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VIA: E-MAIL:

Mr. Nicholas A. Fraser
Information Policy Branch
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Executive Office of the President
Washington, DC 20503
Nicholas_A_Fraser@omb.eop.gov

Ms. Cathy Williams
Office of Managing Director
Federal Communications
Commission
445 12th Street SW
Washington, DC 20554
PRA@fcc.gov and
Cathy.Williams@fcc.gov

Re: OMB Control No.: 3060-1207 FCC Online Public File

Dear Mr. Fraser & Ms. Williams:

Broadcast1Source, by its counsel, respectfully submits these comments regarding the Report & Order in Federal Communications Commission Docket 14-127, identified as the above referenced OMB Control Number. These comments respond to the information collection notice and request for comments published in the *Federal Register* Friday, February 26, 2016. The Report & Order in Docket 14-127 expands the FCC online public file obligations to cable and satellite TV operators and to broadcast and satellite radio licensees. Broadcast1Source has no objection to the larger goal of placing the local public file of such licensees online. Broadcast1Source's comments are concerned only with the expansion to terrestrial broadcast radio licensees and cable television, and are limited to the issues directly related to the Paperwork Reduction Act goal of reducing and limiting the burden imposed upon U.S. regulated entities, and in particular, U.S. small business regulated entities.

In the Report and Order, the Commission notes several times the special concern of various commenters regarding the potential burden of moving the broadcast radio local public file away from the local station and to a centrally located, internet supported, cloud-based location maintained by the FCC itself. These commenters emphasized, and supported with data, the potential burden that would be imposed upon small business operators of local community radio broadcasting stations. The Commission cited these concerns at paragraph 81 of its Report and Order, stating:

Most radio commenters focus in particular on the impact on small stations, including small NCE stations, of including broadcast radio stations in the online public file. In general, these commenters argue that many radio stations are very small with limited financial and other resources, face constant economic pressure, and would find a transition to the online file very burdensome.

Broadcast1Source is quite familiar with the impact of regulation on small business broadcasters. Broadcast1Source is itself a small business entity initially created to simplify broadcaster rule compliance and ease the recordkeeping requirements of FCC rules. Since 2002, it has performed that function for broadcasters in connection with their Equal Employment Opportunity record keeping and documentation obligations. The service was expanded to offer electronic public inspection file management (“ePIF”) for broadcasters to achieve ease of compliance in anticipation of the FCC requirement to place television and now radio station public files online with the FCC. When the FCC first adopted the online public file requirement for television, ePIF was modified and enhanced to work with the FCC folders as then adopted. Recognizing that small and medium sized cable television operators face similar issues as broadcasters, but on a much larger scale, particularly with regard to EEO employment compliance, it has recently announced the launch of Cable1Source, and will soon be providing the same compliance and record keeping services for cable operators.¹

The FCC, too, has recognized the potential burden of its regulations on small business broadcasters and welcomed the introduction of services such as Broadcast1Source. In its Second Report and Order adopting the television online public file, the FCC stated that it would encourage and accommodate “third-party web-based hosting” services [that] would allow for greater efficiencies” and instructed the FCC staff to cooperate with industry as it develops specifications and to incorporate them in the Commission’s online system. The staff has also been delegated authority to design, add to, or adjust the features of the online public file, as needed.²

Thus, the Commission recognized and attempted to accommodate those regulated small businesses that lack the necessary resources to comply efficiently with the Commission’s new online, internet-based and extensive public filing requirements.

¹ See: Cable1Source Readying Employment Compliance Service for MVPDs, *MultiChannel News*, March 17, 2016 <http://www.multichannel.com/blog/i-was-saying/cable1source-readying-employment-compliance-service-mvpds/403414> “Like its 14-year-old Broadcast1Source predecessor, the new cable software package will provide a single-source solution to consistent record-keeping, self-monitoring and FCC audit preparedness, including automated creation of material for the FCC’s mandated Public Inspection Files (ePIF) that are available on the FCC.gov site.”

² Standardized and Enhanced Disclosure Requirements For Television Broadcast Licensee Public Interest Obligations (Second Report and Order), 27 FCC Rcd 4535 (2012) at 4565 ¶ 61.

In the instant proceeding, several commenters explained that the small business concerns for radio were significantly more urgent than they had been for television. For example, the Missouri and California Broadcasters Associations noted that adoption of the online public file rule should not be extended to radio without a comprehensive analysis as required under the Paperwork Reduction Act of 1995, targeted to the impact on small market radio stations. They noted that there is nearly ten times more radio than television stations that will be required to feed data into the system. Also, in each of their relatively populous states, the majority of stations are outside all radio markets and that many lack the staff required to comply with the new rule. For example, in Missouri 281, and in California 539, radio stations report that a single person already holds dual roles among the following important top level positions within the station: traffic director, sales manager, program director and general manager. The comments also demonstrated that the revenues produced by small market stations are particularly challenged.

As it did with television, the Commission did not ignore these small business, small market concerns. Rather, it attempted to meet the need of small market and lightly staffed stations by accommodating third-party service providers who would be available to assist small stations at reasonable cost. At paragraph 21, the Commission states, in affirmative terms, that:

The Commission has completed the development and implementation of an application programming interface (“API”) that can connect the online file database to third-party web hosting services and that would permit such services to efficiently load documents into the online file on behalf of client broadcast stations and other entities. We recognize that third-party web hosting services may offer valuable assistance to entities in uploading documents to the online file and otherwise maintaining the file, particularly smaller entities that may choose to outsource this effort because of cost savings and other resource constraints.³ “The media bureau and the office of managing director will provide further information about the API in the near future and will conduct one or more demonstrations. The API library will also be made available for testing by covered entities and their third-party service providers prior to the effective date of the online filing requirements adopted in this proceeding. (emphasis added)

Note that the statement represents that the API has been developed and implemented. Yet, despite this statement in the Report and Order, the API has not been completed to the point that it can be tested by a third-party service organization. Broadcast1Source has consistently, frequently and repeatedly requested information regarding the promised API and asked for testing opportunities in order to offer the promised service to its clients and other small business radio stations. See a summary description of these efforts in Attachment “A”. Despite its many promises, the FCC has yet to deliver an API or make it available for testing to a third party service provider. Broadcast1Source clients have expressed their frustration with its inability to provide this service and with the FCC over the unavailability of a reliable service organization

³ Citing our Broadcast 1 Source comments.

capability for the online public file. On several occasions, just as the date when the FCC staff promised to have the API available was approaching, Broadcast1Source was then informed that, for various reasons including the security of the FCC system, the development team had to start over again from scratch with a new template. Without the proper ability to test the API and place it into service, radio stations will be left to their own devices and will not be able to utilize the promised third-party organization services.

In the burden submission to OMB, the FCC estimated the total annual cost to its regulated entities for compliance with the new rule to be \$592 and about seven days of employee time, i.e., 54 hours. The Commission represents to OMB that it “took similar measures to minimize the effort and cost entities must undertake to move their public files online.” Presumably, and based on the representations in its Report and Order, one of those measures includes providing the completed, tested API and facilitating its use so that private sector third-party service organizations could be of assistance. While the formula for determining the \$592 annual cost burden or annual time burden was not revealed, one might also assume that the cost savings available through third-party service organizations was included as a factor determining those cost estimates. Indeed, in the summary following its certification, the Commission checks Item “c”: certifying that this new rule actually *will reduce* the burden on small entities. To reduce that burden, as stated above, the Commission admits that it may require the services of third parties to assist small business entities.

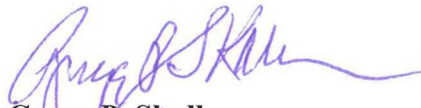
The rule is designed to take effect automatically, three days following OMB approval. It will apply first to radio stations in the top 50 markets with five or more employees. On March 1, 2018, the rule automatically applies to all other radio stations, regardless of market size, location or staffing. **Nowhere does the Commission condition the effectiveness of the rule on the availability of a tested API with proven accuracy and efficiency.** Yet, if past is indeed prologue, two years is a short time in which to reliably predict that a useful API will be ready. Thus, automatic effectiveness of the rule could place small market and small business stations in jeopardy of significant fines, with added special compliance obligations, if they are not in a position to comply.

The Commission further seeks to remedy this problem for small business and small market stations by providing a limited waiver procedure. However, an *ad hoc* waiver procedure provides at best an uncertain and anxiety ridden regulatory environment. Even if granted, the requirement to request a waiver involves the burden of additional time and cost to analyze each station’s special circumstances, document it and incur the expense of legal assistance in properly presenting and arguing for the requested waiver. The FCC also continues its exemption of cable systems with fewer than 1000 subscribers. However, the record discloses and Cable1Source discussions with small market cable operators confirms, that 1000 subscribers is a very low threshold and many non-exempt cable systems will require the services of third-party service providers to efficiently comply with the new online public file requirement within the FCC submitted cost burden estimates.

Broadcast1Source also wishes to emphasize that the FCC staff has been communicating with it and has made substantial effort to develop a workable API useful for third-party service organizations such as Broadcast1Source and Cable1Source. However, the fact remains that we are not there yet, and cannot be confident that the FCC and third-party service organizations can be in a position to use the efficiencies and cost saving features that can be provided by a well-designed and tested API by the time this rule would apply to small business broadcasters and cable operators.

Whether or not the FCC's proposed online public file requirement for broadcast radio stations or cable television is a good idea is not the basis of this comment. Rather, the question is when should such a requirement be imposed and under what conditions. It is clear from the Commission's own statements that the rule should not be permitted to take effect unless and until the promised API has been provided to third-party service organizations who request it and they have had a proper opportunity to test its accuracy and capabilities to assist their customers to achieve full compliance with the rules. OMB should seek a date certain by which the FCC will commit as a top level priority to produce and test a working, fully functioning API. Accordingly, it is respectfully requested that the Commission's Order be stayed until that date and the Commission has fulfilled its commitment to OMB that the API has been made available and its reliability proven.

Sincerely,



Gregg P. Skall
Counsel to Broadcast1Source and Cable1Source

Attachment "A"
ePIF Interface with FCC Timeline

Date	Description
November 2010	Initial conversation about an interface with Jim Bradshaw and other members of the Audio Division related to the redesign of CDBS.
December 2011	Meeting at the commission with Broadcast1Source GM/Director of IT Infrastructure/Legal Counsel with Chief Data Officer and other staff. Discussion was "research" about Broadcast1Source's offerings and how that might interface with the FCC's proposed online Public Inspection File tool.
April 2011	Commission announces at the NAB that the online Public Inspection File tool will be coming.
July 2012	Meetings at the commission about a possible interface and discussion about ways to move forward.
July 2012 - December 2013	Ongoing development with the FCC's Chief Data Officer to build and implement integration. More than 1700 development hours have been expended on this project (as well as nearly \$25,000 in travel and legal fees).
January 2014	FCC's Chief Data Officer leaves the Commission. Project in its final testing stages. Contact made with new FCC project management, followed by extended quiet period with project standing at "Final Testing."
September 2014	Meeting with new Project Managers and senior Media Bureau officers to discuss testing of the project.
March 2015	Numerous unproductive requests for testing followed by requested meeting with the Media Bureau chief and other members of staff. Informed at this meeting that major changes had and would be made, mainly due to security protocols that had changed at FCC. Informed that it was doubtful that the Broadcast1Source interface, built to prior FCC specifications, would remain viable.
May 2015	Permission to test the interface was granted. As expected, conditions did not prove favorable to our development, due to security protocol changes.
January 2016	Requested a meeting with the Project team to discuss options that might be available to Broadcast1Source based on the rules being modified for Radio and Cable mandating their use of the Online Public Inspection File. Informed a new API was being developed and would be available for testing in two weeks. To date, testing has not been available. FCC project team continues to provide assurances that the option to test will be "coming soon" and Broadcast1Source will be contacted.
March 2016	FCC project team states that tested API is expected soon and that some initial internal testing showed positive results. However, FCC resources are stretched due to other projects, including the incentive auction and a new development for CORES. Still no information on testing the API.