Before the
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C.

COMMENTS IN RESPONSE TO NOTICE RE
"INFORMATION COLLECTION BEING
SUBMITTED TO THE OFFICE OF MANAGEMENT
AND BUDGET FOR REVIEW AND APPROVAL"
76 FED. REG. 50730 (AUGUST 16, 2011)

OMB CONTROL NUMBER: 3060–0214

Fletcher, Heald & Hildreth, P.L.C. ("Fletcher Heald") hereby submits the following in response to the above-referenced invitation for comments relative to an Information Collection ("the Collection"), OMB Control Number 2060-0214, submitted to the Office of Management and Budget ("OMB") by the Federal Communications Commission ("Commission" or "FCC"). *See* 76 Fed. Reg. 50730 (August 16, 2011). The Collection seeks extension of OMB's previous approval of certain regulatory requirements imposed by the Commission, including primarily the "local public inspection file" rule contained in, *inter alia*, 47 C.F.R. §§73.3526 and 73.3527.

As demonstrated below, OMB cannot consider, much less approve, the FCC's extension request because that request fails to satisfy basic statutory requirements.

The FCC's submission to OMB is late.

As a threshold matter, OMB has no statutory authority to consider the FCC's Collection because that submission was not filed within the time frame specified by Congress in 44 U.S.C. §3507(h)(1) of the Paperwork Reduction Act ("PRA"). Section 3507(h)(1) states that, when an agency seeks extension of a previous approval of an information collection, the agency

shall submit the collection to OMB "no later than 60 days before the expiration date of the control number" then assigned to the collection.

The following is a "screen grab" from the OMB website page concerning OMB Control No. 3060-0214:

View ICR - Agency Submission

OMB Control No: 3060-0214 **ICR Reference No:** 201108-3060-008
Status: Received in OIRA **Previous ICR Reference No:** 200808-3060-002
Agency/Subagency: FCC **Agency Tracking No:** MB
Title: Sections 73.3526 and 73.3527, Local Public Inspection File, Sections 76.1701 and 73.1943, Political Files
Type of Information Collection: Extension without change of a currently approved collection
Type of Review Request: Regular **Date Submitted to OIRA:** 08/16/2011

	Requested	Previously Approved
Expiration Date	36 Months From Approved	09/30/2011
Responses	59,833	52,285
Time Burden (Hours)	2,176,815	1,831,706
Cost Burden (Dollars)	0	0

http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201108-3060-008 (visited September 14, 2011). As that image confirms, the expiration date of the previous approval of this particular Information Collection is September 30, 2011, but the Commission's request for extension of that approval was not submitted until August 16, 2011. The OMB website also reflects that the date of the FCC's required certification was August 16, 2011:

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9 and the related provisions of 5 CFR 1320.8(b)(3).
The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- [x] (a) It is necessary for the proper performance of agency functions;
- [x] (b) It avoids unnecessary duplication.
- [x] (c) It reduces burden on small entities;
- [x] (d) It uses plain, coherent, and unambiguous language that is understandable to respondents;
- [x] (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- [x] (f) It indicates the retention periods for recordkeeping requirements.
- [x] (g) It informs respondents of the information called for under 5 CFR 1320.8 (b)(3) about:
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- [x] (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected
- [ ] (i) It uses effective and efficient statistical survey methodology (if applicable); and
- [x] (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item by leaving the box unchecked and explain the reason in the Supporting Statement.
Certification Date: 08/16/2011

Id. In order to comply with the statutory deadline, the request would have had to have been filed no later than August 2, *i.e.*, "no later than 60 days before the expiration date". The Commission's submission was thus late by two weeks.

The deadline at issue here is expressly mandated by Congress in the PRA. It is not, therefore, subject to waiver or forbearance by OMB or the FCC. That being the case, OMB cannot consider the FCC's request. Rather, it must dismiss that request summarily, as OMB lacks any authority to consider it under the extant circumstances.

The FCC's submission fails to provide statutorily-mandated information.

Even if, *arguendo*, OMB were to conclude that the Commission's request may be considered notwithstanding its fatal lateness, that request still cannot be granted because the FCC has failed to provide the information required by the PRA.

Section 3507(h)(1) of the PRA sets out the obligations of an agency seeking extension of a previously approved information collection. Central to those obligations is the requirement that the agency provide OMB with "an explanation of how the agency ***has used*** the information that it has collected" (emphasis added). The FCC's Supporting Statement provides no such explanation. While the Supporting Statement alludes generally to a number of regulatory aspirations, *i.e.*, how the local public inspection file requirements might theoretically be of some benefit in some instances, the Supporting Statement provides absolutely no evidence that the Commission in fact ***has used*** those regulatory requirements for any actual regulatory purpose.

To the contrary, the record before the agency plainly establishes that the local public inspection file requirements at issue in the Collection have served no useful regulatory purpose at all. As the Commission acknowledges (in Part A(1) of its Supporting Statement), the FCC does

"not routinely monitor" broadcast licensees' compliance with Commission rules; rather, the agency "depends on viewers and listeners to provide information about whether stations are meeting their public interest obligations". The local public inspection file – *i.e.*, the subject matter of the Collection – supposedly "allows the public to monitor a station's public interest performance". That, in turn, supposedly facilitates "an informed dialog" between the public and the broadcast licensee, as well as the filing (with the Commission) of complaints or petitions to deny license renewals. *See also* FCC Supporting Statement, Part A(2). So if the Commission has in fact "used" the local public inspection file rule, the Commission should theoretically be able to point at least to complaints and/or petitions, based on information obtained from local public inspection files, that have demonstrated failure by broadcast licensees to comply with the rules or serve the public interest.

The Commission has provided OMB no evidence that the FCC's hopes and dreams relative to possible uses of the local public inspection file have ever been realized.

If, as the Commission posits, the availability of the public inspection file gives rise to "informed dialog" and "complaints or petitions to deny", then there should be some evidence of such dialog, complaints or petitions somewhere in the Commission's records. No such evidence exists. Indeed, as Fletcher Heald pointed out to the Commission in comments filed last June, the evidence is precisely to the contrary. [1]

To the best of our knowledge, no broadcast license renewal has been denied since 1986 (*i.e.*, the year in which the current version of the issues/programs list component of the local public inspection file was adopted) based on information obtained from a licensee's public file,

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[1] For OMB's ease of reference, a copy of Fletcher Heald's comments, filed on behalf of Alaska Broadcasters Association *et al.*, is included as Attachment A hereto and incorporated by reference herein.

including but not limited to issues/programs lists. Note that the entire broadcast industry – consisting of approximately 12,000-15,000 stations – has gone through at least three renewal cycles since 1986, meaning that the Commission has processed approximately 40,000 renewal applications during that time. And yet, the availability of local public inspection file materials has had no perceptible effect on that process. We believe that the same holds true for the period prior to 1986 as well – we mention 1986 only because that's the year in which the current version of the local public inspection file requirements was adopted.

In some rare cases – numbering possibly in the dozens, *i.e.*, an infinitesimal fraction of the tens of thousands of renewal applications filed – petitioners over the years have occasionally sought the denial of license renewals based on, *inter alia*, information derived from local public inspection files (information including, for example, issues/programs lists). But the Commission has routinely rejected such arguments, observing, for example, that

> the FCC is prohibited by Section 326 of the Act from censoring programs or from interfering with freedom of expression in broadcasting. The choice of what is or is not to be covered in the presentation of broadcast news is a matter committed to the licensee's good faith discretion.

Victoria Strange, 22 FCC Rcd 12846 (Video Division 2007). In other words, even when programming-related materials presumably drawn from local public inspection files have been relied on in petitions and the like filed with the Commission, those materials cannot be said to have advanced the Commission's functions because the Commission is prohibited, by Section 326 of the Communications Act, from interfering with each licensee's own editorial judgment, as the Commission itself must recognize.

The local public inspection file rule in general, and the issues/programs list requirement in particular, were essentially based on a prediction by the Commission that those regulations would promote informed public participation in the license renewal process. The available

historical record indicates that that prediction was simply not correct. The public has chosen, for whatever reason, not to interpose objections to the vast majority – probably greater than 99% – of all renewal applications since 1986, when the current version of the issues/programs list requirement was adopted.

Because of that, the Commission cannot demonstrate *any* "actual use" that it "has made of the information" available as a result of the Collection. But the Commission is statutorily required to make precisely such a demonstration. *See* 44 U.S.C. §3507(h)(1)(B); *see also* OMB Form 83i, page 6 ("indicate the ***actual use the agency has made*** of the information received from the current collection" (emphasis added)).

The Collection is, after all, a request for an extension of a previously granted approval. Extension requests are addressed separately in the PRA because they are inherently different from initial requests. In an initial request, the agency normally has no track record to support its claim that the proposed information collection will be necessary. But in the context of an extension request, the agency should be able to demonstrate that the information collection has in fact used the information, and that the information collection has in fact been necessary. If the agency cannot make that demonstration, then, logically, no extension is warranted.

Fletcher Heald, on behalf of a number of commenters, pointed this out in comments to the Commission relative to the Collection. *See, e.g.*, Comments of the Alaska Broadcasters Association *et al.* at, *e.g.*, 4-6. In its Supporting Statement to OMB the Commission does not deny the assertion that the Commission has not in fact used any of the information available as a result of the local public inspection file requirement. Nor does the Commission rebut that assertion by pointing to specific situations or ways in which the Commission has in fact used such information. Rather, the FCC again observes merely that the Commission itself "does not

routinely monitor" broadcast station performance, relying instead on audience members "to provide information". But if audience members did provide such information obtained from public inspection files – and that information proved even arguably essential to the agency's regulatory activities – the Commission should be able to prove that. In its Supporting Statement the Commission does not even try to prove it – because, Fletcher Heald submits, the Commission cannot prove it.

The FCC's Supporting Statement also cites to various comments filed in support of preserving the local public inspection file requirement. FCC Supporting Statement at 11. None of those comments satisfies the statutory mandate that the agency show how it "has used" the information. At most those comments (as summarized by the Commission) reflect the same inchoate aspirations described by the Commission. But the FCC's comments most certainly do ***not*** refer to ***any*** situations in which those aspirations were ever realized in any discernible way. As noted above, the Commission (and its supporting commenters) have had tens of thousands of license renewal opportunities since 1986 in which to utilize the local public inspection file in some concrete manner – ***if***, that is, the local public inspection file requirement had any actual regulatory effect. And yet the record as presented by the Commission and the requirement's supporters is barren of even a single case in which the availability of the local public inspection file came meaningfully into play before the Commission.

In its Supporting Statement the Commission alludes to the fact that "almost 500 individuals filed e-mail comments noting the importance of the public file requirement". FCC Supporting Statement at 11. The Commission does not describe those e-mail comments in any greater detail. Since all those comments are part of the record herein, however, OMB can review them itself. Fletcher Heald urges OMB to do so. The vast majority of those comments –

probably in excess of 470 – are brief, identical (or near-identical), cookie-cutter comments that provide no evidence at all that the FCC has ever put to any use information obtained through the public inspection file requirement. And while they do technically express support for the preservation of the local public inspection file rule, none of those comments describes any way in which the Commission could be said to have used that rule.

That is especially true of the 470 or so cookie-cutter email comments. A Google search indicates that the source of those comments was apparently a website set up by two communications-related unions concerned that elimination of the public inspection file "is certain to result in more job losses for [union] members". *See* http://action.cwa-union.org/c/797/p/dia/action/public/?action_KEY=2291 (visited September 14, 2011). A "screen grab" of that page is included as Attachment B hereto. While the unions are certainly free to set up such a site to advance their members' interests by facilitating the mass filing of identical comments, the mere fact that they have done so does ***not*** establish that the FCC has ever in fact used information obtained as a result of the public inspection file requirement. Indeed, since the primary goal of the unions' email-writing campaign appears to have been the preservation of jobs rather than the continued local availability of broadcast licensee records for any regulatory purpose, the vast majority of the supporting comments received by the Commission fall well short of affording the Commission any real support at all.

The PRA places on the agency a very specific burden: to show "how the agency has used the information it has collected". 44 U.S.C. §3507(h)(1). The FCC has failed to meet that burden. There is absolutely no evidence that the FCC has in fact used any information made available as a result of the local public inspection file. In the absence of such evidence, the FCC's Collection must be dismissed or denied. OMB is statutorily barred from approving any

information collection unless that collection is "***necessary*** for the proper performance of the functions of the agency" proposing the collection. 44 U.S.C. §3508 (emphasis added). That imposes an extraordinarily rigorous standard on agency information collections. Such collections must not simply be nice ideas that might come in handy some day; rather, such collections must be shown to be ***necessary***.

Since the FCC has not provided *any* evidence that it has *ever* in fact used the information made available through the local public inspection file requirement for *any* purpose, it is clear that the record presently before OMB cannot support a determination that that requirement is "necessary for the proper performance" of the FCC's functions. Accordingly, the Commission's request must be dismissed or denied.

Respectfully submitted,

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September 15, 2011

ATTACHMENT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

COMMENTS IN RESPONSE TO
"NOTICE OF PUBLIC INFORMATION COLLECTION(S) BEING REVIEWED
BY THE FEDERAL COMMUNICATIONS COMMISSION"
76 FED. REG. 21739 (APRIL 18, 2011)
(ERRATUM)

By "Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission" ("*Notice*"), 76 Fed. Reg. 21739, April 18, 2011, the Commission has requested comments relative to the local public inspection file rules (47 C.F.R. §§73.3526 and 73.3527). In particular, the Commission has invited comments addressing, *inter alia*:

> Whether [those rules are] necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;
>
> the accuracy of the Commission's estimate of the burden those rules impose on licensees; and
>
> ways to minimize the burden of [those rules] on [broadcast licensees subject to them], including the use of automated collection techniques or other forms of information technology.

Notice, 76 Fed. Reg. 21739, April 18, 2011. The following comments in response to that request are hereby submitted on behalf of the following entities which are either broadcast licensees or associations of broadcast licensees:

Alaska Broadcasters Association
Arkansas Broadcasters Association
Bott Broadcasting Company
Bott Broadcasting Company—Tennessee
Bott Communications, Inc.
Calvary Chapel of Albuquerque, Inc.
Catamount Broadcasting of Chico-Redding, Inc.
Christian Broadcasting System, Ltd.
Community Broadcasting, Inc.
FM Idaho Co., Inc.

GHB of Waxhaw, Inc.
GHB Radio, Inc.
Jackson Broadcasting LLC
Lazer Broadcasting Corporation
Liberty University
Locally Owned Radio, Inc.
Louisiana Association of Broadcasters
Metro Broadcasters-Texas, Inc.
Mississippi Association of Broadcasters
Montclair Communications, Inc.
New Mexico Broadcasters Association
PMB Broadcasting, LLC
Puerto Rico Radio Broadcasters Association
Richard P. Bott, II
Sinclair TeleCable, Inc.
Statesville Family Radio Corporation
Urban Radio Communications, LLC
Virginia Broadcasting Corporation
WEAM Quality Radio, Inc.
Weeks Broadcasting, Inc.
WHVN, Inc.
WMGY Radio, Inc.
WNAP, Inc.
WPW Broadcasting, Inc.
WTIX, Inc.
WYZE Radio, Inc.

I. The local public inspection file rules are not necessary for the proper performance of the Commission's functions.

The public inspection file obligation was first adopted by the Commission in 1965. *Report and Order in Docket No. 14864,* 38 FCC 622, 4 R.R. 2d 913, 1664 (1965), *recon. granted in part and denied in part* 1 FCC2d 921, 6 R.R. 2d 1527 (1965). Its purpose was then said to be to "make information to which the public already has a right more readily available, so that the public will be encouraged to play a more active part in dialogue with broadcast licensees." *Id.* 4 R.R. 2d at 1667.

Over the ensuing decades the public file requirement was modified on a number of occasions, perhaps most notably in connection with the Commission's deregulation of broadcast

radio and television in the 1980s. *E.g.*, *Deregulation of Radio*, 84 FCC 2d 968 (1981), *recon. granted in part*, 87 FCC2d 797 (1981); *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 FCC2d 1076, 1107-11 (1984). Those changes imposed a new requirement on broadcasters – *i.e.*, the need to include in their public inspection files lists ("issues/programs lists") of (a) issues to which the broadcaster gave significant treatment and (b) the programming that provided that treatment.

In its original form, the issues/programs list requirement entailed the preparation of lists *annually*, with no more than ten issues listed. Upon initial review, the U.S. Court of Appeals for the D.C. Circuit remanded the portion of the *Radio Deregulation* order relating to the issues/programs lists. *Office of Communication of the United Church of Christ v. FCC ("UCC III")*, 707 F.2d 1413, 1438-43 (D.C. Cir. 1983). The Court was particularly concerned that the issues/programs lists – which were adopted in lieu of extensive program logging requirements – would not provide sufficient information to potential petitioners seeking to deny license renewals.[1]

On remand, the Commission modified the issues/programs list requirement in response to the Court's concerns, but on further review, the Court remained dissatisfied. *Office of Communication of the United Church of Christ v. FCC ("UCC IV")*, 779 F.2d 702 (D.C. Cir. 1985). Under the revised regimen, the lists were to be compiled on a quarterly basis, and the initial maximum of ten issues was eliminated. Again, the Court acknowledged the Commission's

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[1] *See, e.g.*, 707 F.2d at 1441 (". . . A citizen seeking to support his petition to deny based on a station's inadequate non-entertainment programming would now find very little information of any value in the station's public file. . . . Such a dearth of information is hardly conducive to encouraging the public participation envisioned by the Congress and by this court as essential to the formulation of an informed regulatory policy.")

"goal [of] public participation in the license renewal process", but expressed doubt about whether the modified issues/programs list requirement would provide would-be petitioners an adequate basis on which to make a prima facie case in their petitions. The Court vacated and remanded the issues/programs list yet again. *UCC IV*, *supra*.

On second remand, in response to the Court's further criticisms the Commission again modified the requirement essentially to its current form. *Deregulation of Radio*, 104 FCC2d 505 (1986). In the Commission's view, the re-revised version of the requirement "give[s] the public substantial and sufficient information about a station's issue responsive programming to determine whether a station has fulfilled its programming obligation." *Id.* at 506.

The issues/programs lists are the primary materials in stations' local public inspection files that are not available elsewhere. (*See* Section III, below, for discussion of general availability of other materials required to be maintained in local public inspection files.) As is apparent from the foregoing discussion, the regulatory purpose underlying the public file rule generally, and the issues/programs list requirement in particular, is the encouragement of "public participation in the license renewal process" and an active "dialogue" between the public and broadcasters.[2]

There is no evidence that the public file rules – or the issues/programs lists component of those rules – currently have, or have ever had, ANY effect on public participation in the license renewal process or the encouragement of any "dialogue".

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[2] *See also, e.g., Tom Struhar*, 22 FCC Rcd 6568 (Audio Division 2007) (the public file requirement "serves the important purpose of facilitating citizen monitoring of a station's operations and public interest performance and fostering community involvement with local stations").

To the best of our knowledge, no broadcast license renewal has been denied since 1986 (*i.e.*, the year in which the current version of the issues/programs list requirement was adopted) based on information obtained from a licensee's public file, including but not limited to issues/programs lists. Note that the entire broadcast industry – consisting of approximately 12,000-15,000 stations – has gone through at least three renewal cycles since 1986, meaning that the Commission has processed approximately 40,000 renewal applications during that time. And yet, the availability of public file materials, including issues/programs lists, has had no perceptible effect on that process.

In some rare cases – numbering possibly in the dozens, *i.e.*, an infinitesimal fraction of the tens of thousands of renewal applications filed – petitioners over the years have occasionally sought the denial of license renewals based on, *inter alia*, information derived from issues/programs lists. But the Commission has routinely rejected such arguments, observing, for example, that

> the FCC is prohibited by Section 326 of the Act from censoring programs or from interfering with freedom of expression in broadcasting. The choice of what is or is not to be covered in the presentation of broadcast news is a matter committed to the licensee's good faith discretion.

Victoria Strange, 22 FCC Rcd 12846 (Video Division 2007). In other words, even when issues/programs lists have been relied on, those lists cannot be said to advance the Commission's functions because the Commission is prohibited, by Section 326 of the Communications Act, from interfering with each licensee's own editorial judgment, as the Commission itself must recognize.

As demonstrated above, the public file rule in general, and the issues/programs list requirement in particular, were essentially based on a prediction by the Commission that those

regulations would promote informed public participation in the license renewal process. The available historical record indicates that that prediction was simply not correct.

There is no reason to believe that the information made available by those rules is in any way inadequate. Indeed, the Commission revised the issues/programs list requirement not once, but twice, enhancing the contents of those lists in response to judicial criticisms. The resulting requirement, presumably satisfactory to both the Commission and the Court, has been in place for a quarter of a century – plenty of time within which to identify any possible need for further changes to the requirement. No such changes have been effected.

And yet it appears that the public has chosen, for whatever reason, not to interpose objections to the vast majority – probably greater than 99% – of all renewal applications since 1986, when the current version of the issues/programs list requirement was adopted.

It is well-established that changes in factual and legal circumstances may impose upon the agency an obligation to reconsider a settled policy or explain its failure to do so. *See Bechtel v. FCC* ("*Bechtel I*"), 957 F.2d 873 (D.C. Cir. 1992). The *Bechtel* court observed that the latitude ordinarily accorded to the Commission to make predictive judgments carries with it "a correlative duty to evaluate its policies over time to ascertain whether they work – that is, whether they actually produce the benefits the Commission originally predicted they would." *See Bechtel v. FCC* ("*Bechtel II*"), 10 F.3d 875 (D.C. Cir. 1993), *citing Bechtel I.* The Commission here has had more than four decades' worth of experience on which to assess the utility of the public file rule generally – and more than 25 years' experience to assess the issues/programs list requirement specifically. It has declined to do so.[3]

[3] The Commission's resistance to examining the actual utility of the public file rule is striking, since a petition for rulemaking filed more than five years ago specifically questions the utility of the public file rule and asserts that few, if any, members of the public ever even ask to review

(Footnote continued on next page)

The public file situation is factually very similar to the question presented in *Bechtel*. At issue there was the Commission's comparative "integration" policy. As the Court observed, "[d]espite its twenty-eight years of experience with th[at] policy, the Commission ha[d] accumulated no evidence to indicate that it achieves even one of the benefits that the Commission attributes to it. . . . There comes a time when reliance on unverified predictions begins to look a bit threadbare." Here, the Commission has had more than 40 years of experience with the public file rule, and 25 years with the issues/programs list. Those requirements, too, are looking more than a bit threadbare.

Since the Commission has failed to re-evaluate the utility of its public file rule and assess the validity (if any) of the predictions underlying that rule, the Commission is not in a position to claim that the rule is "necessary for the proper performance of the [Commission's] functions". And, since the historical record establishes that information obtained from public files has never factored meaningfully into the Commission's licensing decisions, the Commission cannot now say that the information required to be maintained in local public files has ***any*** practical utility at all.

(Footnote continued from preceding page)
most stations' public files. *See* Petition for Rulemaking filed by David Tillotson, RM-11332 (filed January 11, 2006). The Commission has taken no action on that petition.

Mr. Tillotson's assertion that members of the public rarely review stations' public files is consistent with reports which the undersigned (along with virtually all of the undersigned's colleagues) has consistently received from a wide range of broadcasters over the course of more than three decades. That raises the obvious question: if members of the public don't review the file, what purpose is served by requiring the file to be maintained? But even if, contrary to the conventional wisdom, members of the public turn out to have flocked to stations' public files in droves, the fact still remains that the Commission can point to no evidence whatsoever that those visits have had any effect on the Commission's licensing activities for decades. In other words, the public file rule cannot be said to be necessary for the performance of the Commission's functions.

II. The accuracy of the Commission's estimate of the burden the public file rules impose on licensees cannot be assessed.

The Commission's *Notice* provides the following burden estimates:

> *Estimated Time per Response:* 2.5–109 hours
>
> *Total Annual Burden:* 1,831,706.
>
> *Total Annual Cost:* None.

No explanation of those estimates is provided. With all due respect, it is impossible to comment on such nebulous, unexplained claims – except to point out that it is beyond irrational to assert that an endeavor that requires as much as 109 hours (per week? per year? – the *Notice* does not say) and imposes a burden of nearly 2,000,000 (again, the *Notice* fails to specify what units might be involved, but it's safe to say that nearly 2,000,000 is a lot of anything) entails a "total annual cost" of "none".

In fact, the maintenance of a local public file entails significant costs in terms of personnel and record-keeping. Since the Commission has failed even to offer a hint as to the basis for its contrary claim that no cost at all is involved, and since that claim is in any event completely counterintuitive, at a bare minimum it is correct to say that the Commission's estimate is wildly inaccurate and manifestly inadequate.

III. While the public file rules are not in any event necessary to the functions of the Commission, there are ways to reduce the burden of those rules.

As discussed above, there is absolutely no evidence that the public file rules are necessary to the proper performance of the Commission's functions. Accordingly, they should be eliminated as contrary to the thrust of the Paperwork Reduction Act. If, for whatever reason, the Commission were to attempt to re-craft the rules, however, a significant number of the obligations imposed by them can and should be eliminated because the materials required to be

maintained in the public file ***are already readily available on the Commission's website.*** The public file rules require stations to maintain in those files copies of all applications, authorizations and Ownership Reports, as well as a copy of the Commission's publication, "The Public and Broadcasting". All of those materials, however, may be obtained from the Commission's website which, it bears noting, is currently being upgraded apparently so as to be even more accessible than has previously been the case. It makes no sense to require licensees to maintain paper copies of materials that are freely available on-line.

Respectfully submitted,

/s/ Harry F. Cole
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Counsel for the Commenting Parties Listed Above

Original filed: June 17, 2011
Erratum filed: June 20, 2011

ATTACHMENT B

FCC Change Will Result in Job Loss for NABET-CWA Members

The FCC is asking if it should end a requirement that is certain to result in more job losses for NABET-CWA members. We need to let the FCC know the proposal to end the required public inspection files is bad for jobs and the public. The FCC licenses airwaves to broadcasters and the public inspection file allows citizens to monitor broadcasters and ensure they are upholding the requirements of their licenses.

The FCC is seeking comments about the elimination of the public inspection files and NABET-CWA members need to make our voices heard.

Use our form below to send your comments directly to the FCC.

Note: We will also submit your comments to be part of the public record at the FCC.

Subject: PRA Comment on public file

Your Letter:

The FCC should maintain its current requirements for broadcasters to maintain a local public inspection file. The public inspection file contains information about stations' programming, ownership structure, and compliance with FCC rules and regulations that is critical to public and FCC oversight of broadcaster performance.

The FCC depends on viewers and listeners to provide information about whether stations are meeting their public interest obligations to local communities. In order for citizens to engage with their local stations or to file complaints with the FCC, they need access to information about broadcast stations' activities and practices.

First Name*

Last Name*

Email*

Street*

Street 2

City*

State/Province*

Select a state

Zip/Postal Code*

Send Your Message

NABET-CWA • 501 3rd Street NW • Washington, DC 20001 • 202-434-1100