



Virginia Association of Broadcasters Legal Review



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January 15, 2015

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COMMENT DATES ESTABLISHED IN PROCEEDING TO “MODERNIZE” THE DEFINITION OF “MVPD”

In our Legal Memorandum dated January 8, 2015, we summarized a December 2014 [Notice of Proposed Rulemaking](#) (“*Notice*”) in which the Commission indicated its intent to “modernize” the definition of “multichannel video programming distributor” or “MVPD” to include services that make video programming available to subscribers over the Internet. As the Memorandum observed, the *Notice* set an aggressive 30/45-day schedule for comments.

The *Notice* has now been scheduled for publication in the Federal Register on Thursday, January 15, 2015, triggering the 30- and 45-day comment periods. Parties wishing to file in this important proceeding will have until February 16, 2015, to file comments and until March 2, 2015, to file reply comments.

By Julia Ambrose

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FCC PROPOSES TO EXPAND THE ONLINE PUBLIC FILE REQUIREMENT TO RADIO STATIONS, BEGINNING WITH THE LARGEST MARKETS

In late December, the FCC released a [Notice of Proposed Rulemaking](#) (the “*Notice*”) which proposes to expand the requirement that public inspection files be posted to the FCC’s online database—as opposed to being maintained in a physical file at the main studio—to certain radio broadcast stations. The broadcast radio industry was not the only one to receive an end of the year gift, or lump of coal, from the FCC, however, because the *Notice* also proposes to adopt the online public file requirements for cable systems, satellite television providers, and satellite radio services.

Radio broadcasters will recall that in 2012, the FCC adopted the online public file requirements for broadcast television stations. At the time, the FCC declined to include radio broadcasters and MVPDs in its initial foray into online posting “until it had gained experience with online posting of public files.” Having apparently gained the necessary experience to more broadly implement the online public file requirements, the FCC classifies the radio proposal as a “modernization effort” that will “extend the benefits of improved public access to public inspection files and, ultimately, reduce the burden on” companies that must maintain public inspection files by reducing the cost of compliance over time through use of the online system. Below are several of the major points discussed in the *Notice* as they relate to radio broadcast stations.

Online public file requirements will initially apply only to large market stations. In an apparent nod to the extensive comments it received from the radio broadcast industry and in recognition of the disparity of resources available to radio broadcasters, the FCC concedes that “concerns regarding the potential cost of an online public file requirement carry more weight, particularly for very small radio stations.” Accordingly, the FCC proposes to initially transition only commercial stations in the top 50 Nielsen Audio (formerly Arbitron) markets that have five or more full-time employees to the online public file regime, while exempting other radio stations from the online public file regime for a two-year period. Nonetheless, during the two-year exemption period, the FCC plans to allow stations in smaller markets to commence uploading material to the online public file on a *voluntary* basis so as to lessen the impact on these stations when/if the requirement is extended to all radio stations. The FCC seeks comment on these proposals, as well as comment on whether certain categories of radio stations—e.g., noncommercial educational stations and stations with fewer than five full-time employees—should be *permanently* exempt from all online public file requirements.

What must be uploaded? According to the *Notice*, the FCC’s goal is “simply to adapt our existing public file requirements to an online format.” To that end, the *Notice* seeks to minimize the effort and costs expended by broadcasters by only requiring the upload of public file documents that are not already on file with the FCC or that are not already maintained in the FCC database, which is the same way the online public file system already works for television stations. Thus, the FCC proposes to upload certain documents to each radio online public file, including authorizations, certain applications, contour maps, ownership reports, certain EEO records, the “*Public and Broadcasting*” manual, and certain Letters of Inquiry issued by the FCC’s Enforcement Bureau. The *Notice* also proposes to exempt *existing* political file materials from the online filing requirement such that only political file documents created after implementation of the rule would need to be uploaded on a going-forward basis. (*Existing* political files would still need to be maintained in hardcopy for the two-year retention period.) The FCC seeks comment on each of these proposals, and has specifically asked whether any other components of the public file should be excluded from the online public file system and, if so, why?

Organization of material in the online public file. The FCC seeks any suggestions that might improve the online organization of material in public files. The *Notice* proposes to utilize the same system that is currently in use for television broadcasters, including the organizational structure of folders and subfolders. This approach combines folders created by the FCC with the

opportunity for stations to create subfolders and customize the way files are organized so as to maximize the user experience.

Online file capacity and technical concerns. Expanding the online public file requirements to radio stations and other entities will likely create a significant increase in demand for access to the online FCC database, especially around quarterly filing deadlines and during the peak of political campaign seasons. Therefore, the FCC seeks comment on how to address these issues. Proposals in the *Notice* include extending the current 10-day filing window for various quarterly reports (e.g., Issues/Programs Lists) to a 30-day filing window and staggering filings for various types of entities in order to relieve network congestion.

Compliance timeframes. The *Notice* proposes that once the new rules are adopted and become effective, radio stations will be required to immediately comply with the online file requirements on a “going forward” basis for any newly created information required to be in the public file. With respect to existing paper public file materials—i.e., documents that were already in the public file when the new rules become effective—the *Notice* proposes a six month window from the effective date of the new rules. These proposals are essentially equivalent to how the compliance deadlines were applied to television stations for their online public files, and the FCC seeks comment on whether these time frames will be adequate for radio stations.

Political file backup requirement. While the FCC is not proposing that broadcasters maintain “backup” copies of all public file materials uploaded to the online public file system, it does propose that radio broadcasters be required to maintain local backup files for the online *political file* to ensure compliance with statutory obligations to make such information available to requesting parties as soon as possible. Just as is the case with television political files, the FCC proposes to require radio stations to make their backup political files available to the public “if and during such rare times” as the FCC online public file system is unavailable. (During the first two-and-a-half years of the television online public file system, stations have periodically experienced short-term situations where their online files were unavailable for a period of a few hours or less, and one longer-term situation—the shutdown of the federal government for 16 days in October 2013, during which almost all of the FCC’s online systems were made unavailable to the public—where their online files were unavailable.)

Contour maps. The *Notice* observes that radio stations are currently required to include service contour maps in their local public inspection files. The FCC now proposes to create its own contour maps to put in radio station online public files (just as it did for television stations) based upon existing data. However, the *Notice* suggests that the FCC might have difficulty creating contour maps for all stations, especially AM stations: “Given the complexities of AM contour mapping, we may not be able to use the same tools that we used to map TV contours and that we anticipate using to map FM contours.” The FCC seeks comment on whether AM stations should be required to upload their own contour maps or if there are other ways in which this issue should be addressed.

Letters and emails from the public. The FCC proposes to exempt from inclusion in the radio online public file letters and emails from the public so as to protect the personally identifiable information of the individuals who sent the correspondence. Just as television stations

are required to do, the FCC proposes to require radio stations to continue to maintain letters and emails from the public in a publicly-available “correspondence file” at the station. As with television stations, social media messages would not be required to be maintained in the correspondence file. The FCC seeks comment on these issues.

Noncommercial Educational (“NCE”) station donor lists. The FCC has proposed not to include NCE radio stations in the initial phase of broadcasters who will have to comply with the online public file requirements. Nonetheless, the FCC seeks comment on whether NCE donor lists should be exempt from the online public file requirement for the same reason that public emails and letters are proposed to be exempt. NCE television stations donor lists are not exempt from the television online public file requirements, but the FCC is seeking comment on whether there may be a reason to treat NCE radio stations differently from NCE television stations in that regard.

Main studio information. According to the *Notice*, current rules do not require the reporting of the main studio location. The FCC believes that information regarding the location of the main studio would help members of the public to engage in an active dialogue with radio stations regarding their service, which, according to the *Notice*, “is one of the goals of this proceeding.” The FCC also observed that this information is necessary to inform the public of the location of the correspondence file and political file. Consequently, consistent with the approach the FCC took with respect to television stations, the FCC proposes to require radio stations to include in the online public file the station’s main studio address and telephone number, and the email address of the station’s designated contact for questions about the public file. In addition, the FCC proposes that stations with a main studio located outside of their community of license be required to list in the online public file the location of the correspondence file and political file, as well as the required local or toll free number. Comment is sought on each of these proposals.

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Initial comments to the *Notice* will be due 30 days after it is published in the Federal Register, and reply comments will be due 60 days after Federal Register publication. As of January 14, 2015, the *Notice* has not been published in the Federal Register.

This proceeding is moving relatively quickly. A petition for rulemaking to expand the online public file requirements to MVPDs was filed in late July 2014, an initial [Public Notice](#) seeking comment on the petition and on the expansion of the requirements to radio stations was issued in early August, the comment deadline was in September, and a mere three months later the FCC proposed rules. We expect this proceeding to continue to move forward relatively promptly once comments are filed, with a possible ultimate goal of putting rules into effect for the largest radio markets in time for political records generated by radio stations in the 2016 General Election cycle to be posted to online public files.

We will keep you posted of significant developments as this proceeding moves forward.

by Will Quick

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

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