



# Virginia Association of Broadcasters Legal Review



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## Legal Memorandum

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*Deadlines:*       [March 1: Radio Online Public File Conversion Deadline](#)  
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### Update on Technical Issues with Online Public Inspection File and Recommendations

We recently became aware of technical issues with the FCC's Online Public Inspection File ("OPIF") system that require action on the part of station personnel with OPIF responsibilities. Over the past several days, some stations attempting to upload materials to the OPIF may have experienced extremely slow website response times and upload errors, and may have noticed that uploaded documents are missing on the public side of the OPIF.

The good news to report is that, according to FCC Staff, the technical issues should now be resolved, meaning stations should be able to begin uploading materials to the OPIF as normal, subject to some possible delays in website responsiveness. The not-so-good news is that, also according to FCC Staff, any materials that were uploaded (or attempted to be uploaded) over the past several days may need to be re-uploaded.

Our recommendation is that any station that uploaded material of any kind to the OPIF system over the past 10 days should go back and check the public side to be sure the uploaded materials are publicly available. If you do not see materials you uploaded within the past 10 days

on the public side of your station's online public file, then you will need to re-upload the missing files. When you log in to the OPIF to re-upload files, we recommend that you leave alone any files that were uploaded earlier but are not available for public view (i.e., don't delete them); these files may have an "error" or "pending" message visible on the upload side of the OPIF.

Please feel free to contact us if you have specific questions or need additional assistance.

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## **Five-Week Countdown:** All Radio Stations Must Begin Using the FCC's Online Public Inspection File System By **March 1, 2018**

This is a five-week countdown reminder that the deadline is rapidly approaching for all radio stations to begin using the FCC's Online Public Inspection File ("OPIF") system (<https://publicfiles.fcc.gov>). All TV stations and all commercial radio stations with five or more full-time employees located in the Top 50 Nielsen Audio Markets already use the OPIF. As of **March 1, 2018**, all other radio stations are required to commence use of the OPIF system.

If your radio station is subject to the March 1, 2018, deadline, the time to get started—if you haven't already—is now! Here are a few reminders regarding conversion of your existing, paper public file to the online version in the FCC's OPIF system (this is not an exhaustive list; please consult with legal counsel to ensure that your station is ready in all respects by the March 1 deadline):

- Put a direct link to your station's online public file on the homepage of your station's website (if your station has a website); you must also identify contact information for a station representative who can assist anyone with disabilities with issues related to the content of the station's public file.
- The URL address for the public side of the OPIF is <https://publicfiles.fcc.gov>. The URL address for the login page for the upload side of the OPIF is <https://publicfiles.fcc.gov/admin/>.
- To log in to the OPIF, each station must obtain its OPIF passcode from the FCC. To obtain your station's OPIF passcode, go to <https://publicfiles.fcc.gov/admin/owner-login/> and enter the licensee's FRN (FCC Registration Number) and password and find your OPIF passcode on the next page.
- Stations are **not** required to maintain back-up (i.e., non-uploaded) files of their online public file material except for political file materials.
- Radio stations are required to upload to the OPIF system only political file records that are created on and after March 1, 2018 (but stations may upload pre-March 1 political file records if they want).
- The FCC has committed to being initially responsible for importing the following documents into each radio station's OPIF:
  - Station Authorizations
  - Applications Filed in the FCC's CDBS and LMS Systems
  - Contour Maps
  - Ownership Reports

- Portions of the Equal Employment Opportunity file that are filed through CDBS (i.e., EEO Mid-Term Report and EEO Program Reports filed at license renewal)
- “The Public and Broadcasting” Manual
- Letters of Inquiry and other investigative information requests from the Commission, unless otherwise directed by the inquiry itself
- Note, however, that the FCC’s rules also state that, in the event that the online public file does not reflect this required information, the station will be responsible for posting such material.
- Finally, don’t click the “on” button to make your online public file visible to the public until you have finished uploading all documents to the OPIF!

Call Sign-FM is now ready for keeping public inspection files online. Call Sign-FM profile is currently turned  OFF for public view.

In December 2017, the Association distributed a guide to the OPIF and the Association’s legal counsel conducted a webcast to help radio stations understand the March 1, 2018, requirements. An archive of the webcast is available at <http://oab.org/Nuts-and-Bolts-of-the-FCCs-OPIF.mp4>.

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## Five-Week Countdown: All Stations Must File 2017 Biennial Ownership Reports By March 2, 2018

As we have previously reported, all broadcast stations must file their 2017 Biennial Ownership Reports by March 2, 2018 (with a currency—or “as of”—date of October 1, 2017).

For the first time, stations must file their ownership reports (Form 323 for commercial stations; Form 323-E for noncommercial stations) in the FCC’s LMS (Licensing and Management System) platform. The LMS interface and versions of the Form 323 and Form 323-E are different from the FCC’s CDBS platform in which stations used to file ownership reports. Thus, stations who typically file their own ownership reports would be well-advised to watch the archived video of the FCC’s tutorial webcast about the ownership reporting process. The tutorial webcast provides important information about the process and engages in a demonstration of how to access, complete, and submit the new ownership reporting forms in the FCC’s LMS platform. The archived tutorial is available at <https://www.fcc.gov/media/ownership-report-commercial-broadcast-station-form-323>. Also available at the same link are FAQs for commercial and noncommercial biennial report filers.

Also for the first time, each noncommercial station will be required to provide (i) an FRN (FCC Registration Number) for all members of its governing board and (ii) demographic information about the members of its governing board (i.e., gender, race, and ethnicity information). Thus, for noncommercial stations, not only will the filing system and process be different than in past years, but the information required to be reported will be different than for past ownership reporting filings.

Stations that file their own ownership reports will almost certainly have questions about the new forms, filing system, and procedure. Those questions might be answered by the FCC’s

tutorial and/or FAQs referenced above. If not, consultation with legal counsel may be in order. In addition, the FCC is taking questions at the specially-designated email address [form323@fcc.gov](mailto:form323@fcc.gov). In any event, stations can submit their biennial ownership reports at any time, so long as the filing is complete by March 2, 2018.

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## Four-Month Countdown: TV Stations Must Video Describe Emergency Graphics on Secondary Audio Program Stream by May 26, 2018

Since November 2015, all TV stations have been required to comply with the FCC’s Audible Crawl Rule, which requires stations to video describe emergency information on a secondary audio stream when such emergency information is provided textually on-screen (e.g., in a crawl or ticker) during non-news programming. All television stations must be prepared to comply with a new portion of the rule in four months—by May 26, 2018. The portion of the rule that becomes effective on that date relates to non-textual emergency information displayed on-screen during non-news programming. All such non-textual emergency information—e.g., maps, radar images, and the like—must be “translated” into spoken text for transmission on a secondary audio stream beginning May 26, 2018. Highlighted below are several aspects of the FCC’s rule to keep in mind as you prepare for the May 26 compliance deadline. These elements should sound familiar—they already apply to the Audible Crawl Rule.

*Video-Described Emergency Information Must Run Twice. To Repeat, Video-Described Emergency Information Must Run Twice.* When emergency information is video-described on the secondary audio stream, it must be conveyed “at least twice in full to ensure that consumers are able to hear all of the information after they switch from the main program audio to the secondary audio stream.” Not surprisingly, the FCC also “encourages” stations “in appropriate circumstances and at their discretion to convey the emergency information more than twice.” The FCC believes that the “twice-plus” protocol “would be particularly appropriate during portions of the day when the secondary audio stream is silent or merely duplicates the main program audio.”

*Accurate Video Description Required.* The emergency information that is video described on the secondary audio stream does not have to be a verbatim recounting of the emergency information provided visually on the screen. However, the information presented aurally must “accurately and effectively” communicate the same critical details about a current emergency and how to respond to the emergency as those that are provided visually.

*ALL Visual Presentations of Emergency Information Are Covered by the Rule.* It is critically important to understand that the portion of the rule going into effect on May 26, 2018, applies to **any and all visual depictions of emergency information** that air during non-news programming. Thus, for example, if, during non-news programming, a station puts a map of its viewing area in the corner of the screen and uses red color-coding to identify three counties comprising the affected area for a severe thunderstorm watch and superimposes the words “severe thunderstorm watch” beneath the map, then the new rule will be triggered, and the station will be required to video describe this same information on the secondary audio stream.

*ALL Stations Are Subject to the Rule; There Is No “Technical Capability” Exception.* Significantly, the FCC did not adopt a “technical capability” exception to the new rule. **In other words, all television stations that will, at any time, provide any “emergency information” in a visual format during non-news programming must acquire and put into operation the equipment and software necessary to make a secondary audio stream available for description of emergency alerts by the compliance deadline.** (This is an important difference from the rules governing video description of other programming, for which there is a “technical capability” exception.) When the FCC adopted the rule, it acknowledged that stations are allowed to use the Commission’s normal processes to attempt to obtain a waiver of the new requirements, but it warned: “Given the importance of accessible emergency information, we do not anticipate that waivers will be routinely granted.” (Of course, for a station that *never* provides “emergency information” in a visual format during non-news programming, there would be little or no opportunity for the new rules to be implicated in the first place.)

*Use of the Secondary Audio Stream Is Mandatory and There Is No Alternative Method.* The FCC has specifically determined that stations must use a secondary audio stream to provide the video-described emergency information. No other method of providing the information will comply with the rules. Period.

*Emergency Information Must Take Priority on the Secondary Audio Stream.* The video description of emergency information must take priority over all other content on the secondary audio stream. Thus, the video description must supersede other content on the secondary audio stream, including regular video description of programming, foreign language translation, or duplication of the main audio stream.

*Aural Tones Are Required on the Main Program Stream and Secondary Audio Stream.* Stations must use an aural tone on the main program stream and also on the secondary audio stream to alert the audience that the regular programming audio on the secondary audio stream will be interrupted for the transmission of emergency information. According to the FCC, the “standard industry practice” for compliance with the aural tone requirement is to use “three high-pitched tones.” While the FCC has never issued a “sample” aural tone that would be sufficient under the rules, it would be reasonable to use a series of “three high-pitched” tones for this purpose. Other aural tones may also suffice; the Commission has not issued any decisions evaluating any station’s aural tone.

*Will There Be Another Delay in the Compliance Deadline?* The FCC has already granted multiple extensions of time for compliance with the portion of the rule that takes effect May 26, 2018. It’s too early to tell whether the FCC will grant another extension of time for TV stations to comply with the requirement that emergency graphics be video described on the secondary audio stream. The rationale for the prior extensions of time was that no “turnkey” solution existed in the marketplace to help stations comply with the requirements. As of this writing, we are not aware of a reliable, turnkey solution on the market. Stay tuned to see if the FCC grants another extension of time for compliance.

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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