

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

In the Matter of )  
 )  
Revisions to Public Inspection File ) MB Docket No. 16-161  
Requirements – Broadcaster Correspondence )  
File and Cable Principal Headend Location )

To: The Commission  
Marlene H. Dortch, Secretary

**JOINT COMMENTS OF THE NAMED STATE BROADCASTERS ASSOCIATIONS**

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Dated: July 22, 2016

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**JOINT COMMENTS OF THE NAMED STATE BROADCASTERS ASSOCIATIONS**

The State Broadcasters Associations named below (the “State Associations”), by their attorneys in this matter and pursuant to Section 1.415 of the Rules of the Federal Communications Commission (the “Commission”),<sup>1</sup> hereby respectfully file their Joint Comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) in this proceeding.<sup>2</sup> As the State Associations noted in their Joint Comments in *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*,

[t]he State Associations also support the Commission’s proposal to permit exempt stations to voluntarily move their public file online, and urge the Commission to take steps in the near future to incentivize exempt stations to make that voluntary move. The best way of doing this is to create rules that ensure an online public file is a way of reducing, rather than increasing, the overall regulatory burden on a radio station

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In this regard, the State Associations particularly encourage the FCC to consider moving forward to eliminate the requirement that broadcasters retain “Letters from

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<sup>1</sup> See 47 C.F.R. § 1.415.

<sup>2</sup> See *In the Matter of Revisions to Public File Requirements--Broadcaster Correspondence File and Cable Principal Headend Location*, Notice of Proposed Rulemaking, MB Docket No. 16-161, FCC 16-62 (released May 25, 2016).

the Public” in the public file—a requirement that, notably, does not apply to cable operators.<sup>3</sup>

In light of the Commission’s subsequent implementation of the online public file for radio on a phased-in basis, the Commission’s proposal in this proceeding to eliminate the Letters from the Public requirement and thereby eliminate the need for a physical public file (and the access obligations associated with it) is timely. For the reasons discussed below, the State Associations urge the Commission to adopt the tentative conclusion reached in the NPRM, and eliminate the requirement that commercial broadcasters retain correspondence from the public in their public inspection files.

First, as the Commission now recognizes, the retention of letters and e-mails from the public is simply not necessary to ensure that broadcasters comply with their public interest obligations.<sup>4</sup> Each station must give public notice of the filing of its license renewal application, and members of the public may file complaints or other comments with the Commission in connection with the license renewal process, or at any other time during the license term.<sup>5</sup> Moreover, in a social media era, the volume of commentary on social media sites about a station’s performance vastly exceeds the number of letters and emails ever sent to a station, and is, by definition, already available online. As a result, viewers and listeners have ample opportunity to communicate directly with broadcast stations and the FCC regarding a station’s

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<sup>3</sup> *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, MB Docket No. 14-127, Joint Comments of the Named State Broadcasters Associations in Response to Notice of Proposed Rulemaking (filed March 16, 2015) (“*Online Public File Comments*”) at ii, 11.

<sup>4</sup> NPRM at ¶ 9.

<sup>5</sup> A section entitled “File a Consumer Complaint” is prominently displayed on the home page of the Commission’s website. Clicking on this section links a user to the Commission’s Consumer Help Center, from which one can easily file complaints or comments with respect to television or radio stations by completing a simple form. The complaint process is thus easier and more accessible for members of the public than has ever previously been the case.

programming and other matters, and an unprecedented ability to make any complaints known to the public at large online.

Indeed, many of the undersigned State Broadcaster Associations previously have advised the Commission that communication between the public and broadcasters is easier than ever, and largely a digital endeavor. The ability of the public to comment on, question, provide suggestions for, and even critique, station programming decisions has been facilitated by the growth of the internet and other digital platforms, including social media. Nearly a decade ago, the Commission's Broadcast Localism proceeding was already replete with examples of this phenomenon.<sup>6</sup>

Moreover, when the Commission adopted the online public file rules for broadcasters, it specifically considered whether to adopt rules requiring social media comments and posts to be included in the correspondence file of local broadcast station public files, and declined to do so.<sup>7</sup> The Commission's decision reflected its astute calculus that social media communications—which have only become more common as vehicles for the public's interaction with stations—

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<sup>6</sup> See, e.g., *Broadcast Localism*, MB Docket No. 04-233, Comments of the Virginia Association of Broadcasters (filed Apr. 28, 2008) at 39-40 (“The electronic environment in which stations and residents of the local community interact makes stations “virtually” accessible at all hours of the day or night and facilitates the exchange of information between stations and the public, which is critical to localism. The Internet has revolutionized the way humans interact and has led to a new era of intercommunication between stations and local residents.”); *Broadcast Localism*, MB Docket No. 04-233, Comments of the Ohio Association of Broadcasters (filed Apr. 28, 2008) at 21-22 (“Moreover, with the growth of technology and the multitude of communications options, such as the Internet, websites, e-mail, and text messaging, residents of a station’s community of license easily and routinely communicate with broadcasters without leaving their homes.”); *Broadcast Localism*, MB Docket No. 04-233, Comments of the North Carolina Association of Broadcasters (filed Apr. 28, 2008) at 29 (“[T]he Internet has led to a new era of communication between stations and local residents. Stations routinely receive email correspondence from local residents and input about news and programming via website “feedback” forms. There is no lack of public accessibility to station program decision-making executives . . .”).

<sup>7</sup> See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012), ¶¶ 66-67 (“We . . . will not require stations to retain social media messages in their correspondence file. . . . We encourage members of the public to relay their concerns directly to the station.”); *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) (“*Online Public File Report and Order*”), ¶ 94 (applying to radio stations the same analysis of social media comments that was applied to television stations).

are already both effective and publicly available. As a result, no legitimate regulatory purpose would be served by requiring stations to maintain them in a public inspection file. Given the fact that the vast majority of communication from listeners and viewers comes via social media, web forms, and other digital means—most of which make stations *immediately and publicly* responsible for their programming decisions—the requirement to maintain letters and emails has become anachronistic, antiquated, and fundamentally meaningless. The Commission itself recognized as much in January 2016 when it acknowledged that “as a practical matter stations appear to receive few requests to view letters from the public.”<sup>8</sup>

Second, by allowing stations to secure their studios and reallocate staff to more productive duties than being on constant vigil for visitors who could drop by at any moment wanting to see the public file, the proposal improves security while reducing staffing burdens, allowing stations with online public files to make more effective use of their staff to serve the public.<sup>9</sup>

Third, while radio stations outside the top-50 markets and those with fewer than five employees in their Station Employment Unit are not required to transition to the online public file until March 2018, they may elect to do so voluntarily at any time prior to that date.<sup>10</sup> By eliminating the Letters from the Public requirement now, the Commission incentivizes such stations to make the move now, giving the public online access to that content much earlier than

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<sup>8</sup> *Online Public File Report and Order*, ¶ 95.

<sup>9</sup> See *Online Public File Comments* at 5 (“Because the FCC is understandably hesitant due to privacy concerns to have stations upload Letters from the Public to an online public file, stations moving public files online must continue to allocate staff resources to hosting a local public file, making the file available at any time during normal business hours, including lunch hours, when a member of the public might randomly walk through the door, and the added security issues of handling impromptu visits by individuals whose only threshold test for admission is that they asked to see the public file.”) (citations omitted).

<sup>10</sup> *Online Public File Report and Order*, ¶¶ 28 and 83.

would otherwise be the case.<sup>11</sup> Because the public correspondence file is the final element of a station's public inspection file required to be maintained locally,<sup>12</sup> elimination of the Letters from the Public requirement would allow and encourage these stations to move their public files online in advance of March 2018. This would allow the public benefits of online access to the public file to be realized sooner for those stations able to make the switch before March 2018.

Fourth, as the Commission itself noted in the NPRM, commercial broadcasters are the only entities required to maintain Letters from the Public in their public inspection file. As a result, eliminating that requirement "would also create greater regulatory parity among entities subject to public file obligations."<sup>13</sup>

Eliminating the Letters from the Public requirement, and thereby eliminating this last vestige of the physical public inspection file, presents the Commission with the opportunity to simultaneously reduce the burden on broadcasters while benefitting the public; first by allowing more effective use of station personnel to serve that public,<sup>14</sup> and second by accelerating the online availability of public file content from smaller stations that have been incentivized to voluntarily make the move online before 2018. It will also benefit broadcaster employees, by allowing broadcasters to provide station staff with better security and a safer working environment.

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<sup>11</sup> The State Associations previously noted that eliminating the public correspondence requirement would encourage stations otherwise exempt from the online public file rule to voluntarily move their public files online. *See Online Public File Comments* at 11-13.

<sup>12</sup> While political file materials predating the move of a station's public file online may be retained in a physical file, stations may nevertheless choose to move the entire political file online. *See Online Public File Report and Order* at ¶26. Smaller radio stations are likely to have smaller political files than television stations or larger top-50-market commercial radio stations. As a result, many of these stations might voluntarily move their entire public file online if the requirement to maintain public correspondence in a physical local file is terminated.

<sup>13</sup> NPRM at ¶ 10.

<sup>14</sup> Elimination of the public correspondence requirement would also eliminate the need for stations to evaluate each piece of correspondence to determine whether it is subject to the rule, and whether it should be placed in the public file or withheld under the rule. These types of evaluations, and the attendant privacy concerns and related litigation risks they raise, would become a thing of the past.

For these reasons, the State Broadcasters Associations named below respectfully request that the Commission adopt its tentative conclusion as set forth in the NPRM, and delete Section 73.3526(e)(9) of its Rules.

Respectfully submitted,

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Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Carolina Association of Broadcasters, North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters,

Radio Broadcasters Association of Puerto Rico, Rhode  
Island Broadcasters Association, South Carolina  
Broadcasters Association, South Dakota Broadcasters  
Association, Tennessee Association of Broadcasters,  
Texas Association of Broadcasters, Utah Broadcasters  
Association, Vermont Association of Broadcasters,  
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