

**Before the
Office of Management and Budget
Washington, D.C. 20503**

Notice of Information Collections)
Being Submitted for Review and Approval) OMB Control Nos. 3060-0214, 3060-0174
To the Office of Management and Budget)

To: Nicholas A. Fraser, Office of Management and Budget
 by e-mail to Nicholas_A._Fraser@omb.eop.gov

 Cathy Williams, Federal Communications Commission
 by e-mail to Cathy.Williams@fcc.gov and PRA@fcc.gov

**JOINT COMMENTS OF THE OHIO ASSOCIATION OF BROADCASTERS,
VIRGINIA ASSOCIATION OF BROADCASTERS, AND NORTH CAROLINA
ASSOCIATION OF BROADCASTERS REGARDING TELEVISION STATION
ONLINE PUBLIC INSPECTION FILES IN MM DOCKET NOS. 00-168 AND 00-44**

The Ohio Association of Broadcasters, Virginia Association of Broadcasters, and North Carolina Association of Broadcasters (collectively, the “Associations”), through their attorneys, hereby jointly file these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Information Collections Being Submitted for Review and Approval to the Office of Management and Budget,¹ in connection with the online public file rules adopted by the FCC in its April 27, 2012, Second Report and Order in *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, FCC 12-44, 77 Fed. Reg. 27631 (May 11, 2012) (the “*Second Report and Order*”).

¹ Notice of Information Collections Being Submitted for Review and Approval to the Office of Management and Budget, 77 Fed. Reg. 27772 (May 11, 2012).

The Associations are non-profit organizations representing the interests of broadcasters in their respective states.²

The Associations respectfully disagree with certain of the “burden” conclusions drawn by the Commission in the *Second Report and Order* and in its May 2012 Supporting Statement submitted to OMB,³ and respectfully request that OMB decline to approve the information collection adopted therein or, alternatively, defer consideration of the information collection until such time as the FCC makes available for public review, evaluation, and comment the online system(s) and interface(s) that will be used for the uploading, maintaining, and viewing of television station online public inspection files. Indeed, the Paperwork Reduction Act of 1995⁴ (the “PRA”) requires no less.

I. A New Provision in Section 73.3526(b)(4) of the FCC’s Rules Imposes Substantial Burdens on Stations But Is Not Addressed By the FCC in Its Burden Analysis

The Commission’s analysis of the burden in the *Second Report and Order* and in its Supporting Statement is faulty because it fails to take into account a significant provision of the new rules, discussion of which was elided in the *Second Report and Order* and in the Supporting Statement.

² OAB has 55 television members. VAB has 31 television members. NCAB has 36 television members. These members will be directly impacted by the FCC’s online public file requirements adopted in this proceeding and under consideration by OMB.

³ The FCC’s Supporting Statement submitted to OMB is available at: <http://www.reginfo.gov/public/do/DownloadDocument?documentID=322281&version=0>, and it will be referred to herein as the “Supporting Statement.”

⁴ 44 U.S.C. §§ 3501 *et. seq.*

The provision at issue is in Section 73.3526(b)(4) of the Commission's Rules, 47 C.F.R. § 73.3526(b)(4).⁵ Subsection (b)(4) begins by setting forth the Commission's responsibility for maintaining certain discrete portions of each television station's online public file:

The Commission will automatically link the following items to the electronic version of all licensee and applicant public inspection files, to the extent that the Commission has these items electronically: authorizations; applications; contour maps; ownership reports and related materials; portions of the Equal Employment Opportunity file held by the Commission; "The Public and Broadcasting"; Letters of Inquiry and other investigative information requests from the Commission, unless otherwise directed by the inquiry itself; Children's television programming reports; and DTV transition education reports.⁶

The penultimate sentence of that subsection, however, creates significant unacknowledged—and, therefore, unaccounted for—burdens:

In the event that the online public file does not reflect such required information, the licensee will be responsible for posting such material.⁷

This provision of Section 73.3526(b)(4)—which does not appear in the noncommercial station rule⁸—is a burden placed on commercial television stations that is not only ignored by the *Second Report and Order's* and Supporting Statement's analysis of the burden of the new rules,

⁵ See *Second Report and Order*, App. A (providing text of new rules).

⁶ 47 C.F.R. § 73.3526(b)(4).

⁷ *Second Report and Order*, App. A (setting forth the new text of Rule Section 73.3526(b)(4)).

⁸ Because this significant provision was not discussed in the *Second Report and Order*, it is unclear whether the omission in the noncommercial station rule (Section 73.3527) was intentional or inadvertent. The FCC's Erratum to the *Second Report and Order* released on May 7, 2012, did not address this issue. To the extent this provision will also apply to noncommercial television stations, appropriate notice has not been provided in order for such stations to evaluate the burden. To the extent this provision only applies to commercial television stations, the FCC has failed to provide any justification for imposing a significantly greater and disparate burden only on commercial stations.

but also swallows the FCC's responsibility to provide such material in each station's online public file and decisively shifts the burden right back to television stations.

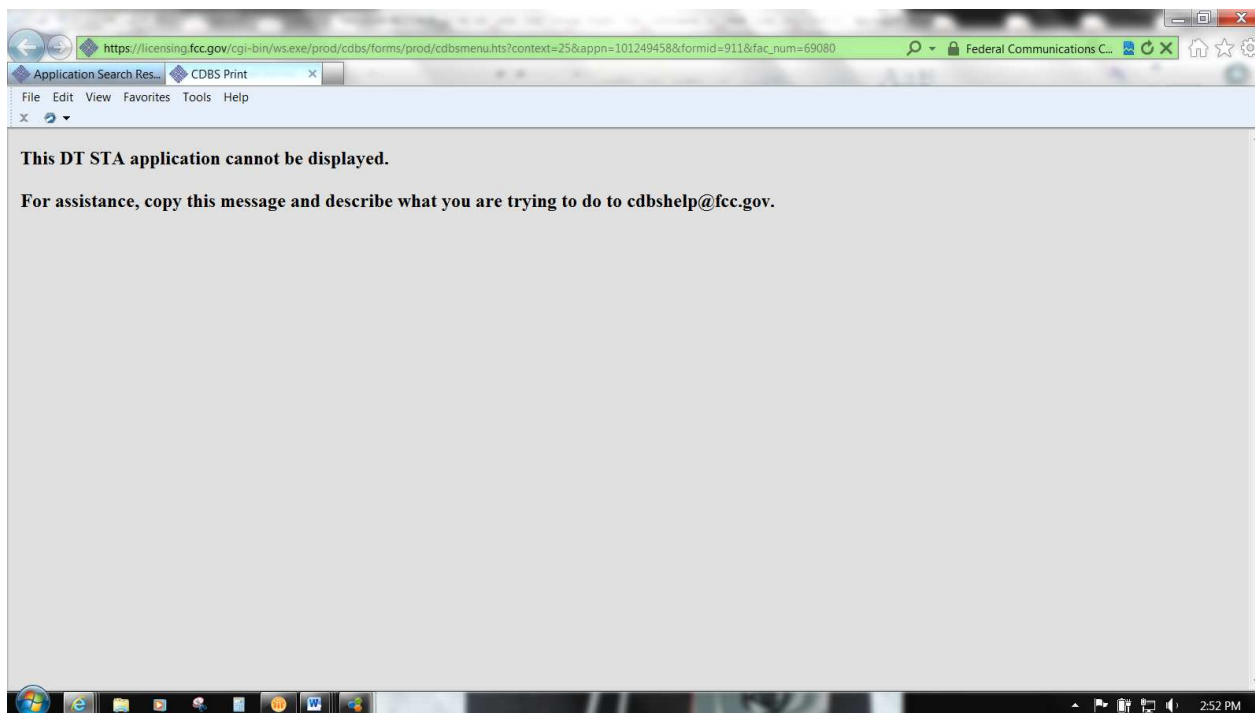
Thus, while the first part of Section 73.3526(b)(4) appears, at first glance, to relieve stations of the burden of maintaining several categories of public file documents by shifting that burden to the Commission—a point that is repeated throughout the *Second Report and Order*⁹—the last sentence of the subsection makes a 180 degree turn and puts the burden and responsibility squarely back on stations under penalty of financial forfeiture.¹⁰ The significance of this provision is that stations will be compelled—by law, prudence, and a commitment to serving the public interest—on a daily basis to review and possibly update their online public files to ensure that these FCC-provided documents do, in fact, appear in the online public file.

The burdens presented by this undiscussed portion of the new rules are significant and real, and the degree of panic station personnel would experience when they attempt in the online public file to access an application filed via the FCC's CDBS system only to see an image such as the one below cannot be overstated.¹¹

⁹ See *Second Report and Order*, ¶¶ 2, 11, 20, 68, 70, 74, 101, 103; see also Supporting Statement at 1-2.

¹⁰ See, e.g., 47 C.F.R. § 1.80 note (establishing base forfeiture of \$10,000 for violations of public inspection file rule).

¹¹ This image was made on June 5, 2012, when a member of the undersigned law firm attempted to retrieve a copy of a request for Special Temporary Authority filed electronically in the FCC's CDBS system by a North Carolina television station in 2008. While the application is no longer germane to that station's operations, it illustrates the issue.



Any station that experiences such an event will undoubtedly contact legal counsel and “spread the word” to educate and warn other stations about the potential for their public files to be similarly compromised and possibly found in violation of the FCC’s rules. And organizations like the Associations will alert all members to regularly check and re-check the FCC-provided portions of their online public files to ensure that no documents are missing or obscured or unavailable. This is not mere speculation—after all, the Commission routinely fines broadcast stations several thousands of dollars for imperfect public inspection files,¹² and stations will

¹² See, e.g., *Twenty-One Communications, Inc.*, Order on Review, FCC 08-33, 23 FCC Rcd 2436 (2008) (\$3,000 fine for three missing items); *KSBY Communications, Inc.*, Notice of Apparent Liability for Forfeiture, DA 08-1726, 23 FCC Rcd 11192 (MB 2008) (\$4,000 fine for three categories of missing items); *Simons Broadcasting, LP*, Notice of Apparent Liability for Forfeiture, DA 07-604, 22 FCC Rcd 2475 (MB 2007) (\$10,000 fine for one missing Children’s Television Programming Report, two missing issues/programs lists, and one missing ownership report); *Community Broadcasting, Inc.*, Forfeiture Order, DA 04-3558, 19 FCC Rcd 22502 (EB 2004) (\$2,000 fine for missing contour map and missing ownership report); see also *Quinn Broadcasting Inc.*, Notice of Apparent Liability for Forfeiture and Order, DA 12-831, 2012 WL 1942255 (EB May 25, 2012) (\$10,000 fine for seven missing issues/programs lists); *Mapleton*

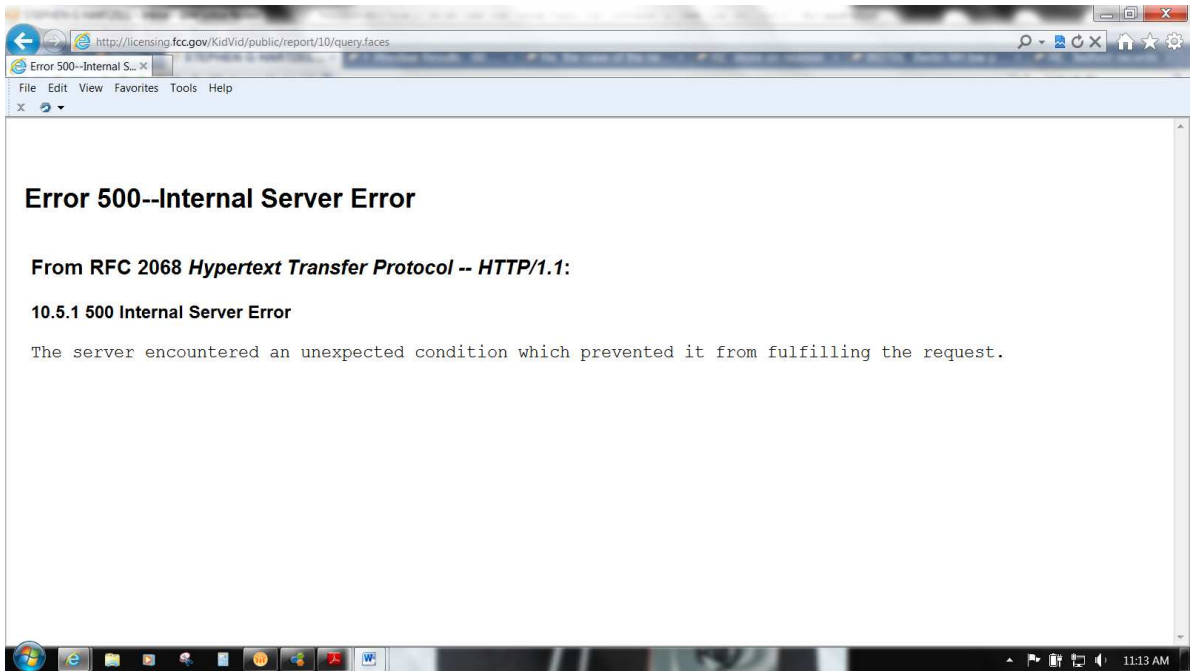
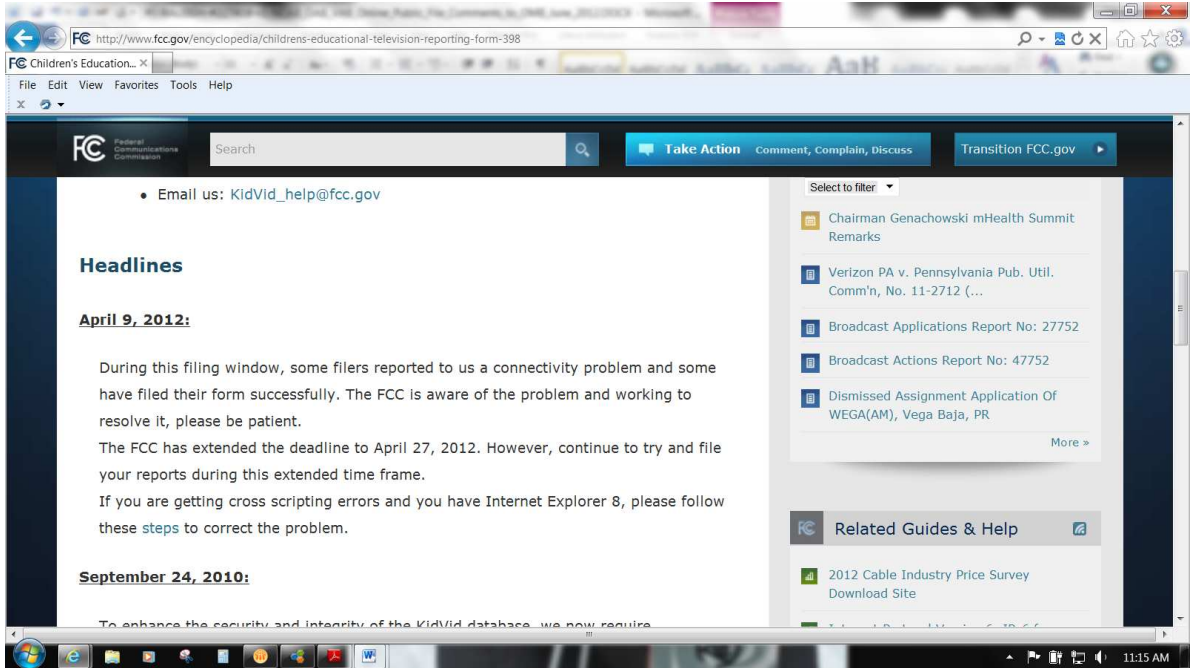
make diligent efforts to try to ensure the completeness of their online public files, especially those portions of the public file that are out of their direct control. But these burdens have not been accounted for, or even acknowledged, by the FCC.

The FCC's CDBS database and filing system is not the only system subject to imperfect performance. Stations have experienced issues with the FCC's Children's Television Programming Report ("KidVid") filing system as recently as April 2012.¹³ Those issues are reflected in the images immediately below.¹⁴

License of San Luis Obispo, LLC, Forfeiture Order, DA 12-608, 2012 WL 1377400 (EB Apr. 19, 2012) (\$10,000 fine for six missing issues/programs lists); *Pilot Media, LLC*, DA 11-809, 26 FCC Rcd 6573 (EB 2011) (\$4,000 fine for four missing issues/programs lists); *Pentecostal Temple Development Corp.*, Forfeiture Order, DA 09-1990, 24 FCC Rcd 11580, ¶ 10 (EB 2009) ("Recent cases have consistently assessed forfeitures of \$4,000 for missing two or more quarters of Issues/Programs lists.").

¹³ A legal assistant in the undersigned law firm contacted FCC Staff on June 5, 2012, to inquire whether the issues experienced in April 2012 with the KidVid filing system had been resolved. The FCC Staffer indicated that they have not yet been resolved, that the KidVid system may have to be moved to another server, and that an extension of the July 10, 2012, filing deadline for Children's Television Programming Reports may ultimately be under consideration. In light of this delay in addressing systemic issues with the KidVid filing system, the Associations are not sanguine about the Commission's pledges to "undertak[e] rigorous testing of the online public file to ensure a smooth user experience," or to provide "Commission staff . . . dedicated to assisting stations with any issues they may confront after implementation of the online public file." Supporting Statement at 15; *Second Report and Order*, ¶ 106. Of course, the time and effort required by stations to contact Commission staff for assistance with the online public file will represent additional undocumented and unaccounted for burdens.

¹⁴ These images were made on June 6, 2012, by a member of the undersigned law firm. The first image is self-explanatory, and the second image is a screen shot of an error message received when attempting to retrieve a filed Children's Television Programming Report from the KidVid database.



These problems illustrate imperfections in the FCC's online systems and interfaces¹⁵—imperfections that will be “passed through” to the online public files when the FCC provides those documents for each station's online public file—that will result in additional, unaccounted for burdens on stations.¹⁶ The burdens that will be created by such issues are at least two-fold: (1) the burden of “going behind” the Commission with regularity to ensure that all documents the Commission is supposed to be responsible for are actually displayed and viewable in the station's online public file, and (2) the burden of uploading the documents that the FCC has failed to effectively upload or link to (due to systemic imperfections in the FCC's various electronic filing systems) despite those documents being in electronic FCC databases. Neither of these burdens is referenced or evaluated by the FCC in the *Second Report and Order* or in the Supporting Statement. As a result, OMB cannot approve this information collection consistent with law.

¹⁵ It is highly relevant and instructive that CDBS and the KidVid filing system—both of which have been in operation for a decade or longer, *see, e.g., Mass Media Bureau Implements Mandatory Electronic Filing of FCC Forms 301, 314 and 315*, Public Notice, 16 FCC Rcd 3989 (2001); *FCC Announces Release of Electronic Form 398 Filing System*, Public Notice, 12 FCC Rcd 10334 (1997)—continue to experience significant, technical problems. The problem with accessing applications or other reports or documents such as those displayed in the screen shots above will not be cured by the Commission's plan to create the fail-over mirror backup of each online public file, *see Second Report and Order*, ¶ 94, because the issue with accessing such documents will stem from imperfections in the Commission's current databases and systems, such as CDBS and the KidVid filing system, and not from accessing the public files themselves.

¹⁶ For clarity, the Associations are not referring to the burden caused by the underlying reporting or filing requirement such as the requirement to file Children's Television Programming Reports on a quarterly basis. As observed by the FCC in the Supporting Statement, such burdens are not properly included in the online public file burden. *See* Supporting Statement at 4 (“[T]he burden estimates for creation and submission of these documents are calculated in other information collections. The burden estimates included in this information collection pertain only to making these items publicly available.”).

Instead, the FCC attempts to address all issues previously raised by commenters relating to its online systems by relying on “cloud computing.”¹⁷ But this is no answer for at least two reasons: First, as discussed above, the cloud-based online public files will apparently be drawing on documents that reside in other Commission databases and systems and any limitations on and burdens from accessing documents in those systems will be limitations on and burdens of the online public file system. Second, as discussed below, there has been no opportunity to evaluate the actual burdens associated with the actual system(s) and interface(s) that the Commission expects to implement for the online public files, cloud-based or otherwise.

II. Without Knowing How the Online Public File System(s) and Interface(s) Will Function and Appear, Accurate Estimates of the Relevant Burdens Remain Elusive

The *Second Report and Order* and Supporting Statement, in light of the FCC’s current online filing systems and databases, do not adequately address the potential burdens and concerns raised by commenters associated with the new online public file requirements. In fact, the Commission’s discussion of the system(s) that will be used for the online public file has made it difficult for both broadcasters and the Commission to forecast with a high degree of accuracy the nature and extent of the burdens that will be experienced by stations as they upload, maintain, and review their online public files with the degree of frequency, care, and caution that is compelled by the FCC’s revised rules. The National Association of Broadcasters (“NAB”) made precisely this point in its comments to the FCC, but the FCC rejected it.¹⁸

¹⁷ See *Second Report and Order*, ¶ 91; Supporting Statement at 12-13 (“The *Second Report and Order* also notes that the Commission has begun utilizing scalable cloud-based IT architecture solutions to enhance the agency’s capabilities, and will do so here as well.”).

¹⁸ See *Second Report and Order*, ¶ 104; Supporting Statement at 14-15.

Of great significance to the burden analysis are the concerns expressed by multiple commenters, including the Associations¹⁹—summarily dismissed by the FCC—relating to the FCC’s online ownership reporting system, which is part of the Consolidated Database System (“CDBS”):

We disagree with broadcasters who argue that their experiences trying to file the revised Form 323 ownership reports suggest a Commission-created database would suffer from implementation problems. These commenters represent that it can take hours to upload just one attachment to the revised Form 323, and that the political file contains similarly large documents. . . . We recognize problems stations have experienced uploading the revised Form 323 and are working to fix those problems. But we do not anticipate similar problems with respect to uploading the public file. The delays in the Form 323 uploading process stem from the time required in the current Form 323 filing application to validate the large spreadsheets that must be filed with Form 323, and the validation queuing process. Public file documentation will not be subject to the validation process that is required for the Form 323 spreadsheets, nor will we need to impose a similar queuing system necessitated by the validation process. Furthermore, Form 323 was launched and run on existing FCC infrastructure. Since then, the Commission has begun utilizing scalable cloud-based IT architecture solutions to enhance the agency’s capabilities. In particular, the Commission anticipates using for online public files the same scalable architecture that currently is being used successfully for the Customer Proprietary Network Information certification document filing system and the National Broadband Map.²⁰

Thus, the Commission observes that the same delays and problems that have plagued the ownership reporting system in CDBS will not be present in the online public file system. Yet, at the same time, the Commission observes that the process for the online public file system will be

¹⁹ See *Joint Comments of The North Carolina Association of Broadcasters, Ohio Association of Broadcasters, and Virginia Association of Broadcasters*, MM Docket Nos. 00-168, 00-44 (filed Dec. 22, 2011), Attachment, Declaration of Kim Eshleman (describing the burdensome nature of the FCC’s CDBS-based ownership reporting system).

²⁰ *Second Report and Order*, ¶ 91 (footnotes omitted).

“a process similar to uploading applications to CDBS – which licensees have been doing for more than ten years.”²¹

These pronouncements are directly relevant to OMB’s PRA evaluation. While the Commission assures the industry that none of the problems repeatedly experienced by broadcasters in CDBS will be present in the new online public file system(s) and interface(s), the *Second Report and Order* does not provide any relevant insight into precisely what the structure of the system will look like—which, to reiterate, impermissibly prevents all relevant parties from effectively evaluating the burdens by such a proposed system. It remains unclear, then, whether the FCC’s online public file system will involve CDBS or not and, if so, precisely how—this leaves the Associations and OMB to guess as to whether the online public file will be a creature of CDBS, or of some other system and interface.²² (It is not clear whether the FCC yet knows how the online public file system(s) and interface(s) will function or what they will look like.²³)

²¹ *Second Report and Order*, ¶ 106. The *Second Report and Order* is not entirely accurate in its description of the CDBS application process. Applications are not “uploaded to CDBS”; instead, electronic CDBS applications are accessed in a broadcast station’s CDBS account and each application contains fields that require data entry. Stations have the option, on an as-needed basis, to upload exhibits in PDF format into an application. The application (with or without exhibits) must then be validated by the CDBS system itself, after which (assuming a successful validation) it is ready to be filed by clicking a button. Stations do have 10 years of experience doing this, but stations do not have 10 years of experience uploading documents to, maintaining, reviewing, and culling documents from an online public file. The two processes appear to have little to do with each other. *But cf. Second Report and Order*, n.315 (“In order to upload information into its online public file, a station will need to log in with the same credentials used to file station applications and materials in CDBS.”).

²² *Cf. Supporting Statement* at 19 (“The Commission estimates that the initial outlay to *enhance the Consolidated Database System* [i.e., CDBS] and create the online public file database will be approximately \$500,000 . . .”).

²³ *See Second Report and Order*, ¶ 90 (“We *anticipate* being able to design an online public file that is highly available, scalable, cloud-based, and eliminates any user wait times associated with processing documents after upload.” (emphasis added)).

The online public file system either will or will not be part of CDBS. If it is part of CDBS, then the *Second Report and Order* and Supporting Statement do not adequately address the comments relating to the ownership reporting system. If it will not be part of CDBS, then what system(s) and interface(s) will be used? The FCC must reveal more about the online public file system(s) and interface(s)—beyond mere reference to “cloud computing”—so that the agency itself, television licensees, members of the public, and OMB may all understand and evaluate the burdens associated with and implicated by the system(s) and interface(s).

In addition, the FCC repeatedly states that the new online public file will use a “drag and drop” system.²⁴ Of course, “drag and drop” makes the whole process sound effortless and intuitive. But the “drag and drop” process—which has *never* been a feature of CDBS nor of the diverse and myriad other electronic filing systems routinely used by broadcasters (including the Media Bureau’s KidVid filing system, the Media Bureau’s Call Sign Reservation System, the Wireless Telecommunications Bureau’s Universal Licensing System (ULS) or Antenna Structure Registration System, or the International Bureau’s online filing system (IBFS))—actually includes more preparation and activity than mere dragging and dropping.

At a minimum, stations must first scan or otherwise prepare the relevant documents for uploading, they must check to be sure all pages are present, in the correct order, and not skewed or otherwise obscured as a result of the scanning process. Comparing two paper documents side-by-side (i.e., when photocopying a document for the paper public file) is very different and far less time consuming than comparing a paper document or original electronic file to a PDF or other electronic file that is being prepared for dragging and dropping. But the Commission takes no account of such burdens, using “buzz words” and terms such as “drag and drop” and “scalable

²⁴ *Second Report and Order*, ¶¶ 25, 30, 37, 61; *see also* Supporting Statement at 13.

cloud-based IT architecture solutions” as if the terms themselves provide an analysis and resolution of the burdens.

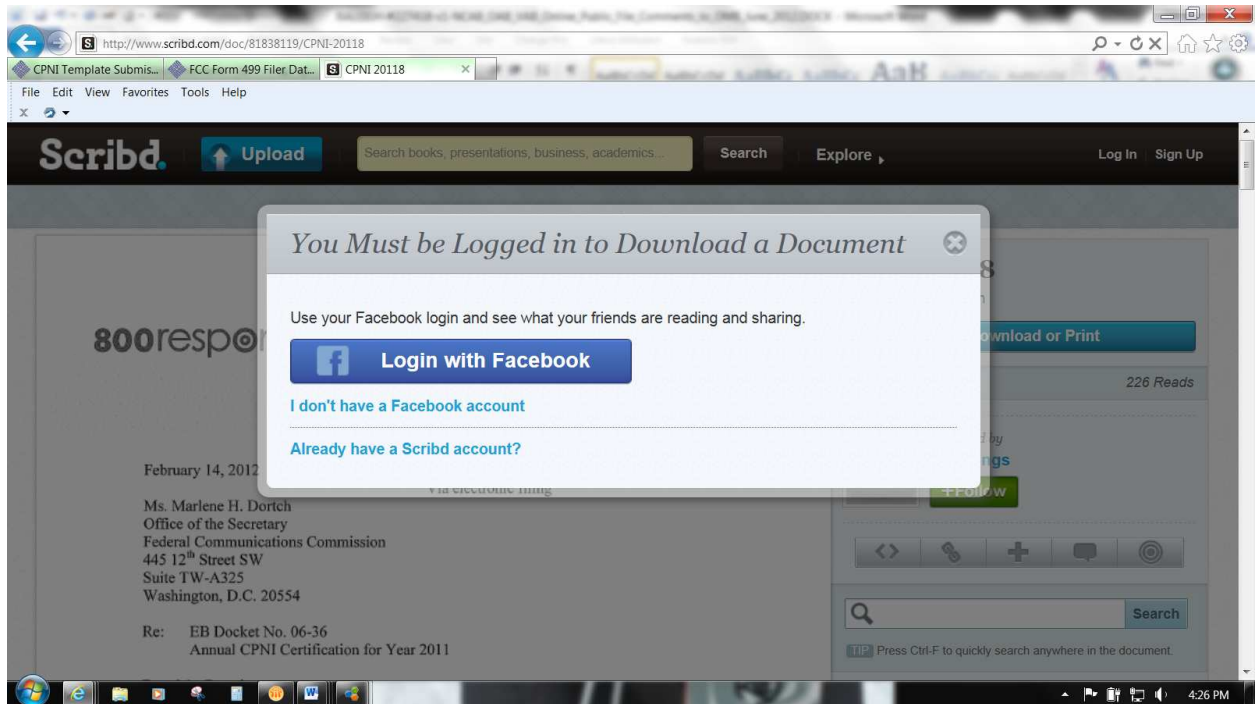
Moreover, the *Second Report and Order* makes much of two additional FCC databases:

[T]he Commission anticipates using for online public files the same scalable architecture that currently is being used successfully for the Customer Proprietary Network Information certification document filing system and the National Broadband Map.²⁵

Neither of those filing systems provides any insight into how the Commission made its PRA burden analysis or determination. Indeed, the National Broadband Map is a one-way application that permits users to obtain certain information regarding deployment of broadband nationwide—there appears to be no “upload” component to the National Broadband Map (other than for Commission Staff itself), and it provides no useful information whatsoever relating to the burdens implicated by the (unknown) online public filing system. The CPNI filing system fares no better in the analysis-of-burden department—if anything, the CPNI filing system is the poster child for how the Commission should *not* structure the online public file system and interface. Even a cursory exploration of that system reveals that public users (i.e., members of the public who wish to print or view complete CPNI filings) must subject themselves to the privacy policies and marketing practices of certain third-party commercial entities, namely Scribd and/or Facebook, as the image below reflects.²⁶

²⁵ *Second Report and Order*, ¶ 91 (citing <http://apps.fcc.gov/eb/CPNI/>; <http://broadbandmap.gov/>).

²⁶ This image was made when a member of the undersigned law firm visited the FCC’s CPNI filing system and attempted to print a complete copy of a CPNI filing on June 5, 2012.



The Commission’s current public file rule—involving paper public files—permits members of the public to obtain copies of public inspection file documents without revealing much more than their name; in fact, under the existing paper-based, public file rule, stations are prohibited from demanding information regarding the nature or identity of the organization (if any) that a member of the public represents. The CPNI filing system, on the other hand, requires members of the public to reveal a great deal of personal information and establish an account with Scribd or Facebook in order to print the PDF version of CPNI filings. This would implicate significant and different burdens—burdens that have not been addressed by the FCC—to the public than are currently implicated by the paper public file rules.²⁷

²⁷ Admittedly, the Associations do not know whether the FCC intends for its online public file system to be similar to the CPNI filing system—the FCC has not provided details and has rejected the NAB’s proposal to use a pilot program. But since the FCC held its CPNI filing system out as an example in the *Second Report and Order*, it is reasonable to assume that there will be some similarities between it and the online public file system.

Furthermore, the Commission’s commitment to “undertak[e] rigorous testing of the online public file to ensure a smooth user experience” and to “provide opportunity for user testing and education before stations are required to upload their online public files”²⁸ has it exactly backwards. The Commission cannot, consistent with the PRA, implement an online public file system without first tallying and justifying its burdens. Without first providing stations and other interested parties access to the system to test it—as through the use of a pilot program, as suggested by the NAB—the Commission cannot justify its (unknown) burdens to OMB. The answer provided to the NAB’s request to implement a pilot program to test the online public filing system was:

The Commission has been exploring for more than 10 years the best way to make broadcasters’ public files more accessible. A broad group of commercial and noncommercial broadcasters participated in every phase of the Commission’s proceeding. The Commission determined that a working group or pilot program is not necessary to ensure that the process of implementing an online public file is successful, and could unduly delay its implementation.²⁹

While it may be true that the FCC has been exploring accessibility of the public file for 10 years, the agency’s delay in proposing and adopting rules—and in evaluating all the burdens implicated by the new rules—cannot be cited, as a legal matter, as a rationale for short-circuiting the mandates of the PRA. Put another way, if ten years have already passed with no evidence of harm having befallen the public, any harm another year during a pilot program could cause would be minimal, especially when the upside would be a more accurate understanding of the burdens and a closer hewing to the mandates of the PRA.

²⁸ *Second Report and Order*, ¶ 106.

²⁹ *Second Report and Order*, ¶ 105; Supporting Statement at 14-15.

Finally, the FCC's Supporting Statement fails to provide "an explanation of how the burden was estimated"³⁰ and a "description of the method used to estimate [the] cost" of the online public file rules to the Federal government,³¹ and it also makes the patently false assertion that "[t]he changes adopted in the Second Report and Order involve automated, electronic collection techniques."³² As such, the FCC has failed to provide adequate information to OMB, and OMB is powerless to approve the information collection.

First, it is clear that the online public file involves very little, if any *automated* collection techniques. There is no plausible argument that any aspect of the series of tasks to log in to an electronic system, affirmatively upload—whether by "drag and drop" or otherwise—label and organize documents, repeatedly check to ensure Commission-provided documents are available, and cull outdated documents from the system is in any manner *automated*. To the contrary, these tasks *all* require active human participation, including review, deliberation, and physical action. The fact that electronic system(s) and interface(s) are being used does not render them *automated*. It appears that misconceptions about the degree of automation have led the agency to conclude that there is no appreciable burden.

Second, the only data the Supporting Statement provides about how the burden was estimated is a series of calculations by which the FCC multiplies the purported "Number of Respondents/Responses" by each "Respondent's Hourly Burden."³³ But the FCC provides no insight or analysis into the derivation of the numbers of hours in the "Respondent's Hourly

³⁰ Supporting Statement at 16; *see also* 5 C.F.R. § 1320.8 and Paperwork Reduction Act Submission Form, Supporting Statement for Paperwork Reduction Act Submissions (OMB 83-I) at 6, available at <http://www.whitehouse.gov/sites/default/files/omb/inforeg/83i-fill.pdf> ("OMB 83-I Form").

³¹ Supporting Statement at 19; *see also* OMB 83-I Form at 7.

³² Supporting Statement at 8.

³³ *See* Supporting Statement at 16-18 (providing tables of calculations).

Burden” column. Fatally, it is precisely the number of hours for each respondent that comprises the relevant burden. The FCC’s hourly estimates are devoid of substantive analysis.³⁴ Unlike television broadcasters who filed comments containing burden estimates, the FCC is not in the business of actually operating television stations and maintaining public files, and its extremely limited experience with the mere photocopying of the public files of a mere eight television stations in a single market certainly does not warrant the substitution of its judgment for that of the multiple stations that filed comments regarding the potential burden. The PRA requires the FCC to provide a substantive explanation of how it estimated the burden—this the FCC has failed to do.³⁵

Third, the Supporting Statement utterly fails to provide “a description of the method used to estimate [the] cost [of the new rules to the Federal government], which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), any other expenses that would not have been incurred without this collection of information.”³⁶ The FCC’s response is one sentence:

The Commission estimates that the initial outlay to enhance the Consolidated Database System and create the online public file database will be approximately \$500,000, and that annual costs

³⁴ See *Second Report and Order*, ¶¶ 24-32.

³⁵ Observations made in the *Second Report and Order* that commenters’ estimated burdens are inaccurate and should be disregarded because they also included burdens relating to rules that were, ultimately, not adopted cannot be the end of the matter. See *Second Report and Order*, ¶ 31. Commenters tailored their burden analysis and information to the rules that were proposed. The Commission’s decision not to adopt all of the rules it originally proposed does, of course, affect the degree of burden, but it does not relieve the agency of its obligation to make an appropriate analysis of all the burdens of the rules that were, in fact, adopted. In other words, the fact that the burden of the adopted rules may be less than the burden of the proposed rules does not end the burden inquiry.

³⁶ Supporting Statement at 19; see also OMB 83-I Form at 7.

will be approximately 30 percent of the initial costs, or \$150,000, for IT operations and general attributable overhead.³⁷

Fatally, these “facts” are wholly unsupported by any “description of the method used” to estimate them—the agency has failed to make its required showing. Given the obvious uncertainty (as discussed elsewhere in these comments) of what the online public file system(s) and interface(s) will look like—let alone how they will operate in practice and how much Commission Staff support will be required to maintain the online public files—it would be nearly impossible for the FCC to actually provide the required information. This, again, underscores the need for the FCC to launch its online public file system as a pilot program and for OMB to defer consideration of the information collection until after the pilot program renders evidence of the actual burdens implicated by the new rules.

Conclusion

For the above-stated reasons OMB should decline to approve the information collection adopted by the FCC in the *Second Report and Order* or, alternatively, defer consideration of the information collection until such time as the FCC makes available for inspection, evaluation, and comment its proposed online public file system and electronic interface.

³⁷ Supporting Statement at 19.

June 11, 2012

Respectfully submitted,

**OHIO ASSOCIATION OF
BROADCASTERS**

**VIRGINIA ASSOCIATION OF
BROADCASTERS**

**NORTH CAROLINA ASSOCIATION OF
BROADCASTERS**

/s/ Mark J. Prak

Wade H. Hargrove

Mark J. Prak

Marcus W. Trathen

Stephen Hartzell

BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, L.L.P.
Wells Fargo Capitol Center, Suite 1600
150 Fayetteville Street (27601)
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304

Their Attorneys