

## SUPPORTING STATEMENT

### A. Justification:

#### Circumstances Necessitating Change to Information Collection:

In 2012, the Commission replaced the decades-old requirement that commercial and noncommercial television stations maintain public files at their main studios with a requirement to post most of the documents in those files to a central, online public file hosted by the Commission.<sup>1</sup> On January 28, 2016, the Commission adopted a *Report and Order* (“R&O”) in MB Docket No. 14-127, FCC 16-4, *In the Matter of Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, expanding the requirement that public inspection files be posted to the FCC- hosted online public file database to satellite TV (also referred to as “Direct Broadcast Satellite” or “DBS”) providers and to satellite radio (also referred to as “satellite Digital Audio Radio Services” or “SDARS”) licensees, among other entities. The Commission stated that its goal is to make information that these entities are already required to make publicly available more accessible while also reducing costs both for the government and the public sector. The Commission took the same general approach to transitioning these entities to the online file that it took with television broadcasters in 2012, tailoring the requirements as necessary to the different services. The Commission also took similar measures to minimize the effort and cost entities must undertake to move their public files online. Specifically, the Commission required entities only to upload to the online public file documents that are not already on file with the Commission or that the Commission maintains in its own database. The Commission also exempted existing political file material from the online file requirement and required that political file documents be uploaded only on a going-forward basis.

The Commission first adopted a public inspection file requirement for broadcasters more than 40 years ago.<sup>2</sup> The public file requirement grew out of Congress’ 1960 amendment of Sections 309 and 311 of the Communications Act of 1934.<sup>3</sup> 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,”<sup>4</sup> 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.”<sup>5</sup> The information provided in the public file enables citizens to engage in an informed dialog with their local operator or to file complaints

<sup>1</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Second Report and Order*, 27 FCC Rcd 4535 (2012)(“*Second Report and Order*”).

<sup>2</sup> *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).

<sup>3</sup> 47 U.S.C. §§ 309,311.

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

<sup>5</sup> *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).

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regarding provider operations. Satellite TV (also known as “Direct Broadcast Satellite” or “DBS”) providers and satellite radio (also referred to as “Satellite Digital Audio Radio Services” or “SDARS”) licensees have public and political file requirements modeled, in large part, on the longstanding broadcast requirements.<sup>6</sup> With respect to DBS providers, the Commission adopted public and political inspection file requirements in 1998 in conjunction with the imposition of certain public interest obligations, including political broadcasting requirements, on those entities.<sup>7</sup> DBS providers were required to “abide by political file obligations similar to those requirements placed on terrestrial broadcasters and cable systems” and were also required to maintain a public file with records relating to other DBS public interest obligations.<sup>8</sup> The Commission imposed equal employment opportunity and political broadcast requirements on SDARS licensees in 1997, noting that the rationale behind imposing these requirements on broadcasters also applies to satellite radio.<sup>9</sup>

**47 CFR Section 25.701(d)** requires each DBS provider to keep and permit public inspection of a complete and orderly record (political file) of all requests for DBS origination time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the provider 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. All records required to be retained by this section must be placed in the political file as soon as possible and retained for a period of two years. DBS providers must make available, by fax, email, or by mail upon telephone request, copies of documents in their political files and assist callers by answering questions about the contents of their political files. If a requester prefers access by mail, the DBS provider must pay for postage but may require individuals requesting documents to pay for photocopying. If a DBS provider places its political file on its website, it may refer the public to the website in lieu of mailing copies.

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<sup>6</sup> Section 315 of the Communications Act, as amended by the Bipartisan Campaign Reform Act of 2002, applies political advertising rate disclosure and public file requirements to broadcast stations, cable systems, and DBS operators. *See* 47 U.S.C. § 315.

<sup>7</sup> *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, 13 FCC Rcd 23254 (1998), *Sua Sponte Reconsideration*, 19 FCC Rcd 5647 (2004).

<sup>8</sup> *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, 19 FCC Rcd at 5661, ¶ 35.

<sup>9</sup> *See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, 12 FCC Rcd 5754, 5791-92, ¶¶ 91-92 (1997) (“*SDARS Order*”). While this item did not expressly refer to political file requirements, SDARS licensees were required to comply with 47 U.S.C. § 315, which was amended in 2002 to include public file requirements. *Id.* at ¶ 92. *See also, infra*, ¶ 5. In addition, the Commission noted in the *SDARS Order* that it had a pending rulemaking proposing revisions to its EEO rules and that satellite radio licensees would be required to comply with the current EEO rules and any changes adopted when the rulemaking was completed. *See SDARS Order*, 12 FCC Rcd at 5791, ¶ 91. The Commission later clarified that SDARS licensees must comply with the same EEO requirements as broadcast licensees, including the public file requirements. *See Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, 23 FCC Rcd 12348, 12426, ¶ 174, and note 551 (2008) (“*XM-Sirius Merger Order*”).

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Any material required to be maintained in the political file must be made available to the public by either mailing or website access or both.

The *R&O* changes 47 C.F.R. Section 25.701(d) to require DBS providers to place all new political file material required to be retained by this section in the online file hosted by the Commission. The *R&O* also eliminates the requirement that DBS providers honor requests by telephone for copies of political file materials if those materials are made available online.

**47 CFR Section 25.701(f)(6)** requires each DBS provider to maintain a public file containing a complete and orderly record of quarterly measurements of: channel capacity and yearly average calculations on which it bases its four percent reservation, as well as its responses to any capacity changes; a record of entities to whom noncommercial capacity is being provided, the amount of capacity being provided to each entity, the conditions under which it is being provided and the rates, if any, being paid by the entity; and a record of entities that have requested capacity, disposition of those requests and reasons for the disposition. All records required by this provision must be placed in a file available to the public as soon as possible and be retained for a period of two years.

The *R&O* changes 47 C.F.R. Section 25.701(f)(6) to require DBS providers to place all public file material required to be retained by this section in the online file hosted by the Commission. The *R&O* also requires that each DBS provider place in the online file the records required to be placed in the public inspection file by 47 C.F.R. Section 25.701(e)(commercial limits in children's programs) and by 47 C.F.R. Section 25.601 and Part 76, Subpart E (equal employment opportunity requirements) and retain those records for the period required by those rules. In addition, the *R&O* requires each DBS provider to provide a link to the public inspection file hosted on the Commission's website from the home page of its own website, if the provider has a website, and provide on its website contact information for a representative who can assist any person with disabilities with issues related to the content of the public files. Each DBS provider is also required to include in the online public file the name, phone number, and email address of the licensee's designated contact for questions about the public file. In addition, each DBS provider must place the address of the provider's local public file in the Commission's online file unless the provider has fully transitioned to the FCC's online public file (*e.g.*, posts online all public and political file material required to be maintained in the public inspection file) and also provides online access via the provider's own website to back-up political file material in the event the online file becomes temporarily unavailable.

**47 CFR Section 25.702.** The *R&O* adds this new rule. New 47 CFR Section 25.702 (b) requires each SDARS licensee to maintain a complete and orderly record (political file) of all requests for SDARS origination time made by or on behalf of candidates for public office, together with the disposition made by the provider of such requests, and the charges made, if any, if the request is granted. The disposition must include 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. SDARS licensees are

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required to place all records required by this section in the political file as soon as possible and retain the record for a period of two years.

New 47 CFR Section 25.702(c) requires each SDARS applicant or licensee to place in the online file hosted by the Commission the records required to be placed in the public inspection file by 47 C.F.R. Sections 25.601 and 73.2080 (equal employment opportunities) and to retain those records for the period required by those rules. Each SDARS licensee must provide a link to the public inspection file hosted on the Commission's website from the home page of its own website, if the licensee has a website, and provide on its website contact information for a representative who can assist any person with disabilities with issues related to the content of the public files. Each SDARS licensee is also required to include in the online public file the name, phone number, and email address of the licensee's designated contact for questions about the public file. In addition, each SDARS licensee must place the address of the provider's local public file in the Commission's online file unless the provider has fully transitioned to the FCC's online public file (*e.g.*, posts online all public and political file material required to be maintained in the public inspection file) and also provides online access via the licensee's own website to back-up political file material in the event the online file becomes temporarily unavailable.

The Commission is requesting a three-year extension for this collection from the Office of Management and Budget (OMB).

The Commission plans to revise any appropriate privacy requirements as necessary to cover the entities and information included in the online file in this proceeding.

Statutory authority for this collection of information is contained in 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, 310, and 332 of the Communications Act of 1934, as amended.

2. The public and FCC use the information in the public file to evaluate information about the DBS or SDARS entity's performance and to ensure that the entity is operating pursuant to the FCC's rules. Similarly, the public and the FCC use the information in the public file to allow them to play an informed role in the regulation of satellite TV and satellite radio and to encourage a greater interaction between the Commission, the public, and these industries.

Maintenance of political files by DBS and SDARS entities 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.

3. The changes adopted in the *R&O* involve automated, electronic collection techniques. Before the *R&O*, DBS and SDARS entities had 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 having to print all items and placing them in the public file, an entity could store materials on a computer that is available to the public. This electronic option is not an online public file requirement, since the materials do not need to be available via the Internet. The changes adopted in the *R&O* require DBS and SDARS entities to

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instead post their “electronic” public files on the Commission’s website, making the public files available over the Internet.

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

5. 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. 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 DBS and SDARS operations. With respect to the political files, if the required documentation were 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. With the exception of the political file, there are no special circumstances that require respondents to report information more than quarterly. The Communications Act and the Commission’s rules require that entities place information into the political file “as soon as possible.”<sup>10</sup> The Commission has long interpreted “as soon as possible” to mean “immediately absent unusual circumstances.”<sup>11</sup> Therefore, consistent with the existing political file rules and statute, the *R&O* requires that records be uploaded to the online political file immediately absent unusual circumstances. Whether maintained at the station or online, the contents of the political file are time-sensitive.<sup>12</sup> A candidate has only seven days from the date of his or her opponent’s appearance to request equal opportunities for an appearance.<sup>13</sup>

There are no special circumstances that 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. While the Commission has instituted procedures to protect confidential information, much of the public file is not confidential.

Political files must be retained for a period of 2 years. This retention period is necessary to provide the

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<sup>10</sup> 47 U.S.C. § 315(e)(3); 47 C.F.R. §§ 73.1943(c), 25.701(d). *See also Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, 12 FCC Rcd 5754, 5791-92, ¶¶ 91-92 (1997) (“*SDARS Order*”).

<sup>11</sup> Section 73.1943(c) of the Commission’s rules provides that “[a]ll records required by this paragraph shall be placed in the political file as soon as possible . . . . As soon as possible means immediately absent unusual circumstances.” 47 C.F.R. § 73.1943(c).

<sup>12</sup> *See* 47 C.F.R. § 73.1943(c).

<sup>13</sup> *See* 47 C.F.R. § 73.1941(c).

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public and the FCC timely information to evaluate the equal rates and access.

8. The Commission published a notice in the Federal Register seeing comments from the public on the information collection requirements contained in this collection (83 FR 63640) on December 11, 2018. The Commission did not receive any comments from the public.

9. No payment or gift was provided to the respondent in association with this collection of information.

10. Most of the documents comprising the public file consist of materials that are not of a confidential nature. 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.

Respondents complying with the information collection requirements may request that the information they submit be withheld from disclosure. If confidentiality is requested, such requests will be processed in accordance with the Commission's rules, 47 CFR § 0.459.

The Commission plans to revise any appropriate privacy requirements as necessary to cover the entities and information included in the online file in this proceeding.

11. This information collection does not address any private matters of a sensitive nature. The Commission will redact any personal information before it becomes available for public inspection, at the request of the submitter.

The Commission prepared a system of records notice (SORN), FCC/MB-2, "Broadcast Station Public Inspection Files," that covers the PII contained in the broadcast station public inspection files located on the Commission's website. The Commission plans to revise any appropriate privacy requirements as necessary to cover any additional entities and information included in the online file in this proceeding.

12. The proposed public burden is estimated as follows. These estimates are consistent with the *Second Report and Order* and the *R&O*, which determine that having the Commission host entities' public file information will ultimately reduce costs for entities – compared to the existing local file requirements.

There are currently two DBS and one licensed SDARS entities. The estimated average burden is 18 hours for each entity.

**Total Number of Respondents: 3<sup>14</sup>**

**Total Number of Annual Responses: 3 records/files**

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<sup>14</sup> There are only 3 respondents to this collection. These 3 respondents make up the universe of filers for their respondent pool; therefore, OMB approval for this collection is still needed.

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**Total Annual Burden Hours:** 3 records/files x 18 hrs/entity = **54 hours**

**Total “In-House” Costs:** We estimate an average hourly wage of \$20.00 per hour for individuals tasked with the recordkeeping requirements.

3 records/files x 18 hrs/entity x \$20.00 per hour = **\$1,080**

These estimates are based on Commission staff's knowledge and familiarity with the data required.

**13. Annual Cost Burden:**

- (a) Total annualized one-time capital/startup costs: 3 respondents x \$197.28<sup>15</sup> = \$591.84.
- (b) Total annual costs (O&M): None
- (c) Total annualized one-time startup cost requested: **\$591.84 (\$592.00 rounded)**.

14. The Commission estimates that the initial outlay to expand the online public file database to include DBS and SDARS will be approximately \$12,000, and that annual costs attributable to DBS and SDARS will be approximately \$2,500 for IT operations and overhead.<sup>16</sup> Over the three-year period of this collection, the total cost attributable to DBS and SDARS will be \$17,000<sup>17</sup>, or an average of \$5,667 per year.<sup>18</sup>

15. There are no program changes or adjustments to this collection.

16. The data will not be published.

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

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<sup>15</sup> When it first established the online public inspection file for television stations, the Commission estimated that stations, on average, may need to spend \$394.56 in one-time capital costs in order to out-source the scanning of the existing public files. While DBS and SDARS entities may choose to scan and upload these files in-house at lower costs, for purposes of this information collection, we are assuming that these entities will choose to out-source this work. We are assuming that the capital costs for DBS and SDARS entities to comply with online file requirements will be less than the cost for TV stations because DBS and SDARS public files are smaller than TV public files. We estimate that DBS and SDARS public files are ½ as large as TV public files and that the cost to DBS and SDARS entities therefore will be only ½ of the cost to TV stations.

<sup>16</sup> We estimate that the total initial cost to expand the online file to include radio, cable, DBS and SDARS will be \$1.2 million, and that total annual costs to maintain the online file will be \$250,000. We estimate that 1% of these costs are attributable to DBS and SDARS, as the number of DBS and SDARS entities proposed to be added to the online file is approximately 1% of the total number of entities the *NPRM* proposes to add to the online file database for a total cost of \$12,000 for the first year and \$2,500 thereafter.

<sup>17</sup> This number was calculated as follows: \$12,000 + \$2,500 + \$2,500 = \$17,000.

<sup>18</sup> This number was calculated as follows: \$17,000 ÷ 3 = \$5,667.

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18. There are no exceptions to the Certification Statement.

**B. Collections of Information Employing Statistical Methods**

No statistical methods are employed.