



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

30-Day Countdown: December 24 Deadline for “First Wave” Radio Stations to Upload Pre-June 24 Public Inspection File Materials

Just in time for the holidays: an important online public file deadline for certain radio stations is rapidly approaching! Don’t let this legal obligation “get lost in the shuffle”!

On June 24, 2016, the FCC launched its new online public inspection file (“OPIF”) database system, and certain radio stations were required to begin using it to upload newly-created public inspection file records. This memorandum is a reminder that radio stations who began using the OPIF on June 24 will be required to finish uploading pre-June 24, 2016, public file records by December 24, 2016. Given that the deadline for uploading pre-June 24 public file records to the OPIF is December 24, time is running out to accomplish this significant requirement. While this memorandum is not intended to provide a complete review of the OPIF or an exhaustive discussion of the contents of radio public inspection files, a public inspection file “checklist” for radio stations is enclosed as Attachment 1.

Definitions for Purposes of this Memorandum. This memorandum uses the terms “First Wave Stations” and “Second Wave Stations” for convenience. These are not terms that are defined by the FCC; they are a shorthand way to discuss the online public file implementation dates and obligations for radio stations. “First Wave Stations” refers only to commercial AM and FM radio stations in the top 50 Nielsen Audio markets with 5 or more full-time employees. “Second Wave Stations” refers to all other AM and FM radio stations. FM translator stations, LPFMs (i.e., Low Power FM Stations), and FM booster stations do not have public inspection file requirements and are not subject to the FCC’s online public file requirements.

Staggered Implementation Dates. The June 24, 2016, and December 24, 2016, OPIF deadlines apply only to commercial radio stations in the top 50 Nielsen Audio markets with 5 or more full-time employees (“First Wave Stations”). As noted above, June 24, 2016, was the date that First Wave Stations were required to begin using the OPIF, at which time such stations were required to begin uploading newly-created public file documents into the OPIF. Public file documents that

existed in a First Wave Station’s public inspection file as of June 23 were not required to be uploaded by June 24; those documents are subject to the December 24 upload deadline and, thus, must be uploaded to the OPIF no later than December 24, 2016.

Subsequently, by **March 1, 2018**, all other radio stations (“Second Wave Stations”) will be required to have their then-existing public file materials uploaded to the OPIF and to begin using the OPIF on a going-forward basis. (In addition, Second Wave Stations are allowed to begin voluntarily using the OPIF at any time prior to March 1, 2018, but if they do so, they must transition completely to the OPIF—more information about this option is below.)

Beat the December 24 Deadline! There is no reason for First Wave Stations to wait any longer to begin uploading their pre-June 24 public file documents. The key, of course, will be to be sure that your existing public file is complete so that when you upload the pre-June 24 materials in time to meet the December 24 deadline, there are no “holes” or “gaps” that can cause compliance issues for the world (including the FCC Staff) to see.

Political Files: Only Newly-Created Political File Records Need to Be Uploaded. With respect to political file materials, radio stations are required to upload only newly-created political file records (but may upload pre-June 24 political file records if they wish to do so).

Thus, First Wave Stations have been required to upload to the OPIF political file records created after June 23, 2016. With respect to pre-June 24 political file records, First Wave Stations have two options: (i) First Wave Stations must continue to maintain and make pre-June 24 political file records available for public inspection at the main studio until they have “timed out” by the lapse of two years’ time, **or** (ii) First Wave Stations may, if they wish, upload pre-June 24 political file records to the OPIF.

Pre-June 24 Political File Records Will Never Be Required to Be Uploaded (But May Be Uploaded Voluntarily at the Station’s Option). As noted above, radio stations will never be required to upload political file records that were already in existence as of the day prior to the date the station commenced use of the OPIF, but the FCC’s rules allow each station to decide whether they would like to voluntarily upload such political file records.

The Special Case of Second Wave Stations Electing to Begin Use of the OPIF Prior to March 1, 2018. As noted above, Second Wave Stations are allowed to begin using the OPIF prior to the March 1, 2018, deadline. Such stations may choose any date they wish to begin using the OPIF, and when they make the choice, they must transition completely to the OPIF at that time. Thus, for a Second Wave Station that wishes to transition to the OPIF on the same schedule as First Wave Stations, the June 24 and December 24 deadlines discussed above would apply. For a Second Wave Station that opts to transition to the OPIF on a different date—for example January 1, 2017—the station would need to have its then-existing public file documents (except for then-existing political file records) uploaded to the OPIF by January 1, 2017, and would be required to begin, as of January 1, 2017, uploading all public file materials created on and after January 1, 2017 (including newly-created political file records). Any Second Wave Station that is considering transitioning “early” to the OPIF would be well-advised to consult with legal counsel prior to making the transition.

After Uploading Pre-June 24 Public File Materials, Radio Stations Must Certify That They Have Done So. First Wave Radio stations are required—at the appropriate time—to complete a certification indicating that they have uploaded all pre-June 24 public file materials. (Second Wave Radio stations are subject to the same requirement.) This certification should be made only after a station has uploaded all required public file materials that existed in the station’s public file prior to June 24, 2016. Because the deadline for First Wave Stations to upload such existing material one short month from now—**December 24, 2016**—many First Wave Stations have not yet completed this certification.

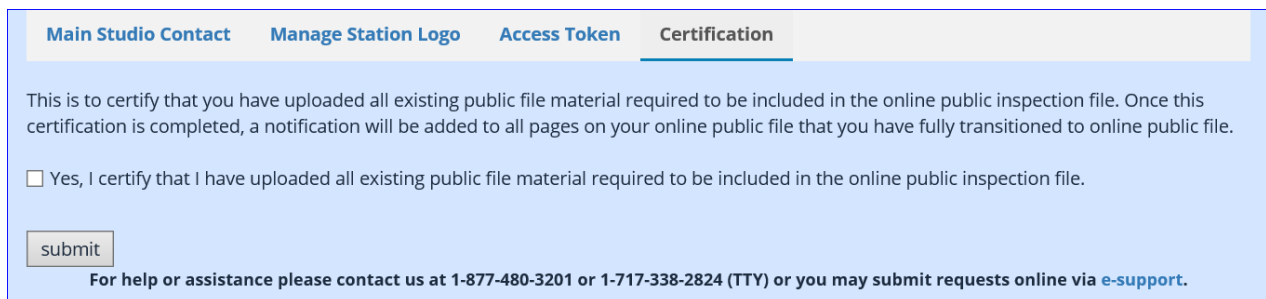
After a radio station has uploaded its pre-June 24 public file materials to the OPIF, it will be ready to make the certification. To access, review, and complete the certification, click on “settings” in your online public file (as shown below)



and then select “certification” from the selections shown below.



The certification that will appear when you click on “certification” will resemble the image below:



The “certification” option will appear on the “settings” bar only after you have toggled the public view of your online public file from “OFF” to “ON.” Thus, it is important to remember that this certification is a separate, additional process from turning on the station’s file for public view, which, of course, all First Wave Stations should have done on June 24, 2016. **Because this certification is an affirmative representation being made by the station to the FCC, stations may wish to consult with their FCC counsel to ensure their files are complete prior to submitting the certification.**

Make a Plan and Move Forward! Our prior memoranda on this topic were intended to help First Wave Stations plan ahead to comfortably meet the December 24, 2016, upload deadline—a deadline that could otherwise easily get lost in the shuffle of holidays and year-end. At this point, with a mere 30 days left until this significant regulatory deadline, stations that have not yet completed or started their upload of pre-June 24 public file materials need to accelerate their plans, assign responsibilities, and follow-up with station staff to ensure this critically important deadline will be timely met.

If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

Stephen Hartzell, Editor

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This Legal Review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

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Attachment 1
Radio Public File Checklist

RADIO STATION PUBLIC INSPECTION FILE CHECKLIST

PAPER PUBLIC FILE LOCATION & ACCESSIBILITY

- For stations that are not Top 50 market commercial stations with 5 or more full time employees, a complete paper public file must be located until March 1, 2018, at the station's main studio, unless such a station opts to fully convert to online system early.
- For Top 50 market commercial stations with 5 or more full time employees, beginning June 24, 2016, only correspondence file, existing political, and back-up political file materials must be located at station's main studio.
- If documents are maintained in a computer database, a computer terminal must be available at the location of the public file.
- File must be available during regular business hours. Appointments cannot be required.
- Only stations with a main studio located outside the city limits of the community of license are required to honor telephone requests for information; mailing area limited to local service area; political file material exempt.
- Photocopying must be available for members of the public. Stations can charge reasonable photocopying fees. Must provide copies within 7 days.
- Stations may require personal identification of members of the public, but may not require that persons identify the organization they represent or the reason for the inspection.

CONTENTS OF THE PUBLIC FILE

Station Authorizations (FCC Imports Some; Station Uploads Some)

- Current FCC authorizations to construct or operate the station. Main station license imported by FCC; STAs uploaded by station.
- All documents relating to current FCC authorizations.
- Remove all authorizations and documents except those relating to the current authorization.

Applications and Related Materials (FCC Imports)

- Applications tendered for filing with the FCC.
- All documents relating to applications tendered for filing, including Initial Decisions and Final Decisions.
- If any petitions to deny have been filed against an application, there must be a statement regarding those petitions.
- Keep applications granted pursuant to a waiver for as long as the waiver is in effect.
- Keep applications granted for a shortened term until final action has been taken on the application filed immediately following the shortened term.
- Remove any other applications and materials relating to any application on which final action has been taken.

Citizen Agreements (Station Uploads)

- Copies of any written agreements between the station and one or more citizens or citizen groups entered into for non-commercial purposes.
- Remove any agreement where the term of that agreement has expired.

The Public and Broadcasting Manual (Link Provided by FCC on Initial Page of Online Public File)

- Copy of the latest version (July 2008) of the FCC manual titled "*The Public and Broadcasting.*"

Contour Maps (FCC Imports)

- Check the map provided by the FCC in your online public file.
- If the contour map imported by the FCC is not correct, upload correct contour map into "Authorizations" folder and notify your legal counsel or the FCC that the contour map imported by the FCC was incorrect.

Ownership Reports (FCC Imports) and Related Materials (Station Uploads)

- Copy of the most recent, complete ownership report filed with the FCC.
- Copies of materials related to the ownership report.
- Copies of or an up-to-date list of contracts listed in the ownership report. A list is contained in the ownership reports, but stations must take care to maintain a current list in the file.
- Remove any documents that do not relate to the current ownership report.

Political File & Sponsorship Identification Lists (Station Uploads)

- Records concerning requests to purchase broadcast time by a legally qualified candidate or that communicate a message relating to any political matter of national importance.
- Stations must maintain a “back up” copy of such records at the main studio in the event the online public file becomes unavailable.
- Such records must contain the following information: (A) whether the request to purchase broadcast time is accepted or rejected by the station; (B) the rate charged for the broadcast time; (C) the date and time on which the advertisement is aired; (D) the class of time that is purchased; (E) the name of the candidate to which the advertisement refers and the office to which the candidate is seeking election, the election to which the advertisement refers, or the issue to which the advertisement refers (as applicable); (F) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and (G) in the case of any other request, the name of the person or entity purchasing the time, the name, address, and phone number of a contact person for such purchaser, and a list of the chief executive officers or members of the executive committee or of the board of directors of such purchaser.
- Lists of chief executive officers or members of the executive committee or of the board of directors of all entities that pay for or furnish broadcast matter that involves political issues or controversial issues of public importance (non-federal third-party ads).
- Remove these records after a period of two years.

EEO (FCC Imports Some; Station Uploads Some)

- EEO Public File Report (every year at license renewal date) – uploaded by station.
- EEO Audit Materials – uploaded by station.
- FCC Form 396 (filed with renewal application) – imported by FCC.
- FCC Form 397 (filed at midway point of license term) – imported by FCC.
- Remove all materials that do not relate to the present term of the station’s broadcast license.

Material Relating to FCC Investigation or Complaint (FCC Imports Some and Station Uploads Some)

- Copy of all material relating to any matter that is the subject of an FCC investigation or complaint to the FCC. Viewer correspondence that is not the subject of an FCC investigation does not need to be uploaded, but instead maintained in the correspondence file.
- Remove material from this folder only if the station has been notified in writing that certain material may be discarded.

Local Public Notice Announcements (Station Uploads)

- When the station airs license renewal pre-filing and post-filing announcements, the station must upload to the public file (within 7 days of the last broadcast of the announcement) a certification of compliance with the public notice requirement.
- Remove statements when final action has been taken on the renewal application to which a certifying statement refers.

Radio Issues/Programs Lists (Station Uploads)

- For each calendar quarter, lists of programs that have provided the station’s most significant treatment of community issues with a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. Lists must be placed in the file by the tenth day of the succeeding calendar quarter.
- Remove all issues/programs lists that do not relate to the present term of the station’s broadcast license.

Correspondence File: Letters and E-Mail from the Public (Paper Public File Only. Do NOT Upload to Online Public File)

- Only commercial stations.
- All written comments and suggestions received from the public regarding station operations.
- All comments and suggestions received over the Internet to station management or publicized station address. They may be kept either on paper or in a computer file. If in a computer file, file must be available to the public. Social media posts (Facebook, Twitter, etc.) are NOT required to be maintained in the public file.
- Remove letters and e-mail after three years from the date received.

Radio Time Brokerage Agreements (Station Uploads)

- Only commercial stations.
- A copy of every agreement or contract involving time brokerage of the station or of another broadcast facility by the station. Confidential or proprietary information may be deleted.
- Remove any time brokerage agreements where the term of that agreement has expired.

Radio Joint Sales Agreements (Station Uploads)

- Only commercial stations.
- Copies of every agreement for the joint sale of advertising time involving the station.
- Remove each agreement after its term has expired.

Donor Lists

- Only non-commercial stations.
- Lists of donors supporting specific programs.
- Remove all donor lists that have been in the file for over 2 years from the date of the broadcast of the specific program supported.