

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Revisions to Public Inspection File Requirements –) MB Docket No. 16-161
Broadcaster Correspondence File and Cable)
Principal Headend Location)
)

NOTICE OF PROPOSED RULEMAKING

Adopted: May 25, 2016

Released: May 25, 2016

Comment Date: [30 days after date of publication in the Federal Register]
Reply Comment Date: [60 days after date of publication in the Federal Register]

By the Commission: Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai and O’Rielly
issuing separate statements.

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (“NPRM”), we propose to eliminate two public
inspection file requirements: (i) the requirement that commercial broadcast stations retain in their public
inspection file copies of letters and emails from the public;1 and (ii) the requirement that cable operators
maintain for public inspection the designation and location of the cable system’s principal headend.2
Because of potential privacy concerns associated with putting the correspondence file online and because
many cable operators prefer not to post online the location of their principal headend for security reasons,
removing these requirements would enable commercial broadcasters and cable operators to make their
entire public inspection file available online and obviate also maintaining a local public file. Eliminating
these public file requirements thus would reduce the regulatory burdens on commercial broadcasters and
cable operators.

II. BACKGROUND

A. Correspondence file

2. Section 73.3526(e)(9) of the Commission’s rules provides that commercial broadcast
stations must retain in their public inspection file “[a]ll written comments and suggestions received from
the public regarding operation of the station unless the letter writer has requested that the letter not be
made public or the licensee believes the letter should be excluded from public inspection because of the
nature of its content,” such as a situation in which a letter contains content that is defamatory or obscene.3
The rule also expressly applies to email messages transmitted to station management or to an email
address publicized by the station.4 In addition, Section 73.1202 requires commercial radio and television

1 See 47 C.F.R. §§ 73.1202, 73.3526(e)(9). We refer herein to this required portion of a public inspection file as the
“correspondence file.”

2 See 47 C.F.R. § 76.1708.

3 47 C.F.R. § 73.3526(e)(9)(i). These letters and emails must be retained for a period of three years.

4 See 47 C.F.R. § 73.3526(e)(9)(ii). The requirement to include email messages in the correspondence file was
added in 1998. See Review of the Commission’s Rules Regarding the Main Studio and Local Public Inspection Files

broadcasters to retain written comments and suggestions from the public regarding the station operation in their local public inspection file.⁵ The language of this rule differs from Section 73.3526 in that it does not specifically address emails received from the public and requires that letters received by TV and Class A TV licensees be separated into two categories – programming and non-programming.⁶

3. The Commission first required commercial radio and television broadcasters to retain written comments and suggestions from the public and make them available for public inspection in 1973.⁷ That public file obligation, set forth in Section 73.1202 of the rules, was adopted together with a requirement that commercial broadcast stations air regular announcements “informing the public of the licensee’s obligation to the public and of the appropriate method for individuals to express their opinions of the station’s operation.”⁸ The purpose of the correspondence file was “to permit a member of the public to better determine the nature of community feedback being received by the licensees and the extent to which his or her opinions regarding community problems and needs and/or the licensee’s station operation might be shared by other members of the community.”⁹ The Commission later removed the requirement in Section 73.1202 that licensees air announcements regarding their obligations to the public, noting that Section 73.3580 of the rules requires that both commercial and noncommercial stations make announcements in connection with the filing of their license renewal applications and concluding that these renewal application announcements were sufficient to inform the public of the “Commission’s oversight functions and the availability of public recourse.”¹⁰ The Commission, however, retained the requirement that licensees keep all written comments and suggestions received from the public in their

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of Broadcast Television and Radio Stations, 13 FCC Rcd 15691, 15709-10, para. 41 (1998) (“*1998 Main Studio and Public File Order*”), *recon. granted in part*, 14 FCC Rcd 11113 (1999).

⁵ See 47 C.F.R. § 73.1202. The rule contains the same exceptions allowing non-inclusion in the file as those in Section 73.3526(e)(9) (correspondence where the sender has requested that it not be made public or the licensee believes that it should be excluded due to its content).

⁶ See 47 C.F.R. § 73.1202(b). In the *1998 Main Studio and Public File Order*, the Commission deleted the requirement in § 73.1202 that TV and Class A TV licensees separate letters from the public into programming and non-programming categories on the ground that the burden imposed by this requirement outweighs the relatively minimal benefit to members of the public interested in reviewing these letters. See *1998 Main Studio and Public File Order*, 13 FCC Rcd at 15714, para. 52. This requirement continues to be reflected in Part 73 of Title 47 of the U.S. Code of Federal Regulations (CFR), Section 73.1202(b), however. In the *1998 Main Studio and Public File Order*, the Commission also directed that the correspondence file requirement be moved from § 73.1202 to § 73.3526(e)(9) of the rules and that § 73.1202 be removed. *Id.* at 15710, para. 42 and at 15735, Appendix C. While the changes ordered by the Commission to § 73.3526(e)(9) in the *1998 Main Studio and Public File Order* are reflected in the CFR, the CFR does not reflect the Commission’s directive that § 73.1202 be removed. We therefore direct the Media Bureau to take the necessary steps to eliminate § 73.1202 in its entirety from the CFR, thereby correcting these oversights. See Appendix A (proposed rules).

⁷ See *Formulation of Rules and Policies Relating to the Renewal of Broadcast Licenses*, Final Report and Order, 43 FCC 2d 1 (“*1973 Final Report and Order*”), *recon. granted in part on other grounds*, 44 FCC 2d 405 (1973) (“*1973 Memorandum Opinion and Order*”).

⁸ See *1973 Final Report and Order* at 2, para. 3. Section 73.1202 formerly set forth the mandatory text of these announcements, which included language requesting that viewers or listeners inform the station of “their opinions, criticisms or suggestions” as well as “the appropriate name and address to which comments should be mailed.” *Id.*

⁹ *1973 Memorandum Opinion and Order* at 415, para. 35. See also *1973 Final Report and Order* at 17, para. 51.

¹⁰ See *Radio Broadcast Services; Revision of Applications for Renewal of License of Commercial and Noncommercial AM, FM, and Television Licensees*, 49 RR 2d 740, 756, 46 FR 26236, para. 58 (1981) (“*1981 Renewal Applications Order*”), *recon denied*, 87 FCC 2d 1127 (1981), *aff’d sub nom. Black Citizens for Fair Media v. FCC*, 719 F.2d 407 (D.C. Cir. 1983).

public inspection files.¹¹ In 1998, the Commission removed rule Section 73.1202, and moved the requirement governing the retention of communications from the public to Section 73.3526, the public file rule section for commercial broadcast stations.¹² The removal of Section 73.1202 has yet to be reflected in the Code of Federal Regulations.

4. The correspondence file requirement applies only to commercial broadcasters; there is no similar requirement for noncommercial broadcasters. There is also no correspondence file requirement for cable operators, DBS providers, or satellite radio licensees, all of which have other public inspection file obligations.

B. Principal headend location

5. Section 76.1708 of the Commission's rules requires operators of all cable television systems to "maintain for public inspection the designation and location of [the system's] principal headend. If an operator changes the designation of its principal headend, that new designation must also be included in its public file."¹³ The Commission first adopted the principal headend public file requirement in 1993 in an order implementing the must-carry and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act").¹⁴ Pursuant to the Cable Act, commercial television stations must deliver a good quality signal to a cable system's "principal headend" in order to be eligible for must-carry rights on that system.¹⁵ The Cable Act's provisions regarding eligibility for must-carry rights for noncommercial and low power television stations also refer to a cable system's "principal headend."¹⁶ In the *Must-Carry Order*, the Commission required cable systems to retain various records relating to must-carry obligations in their public file, including, as noted above, the designation and location of the system's principal headend.¹⁷

C. Online public inspection file

6. In 2012, the Commission adopted online public inspection file rules for television broadcasters that required them to post public file documents to a central, FCC-hosted online database rather than maintaining files locally at their main studios.¹⁸ However, in the *Television Online Public File*

¹¹ See *1981 Renewal Applications Order*, 46 FR 26236, at Appendix B (revising the heading of § 73.1202 to read "Retention of letters received from the public").

¹² See 47 C.F.R. § 73.3526(e)(9). See also note 6, *supra*.

¹³ 47 C.F.R. § 76.1708(a).

¹⁴ See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965 (1993) ("*Must-Carry Order*"), *reconsideration granted in part on other grounds*, 9 FCC Rcd 7882 (1994). The Cable Act provides must-carry rights to commercial and noncommercial television stations that are "local" to the area served by a cable system.

¹⁵ See 47 U.S.C. § 534(h)(1)(B)(iii).

¹⁶ A qualified noncommercial educational station can be considered "local," and thus eligible for mandatory carriage on a cable system, in one of two ways: it may either be licensed to a principal community within 50 miles of the system's principal headend, or place a "Grade B" signal over the principal headend. 47 U.S.C. § 535(l)(2). Low power stations, including Class A stations, are eligible for must carry only if, among other qualifications, the station is located no more than 35 miles from the cable system's "principal headend" and delivers to that headend a good quality over-the-air signal. 47 U.S.C. § 534(h)(2)(D); 47 C.F.R. § 76.56(d)(4).

¹⁷ See *Must-Carry Order*, 8 FCC Rcd at 2968, para. 10 and note 29. These requirements were initially included in former § 76.302 of the FCC's rules. The principal headend public file requirement was moved to § 76.1708 in 1999. See *1998 Biennial Regulatory Review—Streamlining of Cable Television Services Part 76 Public File and Notice Requirements*, 14 FCC Rcd 4653, 4682, Appendix C (1999).

¹⁸ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012) ("*Television Online Public File Order*").

Order, the Commission determined that letters and emails from the public should not be uploaded to the online file but should instead continue to be maintained at the station's main studio.¹⁹ The Commission concluded that including letters and emails from the public in the online file could risk exposing personally identifiable information and that requiring stations to redact such information prior to uploading these documents would be overly burdensome.²⁰

7. In January 2016, the Commission adopted the *Expanded Online Public File Order*, in which it added cable operators, DBS providers, broadcast radio licensees, and satellite radio licensees to the list of entities required to post their public inspection files to the FCC-hosted online database.²¹ With respect to commercial radio licensees, the Commission concluded, consistent with the decision reached in the *Television Online Public File Order*, that it would exempt letters and emails from the public from the online file and instead require stations to continue to retain such material at the station.²² The Commission also concluded that it would not require cable operators to include principal headend location information in the online public file and instead gave operators the option to continue instead to retain this information in their local public file.²³

8. The Commission determined in the *Expanded Online Public File Order* that entities that upload all public file material to the FCC's online database and that also provide online access to back-up political file documents via the entity's own website when the FCC's online database is temporarily unavailable will not be required to maintain a local public file.²⁴ The Commission noted, however, that this option is not available to commercial broadcast licensees, which must continue to retain a correspondence file that cannot be made available online for privacy reasons.²⁵ The Commission indicated in the *Expanded Online Public File Order* that it would initiate a proceeding to consider whether to eliminate the correspondence file requirement for commercial broadcasters.²⁶ As requested by NCTA,²⁷ we also consider herein whether we should eliminate the requirement that cable operators retain information regarding the location of their principal headend in the public inspection file. As NCTA has observed, under our current rules, operators who feel the need to avoid posting this information online for

¹⁹ *Id.* at 4566-67, para. 62.

²⁰ In particular, the Commission stated its concern that requiring correspondence to be placed in the online public file might result in violations of the Children's Online Privacy Protection Act (COPPA), which prohibits posting children's personally identifiable information online. The Commission stated that, because letters and emails from the public can account for a substantial amount of the content of a station's public file, requiring stations to review these documents for compliance with COPPA before uploading them could pose a burden. *See Television Online Public File Order*, 27 FCC Rcd at 4567, para. 63.

²¹ *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016) ("*Expanded Online Public File Order*"). The Commission is investigating what efforts are necessary to improve the searchability and machine-readability of the contents of the online public file. *See* Letter from Congressman Frank Pallone, Jr., Congresswoman Anna G. Eshoo, Congressman Ben Ray Lujan, and Congressman John Yarmuth to Tom Wheeler, Chairman, FCC, dated April 29, 2016, MB Docket No. 14-127.

²² *Expanded Online Public File Order*, 31 FCC Rcd at 564, para. 94.

²³ *Id.* at 549-50, para. 61.

²⁴ *Id.* at 541-42, para. 38.

²⁵ *Id.*

²⁶ *Id.* at 542, para. 38, n. 105 and 564, para. 95, n. 269.

²⁷ *See* Letter from Stephanie L. Poday, Vice President and Associate General Counsel, NCTA to Marlene H. Dortch, Secretary, FCC, dated March 14, 2016, MB Docket No 14-127 ("*NCTA Mar. 14 Letter*").

security reasons are required to retain this information locally and therefore are unable to transition to a fully online public inspection file.²⁸

III. DISCUSSION

A. Correspondence file

9. We tentatively conclude that we should eliminate the requirement that commercial broadcasters retain letters and emails from the public in their public inspection files and invite comment on this tentative conclusion. The goal of this requirement was to ensure that broadcasters comply with their public interest obligation to air programming that is responsive to the needs and interests of their community of license. As the Commission recognized in the *1981 Renewal Applications Order*, however, most of the Commission's scrutiny of all but the most egregious licensee conduct occurs in conjunction with consideration of a station's license renewal application.²⁹ Any interested listeners and viewers may file comments and/or petitions concerning licensee performance at the time the station files its renewal application.³⁰ Interested parties also may file a complaint with the Commission regarding a station's performance at any time during the license period. While listeners and viewers may communicate directly with the station via letters, emails, or other forms of communication at any time during the license term, we do not believe it is necessary to require that stations retain and make available to the public the letters and emails they receive regarding operation of the station to ensure that the station meets its obligation to serve its local community.³¹ Eliminating these public inspection file requirements would reduce the burden on commercial broadcasters without affecting the public's ability to communicate directly with the station or to file petitions, comments, and complaints regarding the station with the FCC.

10. Eliminating the correspondence file requirement would have the added benefit of providing commercial television and radio broadcasters with the same option as noncommercial broadcasters and other entities subject to our online public inspection file requirements to cease maintaining a local public inspection file if they post all public file material to the online public file database and provide online access via their own website to back-up political file material. Extending this option to commercial broadcasters would allow them to realize the full benefits in terms of cost savings and reduced regulatory burdens of moving their public files online, and would also create greater regulatory parity among entities subject to public file obligations.³²

²⁸ *Id.* at 2.

²⁹ *1981 Renewal Applications Order*, 46 FR 26236, para. 62.

³⁰ Our rules require all licenses to air announcements both before and after a renewal application is filed inviting members of the public "who wish to advise the FCC of facts relating to [the] renewal application and to whether the station has operated in the public interest" to file "comments and petitions" with the FCC. 47 C.F.R. § 73.3580(d)(4)(i) and (ii). *See also* 47 C.F.R. § 73.3584 (Procedure for filing petitions to deny).

³¹ We also note that both commercial and noncommercial television and radio broadcasters are required to prepare on a regular basis and retain in their public inspection files issues/programs lists identifying "programs that have provided the station's most significant treatment of community issues." 47 C.F.R. §§ 73.3526(e)(11)(i), 73.3527(e)(8). These lists are a significant source of information about the issue-responsive programming stations air for their viewers and listeners.

³² Commenters in the Commission's *Expanded Online Public File* proceeding urged the Commission to consider eliminating the correspondence file requirement so that stations could move their entire public file online and eliminate the need to host a local public file, thereby reducing the overall burden of maintaining the public inspection file. *See* Joint Comments of Named State Broadcasters Associations, MB Docket 14-127 (Mar. 16, 2015) at 11-12. *See also* Reply Comments of Richard J. Hayes, Jr. (Feb. 2, 2015) at 12 (advocating elimination of the correspondence file requirement).

11. We invite comment on these views and our proposal to eliminate the correspondence file requirement, including responses to the following questions. Are there other benefits to eliminating the requirement? On the other hand, are there benefits to maintaining local correspondence file obligations we should consider? How frequently do local consumers or others make use of the correspondence file? Does it contain information that continues to be useful to local viewers or listeners, or other interested parties, that cannot be obtained through other means? What impact does the use of social media by broadcast stations have on viewers' ability to communicate with the stations and others regarding the stations' programming and other issues?³³ We request that commenters explain how any benefits of either eliminating or retaining local correspondence rules would outweigh any potential costs.

B. Headend location information

12. We also propose to eliminate the requirement that cable operators retain information about the designation and location of their principal headends in their public inspection files. In the *Expanded Online Public File Order*, we reserved judgement as to whether there are valid security concerns associated with posting the location of the principal headend online.³⁴ We observed, however, that the general public is unlikely to be interested in this information and therefore permitted operators who prefer to retain this information locally rather than posting it online to do so.³⁵ In that Order, our focus was on adapting our existing public file requirements to an online format rather than considering substantive changes to the public file rules.³⁶ NCTA subsequently requested that we consider eliminating the requirement that cable operators retain information regarding the location of the principal headend in the public inspection file.³⁷ In this proceeding, we propose to eliminate this public inspection file requirement because we do not believe that the general public has any need for or interest in this information. Eliminating this requirement would permit all cable operators to transition to a fully online public inspection file, obviating the need for them to also maintain local files, and address the concerns of those operators who believe there may be a potential security risk associated with disclosing the location of the principal headend online.

13. At the time the original public inspection file requirement was adopted, the Commission's focus was to ensure that information was provided to television stations and the Commission regarding the location of a cable system's principal headend for purposes of determining carriage rights and enforcement.³⁸ There was no discussion in the implementing order about the general public's need to access this information.³⁹ We are unaware of any reason that the general public would need to know the location of a cable system's principal headend, but we recognize that television stations must have access to this information in order to exercise their must-carry rights. In addition, the Commission must have this information in order to enforce its signal leakage rules⁴⁰ and to respond to must-carry and signal leakage complaints. We also recognize that local franchising authorities may need access to it in connection with their oversight of local cable systems and operations. Accordingly, if we eliminate the

³³ The Commission has concluded that social media messages do not need to be retained in the correspondence file. See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4567-68, para. 66 (2012).

³⁴ See *Expanded Online Public File Order*, 31 FCC Rcd at 549-50, para. 61.

³⁵ *Id.*

³⁶ *Id.* at 528, para. 4.

³⁷ See NCTA March 14 Letter.

³⁸ See *Must Carry Order*, 8 FCC Rcd at 2967, 2979, 2981.

³⁹ See *id.*, 8 FCC Rcd 2965.

⁴⁰ See, e.g., 47 C.F.R. §§ 76.601-76.640.

requirement to retain principal headend location information in the public inspection file, we would adopt means for this information to remain available to those entities that need it.

14. We invite comment generally on our proposal to eliminate the principal headend public file requirement. Are there benefits to retaining this requirement? Would the benefits of eliminating the requirement outweigh the cost if we were to make information regarding the principal headend available to the Commission, television stations and/or local franchising authorities by other means?

15. We also seek comment on how the FCC should collect principal headend information from cable operators if we eliminate the requirement that it be maintained in the public file. One possibility would be to have cable operators submit this information to the Commission upon request. Another possibility would be to have cable operators submit this information using one or more existing FCC forms that could be revised for this purpose, such as FCC Form 322 (Cable Community Registration), 324 (Cable Operator, Mail Address, and Operational Status Changes), and/or 325 (Annual Cable Operator Report). We invite comment generally on this approach and on any alternative means we should consider to collect this information. Should we keep headend location information filed with the FCC confidential and not make this information routinely available to the general public?

16. As noted above, if we eliminate the principal headend public file requirement, we propose to require that cable operators provide information regarding the designation and location of the system's principal headend to television stations. Should we also require that this information be provided to local franchising authorities? Are there any other entities that should be able to access it? How should this information be provided? If we update our existing Form 322, 324, or 325 to include principal headend information, should we also provide a means for broadcasters to access that information for purposes related to their must-carry rights? Should we also make it accessible to franchising authorities or any other entities? What methods should we use to make the information accessible? Alternatively, should we require cable operators to provide this information to entities that need it upon request? If so, what requirements should we impose regarding the format of these requests and the format and timing of the cable system's response? We note that our existing rules require cable operators to provide written notice by certified mail to all stations carried on its system pursuant to the must-carry rules at least 60 days prior to any change in the designation of its principal headend.⁴¹ If we require that cable operators provide principal headend information upon request, should we require that this information be provided in writing by certified mail? Should we require any requests for that information also to be submitted in writing by certified mail? Should we instead permit the request and response to be made electronically? Should we require broadcast stations to keep information regarding the location of a cable system's principal headend confidential, or do broadcasters have a valid reason at times to disclose this information, such as in pleadings related to a cable carriage dispute?

IV. PROCEDURAL MATTERS

A. Ex Parte Presentations

17. The proceeding this *NPRM* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁴² Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the

⁴¹ See 47 C.F.R. § 76.1607.

⁴² 47 C.F.R. §§ 1.1200 *et seq.*

presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Initial Regulatory Flexibility Act Analysis.

18. The Regulatory Flexibility Act of 1980, as amended ("RFA"), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

19. With respect to this *NPRM*, an Initial Regulatory Flexibility Analysis ("IRFA") under the Regulatory Flexibility Act⁴³ is contained in Appendix B. Written public comments are requested in the IRFA, and must be filed in accordance with the same filing deadlines as comments on the *NPRM*, with a distinct heading designating them as responses to the IRFA. The Commission will send a copy of this *NPRM*, including the IRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, a copy of this *NPRM* and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the *Federal Register*.

C. Paperwork Reduction Act Analysis.

20. This document contains proposed new or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements proposed in this document, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

D. Comment Filing Procedures

21. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

▪ Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

⁴³ *See* 5 U.S.C. § 603.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

22. Additional Information: For additional information on this proceeding, please contact Kim Matthews of the Media Bureau, Policy Division, Kim.Matthews@fcc.gov, (202) 418-2154.

V. ORDERING CLAUSES

23. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in Sections 1, 4(i), 303(r), 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303(r), 534, and 535, this Notice of Proposed Rulemaking **IS ADOPTED**.

24. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Proposed Rules**

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The Authority citation for Part 73 continues to read as follows:

AUTHORITY: 47.U.S.C. 154, 303, 307, and 554.

2. Section 73.1202 is removed and reserved.

3. Section 73.3526 is amended by revising paragraphs (a)(1), (a)(2), (b)(1), and (b)(2)(i) as follows and by deleting §73.3526(e)(9) and renumbering (e)(10) – (e)(17) accordingly.

(a) ...

(1) Applicants for a construction permit for a new station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(2) and (e)(9) of this section. A separate file shall be maintained for each station for which an application is pending. If the application is granted, paragraph (a)(2) of this section shall apply.

(2) Every permittee or licensee of an AM, FM, TV or Class A TV station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(9) and paragraph (e)(12) of this section. In addition, every permittee or licensee of a commercial TV or Class A TV station shall maintain for public inspection a file containing material, relating to that station, described in paragraphs (e)(10), (e)(14), (e)(15), and (e)(16) of this section, and every permittee or licensee of a commercial AM or FM station shall maintain for public inspection a file containing the material, relating to that station, described in paragraphs (e)(11), (e)(13), and (e)(15) of this section. A separate file shall be maintained for each station for which an authorization is outstanding, and the file shall be maintained so long as an authorization to operate the station is outstanding.

b) ...

(1) For radio licensees temporarily exempt from the online public file hosted by the Commission, as discussed in paragraph (b)(2) of this section, a hard copy of the public inspection file shall be maintained at the main studio of the station, unless the licensee elects voluntarily to place the file online as discussed in paragraph (b)(2) of this section. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

(2)(i) A television station licensee or applicant, and any radio station licensee or applicant not temporarily exempt as described in this paragraph, shall place the contents required by paragraph (e) of this section of its public inspection file in the online public file hosted by the Commission, with the exception of the political file as required by paragraph (e)(6) of this section, as discussed in paragraph (b)(3) of this section. Any radio station not in the top 50 Nielsen Audio markets, and any radio station with fewer than five full-time employees, shall continue to retain the public inspection file at the station in

the manner discussed in paragraph (b)(1) of this section until March 1, 2018. However, any radio station that is not required to place its public inspection file in the online public file hosted by the Commission before March 1, 2018 may choose to do so, instead of retaining the public inspection file at the station in the manner discussed in paragraph (b)(1) of this section.

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

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

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

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

5. Section 76.5(pp)(2) is revised to read as follows:

In the case of a cable system with more than one headend, the principal headend designated by the cable operator, except that such designation shall not undermine or evade the requirements of subpart D of this part. Each cable system must provide information regarding the designation and location of the principal headend to the FCC. Except for good cause, an operator may not change its choice of principal headend.

6. Section 76.1700 is amended by removing § 76.1700(a)(6) and renumbering (a)(7) – (a)(10) accordingly.

7. Section 76.1708 is removed and reserved.

APPENDIX B**Initial Regulatory Flexibility Act Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) concerning the possible significant economic impact on small entities of the policies and rules proposed in the *Notice of Proposed Rulemaking* (“NPRM”). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rule Changes

2. The *NPRM* proposes to eliminate two public inspection file requirements - the requirement that commercial broadcast stations retain in their public inspection file copies of letters and emails from the public⁴ and the requirement that cable operators maintain for public inspection the designation and location of the cable system’s principal headend.⁵ We tentatively conclude that these two components of our public inspection file rules involve documents or information that does not need to be made available to the general public and that eliminating these rules would reduce the burden of maintaining the public inspection file on commercial broadcasters and cable operators. Our goal is also to permit commercial television and radio broadcasters and cable operators to cease maintaining a local public inspection file if they post all public file material to the online public file database and provide online access via their own website to back-up political file material. The Commission has previously adopted this option for other entities subject to our online public inspection file requirements. Because the correspondence file cannot be made available online for privacy reasons and because many cable operators prefer not to post the location of their principal headend online for security reasons, removing these requirements would permit commercial broadcasters and cable operators to elect to make their entire public inspection file available online and cease maintaining a local public file, thereby further reducing overall regulatory burdens on these entities.

B. Legal Basis

3. The proposed action is authorized pursuant to Sections 1, 2, 4(i), 4(j), 303, 601, 614 and 615 of the Communications Act, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 303, 601, 614, and 615.

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

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ See 47 C.F.R. §§ 73.1202, 73.3526(e)(9). We refer herein to this public inspection file requirement as the “correspondence file.”

⁵ See 47 C.F.R. § 76.1708.

⁶ 5 U.S.C. § 603(b)(3).

organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

5. *Television Broadcasting.* This economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”¹⁰ The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.¹¹ The 2007 U.S. Census indicates that 808 firms in this category operated in that year. Of that number, 709 had annual receipts of \$25,000,000 or less, and 99 had annual receipts of more than \$25,000,000.¹² Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

6. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,387 stations.¹³ Of this total, 1,221 stations (or about 88 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 2, 2014. Based on these data, we estimate that the majority of television broadcast stations are small entities.

7. *Class A TV Stations.* The same SBA definition that applies to television broadcast stations would apply to licensees of Class A television stations, as well as to potential licensees in these television services. As noted above, the SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.¹⁴ The Commission has estimated the number of licensed Class A television stations to be 405.¹⁵ Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

⁷ 5 U.S.C. § 601(6).

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

⁹ 15 U.S.C. § 632.

¹⁰ U.S. Census Bureau, 2012 NAICS Definitions, “515120 Television Broadcasting,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹¹ 13 C.F.R. § 121.201; 2012 NAICS code 515120.

¹² U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2007* (515120), http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table.

¹³ See *Broadcast Station Totals as of December 31, 2015*, Press Release (MB rel. Jan. 8, 2016) (“*Broadcast Stations Totals*”), available at <https://www.fcc.gov/media/broadcast-station-totals>.

¹⁴ 13 C.F.R. § 121.201; 2012 NAICS code 515120.

¹⁵ See *Broadcast Stations Totals*, supra.

8. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations¹⁶ must be included. Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the revenue threshold noted above, our estimate of the number of small entities affected is likely overstated. In addition, we note that one element of the definition of “small business” is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, our estimate of small television stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

9. *Radio Broadcasting.* The SBA defines a radio broadcast station as a small business if such station has no more than \$38.5 million in annual receipts.¹⁷ Business concerns included in this industry are those “primarily engaged in broadcasting aural programs by radio to the public.”¹⁸ According to review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of November 26, 2013, about 11,331 (or about 99.9 percent) of the then number of commercial radio stations (11,341) have revenues of \$35.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial radio stations to be 4,095.¹⁹ We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.²⁰ This estimate, therefore, likely overstates the number of small entities that might be affected, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

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

11. *Cable Companies and Systems.* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.²¹ Industry data shows that there were currently 660 cable operators.²² Of this total, all but ten cable operators nationwide are small under

¹⁶ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 C.F.R. § 21.103(a)(1).

¹⁷ 13 C.F.R. § 121.201, 2012 NAICS code 515112.

¹⁸ U.S. Census Bureau, *2012 NAICS Definitions: 515112 Radio Broadcasting*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515112&search=2012>.

¹⁹ See *Broadcast Station Totals*, supra.

²⁰ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both.” 13 C.F.R. § 121.103(a)(1).

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

²² NCTA, Industry Data, Number of Cable Operators and Systems, <http://www.ncta.com/Statistics.aspx> (visited March 18, 2016). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. See *Annual Assessment of the Status of Competition in the*

(continued....)

this size standard.²³ In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.²⁴ Current Commission records show 4,537 cable systems nationwide.²⁵ Of this total, 3,965 cable systems have less than 20,000 subscribers, and 572 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

12. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."²⁶ There are approximately 53 million cable video subscribers in the United States today.²⁷ Accordingly, an operator serving fewer than 540,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.²⁸ Based on available data, we find that all but ten incumbent cable operators are small entities under this size standard.²⁹ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.³⁰ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

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

13. The rule change proposed in the *NPRM* would reduce reporting, recordkeeping, and other compliance requirements for commercial broadcast stations which are currently required to retain letters and emails from the public in their local public inspection file. The *NPRM* proposes to eliminate this requirement, which would reduce recordkeeping burdens on these entities. In addition, eliminating the correspondence file requirement would permit commercial radio and television stations to fully transition to the online public file and to cease maintaining a local public file, allowing them to realize the long-term cost savings associated with the online public file.

(Continued from previous page) _____

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

²³ See SNL Kagan, "Top Cable MSOs – 12/12 Q"; available at <http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc>.

²⁴ 47 C.F.R. § 76.901(c).

²⁵ The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on March 18, 2016. A cable system is a physical system integrated to a principal headend.

²⁶ 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

²⁷ See NCTA, Industry Data, Cable's Customer Base, <http://www.ncta.com/industry-data> (visited March 18, 2016).

²⁸ 47 C.F.R. § 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

²⁹ See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

³⁰ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 C.F.R. § 76.901(f).

14. The overall effect of the rule changes proposed in the *NPRM* on cable operators is less clear. The *NPRM* proposes to eliminate the requirement that cable systems retain the location and designation of the principal headend in their public file, which would reduce public inspection file requirements for these entities. However, the *NPRM* recognizes that this information must continue to be made available to the FCC and to television stations and seeks comments on options for ways to accomplish this. Some of these options could result in greater reporting, recordkeeping, or other compliance requirements than the existing public inspection file requirement. Cable operators may support more burdensome requirements, however, if they prefer to transition to a fully online public inspection file and are concerned about security risks associated with placing headend location information online.

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

15. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standard; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³¹

16. The *NPRM* proposes to eliminate two current public file obligations - one applicable to commercial radio and television broadcasters and one applicable to cable operators. Eliminating these obligations which would reduce overall public inspection file burdens on these affected entities. The *NPRM* seeks comment on these proposals, including any comments that might oppose eliminating these requirements. In addition, eliminating the correspondence file requirement would permit commercial radio and television stations to fully transition to the online public file and to cease maintaining a local public file, allowing them to realize this cost savings associated with the online public file.

17. With respect to cable operators, eliminating the headend location public inspection file requirement would necessitate establishing a different requirement to ensure that headend location information continues to be made available to the FCC and to television stations. The *NPRM* seeks comments on various ways to accomplish this. Some of these options could result in greater reporting, recordkeeping, or other compliance requirements than the existing public inspection file requirement. Cable operators may support more burdensome requirements, however, if they prefer to transition to a fully online public inspection file and are concerned about security risks associated with placing headend location information online.

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

None.

³¹ 5 U.S.C. § 603(c).

**STATEMENT OF
CHAIRMAN THOMAS E. WHEELER**

Re: *Revisions to Public Inspection File Requirements – Broadcaster Correspondence File and Cable Principal Headend Location*, MB Docket No. 16-161.

In recent years, the Commission has adopted multiple updates to our rules requiring television and radio licensees to maintain public inspection files, which disclose community-relevant information such as political advertising sold and data on ownership and equal employment opportunities. Most notably, we adopted rules to make the so-called “public file” available online, rather than being squirreled away in a file cabinet at the actual TV and radio stations.

Although the central thrust of these changes has been to make the so-called “public file” more accessible to the public, we also consistently sought to minimize the burdens on licensees throughout these process reforms. At the request of Commissioner O’Rielly, the January 2016 *Expanded Online Public File Order* asked questions about whether certain requirements should be eliminated. The Commission staff has completed its review, and, consistent with its findings, this item proposes striking two outdated public file obligations.

First, we propose eliminating the requirement that commercial broadcast stations retain and make available to the public the letters and emails they receive regarding operation of the station. The original goal of the correspondence file requirement was to ensure that commercial broadcasters comply with their public interest obligation to air programming that is responsive to the needs and interests of their community of license. However, as consumers change the way they communicate with the world, it has become less common for them to write a letter or send an email to their local station. Instead, like most of us, consumers interact with their favorite stations via social media. And for those who would like to share information with the Commission about a station, that option remains available. Hence, the item tentatively concluded this requirement is no longer needed to serve its intended purpose.

Removing these public inspection file requirements would enable commercial broadcasters and cable operators to make their entire public inspection file available online and dispense with the need to maintain local public files. This should enable such broadcasters to lock their doors and redeploy resources once used to help the public access the file at the station.

The second obligation recommended for elimination is the requirement that cable operators publicly disclose the location of their control center for receiving and processing television signals. Some cable operators raised concerns that making information about the location of these control centers – or headends -- available online poses a potential security risk. The Commission’s review couldn’t identify any reason that the general public would need to know the location of a cable system’s principal headend, and we accordingly propose removing this rule.

However, we recognize that the designation and location of the principal headend must be made available to certain entities, including the FCC and local television stations. That’s why this item seeks comment on how principal headend information should be collected by the FCC and made available to those entities that need it.

These recommendations are not only part of a broader effort to update our public file rules, they are consistent with our agency-wide process reform initiative to review all Commission regulations and update or repeal outdated and unnecessary rules.

Thank you to the Media Bureau for their work on this item and to Commissioner O’Rielly for championing the specific proposals in this item.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Revisions to Public Inspection File Requirements – Broadcaster Correspondence File and Cable Principal Headend Location*, MB Docket No. 16-161.

In 1973, a gallon of gas was just under 40 cents, the Oakland Athletics won the World Series, and *Bonanza*, which in the early years, starred one of my favorite small screen personalities, Pernell Roberts, would end its 14 season run with 431 episodes. 1973 also marked the year, the Commission first required commercial radio and television broadcasters to retain letters received from the public, in a public inspection file.

Yes, the world looked very different then, and while not always a justification for changing Commission's rules, a look at the facts suggest that it is time for us to reassess whether the requirement that commercial broadcast stations, retain copies of letters and emails from the public, as part of their public inspection file.

An individual seeking to provide their local broadcaster with written feedback some 40 years ago, basically had one option: to submit a letter in paper form. Today, we can avail ourselves of several platforms, and a social media post on a broadcaster's page can be far more impactful than a letter or an e-mail sent directly to a television or radio station's office.

I remain a firm believer in the power of transparency and disclosure, which is why I have supported recent Commission actions to move the vast majority of the public inspection file online. This makes information more accessible to the general public. At the same time, I am cognizant of the regulatory burdens and the potential privacy concerns associated with posting individual letters and emails online. Today's NPRM, seeks to balance these interests and recognizes that members of the public will continue to have multiple means of communicating their comments or concerns, including direct contact with the FCC as part of a station's license renewal application process. Any renewal challenges made by the public will continue to be available in a station's online file as well as in the Commission's licensing databases.

Similarly, as the Commission reassesses its requirement to maintain a broadcaster correspondence file, I agree that it now makes sense to look at eliminating principal headend information from a cable operator's public inspection file. When was the last time you overheard two friends talking about the location of their cable operator's headend? Unless these individuals work in the communications industries or are incredibly bored, it is unlikely that such a conversation takes place with any regularity. But it is also important to note that for those entities with a legitimate need for headend location information, the NPRM commits to adopting a means for ensuring that this remains available to them.

I would like to thank the Media Bureau for their work on this item as well as their continued focus on finding ways to reduce regulatory burdens without diminishing the public's right to access valuable station information.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Revisions to Public Inspection File Requirements – Broadcaster Correspondence File and Cable Principal Headend Location*, MB Docket No. 16-161.

Four years ago the Commission's public file policies got their first dose of modernity when the agency made it possible to move these files from old dusty cabinets in television broadcast studios to a new cloud-based online database. Four months ago we offered up a second serving of the same when we took steps to permit radio, cable, and satellite providers to also post their public files online.

Today we continue on the same course by starting a rulemaking to cut the remaining elements of our public file requirements that still require paper files. Specifically, we seek comment on eliminating the broadcast correspondence file and cable headend disclosure requirements. The net effect of eliminating both requirements would be allowing commercial broadcasters and cable providers to put their entire public file online. This strikes me as modern—and timely. I look forward to the record that develops.

**STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *Revisions to Public Inspection File Requirements – Broadcaster Correspondence File and Cable Principal Headend Location*, MB Docket No. 16-161.

The late singer and actress Pearl Bailey once famously said: “What the world really needs is more love and less paperwork.” The FCC can’t do much about the former, but today, it does something about the latter.

In particular, this *Notice of Proposed Rulemaking* raises the question of whether the FCC should continue to require commercial broadcast stations to maintain letters and emails from the public in a paper inspection file. In my view, our correspondence file mandate is an unnecessary regulatory burden. Indeed, the very words “hardcopy,” “paper,” and “inspection file” are enough to make an increasingly digital citizenry yawn. I therefore support the proposal to eliminate this mandate.

There is little, if any, connection between the requirement and its purported goal of ensuring that a station serves its local community. Without the requirement, viewers and listeners would still be able to tell any broadcaster and the FCC what they think about a station’s performance. Moreover, getting rid of this requirement would allow commercial broadcasters to exclusively use an online public file rather than maintaining both physical and digital files.

I also support the proposal to eliminate the requirement that cable operators disclose headend location information in their public inspection files. When the Commission was considering cable operators’ online file obligations, I appreciated my colleagues’ willingness to refrain from ordering cable operators to post the location of their systems’ principal headends on the Internet. Widely disseminating that information, in my view, would have heightened security threats without any corresponding benefit to the public.

But cable operators are *still* required to place headend location information in a paper inspection file. This mandate is entirely unnecessary. For what was true for digital is true for analog: There is no legitimate need for the public to know the location of a cable system’s principal headend. Indeed, making the location of such critical infrastructure available to the general public could increase the security risks facing those facilities. And, once again, repealing this rule would allow cable operators to transition fully to an online public file and stop storing all that paper.

Too often of late, the FCC has imposed unnecessary regulatory burdens that don’t benefit consumers. But here, we are showing more love toward the public interest and proposing to eliminate two such burdens. That’s why I support this *Notice* and a prompt resolution of this proceeding.

**STATEMENT OF
COMMISSIONER MICHAEL P. O'RIELLY**

Re: *Revisions to Public Inspection File Requirements – Broadcaster Correspondence File and Cable Principal Headend Location*, MB Docket No. 16-161.

I fully support this step forward to eliminate unnecessary Commission requirements, thereby reducing costs for broadcasters and cable operators and enhancing overall physical security at their facilities. As I have pointed out in the past, the need to maintain the required correspondence files on paper and make them available to anyone walking in from the street creates an unnecessary security exposure for broadcasters. Likewise, including in cable public inspection files the location and designation of cable principal headends constitutes a potential security risk not only to cable operators' physical office space and employees, but also to the headends themselves.

The Commission's move to online public files presents us with an opportunity to review these particular risks. If the public inspection file is placed online, there is no more need to provide public access to a physical paper copy. However, a few roadblocks still remain before broadcasters and cable operators can transition to an online-only public file. The public file rules require broadcasters and cable operators to include a small amount of very specific information that arguably should not be placed online – namely public correspondence that includes its senders' personally identifiable information – as well as the locations and designations of cable headends. So despite undertaking the burden to move vast quantities of public file information onto the Internet, many filers still would not be able to realize the security-related benefits of having a truly online public file.

To the staff's credit, when I brought this issue to their attention, they were willing to set aside assumptions and question whether this information should be kept in a public file at all. Given the very few requests for onsite inspection of broadcasters' correspondence files or cable companies' headend information, along with modern options, like email and other social media, these rules look outdated and unnecessary.

This is an excellent case of a half dozen or dozen changes that should be made to update our media rules. I thank the staff for all their good work in this regard. I look forward to reviewing the comments that will be filed, and hopefully clearing away the roadblocks in the very near future.