

**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	)	
	)	
	)	

**REPORT AND ORDER**

**Adopted: January 31, 2017**

**Released: January 31, 2017**

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

**I. INTRODUCTION**

1. In this *Report and Order*, we 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;<sup>1</sup> and (ii) the requirement that cable operators maintain for public inspection the designation and location of the cable system’s principal headend.<sup>2</sup> 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 will enable commercial broadcasters and cable operators to make their entire public inspection file available online without these privacy and security concerns and eliminate the need to maintain a local public file.

2. Principal headend location information must be accessible to the Commission, however, to enable it to enforce its signal leakage rules and to respond to must-carry and signal leakage complaints. In addition, broadcast television stations must have access to this information in order to exercise their must-carry rights and franchisors may need it in connection with their oversight of local cable systems and operations. Accordingly, we will require cable systems to provide principal headend location information to these entities upon request. In lieu of responding to individual requests for such information, operators may alternatively elect voluntarily to provide this information to the Commission for inclusion in the Commission’s online public inspection file (“OPIF”) database and may elect to make the information publicly available there.

3. Eliminating the correspondence file and principal headend public file requirements will reduce regulatory burdens on commercial broadcasters and cable operators. By permitting these entities to cease maintaining a local public file, our actions will also advance regulatory parity with respect to our public file requirements among various program distributors and improve security at local stations and principal headend locations.

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

<sup>2</sup> See 47 C.F.R. §§ 76.1708, 76.1700(a)(6).

## II. BACKGROUND

### A. Correspondence File

4. 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.<sup>3</sup> The rule expressly includes email messages transmitted to station management or to an email address publicized by the station.<sup>4</sup>

5. As discussed in the *Notice of Proposed Rulemaking* in this proceeding,<sup>5</sup> 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.<sup>6</sup> The original correspondence file rule 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."<sup>7</sup> 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."<sup>8</sup> The Commission later removed the requirement 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."<sup>9</sup> The Commission, however, retained the requirement that licensees keep all written comments and suggestions received from the public in their public inspection files.<sup>10</sup>

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

<sup>4</sup> 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 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). Section 73.1202 of the Commission's rules also includes outdated references to correspondence file requirements. See, *infra*, note 39.

<sup>5</sup> See *Revisions to Public Inspection File Requirements – Broadcaster Correspondence File and Cable Principal Headend Location*, Notice of Proposed Rulemaking, 31 FCC Rcd 5796 (2016) ("NPRM").

<sup>6</sup> 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").

<sup>7</sup> 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.*

<sup>8</sup> 1973 Memorandum Opinion and Order at 415, para. 35. See also 1973 Final Report and Order at 17, para. 51.

<sup>9</sup> See *Radio Broadcast Services; Revision of Applications for Renewal of License of Commercial and Noncommercial AM, FM, and Television Licensees*, 49 FR 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).

<sup>10</sup> 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").

6. 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**

7. 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."<sup>11</sup> 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").<sup>12</sup> Under 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.<sup>13</sup> 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."<sup>14</sup> 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.<sup>15</sup>

### **C. Online Public Inspection File**

8. 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.<sup>16</sup> However, in the *Television Online Public File*

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<sup>11</sup> 47 C.F.R. § 76.1708(a).

<sup>12</sup> 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. See 47 U.S.C. §§ 534, 535.

<sup>13</sup> See 47 U.S.C. § 534(h)(1)(B)(iii).

<sup>14</sup> 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).

<sup>15</sup> 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).

<sup>16</sup> *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*"). Stations were required to upload new public file documents to the online database starting August 2, 2012. Stations were given six months from this date to upload documents that were already in their public inspection file that were required to be uploaded to the online file. Stations were not required to upload existing political file material but only new political file material on a going-forward basis. In addition, to smooth the transition for television stations and the Commission and to allow smaller broadcasters additional time to begin posting their political files online, the Commission phased in the new political file posting requirement. Television stations affiliated with the top four national networks (ABC, NBC, CBS, and Fox) and licensed to serve communities in the top 50 Designated Market Areas were required to begin posting their new political file documents online starting August 2, 2012, but other television stations were exempted from posting their political file documents online for two years, until July 1, 2014.

*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.<sup>17</sup> 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.<sup>18</sup>

9. 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.<sup>19</sup> 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 requirement to file online and instead require stations to continue to retain such material in their local public file.<sup>20</sup> The Commission also concluded that it would not require cable operators to include principal headend location information in the online public file and gave operators the option instead to continue to retain this information in their local public file.<sup>21</sup>

10. The Commission determined in the *Expanded Online Public File Order* that entities that upload all public file material to the Commission's online database and that also provide online access to back-up political file documents via the entity's own website when the Commission's online database is temporarily unavailable will not be required to maintain a local public file.<sup>22</sup> 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.<sup>23</sup> In the *NPRM*, the Commission tentatively concluded that it should eliminate the correspondence file requirement.<sup>24</sup> As requested by NCTA,<sup>25</sup> we also proposed in the *NPRM* to eliminate the requirement that cable operators

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<sup>17</sup> *Id.* at 4566-67, para. 62. See also 47 CFR §73.3526(b)(1) ("For all licensees, letters and emails from the public, as required by paragraph (e)(9) of this section, shall be maintained at the main studio of the station").

<sup>18</sup> 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.

<sup>19</sup> *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 exempted cable systems with fewer than 1,000 subscribers from all online public file requirements. *Id.* at 546, para. 50. These systems are also exempt from many public inspection file requirements, including the political file, sponsorship identification, EEO records, and records regarding children's commercial programming. *Id.* at 544-545, para. 46 and note 120.

<sup>20</sup> *Expanded Online Public File Order*, 31 FCC Rcd at 564, para. 94.

<sup>21</sup> *Id.* at 549-50, para. 61. See also 47 CFR §76.1700(e) ("Public file material that continues to be retained at the system shall be retained in a public inspection file maintained at the office in the community served by the system that the system operator maintains for the ordinary collection of subscriber charges, resolution of subscriber complaints, and other business and, if the system operator does not maintain such an office in the community, at any accessible place in the communities served by the system (such as public registry for documents or an attorney's office)").

<sup>22</sup> *Expanded Online Public File Order*, 31 FCC Rcd at 541-42, para. 38.

<sup>23</sup> *Id.*

<sup>24</sup> See *NPRM*, 31 FCC Rcd at 5800, para. 9.

<sup>25</sup> See Letter from Stephanie L. Podey, 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").

retain information regarding the location of their principal headend in the public inspection file. We noted that the general public has no interest in this information and that eliminating this public file requirement would permit operators who feel the need to avoid posting this information online for security reasons to cease retaining this information locally and to transition to a fully online public inspection file.<sup>26</sup>

### III. DISCUSSION

#### A. Correspondence File

11. As we proposed in the *NPRM*, we eliminate the requirement that commercial broadcast stations retain letters and emails from the public in their public inspection files.<sup>27</sup> We agree with those commenters who argue that retention of letters and emails is not necessary 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.<sup>28</sup> Viewers and listeners can continue to communicate directly with stations by letter, email, social media, telephone, or other means; the only change is that stations will no longer be required to retain letters and emails and make them publicly available in their local public file.<sup>29</sup>

12. We agree with the Broadcaster Coalition that stations are likely to continue to respond to concerns raised by consumers even though they are no longer required to retain all written communications for public inspection.<sup>30</sup> Stations have an economic incentive to be responsive to their

<sup>26</sup> See *NPRM*, 31 FCC Rcd at 5796, para. 1 and at 5801, para. 12.

<sup>27</sup> This Order removes the text of both § 73.3526(e)(9) and § 73.1202 from the Code of Federal Regulations (CFR). See 47 C.F.R. §§ 73.1202, 73.3526(e)(9). Section 72.1202 is nearly identical to § 73.3526(e)(9), *see paras.* 4-5, *supra*, in that it requires commercial radio and television broadcasters to retain written comments and suggestions from the public regarding the station operation in their local public inspection file. Section 73.1202 differs from § 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. 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 CFR, § 73.1202(b), however. In 1998, the Commission also directed that the correspondence file requirement be moved from § 73.1202 to § 72.3526(e)(9) 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) are reflected in the CFR, the Commission's directive that § 73.1202 be removed was not implemented. The Commission is eliminating § 73.1202 in its entirety, thereby correcting these oversights. See Appendix B (final rules).

<sup>28</sup> See, e.g., Comments of NAB at 2, Named State Broadcasters Associations at 3, Broadcaster Coalition at 3.

<sup>29</sup> Several commenters report that few, if any, members of the public request to view the correspondence file. See Comments of Saga at 2 (noting that Saga's general managers report that no member of the public has visited a station in the last five years to view the correspondence file), Broadcaster Coalition at 2 (noting that, in the collective experience of the Coalition, few, if any, members of the public ever review a station's correspondence file), and NAB at 3 (noting that very few members of the public make the effort to examine stations' local public inspection files). NHMC provides evidence of a number of visits it has made to view local public inspection files, including correspondence files. See Letter from NHMC and Free Press to Marlene H. Dortch, Secretary, FCC, dated November 16, 2016, at 2-4. These commenters, together with Howard Media Group, oppose elimination of the correspondence file requirement, arguing generally that viewers and listeners without Internet access should continue to be able to access the correspondence file in person in order to hold stations accountable for their programming. See NHMC Comments at 4 and Reply Comments at 1-2. See also Howard Media Group Comments at 1-2. As discussed below, viewers and listeners without Internet access at home will continue to be able to communicate with stations and the FCC by other means. See, *infra*, para. 14.

<sup>30</sup> See Broadcaster Coalition Comments at 3.

consumers. The Broadcaster Coalition notes that, as they have with letters and emails from the public, stations now monitor their social media accounts to understand viewers' reactions to stories and obtain feedback about the operation of the station.<sup>31</sup> We also agree with those commenters who note that the volume of commentary on social media sites about a station's performance is likely to far exceed the number of letters and emails a station receives.<sup>32</sup> Unlike the correspondence file, these Internet postings are readily available online where they can be viewed by interested parties.

13. Our action today will have little, if any, impact on the Commission's role in reviewing licensee performance. As we stated in the *NPRM*, the Commission's scrutiny of most licensee conduct occurs in conjunction with consideration of a station's license renewal application.<sup>33</sup> Interested listeners and viewers may file petitions or objections concerning licensee performance at the time the station files its renewal application.<sup>34</sup> Licensees are required to air announcements notifying their viewers and listeners that they have the opportunity to provide feedback during the Commission's review of the license renewal application.<sup>35</sup> Petitions and objections filed in connection with a license renewal application are accessible by the public in the Commission's Consolidated Database System ("CDBS").<sup>36</sup> Interested parties may also file formal and informal complaints at any time during a station's license period. The Commission maintains a public website that permits consumers to file informal complaints directly with the Commission.<sup>37</sup>

14. While we recognize that some consumers may not have Internet access at home, lack access to broadband, or lack digital media skills, we disagree with those commenters who argue that these concerns warrant requiring commercial broadcasters to continue to maintain a correspondence file.<sup>38</sup> The

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<sup>31</sup> See Broadcaster Coalition Comments at 3.

<sup>32</sup> See, e.g., Comments of Named State Broadcasters Associations at 3, NAB at 3, Meredith at 1, Saga at 2-3. For example, many stations maintain pages on Facebook. See Saga Comments at 2-3.

<sup>33</sup> See *NPRM*, 31 FCC Rcd at 5800, para. 9.

<sup>34</sup> See 47 C.F.R. §§ 73.3584 (petition to deny), 73.3587 (informal objection). Petitions to deny must be filed electronically but informal objections may be filed by mail.

<sup>35</sup> Licensees must 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).

<sup>36</sup> See [https://licensing.fcc.gov/prod/cdbs/forms/prod/cdbs\\_ef.htm](https://licensing.fcc.gov/prod/cdbs/forms/prod/cdbs_ef.htm).

<sup>37</sup> See <https://consumercomplaints.fcc.gov>. The FCC recently took steps to improve this Consumer Help Center website, where consumers can obtain information about television and radio programming concerns and other consumer issues related to broadcasting and file an informal complaint regarding a particular station. The FCC reviews all informal complaints, issues a tracking number, and provides periodic emails to the filer regarding the status of the complaint. Once all required information regarding the complaint has been gathered, the FCC either responds to the filer by providing relevant educational material or an external referral, refers the complaint internally, or serves the complaint on the station/service provider. If the complaint is served, the provider must respond to the FCC with a copy to the consumer in writing within 30 days. There is no fee to file an informal complaint with the FCC. While informal complaints cannot currently be searched by station/service provider, the Commission is working on providing more search options for consumers.

<sup>38</sup> See Comments of NHMC at 4 (noting that nearly one-third of Americans do not have home broadband, including demographic groups like the poor and Latinos that rely disproportionately on over-the-air broadcast, and arguing that eliminating the correspondence file would leave viewers without Internet access or who lack digital literacy skills without a way to include their comments regarding a station in the public record), and Howard Media Group at 1-2 (noting that a significant number of Americans do not have access to online services and many have no access to broadband, and arguing that the public should have access to station files in person as well as online). See also Reply Comments of NHMC *et al.* at 1-2 (arguing that eliminating the correspondence file would disproportionately hurt the poor and communities of color and would exclude consumers without access to the Internet from the resources that allow them to hold their broadcasters accountable).

record suggests that few consumers seek access to the correspondence file. Consumers can continue to communicate directly with stations by letter or telephone and those without Internet access at home may also be able to access the online public file from locations, such as public libraries, that provide Internet access to the public. In addition, consumers who are unable to access or navigate the Commission's website can file an informal objection to a renewal application by mail. Consumers can also contact the Commission toll-free by telephone to file an informal complaint against a station.<sup>39</sup>

15. Eliminating the correspondence file requirement will have the added benefit of permitting commercial broadcasters to transition to an entirely online public file and cease maintaining a local public file. This change will reduce regulatory burdens on commercial broadcasters and allow them to realize the cost savings and other efficiencies of an entirely online file. Eliminating the correspondence file will also advance regulatory parity by providing commercial broadcasters with the same opportunity as other entities with online file requirements to provide online access to all public file materials, and will permit commercial licensees concerned about security to limit public access to a station's facilities.<sup>40</sup>

16. We note that the Telecommunications Act of 1996 requires television licensees to include in their license renewal application "a summary of written comments and suggestions" that are both "received from the public," and "maintained by the licensee (in accordance with Commission regulations)," and that "comment on the applicant's programming, if any, and that are characterized by the commenter as constituting violent programming."<sup>41</sup> The Commission determined in 1999 that noncommercial broadcasters are not subject to this requirement because Section 308(d) requires licensees to summarize correspondence maintained by licensees "in accordance with Commission regulations"<sup>42</sup> and "noncommercial educational licensees are not required to maintain these letters under our rules."<sup>43</sup> It follows from this determination that because commercial TV licensees will no longer be required to maintain correspondence under our rules, under the terms of Section 308(d) they also will not be required to file a summary of correspondence received regarding violent programming with their renewal application.<sup>44</sup> Our extension of our 1999 determination moots the Broadcaster Coalition request that the Commission clarify that such communications may be retained in a non-public file and that the retention period for such communications is three years, consistent with the correspondence file retention period requirement, rather than the eight-year license term.<sup>45</sup> The Commission's license renewal application, FCC Form 303-S, directs commercial TV and Class A TV applicants to submit a summary of written communications received from the public regarding violent programming.<sup>46</sup> We delegate authority to the

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<sup>39</sup> 1-888-CALL FCC (225-5322).

<sup>40</sup> See Comments of Meredith at 2 (arguing that allowing the public into stations has become "much more dangerous given current sociopolitical realities") and Broadcaster Coalition at 5-6 (arguing that the safety of employees at the main studio is a "very real and growing concern"). *But see* Reply Comments of NHMC *et al.* at 4 (arguing that there are "no documented incidents of violence resulting from an individual inspecting the public file").

<sup>41</sup> 47 U.S.C. § 308(d).

<sup>42</sup> 47 U.S.C. § 308(d).

<sup>43</sup> See *In the Matter of Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Memorandum Opinion and Order, 14 FCC RCd 11113, 11126-11127, paras. 35-37 (1999) ("1999 Main Studio and Public File Order").

<sup>44</sup> As noted above, viewers concerned about a station's airing of violent programming may file petitions or objections concerning licensee performance at the time the station files its renewal application. See *supra* para. 13. In addition, viewers may file formal and informal complaints with the Commission at any time during the license term as well as submit commentary on the station's social media site about violent programming.

<sup>45</sup> See Broadcaster Coalition Comments at 4, note 9.

<sup>46</sup> See FCC Form 303-S at p. 5 and instructions at p. 25.

Media Bureau to revise this form and instructions consistent with our decision to eliminate the correspondence file requirement.

17. The rule changes we are adopting herein must be approved by the Office of Management and Budget (“OMB”) under the Paperwork Reduction Act (“PRA”). The Media Bureau will issue a Public Notice announcing such approval and the effective date of the rules. Commercial broadcasters must continue to retain a correspondence file locally and make it available for public inspection until the effective date of the new rules.<sup>47</sup>

#### **B. Principal Headend Location**

18. As we proposed in the *NPRM*, we also eliminate the requirement that cable operators retain information about the designation and location of the system’s principal headend in the public inspection file. No commenter opposed this proposal.<sup>48</sup> All commenters who addressed the issue agreed with our conclusion in the *NPRM* that the general public has no need for or interest in this information.<sup>49</sup>

19. While the general public has no need for information about the location of a cable system’s principal headend, that information must be accessible to the Commission as needed to permit enforcement of cable carriage and signal leakage requirements and to avoid interference to and from cable headends. For example, the Commission must know the location of the principal headend to conduct tests to determine compliance with signal leakage requirements.<sup>50</sup> In addition, the Commission must know the location of a principal headend in order to ensure that the facilities are not causing interference to, or receiving interference from, other communications facilities.<sup>51</sup> The Commission currently does not maintain principal headend location information for most cable systems.<sup>52</sup> Broadcast television stations also must have access to principal headend location information to determine cable carriage rights.<sup>53</sup>

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<sup>47</sup> The modifications to FCC Form 303-S also require approval by OMB under the PRA. The Bureau will submit information on the rule changes and the revised collection to OMB for review under section 3507(d) of the PRA. Comments on the changes to the form will be requested at that time. The Bureau will announce the specific filing deadlines and other procedures for submitting Form 303-S under the revised rules in a subsequent Public Notice. Until such announcement, applicants should continue to submit Form 303-S as required under the existing rules. The Bureau will publish a notice in the Federal Register announcing receipt of approval for the change and the effective date for use of the revised form.

<sup>48</sup> CDE, an engineering firm, notes that there is likely to be an increased need for information regarding the location of cable systems’ principal headends during the repacking phase following the incentive auction, as television stations being repacked will want to ensure that service is maintained to the principal headend. *See* CDE Comments at 1-2. CDE asks how this information will be made available if the principal headend public inspection file requirement is not readily available. *Id.* at 2. As discussed further below, we will require cable systems that do not make principal headend location publicly available in OPIF to provide it to television stations on request. *See, infra*, paras. 20-21. Stations may provide this information to their engineers.

<sup>49</sup> *See NPRM*, 31 FCC Rcd at 5801, para. 12. *See also* Comments of ACA at 6, NCTA at 3, and WTA at 2. WTA and ACA state that they are not aware of any instance in which a request has been made to view principal headend information in the public file. *See* WTA Comments at 3 and ACA *ex parte* at 2.

<sup>50</sup> *See, e.g.*, 47 C.F.R. §§ 76.613 (Interference from a multichannel video programming distributor (MVPD)), 76.614 (Cable television system regular monitoring), 76.616 (Operation near certain aeronautical and marine emergency radio frequencies), 76.617 (Responsibility for interference), and 76.605(a)(12) (Technical Standards).

<sup>51</sup> *See, e.g.*, 47 C.F.R. § 74.703(d) (Interference).

<sup>52</sup> The Commission’s EAS Test Reporting System maintains information regarding the geographic location of certain cable system facilities, but does not identify the principal headend. *See* ACA *ex parte*, filed January 23, 2017, at note 5.

<sup>53</sup> *See, supra*, para. 7.



20. To ensure that the Commission has access to principal headend location information, we will require that all cable systems provide it to us promptly upon request made by phone, email, or other means. Systems must also provide this information upon request to broadcast television stations and franchisors.<sup>54</sup> In lieu of responding to individual requests for principal headend location information, systems may alternatively elect voluntarily to input this information into OPIF or provide it to the Commission by mail or email to be included in that database.<sup>55</sup> Systems that elect to provide this information in OPIF may choose to make it accessible only to the Commission or also make it publicly available.<sup>56</sup> Inputting headend information into OPIF will be a simple task and, for cable operators that choose this option, will obviate responding to inquiries about their headend location from Commission staff. In addition, systems that input the information directly into OPIF can elect to make it immediately available to the public and thereby also eliminate the necessity of providing information in response to other requests for principal headend location information.

21. Systems that elect not to provide principal headend information in OPIF, or that elect to protect this information from public view, will be required to make it available to broadcast television stations and local franchisors upon request. If a request is submitted to a cable system from a broadcaster or local franchisor in writing by certified mail, cable systems must respond in writing by certified mail within 15 calendar days. Cable systems may in addition elect to respond to requests from these entities submitted by telephone or email, but must respond in writing by certified mail if requested to do so by the station or franchisor. Systems that choose to provide principal headend information to the FCC by email or mail, and that state that it can be made public in OPIF, must provide it to stations upon request until their information appears in the OPIF database.

22. After the rules adopted in this order are approved by the Office of Management and Budget (“OMB”), the Media Bureau will issue a Public Notice (“PN”) announcing the effective date of the rules. The Media Bureau will provide in the PN instructions on how to access and use the OPIF database, addresses to be used to send the information directly to the Commission, and the telephone number for technical assistance with OPIF.

23. The actions we take today will reduce burdens for cable system operators, particularly those with security concerns about posting principal headend location information online. By eliminating the principal headend public file requirement, we enable these systems to transition to a fully online public file and benefit from the long-term cost-savings and other efficiencies associated with an online file.<sup>57</sup> While these systems must provide principal headend information to the Commission, broadcasters, and franchisors upon request, this requirement is minimal and should not be onerous. Commenters report

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<sup>54</sup> We note that our rules also require cable operators to provide written notice by certified mail to all stations carried on a cable system pursuant to the must-carry rules at least 60 days prior to any change in the designation of the principal headend. *See* 47 C.F.R. § 76.1607.

<sup>55</sup> As noted above, cable systems with 1,000 or more subscribers currently have the option to upload principal headend information to OPIF or retain it in their local public file. *See, supra*, para. 9. While systems with fewer than 1,000 subscribers do not have an online public file requirement, *see, supra*, note 19, they may use the online file voluntarily to make available principal headend information.

<sup>56</sup> ACA requested that cable systems be given the option to continue to make principal headend location information available to the public in their public inspection files. *See* ACA Comments at 2.

<sup>57</sup> Commercial broadcasters must maintain a correspondence file locally until the effective date of the rules adopted in this proceeding, and cable operators must make principal headend information publicly available, either in OPIF or in the local public file, until that date. Also, until the effective date of the rules adopted in this proceeding, commercial TV and Class A TV stations must submit a summary of communications regarding violent programming with any renewal application as required by 47 U.S.C. § 308(d). *See, infra*, para. 32.

that systems receive very few, if any, requests for this information.<sup>58</sup> Any burden from these new requirements is more than offset by the benefit of no longer being required to maintain a local public file to retain principal headend location information. Moreover, cable systems that elect voluntarily to provide principal headend location information to the Commission to be maintained in OPIF, and that elect to make this information publicly available, can direct anyone requesting principal headend location information to that database in lieu of responding to individual requests.

24. We disagree with ACA that small cable systems should have the option to retain principal headend location locally and provide it to the Commission, television stations, and franchisors on request made in person at their facilities.<sup>59</sup> Requiring entities to make an in-person visit to the system to obtain this information, should that be necessary, would be unduly burdensome, particularly as there are other simple, essentially costless means for the system to provide the information to entities that need it. Moreover, as the Commission currently does not have information regarding the address of the principal headend or local business office for many small systems, Commission staff often would not know where to go in person to request principal headend location information.

#### IV. PROCEDURAL MATTERS

##### A. Final Regulatory Flexibility Act Analysis

25. As required by the Regulatory Flexibility Act of 1980 (“RFA”),<sup>60</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (“FRFA”), attached hereto as Appendix C, relating to this Report and Order.

##### B. Paperwork Reduction Act Analysis

26. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (“PRA”), Public Law 104-13. It will be submitted to the Office of Management and Budget (“OMB”) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

##### C. Congressional Review Act

27. The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

#### V. ORDERING CLAUSES

28. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 303(r), 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 614, and 615, this *Report and Order* **IS HEREBY ADOPTED**.

29. **IT IS FURTHER ORDERED** that Parts 73 and 76 of the Commission’s rules, 47 C.F.R. Part 73, 76, are **AMENDED** as set forth in Appendix B. Such rule amendments contain new or modified information collection requirements that require approval by the Office of Management and

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<sup>58</sup> See ACA *ex parte* at 2 (stating it is not aware of any requests to its members for access to principal headend public file information) and WTA at 2 (stating its members have never received an inquiry regarding the location of the principal headend).

<sup>59</sup> See ACA *ex parte*, filed October 16, 2016, at 1, ACA Comments at 2, and ACA Reply Comments at 5.

<sup>60</sup> The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Budget (OMB) under the Paperwork Reduction Act (PRA),<sup>61</sup> and **SHALL BECOME EFFECTIVE** after publication in the Federal Register of a notice announcing such approval and the relevant effective date.

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

31. **IT IS FURTHER ORDERED** that the Commission SHALL SEND a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>61</sup> Pub. L. No. 104-13, 109 Stat. 163 (May 22, 1995), *codified at* 44 U.S.C. §§3501 *et seq.*

**APPENDIX A****List of Commenters****Comments Filed in response to the *NPRM***

American Cable Association (“ACA”)

Cohen, Dippell and Everist, P.C. (“CDE”)

Howard University Media Group (“Howard Media Group”)

Meredith Corporation (“Meredith”)

Named State Broadcasters Associations

National Association of Broadcasters (“NAB”)

National Cable & Telecommunications Association (“NCTA”)

National Hispanic Media Coalition (“NHMC”)

Saga Communications, Inc. (“Saga”)

The Broadcaster Coalition

WTA – Advocates for Rural Broadband (“WTA”)

**Reply Comments Filed in response to the *NPRM***

ACA

NAB

NHMC, The American Federation of Labor and Congress of Industrial Organizations, the Center for Media Justice, Common Cause, Communications Workers of America, Free Press, and Public Knowledge (“NHMC et al.”)

Robert Bittner

***Ex Parte Filings***

NAB, filed September 14, 2016

NHMC, filed September 16, 2016

NHMC, filed September 16, 2016

NCMC, filed September 16, 2016

ACA, filed October 18, 2016

NHMC and Free Press, filed November 16, 2016

NHMC, filed January 13, 2017

NCTA, filed January 19, 2017

ACA, filed January 23, 2017

**APPENDIX B****Final 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 (b)(1), and (b)(2)(i) as follows and removing and reserving §73.3526(e)(9).

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 Commission promptly upon request. Except for good cause, an operator may not change its choice of principal headend. Cable systems may elect voluntarily to provide the location of the principal headend in the Commission's online public inspection file database and may choose whether to make this information accessible only by the Commission or to also make it publicly available. Systems that elect not to provide this information in the online file, or to protect this information in the online file from public view, must make it available to broadcast television stations and local franchisors upon request. If a request is submitted by a television station or franchisor in writing by certified mail, cable systems must respond in writing by certified mail within 15 calendar days. Cable systems may in addition elect to respond to requests from these entities submitted by telephone or email, but must respond in writing by certified mail if requested to do so by the station or franchisor.

6. Section 76.1700 is amended by revising paragraph (a) to read as follows, removing § 76.1700(a)(6), and renumbering (a)(7) – (a)(10) accordingly.

(a) *Public inspection file.* The following records must be placed in the online public file hosted by the Commission, except as indicated in paragraph (d) of this section and except that the records listed in paragraph (a)(1) of this section (political file) that are in existence 30 days after the effective date of this provision, if not placed in the online file, shall continue to be retained at the system and made available to the public in the manner discussed in paragraph (e) of this section until the end of the retention period. In addition, any cable system with fewer than 5,000 subscribers shall continue to retain the political file at the system in the manner discussed in paragraph (e) of this section until March 1, 2018. For these systems, effective March 1, 2018, any new political file material shall be placed in the online file hosted by the Commission, while the material in the political file as of March 1, 2018, if not placed in the Commission's online public file, shall continue to be retained at the system in the manner discussed in paragraph (e) of this section until the end of its retention period. However, any system that is not required to place its political file in the Commission's online public file before March 1, 2018 may choose to do so, instead of retaining the political file at the system in the manner discussed in paragraph (e) of this section.

7. Section 76.1708 is removed and reserved.

## APPENDIX C

## Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act (“RFA”),<sup>62</sup> an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the *Notice of Proposed Rulemaking* (“NPRM”) in MB Docket 16-161.<sup>63</sup> The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA.<sup>64</sup> We received no comments specifically directed toward the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

**A. Need for, and Objectives of, the Report and Order**

2. This *Report and Order* eliminates two public inspection file requirements - the requirement that commercial broadcast stations retain in their public inspection file copies of letters and emails from the public (referred to as the “correspondence file”) and the requirement that cable operators maintain for public inspection the designation and location of the cable system’s principal headend. We conclude that these two components of our public inspection file rules involve documents or information that do not need to be made available to the general public and that eliminating these rules will reduce the burden of maintaining the public inspection file on commercial broadcasters and cable operators. Our action today will also 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 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 will 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. This *Report and Order* also delegates to the Media Bureau the authority to revise FCC Form 303-S to reflect the fact that, consistent with the language of 47 U.S.C. § 308(d), commercial TV and Class A TV licensees will no longer be required to submit with their renewal applications a summary of written communications received from the public regarding violent programming.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

3. No comments were filed in response to the IRFA.

**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.<sup>65</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small

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<sup>62</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>63</sup> See *NPRM*, 31 FCC Rcd at 5807-5811 (Appendix B).

<sup>64</sup> *Id.* at ¶ 1.

<sup>65</sup> 5 U.S.C. § 603(b)(3).



organization,” and “small governmental jurisdiction.”<sup>66</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>67</sup> 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.<sup>68</sup> 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.”<sup>69</sup> The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.<sup>70</sup> The 2012 U.S. Census indicates that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25,000,000 or less.<sup>71</sup> 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.<sup>72</sup> 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. In addition, the Commission has estimated the number of licensed Class A television stations to be 417.<sup>73</sup> Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition. Based on these data, we estimate that the majority of television broadcast stations are small entities.

7. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations<sup>74</sup> 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

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<sup>66</sup> 5 U.S.C. § 601(6).

<sup>67</sup> 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).

<sup>68</sup> 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

<sup>69</sup> U.S. Census Bureau, 2012 NAICS Definitions, “515120 Television Broadcasting,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>70</sup> 13 C.F.R. § 121.201; 2012 NAICS code 515120.

<sup>71</sup> U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120), [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>72</sup> See *Broadcast Station Totals as of September 30, 2016*, Press Release (MB rel. Oct. 19, 2016) (“*Broadcast Stations Totals*”), available at <https://www.fcc.gov/media/broadcast-station-totals>.

<sup>73</sup> *Id.*

<sup>74</sup> “[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).

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.

8. *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.<sup>75</sup> Business concerns included in this industry are those “primarily engaged in broadcasting aural programs by radio to the public.”<sup>76</sup> 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 commercial radio stations to be 11,408.<sup>77</sup> We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.<sup>78</sup> 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.

9. 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.

10. *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.<sup>79</sup> Industry data shows that there were are currently 660 cable operators.<sup>80</sup> Of this total, all but ten cable operators nationwide are small under this size standard.<sup>81</sup> In addition, under the Commission’s rate regulation rules, a “small system” is a cable

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<sup>75</sup> 13 C.F.R. § 121.201, 2012 NAICS code 515112.

<sup>76</sup> U.S. Census Bureau, *2012 NAICS Definitions: 515112 Radio Broadcasting*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515112&search=2012>.

<sup>77</sup> See *Broadcast Station Totals*, supra.

<sup>78</sup> “[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).

<sup>79</sup> 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).

<sup>80</sup> NCTA, Industry Data, Number of Cable Operators and Systems, <http://www.ncta.com/Statistics.aspx> (visited October 20, 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 Market for Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, 28 FCC Rcd 10496, 10505-6, para. 24 (2013) (“15<sup>th</sup> Annual Competition Report”).

<sup>81</sup> See SNL Kagan, “Top Cable MSOs – 12/12 Q”; available at <http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc>.

system serving 15,000 or fewer subscribers.<sup>82</sup> Current Commission records show 4,421 cable systems nationwide.<sup>83</sup> Of this total, 3,936 cable systems have less than 20,000 subscribers, and 485 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.

11. *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.”<sup>84</sup> There are approximately 53 million cable video subscribers in the United States today.<sup>85</sup> 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.<sup>86</sup> Based on available data, we find that all but ten incumbent cable operators are small entities under this size standard.<sup>87</sup> 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.<sup>88</sup> 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**

12. The rule changes adopted in the *Report and Order* will reduce reporting, recordkeeping, and other compliance requirements for commercial broadcast stations which, prior to our action today, were required to retain letters and emails from the public in their local public inspection file. The *Report and Order* eliminates this requirement, thereby reducing recordkeeping burdens on these entities. In addition, eliminating the correspondence file requirement will permit commercial radio and television stations to fully transition to an online public file and cease maintaining a local public file, allowing them to realize the long-term cost savings associated with the online public file. The elimination of the requirement that commercial television and Class A licensees include in their license renewal applications a summary of communications received from the public regarding violent programming will also reduce regulatory burdens on these licensees.

13. The actions we take today will also reduce burdens for cable system operators, particularly those with security concerns about posting principal headend location information online. By

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<sup>82</sup> 47 C.F.R. § 76.901(c).

<sup>83</sup> The number of active, registered cable systems comes from the Commission’s Cable Operations and Licensing System (COALS) database on October 20, 2016. A cable system is a physical system integrated to a principal headend.

<sup>84</sup> 47 U.S.C. § 543(m)(2); *see* 47 C.F.R. § 76.901(f) & nn. 1-3.

<sup>85</sup> *See* NCTA, Industry Data, Cable’s Customer Base, <http://www.ncta.com/industry-data> (visited October 20, 2016).

<sup>86</sup> 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).

<sup>87</sup> *See* NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

<sup>88</sup> 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).

eliminating the principal headend public file requirement, we enable these systems to transition to a fully online public file and benefit from the long-term cost-savings and other efficiencies associated with an online file.<sup>89</sup> While these systems must provide principal headend information to the Commission, broadcasters, and franchisors upon request, this requirement is minimal and should not be onerous. Commenters report that systems receive very few, if any, requests for this information.<sup>90</sup> Any burden from these new requirements is more than offset by the benefit of no longer being required to maintain a local public file to retain principal headend location information. Moreover, cable systems that elect voluntarily to provide principal headend location information to the Commission to be maintained in OPIF, and that elect to make this information publicly available, can direct those requesting principal headend location information to that database in lieu of responding to individual requests.

#### **E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

14. 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, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>91</sup>

15. Alternative options discussed in the *NPRM* included requiring cable systems to file a form with the FCC to provide principal headend information. Requiring systems to instead provide this information upon request is less burdensome than a requirement to file a form. While ACA urged the FCC to simply permit small cable systems to retain principal headend information locally and provide it upon request to entities who ask for it in person, requiring entities to make an in-person visit to the system to obtain this information would be overly burdensome, particularly as there are other simple, essentially costless means for the system to provide the information to entities that need it. Moreover, as the FCC currently does not have information regarding the address of the principal headend or local business office for many of small systems, it would not know where to go to request principal headend location information. Overall, we believe that the *Report and Order* appropriately balances the interests of the public against the interests of the entities who will be subject to the rules, including those that are smaller entities.

#### **F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule**

16. None.

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<sup>89</sup> Commercial broadcasters must maintain a correspondence file locally until the effective date of the rules adopted in this proceeding, and cable operators must make principal headend information publicly available, either in OPIF or in the local public file, until that date. Also, until the effective date of the rules adopted in this proceeding, commercial TV and Class A TV stations must submit a summary of communications regarding violent programming with any renewal application as required by 47 U.S.C. § 308(d). *See, infra*, para. 32.

<sup>90</sup> *See* ACA *ex parte* at 2 (stating it is not aware of any requests to its members for access to principal headend public file information) and WTA at 2 (stating its members have never received an inquiry regarding the location of the principal headend).

<sup>91</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

**STATEMENT OF  
CHAIRMAN AJIT PAI**

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

A few years ago, I visited KKOW-FM in Pittsburg, Kansas. It's one of the radio stations I listened to a lot growing up. During my visit, the station's staff showed me an imposing series of huge file cabinets filled with folders, each folder stuffed with paper. It was the station's public inspection files, dating back many years. When I asked how often members of the public came to inspect them, they laughed—I was the first that anyone could remember, and they had been with the station a long time. What they didn't laugh about was the burden of maintaining all that paper. KKOW is a small station, and its staff are stretched thin handling programming, sales, technical matters, and . . . paperwork.

That last factor is something that falls within our bailiwick here at the FCC. We are fully ensconced in the digital age, but our rules still require many regulated entities to put a priority on pulp. That's why I'm pleased that this *Order* takes a few steps—simple ones, perhaps, but important ones—toward modernizing our rules to match today's realities.

In particular, we amend our public inspection file rules to eliminate two requirements: (1) that commercial broadcast stations retain copies of letters and emails from the public; and (2) that cable operators maintain for public inspection the designation and location of a cable system's principal headend. These measures follow directly from Commissioner O'Rielly's diligent work to identify unnecessary paperwork burdens. In all, this action reduces regulatory burdens on commercial broadcasters and cable operators without adversely affecting the public interest.

Let me expand a bit on that last point about the public interest as it concerns broadcasters. There is little, if any, connection between the correspondence file requirement and its purported goal of ensuring that a station serves its local community. After this decision, television viewers and listeners will still be able to communicate directly with a station by letter, email, or through social media. The public will continue to be able to file petitions or objections concerning a television station licensee's performance at the time the station files its renewal application. Stations will still have every incentive to serve their communities in an increasingly competitive marketplace. In short, getting rid of this requirement will simply allow commercial broadcasters, like the hardworking folks I met at KKOW, to transition to an entirely online public file and send those clunky file cabinets packing.

This *Order* also eliminates the requirement that cable operators disclose headend location information in their public inspection files. This will improve security at local stations and principal headend locations, since there is no legitimate need for the public to know the location of a cable system's principal headend. This *Order* also makes clear that cable operators must provide principal headend location information to the FCC, broadcasters, and franchisors upon request. Alternatively, cable operators have the option of posting such information in their online public file if they so desire.

I'd like to thank the Media Bureau staff who worked on this item, including Mary Beth Murphy, Martha Heller, Kim Matthews, and Sean Mirzadegan. And my gratitude extends as well to Bill Lake, the FCC's longtime Media Bureau Chief, a dedicated public servant to whom we bid a fond farewell today—his last day at the FCC.

**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.

Last September I had the opportunity to meet with four different station owners during the NAB Radio Show in Nashville, TN. During our discussions, I asked each broadcaster this: How often do you receive requests from the public to examine the correspondence file? The near universal answer: “rarely if ever at all.”

The broadcaster correspondence file rule was established more than 40 years ago as a way to "make information to which the public already has a right, more readily available, so that the public will be encouraged to play a more active part in dialogue with broadcast licensees." Stations were required to retain letters received from the public, pertaining to its operations. And while physical letters from viewers today may not play the role they once did, this does not lessen the importance of the public having a direct means to communicate with their local broadcaster. Thankfully, nothing in this *Order* changes that. Additionally, as social media becomes inextricably interwoven into the fabric of our everyday lives, platforms like Facebook and Twitter not only amplify a viewers' message to their broadcaster, but they provide a public record that lives on in perpetuity.

It is important to note that this *Order* ensures that those without access to the Internet, continue to have a voice by reiterating that the Commission's broadcast license renewal process remains intact and consumers can continue to file an informal objection by mail or through the Commission's toll-free phone number. Such objections have and will continue to be included in a station's online file, as well as in the Commission's licensing database, providing the public with a transparent view into any concerns expressed by the local community.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

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

It's been a year since the Commission moved to transition broadcasters' public inspection files to an online format, and I made the point at the time that we should reassess our requirements with respect to the leftover bits of information that could not be moved online, by either broadcasters or cable providers, for different reasons. This request was based on the simple premise that if companies are undertaking the burden to move vast quantities of information online, we should ensure they are able to move *all* the information online to take advantage of the potential security dividend to be gained. Taking this step also acknowledges the ease with which the American public can use other technologies to register their compliments, views, concerns and/or objections with broadcasters serving their particular area.

Local broadcasters and their hardworking staffs are mostly celebrated in their communities due to their high-profile work performing various official and public service functions, but this exposure and notoriety can leave them particularly vulnerable. Station employees face safety risks every day, and have been targets of attacks. Similarly, the need for cable operators to open their premises to the public created an unmistakable security risk. These were necessary risks to take in an era of paper files, but online public files have the potential to improve the safety of broadcast and cable facilities while enhancing public access to important information. This potential can now be fully realized by broadcasters and cable operators alike.

The patience of everyone concerned has been rewarded with this common sense Order that I am pleased to support. I very much appreciate the efforts of the Media Bureau to see this initiative through, and the support of my colleagues Chairman Pai and Commissioner Clyburn to get it over the goal line. And I recommit myself to the task of doing whatever I can to clear out similar underbrush in this and other regulated spaces. We will all be better off if we spend half the time we do regulating on finding ways to remove unnecessary and obsolete burdens on broadcasters.