local or toll-free number, rather than the licensee pledges, if any, associated with their superseded waiver grants. Upon the elimination of the main studio rule, it would not

[67] *See, e.g.,* MRE Comments at 7-9 (proposing that the Commission adopt a relaxed main studio requirement under which a station must be located within 75 miles of its community of license); Aurora Comments at 2 (proposing that the Commission maintain its current main studio requirement but adopt a modified waiver process that could include consideration of such factors as market size and economic hardship).

[68] 47 U.S.C. § 307(b).

[69] *See* 47 CFR §§ 73.24(i), 73.315. 73.625; Starboard Comments at 5.

[70] *See supra* para. 10.

[71] *See, e.g.,* Saga Comments at 4; *see also infra* para. 19.

[72] We thus reject claims that the main studio rule is still needed to meet the obligations in section 307(b) of the Act. *See, e.g.,* Free Press Comments at 4; Common Frequency Reply at 2, 7. In addition, we agree with NAB that any assertion that the main studio rule is needed to enforce the "transmission service" requirement is misplaced because "[t]he Commission effectively abandoned this definition of transmission service when it eliminated the program origination requirement." *See* Free Press Comments at 9-10; Common Frequency Reply at 11; NAB Reply at 4, 6 (explaining that, while in the 1950s the FCC held that a station could not provide "transmission service" in the absence of a physical local studio, that is no longer true today since stations now originate programming outside of the main studio). *See also infra* paras. 19-20.

[73] *See, e.g.*, *Delmarva Educational Association*, Memorandum Opinion and Order, 19 FCC Rcd 6793, 6798 (2004) (*Delmarva Order*).

[74] *See, e.g.,* HCBI Comments at 3; Moody Comments at 3; NHPR Comments at 2, n.3. The main studio waiver grants are superseded by this Order because there will no longer be a main studio rule to be waived. Given that waivers of the main studio rule will no longer be necessary, we need not address one commenter's claim that the current waiver process leads to an unfair and inefficient distribution of radio services. *See* REC Comments at 3. Below we explain one type of main studio waiver for which we will grandfather the station's current main studio as a permissible location for its local public file. *See infra* para. 26.

make sense to continue subjecting stations to the commitments they made in obtaining a waiver of the main studio rule,[75] including any related recordkeeping requirements.[76]

B. Elimination of the Associated Staffing Requirements

17. In addition to eliminating the main studio rule itself, we adopt our NPRM proposal to eliminate the staffing requirements currently associated with the rule. This will provide broadcasters with more flexibility to staff their operations as they see fit. As explained above,[77] pursuant to Commission precedent, there currently must be two employees (one management and one staff) present on a full-time basis at a main studio during normal business hours. Given the technological advances that enable remote monitoring and control of broadcast stations,[78] commenters attest that some main studio employees have nothing to do but sit at the main studio in fulfillment of this requirement.[79] Commenters persuasively state that it can be difficult for small or rural stations and for financially-challenged AM stations to support two full-time employees.[80] For example, station KIHT(FM) is licensed to Amboy, California (population: four) and serves motorists traveling through the Mojave Desert.[81] One employee travels over an hour each way each day to staff the main studio.[82]

18. We find that decisions regarding location and number of staff members should be left to broadcast licensees.[83] Although we acknowledge that elimination of the main studio staffing requirement possibly could lead to fewer employees available to interact person to person at the physical station office, we have explained above that technology enables broadcasters to interact with the local community and to broadcast information about local events even without a local main studio.[84] Eliminating the main studio requirement and associated staffing requirement promotes our statutory goals by allowing broadcasters to allocate greater resources to programming and other matters, promoting increased broadcast service in small towns and rural areas, and preventing stations from going dark.[85] To the extent commenters express concerns about potential job loss following the elimination of the main

[75] *See, e.g.,* CCR Comments at 5-6.

[76] *See* NAB Comments at 11.

[77] *See supra* Section II.

[78] *See, e.g.,* Blount Comments at 2.

[79] *See, e.g.,* Bryan Broadcasting *et al.* Comments at 6.

[80] *See, e.g.,* Bryan Broadcasting *et al.* Comments at 7; Classic Broadcasting Comments at 2; FPR Comments at 1; Jackson Comments at 2.

[81] *See* Bryan Broadcasting *et al.* Comments at 7.

[82] *See id.*

[83] We caution that the deletion of the main studio rule does not in any way limit or reduce broadcast licensees' obligation and responsibility to retain and maintain control over essential station matters, such as personnel, programming, and finances. 47 U.S.C. § 310(d). *See, e.g., WHDH, Inc.*, 17 FCC 2d 856 (1969), *aff'd sub nom. Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir.), *cert. denied,* 403 U.S. 923 (1971); *Stereo Broadcasters, Inc.*, 55 FCC 2d 87 (1981), *recon. denied*, 50 RR 2d 1346 (1982*); Radio Moultrie, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 24304, 24306-07 (2002). The Commission expects that broadcast licensees will continue to be able to demonstrate such control notwithstanding the elimination of the main studio rule and the staffing requirements associated with the main studio rule. *See, e.g.,* NAB Comments at 10-11.

[84] *See supra* para. 11.

[85] *See supra* Section III.A. *See also* 47 U.S.C. §§ 303(g) (authorizing the Commission to "generally encourage the larger and more effective use of radio in the public interest"); 307(b) (directing the Commission to make "distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same").

studio rule and the associated staffing requirement,[86] we do not believe we are required to disregard our statutory goals to prevent such loss. Further, preventing stations from going dark and enabling broadcasters to launch stations that they otherwise may not launch[87] may promote employment.

C. Elimination of the Associated Program Origination Capability Requirement

19. In addition to the foregoing, we also adopt our NPRM proposal to eliminate the program origination capability requirement currently associated with the main studio rule. This will provide broadcasters greater flexibility with respect to their programming operations. As explained above,[88] pursuant to Commission precedent, the main studio currently must be capable of transmitting programming and must be equipped with production and transmission facilities. When the Commission decided thirty years ago to eliminate its rule requiring stations to actually originate programming at their main studios, it concluded that "the main studio no longer plays the central role in the production of a station's programming and programming originated from within the political boundaries of the community is not necessarily responsive to the needs and interests of the community."[89] Conversely, the Commission has recognized for decades that non-locally produced programming can serve the needs of a community.[90] Those statements are only more true today. Technology makes it easier than ever before to originate locally relevant programming from locations outside of the station's community of license,[91] and the existence of technology that enables stations to provide local broadcast coverage without a local main studio[92] also moots concerns that licensees need a local main studio to broadcast emergency information.[93]

20. There is no evidence in the record that the current program origination capability requirement has enhanced local programming or otherwise served the public interest. Commenters state that many broadcasters that currently originate programming locally will continue to do so in the absence of the current program origination capability requirement.[94] In any case, it appears that the location from

[86] *See, e.g.,* Brown Comments; Crider Comments; Donahue Comments.

[87] *See supra* Section III.A.

[88] *See supra* Section II.

[89] *See 1987 Main Studio and Program Origination Order*, 2 FCC Rcd at 3219, para. 41. In that order, the Commission recognized the limited utility of the program origination requirement by deleting its rule requiring each broadcast station to originate more than 50 percent of its non-network programs from its main studio or other points within its community of license. *See id.*, 2 FCC Rcd at 3218-19, paras. 39-43.

[90] *See Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations*, Report and Order, 32 FCC Rcd 3411, para. 26 (2017); *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425, 12431 n.43 (2004) ("[P]rogramming that addresses local concerns need not be produced or originated locally to qualify as 'issue-responsive' in connection with a licensee's program service obligations"), *citing Revision of Programming and Commercialization Policies*, Report and Order, 98 FCC 2d 1076, n.28 (1984) ("[T]he coverage of local issues does not necessarily have to come from locally produced programming."); *1987 Main Studio and Program Origination Order*, 2 FCC Rcd at 3218-19, para. 39 (finding that the Commission "can no longer presume that location alone is relevant to the provision of programming which is responsive to the interests and needs of the community" and noting that a local program origination requirement "may actually preclude the presentation of responsive programming"); *WPIX, Inc.*, Decision, 68 FCC 2d 381, 402-3, para. 61 (1978) ("premise that local needs can be met only through programming produced by a local station has not only been rejected by the Commission . . . , but it also lacks presumptive validity") (citations omitted).

[91] *See* Bryan Broadcasting *et al.* Comments at 8; Burrow Reply at 1.

[92] *See supra* para. 11.

[93] *See, e.g.,* REC Comments at 4.

[94] *See, e.g.,* AMG Comments at 3 ("Even if [the] program origination requirement were eliminated, AMG believes that a significant number of broadcasters would continue to provide local program origination as a matter of prudent business operation, in order to serve their communities and receive the economic support of same through

(continued….)

which programming is originated is irrelevant to whether the programing serves a community's needs and interests.[95] We agree with broadcast commenters "that a licensee's understanding of the needs and concerns of its station's audience," not the physical location of its studio or program production equipment, "promotes the broadcast of issue-responsive programming."[96]

D. Continued Maintenance of a Local or Toll-Free Telephone Number

21. As proposed in the NPRM, we retain section 73.1125(e) of our rules, which requires "[e]ach AM, FM, TV and Class A TV broadcast station [to] maintain a local telephone number in its community of license or a toll-free number."[97] NAB supports this requirement, which it says "keep[s] the community well-informed and [is] not unduly burdensome."[98] The telephone number rule permits station owners to provide one telephone number for multiple stations, provided that the number is toll-free or local to each station's community of license.[99] Some consumers are subject to an additional fee for non-local calls, and we thus retain the requirement for a local or toll-free number. Retaining the telephone number rule will help promote continued access to local broadcast stations by community members upon elimination of the main studio rule.[100] We find that retaining the existing rule is an appropriate means to ensure that members of the public can easily contact station representatives and receive timely responses.[101]

(Continued from previous page)
advertising sales."); MMTC Comments at 2 ("Stations that regularly engage in local originations are unlikely to risk alienating audiences and advertisers by ceasing or curtailing program originations.").

[95] *See* Starboard Comments at 5. *See also* NPR Comments at 7 (noting that the location in which a program was produced does not dictate whether the program responds to local needs).

[96] Broadcast Licensees Comments at 8-9. For this reason, we reject the assertion that a main studio's most important function is program origination capability. Romar Comments at 10.

[97] 47 CFR § 73.1125(e); NPRM, 32 FCC Rcd at 4419, para. 10. Several commenters support this proposal. *See, e.g.,* Bittner Comments; Blount Comments at 3; Crawford Comments at 2; Hubbard Comments at 5; NAB Comments at 9; NPR Comments at 9; Romar Comments at 13; Univision Comments at 8; Burrow Reply at 2. One commenter stated that co-located stations should be permitted to utilize a single telephone number. MRE Comments at 11; *see also* Appelbaum Comments at 2 (proposing that stations should be able to establish call centers).

[98] NAB Comments at 9.

[99] Implicit in the requirement to maintain a local or toll-free number is the requirement that phone calls made to this number be answered during business hours. We encourage broadcasters to use voicemail or another way for consumers to leave messages outside of stations' normal business hours. *See* AMG Comments at 4 (broadcasters should use voicemail outside of normal business hours); MMTC Comments at 4 ("the need to convey time-sensitive communications may occur where there is a potential threat of danger to life or property" and it "can be addressed by requiring stations to subscribe to an answering service (as plumbers and physicians do).").

[100] *See, e.g.,* NAB Comments at 9; Univision Comments at 8. We recognize that there is some cost to stations of maintaining a local or toll-free telephone number, *see* MRE Comments at 10-12, but we find that on balance the relatively limited cost is outweighed by the benefit of ensuring that the station remains accessible to local community members.

[101] NFIB has proposed instead that the Commission adopt a functional requirement that each station "ensure that persons in its community of license have a reasonable opportunity to communicate with the station through at least one generally available means of communication at no charge." NFIB Comments at 2 (stating that the means of communication could include an email address, toll-free telephone number, or telephone number in the station's community of license). We find that such an approach would be unworkable for consumers who do not use email and thus would have no way to contact a station if the station eliminates its local main studio. Accordingly, maintenance of the current telephone number requirement is a more practical approach.

22. Stations currently are required to post their telephone numbers in their online public files.[102] We retain that requirement and do not require stations to publicize their phone numbers in any additional ways.[103] We agree with commenters that broadcasters have extensive marketplace incentives and license obligations to be accessible and responsive to their audience,[104] and we note that telephone numbers by their nature generally are accessible in other ways. Broadcasters will retain the flexibility to determine whether they want to publicize their telephone numbers in additional ways. For example, most stations already choose to post their telephone numbers on their websites.[105]

23. Furthermore, in the NPRM, the Commission sought comment on whether additional requirements are needed to ensure that broadcasters are responsive to time-sensitive and emergency information.[106] Because broadcasters already coordinate with federal, state, and local emergency management officials, as well as law enforcement officials, to address emergencies that occur at any time of day,[107] we conclude that there is no need to adopt additional requirements pertaining to broadcast station responsiveness to time-sensitive or emergency information.[108] While some commenters reference such requirements,[109] other commenters persuasively explain that broadcasters already have processes in place to ensure that station personnel are available to receive and broadcast time-sensitive emergency information.[110] On balance, we conclude that the adoption of additional rules would not necessarily improve broadcasters' responsiveness to local emergencies, and we thus find that there is no evidence that the cost of such obligations would be justified by any purported benefits.

E. Access to the Local Public Inspection File

24. As discussed below, and as supported by NAB and other broadcasters, we require every broadcast station applicant, permittee, or licensee to maintain any portion of its public file that is not part of the online public file at an accessible place within its community of license. Pursuant to the Commission's online public file rules, in the very near future there will be only limited instances in which any portion of a station's public inspection file will be permitted to be maintained at the station's main

[102] *See* 47 CFR §§ 73.3526(b)(2)(ii); 73.3527(b)(2)(iii). These rules also currently require a station to include its main studio address, and as discussed below we modify them to require the public file to include the station's address (rather than its main studio address). The posted address should be a location at which the licensee may be contacted by mail and in person, for example, a studio, office, or headquarters. *See infra* Section III.F.

[103] *See* Cordillera/Cox Comments at 7; NAB Comments at 9. Several commenters suggest that we should encourage or require stations to publicize their telephone numbers in additional ways. *See, e.g.,* AMG Comments at 4; Crawford Comments at 3; MRE Comments at 13; Osenkowsky Comments at 3; Prime Time Comments at 3-4; REC Comments at 2.

[104] *See* Hubbard Comments at 5-6.

[105] *See* Saga Comments at 5.

[106] NPRM, 32 FCC Rcd at 4419, para. 10 ("If community members must leave a voicemail message in order to reach a local broadcast station, will this impede the station's ability to relay time-sensitive emergency information to the public? . . . Should broadcasters establish processes to ensure their ability to receive time-sensitive or emergency information during non-business hours?").

[107] *See* Univision Comments at 9.

[108] Nothing in this Order is intended to alter the obligation on licensees to post a written document designating the station's Chief Operator along with the posted copy of the station's license, as set forth in 47 CFR 73.1870(b)(3).

[109] *See, e.g.,* AMG Comments at 4 (broadcast station voicemail messages should include the telephone number of an emergency contact that can interrupt regular programming if needed); Bell Comments at 1 (emergencies can be addressed if broadcasters post an emergency telephone number on station websites).

[110] *See, e.g.,* MMTC Comments at 4; MRE Comments at 13; Univision Comments at 9; Urban One Comments at 2. *See also* Cordillera/Cox Comments at 7 ("the FCC has found that licensees have broad discretion over their programming decisions").

studio rather than online.[111] In 2012, the Commission adopted rules requiring television broadcasters to utilize an online public file hosted by the Commission, rather than maintaining the public file locally, and television stations completed their transition to the online public file in 2014.[112] In 2016, the Commission adopted rules expanding the online public file requirement to broadcast radio licensees.[113] As of June 24, 2016, commercial broadcast radio stations in the top 50 Nielsen Audio radio markets with five or more full-time employees were required to place *new* public and political file documents in the online public file on a going-forward basis.[114] By December 24, 2016, these entities were required to upload their *existing* public file documents to the online file, except for existing political file material which they may either upload or maintain locally until the expiration of the two-year retention period for such political file material.[115] Beginning March 1, 2018, all other broadcast radio stations[116] must place *new* public and political file documents in the online public file on a going-forward basis. They must also upload their *existing* public file documents to the online file by that date, except for existing political file material which they may either upload or maintain locally until the expiration of the two-year retention period for such political file material.[117] In other words, community members already have online access to television station public files, and by March 1, 2018 they will have online access to radio station public files, with the potential exception of preexisting portions of the political file that the station may retain locally until the expiration of the two-year retention period for such materials.

25. Nonetheless, we recognize the need to ensure that community members have local access to a station's public file for any timeframe during which all or a portion of that file is not available via the online public file.[118] Accordingly, we require every broadcast station applicant, permittee, or licensee to maintain any portion of its public file that is not part of the online public file at an accessible place within its community of license. NAB and other broadcasters support this approach.[119] The "accessible place"

[111] Sections 73.3526(e) and 73.3527(e) of the Commission's rules set forth the required contents of the station's public inspection file. These contents include the "political file," which consists of the records required to be maintained under Section 73.1943 of our rules concerning broadcasts by candidates for public office. *See* 47 CFR § 73.3526(e) (listing the materials that commercial stations must retain in their public inspection files); *id.* § 73.3527(e) (listing the materials that NCE stations must retain in their public inspection files).

[112] *See Television Online Public File Order*.

[113] *See Expanded Online Public File Order* (expanding the online public file requirement to cable and satellite television operators and broadcast and satellite radio licensees).

[114] *See Effective Date Announced for Expanded Online Public Inspection File Database*, Public Notice, 31 FCC Rcd 4699 (rel. May 12, 2016) (*Expanded Online Public File Effective Date PN*).

[115] *See id*. *See also* 47 CFR § 73.3526(b)(3)(i)-(iii) (requiring commercial stations either to retain previously existing political file material at the station until the end of the two-year retention period, or to opt instead to place that existing political file material in the online public inspection file).

[116] This includes NCE broadcast radio stations, commercial broadcast radio stations in the top 50 Nielsen Audio radio markets with fewer than five full-time employees, and commercial broadcast radio stations in markets below the top 50 or outside all markets.

[117] *See Expanded Online Public File Effective Date PN*, 31 FCC Rcd at 4700; 47 CFR §§ 73.3526(b)(3)(i)-(iii) (requiring commercial stations either to retain previously existing political file material at the station until the end of the two-year retention period, or to opt instead to place that existing political file material in the online public inspection file), 73.3527(b)(2)(i)-(ii) (imposing the same requirement on NCE stations).

[118] *See* NPRM, 32 FCC Rcd at 4419, para. 11 ("To the extent that stations are no longer required to have a local main studio, we seek comment on how we should ensure that community members have access to a station's public file.").

[119] *See* NAB Comments at 8; Saga Comments at 5; Urban One Comments at 3; Wagner Comments at 8; Letter from Erin L. Dozier, Senior Vice President and Deputy General Counsel, Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC, at 1 (filed Aug. 14, 2017) (NAB Aug. 14 *Ex Parte* Letter). *See also* Univision Comments at 6.

could be a station office or studio, if it is located within the community of license, or it could be a different location such as a local library or another station's office or studio.[120] The file must be available for public inspection at any time during regular business hours, as is currently the case with regard to access to a public file maintained at a station's main studio.[121] If a station has transitioned to the online public file with the exception of its existing political file materials, which certain stations may maintain locally until the two-year retention period expires as discussed above, then the station must maintain a copy of its existing political file materials at an accessible place within its community of license until it is no longer required to retain those materials.[122] We note that any station that wishes to avoid this requirement has the option to instead fully transition to the Commission's online public file system.

26. In addition, if a broadcast station currently maintains its local public file at a main studio that complies with the current main studio rule but is not within the station's community of license, and if the station retains that studio, we will grandfather that studio as a permissible location for the station's local public file for the period before completion of the station's transition to the online public file.[123] Similarly, some existing waivers of the main studio rule permit stations to maintain their public files at the station's main studio outside the community of license.[124] We also will grandfather any such studio as a permissible location for the station's local public file for the period before completion of the station's transition to the online public file. This approach will ensure that stations with current waivers do not face increased burdens as a result of the elimination of the main studio rule.

[120] *See* NPRM, 32 FCC Rcd at 4420, para. 11.

[121] The other requirements of existing sections 73.3526(c)(1) and 73.3527(c)(1) of our rules also will apply to the selected location of the public file within the community of license. *See* 47 CFR §§ 73.3526(c)(1), 73.3527(c)(1). Sections 73.3526(b) and 73.3527(b) of our rules currently contain multiple references to the hard copy public inspection file maintained at a station or at the station's main studio, and we will revise this language instead to reference retention of the file at an accessible place in the community of license (with the exception of references that are limited to timeframes in the past).

[122] Urban One states, "a radio station that has voluntarily uploaded all political materials that are required to be maintained to its online file should have no obligation to make public file material available other than online." Urban One Comments at 3, n.9. As explained above, certain stations may locally retain political file materials that were existing as of a certain date, rather than uploading them to the online public file, until the expiration of the two-year retention period for those materials. To the extent Urban One is arguing that we should permit stations to include new political file materials in the online public file, but not to make existing political file materials available either locally or through the online public file, we disagree. To the contrary, we find that it is important to ensure that community members have local access to all portions of the public inspection file that are not part of the online public file. If it is too inconvenient or costly to maintain these materials locally, then a station may choose to post them to the online public file instead. In addition, we note that a change to the material that is required to be part of a station's public file is outside the scope of this proceeding.

[123] Sections 73.3526(c)(2) and 73.3527(c)(2) of our rules currently govern access to material in the public file by mail where the applicant, permittee, or licensee maintains its main studio and public file outside its community of license. *See* 47 CFR §§ 73.3526(c)(2), 73.3527(c)(2). These current rules will remain in place, but we will delete the phrase "main studio and," such that the provisions will be triggered if an applicant, permittee, or licensee maintains its public file outside its community of license because the station's studio is grandfathered as a permissible location for the file, as discussed herein. *See* NAB Aug. 14 *Ex Parte* Letter at 2 (explaining that the requirement in section 73.3526(c)(2) "was adopted against the backdrop of the existing main studio rule and should be updated to reflect the elimination of the rule").

[124] Some main studio waivers reference a licensee pledge to maintain the public file in the community of license, while others permit the licensee to maintain the public file at the main studio subject to the waiver. *See, e.g., Delmarva Order* (a main studio waiver that references such a pledge); Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to John Crigler, Esq., Garvey, Schubert & Barer, at 2 (June 24, 2005) (a main studio waiver that does not reference such a pledge).

27. A community member seeking access to a station's public inspection file in the community of license may contact the station to inquire as to the location of the file, for example via its required telephone number[125] or email. Stations must promptly provide information regarding the location of the file within one business day of a request. In addition, we encourage stations that make public file materials available at an accessible place in the community to provide that location on their website, if they have a website, and by any other means that the station deems effective.[126]

28. In the NPRM, the Commission sought comment on whether alternatively it should only eliminate the main studio rule for stations that have fully transitioned all public file material to the online public file, including existing political file materials.[127] While some commenters support this alternate approach,[128] we agree with NAB that we should not limit in this manner the public interest benefits that will follow the elimination of the main studio rule.[129] The later March 1, 2018 online public file deadline generally applies to smaller stations.[130] Some of these entities may be most adversely impacted by the costs of complying with the current main studio rule, and we conclude that we should not disadvantage them by denying them the benefits of the repeal of the rule. As discussed above, the costs savings of eliminating the rule will be significant and will apply to all types of broadcast stations.[131] Given our decision to require maintenance of paper files at an accessible location in the community if they are not available via the online public file, the benefits of retaining the main studio rule for those stations that do not use the online public file would be minimal, if they exist at all. Indeed, in many cases the station may locate its file at its current main studio, and in other cases we expect that the selected local file location will be equally, if not more, convenient to residents as compared to the station's current main studio. For example, if a station previously maintained its main studio outside of its community of license, as permitted under the current rule, and the station chooses to cease operating that local studio as a result of this Order, then it may be more convenient for community members to access the local file at a location within the community of license, as we require here.

F. Related Commission Rules

29. As a result of our repeal of the main studio rule, we also will make the following conforming rule revisions as shown in Appendix A:[132]

- In section 1.80, delete the row of the chart detailing the base forfeiture amount for violations of the main studio rule.[133]

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[125] *See supra* Section III.D; NPR Comments at 10; Urban One Comments at 3.

[126] *See, e.g.,* MMTC Comments at 3 (if a station makes its public file available at a different location in the community, it could publicize the location online or through on-air announcements); Urban One Comments at 3 (the station could provide the location of its public file on its website or on request by telephone).

[127] NPRM, 32 FCC Rcd at 4420, para. 11.

[128] *See* Crawford Comments at 2; Jackson Comments at 1; Prime Time Comments at 2; REC Comments at 4.

[129] NAB Comments at 9. In addition, we will not adopt the proposal of one commenter that we only permit stations to eliminate their current main studios if they make their public file available both online and at a business or library in the station's community of license. *See* Bittner Comments. Given that it is sufficient for a station currently to make its public file available online only, we see no reason to require an additional means of access if the station eliminates its current main studio and its entire public file is available through the Commission's online public file.

[130] The deadline applies to NCE broadcast radio stations, commercial broadcast radio stations in the top 50 Nielsen Audio radio markets with fewer than five full-time employees, and commercial broadcast radio stations in markets below the top 50 or outside all markets

[131] *See supra* Section III.A.

[132] *See* NPRM, 32 FCC Rcd at 4420, para. 12 (seeking comment on rule changes needed to conform to the proposed elimination of the main studio rule and associated requirements). Commenters support the deletion of rules that are premised on the existence of the main studio rule. *See* NAB Comments at 10; Nexstar Comments at 1-2.

- In section 1.1104, delete the four rows detailing the schedule of charges for a "Main Studio Request," and re-letter the remaining listings accordingly.[134]
- In the definition of "equipment performance measurements" in section 73.14 of our rules, delete "at main studio."[135]
- Delete section 73.761(d) of our rules, which currently governs formal applications for a change in main studio location, and renumber the remainder of the rule.[136]
- In section 73.1400(a)(1)(ii) of our rules, change the reference to "the main studio or other location" to "a studio or other location."[137]
- Delete section 73.1690(c)(8)(ii) of our rules, which currently states that both commercial and NCE FM stations must comply with the main studio rule, and renumber the remainder of the rule.[138]
- Delete section 73.1690(d)(1) of our rules, which currently governs permissive changes in studio location, and renumber the remainder of the rule.[139]
- Modify sections 73.3526(b)(2)(ii) and 73.3527(b)(2)(iii) of our rules, which currently require the public file to include the station's main studio address and telephone number, instead to require the public file to include the station's address and telephone number.[140]
- Delete the reference to "main studio" in sections 73.3526(e)(4) and 73.3527(e)(3) of our rules, which currently require inclusion of information showing service contours and/or main studio and transmitter location in the public file.[141]
- Delete section 73.3538(b)(2) of our rules, which currently governs informal applications to relocate a main studio, and renumber the remainder of the rule.[142]
- Delete section 73.3544(b)(3) of our rules, which currently governs informal applications for a change in location of the main studio, and renumber the remainder of the rule.[143]
- In the Alphabetical Index to Part 73, delete the four rows that reference section 73.1125.[144]

(Continued from previous page)

[133] 47 CFR § 1.80. We will continue to rely on the base forfeiture amount of $7000 as a starting point in assessing a forfeiture for any violations of the main studio rule that occurred before the effective date of the elimination of the rule. 47 U.S.C. § 503(b)(6).

[134] 47 CFR § 1.1104.

[135] *Id.* § 73.14.

[136] *Id.* § 73.761(d).

[137] *Id.* § 73.1400(a)(1)(ii).

[138] *Id.* § 73.1690(c)(8)(ii).

[139] *Id.* § 73.1690(d)(1).

[140] *Id.* §§ 73.3526(b)(2)(ii), 73.3527(b)(2)(iii). As stated above, the posted address should be a location at which the licensee may be contacted by mail and in person, for example, a studio, office, or headquarters. *See supra* Section III.D.

[141] 47 CFR §§ 73.3526(e)(4), 73.3527(e)(3).

[142] *Id.* § 73.3538(b)(2).

[143] *Id.* § 73.3544(b)(3). We also adopt the proposal to delete the outdated reference in section 73.1690(d)(2) to section 73.1410, which has been deleted. NPRM, 32 FCC Rcd at 4420, n.36.

[144] 47 CFR Part 73, Alphabetical Index.

30. We also will delete section 73.6000(3) of our rules and will require Class A stations to meet the required quantity of "locally produced programming" through programming that complies with section 73.6000(1) or (2).[145] Consistent with the Community Broadcasters Protection Act of 1999, Section 73.6001(b)(2) requires Class A stations to broadcast an average of at least three hours of locally produced programming per week each quarter.[146] Section 73.6000 defines locally produced programming for these purposes as programming that is:

> (1) Produced within the predicted Grade B contour of the station broadcasting the program or within the contiguous predicted Grade B contours of any of the stations in a commonly owned group; or
>
> (2) Produced within the predicted DTV noise-limited contour . . . of a digital Class A station broadcasting the program or within the contiguous predicted DTV noise-limited contours of any of the digital Class A stations in a commonly owned group; or
>
> (3) Programming produced at the station's main studio.[147]

Upon deletion of the main studio rule, we find that it is appropriate to delete option (3). Options (1) and (2) are sufficiently broad that it should not be difficult for Class A stations to meet the required quantity of locally produced programming.[148] Our approach will alleviate the concern of Free Press that eliminating the main studio rule would "effectively nullify" the Class A requirement pertaining to the quantity of locally produced programming.[149]

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

31. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[150] the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Order. The FRFA is set forth in Appendix B.

B. Final Paperwork Reduction Act of 1995 Analysis

32. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.[151] It will be submitted to OMB for review

[145] *Id.* § 73.6000. *See also* NPRM, 32 FCC Rcd at 4420-21, para. 12. Commenters did not address this issue substantively.

[146] 47 CFR § 73.6001(b).

[147] *Id.* § 73.6000.

[148] The Commission grandfathered certain main studios that did not comply with the main studio rule when it implemented the Community Broadcasters Protection Act of 1999 creating the Class A service. *See Establishment of a Class A Television Service*, Report and Order, 15 FCC Rcd 6355, 6366, para. 25 (2000), *on reconsideration*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 8244, 8256, para. 31 (2001) (grandfathering the location of a Class A station's main studio, if any, as of November 29, 1999). For those Class A stations currently operating at grandfathered main studios that are outside the locations described in section 73.6000(1)-(2) of our rules, we will continue to consider programming produced at that previously grandfathered main studio to be locally produced.

[149] Free Press Comments at 23.

[150] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

[151] *See* Appendix A, revising sections 73.3526(c)(1) and 73.3527(c)(1) of our rules to add, "The applicant, permittee, or licensee must provide information regarding the location of the file, or the applicable portion of the file, within (continued….)

under Section 3507(d) of the PRA. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,[152] we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix B, *infra*.

C. Congressional Review Act

33. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

D. Additional Information.

34. For additional information on this proceeding, contact Diana Sokolow, Diana.Sokolow@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

V. ORDERING CLAUSES

35. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 4(i), 4(j), 303, 307(b), and 336(f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303, 307(b), and 336(f), this Report and Order **IS HEREBY ADOPTED**.

36. **IT IS FURTHER ORDERED** that Parts 1 and 73 of the Commission's rules, 47 CFR Parts 1 and 73, **ARE AMENDED** as set forth in Appendix A, and such rule amendments shall be effective thirty (30) days after the date of publication in the Federal Register, except for the portions of sections 73.3526(c)(1) and 73.3527(c)(1) that contain new or modified information collection requirements, which shall become effective after the Commission publishes a notice in the *Federal Register* announcing OMB approval and the relevant effective date.

37. **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.

(Continued from previous page)
one business day of a request for such information." In addition to those new information collection requirements, which we will submit to OMB via a non-substantive change request, following adoption of this Order the Commission also will submit to the Office of Management and Budget (OMB) a notice of discontinuance to reflect the deletion of the main studio rule and its associated information collection requirements.

[152] *See* 44 U.S.C. § 3506(c)(4).

38. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this Order in a report to be sent 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

Final Rules

For ease of review, the final rules set forth below show amendments in **bold/underline** (for additions) and ~~strikethrough~~ (for deletions).

The Federal Communications Commission amends 47 CFR parts 1 and 73 to read as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 310, 332, 1403, 1404, 1451, 1452, and 1455.

2. Revise § 1.80 by deleting the row of the chart detailing the base forfeiture for a violation of the main studio rule, as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

Violations Unique to the Service

* * *

~~Violation of main studio rule~~	~~Broadcast~~	~~7,000~~

* * *

* * * * *

3. Revise § 1.1104 (Schedule of charges for applications and other filings for media services) by deleting items 1.c. (Commercial TV Services, Main Studio Request), 2.c. (Commercial AM Radio Stations, Main Studio Request), 3.c. (Commercial FM Radio Stations, Main Studio Request), and 8.g. (Class A TV Services, Main Studio Request), and re-lettering the remaining items accordingly.

PART 73 – RADIO BROADCAST SERVICES

4. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309, 310, 334, 336, and 339.

5. Revise § 73.14 by modifying the definition of "equipment performance measurements" as follows:

§ 73.14 AM broadcast definitions.

* * * * *

Equipment performance measurements. The measurements performed to determine the overall performance characteristics of a broadcast transmission system from point of program origination ~~at main~~

~~studio~~ to sampling of signal as radiated. (See §73.1590)

* * * * *

6. Revise § 73.761 by deleting paragraph (d) and renumbering the following paragraphs as follows:

§ 73.761 Modification of transmission systems.

* * * * *

~~(d) Change in location of main studio, if it is proposed to move the main studio to a different city from that specified in the license.~~

(~~e~~**d**) Change in the power delivered to the antenna.

(~~f~~**e**) Change in frequency control and/or modulation system.

(~~g~~**f**) Change in direction or gain of antenna system.

Other changes, not specified above in this section, may be made at any time without the authority of the Commission: *Provided,* That the Commission shall be immediately notified thereof and such changes shall be shown in the next application for renewal of license.

7. Revise § 73.1125 to read as follows:

§ 73.1125 ~~Station main studio location~~ Station telephone number.

~~(a) Except for those stations described in paragraph (b) of this section, each AM, FM, and TV broadcast station shall maintain a main studio at one of the following locations:~~

~~(1) Within the station's community of license;~~

~~(2) At any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's community of license; or~~

~~(3) Within twenty-five miles from the reference coordinates of the center of its community of license as described in §73.208(a)(1).~~

~~NOTE TO PARAGRAPH (a): The principal community contour of AM stations that simulcast on a frequency in the 535-1605 kHz band and on a frequency in the 1605-1705 kHz band shall be the 5 mV/m contour of the lower band operation during the term of the simultaneous operating authority. Upon termination of the 535-1605 kHz band portion of the dual frequency operation, the principal community contour shall become the 5 mV/m of the remaining operation in the 1605-1705 kHz band.~~

~~(b) The following stations are not required to maintain their main studio at the locations described in paragraph (a) of this section.~~

~~(1) AM stations licensed as synchronous amplifier transmitters ("AM boosters") or,~~

~~(2) AM, FM, or TV stations, when good cause exists for locating the main studio at a location other than that described in paragraph (a) of this section, and when so doing would be consistent with the operation of the station in the public interest.~~

~~(c) Each Class A television station shall maintain a main studio at a location within the station's predicted Grade B contour, as defined in §73.683 and calculated using the method specified in §73.684. With respect to a group of commonly controlled stations, Class A stations whose predicted Grade B contours are physically contiguous to each other may locate their main studio within any of these contours. If a Class A station is one of a group of commonly controlled Class A stations, but its predicted Grade B contour is not physically contiguous to that of another Class A station in the commonly owned group, its main studio shall be located within its own predicted Grade B contour. Alternatively, a Class A television station shall maintain a main studio at the site used by the station as of November 29, 1999.~~

~~(d) Relocation of the main studio may be made:~~

~~(1) From one point to another within the locations described in paragraph (a) or (c) of this section, or from a point outside the locations specified in paragraph (a) or (c) to one within those locations, without specific FCC authority, but notification to the FCC in Washington shall be made promptly.~~

~~(2) Written authority to locate a main studio outside the locations specified in paragraph (a) or (c) of this section for the first time must be obtained from the Audio Division, Media Bureau for AM and FM stations, or the Video Division for TV and Class A television stations before the studio may be moved to that location. Where the main studio is already authorized at a location outside those specified in paragraph (a) or (c) of this section, and the licensee or permittee desires to specify a new location also located outside those locations, written authority must also be received from the Commission prior to the relocation of the main studio. Authority for these changes may be requested by filing a letter with an explanation of the proposed changes with the appropriate division. Licensees or permittees should also be aware that the filing of such a letter request does not imply approval of the relocation request, because each request is addressed on a case-by-case basis. A filing fee is required for commercial AM, FM, TV or Class A TV licensees or permittees filing a letter request under the section (see §1.1104 of this chapter).~~

~~(e)~~ Each AM, FM, TV**,** and Class A TV broadcast station shall maintain a local telephone number in its community of license or a toll-free number.

8. Revise § 73.1400 paragraph (a)(1)(ii) to read as follows:

§ 73.1400 Transmission system monitoring and control.

* * * * *

(a) *Attended operation.* (1) * * *

(ii) Remote control of the transmission system by a person at ~~the main~~ **a** studio or other location. The remote control system must provide sufficient transmission system monitoring and control capability so as to ensure compliance with §73.1350.

* * * * *

9. Revise § 73.1690 paragraphs (c)(8) and (d) to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(c) * * *

(8) FM commercial stations and FM noncommercial educational stations may decrease ERP on a modification of license application provided that exhibits are included to demonstrate that all ~~six~~ **five** of the following requirements are met:

(i) Commercial FM stations must continue to provide a 70 dBu principal community contour over the community of license, as required by §73.315(a). Noncommercial educational FM stations must continue to provide a 60 dBu contour over at least a portion of the community of license. The 60 and 70 dBu contours must be predicted by use of the standard contour prediction method in §73.313(b), (c), and (d).

~~(ii) For both commercial FM and noncommercial educational FM stations, the location of the main studio remains within the 70 dBu principal community contour, as required by § 73.1125, or otherwise complies with that rule. The 70 dBu contour must be predicted by use of the standard contour prediction method in § 73.313(b), (c), and (d).~~

(~~i~~ii) For commercial FM stations only, there is no change in the authorized station class as defined in §73.211.

(~~iv~~iii) For commercial FM stations only, the power decrease is not necessary to achieve compliance with the multiple ownership rule, §73.3555.

(**i**v) Commercial FM stations, noncommercial educational FM stations on Channels 221 through 300, and noncommercial educational FM stations on Channels 200 through 220 which are located in excess of the distances in Table A of §73.525 with respect to a Channel 6 TV station, may not use this rule to decrease the horizontally polarized ERP below the value of the vertically polarized ERP.

(v~~i~~) Noncommercial educational FM stations on Channels 201 through 220 which are within the Table A distance separations of §73.525, or Class D stations on Channel 200, may not use the license modification process to eliminate an authorized horizontally polarized component in favor of vertically polarized-only operation. In addition, noncommercial educational stations operating on Channels 201 through 220, or Class D stations on Channel 200, which employ separate horizontally and vertically polarized antennas mounted at different heights, may not use the license modification process to increase or decrease either the horizontal ERP or vertical ERP without a construction permit.

* * * * *

(d) The following changes may be made without authorization from the FCC, however informal notification of the changes must be made according to the rule sections specified:

~~(1) Change in studio location within the principal community contour. See § 73.1125.~~

(**1**~~2~~) Commencement of remote control operation pursuant to §73.1400 ~~and 73.1410~~.

(**2**~~3~~) Modification of an AM directional antenna sampling system. See §73.68.

* * * * *

10. Revise paragraphs (b), (c), and (e)(4) of § 73.3526 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) of this section, a hard copy of the public inspection file shall be maintained at ~~the main studio of the station~~ **an accessible place in the community of license**, unless the licensee elects voluntarily to place the file online as discussed in paragraph (b)(2) of this section. 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~~.

NOTE TO PARAGRAPH (b)(1): If as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER] a broadcast station maintains a hard copy of all or a portion of its public inspection file at a main studio that either complied with the Commission's previous main studio rule but is not within the station's community of license, or was deemed a permissible location for the station's public inspection file pursuant to a waiver of the previous main studio rule, and if the station retains that studio, then that studio is a permissible location for the station's hard copy public inspection file. Any reference in this section to "an accessible place in the community of license" shall be deemed to include such a 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 this section 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)(6) of this section, as discussed in paragraph (b)(3) of this section. 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~~ **an accessible place in the community of license** in the manner discussed in paragraph (b)(1) of this section 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~~ **an accessible place in the community of license** in the manner discussed in paragraph (b)(1) of this section.

(ii) A station must provide a link to the public inspection file hosted on the Commission's Web site from the home page of its own Web site, if the station has a Web site, and provide contact information on its Web site 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~~ **an accessible place in the community of license** or on the Commission's Web site, 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 this section 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~~ **an accessible place in the community of license** in the manner discussed in paragraph (b)(1) of this section 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) of this section 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 Web site, shall continue to be retained at the station in the manner discussed in paragraph (b)(1) of this section 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) of this section.

NOTE TO PARAGRAPH (b)(3)(ii): For purposes of paragraph (b)(3)(ii), the "manner discussed in paragraph (b)(1) of this section" refers to maintaining a hard copy of the public inspection file at the main studio of the station as described in paragraph (b)(1) prior to [INSERT EFFECTIVE DATE OF AMENDMENT TO 47 CFR § 73.3526(b)(1)]. *See* 47 CFR § 73.3526(b)(1) (2016).

(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~~ **an accessible place in the community of license** in the manner discussed in paragraph (b)(1) of this section 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~~ **an accessible place in the community of license** in the manner discussed in paragraph (b)(1) of this section until the end of its retention period. However, any station that is not required to place its political file on the Commission's Web site before March 1, 2018, may choose to do so, instead of retaining the political file at ~~the station~~ **an accessible place in the community of license** in the manner discussed in paragraph (b)(1) of this section.

(4) * * *

(c) *Access to material in the file.* (1) **For any applicant, permittee, or licensee that does not include all material described in paragraph (e) of this section in the online public file hosted by the Commission, the portion of the file that is not included in the online public file** ~~The file~~ shall be available for public inspection at any time during regular business hours **at an accessible place in the community of license. The applicant, permittee, or licensee must provide information regarding the location of the file, or the applicable portion of the file, within one business day of a request for such information**. All or part of the file may be maintained in a computer database, as long as a computer terminal is made available, at the location of the file, to members of the public who wish to review the file. Material in the public inspection file shall be made available for printing or machine reproduction upon request made in person. The applicant, permittee, or licensee may specify the location for printing or reproduction, require the requesting party to pay the reasonable cost thereof, and may require guarantee of payment in advance (e.g., by requiring a deposit, obtaining credit card information, or any other reasonable method). Requests for copies shall be fulfilled within a reasonable period of time, which generally should not exceed 7 days.

(2) The applicant, permittee, or licensee who maintains its ~~main studio and~~ public file outside its community of license **(see NOTE TO PARAGRAPH (b)(1))** shall:

(i) Make available to persons within its geographic service area, by mail upon telephone request, photocopies of documents in the file (*see* §73.3526(c)(1)), excluding the political file (*see* §73.3526(e)(6)), and the station shall pay postage;

(ii) Mail the most recent version of "The Public and Broadcasting" to any member of the public that requests a copy; and

(iii) Be prepared to assist members of the public in identifying the documents they may ask to be sent to them by mail, for example, by describing to the caller, if asked, the period covered by a particular report and the number of pages included in the report.

NOTE TO PARAGRAPH (c)(2): For purposes of this section, geographic service area includes the area within the Grade B contour for TV, 1 mV/m contour for all FM station classes except .7 mV/m for Class B1 stations and .5 mV/m for Class B stations, and .5 mV/m contour for AM stations.

(d) * * *

(e) * * *

(4) *Contour maps.* 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.

* * * * *

11. Revise paragraphs (b), (c), and (e)(3) of § 73.3527 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~~ **an accessible place in the community of license** until March 1, 2018, except that, as discussed in paragraph (b)(2)(ii) of this section, 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 accessible place in the community of license**. 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~~.

NOTE TO PARAGRAPH (b)(1): If as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER] a broadcast station maintains a hard copy of all or a portion of its public inspection file at a main studio that either complied with the Commission's previous main studio rule but is not within the station's community of license, or was deemed a permissible location for the station's public inspection file pursuant to a waiver of the previous main studio rule, and if the station retains that studio, then that studio is a permissible location for the station's hard copy public inspection file. Any reference in this section to "an accessible place in the community of license" shall be deemed to include such a studio.

(2)(i) A noncommercial educational television station licensee or applicant shall place the contents required by paragraph (e) of this section 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) of this section, which may be retained at the station in the manner discussed in paragraph (b)(1) of this section 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) of this section 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) of this section.

NOTE TO PARAGRAPH (b)(2)(i): For purposes of paragraph (b)(2)(i), the "manner discussed in paragraph (b)(1) of this section" refers to maintaining a hard copy of the public inspection file at the main studio of the station as described in paragraph (b)(1) prior to [INSERT EFFECTIVE DATE OF AMENDMENT TO 47 CFR § 73.3527(b)(1)]. *See* 47 CFR § 73.3527(b)(1) (2016).

(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~~ **an accessible place in the community of license** in the manner discussed in paragraph (b)(1) of this section 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 at ~~the station~~ **an accessible place in the community of license** 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 Web site, if the station has a Web site, and provide contact information for a station representative on its Web site 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~~ **an accessible place in the community of license** or on the Commission's Web site, depending upon where the documents are required to be maintained under the Commission's rules.

(3) * * *

(c) *Access to material in the file.* (1) **For any applicant, permittee, or licensee that does not include all material described in paragraph (e) of this section in the online public file hosted by the Commission, the portion of the file that is not included in the online public file** ~~The file~~ shall be available for public inspection at any time during regular business hours **at an accessible place in the community of license. The applicant, permittee, or licensee must provide information regarding the location of the file, or the applicable portion of the file, within one business day of a request for such information.** All or part of the file may be maintained in a computer database, as long as a computer terminal is made available, at the location of the file, to members of the public who wish to review the file. Material in the public inspection file shall be made available for printing or machine reproduction upon request made in person. The applicant, permittee, or licensee may specify the location for printing or reproduction, require the requesting party to pay the reasonable cost thereof, and may require guarantee of payment in advance (e.g., by requiring a deposit, obtaining credit card information, or any other reasonable method). Requests for copies shall be fulfilled within a reasonable period of time, which generally should not exceed 7 days.

(2) The applicant, permittee, or licensee who maintains its ~~main studio and~~ public file outside its community of license **(see NOTE TO PARAGRAPH (b)(1))** shall:

(i) Make available to persons within its geographic service area, by mail upon telephone request, photocopies of documents in the file (*see* §73.3527(c)(1)), excluding the political file (*see* §73.3527(e)(5)), and the station shall pay postage;

(ii) Mail the most recent version of "The Public and Broadcasting" to any member of the public that requests a copy; and

(iii) Be prepared to assist members of the public in identifying the documents they may ask to be sent to them by mail, for example, by describing to the caller, if asked, the period covered by a particular report and the number of pages included in the report.

NOTE TO PARAGRAPH (c)(2): For purposes of this section, geographic service area includes the area within the protected service contour in a particular service: Grade B contour for TV, 1 mVm contour for all FM station classes except .7 mV/m for Class B1 stations and .5 mV/m for Class B stations, and .5 mV/m contour for AM stations.

(d) * * *

(e) * * *

(3) *Contour maps.* 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.

* * * * *

12. Revise § 73.3538 paragraph (b) to read as follows:

§ 73.3538 Application to make changes in an existing station.

* * * * *

(b) An informal application filed in accordance with § 73.3511 is to be used to obtain authority to ~~make the following changes in the station authorization: (1) To~~ modify or discontinue the obstruction marking or lighting of the antenna supporting structure where that specified on the station authorization either differs from that specified in 47 CFR 17, or is not appropriate for other reasons.

~~(2) Relocation of a main studio outside the principal community contour may require the filing and approval of a letter request for authority to make this change prior to implementation. See §73.1125.~~

13. Revise § 73.3544 by revising paragraph (b) to read as follows:

§73.3544 Application to obtain a modified station license.

* * * * *

(b) An informal application, see §73.3511(b), may be filed with the FCC in Washington, DC, Attention: Audio Division (radio) or Video Services Division (television), Media Bureau, to cover the following changes:

(1) A correction of the routing instructions and description of an AM station directional antenna system field monitoring point, when the point itself is not changed.

(2) A change in the type of AM station directional antenna monitor. See §73.69.

~~(3) A change in the location of the station main studio when prior authority to move the main studio location is not required.~~

(**3**4) The location of a remote control point of an AM or FM station when prior authority to operate by remote control is not required.

* * * * *

14. Revise § 73.6000 by deleting paragraph (3) as follows:

§73.6000 Definitions.

Locally produced programming. For the purpose of this subpart, locally produced programming is programming:

(1) Produced within the predicted Grade B contour of the station broadcasting the program or within the contiguous predicted Grade B contours of any of the stations in a commonly owned group; or

(2) Produced within the predicted DTV noise-limited contour (*see* §73.622(e) of this part) of a digital Class A station broadcasting the program or within the contiguous predicted DTV noise-limited contours of any of the digital Class A stations in a commonly owned group**.**~~; or~~

~~(3) Programming produced at the station's main studio.~~

NOTE TO §73.6000: *See Report and Order,* In the Matter of Establishment of a Class A Television Service, MM Docket No. 00-10, released April 4, 2000; *Memorandum Opinion and Order on Reconsideration,* In the Matter of Establishment of a Class A Television Service, MM Docket No. 00-10, released April 13, 2001**; *Report and Order*, In the Matter of Elimination of Main Studio Rule, MB Docket No. 17-106, released October 24, 2017.**

15. Revise the alphabetical index following Part 73 by deleting the following entries for section 73.1125:

Alphabetical Index – Part 73

* * * * *

L

* * * * *

~~Location, Main studio ……... 73.1125~~

* * * * *

M

~~Main studio location……..... 73.1125~~

* * * * *

S

* * * * *

~~Station, main studio location……..... 73.1125~~

* * * * *

~~Studio location, Main……..……73.1125~~

* * * * *

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM).[2] The Commission sought written public comments on proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA, although some commenters discussed the effect of the proposals on smaller entities, as discussed below. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

2. In the Report and Order (Order), we adopt our proposal to eliminate the Federal Communications Commission (Commission) rule that requires each AM, FM, and television broadcast station to maintain a main studio located in or near its community of license.[3] We also adopt our proposal to eliminate existing requirements associated with our main studio rule, including the requirement that the main studio have full-time management and staff present during normal business hours, and that it have program origination capability.

3. The Commission first adopted main studio requirements in 1939 to ensure that community members could provide their local broadcast stations with input and that stations could participate in community activities.[4] The record in this proceeding clearly demonstrates that a local main studio is no longer needed to fulfill these purposes. The record also shows that eliminating the main studio rule will produce substantial benefits. Broadcasters will be able to redirect the significant costs associated with complying with the main studio rule to programming, equipment upgrades, newsgathering, and other services to the benefit of consumers. Moreover, repealing the rule will encourage the launch of new broadcast stations in small towns and rural areas and help prevent existing stations in those areas from going dark.

4. Since 2014, broadcasters have been transitioning from local public inspection files, maintained at the station's main studio, to an online file hosted by the Commission.[5] This transition will be almost entirely complete by March 2018, when the last group of remaining radio stations to transition must begin using the online file.[6] Although our rules will permit some stations to maintain a small portion of their public file documents locally for a limited period of time, the need for community members to visit a station's local main studio to access its public inspection file is quickly becoming a relic of the past. While we take steps to ensure that community members will continue to have local access to public files when necessary, we find that the few circumstances in which broadcast stations may continue to maintain portions of their public files locally do not justify the existence of our main studio

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

[2] *Elimination of Main Studio Rule*, Notice of Proposed Rulemaking, 32 FCC Rcd 4415, 4426-30 (2017) (NPRM).

[3] 47 CFR § 73.1125(a)-(d).

[4] *See, e.g., Applications of the Tribune Company, Tampa, Florida, et al.*, 19 FCC 100, 148 (1954) ("The accessibility of the broadcast station's main studio may well determine in large part the extent to which the station (a) can participate and be an integral part of community activities, and (b) can enable members of the public to participate in live programs and present complaints or suggestions to the stations.").

[5] *See* Order Section III.E.

[6] *See id.* A more detailed discussion of the deadlines applicable to use of the online public file can be found in paragraph 24 or the Order.

rule. Moreover, the record shows that community members are highly unlikely to visit a station's main studio for other purposes, with people instead choosing to contact their local stations through more efficient means such as the telephone, email, or social media.[7] Similarly, broadcast stations now interact with their communities of license via online means, and technology enables them to produce local news even without a nearby studio.[8] For all of these reasons, we adopt the tentative conclusion in the Notice of Proposed Rulemaking that the main studio rule and its associated requirements are now outdated and unnecessarily burdensome for broadcast stations, and should therefore be eliminated.[9]

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

5. No comments specifically address the proposed rules and policies presented in the IRFA. Some comments do, however, discuss the effect of the NPRM's proposals on smaller entities. For example, some commenters support the proposal to eliminate the main studio rule by explaining that in some small towns and rural areas the cost of complying with the current main studio rule dissuades broadcasters from launching a station, even if the broadcaster has already obtained a construction permit for the station.[10] Many stations based in such small towns and rural areas are smaller entities. Similarly, comments support the Commission's position that the main studio rule imposes significant and burdensome costs on broadcasters, particularly smaller broadcasters and noncommercial educational (NCE) stations.[11] Some commenters claim, without evidence, that small and independent broadcasters will not benefit from the elimination of the main studio rule because they likely will not relocate their existing studios and will become unable to compete against consolidated multi-station broadcasters.[12] The fact-based statements of small broadcasters in this proceeding, detailing the costs of compliance with the main studio rule and the potential benefits to them of the elimination of the rule, belie these claims.[13] Broadcasters detail the significant costs that they face under the main studio rule, including such expenses as: (a) rent, utilities, insurance, and maintenance costs for the studio itself; (b) equipment and transmission facilities; and (c) salaries, taxes, insurance, and benefits for the main studio's two full-time employees.[14] Broadcasters claim that main studio-related costs range from $20,000 per year to several

[7] *See* Order Section III.A.

[8] *See id.* Section III.A, C.

[9] NPRM.

[10] *See, e.g.,* Bryan Broadcasting *et al.* Comments at 3; CCR Comments at 3; DeLaHunt Comments; Jackman/Sebago Comments at 2-3; KCR Comments at 1-2.

[11] *See, e.g.,* AMG Comments at 1; Anderson Comments; Bittner Comments; Blackbelt Broadcasting Comments; Broadcast Licensees Comments at 4; Crawford Comments at 2; Fiorini Comments; John Fox Comments; Great Plains Comments; GSB's Media Group Comments at 2; HCBI Comments at 2; Joint Commenters Comments at 4; L.M.N.O.C. Comments at 2; Miller Media Group Comments; Moody Comments at 2; NAB Comments at 8; NPR Comments at 7; Peninsula Communications Comments; Saga Comments at 3; Trinity Comments at 4; Venture Comments at 1.

[12] *See* Free Press Comments at 5, 14; Common Frequency Reply at 17. *See also* Aurora Comments at 2 (arguing that, since the value of small market stations will artificially inflate as they become less expensive to operate, it will become more difficult for minority and small owners to purchase stations).

[13] *See* NAB Reply at 6-7.

[14] *See, e.g.,* Blount Comments at 2; Broadcast Licensees Comments at 5; Hubbard Comments at 3; MMTC Comments at 2; MRE Comments at 3; NFIB Comments at 2; Prime Time Comments at 2-3; Starboard Comments at 2-3.

hundred thousand dollars per year.[15] One broadcaster states that it could consolidate main studios and save more than $10 million *annually*.[16]

6. Regarding the NPRM's proposal to eliminate the staffing requirement currently associated with the main studio rule, commenters persuasively state that it can be difficult for small or rural stations and for financially-challenged AM stations to support the requisite two full-time employees.[17]

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

7. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[18] The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

8. 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 rules adopted herein.[19] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[20] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[21] 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 Small Business Administration (SBA).[22] Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

9. *Television Broadcasting.* This economic Census category "comprises establishments primarily engaged in broadcasting images together with sound."[23] These establishments operate

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[15] *See, e.g.,* Blount Comments at 2; Broadcast Licensees Comments at 5; Bryan Broadcasting *et al.* Comments at 6; Cordillera/Cox Comments at 5-6; Crawford Comments at 2; Hubbard Comments at 3; MRE Comments at 3; Prime Time Comments at 2-3; Starboard Comments at 3.

[16] Trinity Comments at 4 (elimination of the main studio rule would enable Trinity to combine and consolidate several studios, leading to "a significant *annual* savings – $10.5-$13.5 million – which would be available for redeployment in additional and upgraded programming") (emphasis in original).

[17] *See, e.g.,* Bryan Broadcasting *et al.* Comments at 7; Classic Broadcasting Comments at 2; FPR Comments at 1; Jackson Comments at 2.

[18] 5 U.S.C. § 604(a)(3).

[19] *Id.* § 603(b)(3).

[20] *Id.* § 601(6).

[21] *Id.* § 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).

[22] 15 U.S.C. § 632.

[23] U.S. Census Bureau, 2012 North American Industry Classification System (NAICS) Definitions, "515120 Television Broadcasting," at http://www.census.gov/cgi-bin/sssd/naics/naicsrch.

television broadcast studios and facilities for the programming and transmission of programs to the public.[24] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having $38.5 million or less in annual receipts.[25] The 2012 U.S. Census indicates that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of $25,000,000 or less, 25 had annual receipts between $25,000,000 and $49,999,999, and 70 had annual receipts of $50,000,000 or more.[26] Based on this data, we estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

10. In addition, the Commission has estimated the number of licensed commercial television stations to be 1,382.[27] Of this total, 1,264 stations had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017. Such entities, therefore, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 393.[28] The Commission, however, does not compile and 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. Based on the data, we estimate that the majority of television broadcast stations are small entities.

11. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations[29] must be included. Our estimate, therefore likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of "small business" requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules would apply does not exclude any television station from the definition of a small business on this basis and therefore could be over-inclusive.

12. There are also 417 Class A stations.[30] Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

[24] *Id*.

[25] 13 CFR § 121.201; 2012 NAICS code 515120.

[26] U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

[27] *See* FCC News Release, *Broadcast Station Totals as of June 30, 2017* (rel. Jul. 11, 2017) ("*Broadcast Station Totals*"), available at https://www.fcc.gov/media/broadcast-station-totals.

[28] *Id*.

[29] "[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 the power to control both." 13 CFR § 121.103(a)(1).

[30] *See Broadcast Station Totals*, *supra*.

13. *Radio Stations.* This economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public."[31] The SBA has created the following small business size standard for this category: those having $38.5 million or less in annual receipts.[32] Census data for 2012 show that 2,849 firms in this category operated in that year.[33] Of this number, 2,806 firms had annual receipts of less than $25,000,000, and 43 firms had annual receipts of $25,000,000 or more.[34] Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

14. 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 commercial FM radio stations to be 6,755, and the Commission has estimated the number of licensed AM radio stations to be 4,646.[35] In addition, the Commission has estimated the number of NCE FM radio stations to be 4,111.[36] NCE stations are non-profit, and therefore considered to be small entities.[37] Based on the data, we estimate that the majority of radio broadcast stations are small entities. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.[38] This estimate, therefore, likely 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.

15. As noted above, 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.

[31] U.S. Census Bureau, 2012 NAICS Definitions, "515112 Radio Stations," at http://www.census.gov/cgi-bin/sssd/naics/naicsrch. This category description continues, "Programming may originate in their own studio, from an affiliated network, or from external sources."

[32] 13 CFR § 121.201, 2012 NAICS code 515112.

[33] U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112), http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table.

[34] *Id.*

[35] *See Broadcast Station Totals,* supra.

[36] *See id.*

[37] 5 U.S.C. §§ 601(4), (6).

[38] "[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 CFR § 121.103(a)(1).

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

16. The Order eliminates the rule requiring each AM, FM, and television broadcast station to maintain a local main studio. It also eliminates the associated staffing and program origination capability requirements that apply to main studios. The Order adopts the NPRM's tentative conclusion that technological innovations have rendered a local studio unnecessary as a means for viewers and listeners to communicate with or access their local stations and to carry out the other traditional functions that they have served. To ensure that community members retain the ability to communicate with and obtain information regarding their local stations, the Order retains the existing requirement that broadcasters maintain a local or toll-free telephone number. The Order also requires stations to maintain any portion of their public file that is not part of the online public file at a publicly accessible location within the station's community of license. If a broadcast station currently maintains its local public file at a main studio that complies with the current main studio rule but is not within the station's community of license, and if the station retains that studio, then the Order grandfathers that studio as a permissible location for the station's local public file for the period before completion of the station's transition to the online public file. Similarly, if a broadcast station has an existing waiver of the main studio rule that permits the station to maintain its public files at the station's main studio outside the community of license, then the Order grandfathers that studio as a permissible location for the station's local public file for the period before completion of the station's transition to the online public file. Finally, the Order makes conforming edits to other Commission rules that are necessitated by the elimination of the main studio rule. Overall, we expect that all entities, including in particular small entities, will benefit from the elimination of the main studio rule and associated rule revisions because these changes may lead to cost savings.

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

17. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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 and reporting requirements under the rule for such 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 such small entities."[39]

18. As an initial matter, we note that the elimination of the existing requirements pertaining to the location of the main studio of each AM, FM, and television broadcast station, as well as the elimination of associated staffing and program origination requirements, will eliminate requirements that may be outdated and unnecessarily burdensome on all broadcast stations, including small entities. The Order thus will lessen the cost of complying with the Commission's rules on all broadcast stations, including small entities. The Order specifically discusses the cost savings that will result from the elimination of the main studio rule, including for small entities.[40] The Order also discusses the cost savings that will result from the elimination of the associated staffing requirement, pursuant to which broadcast stations currently must have two employees (one management and one staff) present on a full-time basis at a main studio during normal business hours.[41] The Order explains the particular relevance of these cost savings to small stations.[42]

[39] 5 U.S.C. § 603(c)(1)-(c)(4).

[40] *See* Order Section III.A.

[41] *See id.* Section III.B.

[42] *See id.*

19. The Order retains the language currently found in section 73.1125(e) of the Commission's rules, which requires "[e]ach AM, FM, TV and Class A TV broadcast station [to] maintain a local telephone number in its community of license or a toll-free number."[43] Retaining this requirement will help promote continued access to local broadcast stations by community members upon elimination of the main studio rule. The Commission considered whether it should adopt additional requirements pertaining to publicizing or staffing these telephone numbers or responding to time-sensitive or emergency information.[44] While some commenters advocated such alternative approaches, the Commission concluded that the burdens of any such additional requirements are unjustified. Declining to adopt these alternative approaches will avoid any new burdens on all broadcast stations, including small entities. Because the Order retains the existing requirement to maintain a local or toll-free telephone number, but declines to adopt any additional requirements, it does not impose any new costs on broadcast stations, including small entities.

20. Pursuant to the Commission's online public file rules, in the very near future there will be only limited instances in which any portion of a station's public inspection file will be permitted to be maintained at the station's main studio rather than online.[45] Nonetheless, the Commission recognizes the need to ensure that community members have local access to a station's public file for any timeframe during which all or a portion of that file is not available via the online public file. Accordingly, the Order requires every broadcast station applicant, permittee, or licensee to maintain any portion of its public file that is not part of the online public file at an accessible place within its community of license.[46] While the Commission could adopt that requirement alone, instead it has taken the alternate approach of providing broadcast stations with additional flexibility that will reduce costs. Specifically, if a broadcast station currently maintains its local public file at a main studio that complies with the current main studio rule but is not within the station's community of license, and if the station retains that studio, then that studio is grandfathered as a permissible location for the station's local public file for the period before completion of the station's transition to the online public file. Similarly, if a broadcast station has an existing waiver of the main studio rule that permits the station to maintain its public files at the station's main studio outside the community of license, then the Order grandfathers that studio as a permissible location for the station's local public file for the period before completion of the station's transition to the online public

[43] 47 CFR § 73.1125(e); Order Section III.D.

[44] *See* Order Section III.D.

[45] As of June 24, 2016, commercial broadcast radio stations in the top 50 Nielsen Audio radio markets with five or more full-time employees were required to place *new* public and political file documents in the online public file on a going-forward basis. *See Effective Date Announced for Expanded Online Public Inspection File Database*, Public Notice, 31 FCC Rcd 4699 (rel. May 12, 2016) (*Expanded Online Public File Effective Date PN*). By December 24, 2016, these entities were required to upload their *existing* public file documents to the online file, except for existing political file material which they may either upload or maintain locally until the expiration of the two-year retention period for such political file material. *See id*. *See also* 47 CFR § 73.3526(b)(3)(i)-(iii) (requiring commercial stations either to retain previously existing political file material at the station until the end of the two-year retention period, or to opt instead to place that existing political file material in the online public inspection file). Beginning March 1, 2018, all other broadcast radio stations (including NCE broadcast radio stations, commercial broadcast radio stations in the top 50 Nielsen Audio radio markets with fewer than five full-time employees, and commercial broadcast radio stations in markets below the top 50 or outside all markets) must place *new* public and political file documents in the online public file on a going-forward basis. They must also upload their *existing* public file documents to the online file by that date, except for existing political file material which they may either upload or maintain locally until the expiration of the two-year retention period for such political file material. *See Expanded Online Public File Effective Date PN*, 31 FCC Rcd at 4700; 47 CFR §§ 73.3526(b)(3)(i)-(iii) (requiring commercial stations either to retain previously existing political file material at the station until the end of the two-year retention period, or to opt instead to place that existing political file material in the online public inspection file), 73.3527(b)(2)(i)-(ii) (imposing the same requirement on NCE stations).

[46] *See* Order Section III.E.

file. This approach will ease compliance burdens on all stations, including small entities, because a station that maintains the studio previously designated as its main studio will not need to make any changes regarding the location of its local public inspection file. In the Order, the Commission explains its rejection of an alternate approach pursuant to which it could only eliminate the main studio rule for stations that have fully transitioned all public file material to the online public file material, stating that such an approach would disadvantage the smaller entities that may be most impacted by the costs of complying with the current main studio rule.[47]

G. Report to Congress

21. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[48] In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.[49]

[47] *See id.* para. 28.

[48] *See* 5 U.S.C. § 801(a)(1)(A).

[49] *See id.* § 604(b).

STATEMENT OF
CHAIRMAN AJIT PAI

Re: *Elimination of Main Studio Rule*, MB Docket No. 17-106.

Back in May, when we released the *Notice* in this proceeding, I observed that broadcast studios and the purposes they serve have changed a lot since 1920, when the first commercial radio broadcast took place, and since 1939, when the FCC first adopted main studio requirements. That's why the FCC proposed to eliminate the main studio rule.

The overwhelming majority of public input favored our proposal. The record shows that main studios are no longer needed to enable broadcasters to be responsive to their communities of license. That's because the public these days is much more likely to interact with stations (including accessing stations' public files) online. Additionally, technology allows broadcast stations to produce local news even without a nearby studio.

The record also shows that getting rid of the rule will help broadcasters serve viewers and listeners, especially those in small towns and rural areas where the cost of compliance dissuades broadcasters from even launching stations. One commenter, for example, stated that after FM Auction 94, it decided not to construct stations in South Dakota and Montana because of the costs associated with the main studio rule.[1] The record further demonstrates that eliminating this rule will enable broadcasters to focus more resources on local programming, newsgathering, community outreach, equipment upgrades, and attracting talent—all of which will better serve their communities. Given these facts, continuing to require a main studio would detract from, rather than promote, a broadcaster's ability and incentive to keep people informed and serve the public interest.

Thank you to Michelle Carey, Martha Heller, and Diana Sokolow from the Media Bureau, and David Konczal from the Office of General Counsel, for your work on this *Order*.

[1] *See* Jackman/Sebago Comments at 2-3.

DISSENTING STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN

Re: *Elimination of Main Studio Rule*, MB Docket No. 17-106.

Today is a solemn one, in the history of television and radio broadcasting. By eliminating the main studio rule in its entirety for all broadcast stations — regardless of size or location – the FCC signals that it no longer believes, those awarded a license to use the public airwaves, should have a local presence in their community. Yes, the very same majority, that talks about embracing policies to promote job creation, is paving the way for broadcast station groups, large and small, to terminate studio staff and abandon the communities they are obligated to serve.

Now I was willing to keep an open mind, when the Chairman teed up a proposed rulemaking earlier this year, just in case I was missing some obvious benefits to consumers, and struggling broadcasters. Well, the comment period has come and gone, and I am left scratching my head, because I cannot reconcile the report and order's rhetoric, with today's action. Why would an industry, that repeatedly extols the virtues of its local roots, want to eliminate their only real connection to that very same community?

This past July, an email I received from Don made me pause: "Please vote to keep the main studio rule," he wrote. "As an old radio man and former owner of a small market station, it is so disturbing to see what is happening to radio." Then just yesterday, Newsmax CEO Christopher Ruddy in a Washington Post op-ed, suggested that if this rule is eliminated, "local news production could be moved to places such as New York and Washington as the big networks buy up local stations." I agree with both statements, in part because most of the benefits cited for eliminating this rule, will flow to broadcast station groups, that are already experiencing record revenue returns.

Changes in the communications landscape over time are inevitable, and most of them we wholeheartedly embrace, but change should never come at the expense, of the public interest. Instead of taking a sledge hammer to the main studio rule, the FCC majority could have exacted a more measured approach, such as a revised waiver process, that considers market size and economic hardship. In fact, one commenter made this suggestion in the record, and my office proposed this as an alternative approach. Regrettably, the targeted proposal, which would have appropriately recognized that some stations in smaller markets face unique challenges to remaining on the air, was rejected by the Chairman's office, and here we are.

Similarly, the Commission could have conditioned elimination of the rule, on a station's commitment to directly use any cost savings to invest in services that are beneficial to consumers, including expanding local programming, and improving newsgathering in the station's community of license. The NPRM in fact suggests that the savings could be used for such purposes, so why not tie the two together? Once again, the proposal was rejected, and here we are.

While I do appreciate that stations must continue to maintain a toll-free or local number that is staffed during normal business hours, I fear this does not go far enough, to remedy the harms to communities that will no longer have a physical broadcast presence of their very own.

So, having proposed and repeatedly been vetoed on what I believed to be reasonable alternatives, I am left with no other choice than to dissent. While I strongly disagree with this Order, nonetheless I thank the Media Bureau staff, for their dedicated public service, and the passion they have for the public airwaves.

STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY

Re: *Elimination of Main Studio Rule*, MB Docket No. 17-106.

With this item, the Commission eliminates an unnecessary requirement that has long outlived its usefulness. The main studio rule, adopted in 1939, restricts broadcasters from allocating their resources efficiently and could even discourage them from launching stations in rural areas. This is a clear example of a Commission rule where the costs outweigh any perceived benefit and I am pleased that we are bringing this proceeding to a decisive conclusion.

When it was implemented—nearly 80 years ago—this rule may have made sense. There was no Internet, social media, or even wireless phones, tools that we now rely on to connect quicker, easier, and more frequently with one another. Today, as the item recognizes, it is more efficient and effective to call or email a broadcast station, especially in times of an emergency, rather than visit the actual studio. By eliminating the requirement that a broadcast station must retain a physical location with a de facto requirement to have two designated staff members but retaining the obligation that broadcasters maintain a contact number, the Commission ensures that community members will be able to reach their local broadcaster in a way that reflects how the public currently communicates with local businesses.

Importantly, this item eliminates costly burdens that no longer make sense in today's modern world. It does *not* eliminate localism, especially in smaller markets. The obligation to air programming responsive to the interests of the community and requirement to maintain in a broadcast station's public inspection file the quarterly issues program lists detailing the programs aired that "provided the station's most significant treatment of community issues"[1] remain intact. There has been no causal effect much less any correlation shown between the maintenance of this rule and the quality of programming or the amount of local content.

Moreover, market incentives and license obligations will ensure that broadcasters remain focused on serving the needs of their local listeners and viewers. Broadcasters noted in the record that "a significant number of broadcasters would continue to provide local program origination as a matter of prudent business operations, in order to serve their communities and receive the economic support of same through advertising sales."[2] In fact, removing this burden could actually pave the way for even more local content, especially in rural communities. While before a station may decide not to locate in an area because it could not support the requirements embedded in the main studio rule, today, the decision could be to expand rural coverage. I look forward to seeing how the market will evolve once the Commission removes an obsolete burden.

Again, I thank the Chairman for focusing on this proposal, and I fully support this item.

[1] 47 CFR 73.3526.

[2] AMG Comments at 3.

STATEMENT OF
COMMISSIONER BRENDAN CARR

Re: *Elimination of Main Studio Rule*, MB Docket No. 17-106

A few months before the start of World War II, the Commission adopted the main studio rule that we take up today—a rule that requires each radio and television broadcast station to maintain a main studio in or near its community of license. In the decades that followed, the Commission relied on this rule to ensure that broadcast stations could stay connected with the local communities they served. In today's digital age, however, a brick and mortar studio is no longer needed to achieve this goal. Technological innovations now provide stations with far more—and far more efficient and effective—ways to interact with their local communities than in-person visits to a studio. These include social media pages, mobile apps, and website comments, not to mention emails and phone calls.

Not only is the main studio rule unnecessary, but the record shows that it actually hurts the ability of smaller stations, including those serving rural areas, from competing in today's media marketplace. In light of modern technology, broadcasters don't need a main studio to provide programming that responds to the needs of the local community. The Commission already made this finding when it relaxed the main studio rule in 1987, and the evidence thirty years later simply confirms it. Indeed, the regulatory relief the FCC provides today could translate into tens of thousands to hundreds of thousands of dollars every year in savings, particularly for smaller and rural broadcasters. A case in point is the owner of several radio stations in rural Texas. This broadcaster spends nearly $40,000 a year to maintain main studios in communities of only 900 and 1,800 residents, respectively. If the rule were repealed, the general manager says that he will be able to divert those savings toward hiring an additional reporter to cover local news and sports.

The substantial yet unnecessary burdens associated with the main studio requirement have led a wide range of parties—from minority-owned and foreign language stations to broadcasters of all sizes serving our cities, suburbs, and rural areas—to call for the FCC to repeal the now outdated rule. I agree. I'm glad the FCC is moving forward in taking this step.

DISSENTING STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL

Re: *Elimination of Main Studio Rule*, MB Docket No. 17-106.

It was pitch-black dark in Minot, North Dakota on January 18, 2002. It was also bitter cold when at 1:37 AM a train derailed, slammed into a house, and sent a vast white cloud of anhydrous ammonia over the state's fourth-largest city.

If you lived nearby you knew instantly things were not right. "It was like something just grabbed your lungs," said a Minot resident who lived 500 feet from the tracks. Then the electricity went out. So, residents turned to battery-powered radios—the kind we are all told to keep on hand for a disaster. But when they tuned in to their local stations all they heard was canned music and DJ banter piped in from somewhere far, far away. Local radio failed the Minot community that night. It offered content that was anything but what residents needed to know. There are many reasons, apologies, and arguments about why it happened this way. But one thing is clear—when broadcasters have a physical presence in the communities they serve this is much less likely to happen.

Of course, what happened in Minot took place more than a decade and a half ago. But a month and a half ago I received an e-mail from an individual in Beaumont, Texas. He described Hurricane Harvey in harrowing detail. Rain fell from the skies and flooded the roads, turning them into virtual lakes. There were widespread power failures. Some tried to flee the area, others stayed put and attempted to rescue those who were caught in deep water. But, as he writes: "at midnight during the peak of the storm . . . not one single station in this market had live coverage of the storm." Instead, he found his favorite stations broadcasting top 40 formats and national talk programs, oblivious to the trouble in the very community they purport to serve.

There are many broadcasters who do an extraordinary job serving communities during disaster. But let's be honest—they can only do so when they have a real presence in their area of license. That's not a retrograde notion—it's a fact.

I do not believe wiping out the main studio rule is going to solve problems like those in Minot and Beaumont. I do not believe it will lead to better community coverage. I do not believe it will lead to more jobs. I do believe it will hollow out the unique role broadcasters play in local communities—a role that is not just tradition, but an essential part of broadcasting under the Communications Act.

I know that many stations face real economic challenges. I wish we would have agreed to simple waivers for the main studio rule anytime it would allow small- and mid-sized stations to keep the lights on and continue to offer service to their communities of license. I regret we do not take those steps here and instead strip our rules of the very localism that makes broadcasting unique. I dissent.

POLITICAL BROADCASTING 2020

Questions and Answers on the FCC Rules and Policies for Candidate and Issue Advertising

Contents

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Background

Even in today's fractured media marketplace, broadcasting plays a central role for nearly every candidate for office. In turn, many broadcast stations count on the political advertising revenues that come from candidates and issue advertisers who recognize the value of the mass audience that broadcasting can deliver. But many stations also approach the area with trepidation, fearing that they will be caught in some nuance of some FCC regulation that they somehow overlooked. This Guide is designed to help to allay a few of those fears.

While, like any guide to legal issues, this one should not be relied on to answer all of your questions, it should at least start you on the path to understanding the issues that arise with candidate advertising and other candidate appearances on your stations, as well as the those that arise in connection with advertising from non-candidate individuals and groups on political matters and other controversial topics. These "issue advertisers" have been increasingly active since the Supreme Court issued the *Citizens United* decision in 2010, which authorizes essentially unlimited electioneering advertising by individuals and corporations – as long as they are acting independently from the candidate.

The advent of online public files for all broadcast stations has changed the compliance landscape. Now that information about the political sales by broadcasters is available 24/7 to anyone with Internet access, it is far easier for competitors, public interest groups, and the FCC to monitor political ad purchases by candidates and issue advertisers. This easy access brings with it a new level of regulatory scrutiny to station activities.

Meanwhile, the substantive FCC rules have, for the most part, been unchanged for almost 30 years. There are also occasional clarifications and interpretations of the rules that are made either in connection with specific cases, or by informal statements of FCC staff. In fact, an apparent clarification of the disclosure requirements for issue ads has been pending at the FCC since May 2018, so we may see that decision at any time. There have been some broader changes since the basic rules were substantially overhauled in the early 1990s, particularly in connection with sponsorship identification and the political file, that arose as a result of the Bipartisan Campaign Reform Act of 2002. This guide looks at the basic rules, and addresses some of the changes and clarifications that have arisen in the years since that last major review.

Even though the basic rules have been in place for almost 30 years, broadcast sales practices have evolved considerably. So application of the rules remains complicated, and every interpretation is one that is very much dependent on the facts of a particular case. Thus, in the case of any controversy, be sure to check with a lawyer familiar with these rules to discuss the specific facts involved, as a few details can make a big difference in the legal analysis of any issue. While this guide can't answer all of your questions, it should at least give you information to help to spot issues and to ask the right questions about any of these issues as they arise.

Most broadcasters are focused on the pricing of political spots. The rules require that broadcasters sell spots to candidates priced at rock-bottom rates during certain pre-election periods. Many times the candidates and their buyers are the least familiar with broadcast sales practices (especially when dealing with state and local candidates), yet they can demand the most time and attention from station sales representatives. On the other hand, some political ad buyers

for more high profile races can be very familiar with the rules, and will attempt to bend them to their advantage. Consequently, broadcasters may end up getting the least money for spots that take the most time to sell. These spots also often cause the most heartache, since there is always the threat of FCC enforcement action or, at least, the cost of attorneys to help avoid getting the rules wrong.

Broadcasters have been fortunate that the FCC authorities currently enforcing political broadcast rules recognize that they can be confusing and have generally sought to mediate disputes between broadcasters and political advertisers, rather than resorting to a formal adversarial process that could result in penalties to the broadcaster. Such negotiations have led to quick and mutually satisfactory resolutions of most political complaints in recent decades.

However, significant fines (including one for $540,000 in 2016) are still possible under FCC rules relating to political and issue advertising. In addition, where violations are discovered after the fact, stations have had to explain possible misconduct, perform audits, and issue rebates to settle candidates' claims. In connection with issue advertising, there can even be the threat of civil liability. And there is no guarantee that current FCC procedures of mediating all issues will continue, or that problems discovered after an election by a determined (and possibly disappointed) candidate would not result in an enforcement action by the FCC. In fact, in recent months there has been an indication that the FCC may be turning to a more enforcement-oriented approach, particularly with respect to online political file irregularities. So stations must still follow the rules carefully.

This guide will provide you with an introduction to the language of the political broadcasting world. It will talk about how your normal business practices can have an impact on your activities during the political broadcasting season. It will also discuss the specifics of the political broadcasting rules – addressing questions including which candidates get access to the advertising time sold by stations; how candidates must be treated fairly; the limits on editing political speech on stations; how much stations can charge political advertisers; what kind of disclosure must be made to political advertisers; and what kind of public records must be maintained (and where to maintain those records). It is intended to provide the basics - so be mindful that there are always wrinkles that demand additional attention from the experts. Develop lines of communication with your attorney throughout the political broadcasting process, as a little preventative effort may save a lot of trouble in the long run.

Note that this guide does not address the growing area of state regulation of political advertising. Particularly in connection with online advertising, a number of states have adopted sponsorship and disclosure obligations that are different, and in some cases more onerous, than those required by the FCC. Sometimes, these rules, though aimed at online ads, are written broadly and can have some applicability to broadcasters as well. If you operate in one of the states that has adopted such rules, be sure that you are familiar with their requirements, and carefully observe the obligations that they set out.

The Basics - Speak the Language

Like any set of rules devised by lawyers, the political broadcasting rules have their own language. It is often essential to know the terms that are used to be able to fully understand the rules that apply. These questions help define some of those basic terms.

Who is a "legally qualified candidate"?

A legally qualified candidate is one who has fulfilled all of the requirements to run for a particular office. That usually means filing certain papers with state or local election boards, and may, in some cases, require the gathering of signatures on a petition or the payment of a filing fee. These requirements vary by jurisdiction. Once a potential candidate has done the things necessary in that jurisdiction to qualify, he or she is considered a "legally qualified candidate." As set forth below, most of the political rules apply once you have a legally qualified candidate.

In presidential elections, there is also a special rule on who is a legally qualified candidate. Once a candidate is legally qualified in 10 states (or 9 states and the District of Columbia), the FCC considers the candidate to be qualified in all 50 states for purposes of the political broadcasting rules. For purposes of determining who is a legally qualified presidential candidate in a particular state, FCC rules provide that a substantial showing of a candidacy (e.g., an active campaign) may be sufficient in and of itself to make a candidate legally qualified in a state. This is particularly important in caucus states where, unlike in most other elections, there may be no formal filing of papers to mark the legal beginning of a campaign.

Note that, in certain cases, the rules can even apply to persons who did not meet all the requirements for a place on the ballot. Most commonly, this would occur when a write-in candidate decides to seek a political office. The definition of a legally qualified candidate may include write-in candidates, where such candidates are eligible for election under state or local law. For a write-in candidate to be considered "legally qualified" for purposes of the FCC's political broadcasting rules, the candidate must have made a public statement that they are running for an office and make a substantial showing that they are engaged in the types of activity normally associated with an active political campaign, e.g., opening campaign offices, providing campaign literature, giving speeches and otherwise actively campaigning for the office they are seeking. The burden is on the candidate to make this showing. In an informal ruling about a decade ago, the FCC found a purported write-in candidate for the US Senate to have not met that threshold where the candidate had a single office and made appearances only in one corner of the state, and had made no overt efforts to get votes outside of his home area. Simply saying, "I am a write-in candidate for office" will not entitle an individual to all of the benefits of a legally qualified candidate under FCC rules.

Determining if a candidate has made a sufficient showing of his or her candidacy to be entitled to FCC protections can be a tricky analysis, so if you have a potential candidate looking to advertise on the station, and it is not clear that they are a legally qualified candidate, ask counsel for advice on how to proceed.

Who is a "federal candidate"?

In many cases, candidates for federal offices have rights and responsibilities that do not apply to candidates for state and local offices. Federal candidates are those running for President, the US Senate, or the US House of Representatives.

What is a "use" by a political candidate?

A "use" is just what it sounds like - the appearance on a broadcast facility by a candidate. For FCC purposes, to be a "use," the appearance must contain the image or recognizable voice of the candidate. Also, the appearance must be a "positive" one, i.e. the appearance of a candidate in an attack ad by an opponent is not a "use."

Similarly, the FCC has determined that the appearance of a candidate in a "bona fide news or news interview program," in a news documentary (where the candidate's appearance is incidental to the subject of the documentary so documentaries about the candidates themselves are likely not exempt), or during on-the-spot coverage of a bona fide news event is not a "use." These are referred to as "exempt programs."

What is a "bona fide news or news interview program"?

Obviously, news programs and news interview programs, like "Meet the Press" or "Face the Nation," are bona fide news interview programs. But the FCC has gradually liberalized the definition of a news interview program to include programs that may be primarily entertainment, but which regularly feature discussions with newsmakers. The Tonight Show, Politically Incorrect, and even Howard Stern's radio program have all been declared by the FCC to be bona fide news interview programs when there was an interview with a candidate, controlled and directed by the station. Most TV talk shows have similarly been deemed to be bona fide new interview programs. Any local program may fit within this definition if it regularly features discussions with newsmakers and if it is not overtly partisan. Stations do not need to ask the FCC to declare that the program is a bona fide news interview program – if it reasonably fits within the definition, then the station can rely on the expanded FCC definition for an exemption from equal opportunities obligations – subject of course to challenge by an opposing candidate. This is discussed in more detail in the Equal Opportunities section of this guide.

What are "lowest unit rates"?

During the political window, sales of broadcast time to candidates for "uses" must be made at lowest unit rates – the lowest rate given to any other advertiser for a purchase of the same class of time. Complete details as to how the lowest unit rate is computed can be found in a later section of this guide.

What is a "political window"?

The political window is the period 45 days before a primary election, or 60 days before a general election. During the political window, candidates can purchase time at lowest unit rates.

What is "reasonable access"?

Federal candidates (and federal candidates only) are entitled to purchase reasonable amounts of time on all commercial broadcast stations. Details on the reasonable access requirements are set

out below.

What is meant by "equal time" or "equal opportunities"?

Essentially, broadcasters must treat candidates for the same race in the same fashion. If one candidate is given free time on the air, an opposing candidate who requests it must be given an equal amount of comparable free time. If one candidate buys time, the opponent must be given an opportunity to buy an equal amount of time with an equivalent audience size. Details are provided below.

What is the difference between "federal" candidates and "state and local" candidates?

A federal candidate is one running for an office in Washington, DC. Thus, federal candidates would be those running for President, Vice President, or either of the Houses of the United States Congress - the Senate or the House of Representatives.

All other candidates for public elective office, whether it be for governor or state legislature, mayor, city council, school board or any other elective office in state or local government, are considered "State and Local" candidates.

For certain purposes, these distinctions are important. For instance, reasonable access and, in most instances, the requirement for candidate statements that they have "approved" a political ad, apply only to federal candidates. As set forth in more detail below, however, once you decide to sell time to state and local candidates, most other rules - including equal opportunities, the no censorship requirement, lowest unit rates, and the public file rules - all apply to state and local candidates with essentially the same force as they do to federal candidates.

What is an "election"?

The political rules apply to contests for public elective office. The FCC has previously stated that most rules apply to state, federal, and municipal elections. Tribal elections on Native American reservations are not subject to these rules. For presidential elections, caucuses are treated like primary elections if they are generally open to participation by the public.

Preparing for an Election – What to Worry About in Pre-election Periods

In the months before an election - before the candidates have even fulfilled the requirements to become legally qualified, what a station does can affect the treatment that it must give to candidates during the election period. Some of the pre-election issues that you should consider are covered in the following questions and answers.

Do advertising rates for spots run at the beginning of the year have an effect on how much I can charge candidates later in the year?

With limited exceptions for long-term contracts that run throughout the year (including within the windows), the rates you charge for spots that run outside of the political windows (45 days before a primary and 60 days before a general election when candidates can only be charged lowest unit rates) generally are irrelevant to the prices charged within the political window.

Do I need to consider the political rules when I sell advertising packages early in the year with spots that may run for long periods of time, including during political windows?

Yes. When selling a package with spots that may run during election periods, the station is allowed to allocate the total price of the package over the different periods of time covered by the package sale to reflect the actual value of the spots contained in the package. This allocation is to be done at the time the order for the package is written. See Lowest Unit Charges section of this guide for more details on the allocation of a package price for purposes of determining lowest unit rates, and how this kind of allocation can actually, at times, be beneficial to the station.

When do I need to worry about equal opportunities and reasonable access?

While the lowest unit rates are applicable only during the 45 days before a primary and the 60 days before a general election, reasonable access, equal opportunities, no censorship and all the public file requirements are triggered as soon as a candidate is legally qualified. So the reasonable access, equal opportunities, no censorship, and public file rules apply even outside of the political windows.

Before the political windows when lowest unit rates are effective, why should I care about appearances on my station by legally qualified candidates?

As stated above, equal opportunities become available to opponents if a legally qualified candidate - federal, state or local - appears in a positive "use" on your station. So if one of your on-air staff decides that they want to run for school board, once they become a legally qualified candidate, their opponents are entitled to equal opportunities - in this case, free time as the employee did not pay for the time that they appeared on the air. Or if a politician running for reelection appears in a PSA, their opponents are entitled, upon request, to equal time - again for free if the PSAs were furnished for free.

In addition, during the period after a candidate becomes legally qualified, and before the political window opens, the political file rules also apply. If you sell a spot to a candidate, or if the candidate otherwise appears in a non-exempt program, then you need to put the appropriate information into the station's public file on an immediate (i.e., same day) basis. Information about the public file is provided in a later section of this guide.

Where do I find out if a candidate is legally qualified?

You can ask the candidate if they are legally qualified, i.e. if they have completed the requirements applicable to that jurisdiction (see discussion above). You can also check with local election authorities. In most states, the secretary of state or an equivalent office administers statewide elections. Local elections may require filings with county or city officials who administer local elections.

Reasonable Access – Deciding Which Candidates Can Buy Time

"Reasonable access" requires that a station sell reasonable amounts of time to *federal candidates* for elective office. As detailed below, it does not require that a federal candidate be able to buy

all the time that they want, nor does the doctrine dictate that candidates get exactly the times that they request. Instead, it requires only that *reasonable* access to all "classes and dayparts" be provided to federal candidates during the course of an election. The factors to look at in determining whether access is reasonable are set out below.

In considering reasonable access, stations are governed by the obligation that they give federal candidates access to all classes and dayparts of a station (with the limited exception of news programming). All *commercial stations* are obligated to provide access. The FCC has also required that, before determining what access is reasonable, a station must consider the needs of the candidate. Thus, stations cannot set numerical limits on the number of spots that a federal candidate can buy in rate cards, political disclosure statements or other written materials. Instead, stations must at least consider the candidate's plans for the advertising time before setting the limits on candidate buys. These concepts are defined in more detail below.

To what candidates does the reasonable access requirement apply?

Reasonable access applies only to federal candidates. Access must be provided to federal candidates who are running in districts that are within the station's service area. In a case decided during the 2012 presidential primary season, the FCC determined that a TV station had to give access to a candidate where the station's noise-limited service contour covered more than a "de minimis" portion of the district in which the candidate was seeking office. Three percent of the district was found to be more than de minimis, so access had to be provided.

Does it apply to all stations - commercial and noncommercial?

No. Reasonable access only applies to commercial stations. Noncommercial stations do not need to provide reasonable access.

Must I give free access to candidates?

Reasonable access only applies to purchases of time by federal candidates. Stations have no obligations to give free time to candidates (except possibly in connection with equal opportunities, as discussed below).

Must I give a federal candidate all the time that they want?

No. The obligation is only to provide "reasonable" access. There is no requirement that you provide a candidate with all the time that he or she wants to buy, and there is no obligation to pre-empt all of your commercial advertisers just to make room for political spots.

To what time periods must a candidate be given access?

The rules say that access must be given to all classes and dayparts on a station. So, effectively, you cannot restrict federal candidates to buying only certain stations in a local cluster of stations. Nor can you limit federal candidates to buying spots only in certain time periods.

Are there any time periods in which I don't have to sell a candidate time?

The FCC has stated that you have the option to not sell time within news programs. You can decide if you want to ban candidates from the entire news program, or just parts of it (e.g., you can ban access during the "hard news," but allow candidates to buy spots in the weather and

sports coverage). However, this cannot be exercised so as to preclude all access to a station by federal candidates. For instance, an all-news station cannot completely ban access to political candidates but instead it must make some access available in all dayparts.

In another decision from the 2012 election, the FCC determined that special one-time events where stations have limited commercial inventory may be another exception to the reasonable access obligation. That decision was in the context of the Super Bowl, where the FCC indicated that because the audience was so unique, and that providing equal time to an opposing candidate after the fact would be almost impossible, candidates could be excluded from that particular game. We think that this is a very limited exception that will rarely be invoked by stations. If you have a situation where you want to deny reasonable access to a federal candidate in such a unique program, consult with your attorney to decide if this precedent would apply.

Do I have to sell program-length time or time in other units of time that I do not usually sell to commercial advertisers?

Yes. Cases have established that federal candidates can require access to program length time, or even odd lengths of time (e.g., 7 minutes), even if your station does not sell such blocks of time or sells it only during dayparts other than the daypart to which the federal candidate is requesting access (e.g., on weekend mornings). A station does not need to make program-length time available often – but if a candidate insists on a purchase of such time, a station must find some way to make an accommodation. And if the candidate demands the time in prime time, at least some program-length time in prime time must be made available.

Charges for program length time or odd lengths of time that are not otherwise sold by the station can be priced at a reasonable rate. For example, a station could charge a multiple of their 30 or 60 second rates, and add a reasonable amount to take into account lost listeners/viewers and any diminution of value of advertising in subsequent time periods due to the candidate's lengthy message.

How do I determine how much time to give to a federal candidate? How much time is reasonable?

While there is no exact formula, the FCC has suggested that you review a number of factors in determining how much time is reasonable. The factors include:

- How many federal candidates are running in the political races in the area served by your station, and the likelihood that these candidates will be seeking to buy time (if there are many candidates, you need to sell fewer spots to each one).
- The expressed needs of the candidate for fulfilling his or her campaign objectives.
- The potential disruption to commercial advertisers and other programming priorities (you don't need to become a wall-to-wall political ad station, and don't need to excessively pre-empt commercial programming to meet reasonable access requirements).
- How much time the candidate has previously purchased (if a candidate has bought substantial amounts of time already, further sales may be more limited).
- When the request is made (obviously, a request for a large buy late in the campaign will be harder to fill than one made early, before other demands on your time arise).

Each of these factors should be considered and discussed with federal candidates or their representatives when making a determination of how much access is reasonable.

Can I put limits on how much time a federal candidate will be able to buy?

Because of the need to engage a candidate in the discussion about how much time to sell and the factors listed above, the FCC has said that you should not establish up-front limits on how much time you will sell to a federal candidate. Thus, your political rate card or disclosure statement should not have specific limits on the amount of time that you will sell to federal candidates.

Of course, stations will internally, for planning purposes, have their own ideas of the amount of time that they will sell to political candidates. As long as the station engages in a reasoned discussion with the candidate, and provides some access to all classes and dayparts, the FCC will give the station discretion to determine how much access is reasonable. It is when stations are unreasonable in providing access that the FCC is likely to get involved.

Are there situations where I should consider selling a federal candidate *less* time than they want to buy?

As noted above, you do not need to sell a federal candidate all of the time that they request, as long as you provide reasonable access to all classes and dayparts that the station sells. While you may be tempted to take their money and sell them as much time as the candidate requests, there are times when you should resist the temptation and commit to selling less than the candidate wants. In recent years, we have seen situations where a federal candidate approaches a station early in the campaign and asks to buy a significant amount of ad time in the final weeks before the election. Stations should resist that temptation, especially during busy election seasons or for primaries with many competing candidates, as the equal opportunities rules described below may obligate you to sell equal amounts of time to competing federal candidates in those final weeks of the election. As there are likely to be many political advertisers who want to get on the air just before election day, a station's ad schedule can become very tight. If you have to provide equal opportunities to opposing candidates to respond to a big flight of ads purchased by the candidate who bought early, you may well end up preempting commercial advertisers to fit in all your required political ads in the final weeks of the election. So plan for these late election-period jams – consider selling the early-arriving candidate only some of what they want, with a promise to sell more time closer to the election if there is still inventory available.

If reasonable access applies only to federal candidates, how do I treat state and local candidates?

A station can decide whether or not to sell time to state and local candidates. The only requirement is that, once you decide to sell time to one candidate for a particular elected position, you must sell it to all candidates in that same race. But that does not mean that, by selling time to candidates in one local race, you must sell to candidates in all other local races. For instance, you can decide to sell time to candidates for governor, but not to those running for state attorney general. Or you can sell time to candidates for mayor, but not those running for city council or school board.

You can even decide that you will make available spots to state and local candidates only on

certain stations in a multi-station cluster in a given market. Or you can restrict state and local candidates to buying advertising time during certain dayparts. For instance, you can decide to sell candidates for sheriff spots only during the overnight hours when you have plenty of inventory, but decide to sell advertising during the entire broadcast day to candidates for mayor. And you can decide to limit state and local candidates to buying time on your AM talk station, but you of course have to provide access to federal candidates on all of your stations, including your FM music station.

However, you cannot restrict candidates by class within a given daypart. Once you decide to let candidates for a particular state or local race into a given daypart, you cannot force them to buy your most expensive class of time within that daypart. Instead, you need to make available spots of all classes and rotations that run in that daypart.

If I do not want to provide access to state and local candidates at lowest unit rates, can they buy time at full rates?

No. During the 45 days before a primary, or the 60 days before a general election, if you sell time to a state or local candidate, it must be at your lowest unit rate. You cannot condition access on their paying a higher rate.

Equal Opportunities – Treating Competing Candidates Alike

The "equal opportunities" doctrine (sometimes referred to as "equal time") requires that a broadcaster treat all candidates for the same office in the same way. Stations must provide equal amounts of time for candidates for the same office, and otherwise treat candidates for the same office in the same way. While the idea sounds simple, there are a number of confusing issues that can arise - including appearances by candidates on news programs, as well as the case of the broadcast employee who decides to enter politics by running for elective office. Specific issues on the equal opportunities requirements are discussed below.

Do equal opportunities apply to state and local as well as federal candidates?

Yes. Equal opportunities apply to *all legally qualified candidates*, whether or not they are running for federal office.

When in the election season does the equal opportunities doctrine apply?

Once you have more than one legally qualified candidate competing for the same office, the equal opportunities rule applies. Thus, *equal opportunities rights **do** apply to times before the "political window"* (45 days before a primary and 60 days before a general election).

What triggers an obligation to provide equal opportunities?

If the recognizable voice or likeness of a legally qualified candidate appears in a broadcast, and that program is not an "exempt" program (as defined below), then equal opportunities apply. Such an appearance is referred to as a "use" by the candidate. But if the candidate appearance is not positive, e.g., if it is an attack ad on the candidate by an opponent or issue advertiser, the ad is not considered a "use" by that candidate so it would not trigger equal opportunities.

There is some precedent that a "fleeting" image of a candidate on a TV station might not be a use requiring equal opportunities. For example, Barack Obama's brief appearance during the cold opening of "Saturday Night Live" during the 2008 election was likely a fleeting image. But such images would need to be on the screen for a very short period of time (less than 4 seconds) to qualify as "fleeting." Check with your attorney if you contemplate running some programming in which a candidate may appear very briefly to determine if the "fleeting image" precedent might apply to your situation.

Does the appearance have to be in connection with the campaign in order to trigger equal opportunities?

No. Any positive appearance of a candidate on a station can trigger equal opportunities. Thus, equal opportunities can be triggered by the candidate's on-air appearance as an on-air station employee, at a sporting event, in an entertainment program, or in an ad for a business - even if the candidate never mentions his or her candidacy. There have been cases where actors have run for political office, and the airing of their old movies or TV shows have been deemed to give rise to equal opportunities. Similarly, the decision to run for office by a local advertiser who appears in his own commercials can give rise to equal opportunities and force a station to sell time to competing candidates for the office that the advertiser is seeking, even though these candidates are seeking a local office for which the station had previously decided to not sell advertising.

Must the appearance be in a program controlled by the station?

No. The appearance of a candidate in a network or syndicated program can trigger obligations for the local station broadcasting that programming. For example, if a network chose to air a rerun of "The Apprentice" featuring Donald Trump, a competing candidate could ask an individual station running the program for equal time.

What happens when a candidate appears in one of these non-exempt programs? How does the opposing candidate get their equal time?

The opposing candidate must send a formal request to station requesting equal time, and this request must be made within seven days of the opponent's appearance on the air. The opponent gets as much time as the initial candidate received, and he can use it for any purpose he wants, as long as his voice or picture is used. For instance, if your weatherman runs for county commissioner and appears in your local news for three minutes while doing the weather, his opponent would be entitled to three minutes of airtime to present any message that opponent wants, in a comparable time period. The opponent does not need to appear in the news, and does not need to present the weather.

Do you have to notify a candidate of the use of a station by his or her opponent?

No. The station does not need to notify a candidate of a "use" by his opponent. Instead, the station needs to note the use in its online public file, and note whether the use was in a paid spot or in a program for which the station received no payment. A candidate finds information about uses by his opponent in the public file. So if your weatherman becomes a legally qualified candidate, there is a "use" of the station each time that he does the weather, and each use should be noted in the station's public file.

There has been some suggestion in informal comments made by FCC officials that, if you do not make a note in your public file of the use of your station by a candidate, then the seven-day period for requesting equal time does not start running until a disclosure in your public file has been made - so get the information in your file promptly (i.e., on a same-day basis).

How long can an opponent wait to make a claim for equal opportunities? When must he make use of his equal time?

A candidate must make a request for equal opportunities within seven days of the appearance on a station by the first candidate (with the caveat noted above that this period may be extended if the use is not timely noted in the public file). The candidate must use the equal opportunity within a reasonable period of time and cannot store the time up for use just before the election.

Who is an opposing candidate who has the right to request equal opportunities?

An opposing candidate is one who is running for the same position as another candidate. During the primaries, a Democratic candidate for nomination for a particular office is an opponent of any other Democratic candidate for the nomination for the same office. That candidate is not an opponent of a Republican who is running for the Republican nomination. They do not become opponents until they have each secured their party's nomination.

Is it a "use" if the candidate's likeness is in an attack ad?

The appearance must be a "positive" or "neutral" appearance to trigger the equal opportunities obligations. Thus, if the likeness of a candidate appears in an ad where that candidate is being attacked, it would be unfair to give the attacker equal time.

During the California governor's race several years ago, some broadcasters took the position that the use of a candidate's voice or picture in a comedic fashion - to make fun of the candidate - was not a positive use and hence not subject to equal opportunities. The FCC did not issue any formal ruling on this question, though informally FCC staffers agreed with this interpretation. As there has been no formal ruling on this matter, if this situation arises at your station, you should check with counsel to see if any updated policy has been issued.

Which programs are "exempt" where the appearance of a candidate does not trigger equal opportunities?

Exempt programs are bona fide news or news interview programs, or on-the-spot coverage of a news event. Also, a news documentary program about a subject other than the candidate, where the candidate's appearance is incidental to that program, is also exempt.

What is a "bona fide" news or news interview program?

A bona fide news interview program is one where the candidate appears because of the news-worthy nature of his comments or participation, and not for some partisan purpose. To be exempt, a candidate's appearance on such a program should be solicited not for partisan purposes, but instead based on good-faith journalistic discretion. For instance, if you had a "news interview program" that only invited candidates from one party, where the discussion was all centered on electing candidates of that party and defeating the other party, it might well not fit within this exemption.

What if an employee of the station who appears on the news becomes a candidate? Is his appearance exempt?

In order to be entitled to the exemption, the candidate must be the object or subject of the news or news interview. The exemption does not apply where the candidate is the interviewer or the one presenting the news. Station news employees who run for office trigger the requirement for equal opportunities, even if the program in which they appear is usually considered an exempt program.

To be exempt, does a news interview program have to be a standard public affairs program that always discusses political issues?

No. The FCC has held in a number of cases that any program that deals with political or other topical issues on a regular basis can be a bona fide news interview program. As discussed above, the selection of the candidate for appearance must not be made for partisan purposes, and the interview should be in the control of the station or program personnel, not in the hands of the candidate. Using these tests, the FCC has declared interview portions of programs as diverse as the *Howard Stern Show*, *Entertainment Tonight*, the *Today Show*, *Politically Incorrect*, *Tom Joyner*, and *Crime Watch Daily* to be bona fide news interview programs. Most late night talk shows rely on this doctrine to avoid equal opportunities issues when they interview candidates, as do many radio morning shows that regularly feature politicians or other discussions of political issues.

Does the FCC have to issue a ruling that a program is a bona fide news interview program?

No. If a program on your station is of the type approved by the FCC in these cases, you can rely on the exemption without getting prior FCC approval. However, to avoid being challenged on any decision, some stations have asked the FCC in advance of an election to issue a "declaratory ruling" that their program is exempt.

Do equal opportunities apply to both paid and free time?

Yes. If you sell time to one candidate for an office, you must be willing to sell an equal amount of time to the opponent. Thus, as noted above, be careful of committing to sell too much time to one candidate, as you may have to provide an equal amount of time to the opponent. Especially in the last few weeks before an election, selling a large schedule to one candidate can create significant scheduling difficulties if an opponent requests equal opportunities, as that request must be honored before the election.

No Censorship and Third-Party Ads - What Responsibility Do Stations Have for the Content of Political Spots?

Once a legally qualified candidate has bought time on a station for a "use" (an ad by his campaign containing the candidate's recognizable voice or picture), a broadcaster cannot censor the candidate's message. Because a broadcaster cannot censor the message a candidate presents, the station has no liability for the contents of the ads.

Note, however, that this immunity only applies to *broadcast* material – if a station chooses to

stream its signal online, the "no censorship" rule does not apply, and thus the station potentially would have liability for the content of a streamed candidate ad, even though the station would be protected for broadcasting the same ad.

Third-party ads, such as attack ads bought by various interest groups or political parties, are not subject to the "no censorship" provisions of the rules. Thus, a station can choose whether or not to run an ad by a third party and, because it can reject these ads based on their content, the station does not have a shield against liability. Questions below explore these topics.

What happens if one candidate claims that an ad by his opponent makes false claims? Can I stop running the ad?

No. You are not allowed to censor the ad of a political candidate so, even if you get a complaint from an opposing candidate, you cannot restrict the message of the first party.

What happens if the candidate's ad attacks an opponent, and the opponent can show the ad is false, and threatens to sue the station if the ad continues to run?

Stations still must run the ad as delivered by the candidate and cannot restrict the message of that candidate, as long as it is a "use." The courts have held that, because the station's hands are tied, the station cannot be held liable for the content of the candidate's ad. So, if an opponent comes to the station and threatens to sue it for running the ad of another legally qualified candidate based on the content of that ad, a station's attorney should be able to point to the court cases holding the station harmless from civil suit over the content of a candidate ad.

What is the remedy for the candidate who is being attacked?

They can sue their opponent based on the content of the opponent's ad, but they cannot sue the station.

What if a third-party claims that a candidate ad contains copyrighted material, and demands that the station stop airing that ad?

The same rule applies – the station cannot refuse to run a candidate ad (as long as it is a "use") based on that ad's content. The person that holds the copyright that may be infringed by the content of the candidate and can sue the candidate, but the station is not responsible for the content of that ad.

What if the candidate ad contains foul language or disturbing images? Can I reject it, or direct it to "safe harbor" hours?

No. You cannot censor an ad, and a court case even forbade stations from restricting the times at which a spot runs. The station can put a disclaimer immediately preceding the ad warning viewers that the following message is a paid political ad that the station is legally obligated under federal law to broadcast (and such disclaimers probably should then be run with opponent's ads as well, even if they are not objectionable). But unless the ad is legally obscene, indecent or otherwise violates a criminal statute or another FCC rule (such as the inclusion of a fake Emergency Alert System sound), stations must run the advertisement. If these issues arise,

consult counsel to determine how best to insulate the station from what might otherwise present a public relations problem for the station. Also consult counsel if the ad appears to be obscene or if it contains an EAS alert or other similarly egregious material.

Does the "no censorship" provision apply to state and local candidates?

Yes. The statute provides that a broadcaster shall not censor any candidate ad - whether the candidate is running for local, state, or federal office. Of course, a station could refuse to accept any advertisements from a particular state or local race. But once a station decides to accept advertising from candidates in a particular state or local race, it may not censor any ads run by any candidate for that office.

What if the candidate's ad fails to include sponsorship identification?

There is an exception to the "no censorship" rule for candidates - if the candidate's ad does not contain appropriate sponsorship identification, the station can alter the ad to include sponsorship identification or refuse to run the ad. Consult with counsel before taking either of these steps. See the Sponsorship Identification section below for more details.

What if I get a complaint about the content of a political ad that is bought by a group other than a candidate's campaign committee? Can I refuse the ad based on its contents?

The "no censorship" rules apply only to ads by candidates and their authorized campaign committees. Thus, a station's sale of an ad to a third-party group is purely voluntary. If you get a complaint about a third-party ad, you can pull that ad unless the advertiser substantiates any disputed claims made in the ad. In fact, you do not need to run any third-party ads if you do not want to.

Can I have liability for running an attack ad from a third-party group?

Yes. Because a station has the right to decide whether or not it will run an ad, it can be held liable for the content of that ad. If an issue ad contains an attack on a candidate that the station knows to be false, or the station is told that the ad is false and the station continues to broadcast the ad and does nothing to investigate whether the ad is in fact false, liability to the station could arise if the claims are in fact false. Similarly, if an issue ad contains other illegal content (e.g., the illegal use of copyrighted material), the station could be liable.

How do I know whether or not a third-party ad is true or not?

The station must do a reasonable review of an ad - especially if the truth of the ad has been challenged. If you receive a challenge to the truth of a third-party ad, ask the committee or organization that is sponsoring the ad for information backing up its claims. Review that information for accuracy and reliability, and check with counsel to assess whether the substantiation materials are likely sufficient to avoid liability for defamation or other torts.

Do I need to stop running the ad while I investigate whether it is true or not?

That really is a question to be discussed with counsel based on the particular facts. In some cases, where the claim that is being challenged is an opinion or the characterization of a voting record of a candidate (e.g. "Mr. Jones is a big spending liberal who will send this country into bankruptcy" or "Ms. Smith voted 12 times in Congress for measures that would raise her own

pay") are less likely to be found to be defamatory. In the case of an opinion, the opinions themselves are not defamatory, unless they clearly convey some factual assertion. In the case of voting records, there usually is some basis for the assertions made, even if the allegation is based on one sentence in a 100 page Congressional bill.

But where the attacks are on the candidate's personal qualities – e.g., that he or she violated the law, had an affair, stole or embezzled money or similar claims – you are more likely to face liability if you keep airing the ad after receiving notice of the falsity of the ad if the ad in fact proves to be untrue.

So, when you get a claim that a third-party ad is false, quickly assess the content of the ad, seek immediate verification of the claims being made, and discuss with your counsel whether or not you should immediately pull the ad while the investigation is ongoing.

Lowest Unit Charges - How Much Money Can You Charge for Political Spots?

The real day-to-day issue for most broadcasters during political season is ad rates. With the complicated selling practices that have developed since the FCC last did a comprehensive review of its political advertising rules, the law has not kept up with the industry. As it has now been almost 30 years since the FCC issued any significant update or clarification of its rules on political rates, many common modern selling practices were not covered by the rules that were adopted so long ago.

Nevertheless, broadcasters must deal with the rules as they are. The idea behind the FCC policies is that the political candidate should get the best possible rate for their ads run on the station for the same class of time on the same day as the candidate's message. Essentially, the candidate gets all the benefits that the best advertiser gets – including all volume discounts – without having to buy the same volume of ads as the best advertiser does, and even though the political candidate will vanish as an advertiser right after election day. The rules adopted to ensure this treatment for candidates are explained by the questions set out below.

How does the FCC define "lowest unit charge"?

During the 45 days before a primary, or the 60 days before a general election, all legally qualified candidates are entitled to the lowest rate that any commercial advertiser paid for a spot of the same class which runs during the same time period as the candidate's spots.

Do I have to give lowest unit rates to state and local candidates?

Yes. While stations are not obligated to sell time to state and local candidates (reasonable access applies only to federal candidates), once a station agrees to sell time to these candidates, the time must be sold at lowest unit rates during the political window.

Once a political window opens for one race, are candidates for all political offices entitled to lowest unit rates?

No. Only the candidates who have an election at the end of the window get lowest unit rates. Thus, especially for primaries during years where there is a Presidential election, there may be different windows for state and federal races. While these windows may overlap, candidates are entitled to lowest unit rates only during the window 45 days before the primary in which voters will select them, and 60 days before the general election in which their race will be decided.

Do all federal candidates get lowest unit rates?

Under the Bipartisan Campaign Reform Act (BCRA), in order to qualify for lowest unit rates, a federal candidate must supply a certification signed by the candidate or his authorized representative. The certification must state that, if the candidate makes a direct reference to an opponent, then the spot will include a sponsorship identification tag where the candidate specifically takes responsibility for the ad. For radio, the candidate must, in his own voice, identify himself and the office that he is seeking and state that he approved the ad. For TV, the candidate must appear in a full screen view, or in a still picture taking up 80 percent of the screen height, and state his name and that he has approved the ad (and that identification must be accompanied by a clearly readable textual statement that the candidate approved the ad and that the ad was paid for by the candidate's authorized committee). More information on these requirements is provided in the Sponsorship Identification section below.

Under other provisions of BCRA, federal candidates must make this enhanced identification in any election ad, whether or not such spots refer to an opponent, so most candidate spots that stations receive from federal candidates should comply with these identification rules.

Since BCRA was adopted, a number of states have adopted similar requirements for state and local candidates. Check locally to see if such obligations are required in areas within your coverage area. Even if the local law does require that state and local candidates have such tags on their ads, the failure to have these tags may not affect the station's obligations to give these ads lowest unit rates, as the lowest unit rate obligation is a federal one which cannot be taken away by state legislation.

Do third-party, non-candidate groups get lowest unit rate in connection with their support of or attacks against a political candidate?

No. Lowest unit rates only apply to candidate ads. However, there may be isolated situations where political parties may be entitled to the lowest unit rate. In most cases, political parties are not entitled to that rate. But, once in a while, parties may purchase time in coordination with a candidate's campaign committee, using "hard" money (money subject to campaign contribution limits to a particular candidate). If a party tells you that is the case, and the candidate confirms that the purchase is an "authorized expenditure" on his behalf (and that is acknowledged in the spot), then the party may be entitled to lowest unit rates. In those cases, the sponsorship identification will usually have a tag saying that the candidate approved the message.

Does each station have one lowest unit rate?

No. Virtually every station has many lowest unit rates - depending on the number of "classes" of time sold by the station. Each class has its own lowest unit rate.

What is a class of time?

A "class" is a type of spot that has unique rights and characteristics. For instance, spots that run in different dayparts which have different rates are of a different class, e.g. morning drive for radio is a different class from mid-day, which is different from afternoon drive. Each of those classes would have its own lowest unit rate.

Even within a given daypart, a station may have spots of many different "classes." Basically, a spot is of a different class if it has different rights. Thus, in any daypart, there may be multiple classes of time, each with its own lowest unit rate. For instance, a preemptible spot would be of a different class than a fixed position spot - each with a different lowest unit rate even if they both run during the same daypart. Different rotations can also be different classes with their own lowest unit rate, e.g. a spot which could run anytime between 6 a.m. and midnight would be a different class from one that can run between 6 a.m. and 6 p.m. If a station sells these rotations, and sells them with differing rates, rights of preemption, or make-good privileges, then each would be of a different class and each would have a different lowest unit rate. A candidate can buy spots of any of those classes at the lowest unit rate for that class, and he gets the same rights that commercial advertisers who buy that spot get (e.g. if the candidate buys spots in a 6 a.m. to midnight rotation, his spots are treated just like those of a commercial advertiser who buys those spots - and they can run anywhere between those hours).

What commercial spots do you look at in determining the lowest unit rate for a given class of time?

You look at the spots of that class running at the same time as the candidate's spots. You need not look any further than those spots running (or being offered on a published rate card) during the 45 days before a primary or the 60 days before a general election except in the situation described in the next question.

What if the station has an annual contract at a very low rate – if the station stops the spots before the political window and picks them up after the window, are they considered in assessing lowest unit rates?

The FCC has informally said that annual contracts that are in effect during the window should be considered in assessing the lowest unit rate – even if the station does not run spots during the window. You cannot avoid the impact of the rates in that contract by keeping spots out of the window if the contract is otherwise in effect before and after the window. If you have a similar situation, consult your attorney.

Can rates change during a political window?

Yes, even within the 45 and 60 day periods, the rates can change. If, for instance, a long term package sets your lowest unit rate for a particular class of time, and the last spot from that package is run midway through the political window, After the last spot from the package runs, the rates for that class of time can go up for the rest of the political window. Similarly, if spots are sold on a demand basis, the lowest unit rate can change on an almost daily basis. If there are "fire sales" of spots during particular periods within a window, the lowest unit charge for the period of the fire sale does not set the rates for periods outside of the fire sale.

Do candidates have to buy in volume to get volume discounts?

No. Candidates get the benefit of all volume discounts, even if they do not buy in volume. For instance, if spots are $10 each, or 12 for $100, the candidate can buy one spot for $8.33 (100 divided by 12) even though a commercial advertiser would have to spend $100 to get the volume discount.

How do bonus or no charge spots affect lowest unit rates?

Bonus spots of the same class are treated just like frequency discounts discussed above. If a commercial advertiser gets two bonus spots for every 10 spots he buys, the FCC considers it as if the advertiser bought 12 spots. Thus, as in the example above, the candidate can buy one spot at one-twelfth of the price paid by the commercial advertiser - getting advantage of the frequency discount without having to buy with the same frequency.

If the bonus spots are of a different class, for lowest unit rate purposes, they are treated as a package plan - as described below.

Does a candidate need to buy a package to take advantage of package rates?

No. In its revisions of the political advertising rules in the early 1990s, the FCC concluded that forcing candidates to buy a package in order to take advantage of package rates was too confusing, and that requiring candidates to buy a package forced them to buy spots that they did not want. So the FCC said that broadcasters needed to break packages down by the class of spots within those packages, so that candidates get full advantage of the discounts such packages offer, but they only have to buy the spots of the classes that they want.

The FCC requires that stations do the work for the candidate by taking the package price and breaking it down by allocating the price to the various classes of time within the package. Once this allocation of the package price has been made, the prices allocated to the various classes of spots within the package are compared to other spots of the same class sold in other contracts to see if the spots from the package affect any of the station's lowest unit rates. The broadcaster first allocates a portion of that package price to each spot within the package, so that each spot is assigned part of the package price, and the total assigned value adds up to the price the commercial advertiser paid for the package. After making such an allocation, the broadcaster then compares the rates assigned to the spots of each class in the package to other spots of the same class sold in other contracts to the same or other advertisers, to see if the spots from the package have any impact on the lowest unit rate for the classes of time included in the package.

For instance, if you sell a commercial advertiser a package that contains 10 drive-time spots and 10 overnight spots for $100, you must allocate the $100 purchase price among the two classes of spots in the package: drive-time and overnight. If you allocate $95 of the package price to the drive-time spots, then the unit rate from this package is $9.50 for the drive-time spots. Compare this price for a drive-time spot with other drive-time spots you have sold in other contracts to determine if this package affects the lowest unit rate for drive-time spots on your station. In this example, the remaining $5 would be allocated to the overnight spots, meaning that their per unit rate is 50 cents each, which you would then compare to other overnight spot sales to determine if the package had an effect on the lowest unit rate for the overnight class of time.

When do I make the allocation of the package price and who do I need to notify?

The FCC has said that you need to make this allocation at the time you write up the package. Thus, *if you are writing up packages today that may run in the primary or election windows, you should be allocating the purchase price of those packages now!*

The allocation should be in writing, and kept in the station's *internal* files. The allocation need not be shown to candidates, nor put into the online public file. The allocation of value of the purchase price for the spots in a package may be different than the allocation shown to commercial advertisers on their invoices (e.g., in the example above, if the overnight spots were shown as no charge or bonus spots, you should still allocate part of the package purchase price to those spots in your internal allocation, as no spot should have an assigned value of zero). The written allocation will ordinarily be seen only if the FCC requests it, either in some sort of audit or in response to a complaint.

Do I need to break out the price of spots in a package if the package contains multiple stations?

No. The only exception to the requirement for allocation of the value of spots within a package recognized by the FCC is for packages that contain buys on multiple stations. Multi-station packages do not need to be broken down by individual classes of spots contained in those packages. Instead, the candidate can only be forced to buy the lowest unit of the multi-station package to qualify for the package rate. For example, if you sell a package where a commercial advertiser gets10 spots on the morning show on each of your three radio stations for $300, a candidate can buy one spot on each of the three stations for $30. The package would not have any impact on the lowest unit rate for any of the individual stations. Note, however, that a candidate should be able to buy spots on each station separately through other rates (i.e., all of the spots on a station cannot be sold exclusively as part of a multi-station combination rate), as each station has its own political obligations.

Do network spots affect a station's lowest unit rate?

No. As discussed above, the sale of time on multiple stations does not affect the lowest unit rate on a single station. So the sale of time by a network does not affect the lowest unit rate on a single station in that network. The network itself, however, may have lowest unit rate obligations.

How do spot sales through an online service that sells remnant inventory affect lowest unit rates?

This is one of the unanswered questions facing broadcasters. Many years ago, the FCC asked for public comment on that question, but it never released any official guidance. As set forth above, if the online service sells packages of stations, it probably will not affect a single station's rates. But if an advertiser can use the online service to buy spots on a particular station, it may have an impact. Consult with counsel if you are faced with this issue.

How do programmatic sales affect lowest unit rates?

This is the 2020 version of the question above – except that programmatic sales for the most part deal with a station's normal inventory, not just with remnant spots sold by many of the online

services that arose years ago. While the FCC has not specifically addressed programmatic sales techniques, it would seem that if an advertiser can buy time in a station's normal classes and rotations through a programmatic platform, the spots would be treated like any other spots sold on the station. If special rights or restrictions are attached to spots sold through a programmatic platform, then such spots may be in their own class of time with their own lowest unit rates. In any case, these spots need to be monitored for their potential implications on political rates, and potentially disclosed to candidates. As stations sign up for programmatic sales platforms, they should ask about political broadcasting implications and, like in so many other areas, this is a good subject to discuss with your attorney, as the manner in which the platform operates may determine the implications for political rates.

Can a station allocate the price of a contract that runs over a long period of time, or does each spot in that contract have the same value?

Informal statements by the FCC have indicated that a long-term package can also be allocated over time to reflect the different values of spots in the package over the course of time. This allocation can be beneficial to a station, as it allows for the allocation of the purchase price for spots, even of the same class, if the spots are to be run over an extended period of time, so as to take into account their true value. For instance, if you sell a major advertiser a year-long contract for spots at the price of $12,000, that price does not need to be allocated $1000 a month, even if it is billed to the advertiser at $1000 per month. Instead, you can make a reasonable allocation of the $12,000 purchase price over the term of the contract to reflect the actual value of the spots (e.g., you could allocate $500 to January when demand and rates are low, but $2000 to December when the opposite is true), as long as the allocations add up to the total package price. Also, remember that the allocation is supposed to be made at the time the contract is initially written, and should be reasonably based on selling values during the course of the contract (you cannot allocate it just so as to place a high allocation during lowest unit charge periods). Again, make the allocation in a written, *internal* document which does not need to be provided to advertisers, the public file or political candidates, but is instead used internally to determine the impact of spots included in the package on the lowest unit rate for spots of the same class. These internal documents could, of course, need to be provided to the FCC if an audit of your political practices arises as a result of a complaint.

How do I treat per-inquiry spots for lowest unit rate purposes?

Per-inquiry spots have no effect on a station's lowest unit rates. This type of spot does not need to be offered to political candidates.

My station sells multiple levels of preemptible time. How do I deal with these for lowest unit rate purposes?

If each level of preemptibility has differing rights, e.g., one can be preempted with notice, while another does not require notice, or one must be made good within seven days, while another has no make-good rights, each of those levels would be a separate class with its own lowest unit rates.

However, stations must be sure that varying levels of preemptibility are strictly observed. For example, if you have three levels of preemptibility, with Class A the least preemptible and Class C the most, Class A must always preempt Class B, and Class B must always preempt Class C.

If, instead of strictly observing these levels, the station just uses the levels as selling guides, and the advertiser who gets on the air is determined simply by who pays the most money regardless of the Class, then the FCC considers the station to have a single class of preemptible time. In that case, a candidate can buy at the highest rate to ensure carriage, and you must give him a rebate for the difference between the price at which he bought the spot and the cheapest spot that clears in the same time period.

The FCC has also made clear that a station must disclose to candidates the likelihood of preemption for each class of preemptible time so that a candidate can make a reasoned decision as to the level at which the candidate wants to buy. By disclosing the likelihood of preemption, the candidate can make a buying decision by assessing the risk of preemption the candidate is willing to accept in return for receiving a lower price. For instance, if you disclose to a candidate that 90 percent of a particular class of preemptible spots will run – candidates may be willing to take their chances on buying at that level. Conversely, if you disclose that 90 percent of spots at that level will be preempted, then they almost certainly will not buy at that level.

What are the rules about rebates if we sell spots to a candidate at a preemptible rate and a lower priced spot of the same class clears during the same time period?

As noted above, if you sell spots to a candidate who buys spots at a high price in a preemptible class of time in which a lower priced spot clears in the same time period, you must rebate the difference in price to the candidate. Rebates should be done promptly (within a week), as candidates are especially sensitive to cash needs during the relatively short election windows. Rebates should be noted in the online public file.

Can we avoid all the issues with preemptible time by offering a special, candidate-only class of time?

A station can offer a special candidate-only class of time, at a discount off of the lowest unit rate for fixed (i.e., non-preemptible) time, to try to avoid the many issues that come up with trying to explain and sell preemptible time to candidates. The FCC has said that such a candidate-only class should be priced at the "effective selling level" of the station. By that, the FCC means that these non-preemptible spots should be priced at a rate that is comparable to a class of preemptible spots that bears a real risk of preemption. However, even by offering such a special candidate only-rate, the station cannot stop the candidate from buying a preemptible class time at a lower rate if the candidate elects to do so and accept the risk of preemption.

How do I treat agency commissions?

Lowest unit rates are based on "net" to the station. Thus, if your lowest unit rate for a class of time is $100, and you sell a spot at that price to a candidate using an agency, and you give the agency a 15 percent commission from that $100 price, you have effectively dropped your lowest unit rate to $85 - and a candidate buying directly would pay only $85. To avoid this trap, recognize that your lowest unit rate is set by what the station receives. If you make it clear in your disclosure statement that the station will not pay any commission on political spots sold at lowest unit rates, and you observe that restriction in practice, you can avoid the issue entirely. Note that a station rep firm is considered to be a station employee - so any amounts paid to the rep firm are part of the "net" received by the station.

Do bonus spots given to charities or government agencies affect lowest unit rates?

In the past, the FCC had said that bonus spots given to nonprofit organizations or government agencies do not need to be considered in lowest unit rate computations. In recent informal statements (which are not binding on the FCC but are indicative of their probable outcome of any case), FCC officials have expanded that holding to state that all spots sold to charities and governmental agencies can be excluded from lowest unit rate computations. The rationale is that candidates are supposed to get the same rates as "commercial" advertisers, and charities and government agencies are not commercial entities. However, spots promoting a charity or public interest cause, but sold to and sponsored by a commercial advertiser (e.g., a spot telling people not to drink and drive, sponsored by a beer company), do get factored into your lowest unit rate calculations.

Do I need to extend credit to a candidate for the advertising that they buy?

The FCC has said that a station can apply its normal credit policies to political candidates. Thus, if a station does not extend credit to organizations that have a temporary existence and that will effectively cease operations after a specific event (i.e., the election), stations do not need to extend credit to candidates and can instead require "cash on the barrel." State and local candidates can be required to pay for their spots before the spots will be scheduled. Federal candidates, however, cannot be made to pay more than seven days in advance of the running of their schedule.

Sponsorship Identification and BCRA Requirements

Any advertising spot dealing with an election or with any other political issue must contain a sponsorship identification tag, letting listeners know who is trying to convince them to act in a particular manner. This same rule applies to all advertising run on a station although, for most commercial products, the FCC assumes that the audience can figure out the sponsor of the ad from the product being advertised. But even in the case of a non-political ad, if it is not clear who is really sponsoring the ad, there must be a sponsorship tag. For example, a station was fined for advertising several stores in a town, without disclosing that it was the local chamber of commerce that paid for the ad.

But for political and other issue ads, whether or not bought by a candidate, the FCC requires that the ad contain a sponsorship identification providing the full, legal name of the sponsor. In a

case only a few years ago, a radio group agreed to pay $540,000 to settle an FCC investigation for apparently failing to identify the legal name of the company that paid for ads supporting an electrical transmission line project (and was behind the project). The case highlights the importance of ensuring that all political and issue advertising is properly tagged with the true sponsor of the ad and the words "paid for" or "sponsored by."

In the political advertising world, the true sponsor must be named, and information about that sponsor must be retained in the station's online public file (see the discussion in the following section). For federal candidates, and federal issues, the rules are more stringent. Some of the issues that arise in these areas are discussed below.

What does the FCC require in a Sponsorship Identification?

All political spots must have a sponsorship identification referencing who paid for the spot. This is true whether it is a candidate spot or a third-party spot dealing with candidates or other political issues or other controversial issues of public importance.

If an ad does not contain the Sponsorship Identification, what do I do?

If a spot does not have the required "paid for" or "sponsored by" language, the station can edit the spot to include the tag before airing it. This is true for both issue ads and candidate ads, regardless of whether the candidate is a federal, state or local candidate. For candidate ads, this is an exception to the "no censorship" rules discussed in a previous section of this guide. The requirement to have the sponsorship tag is a station obligation, not one of the advertiser. For candidate ads, if the candidate (or candidate's committee) does not agree to add a sponsorship tag, the station needs to add that tag or the station can be found in violation by the FCC. For issue ads, the station can pull the ad if the advertiser refuses to identify itself with an appropriate tag. Make sure that your advertising sales materials make clear that you have the right to pull ads if they do not comply with the law, including the rules regarding sponsorship identification, so that your decision to pull a noncomplying ad does not result in any contractual issues with the advertiser.

What is the "I'm X and I approved this message" all about?"

Under BCRA, an ad by a federal candidate must not only contain the "paid for" or "sponsored by" language, but there must also be a statement of approval by the candidate. If the proper BCRA language is not included, and the spot mentions the opposing candidate, the candidate forfeits his right to lowest unit rates (though it is still an open question as to whether a station may voluntarily give the candidate that low rate).

Under FEC rules, a federal candidate's spots must contain similar disclosures whether or not the spot mentions an opposing candidate. So most spots for federal candidates should already contain the appropriate language when they arrive at the station. The failure to have that language is not the station's responsibility (the candidate is the one who will get fined if it is missing), so a station cannot refuse an ad that does not containing the BCRA language, nor can the station on its own edit the spot to put the language in. However, if the spot does not contain the BCRA language, and the spot mentions an opponent, the station is not required to charge lowest unit rates. And, while the station cannot edit the ad to include the BCRA language, it may also end up fielding complaints from other candidates about the missing tags, and requests

for the station to withdraw lowest unit rate eligibility from the sponsoring candidate. If you get these calls, it is a good time to talk to your attorney about how to respond.

The exact language of the BCRA tag differs slightly for radio and television, and the FEC and the FCC also have slightly different requirements. However, the requirements are essentially as follows:

For television:

- A verbal statement by the candidate that he or she approved the ad (required by FEC for the candidate, but not by FCC); *and*
- Either:
    - A full-screen view of the candidate, *or*
    - An image of the candidate (80% of screen height); *and*, in either case,
- A clearly readable written statement of the approval and the name of the sponsoring committee (4 of height, 4 seconds, sufficient color contrast to be readable).

For radio:

- An audio statement by the candidate in which the candidate identifies himself, *identifies the office for which he is running* (the name of the office is not required in the TV ad), and states that he or she approves of the broadcast.
- The ad must also state that the candidate's committee has paid for the spot.

Note that in the radio ad, the candidate must state the office for which he or she is running. That does not need to be part of the audio for the television ad.

Do these enhanced identification requirements apply to state and local candidates?

Not under BCRA, which applies only to federal candidates. But check state laws, as a number of states have adopted election reform measures that require similar disclosures for state and local candidates. Some states also require additional disclosures - most often the name of the treasurer of a campaign committee. Check your local laws for requirements that might apply to your elections. While the requirements of Federal law cannot be changed by state laws, additional obligations like the need to name the treasurer can be added by these state laws.

What needs to be disclosed for issue ads?

As with political ads, for FCC purposes, you must have the "paid for" or "sponsored by" tag identifying the actual buyer of the advertising spots.

What if someone questions the identity of the sponsor named in the sponsorship identification tag?

From time to time, especially in connection with ads addressing ballot issues or attacking a candidate for office, questions are raised as to the true sponsor of an ad. Groups that oppose the message conveyed in the ad often allege that the identified sponsor is a front for another group who, often for political reasons or because it might detract from the message being conveyed,

wants to remain hidden. The FCC in one case suggested that stations have a duty to investigate the true sponsor of an ad if there is reason to believe that the named sponsor is not the true sponsor of the ads. If the named group is not paying for the spots, or if the named group seems to have no independent existence (if it is staffed completely by employees of another entity and run from the offices of that entity or entirely financed by that entity), the station may have an obligation to identify the other entity sponsor for the advertising. Check with counsel should such issues arise.

There are currently pending at the FCC several complaints against TV stations arguing that, when the stations run ads sponsored by a Political Action Committee (PAC), and the PAC is exclusively or predominantly funded by a single individual, that individual should be named as a true sponsor of the ad rather than the name of the PAC. The complaints have suggested that such an obligation is heightened when the station has knowledge (e.g., through its own news reports) of the source of funding for such a PAC. Watch for updates on these cases to see if the FCC will adopt any official changes to political advertising disclosure requirements.

Public File and Disclosure Statements

In a hot political race, a station's public inspection files may be in demand, as the online public file is supposed to be the place where candidates and the public can determine what advertising time other candidates and issue advertisers are buying on your station, and learn about other "uses" of your station by candidates outside of exempt programs. In addition, public interest organizations are getting more and more active in monitoring the online public file to get ideas about who is trying to persuade the public about a candidate or issue. Thus, the political file is very important.

The NAB's political broadcasting forms are not mandatory for collecting information about candidate or issue buys. But these forms are very good in gathering all the information needed from candidates and issue advertisers, so stations should strongly consider using them or similar forms published by other organizations. Completing the forms will help ensure that you have collected all of the information required under FCC rules. The current version of the NAB's form is PB-18 and is available to NAB members.

All broadcasters are required to keep their political files online, in an FCC-hosted public inspection file.

In addition to posting required political files online, stations are obligated to disclose their sales practices to legally qualified candidates. The FCC has expressed concern that candidates generally lack sufficient knowledge about station advertising sales processes. The FCC is concerned about the possibility that candidates, through lack of understanding of the process, may end up purchasing schedules that they do not need or paying more than they need to pay to ensure that their spots will air. Thus, stations are supposed to provide a disclosure to candidates before they buy time, setting out all of the information candidates need to know to make an informed buying decision. Details of the information to be provided by the public file and the disclosure statement are provided below.

What information about candidate ad purchases do I need to place in my public file?

The political section of the online public file should contain the following information:

- Whether a request to purchase time was accepted or rejected.
- If the request was accepted, the rate charged to the candidate.
- The date and time the spots are scheduled to be aired.
- The class or classes of time (daypart or program) purchased.
- In the case of a candidate request, the name of the candidate, authorized committee, and treasurer of the committee.
- After the spots have run, the specific times at which the spots were actually aired.
- If there were unpaid (i.e., free) "uses" by a political candidate outside of an exempt program, information about the time, date and length of time the candidate appeared on the station.

If there is a "use" of a station other than in a purchased advertising spot (e.g., if an on-air employee of a station becomes a candidate), the date and time of that use, its duration and the fact that there was no consideration paid by the candidate should be noted in the file.

When does information need to be placed in the public file?

As the public file is the source of all information for candidates, the information should be placed in the file "immediately", i.e., as quickly as possible - as soon as orders are placed or a "use" is made of the station, within a day, so that opposing candidates have access to up-to-the-minute information. The FCC has recognized that the specific times at which spots ran can be placed in the file at a somewhat more relaxed pace - whenever your traffic system normally generates information for affidavits of performance - as that information is not really necessary, given that information about the class of the spot and the date and time at which the spots are to run is already in the file. However, if specifically requested, information about exact times at which a spot ran should be provided to legally qualified candidates as quickly as possible.

Do I need to provide information about a candidate's uses of the station to his opponent over the phone?

No. Candidates can be directed to the online public file for that information. However, if you do provide information over the phone about one candidate's buys to his opponent, you need to provide that same type of information over the phone to all candidates in the same race. You need to treat all candidates for the same office in the same way. Hopefully this issue will slowly go away as candidates and buyers recognize that they can get complete information from the political files that are now available online.

Do I need to put any information in the public file about third-party political buys?

For groups buying time about state and local issues (e.g., bond issues, zoning matters or legislative actions in the state legislature), the FCC requires that you place in the public file information about the group who purchased the time. You do not need to disclose the rate charged for such state and local issue buys.

For all issue ads, you must also provide in the public file the name of the group, as well the

names of its executive officers or directors. In a recent decision, the FCC has suggested that, if the buyer only lists one officer or director, the station needs to make an inquiry as to whether there are additional officers or directors. While that decision is under review, we suggest that stations make that inquiry now if only a single officer or director is identified – and keep records showing that you made the inquiry.

For third-party groups buying time in connection with a federal election (e.g., attacking or supporting a candidate) or dealing with a federal issue (i.e., one that will be decided by Congress, a federal agency or the President), in addition to providing all the information that you would provide for any state or local issue, you need to specify the name, address and phone number of a contact person. You also essentially need to provide all the information that you would provide about a candidate's buy. That would include:

- A record of each request to purchase time
- Whether the request was accepted or rejected, in whole or in part.
- The rate charged to the third-party group, if the request was accepted.
- The date and time the spots are scheduled to be aired.
- The class or classes of time (daypart or program) purchased.
- Name of candidate to which the spot refers, the office sought, or the issue to which the spot refers.
- The name of the sponsor of the ad, along with the name, address and phone number of a contact person for the sponsor, and a list of the sponsor's chief executive officers/board of directors.
- After the spots have run, the specific times at which the spots were aired.

Note the requirement that you must identify in the public file the issue to which the issue ad refers. In a recent decision, FCC staff suggested that the station needs to identify *all* of the issues in the spot. Thus, even if the primary purpose of the ad is to attack or support a political candidate, if it also addresses very specific issues in a meaningful way (such as health care, abortion or climate change), those issues should also be identified. Sometimes, the buyer will not readily identify the issues being addressed in the ad. It is a station's obligation to make the disclosure, so review the ads carefully, and make sure that the issues addressed in the ad are being properly disclosed.

What information do I need to disclose to candidates about my sales practices?

Stations must disclose to legally qualified candidates the information necessary for the candidate to make an informed decision about what to buy on a station. This would include:

- The classes of spots and the dayparts sold by the station.
- The principal rotations sold by the station (not every rotation needs to be listed, if the most frequently used ones are disclosed and it is made clear that information about additional rotations can be provided on request).
- How the time is sold (e.g., preemptible or non-preemptible, using some sort of grid or on-demand system, etc.).
- To the extent that a station offers preemptible classes of time, the likelihood of preemption for each class.

- Specific selling practices that may affect buying decisions, including make-good rights, notice provisions before preemption, and other discounts or practices that may apply and affect the decision to buy time.

How do I make disclosures about information that may change?

As set out in the discussion of rates above, rates may change during the course of the political window. Other factors involving the decision to buy, including the likelihood of preemption, may also change. Thus, a station needs to do its best to estimate the rates and likelihood of preemption in the written materials. The disclosure should note that in fact estimates are estimates as of the date of disclosure. As estimates change, information about the change should be provided to the candidates and their representatives.

Does the disclosure need to be in writing?

The FCC's rules do not require that the disclosure be in writing. However, the disclosure is supposed to be made each time a station offers time to a candidate, and it needs to be made equally to all candidates. And the same disclosure should be made by all station employees or agents including station rep firms. Thus, to ensure uniform disclosure, and to have evidence of a station's particular sales practice in case it becomes an issue, it should be made in writing.

How long do I need to keep these political records in my public file?

Stations must retain political records for two years. After two years, the station can purge the relevant records from their online public files, or retain them in a non-public file until the applicable statute of limitations for written contracts in your state has passed.

Conclusion - Questions and Resources

While we have provided lots of questions, and almost as many answers, the political broadcasting rules are murky enough that any station will no doubt have new issues arise throughout the political season. Broadcasters should rely on this or other political broadcasting guides as just that - a guide to help you spot these issues. But know when to ask for more help from counsel or the FCC as you face complicated or novel issues.

Also, stations should be sure that a reliable and trusted person is responsible for the supervision of *all* political broadcasting activities. Because these rules can be complex, you do not want inexperienced sales representatives providing uninformed or contradictory information to candidates or their agencies. Not treating all candidates alike is the most certain way to get a station into trouble.

And, as with any area of FCC regulation, watch for new developments. Throughout the election season, political broadcasting issues may arise and you will need to adapt to any new rulings. Keep an eye on the trade press or check out our Blog at www.broadcastlawblog.com for the latest developments.