

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**

**Washington, D.C. 20554**

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In the Matter of

Expansion of Online Public File  
Obligations to Cable and Satellite  
TV Operators and Radio Licensees

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MB Docket No. 14-127

To: The Commission

**Reply Comments of National Religious Broadcasters**

National Religious Broadcasters hereby makes these Reply Comments in the above captioned Notice of Proposed Rulemaking proceeding in the Matter of Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Radio Licensees.<sup>1</sup>

**Introduction**

The National Religious Broadcasters (NRB) is a non-partisan, international association of Christian communicators and broadcasters, including radio stations and radio networks, whose member organizations represent millions of listeners. Dr. Jerry A. Johnson is NRB's President and CEO. NRB's mission is to advance biblical truth; to promote media excellence; and to defend free speech. In addition to promoting standards of excellence, integrity, and accountability, NRB provides networking, educational, ministry, and fellowship opportunities for its members.

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<sup>1</sup> *In the Matter of Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Notice of Proposed Rulemaking, FCC 14-209 (rel. Dec. 18, 2014)[hereinafter "NPRM"].

NRB endorses and supports several Comments filed in this proceeding which oppose Internet posting obligations for radio stations and which are identified in headings below, and NRB further adds its own considerations on this important issue.

**NRB Agrees with the Comment of  
Blount Masscom, Inc. - Accommodating Small Stations**

The FCC has proposed to begin online filing requirements with commercial radio stations in Nielsen Audio defined markets 1-50 that have five or more full-time employees.<sup>2</sup> All other radio stations would be required to begin online filing two years after the initial implementation date, except NCEs and stations with fewer than five full-time employees.<sup>3</sup> That proposal to exempt NCEs and small stations with fewer than five full-time employees is temporary in nature. Blount Masscom, Inc. (“Blount”),<sup>4</sup> as well as Educational Media Foundation (“EMF”)<sup>5</sup> and other commenters listed in our headings below, believe those stations should be permanently exempted from the online public file requirements. NRB agrees with this suggestion.

In the past, NRB had conducted national surveys of Christian broadcasters, including radio stations and networks. A consistent finding was the small size of the average full-time staff for those religious radio stations, usually fewer than five full-time employees. While that data is somewhat dated, NRB has found anecdotally that this staffing trend has stayed constant, and in many cases, due to economic strains, the staffing trend has even been in a downward direction. Failure to make permanent this exemption for small stations would impose a particularly onerous burden on faith-based

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<sup>2</sup> See NPRM ¶ 69.

<sup>3</sup> *Id.*

<sup>4</sup> Comments of Blount Masscom, Inc., March 17, 2015.

<sup>5</sup> Comments of Educational Media Foundation, March 17, 2015.

radio stations.

**NRB Agrees with the Comment of Educational Media Foundation –  
Accommodating NCE Stations and Protecting Donor Privacy**

The Comment of the Educational Media Foundation (“EMF”) additionally raised concerns about the special need to exempt small stations and NCE stations from the online obligations, especially in light of the need to protect the privacy of donors who have contributed to noncommercial stations, concerns with which we wholeheartedly concur.<sup>6</sup> It must be noted that the Commission currently proposes to mandate the disclosure, online, of the identity of donors to NCE stations.<sup>7</sup> NRB strenuously opposes this suggestion.

The Commission has asked whether radio should be treated differently from television regarding online posting of their public and political files, and if so, why.<sup>8</sup> The major reason for treating noncommercial radio stations differently with respect to divulging of donor lists is the prevalence of the number of noncommercial stations (many of them religious in nature) that generate significant listenership because of the talk program formats, which are the formats most likely to stir both strong support, but also strong opposition. According to the *Pew Research Center’s Project for Excellence in Journalism – 2012 State of the News Media*, the format of talk/information/news “dominates” noncommercial radio, and the number of noncommercial stations with such

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<sup>6</sup> NRB also sees the need to avoid mandating disclosure, online, of information violating the privacy of donors in light of the documented risk of politically or socially motivated harassment. See, *infra* page 6, “ The First Amendment - Respecting Privacy Rights and Preventing Harassment.”

<sup>7</sup> *NPRM*, ¶ 75.

<sup>8</sup> *NPRM*, ¶ 75.

formats increased 21% from 2008 – 2010.<sup>9</sup> Television programming, which is predominately populated by *commercial* stations and networks, is varied and diverse and is not similarly dominated by talk/information/news programming formats.

Equally significant, noncommercial radio stations with a heavy talk radio presence and a reliance on donor dollars for their survival face a staggering problem if donor lists are mandated to be publicized nationally (if not globally) via an online posting obligation: donors may choose to refrain from contributing either because they do not wish to have their privacy violated, or because they fear retaliation for supporting noncommercial radio stations that take unpopular or controversial positions (or who broadcast talk shows that do), or possibly both. In the final section of this Reply, (“The First Amendment - Respecting Privacy Rights and Preventing Harassment”) we discuss why those concerns are realistic.

In addition, this potential for noncommercial radio stations to lose donations is further buttressed by two convergent facts: the popularity of talk formats, coupled with the ages of those most likely to be avid listeners. Talk/news/information formats on radio are second only to country music in terms of popularity.<sup>10</sup> As for the demographics of their listeners, “[m]ost often, adults between ages 30-65 turn to local radio” for talk/news/information.<sup>11</sup> Thus, by contrast to commercial television that relies on advertising dollars rather than donations, the very group that would be most likely to possess the economic status to be able to donate to *noncommercial* radio and who have the incentive to donate because of their dedication to the talk formats of those

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<sup>9</sup> Accessed at: <http://www.stateofthedia.org/2012/audio-how-far-will-digital-go/audio-by-the-numbers/>

<sup>10</sup> Id.

<sup>11</sup> Id.

*noncommercial* stations, could well decide not to donate because of concerns over the Internet posting of donor lists that would include their identities.

**NRB Agrees with the Comments of University of  
Northwestern – St. Paul - The Burden on NCE Stations**

The University of Northwestern – St. Paul has made a cogent argument in favor of exempting all NCE radio stations.<sup>12</sup> They indicate that what had formally been a two-step process in meeting the public file obligations would, if the Internet posting obligation is made applicable to NCE stations like Northwestern, become an expensive and time-consuming nine-step process; and considering the fact the Commission’s priority is one of “transparency” of political file information in particular, such a priority is entirely irrelevant regarding noncommercial stations because they are prohibited from receiving advertising dollars for political ads.<sup>13</sup>

They also make a compelling case for the need to protect the proprietary nature of donor lists.<sup>14</sup> That is a concern inherent to noncommercial radio stations but entirely inconsequential to predominately commercial television stations which do not depend on public donations.

**NRB Agrees with the Comments of LeSea Broadcasting Corporation  
and First Dallas Media Inc. - the Need for NCE Exemption**

LeSea Broadcasting Corporation, in its Comments arguing for the need for NCE radio station exemption, points out the need for the Commission to specifically clarify the definition of “small stations,” and urges that such stations be defined as having fewer

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<sup>12</sup> Comments of University of Northwestern – St. Paul, March 17, 2015.

<sup>13</sup> Comments of University of Northwestern – St. Paul, *supra*, at pages 2-3.

<sup>14</sup> *Id.*, pages 5-6.

than five full-time employees.<sup>15</sup> NRB agrees that such a clarification is needed, unless the Commission exempts all NCE radio stations, which we believe is the preferable option.

First Dallas Media Inc., in its Comments, notes the need for a total exemption of all noncommercial radio stations, given the fact that such stations are much smaller in their staffing and work with much smaller budgets than does the average television station, thus creating a substantial justification for the Commission to avoid simply rubber-stamping its television online posting order onto this radio station proceeding.<sup>16</sup> NRB agrees that the optimal solution would be the complete exemption of all noncommercial radio stations, in addition to exemption of smaller commercial radio stations.

### **The First Amendment - Respecting Privacy Rights and Preventing Harassment**

Donors who support noncommercial radio stations that carry talk programs focusing on important public issues face substantial burdens on their privacy and even their safety if their identities are mandated to be posted on the Internet. The harm visited on citizens who support “controversial” issues and whose identities are mandated to be posted on the Internet is clearly demonstrated by the “Proposition 8” campaign in California. There, pursuant to state law, donors who gave more than \$100 to support or oppose Proposition 8, an admittedly *controversial issue*, were required to disclose to the state government their identities, addresses and other information. That information was then posted on the Internet by the Secretary of State’s office. What resulted was a concerted, Internet-driven campaign of harassment and, in some cases, violence mounted

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<sup>15</sup> Comments of LeSea Broadcasting Corporation, March 17, 2015, page 2.

<sup>16</sup> Comments of First Dallas Media Inc., March 17, 2015, page 2.

against them.

As Supreme Court Justice Clarence Thomas explained in a procedurally unrelated case, these mandated Internet disclosures of supporters of “Proposition 8” led to rampant retaliation:

Some opponents of Proposition 8 compiled this information [from Internet disclosures] and created Web sites with maps showing the locations of homes or businesses of Proposition 8 supporters. Many supporters (or their customers) suffered property damage, or threats of physical violence or death, as a result.<sup>17</sup>

As the U.S. District Court approached trial in the Proposition 8 case, it granted the request for the case to be televised, announcing that “an audio and video feed of trial proceedings would be streamed live to certain courthouses in other cities [and pending approval of the Chief Judge of the 9<sup>th</sup> Circuit] the trial would be recorded and then broadcast *on the Internet*,” an order that was immediately appealed on an application for stay to the U.S. Supreme Court.<sup>18</sup>

The Supreme Court granted the stay, holding that the objectors had demonstrated that “irreparable harm” was likely if the broadcasting of witness’ testimony (including *streaming over the Internet*) was carried out.<sup>19</sup> This harm was demonstrated by evidence that opponents of Proposition 8 also were alleged to have compiled “Internet blacklists” of pro-Proposition 8 businesses and urged others to boycott those businesses in retaliation for supporting the ballot measure ... [a]nd numerous instances of vandalism and physical

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<sup>17</sup> *Citizens United v. Federal Election Commission*, 558 U.S. \_\_\_\_ (2010), 2010 U.S. LEXIS 766, 300 (Thomas, J. concurring in part and dissenting in part).

<sup>18</sup> *Hollingsworth v. Perry*, 558 U.S. \_\_\_\_ (2010), 2010 U.S. LEXIS 533, 8.

<sup>19</sup> *Supra* at 2010 LEXIS 533, 10.

violence have been reported against those who have been identified as Proposition 8 supporters.”<sup>20</sup>

Moreover, what is particularly relevant is the distinction made by the Court between the *physical* appearances by witnesses in a public courtroom on the one hand (only a minor privacy intrusion) and the national broadcasting of their identities and their point of view in a *medium* that is both *instantaneous and national* in its reach. As the Court noted: “[t]here are qualitative differences between making public appearances regarding an issue and having one’s testimony broadcast throughout the country.”<sup>21</sup>

In the same manner, we would submit that there is a similar “qualitative difference” between placing information containing the identities of persons donating or supporting a noncommercial radio station in a *physical* file open for public inspection, and having that information spread globally over the Internet.

Further, it is dubious to suggest that some Internet-trolling person in Los Angeles, or in Miami, for instance, would have any tangible, substantial “public interest” in learning the identity of local residents in Ohio who donate to a noncommercial religious radio station that happens to carry a controversial talk show.

The First Amendment has been held to require, in some instances, protection of the privacy of private persons who support certain social or political causes. The Supreme Court held that an Ohio law that prohibited the *anonymous* distribution of political pamphlets violated the First Amendment, rejecting the argument of the state of Ohio that the law advanced the “interest in providing the electorate with relevant information” and

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<sup>20</sup> *Hollingsworth v. Perry, supra*, at 2010 LEXIS 533, 10

<sup>21</sup> *Hollingsworth, supra*, at 20.



rejecting the suggestion that it trumped the constitutional right to political anonymity.<sup>22</sup>

The Supreme Court has also held that there is a “vital relationship between” political association “and privacy in one’s associations.”<sup>23</sup> Further, “[t]he Constitution protects against the compelled disclosure of political associations and beliefs.”<sup>24</sup>

It is also important to note that in the *Federal Election Comm’n v. Wisconsin Right to Life, Inc.*, (“*WRTL*”) decision, where a non-profit, pro-life advocacy group “had to turn over many documents related to its operations, plans, and finances” during litigation involving the question of whether its ads violated campaign reform rules, the Supreme Court concluded that such disclosures “constitute[ ] a severe burden on political speech.”<sup>25</sup> We would suggest that the mandatory Internet posting of the identities of every donor of every NCE radio station, particularly regarding the plethora of NCE stations that run talk shows on controversial public issues, trumps even the burden critiqued in *WRTL* and which was found to have violated the First Amendment.

The only real way for the Commission to avoid hitting the tripwire of the First Amendment is to fully exempt all NCE radio stations from the online posting requirements, especially regarding the posting of donor lists.

### **Conclusion**

National Religious Broadcasters supports the Comments of the aforementioned commenters, and urges the Commission to exempt from online posting requirements all NCE radio stations, particularly regarding donor lists, and to exempt all small radio

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<sup>22</sup> *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 338 (1995).

<sup>23</sup> *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958).

<sup>24</sup> *Brown v. Socialist Workers 74’ Campaign Comm. (Ohio)*, 459 U.S. 87, 91 (1982).

<sup>25</sup> *Federal Election Comm’n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 468, n. 5 (2007).

stations (those with fewer than five full-time employees, whether commercial or noncommercial).

Dated this 13th day of April, 2015.

Respectfully submitted,

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