

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

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

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

* * * * *

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

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

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

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

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

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

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

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

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

* * * * *

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

§ 73.3580 Local public notice of filing of broadcast applications.

* * * * *

(d) * * *

(4) * * *

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

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

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

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

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

* * * * *

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

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

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

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

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

§ 76.630 Compatibility with consumer electronics equipment.

(a) * * *

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

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

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

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

* * * * *

12. Section 76.1700 is revised to read as follows:

§ 76.1700 Records to be maintained by cable system operators.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

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

§ 76.1702 Equal employment opportunity.

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

* * * * *

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

§76.1709 Availability of signals.

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

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

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

* * * * *

APPENDIX C

Final Regulatory Flexibility Analysis

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

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

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

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

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

² See *NPRM* at Appendix C.

³ *Id.* at ¶ 1.

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

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

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

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

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

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

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

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

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

⁷ *Id.* at 4536, ¶ 1.

⁸ 5 U.S.C. § 603(b)(3).

⁹ 5 U.S.C. § 601(6).

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

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

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

¹³ NCTA, Industry Data, Number of Cable Operators and Systems, <http://ncta.net/cable.com/Stats/2014.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*

(continued...)

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

(Continued from previous page)

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

¹⁴ See SNL Kagan, "Top Cable MSOs – 12/12 Q"; available at

<http://www.snk.com/resources/TopCableMSOs/TopCableMSOs-2012-12-quarter-subscriber-distribution-report.pdf>.

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 Red 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*

(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 4,090.³⁰ The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. These stations rely primarily on grants and contributions for their operations, so we will assume that all of these entities qualify as small businesses. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.³¹ This estimate, therefore, likely

(Continued from previous page) —————

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

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

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

²⁵ *Id.*

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

²⁷ See *15th Annual Competition Report*, 28 FCC Red 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/ipeds/data/naics/2012/515112.html> (last visited October 13, 2014).

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

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

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

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

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

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

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

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

13. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account

compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³³

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

³² See <http://nrc.gov/sip/telecom/telecom/011101.htm>.

³³ 5 U.S.C. § 603(c)(1)-(c)(4).

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

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

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

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

17. None.

**STATEMENT OF
CHAIRMAN THOMAS E. WHEELER**

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

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

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

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

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

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

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

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

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

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

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

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

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

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

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

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

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

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

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

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

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY

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

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

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

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

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