

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

In the Matter of)	
)	
Amendment of Section 73.3613 of the Commission's Rules Regarding Filing of Contracts)	MB Docket No. 18-4
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105
)	

COMMENTS



The American Cable Association files these comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.¹ The NPRM seeks comment on a proposal to eliminate the requirement that broadcast stations file contracts identified in Section 76.3613 of the Commission's rules. ACA generally supports the Commission's efforts to reduce unnecessary paperwork burdens on regulated entities, as the proposals in this proceeding are intended to do. At the same time, the Commission has long held that "it is essential for the public to have ready access to ownership information which will identify the principals of the licensee who is

¹ *Amendment of Section 73.3613 of the Commission's Rules Regarding Filing of Contracts*, Notice of Proposed Rulemaking, FCC 18-8 (rel. Jan 30, 2018) ("NPRM").

responsible for the program service and policies of a broadcast station.”² ACA believes that the Commission can take advantage of today’s technology and amend the rules in a way that will both relieve broadcast stations of unnecessary paperwork burdens while also improving the public’s access to the essential information contained in the contracts at issue.

ACA therefore proposes that, in lieu of filing such contracts with the Commission, broadcasters should be required to post them online, just as they do today with shared service agreements (“SSAs”),³ joint sales agreements (“JSAs”),⁴ and time brokerage agreements (“TBAs”).⁵ Similarly, ACA supports the NPRM’s proposal to allow broadcast stations to redact confidential or proprietary information from contracts required to be made public by Section 73.3613 without prior approval from the Commission, with three caveats. First, such automatic redactions should be permitted only if those contracts are posted in a broadcast station’s online public inspection file. Second, the Commission should clarify that interested parties have a mechanism for challenging any redactions made without prior approval. And third, broadcasters should not be permitted to redact any information related to ownership or retransmission consent. Finally, ACA proposes that the Commission require broadcasters to post all contracts in their online public inspection files within 30 of the contracts’ execution.

1. Proposal to Eliminate Section 73.3613 of the Commission’s Rules. As part of the Commission’s broader initiative to modernize its media regulations, the NPRM proposes to eliminate the requirement that each station file certain contracts and other documents with the Commission within 30 days of execution.⁶ In lieu of this requirement, the NPRM proposes to rely solely on the existing public file rules.⁷

² *Report and Order in Docket No. 14864*, 30 FR 4543, ¶ 18 (1965).

³ 47 CFR § 73.3526(e)(18).

⁴ 47 CFR § 73.3526(e)(16).

⁵ 47 CFR § 73.3526(e)(14).

⁶ NPRM, ¶ 1, *citing* 47 CFR § 73.3613.

⁷ 47 CFR §§ 73.3526(b), 73.3527(b).

The online public file rules, however, only require *certain* contracts (joint sales agreements, time brokerage agreements, and shared services agreements) to be posted in their entirety.⁸ With respect to other agreements related to ownership, broadcasters are permitted to include only a list of such contracts, as long as they make the agreements themselves available to the public upon request within seven days.⁹

Thus, eliminating section 73.3613 without making certain corresponding changes to the public file rules will result in *less* transparency regarding broadcasters' ownership-related contracts. ACA's roughly 750 small and mid-size MVPDs, each of whom must negotiate with broadcast stations for the right to retransmit broadcast signals to their subscribers, believe it is necessary to have access to pertinent ownership information, and that such access will be increasingly important in the future.

Cable operators must, at a minimum, be able to know who actually owns the broadcast station with whom they are negotiating. Under Commission rules, a single party generally cannot own two "top-four" rated stations.¹⁰ At the same time, *separately* owned, same-market broadcast stations are prohibited from coordinating their retransmission consent negotiations.¹¹ (This latter prohibition was later codified by Congress.¹²) Thus, the legality of coordinated retransmission consent negotiations within a market depends on whether the same party owns the stations in question – and such joint ownership may become more common in light of recent relaxation of the Commission's rules.¹³ Cable operators encountering joint negotiation should

⁸ 47 CFR § 73.3526(e)(14) (time brokerage agreements); *id.* § 73.3526(e)(16) (joint sales agreements); *id.* § 73.3526(e)(18) (shared service agreements).

⁹ *Id.* § 73.3526(e)(5).

¹⁰ 47 CFR § 73.3555.

¹¹ 47 CFR § 76.65(b)(viii).

¹² STELA Reauthorization Act of 2014, Pub. L. No. 113-200, 128 Stat. 2059 (2014).

¹³ 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, FCC 17-156 (rel. Nov. 20, 2017).

have an easy and timely way to confirm that such joint negotiation is actually permitted under the Commission's rules, especially in light of recent violations of those rules.¹⁴

Broadcasters, moreover, have increasingly used a variety of exotic agreements to obtain influence over – or even responsibility for – other stations' operations and finances. They can often obtain influence or control over other stations' retransmission consent negotiations through agreements *other* than those already required to be placed in the public file.¹⁵

To take the most prominent example, owners of national broadcast networks have, in recent years, been exercising greater levels of control over their affiliate stations' operations.¹⁶ As a result, there is a greater likelihood that a national network will inappropriately exercise *de facto* control over an otherwise independent station's finances and operations,¹⁷ or will influence a station's retransmission consent negotiations in a manner that could be construed as a violation of the good faith rules.¹⁸ National networks typically obtain such control through affiliation agreements, which currently must be filed with the Commission, but which would *not* automatically be placed in the station's public file under the Commission's proposal.¹⁹

Agreements pertaining to ownership or control of a station concern the public.

Moreover, as discussed above, any such agreement pertaining to retransmission consent

¹⁴ *Sinclair Broad. Grp., Inc.*, 31 FCC Rcd. 8576 (2016) (adopting consent decree after finding violation of joint negotiation rules).

¹⁵ *Amendment of the Commission's Rules Related to Retransmission Consent*, 29 FCC Rcd. 3351, 3370 (2014) (defining "joint negotiation" to include "any informal, formal, tacit or other agreement and/or conduct that signals or is designed to facilitate collusion regarding retransmission terms or agreements between or among Top Four broadcast television stations that are not commonly owned and that serve the same DMA.").

¹⁶ For example, in its comments in response to the Commission's Notice of Proposed Rulemaking on the Totality of the Circumstances test for determining a good faith violation, ACA described the way in which national network affiliates are increasingly prohibiting stations from exporting their signals to neighbor markets. *Implementation of Section 103 of the STELA Reauthorization Act of 2014; Totality of the Circumstances Test*, MB Docket No. 15-216, Comments of the American Cable Association, at 60-70 (filed Dec. 1, 2015).

¹⁷ 47 CFR § 73.3540(a) ("Prior consent of the FCC must be obtained for a voluntary assignment or transfer of control.").

¹⁸ For instance, by requiring a broadcast station to accept specific rates or terms such that the station would, in effect, be required to present an MVPD with a "take it or leave it" offer, in violation of 47 CFR § 76.65(b)(iv).

¹⁹ 47 CFR § 73.3613(a)(1).

particularly concerns ACA's members. At the same time, ACA supports elimination of procedural burdens on all regulated entities, including broadcasters. The Commission can achieve both goals by eliminating the current requirements to file ownership agreements with the Commission, maintain a list of them in the public file, and provide them upon request. Instead, broadcasters should simply include such contracts in their entirety in their public file.

2. Redaction of Confidential or Proprietary Information. The NPRM seeks comment on whether to allow broadcast stations to redact confidential or proprietary information prior to making contracts available to the public.²⁰ Under the existing rules, broadcast stations may redact such information from SSAs, JSAs and TBAs prior to posting such agreements in their public file, as long as unredacted versions of the documents are provided to the Commission upon request.²¹ Stations may not redact other types of contracts, however, without first undertaking the Commission's general procedure for redaction.²² The NPRM proposes to extend the confidential treatment of JSAs, SSAs, and TBAs to all contracts covered by Section 73.3613.

Again, ACA supports the Commission's goal of reducing regulatory burdens, so long as deregulation does not result in limiting the public's access to important broadcast ownership information. And here again, adopting the NPRM's original proposal without corresponding changes could actually reduce transparency. If broadcasters need only provide ownership-related contracts "upon request," and *then* engage in inappropriate redactions, it could take MVPDs months to receive information to which they are unquestionably entitled.

The Commission can simplify the process by treating all Section 73.3613 contracts the same as it now treats JSAs, SSAs, and TBAs. Namely, by allowing redaction without prior approval, but requiring broadcasters to post contracts in their online public file. This would

²⁰ NPRM, ¶ 18.

²¹ 47 CFR § 73.3613(d)(1)-(d)(2); *see also* 47 CFR §§ 73.3526(e)(14), (e)(16), (e)(18).

²² 47 CFR § 0.459(a)(1).

eliminate the unnecessary seven-day waiting and would allow interested parties to determine as early as possible whether necessary information has been inappropriately redacted.

The Commission should also clarify that parties who believe that any contracts placed in the public file have been inappropriately redacted may treat the automatic redaction as a confidentiality request pursuant to Section 0.459 of the Commission's rules.²³ Additionally, the Commission should also make clear that automatic redactions may apply only to information that is unrelated to the station's ownership and control, and that information related in any way to retransmission consent should never be redacted. If the Commission does not require broadcast stations to post their contracts in their online public file, it should also prohibit broadcasters from providing different redactions to its contracts to different parties requesting them.

3. *Updating the Public File.* The NPRM also seeks comment on whether, in eliminating Section 73.3613's requirement that relevant contracts be filed with the Commission within 30 days of execution, the Commission should amend its public file rules, which currently require only that licensees and permittees "update their files in a timely fashion and . . . maintain orderly files."²⁴ To ensure that the public continues to have "ready access" to ownership information, as intended by the original rule, the Commission should require broadcast stations to update their public files to reflect new contracts within a set period after the contracts' execution. That time should not extend beyond the current 30 days. Given the burdens that a broadcaster undertakes on its own to enter into a new contract, an additional burden of requiring these broadcasters to thereafter make such contracts accessible within 30 days would be relatively minimal.

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²³ 47 CFR § 0.459(d).

²⁴ NPRM, ¶ 11.

For the reasons discussed above, the Commission should take steps to ensure that any changes designed to alleviate regulatory burdens on broadcast stations do not decrease the ready availability of ownership information.

Respectfully submitted,



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March 19, 2018