

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

In the Matter of)
Expansion of Online Public File Obligations) MB Docket No. 14-127
To Cable and Satellite TV Operators and)
Broadcast and Satellite Radio Licensees)
Request for Partial Waiver of Online)
Public Inspection File Requirements)

MEMORANDUM OPINION AND ORDER

Adopted: December 16, 2016

Released: December 16, 2016

By the Chief, Media Bureau:

I. INTRODUCTION

1. Cox Radio, Inc. (Cox Radio), the licensee of radio stations WALR-FM, Palmetto, Georgia (Facility ID No. 48728) and WSRV(FM), Gainesville, Georgia (Facility ID No. 59970) (collectively, the Stations), has filed a request for a partial waiver of section 73.3526 of the Commission's rules insofar as that rule requires the Stations to upload their quarterly issues/programs lists and annual equal employment opportunity (EEO) reports for prior license renewal terms to the Commission's online public inspection file. For the reasons stated below, we grant Cox Radio a partial waiver pursuant to section 1.3 of the Commission's rules, and we allow it and other similarly situated licensees, as described below, to refrain from posting issues/programs lists and EEO reports from prior renewal terms to the online public file, under certain conditions. Licensees, including Cox Radio, that take advantage of this partial waiver must retain the paper version of their issues/programs lists and EEO reports for prior pending license renewal terms in their public inspection file at the main studio until the Commission acts on the relevant pending license renewal applications.

II. BACKGROUND

2. On April 27, 2012, the Commission adopted enhanced disclosure rules requiring television broadcast stations to post their public inspection files online both to improve the public's access to information and to facilitate dialogue between broadcast stations and the communities they serve. On January 28, 2016, the Commission expanded the list of entities that must post their public inspection files to the Commission's online database to include cable operators, satellite television providers, broadcast

1 Letter from Christina H. Burrow, Counsel for Cox Radio, to Marlene H. Dortch, Secretary, FCC (Dec. 9, 2016) (Waiver Request).

2 See 47 CFR § 73.3526; 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, 555, para. 77 (2016) (Expanded Online Public File Order).

3 See 47 CFR § 1.3.

4 See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Report and Order, 27 FCC Rcd 4535, 4541, para. 12 (2012) (Enhanced Disclosure Order).

radio licensees, and satellite radio licensees.⁵ The Commission explained that expanding the list of entities that must comply with the online public file requirements would “make information that [these entities] are already required to make publicly available more accessible while also reducing costs both for the government and the private sector.”⁶ The Commission expected that requiring additional categories of entities to place the public file online would improve access to information about how these entities serve their communities and meet their public interest obligations, while reducing the burden on the entities’ staff, who would otherwise have to facilitate in-person visits to view public file material.⁷

3. The public interest benefits of posting public information online are, as the Commission has previously stated, “unquestionably substantial.”⁸ The rules adopted in the *Expanded Online Public File Order* will yield benefits to the public by enhancing access to stations’ public inspection files, including online access to quarterly issues/programs lists and annual EEO reports. The quarterly issues/programs list contains “a list of programs that have provided the station’s most significant treatment of community issues during the preceding three month period,” and it includes “a brief narrative” description containing “the time, date, duration, and title of each program in which the issue was treated.”⁹ The annual EEO report contains: (1) a list of full-time vacancies filled by the station’s employment unit during the preceding year, (2) the recruitment sources used to fill each such vacancy, (3) the recruitment source that referred the hiree, (4) data reflecting the total number of people interviewed for the listed full-time vacancies and the total number of interviewees referred by each recruitment source, and (5) a list and brief description of EEO-related initiatives undertaken during the preceding year.¹⁰ Members of the public need access to quarterly issues/programs lists and annual EEO reports if they wish to assess the sufficiency of licensees’ service to their communities of license or the sufficiency of their EEO programs, including in connection with petitions to deny license renewal applications.

4. Given the importance of EEO reports and issues/programs lists to the renewal process, sections 73.3526(e)(7) and (12) of the Commission’s rules require stations to maintain all quarterly issues/programs lists and annual EEO reports in the public file “until final action has been taken on the station’s next license renewal application.”¹¹ The *Expanded Online Public File Order* required commercial radio broadcast stations in the top 50 Nielsen Audio markets with five or more full-time employees to begin placing new public file materials in the Commission’s online public file database on June 24, 2016.¹² The *Expanded Online Public File Order* also requires these stations to place public file materials that existed as of June 24, 2016, with the exception of then existing political files, in the Commission’s online public file database by December 24, 2016.¹³ Ordinarily, this would include all issues/programs lists and EEO reports that a licensee has completed during its current eight-year license term. Where, however, a station’s license renewal application for the period preceding the current eight-year term has been deferred, as here, our rules require that the public file include issues/programs lists and

⁵ *Expanded Online Public File Order*, 31 FCC Rcd at 527, para. 1.

⁶ *Id.* at 533, para. 15.

⁷ *Id.*

⁸ *Id.*; see also *Enhanced Disclosure Order*, 27 FCC Rcd at 4542, para. 13.

⁹ 47 CFR § 73.3526(e)(12).

¹⁰ *Id.* §§ 73.2080, 73.3526(e)(7).

¹¹ *Id.* §§ 73.3526(e)(7), (12).

¹² See *Expanded Online Public File Order*, 31 FCC Rcd at 542-543, para. 41; *Effective Date Announced for Expanded Online Public Inspection File Database*, Public Notice, 31 FCC Rcd 4699 (MB, May 12, 2016) (*Expanded Online Public File Public Notice*).

¹³ See *Expanded Online Public File Order*, 31 FCC Rcd at 543, para. 43; *Expanded Online Public File Public Notice*, 31 FCC Rcd 4699.

EEO reports for the deferred term as well.

5. Cox Radio seeks permission not to upload the quarterly issues/programs lists and annual EEO reports for the Stations' prior pending license renewal periods, which include one pending license renewal application for WALR-FM and two pending license renewal applications for WSRV(FM).¹⁴ Cox Radio timely filed license renewal applications for WALR-FM¹⁵ and WSRV(FM),¹⁶ and it is unaware of any objections filed against the license renewal applications.¹⁷ Commission action on the renewal applications has been delayed, according to Cox Radio, due to the Commission's continued examination of its newspaper/broadcast cross-ownership rule (the NBCO Rule), a matter that is outside of Cox Radio's control.¹⁸ Because the Commission has not granted WALR-FM's 2011 license renewal application or WSRV(FM)'s 2003 or 2011 license renewal applications, the Commission's rules require WALR-FM and WSRV(FM) personnel to maintain public inspection files dating back to April 1, 2004 and April 1, 1996, respectively.¹⁹

6. Cox Radio argues that uploading thousands of pages of quarterly issues/programs lists and annual EEO reports covering up to a twenty-year period will be burdensome to the Stations and will not provide any benefit to the public.²⁰ Cox Radio estimates that it could take up to two weeks for a full-time station employee to scan the quarterly issues/programs lists and annual EEO reports for the prior pending license renewal terms and upload them to the online public inspection files.²¹ Moreover, Cox Radio states that it has already uploaded all of the required public inspection file materials for the current license term to the online public inspection files.²² Cox Radio commits to continued maintenance of the issues/programs lists and EEO reports for the prior pending renewal periods at the main studio, where the materials will be available for public inspection until the Commission acts upon the pending license

¹⁴ See Waiver Request at 2.

¹⁵ See FCC File No. BRH-20111128ERH.

¹⁶ See FCC File Nos. BRH-20031205ACS and BRH-20111128ESM.

¹⁷ See Waiver Request at 2.

¹⁸ See *id.* at 2-3. Cox Radio explains that before it acquired the Stations and continuing today, "an affiliate of Cox Radio has owned and operated the *Atlanta Journal-Constitution*, a daily newspaper published in Atlanta." See *id.* at 1. Cox Radio's acquisitions of the Stations in the late 1990s was conditioned on its compliance with the Commission's NBCO Rule, which "the FCC and the federal appellate courts have reviewed on multiple occasions during the entire period of Cox Radio's ownership of the Stations." *Id.* The Commission in August 2016 adopted an order addressing the NBCO Rule. See *2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Second Report and Order, 31 FCC Rcd 9864 (2016) (*2016 Broadcast Ownership Order*). Petitions for reconsideration and appeals of that order are pending. Subsequently, Cox Radio filed an amendment to the 2011 license renewal application for WALR-FM, and amendments to the 2003 and 2011 license renewal applications for WSRV(FM), on December 8, 2016 and December 12, 2016, respectively. In these amendments, Cox Radio stated that its "common ownership of WSRV(FM), WALR-FM, and the [*Atlanta Journal-Constitution*] should be approved because this combination has not harmed and will not harm viewpoint diversity in the Atlanta market. Accordingly, and solely to the extent necessary with respect to WSRV(FM), Cox requests a permanent waiver of the NBCO Rule to permit continued common ownership of these properties."

¹⁹ See Waiver Request at 2-3. See also FCC File No. BRH-20031205ADF (WALR-FM's most recent granted license renewal application, which was granted for a term expiring on April 1, 2012); FCC File No. BRH-19951201WP (WSRV(FM)'s most recent granted license renewal application, which was granted for a term expiring on April 1, 2004).

²⁰ See Waiver Request at 2.

²¹ See *id.* at 3.

²² See *id.* at 3-4.

renewal applications.²³ In addition, Cox Radio explains, “[b]ecause the Stations are operated as part of an employment unit with other Cox radio stations in the market, the Commission has previously considered each of the EEO reports subject to the waiver request and deemed them sufficient in the context of its review of the renewal applications for the other stations.”²⁴

7. The waiver request at issue herein is very similar to a waiver that the Media Bureau previously granted to permit television stations to refrain from posting issues/programs lists from a prior renewal term to the online public file, provided that the television station’s prior renewal application was (1) unopposed by any member of the public, and (2) deferred due to enforcement matters unrelated to the station’s obligation to air programming responsive to the needs and interests of its community or the recordkeeping related thereto.²⁵ In that proceeding, we granted the partial waiver request of a television station licensee, and we also granted the same waiver for other similarly situated stations given our belief that many other stations were similarly situated.²⁶

III. DISCUSSION

8. Pursuant to section 1.3 of the Commission’s rules, the Commission may waive any provision of its rules if it determines that good cause has been shown.²⁷ For reasons similar to those articulated in the *Television Online Public File Waiver*, we conclude that Cox Radio has demonstrated good cause for a waiver.²⁸ The public had an opportunity to review the quarterly issues/programs lists and annual EEO reports²⁹ covering prior license renewal periods at the time WALR-FM sought renewal in 2011, and at the time WSRV(FM) sought renewal in 2003 and 2011, but no member of the public opposed the prior renewal applications.³⁰ We find that lack of access to issues/programs lists or EEO reports that are more than eight years old via the online file is unlikely to cause any significant inconvenience to the public in these circumstances. In the event that any member of the public would like to view these materials, they may do so at the Stations’ main studio. Further, Cox Radio has shown that moving the issues/programs lists and EEO reports covering the prior renewal periods to the online public file will impose a burden to its staff. Thus, we find that having the Stations keep these quarterly issues/programs lists and annual EEO reports available at the main studio is a reasonable alternative to

²³ See *id.* at 4.

²⁴ *Id.* at 3.

²⁵ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Request for Partial Waiver of Online Public Inspection File Requirements*, Memorandum Opinion and Order, 28 FCC Rcd 443 (MB, Jan. 31, 2013) (*Television Online Public File Waiver*).

²⁶ *Id.* at 449, para. 7.

²⁷ See 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied* 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission’s rules is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

²⁸ We note that licensees filing a new renewal application, whose last renewal application remains pending, in general are required only to provide information and certifications in their new renewal application for the current renewal term, and not for the entire time elapsed since their last grant. See *Media Bureau Announces Revisions to License Renewal Procedures and Form 303-S; Radio License Renewal Cycle to Commence on May 2, 2011*, Public Notice, 26 FCC Rcd 3809 (rel. Mar. 14, 2011). See also *Television Online Public File Waiver*, 28 FCC Rcd at 448-449, para. 6.

²⁹ As Cox Radio notes, the EEO rules went into effect in 2003. See Waiver Request at 2, n. 8.

³⁰ See *id.* at 2.

posting online based on the facts presented.

9. Accordingly, we waive compliance with the requirement that the Stations post their quarterly issues/programs lists and annual EEO reports online for their prior unopposed renewal periods, from April 1, 2004 to March 31, 2012 for WALR-FM and from April 1, 1996 to March 31, 2012 for WSRV(FM), on the condition that the Stations make all quarterly issues/programs lists and annual EEO reports for that period available to the public at the main studio until final action has been taken on the license renewal applications covering the prior renewal periods. We stress that the Stations remain subject to the other requirements of section 73.3526 and the *Expanded Online Public File Order*, including the requirement that they upload most other existing public file documents online by December 24, 2016.

10. Because we believe that other stations may be similarly situated, we also grant the same waiver for other similarly situated stations. Such stations may choose to make their quarterly issues/programs lists and annual EEO reports from prior pending renewal terms³¹ available to the public at the station's main studio in lieu of uploading them to the online public file. To be similarly situated, a station's prior renewal application must have been: (1) unopposed by any member of the public, and (2) deferred due to reasons unrelated to (a) the station's obligation to air programming responsive to the needs and interests of its community or the recordkeeping related thereto, or (b) the station's obligation to comply with its EEO requirements or the recordkeeping related thereto.³² We note that this waiver does not apply to WALR-FM, WSRV(FM), or any other station for documents and materials covered under the current renewal term. Given the importance of issues/programs lists and EEO reports for complaints or petitions to deny the renewal of a station's broadcast license, we stress that all stations are required to comply with sections 73.3526(e)(7) and (12) for each station's current renewal cycle.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to section 1.3 of the Commission's rules, 47 CFR § 1.3, the request for waiver filed by Cox Radio, Inc. IS GRANTED for WALR-FM, WSRV(FM), and any similarly situated station on the conditions discussed above.

³¹ License expiration dates for the current term span from June 1, 2019 to April 1, 2022, depending upon the state where the station is licensed. See <https://www.fcc.gov/media/radio/broadcast-radio-license-renewal-dates-by-date#block-menu-block-4>. License expiration dates from the prior term spanned from 2011 to 2014.

³² If a station's prior renewal application was deferred due to a matter related to the station's obligation to air programming responsive to the needs and interests of its community or the recordkeeping related thereto, it still may take advantage of the waiver with regard to EEO reports only. Similarly, if a station's prior renewal application was deferred due to a matter related to the station's obligation to comply with its EEO requirements or the recordkeeping related thereto, it still may take advantage of the waiver with regard to issues/programs lists only. In the *Television Online Public File Waiver*, we considered a station to be similarly situated if its prior renewal application was (1) unopposed by any member of the public, and (2) deferred due to enforcement matters unrelated to the stations' obligation to air programming responsive to the needs and interests of its community or the recordkeeping related thereto. *Television Online Public File Waiver*, 28 FCC Rcd at 449, para. 7. Here, Cox Radio explains that its prior renewal applications were deferred due to "the Commission's continued examination of the NBCO Rule," and not due to enforcement matters. See Waiver Request at 2. Accordingly, the second criterion here will not be limited to "enforcement matters." Because this waiver applies to annual EEO reports as well as quarterly issues/programs lists, unlike the television waiver which was requested only for issues/programs lists, the second criterion here also clarifies that the matters leading to the deferral must be unrelated to compliance with requirements related to the issues/programs list or the EEO program.

12. This action is taken pursuant to authority delegated by section 0.283 of the Commission's rules, 47 CFR § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

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