



Virginia Association of Broadcasters Legal Review



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SPECIAL REPORT

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July 3, 2013

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FCC SEEKS COMMENT REGARDING ONLINE POLITICAL FILE DEADLINE FOR ALL TELEVISION STATIONS – COMMENTS DUE AUGUST 26

The FCC has released a Public Notice seeking comment on requiring all full power and Class A television stations to comply with the requirement to upload political file documents to their online public files. Comments are due by August 26, 2013.

Since August 2, 2012, the Commission has required Big Four network affiliated stations in the top 50 markets to upload newly created political file documents to the online public file. All other television stations are not required to do so until July 1, 2014.

When the rule was adopted in 2012, the Commission promised to open a proceeding by July 1, 2013, to evaluate the proposed July 1, 2014, deadline for all full power and Class A television stations. The Public Notice has now opened that proceeding, and it provides an opportunity for comment by all interested parties.

To be clear, the online political file rule did not—and the FCC is not now proposing to—change stations' underlying political recordkeeping requirements. Rather, the rule directs whether (and when) political file documents must be posted to each station's online public file or maintained in paper form at the station.

Here is a summary of the online political file rule now in effect for Big Four network affiliates in the top 50 markets and which the Commission proposes to impose on all full power and Class A stations.

I. Summary Of Online Political File Rule

For now, only Big Four network affiliates (i.e., television stations affiliated with ABC, CBS, Fox, or NBC) that are in the top 50 DMAs as of 2011-2012 are required to upload their political file materials to the FCC's online public file system. All other stations (i.e., all stations in markets smaller than the top 50 DMAs and all stations not affiliated with a Big Four national television broadcast network, regardless of the size of the market they serve) will be subject to the online political file as of July 1, 2014.

In any event, no station is required to upload its political file records that were created prior to the rule's effective date—only to upload political materials on a “going-forward” basis. Existing political file materials must be retained locally at the station for the required retention period (two years).

As with the current paper political file, the FCC's online political file rules require that political file materials be uploaded to the online public file “immediately absent unusual circumstances.” When the rule was adopted in 2012, the FCC clarified that the underlying requirement of “immediacy” applies to “final orders” and not to “reconciliation information” such as the times spots actually aired and details such as any make goods for preempted time, rebates, or credits issues. As to reconciliation information, the Commission confirmed its existing informal guidance that such information does not have to be placed in the public file immediately but rather may be placed in the file “at a later date consistent with business practices—usually when final billing is compiled for the purchaser on a monthly basis,” so long as stations make personnel available to answer questions about reconciliation information in person, by email, or over the phone during the period before such information is placed in the public file.

Finally, the FCC requires stations to maintain a back-up copy of their online political file materials. To meet this requirement, stations must maintain paper or electronic copies of the documents at the main studio, or stations may choose to meet the political file backup requirement by periodically downloading a “mirror” copy of the online political file. (Stations choosing this latter option will need to ensure that they retain any political file records that have not been uploaded or were uploaded after their last download of a mirror copy of the public file.) Stations are required to make the back-up copy of political folder materials available to the public only when the FCC's online public file system becomes unavailable.

The FCC has attempted to help stations organize their online political files by providing electronic file folders labeled by year, and subfolders dedicated to Federal, State, Local, and Non-Candidate Issue Ads. In addition, within some of those folders, the FCC has created subfolders labeled with the names of certain races. Stations are free to organize their political files using additional subfolders and subcategories that are consistent with their own business practices.

II. Questions Posed For Comment

The Public Notice specifically asks for comment from Big Four network affiliates in the top 50 markets (who are currently required to upload their newly created political file documents) regarding their experiences in adapting to the new requirements and the FCC's online public file interface. The FCC seeks comment on these particular questions: 1) Have stations encountered particular obstacles in connection with posting documents to the online political file? 2) Has online posting become easier over time as station personnel have become more familiar with the process and as the Commission has made improvements to its online database? 3) Are there other steps the FCC could take to make its database more user-friendly?

The Public Notice also invites comment from political candidates and members of the public regarding their ability to access and review the material in stations' online political files.

In addition, the Public Notice seeks comment on the ability of the stations that are currently exempt from the online political posting requirement to comply with the July 1, 2014, deadline. The Commission asks what changes should be made to the rules or to the online public file to facilitate compliance for stations that will become subject to the online posting requirement in 2014.

As referenced above, the online political file rules require Big Four affiliates in the Top 50 DMAs to upload political file documents on a going-forward basis and to upload them "immediately" after the documents are created. Accordingly, some stations may have encountered challenges in adapting their work flow to accommodate this requirement. Other stations may have experienced challenges implementing new procedures to protect certain private or sensitive data, such as social security numbers, copies of checks, or credit card numbers, which should all be removed or redacted from documents before they are uploaded. The FCC seeks comment on these issues.

Finally, the Commission seeks comment on an alternate online political file proposal put forth by a coalition of broadcast groups in 2012. The alternative proposal would require stations to aggregate political advertising data for the *online* political file and maintain other data in the "old" *traditional paper* political file. That proposal would permit stations, on an opt-in basis, to upload information showing the aggregate amount of money spent by a sponsor of political advertisements on the station instead of uploading specific (and competitively sensitive) rate information online. This proposal was designed to allow the public to track overall spending by specific candidates and groups while shielding from public view the specific rates charged by stations for specific time buys. Stations that support this proposal should file comments in support of it.

Stations may wish to submit comments regarding their experiences uploading documents to the online political file or the obstacles they anticipate with complying by

July 1, 2014. If you have questions regarding the requirements or the questions posed for comment, please contact your communications counsel or give our office a call.

Comments in this proceeding are due August 26, 2013, and reply comments are due September 23, 2013.

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

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