Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of	)	
	)	
Delete, Delete, Delete	)	GN Docket No. 25-133
	)	

To: The Commission

JOINT COMMENTS OF THE STATE BROADCASTERS ASSOCIATIONS

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Table of Contents

Page

I. Beyond Deregulation, a More Practical Approach to Broadcast Enforcement Is Critically Needed 8

II. The Commission Should Eliminate Its Regulations Seeking to Micromanage the Recruitment, Hiring and Promotion of Broadcast Employees Along With the Associated Recordkeeping and Reporting Requirements Found in Section 73.2080(b), (c), (d), (e), (f) and (g) of Its Rules 12

III. The Station Contracts Filing and Reporting Requirements of Section 73.3613 and Related Rules Should Be Eliminated....17

IV. The Commission Should Eliminate From the Public File Rule Most or All Categories of Documents That Are Not Currently Automatically Inserted by the Commission 20

1. Quarterly Issues Programs Lists Should Be Eliminated 21

2. The Annual EEO Public File Report and Associated Audit Response Filing Requirements Should Be Eliminated 25

V. The Requirement to File Biennial Ownership Reports Should Be Eliminated 26

VI. The Commission Should Eliminate Detailed Reporting of Children's Television Programming Preemptions....27

VII. The Commission Should Modify Its Interpretation of the Political File Requirements of the Communications Act to Provide Greater Flexibility for Broadcasters Uploading a Growing Number of Political File Documents 29

CONCLUSION....31

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JOINT REPLY COMMENTS OF THE STATE BROADCASTERS ASSOCIATIONS

The Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California 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, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters (collectively, the "State Associations"), by their attorneys in this matter, hereby file these Joint Comments in the above-captioned proceeding.[1]

SUMMARY AND INTRODUCTION

The State Associations appreciate this opportunity to support the Commission's efforts to relieve FCC regulatees of not just unnecessary regulatory burdens, but of those whose public benefits fall short of the costs they impose on broadcasters, thereby harming service to the public. The media environment continues to evolve rapidly on a near-daily basis, and has already changed in tectonic ways unimaginable when most of these rules were adopted. In the face of these rapid changes, rather than wither away, many of the Commission's broadcast rules have instead ossified, remaining stubbornly in place despite their utility having long ago ended. Because changes to these relics of a different time have become so overdue, dramatic

[1] Public Notice, *In Re: Delete, Delete, Delete,* GN Docket No. 25-133, DA 25-219 (rel. March 12, 2025).

deregulation rather than mere incremental adjustments are needed to meet the Communications Act's overarching goal of preserving and promoting broadcast service to the public.

The Commission's inquiry is rooted in two Presidential Executive Orders which seek to enhance economic prosperity by eliminating overbearing or burdensome regulations.[2] The *Unleashing Prosperity EO* correctly recognizes that current regulatory regimes "are often difficult for the average person or business to understand, as they require synthesizing the collective meaning not just of formal regulations but also rules, memoranda, administrative orders, guidance documents, policy statements, and interagency agreements that are not subject to the Administrative Procedure Act, further increasing compliance costs and the risk of costs of non-compliance," and seeks to "reduce the private expenditures required to comply with Federal regulations."[3] For its part, the *Ensuring Lawful Governance EO* targets for elimination regulations that may be unconstitutional, unlawful, not authorized by clear authority, not based on the best interpretation of underlying authority or prohibition, impose significant costs not outweighed by public benefits, impose undue burdens on small business, impede private enterprise and entrepreneurship, or technological innovation, among other things.

Taken together, the Executive Orders call upon the FCC to take a holistic approach to the regulatory environment in which its regulatees must operate, an environment with which the State Associations, through their members, are intimately familiar. While individual rules or rule subsections that create discrete paperwork burdens can be eliminated, and the deregulatory gains

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[2] *See, e.g.*, *Executive Order 14192 of January 31, 2025, Unleashing Prosperity Through Deregulation*, 24 Fed. Reg. 9065 (Feb. 6, 2025) (hereinafter "*Unleashing Prosperity EO*"); *see also Executive Order 14219 of February 19, 2025, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*, 36 Fed. Reg. 10583 (Feb. 25, 2025) (hereinafter "*Ensuring Lawful Governance EO*").

[3] *Unleashing Prosperity EO* at 9065, Section 1.

counted toward a running total of rules eliminated, it is the pervasive web of rules, policies, interpretations and enforcement practices, many not contained in the written rules and most subject to reinterpretation upon each change in administration or agency personnel, that form the biggest barrier to entry for both potential broadcasters and investment in the broadcast industry. As enticing new entrants and investment to the industry is vital to innovation, the loss caused by these regulations is felt not just by licensees, but by the public itself.

This regulatory miasma overwhelms individual broadcast licensees and any hopes they might have for growth, while slowly strangling an entire industry—a bureaucratic boa constrictor. As they compete against an ever-growing array of unregulated audio and video services, broadcasters' need to stand up complex and expensive compliance programs, especially where requirements are vague, liability is strict, and enforcement penalties are high, is becoming untenable. This dynamic is driving smaller operators from broadcasting while erecting a significant cost and knowledge barrier which blocks those interested in becoming a broadcaster, or pondering whether to invest in, or lend to, a broadcaster.

Indeed, it is no coincidence that the Commission's broadcast spectrum auction was entirely premised on a single principle: that the regulations burdening broadcasting are so damaging that broadcast spectrum becomes vastly more valuable simply by removing those regulations.[4] In the *Greenhill Report* commissioned by the FCC as part of the Broadcast Incentive Auction, the removal of these burdens was repeatedly referred to as "unlock[ing]

[4] *See, e.g.*, Spectrum Analysis: Options for Broadcast Spectrum, OBI Technical Paper No. 3 (FCC, June 2010) ("[T]he TV bands in their current use have a substantially lower market value than similar spectrum recently auctioned primarily for mobile broadband use").

spectrum value."[5] That value differential is the real-world cost of knowing and complying with the FCC's vast web of broadcast regulations.

The recognition of that cost differential led to the creation of an innovative reverse spectrum auction and a years-long spectrum clearing process that repurposed much of the TV band spectrum to broadband use. This *Delete, Delete, Delete* initiative demands an equally innovative and energized approach to remaking the regulatory environment for the broadcasters who continue to use their spectrum to serve their communities. With broadcasting's public benefits undiminished, but its competitive prospects challenged on every front, merely trimming around the make-work regulatory edges would be short-sighted. Now is the time to do the deep regulatory pruning needed to preserve the broadcast service for the future.

The recent release of the Public Notice seeking comments on the National Association of Broadcasters' request to cement a timeline for transitioning to ATSC 3.0 is a good start,[6] and completing the pending Quadrennial Review aimed at harmonizing the Commission's broadcast ownership rules with the media world in which broadcasters must exist is an equally important step. However, to stop there and go no farther would be to repeat the tragic error of the Newspaper-Broadcast Cross-Ownership Rule—a rule that was mooted by the demise of countless newspapers long before it was removed from the books. The Commission must act here before broadcasting finds itself also teetering on the brink.

More specifically, as detailed in these comments, the time has come to fundamentally change the Commission's "strict liability" approach to enforcing broadcast rules, no matter how

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[5] *See Incentive Auction Opportunities for Broadcasters: Prepared for the Federal Communications Commission by Greenhill* (Feb. 2015), at 3, 4 (quoted above), 6, 10, and 23.

[6] Public Notice, *Media Bureau Seeks Comment on Petition for Rulemaking and Future of Television Initiative Report Filed by the National Association of Broadcasters to Facilitate Broadcasters' Transition to NextGen TV*, MB Docket 16-142, DA 25-314 (rel. April 7, 2025).

inadvertent or harmless the rule violation is; eliminate the many unnecessary paperwork obligations related to (a) the Public Inspection File, (b) the recruiting, hiring and promotion of broadcast employees, (c) the reporting of station contracts, (d) the reporting of each children's television program episode preemption, and (f) biennial ownership reports; and providing greater flexibility to broadcasters in meeting their growing Political File obligations.

In proposing these changes, the State Associations wish to emphasize that the list of deregulatory changes discussed herein is far from exhaustive, and simply reflects the constraints imposed by both the comment deadline and breadth of this proceeding. There will certainly be numerous other broadcast rule reforms proposed by commenters in this proceeding that merit consideration. That they are not discussed in these comments should not be construed as the State Associations disagreeing with them, but is merely the result of having finite resources and finite time to address broadcast regulations that are overly burdensome—an extremely large canvas on which to paint. In reviewing the proposals herein and those submitted by other commenters advocating for broadcast deregulation, the State Associations urge the Commission to follow the mandate of the Executive Orders and consider not just the impact of each regulation individually, but holistically, with the goal of meaningfully changing the regulatory environment—an environment that is currently driving licensees, investors, lenders, potential new entrants, and the most popular (and therefore expensive) programming into the arms of broadcasters' unregulated competitors.

I. Beyond Deregulation, a More Practical Approach to Broadcast Enforcement Is Critically Needed

The *Ensuring Lawful Governance EO* mandates that agencies "preserve their limited enforcement resources by generally de-prioritizing actions to enforce regulations that are based on anything other than the best reading of a statute and de-prioritizing actions to enforce

regulations that go beyond the powers vested in the Federal Government by the Constitution."[7] In making this statement, the Executive Order recognizes that deregulation alone is insufficient; it is how the rules that remain on the books are enforced that can have just as seismic an impact.

In the case of the Commission's broadcast rules, the problem is not simply one of excessive rules and policies; the Commission's strict liability approach to one-time and minor rule violations forces broadcasters to overinvest in compliance personnel and resources, trying to achieve an unachievable 100% compliance 100% of the time. Such an approach might make sense in an industry where a single violation could cause widespread radiation poisoning. It does not, however, make sense in an industry where the failure to upload a Quarterly Issues-Programs List will not have a meaningful impact on anyone, as it merely summarizes what everyone watching or listening to the station already knows. Despite that, and no matter how inadvertent the employee's failure to upload it was, it will be treated as a serious, willful violation that must be reported in the station's license renewal application eight years later. And if it is not reported eight years later in that license renewal application, the licensee risks a further charge of false certification. In contrast, the general statute of limitations for federal crimes not punishable by death is a mere five years.[8]

Where hiring a single broadcast employee to monitor a station's feed could achieve 99.9% compliance over an eight-year license term (70,080 hours of programming), hiring four more individuals in hopes of achieving that last 0.1% of compliance is a tremendous waste of station resources with no real-world benefit to the public, but one which deprives the public of better-resourced news departments and programming—the real benefit to the public. In the

[7] *Id.* at 10584, Section 3.
[8] *See* 18 U.S.C. § 3282.

Communications Act, Congress mandated that "the Commission shall make such 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."[9] It did not mandate such extensive regulation and aggressive enforcement of those regulations as to undercut that very service to the public, whether by diverting resources from the actual provision of broadcast programming, driving station operators from the business because of the expense of defending themselves, or by simply discouraging entry and investment in the broadcast industry.

And make no mistake, the literal and figurative cost of that eternal quest for 100% compliance is quite high. A station with even a 99.9% compliance rate would have seventy hours of program violations over the course of an 8-year license term (99.9% x 70,080 hours of programming). If that consisted of one violation in each of those seventy hours, that is anywhere from one to seventy FCC investigations that such a station could face per license term, along with any associated fines or other penalties.

While promoting a culture of rule compliance is important in a regulated industry, very few industries are subject to such extreme enforcement practices as broadcasting, where a single inadvertent error by an employee will be deemed "willful" regardless of the circumstances, pursued by the Enforcement Bureau not through a simple letter of inquiry asking whether the violation occurred (as the Commission previously used to do), but with an extensive prosecutorial document production request demanding thousands of documents. This happens even where the licensee readily concedes a violation occurred and is often the one who brought it to the FCC's attention in the first place, either spontaneously, to comply with one of the

[9] 47 U.S.C. § 307.

Commission's many rules requiring disclosure of a violation,[10] or in truthfully providing the extremely broad certifications demanded by the FCC's license renewal and other application forms.

The result is that a broadcaster must often report even inadvertent, one-time instances of non-compliance, be pilloried for doing so through overly broad (and often unnecessary) investigatory document productions, and then subject its very livelihood to the Commission, and often a bureau of the Commission, holding the power of judge, jury, and executioner. And, to top it off, the broadcaster can challenge an adverse ruling only by first exhausting its appeals within the Commission, after which it may challenge the ruling in the Court of Appeals only by waiving its right to a jury trial,[11] and paying the fine, which is deemed under the Communications Act to be an admission of guilt.[12]

So it is not merely the breadth and depth of the Commission's broadcast rules that harm broadcast service to the public, but the manner in which those rules are enforced. Broadcasters and their employees are human. Occasionally, an educational children's program will slip through without an "E/I" identifier on it; a multicast stream's closed captioning will be interrupted when a piece of equipment fails; or a microphone will pick up an athlete cursing during coverage of a live sporting event. These events will occasionally happen no matter how many employees and resources a broadcaster dedicates to trying to prevent every single occurrence over an eight-year term, all of which are resources diverted from providing informative and entertaining programming to the public.

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[10] *See, e.g.*, 47 C.F.R. § 11.45(b); 47 C.F.R. § 73.3526(e)(11)(ii); 47 C.F.R. § 73.2080(c)(6); 47 C.F.R. § 73.3526(e)(11)(iii).

[11] *AT&T Corp. v. FCC*, 323 F.3d 1081, 1084 (D.C. Cir. 2003).

[12] 47 U.S.C. § 504(c)(i).

For those who protest that even a single instance of any of the above harms children or other members of the public, note that every one of these events is the norm, not the exception, for nearly every audio or video service with which broadcasters compete and with which audience members are spending an ever greater portion of their time. Burdening broadcasters with regulations both numerous and virulently enforced only speeds the day when those other services are all that is available to the public, and like the Newspaper-Broadcast Cross-Ownership Rule, broadcast regulations simply become moot due to the absence of broadcasters. It is time for the Commission to stop making a literal federal case of each and every broadcast violation, no matter how harmless it is in the bigger scheme of things.

II. The Commission Should Eliminate Its Regulations Seeking to Micromanage the Recruitment, Hiring and Promotion of Broadcast Employees Along With the Associated Recordkeeping and Reporting Requirements Found in Section 73.2080(b), (c), (d), (e), (f) and (g) of Its Rules

As the State Associations have long noted, the prevention of discrimination in broadcast employment is a laudable goal, but one which cannot countenance the Commission's long-term efforts to micromanage every aspect of broadcast recruiting, hiring and promotion. Indeed, as the State Associations noted in 2019, there does not appear to be a Commission decision finding that a broadcaster engaged in discrimination since the advent of the FCC's first EEO Rule in 1969.[13]

Despite that, the Commission not only has extensive rules surrounding the recruitment, hiring, and promotion of broadcast employees, but those regulations are backstopped by some of

[13] *See Review of EEO Compliance and Enforcement in Broadcast and Multichannel Video Programming Industries*, Joint Reply Comments of the State Broadcasters Associations, MB Docket No. 19-177 (filed Nov. 4, 2019) at 3, n.4.

the Commission's most extensive recordkeeping and reporting requirements. And, unlike every other rule applicable to broadcasters, where enforcement is based upon the Commission being presented with evidence of a violation, and then conducting an investigation to determine whether a rule violation occurred, the FCC's employment rules are unique in that they are enforced through random audits of 5% of broadcast stations each year, making clear to broadcasters that simply recruiting, hiring, and promoting applicants and employees on a non-discriminatory basis is patently inadequate to comply with the Commission's EEO Rule. Moreover, the EEO Rule audit program is the very definition of a program that fails any rational cost-benefit analysis. As the NAB noted in 2019, *15,000* EEO Rule audits conducted over the prior seventeen years revealed less than 20 instances of potential EEO Rule violations.[14]

Given the tremendous paperwork burdens imposed by both the EEO Rule and the random audits conducted solely to ensure that the broadcast industry maintains its 99.9% compliance record with those requirements, the time has come to eliminate the substantive and recordkeeping requirements contained in Section 73.2080(b), (c), (d), (e), (f) and (g).[15] Pursuant to these rule sections, every broadcast station that is part of a Station Employment Unit ("SEU") with five or more full time employees must "establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity and nondiscrimination in every aspect of station employment policy and practice." The types of practices and policies requiring such attention include defining responsibility for compliance with the rules at every level of station management; communicating the station's policies and

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[14] *Review of EEO Compliance and Enforcement in Broadcast and Multichannel Video Programming Industries*, Comments of the National Association of Broadcasters in Response to Notice of Proposed Rulemaking, MB Docket No. 19-177 (filed Sept. 20, 2019) at 8.

[15] The Commission should also amend Section 73.3500 to remove the Form 395-B, Form 396, and Form 396-A.

practices to employees and applicants; conducting an ongoing review of job structure and employment practices; engaging in positive job design; achieving broad outreach sufficient to widely disseminate information concerning all full time job vacancies, including to organizations that have requested to be notified of such vacancies; engaging in either two or four (depending on the size of the station's staff and market) non-vacancy specific employment outreach initiatives from an approved list every two years; periodically analyzing the station's recruitment program, analyzing seniority practices, rates of pay and fringe benefits, promotions, and applicant selection techniques; and maintaining records sufficient to demonstrate compliance with all the above.

Each year, stations must prepare and place in their online Public File an Annual EEO Program Report listing all job vacancies filled in the prior year along with all recruitment sources used to fill each vacancy, the number of interviewees referred by each source, the source of the hiree, and evidence of completion of the required non-vacancy specific employment outreach initiatives. The FCC reviews the Annual EEO Program Reports during a station's license renewal and at the midpoint of its license term. As noted above, in addition to these reviews, the FCC undertakes an audit of 5% of broadcast stations each year. In the audit, the station must produce records to support the information contained in the Annual EEO Program Reports for the past two years, including dated copies of all the job vacancy announcements it used to widely recruit for each opening, as well as narrative responses explaining how the SEU has put into place the various policies and undertaken the various reviews of job structures, pay and promotion decisions that are required by the rule.

With this lengthy list of requirements and near constant cycle of review and auditing, compliance with these portions of the EEO Rule is unduly onerous and resource-intensive.[16] The rule's fixation on process and paperwork unnecessarily runs up costs and diverts station resources from serving the public. For example, public broadcasting entities have advised the Commission that their members have had to hire extra staff simply to assist in uploading audit responses to their online Public Files.[17] Station personnel are required to incur the expense of engaging in non-vacancy specific employment outreach initiatives, such as leaving the station and other work requirements behind to attend job fairs, even when the station has no openings available.[18] Moreover, some of the rule's requirements are hopelessly outdated and have proven ineffectual in turning out qualified candidates.[19] Specifically, online job search and application platforms are now ubiquitous and convenient for both employers and candidates to use. But broadcasters are forced to attend a dwindling number of job fairs when they have no job

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[16] *See, e.g.*, *Review of EEO Compliance and Enforcement in Broadcast and Multichannel Video Programming Industries*, Joint Comments of 82 Broadcast Station Licensees and Petition for Further Notice of Proposed Rulemaking, MB Docket No. 19-177 (filed July 18, 2019) at 9 ("This is a plaintive plea by smaller broadcasters for relief from these ongoing, pervasive, time-consuming, and resource-gobbling paper-work and documentation requirements . . . ."); *Review of EEO Compliance and Enforcement in Broadcast and Multichannel Video Programming Industries*, Comments of ACA Connect, MB Docket No. 19-177 (filed September 20, 2019) at 8.

[17] *See Modernization of Media Regulation Initiative*, Comments of America's Public Television Stations, Corporation for Public Broadcasting, National Public Radio, Inc. and Public Broadcasting Service, MB Docket No. 17-105 (filed July 5, 2017) at 11 n.18.

[18] Notably, some of the non-vacancy specific employment outreach initiatives may even be constitutionally suspect as they are required to be carried out with organizations whose membership includes significant participation by women and minorities, a requirement that may also run afoul of the President's recent Executive Orders relating to DEI. It is fundamentally unfair to place broadcasters in the middle of these seemingly conflicting mandates.

[19] *Modernization of Media Regulation Initiative*, Comments of the Joint Radio Commenters, MB Docket No. 17-105 (filed July 5, 2017) at 13 ("[M]ost broadcasters find very little return on the significant investment in time and resources it takes to notify these sources of their open positions. Entitled sources remain on licensee recruitment source lists for years on end and yield few, if any, qualified candidates . . . .").

openings, and maintain a list of organizations that must receive notice of the station's job vacancies, even if those organizations have never produced a single job applicant.

All this intrusion into, and constant surveillance of, broadcasters' employment practices along with the associated paperwork and expense imposed on both broadcasters and the FCC to maintain this regime can hardly pass a cost-benefit analysis when no clear benefit from it can be identified. Myriad more modern ways of connecting applicants with broadcast vacancies have become available, and attracting new employees into an industry that many young people view as being the dinosaur of media has proven extremely challenging, dispelling any notion underlying the EEO Rule that broadcast jobs are so desirable that only insiders can get them. Broadcasters are trying every novel approach they can think of to bring new blood into the industry, and doing that while also shoehorning those efforts into the antiquated framework of the EEO Rule has become increasingly difficult.

Despite conducting thousands of EEO audits over the past 20 years, the FCC has found very little noncompliance with its rules.[20] There has not been a finding of actual discrimination by the FCC in many decades. And the recruiting methods upon which the EEO Rules fixates are simply from another time. Given these facts, it is time to let broadcasters move on and discard a rule that was drafted in an era when the FCC was still suspicious of letting broadcasters conduct recruiting via the Internet. Despite extensive machinery to monitor every full time hire by a broadcaster for literally decades, the Commission has found no evidence that broadcasters have any interest in discriminating against anyone, and are instead focused on using every method at their disposal to attract the best employees who will grow their stations and hopefully launch the

[20] *See Review of EEO Compliance and Enforcement in Broadcast and Multichannel Video Programming Industries*, Comments of the National Association of Broadcasters in Response to Notice of Proposed Rulemaking, MB Docket No. 19-177 (filed September 20, 2019) at 8.

next generation of broadcasters. The Commission's two prior EEO Rules were both found to be unconstitutional,[21] and the current EEO Rule has yet to face and survive such a court challenge. Given the extreme regulatory and paperwork burdens it imposes, and the growing challenge for broadcasters in diverting resources from their programming and community service efforts to shoulder those burdens, the time has come to let broadcasters design their own recruiting and hiring programs to meet their distinct operational needs rather than the perceived needs of a 2003-era FCC. Accordingly, Section 73.2080(b), (c), (d), (e), (f) and (g) of the FCC's Rules should be deleted, and conforming changes made to all rules, policies, and forms affected by these deletions.

III. The Station Contracts Filing and Reporting Requirements of Section 73.3613 and Related Rules Should Be Eliminated

Sections 73.3613(a), (b) and (c), Section 73.3526(e)(5), Section 73.3527(e)(4) of the Commission's Rules and FCC Forms 323 and 323-E require that broadcasters include in their Ownership Reports, and promptly update in their Public File upon each amendment or change, a list of certain documents (or with regard to the Public File, the documents themselves) that are tangentially related to ownership and control of the station.[22] Whenever there is a change in the list due to the expiration or amendment of an agreement, or entry into a new reportable

[21] *See Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344, *rehearing denied* 154 F.3d 487, *rehearing en banc denied* 154 F.3d 494 (D.C. Cir. 1998); *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13, 21, *rehearing denied* 253 F.3d 732 (D.C. Cir 2001), cert denied sub nom. *Minority Media and Telecommunications Council v. MD/DC/DE Broadcasters Assoc.*, 534 U.S. 1113 (2002) ("Option B places pressure upon each broadcaster to recruit minorities without a predicate finding that the particular broadcaster discriminated in the past or reasonably could be expected to do so in the future.").

[22] *See* 47 C.F.R. Section 73.3613(a)-(c); 47 C.F.R. Section 73.3526(e)(5) (commercial stations) and Section 73.3526(e)(4) (noncommercial stations).

agreement, the station must upload the new or changed documents or an updated list of them within 30 days.

This filing regime creates a number of complications. The Ownership Report itself is filed electronically with the FCC and thereafter is automatically inserted by the Commission into the station's Public File. In contrast, the documents, or the up-to-date list of them, must be uploaded by the station licensee. While the Ownership Report is typically filed only biennially, the documents or list of documents must be updated within 30 days of each change. For even a standalone station, this requires constantly monitoring such agreements for each amendment, expiration, and extension, while necessitating the immediate review of each new contract to determine if it has any provisions in it that would require its inclusion in the station's Public File list—tasks for which most station employees are not equipped and often require retention of regulatory counsel to assist in these reviews.

The challenges become more complex with regard to a station group owner where a contract might apply to one, several or all of its stations, requiring review and upload of a modified contracts list to the correct mix of station Public Files within thirty days. That task is more complex than it sounds, because in many cases, no two stations will have the same list of contracts because some contracts apply to the whole group of stations, some apply to differing combinations of them, and some are unique to that station, requiring the creation and uploading of a new unique list for each station within that 30-day period. The likelihood of a missed amendment or late upload, particularly across multiple stations, is significant, and the failure to notice that a credit agreement providing financing for a 25-station group has a security clause in it that requires its inclusion in the Ownership Report or Public File list can instantly create 25 Public File violations, where the base fine is $10,000 per violation.

Balanced against this burden, which does nothing to promote service to the public and in fact diverts resources from that service, is no particular public benefit. To the extent an option to acquire a station is exercised, or an agreement to purchase a station is signed, the operative document is already required to be filed with the Commission for its review as part of the associated assignment or transfer application. To the extent the list of required agreements references documents such as certain types of mortgages that might affect control if foreclosed on, a change of control would still require prior FCC approval, making any contractual language to the contrary void ab initio. And, including such a contract in the Public File list would do nothing to alter such language anyway.

Finally, while the Commission's Rules currently require stations to provide a redacted copy of such agreements to members of the public requesting it, such requests are extraordinarily rare, and their use in FCC proceedings rarer still. The resources required nationwide to monitor every broadcaster agreement and amendment needed to ensure that relevant ones are added to the appropriate stations' files within 30 days are immense, while whatever theoretical benefit that effort yields is clearly outweighed by the diversion of station (and corporate) resources from more productive tasks. That, along with the risk of "gotcha" enforcement actions for inadvertently late uploads, makes these contract reporting regulations long on burden, short on public benefit, and ripe for elimination. Making broadcasters publicize sensitive information like when their station's network affiliation will expire so that competing stations know when to make a grab for it is also not a public interest benefit.

IV. The Commission Should Eliminate From the Public File Rule Most or All Categories of Documents That Are Not Currently Automatically Inserted by the Commission

The Commission adopted its original Public File rule in 1965 after Congress granted members of the public the ability to file petitions to deny broadcast applications. The Commission concluded that making applications filed in Washington, DC available in the station's community of license would assist local residents in assessing their needs and desire for broadcast service and to engage in dialog with local broadcasters on those issues.[23] In today's world, however, virtually all FCC filings made by broadcast stations are filed electronically and then automatically populated into the station's online Public File, making them easily accessible 24/7, unlike a physical file located at a station's main studio. Thus, the original underlying concern for public access to records kept in Washington, DC is more than met.

Over time, however, the Commission has added more and more requirements for various documents to be placed in the Public File. In terms of the sheer volume of filings and associated uploading burden on broadcasters, the vast bulk of the Public File uploading burden comes from just three categories of documents – station contracts and contracts lists uploaded pursuant to Section 73.3613 of the Commission's Rules and related rules, EEO Annual Public File Reports and audit responses uploaded pursuant to Section 73.2080 of the Commission's Rules, and Quarterly Issues-Programs Lists.

As discussed extensively above, uploading station contracts or uploading station contract lists (as is permitted subject to certain additional requirements) each time a relevant contract is entered into, amended, extended, terminated, or expires can be particularly burdensome even

[23] *Records of Broadcast Licensees*, 4 R.R.2d 1664 at ¶ 12 (1965); *see also Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, 27 FCC Rcd 4535, 4537-38 (2012).

where the actual number of pages uploaded to each individual station's Public File is not immense. The elimination of the contract reporting requirements of Section 73.3613 and associated rules as requested above would obviously also eliminate that portion of the Public File, along with the corresponding 30-day contract review/upload requirement. It is therefore not further discussed in this portion of the State Associations' comments. The case for eliminating the Quarterly Issue-Programs Reports requirement is discussed below, as is the case for eliminating Annual EEO Public File Reports and associated audits from the Public File.

1. Quarterly Issues Programs Lists Should Be Eliminated

Without a doubt, from a purely paperwork perspective, the Quarterly Issues Programs Lists requirement is one of the more burdensome Public File obligations, both because of the sheer number of these quarterly filings over an eight-year license term (32 reports), but because each one must be drafted from scratch based on the station's ascertainment during that quarter of the community's most important needs and interests, and from the information collected during that quarter regarding each of the station's programming efforts aimed at addressing those issues. By definition, each quarter's issues and responsive programming efforts are unique, maximizing the burden each quarter, particularly for multiple station clusters with different program formats and audiences.

The Commission's three rule sections mandating the preparation and filing of Quarterly Issues Programs Lists[24] dictate that, every three months, broadcasters produce lists of the programs they have aired that represent the station's most significant on-air treatment of issues the broadcaster has determined, in an exercise of the licensee's good faith discretion, are facing

[24] *See* 47 C.F.R. Sections 73.3526(e)(11) (commercial television issues-programs lists); 73.3526(e)(12) (commercial radio issues-programs lists); 73.3527(e)(8) (noncommercial educational broadcast station issues-programs lists).

the station's community. The Lists are meant to be non-exhaustive examples of programming aired and issues addressed. They must provide a narrative description of both the issues addressed and the programming treatments, by title, that the station aired to address each issue, including at a minimum the time, date and duration of each programming treatment.[25] In practice, this exercise involves considerable work in marrying up program segments aired in different programs, different dayparts, and different airdates across a three-month period with the issue to which each is responsive, as well as tracking detailed information such as replays of the segments throughout a news day and the duration of each segment. The Commission has said that simply attaching a list of topics to a list of programs aired is not sufficient.[26]

At the time the Commission adopted the Quarterly Issues-Programs List requirement in the 1980s,[27] digital video recorders had not yet arrived. A petitioner seeking to track the content of a television station's broadcasts would have had to religiously swap out video cassettes every few hours on a VHS or Betamax video cassette recorder and then review the tapes in real time, or merely sample random parts of each tape by painfully fast forwarding through most content. In contrast, a modern digital video or audio recorder can record several months' worth of a television station's programming on a hard drive (and literally years of a radio station's programming) with no intervention beyond setting it up to record the station's broadcasts and returning several months later to review the entirety of the station's programming over that period. Even the review itself can be expedited by using the digital recorder's accelerated

[25] *See* 47 C.F.R. Sections 73.3526(e)(11) (commercial television issues-programs lists); 73.3526(e)(12) (commercial radio issues-programs lists); 73.3527(e)(8) (noncommercial educational broadcast station issues-programs lists).

[26] *See, e.g., San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13331 (2004).

[27] *See Deregulation of Radio*, Second Report and Order, 96 FCC 2d 930 (1984).

playback, which speeds up the video while maintaining soundtrack intelligibility. If the reviewer wants to analyze a segment in slow motion or even freeze the picture entirely, a DVR can do that with crystal clarity. The hard drive recordings can even be analyzed with the assistance of AI software that can search the recordings autonomously, looking for whatever specific audio or video it has been asked to search for, and marking those segments so that a human reviewer can later go back and review just that content.

Suffice it to say that many of the same technological developments that are placing increased competitive pressures on broadcasters also make it easy for pretty much any member of the public to extensively review a station's program content, while saving an exact copy of any content the reviewer wants to bring to the FCC's attention. And with many if not most broadcast stations streaming their on-air content, a reviewer doesn't even have to be in range of the station's OTA signal to be able to monitor its content, including a station's responsiveness or lack of responsiveness to community issues. A Quarterly Issues-Programs List containing merely "examples" of a station's community-responsive programming seems positively antiquated by comparison, and individuals would face little burden in gathering the best evidence of a station's programming—the programming itself—to have the information necessary to file a complaint or petition concerning a station's issue-responsive programming.

This conclusion is borne out by real world experience. In part because of better technological alternatives, and in part because of First Amendment concerns, the Commission has not relied upon, and petitioners have not cited to the content of, a station's Quarterly Issues-Programs list in many years. This dearth of use in recent years is particularly revealing of the Lists' lack of public value given that the advent of online Public Files has actually made it far

easier for the public to access the Lists, but apparently there is little interest among the public in doing so.

Instead, the Lists pop up repeatedly in FCC decisions for only one reason: the Commission fining a station for failing to timely upload all of its Quarterly Issues-Programs Lists during its license term. Because the switch to an online Public File ensures that every upload is date-stamped, it takes FCC staff just minutes to determine if a station failed to upload, or timely upload, any Issues-Programs List during its entire license term. As a result, while many fines have been issued for upload failures, FCC enforcement actions regarding the actual content of the Lists are rarer than hen's teeth in the modern era, effectively making this requirement a regulatory speed trap that triggers fines regularly, but all of which relate only to timely uploading and not to the stated purpose for the Lists' existence.

In that context, the Quarterly Issues Programs List's sole purpose has been supplanted both by far superior and less burdensome technological options available to the public for monitoring and analyzing broadcast content, and a growing awareness of the serious First Amendment issues that would be raised by any effort on the part of the FCC to take adverse action against a licensee based on "examples" of the issues it concluded were important in the community and the programming it chose to address them. Conversely, if a petitioner were to present recordings of station content that the FCC agreed was harmful to the public interest, it seems unlikely that the Commission would ignore those recordings in favor of simply relying on the program examples in the station's Quarterly Issues-Programs Lists. When the nationwide burden of broadcasters collectively drafting and uploading nearly 70,000 Quarterly Issues-Programs lists *per year* is balanced against the near total lack of any modern public interest use

or benefit emanating from them, it is clear that eliminating this requirement is some of the most obviously low-hanging fruit on the deregulatory tree.

In adopting the Issues-Programs List filing requirement, the FCC surmised that quarterly filing would "probably" provide fresh data and not impose a substantial burden, but candidly noted "[i]n our view, there is no scientific way to determine how frequently these lists should be prepared and disclosed."[28] The forty years since have shone light on the answer to that question, which should be "never again."

2. The Annual EEO Public File Report and Associated Audit Response Filing Requirements Should Be Eliminated

The EEO Annual Public File Reports requirement for non-exempt SEUs mandates the drafting and upload of eight Reports per license term multiplied by each station in the SEU. However, if one of the stations in the SEU is selected for a random audit, the audit response can dwarf most other portions of the Public File and must be uploaded to the Public Files of all stations in the SEU.

As discussed above, the State Associations have herein urged the Commission to eliminate both the substantive regulations seeking to micromanage station hiring as well as the associated recordkeeping and reporting requirements found in Section 73.2080(b), (c), (d), (e), (f) and (g) of the FCC's Rules. Consistent with the elimination of those rule subsections, broadcasters would no longer be required to produce and place in their online Public Files the Annual EEO Public File Report and the typically voluminous EEO Audit responses, mooting this aspect of the Public File rule.

[28] *Id.* at 941.

V. The Requirement to File Biennial Ownership Reports Should Be Eliminated

The FCC should eliminate the requirement in Section 73.3615 that broadcast stations file Biennial Ownership Reports. Currently, broadcasters are required to file ownership reports within 30 days of the grant of an initial construction permit, on the date the permittee of a new station files its license to cover application, within 30 days of consummating a transfer of control or assignment of license, and on December 1 of every odd numbered year.[29]

While the Commission has enhanced the functionality of its electronic filing system over what it had been in past years, it remains an added burden to also file the reports every two years with little discernible public benefit. The reports are laborious to prepare for large broadcast entities that must file multiple reports for all entities in the chain of ownership. The resulting reports can be difficult for the public to read, often leading to misunderstandings of the relationships between reporting entities rather than bringing clarity to them. More frequent reports do not change that.

At the same time, even a broadcaster whose information remains unchanged faces enforcement action if it misses the December 1 deadline for filing its Biennial Ownership Reports in an odd-numbered year. Whatever the public interest benefits of gathering ownership information following an FCC-approved change in control may be—perhaps to merely confirm that a licensee's ownership following a transaction is materially as was proposed in the application—a Biennial Ownership Report reflecting only minor (or no) changes since the licensee's last ownership report accomplishes even less, with a lesser associated public interest benefit.

[29] *See* 47 C.F.R. § 73.3615.

Additionally, it is worth noting that the far larger non-broadcast media entities with which broadcasters compete in the marketplace do not have a similar ownership reporting requirement, and where the goal must be to fundamentally reduce all aspects of the regulatory thicket, burdens cannot be viewed in isolation, but as part of collective obstacles to broadcasters engaging in unfettered competition with all media, including non-broadcast media. Each deregulatory step in that direction is beneficial to both the short-term and long-term health of broadcasting.

VI. The Commission Should Eliminate Detailed Reporting of Children's Television Programming Preemptions

In connection with the obligation that television stations provide educational and informational programming for children, television stations must complete and electronically file the Children's Television Programming Report on an annual basis.[30] The form requires the station to provide the total number of hours of children's programming aired on the station during each quarter of the year that met the FCC's definition of core educational and informational programming. Where the station has aired a regularly scheduled children's television series in fulfillment of its core programming obligations, the station must provide information about each program series, including the number of times the program aired during the year and each quarter, the number of times it was preempted, and the number of times preempted episodes were made good in accordance with the FCC's policy for rescheduling core programming. For each preempted episode, the station must then go on to provide more information, including the date and time that the episode was regularly scheduled to air, whether the episode was rescheduled in the timeframe permitted by the FCC's rules, the rescheduled date

[30] *See* 47 C.F.R. § 73.3526(e)(11)(iii).

on which it aired, as well as the reason for the preemption and whether the station provided on-air notice of the schedule change.[31]

Completing the preemption reports section is a laborious process. The station must open a separate subform for each preempted episode to provide a response. The subforms are difficult to work with and must again be opened individually to make any edits or revisions if an error is noted. Given the space the preemption reports take up, the resulting Children's Television Report can be dozens or even hundreds of pages long. The formatting makes it difficult to review prior to submission and equally difficult to review afterwards. Were it not for the requirement to include the original airdate and the rescheduled airdate for each preempted episode, there would be no need for the cumbersome subform process. All of the information requested could be presented in the aggregate alongside the other information the form already collects—for example, 10 preemptions, all rescheduled within the time period permitted, all rescheduled on the same stream, all were due to sports coverage, and the station gave notice of all the preemptions. If an episode was not rescheduled on the same stream or notice was not given, an explanation would be required.

The only discernible reason to ask for the date that the preempted episode was originally scheduled to air and the date that it was rescheduled to air is to be able to verify that the rescheduled date is within the timeframe allowed by Section 73.671(e) of the Commission's Rules (seven days before or after), something the preemption report subform already demands—"If preempted program was not rescheduled or it was not rescheduled within 7 days before or after the originally scheduled air date please leave blank." Therefore, modifying the form as proposed above would reduce the burden on broadcasters in filling it out, make the form more

[31] *See* FCC Form 2100, Schedule H.

easily reviewable by the Commission and the public, while facilitating the broadcaster's own efforts to ensure that the form has been filled out correctly before submitting it. Because these changes would benefit all parties with no countervailing harm to the public, the State Associations urge the Commission to adopt these changes.

VII. The Commission Should Modify Its Interpretation of the Political File Requirements of the Communications Act to Provide Greater Flexibility for Broadcasters Uploading a Growing Number of Political File Documents

Stations' online Political Files, like their online Public Files, impose considerable burdens on broadcasters. What is different about the Political File, though, is the intense time pressure under which broadcasters must operate. Section 315(e)(3) of the Communications Act requires that these documents be uploaded "as soon as possible."[32] The FCC in Section 73.1943 of its Rules has stated that "As soon as possible means immediately absent unusual circumstances."[33] To provide an objective standard, the Commission's Media Bureau has "informally interpreted" the term "immediately" to mean within one business day.[34] Since 2018, stations' inability to meet this 24-hour deadline 100% of the time (for example, when it is not "possible") has resulted in a large number of Consent Decrees and forfeitures.[35]

Similarly, broadcasters must review each advertisement that they receive from a third-party issue advertiser to determine whether that ad communicates a message relating to any

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[32] 47 U.S.C. § 315(e)(3).

[33] 47 C.F.R. § 73.1943(d).

[34] *See, e.g., Townsquare Media, Inc., Parent Company of Licensees of Stations KLIX(AM), Twin Falls, ID and KIDO(AM), Nampa, ID*, Consent Decree, 39 FCC Rcd 286, 291 n.22 (MB 2024).

[35] *See id. See also* Kelcee Griffis, *Online Records Expose Stations' Sloppy Political Ad Files*, Law360 (October 13, 2020) (noting that an industrywide audit of stations' reporting requirements for political advertisements had yielded nearly 80 settlements by that time).

political matter of national importance. If the ad does communicate a message relating to any political matter of national importance, the broadcaster must use reasonable good faith judgment and efforts to assure that its Political File identifies *all* political matters of national importance contained within the advertisement.[36]

Doing all this along with meeting all of the other Political File recordkeeping requirements, including rapidly updating those records as the ad buy moves through the process,[37] is becoming increasingly difficult in light of the growing number of such ads. As the recent 2024 general election and subsequent 2025 special elections have shown, modern campaigns are only becoming more frenzied. Modern production techniques allow for the creation of ever more ads in less and less time, forcing stations' staffs to undertake more rapid reviews and upload more information than ever before at a breakneck pace. And again, the widespread challenges that these requirements pose to broadcasters are not faced by their unregulated competitors who are more likely to gather the ad dollars because of less paperwork and content review. The Commission should revisit its interpretation of "as soon as possible" in light of the current reality in which stations must operate and alleviate some of this increasingly unrealistic time pressure, such as by permitting the upload of required documents to the Political File in two business days, rather than one, before it is deemed untimely.

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[36] *Complaints Involving the Political Files of WCNC-TV, Inc., et al.,* Order on Reconsideration, 35 FCC Rcd 3646, 48-50 (2020).

[37] *See, e.g., Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements,* Joint Reply Comments of the State Broadcasters Associations, MB Docket 24-211 (filed October 11, 2024) at 16-18 (illustrating the regulatory burden of the FCC's political advertising regulations on stations); *Standardized and Enhanced Disclosure Requirements for Television Broadcaster Licensee Public Interest Obligations*, Comments of the National Association of Broadcasters on Proposed Information Collection Requirements, MM Docket 00-168 (filed Jan. 23, 2012) (identifying anticipated costs and staffing needs to comply with online Political File requirements).

CONCLUSION

For the reasons set forth in these Comments, the State Associations urge the Commission to abandon the Commission's "strict liability" approach to enforcing broadcast rules; eliminate the many unnecessary paperwork obligations related to the Public Inspection File, the rules regarding recruiting, hiring and promotion of broadcast employees, the reporting of station contracts, the reporting of each children's television program episode preemption, and biennial ownership reports; and provide greater flexibility to broadcasters in meeting their growing Political File obligations.

Respectfully submitted,

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