

SUPPORTING STATEMENT

A. Justification:

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The Commission first adopted a public inspection file requirement more than 40 years ago.¹ The public file requirement grew out of Congress' 1960 amendment of Sections 309 and 311 of the Communications Act of 1934.² Finding that Congress, in enacting these provisions, was guarding "the right of the general public to be informed, not merely the rights of those who have special interests,"³ the Commission adopted the public inspection file requirement 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."⁴ In return for their exclusive use of public spectrum, broadcasters must operate and program their stations in the "public interest, convenience and necessity."⁵ This means that all stations must be responsive and accountable to their local community of license. The manner in which broadcasters communicate with their communities is a core function of their role as licensees. Specific items in the public file, listed below, include items that provide station information to the public, like ownership reports, contour maps, citizens agreements, EEO reports and quarterly lists of programs that the stations believe addressed important issues in their community. Access to the public inspection file allows the public to monitor a station's public interest performance. The information provided in a station's public file enables citizens to engage in an informed dialog with their local stations or to file complaints or petitions to deny the renewal of a station's license.⁶ Comments, complaints, and petitions to deny filed by the viewing public have long been a part of the regulatory and the renewal process.⁷ As part of the Commission's license renewal process, the Commission does not routinely monitor every aspect of stations' compliance with Commission rules; rather, it depends on viewers and listeners to provide information about whether stations are meeting their public interest obligations.

¹ *Report and Order in Docket No. 14864*, 4 R.R.2d 1664, 1667 (1965); recon. granted in part and denied in part 6 R.R.2d 1527 (1965)

² 47 U.S.C. §§ 309,311.

³ *Report and Order in Docket No. 14864*, 4 R.R.2d at 1666 (citing, e.g., Senate Report No. 690, 86th Cong., 1st Sess., to accompany S. 1898, "New Pre-Grant Procedure" (Aug. 12, 1969) page 2).

⁴ *Report and Order in Docket No. 14864*, 4 R.R.2d 1664, 1667 (1965); recon. granted in part and denied in part 6 R.R.2d 1527 (1965).

⁵ 47 U.S.C. § 307(c)(1), 309(a).

⁶ *Office of Communication of United Church of Christ v. FCC*, 359 F.2d 994, 1009 (D.C. Cir., 1966).

⁷ *See Deregulation of Radio*, Second Report and Order, 96 FCC 2d 930 (1984).

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The following Information Collection Requirements are Part of This Collection and Have Been Approved By OMB:

47 CFR Sections 73.3526(a) and 73.3527(a) require that licensees and permittees of commercial and noncommercial educational (NCE) broadcast stations⁸ maintain a local public inspection file. The contents of the file vary according to type of service and status. A separate file shall be maintained for each station for which an application is pending or for which an authorization is outstanding. The public inspection file must be maintained so long as an authorization to operate the station is outstanding.

47 CFR Sections 73.3526(b) and 73.3527(b) require that the public inspection file be maintained at the main studio of the station. 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.

47 CFR Sections 73.3526(c) and 73.3527(c) require the licensee/permittee to make the file available for public inspection at any time during regular business hours. All or part of this file may be maintained in a computer database as long as a computer terminal is made available to members of the public. Materials in the public file must be made available for review, printing or reproduction upon request.

Licensees that maintain their main studios and public file outside their communities of license⁹ are required to mail a copy of "The Public and Broadcasting"¹⁰ to anyone requesting a copy. Licensees shall be prepared to assist members of the public in identifying the documents they may want to be sent to them by mail.

47 CFR Sections 73.3526(d) and 73.3527(d) require an assignor to maintain the public inspection file until such time as the assignment is consummated. At that time, the assignee is required to maintain the file.

47 CFR Sections 73.3526(e) and 73.3527(e) specify the contents of the public inspection files. Separate rule sections not subject to this information collection require the creation and submission to the Commission of many of the items that must be retained in the public inspection file. As such, the burden estimates for creation and submission of these documents are calculated in other information collections. The burden estimates included in this information collection pertain only to making these items publicly available. We have listed below some of the relevant information collections pertaining to the creation and submission of such documents. The documents to be retained in the public inspection files are as follows:

⁸ These stations are licensed to nonprofit educational organizations for use in the advancement of educational programs.

⁹ Every broadcast station is permitted or licensed to a designated community, the needs and interests of which the station primarily serves. The station is required to place a signal of a certain strength over the entirety of its community of license, and is required to provide programming to serve its community of license. *See, e.g.*, 47 U.S.C. § 307(b); 47 C.F.R. §§ 73.24(i), 73.315(a).

¹⁰ This manual provides a brief overview of the regulation of broadcast radio and television.

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- (a) A copy of the current FCC authorization to construct or operate the station, as well as any other documents necessary to reflect any modifications thereto or any conditions that the FCC has placed on the authorization;
- (b) A copy of any application tendered for filing with the FCC, together with all related material, and copies of Initial Decision and Final Decisions in hearing cases. If petitions to deny are filed against the application, a statement that such a petition has been filed shall be maintained in the file together with the name and address of the party filing the petition [Application for Construction Permit for Commercial Broadcast Station (OMB control number 3060-0027, FCC Form 301; Application for New Commercial or Noncommercial Educational Broadcast Station License (OMB control number 3060-0029, FCC Form 340); Application for Consent to Assignment of Broadcast Station Construction Permit or License, FCC Form 314; Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, FCC Form 315; Section 73.3580, Local Public Notice of Filing of Broadcast Applications (OMB control number 3060-0031)];
- (c) For commercial broadcast stations, a copy of every written citizen agreement;¹¹
- (d) A copy of any service contour maps, submitted with any application, together with any other information in the application showing service contours and/or main studio and transmitter location;
- (e) A copy of the most recent, complete Ownership Report (FCC Form 323) filed with the FCC for the station, together with any statements filed with the FCC certifying that the current Report is accurate [Ownership Report for Broadcast Station (OMB control number 3060-0010, FCC Form 323); Ownership Report for Noncommercial Educational TV, FM or Standard Broadcast Station (OMB control number 3060-0084, FCC Form 323-E)];
- (f) A political file of records required by 47 CFR Section 73.1943 concerning broadcasts by candidates for public office [Section 73.1942, Candidates Rates, 76.206, Candidates Rates, Section 76.1611, Political Cable Rates and Classes of Time (OMB control number 3060-0501)];
- (g) An Equal Employment Opportunity File required by 47 CFR Section 73.2080 [Broadcast EEO Program Report, FCC Form 396 (OMB control number 3060-0113); Multi-Channel Video Program Distributor EEO Program Annual Report, (OMB control number 3060-1033, FCC Form 396-C)].

¹¹ A citizen agreement is an agreement between a licensee and one or more citizens that deal with goals or proposed practices that affect station operations in the public interest in areas such as - but not limited to - programming and employments.

- (h) A copy of the most recent edition of the manual entitled "The Public and Broadcasting;"
- (i) For commercial broadcast stations, all written comments and suggestions (letters and electronic mail) received from the public regarding operation of the station;
- (j) Material having a substantial bearing on a matter which is the subject of an FCC investigation or complaint to the FCC of which the applicant/permittee/licensee has been advised;
- (k) For commercial radio and TV broadcast stations and non-exempt NCE broadcast stations, a list of programs that have provided the station's most significant treatment of community issues. This list is kept on a quarterly basis and contains a brief description of how each issue was treated;
- (l) For commercial TV broadcast stations, records sufficient to permit substantiation of the station's certification, in its license renewal application, of compliance with the commercial limits on children's television programming. The records must be placed in the public file quarterly. The FCC Form 398, Children's Television Programming Reports, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children must be placed in the public file quarterly [Children's Television Programming Report (OMB control number 3060-0754, FCC Form 398)];
- (m) For NCE stations, a list of donors supporting specific programs. The list is to be retained for two years from the date of the broadcast of the specific program supported, and will be reserved for sponsors/underwriters of specific programming;
- (n) Each applicant for renewal of license shall place in the public file a statement certifying compliance with the pre-filing and post-filing local public notice announcements. These statements shall be placed in the public file within 7 days of the last day of broadcast [Section 73.3580, Local Public Notice of Filing of Broadcast Applications (OMB control number 3060-0031)];
- (o) Commercial radio and TV licensees who provide programming to another licensee's station, pursuant to time brokerage agreements, are required to keep copies of those agreements in their public inspection files, with confidential information blocked out where appropriate;
- (p) Commercial TV stations must make an election between retransmission consent and must-carry status once every three years. Television stations that fail to make an election will be deemed to have elected must-carry status. This statement must be placed in the station's public inspection file. This rule codifies Section 325(b)(3)(B) of the Communications Act of 1934, as amended [Section 73.1601, Deletion of Repositioning of Broadcast Signals; Section 76.1617, Initial Must-Carry Notice; and Sections 76.1697 and 76.1708, Principal Headend (OMB control number 3060-0649)];

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(q) NCE television stations requesting mandatory carriage on any cable system pursuant to 47 CFR Section 76.56 shall place in its public file the request and relevant correspondence; and

(r) Commercial radio and TV licensees who have entered into joint sales agreements must place the agreements in the public inspection file, with confidential and propriety information blocked out where appropriate.

(s) Full-power commercial and noncommercial educational ("NCE") TV broadcast stations are required to retain in their public inspection file a copy of their FCC Form 388 – DTV Consumer Education Quarterly Activity Report on a quarterly basis. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. These Reports shall be retained in the public inspection file for one year. Broadcasters must publicize in an appropriate manner the existence and location of these Reports.

47 CFR Sections 73.1212(e), 73.1943 and 76.1701 require licensees of broadcast stations and every cable television system to keep and permit public inspection of a complete record (political file) of all requests for broadcast and cablecast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the system of such requests, and the charges made, if any, if the request is granted. The disposition includes the schedule of time purchased, when the spots actually aired, the rates charged, and the classes of time purchased. Also, when free time is provided for use by or on behalf of candidates, a record of the free time provided is to be placed in the political file as soon as possible and maintained for a period of two years. 47 CFR Sections 73.1212(e) and 76.1701 also require that, when an entity sponsors broadcast or cablecast material that concerns a political matter or a discussion of a controversial issue of public importance, a list must be maintained in the public file of the system that includes the sponsoring entity's chief executive officers, or members of its executive committee or of its board of directors [Sections 73.1212, 76.1615 and 76.1715, Sponsorship Identification (OMB control number 3060-0174); Section 73.1942, Candidates Rates, 76.206, Candidates Rates, Section 76.1611, Political Cable Rates and Classes of Time (OMB control number 3060-0501)].

The Commission is requesting an extension of this information collection for a three year period from OMB.

This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

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2. Indicate how, by whom and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The data is used by the public and FCC to evaluate information about the broadcast licensee's performance, to ensure that broadcast stations are addressing issues concerning the community which it is licensed to serve and to ensure that stations entering into time brokerage agreements comply with Commission policies pertaining to licensee control and to the Communications Act and the antitrust laws. Placing joint sales agreements in the public inspection file facilitates monitoring by the public, competitors and regulatory agencies.

Television broadcasters are required to send each cable operator in the station's market a copy of the election statement applicable to that particular cable operator. Placing these retransmission consent/must-carry elections in the public file provide public access to documentation of station's elections which are used by cable operators in negotiations with television stations and by the public to ascertain why some stations are/are not carried by the cable systems.

Maintenance of political files by broadcast stations and by cable television systems enables the public to assess money expended and time allotted to a political candidate and to ensure that equal access was afforded to other legally qualified candidates for public office.

Retention of the FCC Form 388 – DTV Consumer Education Quarterly Activity Report by broadcast stations in their public inspection files will be used by the public and FCC to evaluate broadcasters' consumer education efforts on the DTV Transition.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

These are recordkeeping and third party disclosure requirements. Broadcast licensees have the option of maintaining all or part of their public file, including their political file in a computer database rather than in paper files. Therefore, instead of printing off all items and placing them in the public file, station may store materials on a computer that is available to the public. This is separate from an on-line public file requirement, since the materials do not need to be available via the internet. Cable system operators also have this option for their political files. The FCC is encouraging licensees and cable system operators who choose this option to also post their "electronic" public files on any World Wide Web sites they maintain on the Internet.

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4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in item 2 above.

No other agency imposes a similar information collection on the respondents. There are no similar data available.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

This information collection does not impose any significant economic impact on a substantial number of small businesses/entities. However, any entity can request a waiver of the Commission's rules, under 47 C.F.R. § 1.3, which allows the Commission to waive rules where good cause has been shown.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If the information contained in the public file were not retained on a regular basis, the Commission and the public would not have timely information to evaluate a broadcaster's public service record. For example, the retransmission consent/must-carry election statements placed in the public file provide information not available elsewhere. As to the political files, if the required documentation was not retained, the public and competing legally qualified candidates running for public office would not have access to records to verify that equal rates and access were made available to all candidates.

7. Explain any special circumstances that cause an information collection to be conducted in a manner: requiring respondents to report information to the agency more often than quarterly; requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; requiring respondents to submit more than an original and two copies of any document; requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

There are no special circumstances that require respondents to report information more than quarterly, require a written response in fewer than 30 days of receipt, or submit more than an original and two copies of any document. With respect to proprietary trade secrets and confidential information, the Commission has instituted procedures to protect the confidentiality of any such information to the extent permitted by law. For example, licensees are explicitly authorized to redact information from contracts for the joint sale of advertising time that is confidential or proprietary in nature. *See* 73.3526(e)(16).

While the Commission has instituted procedures to protect confidential information, much of the public file is not confidential. A copy of the current FCC authorization to construct or operate the station must be retained in the public file until replaced by a new authorization. Applications tendered for filing shall be retained until final action has been taken on the application, except that applications for a new

construction permit granted pursuant to a waiver showing shall be retained for as long as the waiver is in effect. A copy of contour maps shall be retained for as long as they reflect current, accurate information regarding the station. License renewal applications granted on a short-term basis shall be retained until final action has been taken on the license renewal application filed immediately following the shortened license term. Citizen agreements shall be retained for the term of the agreement. Ownership Reports and related materials shall be retained until a new, complete Ownership Report is filed with the FCC. The licensee need not retain a copy of the contracts listed in the Ownership Report so long as the licensee maintains an up-to-date list of such contracts in the file and provides copies of any contracts to requesting parties within 7 days. Political files required by Sections 73.1943 and 76.1701 shall be retained for a period of 2 years. A copy of the 1998 edition of the manual entitled "The Public and Broadcasting" must be retained at all times. Material relating to an FCC investigation or complaint must be retained until notified in writing that the material may be discarded. Donor lists must be retained for two years. The certifications of compliance with the pre-filing and post-filing local public notice announcements of the filing of applications for renewal of license shall be retained for as long as the application to which it refers. Time brokerage agreements¹² and joint sales agreements¹³ must be retained as long as the contract or agreement is in force.

Letters and electronic mail messages issues/program lists, and records concerning commercial limits and Children's Television Programming Reports must be retained until final action has been taken on the station's next license renewal application. Television station's must-carry/retransmission election statements shall be retained for the duration of the three-year election period to which the statement applies.

These retention periods are necessary to provide the public and the FCC timely information to evaluate the station's performance during its entire license term or over the life of a contract.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information prior to submission to OMB.

The Commission published a notice in the *Federal Register* seeking public comment on the information collections contained in this supporting statement, *see* 76 FR 21739, published April 18, 2011. The Commission received 516 comments from the public. 483 of these comments supported the continued maintenance of the existing local public inspection file requirements. The remaining comments opposed all or a portion of the comments. These opposition comments are addressed below:

¹² "Time brokerage," also known as "local marketing," is the sale by a broadcast licensee of discrete blocks of time to a "broker" that supplies the station with programming to fill that time and sells the commercial spot announcements in that block. Confidential information in these agreements may be redacted. *See also* 47 CFR § 73.3613(d)(1).

¹³ A Joint Sales Agreement is an agreement authorizing a broker to sell advertising time for the brokered station in return for a fee paid to the licensee. *See also* 47 CFR § 73.3613(d)(2).

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The Commission's burden estimate (*Alaska Broadcasters Assn et al, Clarke Broadcasting et al, Hubbard Broadcasting, Saga Communications, James Edwin Whedbee, GoodRadio.TV LLC*) Commenters argue that it is impossible to comment on the burdens included in the Federal Register Notice, since no explanation or formula is included. They state that the Commission fails to include certain fundamental information in its burden estimates. GoodRadio.TV LLC estimates it takes 65 hours per year per station to maintain the public file. Hubbard Broadcasting estimates that maintaining the public file takes from 156-510 (mean of 291) hours per year, and costs from \$3,420-10,500 (mean of \$6122). Hubbard states that in 2008, the last time that the Commission was required under the PRA to justify the information collection burdens of the public inspection file rules, the information collection estimated that commercial television stations spent 191.25 hours to maintain the public file, and commercial radio stations spent 110.25 hours. Even though Hubbard believes that the 2008 estimates were low, they believe they are considerably higher than the current estimates the FCC provides in the Federal Register Notice. Hubbard believes that the Commission has not reduced public inspection file information collection burdens since 2008. In fact, it believes that the burdens of maintaining public inspection files have increased since 2008, citing more complex ownership report forms and children's programming reports. James Edwin Whedbee argues that the estimate ignores the burden on non-broadcast members of the public and believes the rules are improperly in force, since members of the public wishing to inspect the public file also have an unnecessary time burden in going to the file to view it.

Response: These commenters misunderstand what is included in this information collection. For example, Hubbard mistakenly believes this collection includes the time used to create forms that are placed in the public file, such as children's programming reports and ownership report forms. In fact, the creation of these items is calculated in separate collections, which are routinely revised to reflect changes in the burden estimates (*e.g.*, collection 3060-0754 for the creation and submission of the children's programming reports, and collection 3060-0010 for the creation and submission of the media ownership reports). Despite Hubbard's assertions, the calculations included in the Federal Register Notice are exactly the same as the numbers submitted in 2008 (*i.e.* 191.25 hours for commercial television stations and 110.25 hours for commercial radio stations). While there have been burden changes to other collections regarding the submission of forms, including the children's programming reports and media ownership reports, those burdens do not affect the burdens for this collection, which only pertains to placing such completed forms into the public file. No matter what changes are made in other collections regarding how to fill out and submit such forms, it should not take licensees longer to place such revised forms in the public file, and therefore the burden estimates for this collection should not change for this purpose. Further, Mr. Whedbee's comments show that he misunderstands what entities should be included in the burden estimate, since the public is under no obligations in this collection. Despite this, the Commission has reviewed the burden estimates again. We do believe that the current burden estimates for maintenance of the political file should be changed to reflect increased buying of political advertising in some markets. We therefore have revised these figures, as reflected in answers 12 and 15.

The Commission's cost estimate (*Alaska Broadcasters Assn et al, Maryland D.C. Delaware Broadcasters Association et al, National Association of Broadcasters, Hubbard Broadcasting*)

Several commenters state that each broadcast licensee must devote significant paid employee time to comply with the public file information collection requirements, including time to compile, copy and review the materials. They state that this expenditure of time and resources inexorably translates into significant costs. They believe it is impossible for a burden of so many hours to have no costs associated with it, so the estimate is inaccurate and inadequate. Hubbard Broadcasting estimates that the costs for each of its stations to maintain the public file are between \$3,420 and \$10,500 (mean of \$6122). Hubbard also argues that the costs submitted in 2008 were substantially higher than the \$0 in costs included in this Federal Register Notice.

Response: Commenters misunderstand what is included in the annual cost burden, and have confused the annual cost burden with annual in-house costs. According to the instructions to Form 83i, costs of employee salary and benefits are not part of the annual cost burden but should instead be included in the total annual in-house costs. (*See Instructions for Completing OMB Form 83-I*, "The costs identified in this item [annual cost burdens] must exclude the cost of hour burden identified in Item 13 [total in-house costs]."). In fact, the annual cost burden estimate is based upon the capital costs of compliance. Because the capital costs of compliance are *de minimis*, the Commission has estimated the annual cost burden as \$0, and none of the comments we received support changing this estimate. Hubbard Broadcasting is mistakenly looking at the annual in-house costs that were submitted in 2008, not the annual cost burden.

The Necessity of the Public File (*Alaska Broadcasters Assn et al, National Association of Broadcasters, State Broadcasters Associations, Chuck Conrad, Tommie Dodd, David M. Eshleman, Rodney J. Fazzari, Randy Henry, Richard J. Hopkins, Hubbard Broadcasting, Manning M. Kimmel IV, Maryland D.C. Delaware Broadcasters Association et al, Nicole McClelland, Saga Communications, C. Curtis Sigmon, Bill Spry, Bill Turner, James Edwin Whedbee, William Wolfenbarger, GoodRadio.TV LLC, Mike Lee, K.M. Richards, Eric Scott*)

Several commenters claim that few or no members of the public ever ask to see the public file, and that stations could better use the resources spent on maintaining the public file. They claim that the public's lack of interest in inspecting public files is a strong indicator that the public no longer sees any use to the public files. Some acknowledge that the lack of interest may be due to a lack of knowledge of the existence of the file. Alaska Broadcasters argues that the existing requirements were adopted in order to encourage public participation in the renewal process, but there is no evidence that the file has ever had any effect on public participation in the renewal process. To the filer's knowledge, no renewal has been denied since 1986 (3 renewal cycles for all stations, amounting to 40,000 renewals) based on information in the public file. The commenter argues that in some rare instances the public has sought to deny license renewals based upon information in the public file, but the FCC has routinely rejected such arguments, and most renewals are not challenged by the public. These commenters argue that in the past, when local stations were one of just a

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handful of media alternatives for the public, it may have made sense to require broadcasters to maintain these documents in their public file. But in today's alternative rich media world, they argue, the public file requirement is an example of a government regulation that is in need of updating.

Response: As discussed in the justification section above, public participation is a key component of the broadcast license renewal system. Comments, complaints, and petitions to deny from the viewing public have long been a part of the regulatory and the renewal process. *See Deregulation of Radio*, Second Report and Order, 96 FCC 2d 930 (1984). As part of the Commission's license renewal process, the Commission does not routinely monitor every aspect of stations' compliance with FCC rules, but instead depends on viewers and listeners to provide information about whether stations are meeting their public interest obligations. Despite claims that the public is not interested in the public file, almost 500 individuals filed e-mail comments noting the importance of the public file requirement. The Commission takes the public's input seriously in the broadcast license renewal system, whether it ultimately agrees or rejects arguments made by the public.

Other commenters (*Free Press et al*, *REC Networks*, *Todd Urick*, *Tracy Rosenberg*, *Charles Reinsch*) argue that the public file is one of the only public interest obligations remaining since deregulation of the renewal system. They note that when broadcasters fall short of their obligations or engage in outright violations of FCC rules, the public's ability to alert the FCC by filing complaints or petitions to deny the renewal of a station's broadcast license is essential to a functional and effective licensing system. They argue that without access to stations' public files the ability to monitor the performance of the local broadcasters, as well as their adherence to FCC regulations, would be severely curtailed, if not entirely eliminated. They note that maintaining an established process of community input into broadcast policy and renewals requires the continuation of the public file system, and believe that no matter how often each station's public file is viewed, the ability of the public to have access to the file itself provides a necessary safeguard to the American people's rights to knowledge of, and input on, the use of the public airwaves. *Free Press, et al.*, notes that courts have upheld public participation in the renewal process, noting that the public "possesses an unassailable right to participate in the disposition of valuable public licenses, free of charge, to public trustees." *Office of Communication of United Church of Christ v. FCC*, 707 F.2d 1413, 1441 (D.C. Cir 1983). The Commission agrees with these arguments.

Availability of the public file on-line (*Clarke Broadcasting et al*, *Randy Henry*, *Saga Communications*, *James Edwin Whedbee*, *REC Networks*, *K.M. Richards*, *State Broadcasters Associations*, *Todd Urick*, *Free Press et al.*)

Commenters argue that many of the materials that licensees are required to maintain in their public file are available on-line at the Commission's website, including applications tendered for filing with the FCC; service contour maps; Ownership Reports (FCC Form 323); Equal Employment Opportunity Program Report (FCC Form 396); "The Public and Broadcasting" publication; and Quarterly Children's Television Programming Reports (FCC Form 398). They argue that the Commission itself has determined that the public file should be placed on-line, by adopting an Order mandating this requirement, and noting that an on-line public file is good policy in a recently released

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FCC Report, “The Information Needs Of Communities.” Commenters argue that most stations have websites, and an on-line public file requirement would increase the file’s utility and availability, enabling the public to view the public file without having to travel, sometimes great distances, to a station’s main studio. They argue that the posting of public files on stations’ websites would impose a minimal burden on broadcasters, and the benefits to the public in gaining access to the files outweigh any incidental burden, and would be offset by the burdens imposed on having to provide copies of the file to members of the public. They argue that the obligation to maintain a paper public file in no way facilitates the Commission’s performance of its regulatory functions. State Broadcasters Association believes that stations should be given the right to use the Commission’s own website for the public file.

Response: The Commission has adopted a rule requiring television stations with websites to maintain an on-line public file, but the rule change is not yet in effect, and was not submitted to OMB for approval, as there are multiple petitions for reconsideration pending to this rule change. *See In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 23 FCC Rcd 1274 (2007). Prior to receiving these petitions for reconsideration, the Commission did publish a Federal Register Notice seeking public comment on a revised information collection based upon the changes imposed in the *Enhanced Disclosure Report and Order*. *See Federal Register Notice*, 73 FR 13541 (March 13, 2008) for FCC 07-205. Many of the petitions for reconsideration filed by industry participants in the *Enhanced Disclosure* proceeding, and many of the comments received in response to the information collection notice, specifically oppose the on-line public file requirement that is now promoted by commenters here, arguing, in part, that an on-line public file requirement would be too burdensome, or that the Commission should be required to host the public file. While no one entity is arguing both for and against the on-line public file requirement, the broadcast industry is not unified in its support of an on-line public file requirement. The Commission agrees that an on-line public file requirement is good policy, and is working to finalize its review of the oppositions to the *Enhanced Disclosure Report and Order*, including a review of the burden concerns. Until the proceeding is resolved, though, it is necessary to maintain the existing public file requirement in order to enable the public to participate in the broadcast renewal process. This is especially important at this time, since the latest renewal cycle, which only happens every eight years, began this summer for radio, and will begin next year for television.

Documents available on the Commission’s website (*Alaska Broadcasters Assn et al, National Association of Broadcasters, State Broadcasters Associations, David M. Eshleman, Rodney J. Fazzari, Randy Henry, Maryland D.C. Delaware Broadcasters Association et al, Nicole McClelland, Saga Communications, C. Curtis Sigmon, Bill Spry, David Tillotson, Bill Turner, William Wolfenbarger, REC Networks, Eric Scott*)

Commenters argue that because the items discussed above (*i.e.* applications tendered for filing with the FCC; service contour maps; Ownership Reports (FCC Form 323); Equal Employment Opportunity Program Report (FCC Form 396); “The Public and Broadcasting” publication; and Quarterly Children’s Television Programming Reports (FCC Form 398)) are available on the FCC’s

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website, the requirement to maintain these particular items in the file is duplicative and burdensome. These commenters argue that it is far more burdensome for the public to visit a broadcast station during regular business hours to review these documents than it would be to review and download them for free, at any hour of the day, from the FCC's website. State Broadcasters Association states that in the merger between Citadel and Cumulus, stations owned by these entities, collectively, must copy and place in their public inspection files more than 357,000 pages of application materials, despite the fact that the merger applications and all related materials are easily accessible on the FCC's website.

Response: As discussed above, the Commission is reviewing multiple petitions for reconsideration filed against the on-line public file requirement adopted in the *Enhanced Disclosure* proceeding. Until that proceeding is completed, all public file materials should be available to the public in one location. Not all members of the public are aware that these materials are available on the Commission's website, and until the Commission resolves the pending petitions for reconsideration regarding the public file on-line requirement, it is in the public interest to ensure that interested members of the public have access to the entire public file. The example provided by the State Broadcasters Association is both extreme and rare. Mergers of this size and nature are discretionary and uncommon. The large number of pages filed in this proceeding is rare, and reflects the nature of this particular merger, where many stations were affected.

Sufficient Notice (*Hubbard Broadcasting*): Hubbard Broadcasting claims that the Commission did not provide any notice of this proceeding in its own public releases, and that the 60-day Federal Register Notice was insufficient, and inconsistent with principles of open government and the FCC's ordinary practices. They state that the FCC should recognize that many record-keeping requirements under Section 73.3526 have outlived their usefulness, and it should ask for comments addressed to a reduction in the kinds of materials required to be kept in public inspection files.

Response: We agree that the notice provided in the Federal Register Notice is insufficient to change the public file rules, but note that the intended purpose of this notice was the routine renewal of the existing rule, not to change the rule or open a rulemaking proceeding. When the Commission undertakes a review of the underlying rules at issue, it will be through a rulemaking proceeding, consistent with its ordinary practices.

Suspension of Rules (*State Broadcasters Assn*): Commenter argues that OMB should condition its approval upon the temporary, partial suspension of the Commission's enforcement of the public file rules. They believe that such a suspension should apply to all documents required under the rules to be placed in a station's public inspection file, except those documents required to be publicly available in the political files of commercial broadcast stations. They propose that the rules as presently written would remain in effect until further order of OMB. The proposed temporary, partial suspension of enforcement would remain in place until the legal effectiveness of a Report and Order adopted by the full Commission evidencing, upon a public record, a thorough and fully updated review of the rules and of the Commission's related enforcement policies and procedures. The

commenter also urges the Commission, on its own motion, to temporarily and partially suspend its enforcement of the public file rules.

Response: Suspension of the public file requirements is not within the scope of this renewal review, and there is no statutory basis for OMB to suspend the requirements here. Some of these requirements are the subject of other pending rulemakings, which will be conducted consistent with the APA and the PRA.

Objections to specific items that are required to be placed in the public file:

Commenters argue that some of the items that are currently required to be placed in the public file are no longer necessary. Any such rule changes require a rulemaking proceeding, and therefore are not properly addressed in this information collection renewal. In any event, the creation and submission of many of these documents are subject to separate information collections not at issue here.

Therefore the issue of whether these documents continue to be necessary goes beyond the scope of this collection. Despite this, we briefly address commenters' concerns below:

Issues/Programs lists - (*Saga Communications, David Tillotson, Bill Turner*): Commenters argue that because the issues/programs list does not have to be submitted to the Commission, it cannot possibly derive any information from the lists. They also note that the recently released FCC Report, "The Information Needs Of Communities" notes that the issues/programs list isn't widely viewed, contains only rudimentary information, and that stations are subject to large fines if their lists are not kept properly. One commenter claims that public affairs programs typically are aired when listenership is at its lowest, since the public does not like to hear these programs.

Response: The issues/programs list requires licensees to disclose their coverage of issues facing their community and place lists of programming providing significant treatment of these issues in the public inspection file on a quarterly basis. This requirement allows the public to meaningfully participate in the station's renewal process, and was adopted in order to provide the Commission and the listening public with important information concerning the extent to which a station has met the needs and interests of its community during the prior license term, and therefore, whether license renewal is warranted. As noted by commenter Free Press, *et al.*, without the quarterly issues/programs lists, citizens' role in the licensing process would be diminished, and the lists are the only way that broadcasters disclose whether and how they are providing community responsive programming. In the 2007 *Enhanced Disclosure* proceeding, the Commission determined that a standardized form with more detailed information on programming would provide a better mechanism for reviewing television broadcaster's public interest programming than the current issues/programs lists. As discussed above, there were many petitions for reconsideration filed in response to this proceeding, and the Commission is considering whether and how to revise this requirement. Until then, the existing issues/programs list is important, as it is the only way for the public to evaluate how licensees believe they are serving their communities of license. This is especially important as the latest renewal cycle has recently begun, as discussed above.

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Digital transition documents (*National Association of Broadcasters*): Commenter argues that because the digital transition is complete, stations should not be required to maintain these documents.

Response: Television stations are only required to retain the digital transition document, Form 388, for one year after the digital transition is completed. Because the transition ended in June 2009, there is no longer a need for almost all full-power stations to retain this material in their public file. There are a few stations that have asked for extensions to complete the transition, and they still need to maintain the forms, but this affects very few stations.

Minor modification requests (*National Association of Broadcasters*): Commenter argues that the public's interest in minor technical applications is likely extremely limited.

Response: The Commission requires all pending applications to the Commission to be placed in the public file, including minor modification requests, in order to ensure that the public is aware of any proposed changes to station operations.

Engineering documents - (*Bill Turner*): Commenter believes that engineering documents are necessary to a station's performance, but to maintain these files as a part of the Public File is redundant, since in an emergency situation, this information can be obtained via the FCC website.

Response: Engineering information such as engineering exhibits to applications and contour maps, which show the station's service contours and transmitter locations, help provide the public with information regarding the station's signal reach and proposed changes to a station's operation.

Employment information - (*Bill Turner*): Commenter asks why the FCC would get involved in EEO practices unless the EEOC has an issue, and that this information would be retained by any responsible business as it is normal business practice.

Response: The Commission has regulations pertaining to the EEO practices of licensees that are specific to the communications industry, and licensees must submit certain forms containing EEO information to the Commission and include copies in their station public files. Many radio and television stations are small enough that they do not have to comply with EEOC filing requirements, and in any event, the Commission's regulations are not duplicative of EEOC rules. This information is of use to the public, and may be used to alert the Commission to licensee's EEO compliance.

Citizen agreements - (*Saga Communications, David Tillotson*): Commenters argue that citizen agreements are no longer popular, so they shouldn't be required to be kept in the file. Citizen agreements are any written agreements made with local viewers or listeners and can deal with programming, employment, or other issues of community concern. Commenters argue that it is hard to

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imagine what public interest objective is served by requiring a copy of such an agreement to be placed in the public file, especially since the Commission has never evinced sufficient interest in such agreements as to require that they be filed with it.

Response – Citizen agreements, and other items required to be placed in the public file that are not required to be filed with the Commission, educate the station’s consumers about the operation of the station. Whether these agreements are popular or not, they are still useful tools, where they exist, for listeners and viewers to ascertain the licensee’s community relations. Where no citizen agreements exist, no burden is imposed.

Copies of business dealings and agreements- (*Bill Turner, Saga Communications*): Saga believes that the public isn’t interested in viewing time brokerage reports and local public notice announcements, and Mr. Turner states that any business has a record of its agreements.

Response: The Commission’s rules require licensees to include certain agreements in its public file, including local marketing agreements (LMA) and time brokerage agreements (TBA). An LMA or TBA is a type of contract that generally involves the sale by a licensee of discrete blocks of time to a broker who then supplies the programming to fill the time and sells the commercial spot announcements to support the programming. Access to TBAs and LMAs is an important part of ensuring compliance with the FCC’s media ownership rules, and an important part of oversight and licensing processes because these contracts reveal whether particular programming is generated by a station itself or a product of a brokerage agreement with another entity, including other local broadcasters. The public file requirement is critical in this regard because the public inspection file is the only mechanism for transparency and oversight of all time brokerage agreements, since they do not need to be filed with the Commission.

EAS File - (*Bill Turner*): The Commenter states that it’s more important for the Emergency Alert System to work than for the station to include a record of when the EAS is not functioning properly, when it is out of service for repairs and placed back in service.

Response: EAS records are not required to be maintained in the public file, and therefore are not a part of this information collection. EAS record requirements and burdens are discussed in supporting statement 3060-0207.

Political file - (*Bill Turner*): Mr. Turner questions the need for the political file, since normal business practices would require a station to maintain such records.

Response: As noted by other commenters (i.e. *Free Press, David Tillotson, GoodRadio.TV, LLC, and Mike Lee*) the political file serves an important public purpose. The specific information about how broadcasters and cable operators made their facilities available to candidates goes to core concerns about democratic engagement and civic participation. In particular, it enables candidates and their supporters to monitor and secure broadcast station and cable system compliance with the

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political advertising rules. It also informs the public and press about the specifics of their transactions with candidates for public office. While stations and cable systems might maintain these records as part of their business practices, the requirement that the records be publicly available for the reasons stated above, is the rationale for this rule.

Correspondence from the public - (Clarke Broadcasting et al, Saga Communications, Bill Turner): Given the popularity of email, commenters argue that the Commission should eliminate, or at least scale back dramatically, the current requirement that commercial broadcasters maintain, for a period of three years, “written comments and suggestions from the public regarding operation of the station.” Commenters argue that the review and maintenance of consumer comments is a burdensome task with little practical utility. They argue that this rule requires management to analyze all communications to determine if they must be placed in the file, or if they meet one of the exceptions for privacy requests and nature of content. They argue that the information contained in such comments and suggestions has little probative or practical utility to someone interested in reviewing the contents of a station’s Public File.

Response: Comments from the public are an important part of determining whether a licensee is acting within the public interest, and whether it is responsive to the needs and interests of the community. The exceptions to the general requirement that communications from the public must be placed within the public file are limited and necessary to protect consumer interests.

Privacy Impact Analysis - (Clarke Broadcasting et al): Commenters note that the FCC stated in the Federal Register Notice that there are “no impact(s)” with respect to Privacy Impact Assessment. They argue that the collection, retention, and provision to other members of the public of correspondence that contains, among other information, names, addresses, and e-mail addresses, all of which are generally categorized as “personally identifiable information,” may well impact privacy concerns.

Response: We note that the correspondence requirement discussed above does contain an exception for those that request that their correspondence not be made public. In addition, we note that this provision requires stations to maintain such correspondence, not the Commission.

Personal protection - (Nicole McClelland): One commenter is concerned that the public file requirement allows members of the public to come to a station and request to see the public file during business hours. She believes that this potentially puts staff at risk of assault or puts the station at risk of theft.

Response: The Commission is unaware of any single instance in which the inspection of the public file rule has had any relation to criminal activity, and would encourage any licensees to report such events.

To view the comments received please visit: <http://transition.fcc.gov/omd/pr/>.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payment or gift was provided to the respondent.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation or agency policy.

Most of the documents comprising the public file consist of materials that are not of a confidential nature. See Response to Question 7 describing those materials. With respect to any such documents that may contain proprietary trade secrets and confidential information, the Commission has instituted procedures to protect the confidentiality of any such information to the extent permitted by law. For example, licensees are explicitly authorized to redact information from contracts for the joint sale of advertising time that is confidential or proprietary in nature.

11. Provide additional justification for any questions of a sensitive nature.

This information collection does not address any private matters of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should: indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance.

The public burden is estimated as follows:

Respondents	Number of Respondents/ Responses	Respondent's Hourly Burden	Total Annual Burden	Hourly In- House Cost	Annual In- House Cost
<i>Local Public Inspection Files:</i>					
<i>(1) General Maintenance</i>					
Commercial Radio Stations	11,311	52 hours	588,172 hrs.	\$15.54/hr.	\$9,140,192.80
Noncommercial Education Radio Stations	3,417	104 hours	355,368 hrs.	\$15.54/hr.	\$5,522,418.70
Commercial TV Stations	1,382	57 hours	78,774 hrs.	\$15.54/hr.	\$1,224,147.90
Noncommercial Educational TV					

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Respondents	Number of Respondents/ Responses	Respondent's Hourly Burden	Total Annual Burden	Hourly In-House Cost	Annual In-House Cost
Stations	392	109 hours	42,728 hrs.	\$15.54/hr.	\$663,993.12
Class A Television Stations	515	57 hours	29,355 hrs.	\$15.54/hr.	\$456,176.70
<i>(2) Community Issue List</i>					
Commercial Radio Stations	11,311	52 hours	588,172 hrs.	\$26.00/hr.	\$15,292,472
Commercial TV Stations	1,382	52 hours	71,864 hrs.	\$26.00/hr.	\$1,868,464
Class A Television Stations	515	52 hours	26,780 hrs.	\$26.00/hr.	\$696,280
<i>(3) Commercial Limits</i>					
Commercial TV Stations	1,382	26 hours	35,932 hrs.	\$26.00/hr.	\$934,232.00
Class A Television Stations	515	26 hours	13,390 hrs.	\$26.00/hr.	\$348,140.00
<i>(4) Must Carry/Retransmission Consent</i>					
Noncommercial Educational TV stations	392	50 hours	19,600 hrs.	\$26.00/hr.	\$509,600.00
Commercial TV Stations	1,382	50 hours	69,100 hrs.	\$26.00/hr.	\$1,796,600.00
Class A Television Stations	515	50 hours	25,750 hrs.	\$26.00/hr.	\$669,500.00
<i>Political Files:¹⁴</i>					
Commercial Broadcast Stations	13,208	15 hours	198,120 hrs.	\$26/hour	\$5,151,120.00

¹⁴ These figures represent a combined annual hourly burden average among all stations in the listed categories. We note that annual burden hours at individual stations will vary widely as the amount of candidate time purchased at the station--information for which must be placed in the political file--will vary based upon how attractive a station's/system's demographics/format are to political buyers and where a particular year falls in the four-year presidential election cycle. This cycle includes: the presidential election year--presidential primaries and general elections for president, 435 seats in the House of Representatives and one third of the U.S. Senate seats; the so-called "mid-term" election year--primaries and general elections for all seats in the House of Representatives and one third of the U.S. Senate seats; and two years with elections which deal almost entirely with state and local elections, with perhaps an occasional special federal election. We note that every year in the cycle would have some state and local elections.

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Respondents	Number of Respondents/ Responses	Respondent's Hourly Burden	Total Annual Burden	Hourly In-House Cost	Annual In-House Cost
Noncommercial Broadcast Stations	4,668	1 hour	4,668 hrs.	\$26/hour	\$121,368.00
Low Power TV	2,172	1 hour	2,172 hrs.	\$26/hour	\$56,472.00
Cable Systems	5,374	5 hours	26,870 hrs.	\$18/hour	\$483,660.00
TOTALS:	59,833		2,176,815 hours		\$44,934,835.00

Total Number of Annual Respondents: 25,422 Licensees/Permittees/Cable Operators

Total Number of Annual Responses: 59,833 (responses)

Total Annual Burden Hours: 2,176,815 Hours

Total Annual "In-house" Cost: \$44,934,835.00

13. Provide estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in items 12 and 14).

- (a) Total annualized capital/startup costs: None
- (b) Total annual costs (O&M): None
- (c) Total annualized cost requested: None

14. Provide estimates of annualized costs to the Federal government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), any other expenses that would not have been incurred without this collection of information.

There is no cost to the Federal Government.

15. Explain the reasons for any program changes or adjustments reported for this information collection.

We have made adjustments to this information collection. First, we have updated the broadcast station and cable system totals to reflect the Commission's most recent accounting. Second, we have added Class A stations to these totals, as we have determined that they should be included because Class A stations must maintain a public file under our rules. Third, we have revised the collection estimates for the political file. We have increased the number of burden hours for commercial station and cable system respondents regarding the political file to reflect the increased use by candidates of commercial broadcast stations and cable systems. We have reduced the burden hours for noncommercial stations to reflect the minimal candidate activity at those stations. Upon review of the presentation of these figures in our 2008 filing, we determined that a different presentation format would be more accurate. Therefore, this collection reflects the following adjustments: the number of respondents has decreased by 26,863¹⁵ (from 52,285 to 25,422), the number of annual responses has increased by 7,548 (from 52,285 to 59,833). The number of annual responses has increased due to changes in station totals and the addition of Class A stations. In addition, the burden hours have increased by 345,109 hours (from 1,831,706 to 2,176,815). The burden hours have increased to reflect changes in station totals, the addition of Class A stations, and changes in the political file collections.

16. For collections of information whose results will be published, outline plans for tabulation and publication.

The data will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection (IC), explain the reasons that display would be inappropriate.

OMB approval of the expiration date of the information collection will be displayed at 47 C.F.R. Section 0.408.

18. Explain any exceptions to the Certification Statement.

The Commission published a notice in the *Federal Register* seeking public comment on the information collections contained in this supporting statement, *see* 76 FR 21739, published April 18, 2011. In the notice the Commission published the following figures: the number of respondents and responses as 52,285, the annual burden hours as 1,831,706 and the estimated time per response as 2.5 – 109 hours.

¹⁵ In the Commission's 2008 submission to OMB, some of the respondents were doubled counted. The number of respondents is accurately accounted for with this submission to OMB.

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With this submission we revise these figures as follows: the number of respondents is 25,422, the number of annual responses is 59,833, the annual burden hours are 2,176,815 and the estimated time per response is 1 hour – 109 hours. There are no other exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods

No statistical methods are employed.