



Virginia Association of Broadcasters Legal Review



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FCC ANNOUNCES EFFECTIVE DATE OF AUGUST 2, 2012, FOR NEW ONLINE PUBLIC FILE RULES FOR TV STATIONS

I. Effective Date

The FCC has announced that its new rules requiring an online public file for all television stations, commercial and noncommercial, will go into effect on August 2, 2012. It remains to be seen whether that date will actually become the effective date. The NAB has challenged the new rules with an appeal to the D.C. Circuit Court of Appeals. Other administrative requirements must still be addressed by the FCC, which could trigger another 40-day waiting period. Nonetheless, television stations will wish to begin preparing for compliance, effective August 2, 2012. The FCC’s new rules are summarized below.

The FCC’s *Second Report and Order* (“*Order*”) in its online public file proceeding adopted new rules to replace almost the entire *paper general* public file for all television stations with an *online* public file hosted on the FCC’s website. The new rules will also replace the *paper political* public file with an online political public file for all Big Four network affiliated television stations in the Top 50 markets beginning August 2, 2012, and for *all* television stations beginning July 1, 2014. Only *existing* political file materials and letters and emails from the public, which will be retained in a station’s local file, are categorically exempted from the new online public file requirement. While the new rules now only apply to television stations, including Class A television stations, the

Commission has suggested it will consider launching a separate proceeding for radio and cable systems and other MVPDs.

As we previously reported, despite objections by broadcasters, the federal Office of Management and Budget (“OMB”) has approved the new rules. (NAB and various state broadcast associations, including VAB, filed objections to the rules with the OMB. In addition, a number of television companies filed a petition asking the FCC to reconsider its decision on the political file requirements requesting, essentially, that, out of fair competition concerns, political and issue ad rates be exempted from the materials that must be posted on the Internet.) The FCC published notice of OMB’s approval in the *Federal Register* on July 3, 2012, triggering a 30-period before the rules become effective. Absent some other development that puts the rules on hold, stations will be required to comply with the new rules on August 2, 2012.

II. The New Requirements

A. Summary Of The New General Online Public File Rules For All Television Stations

* *Online Public File To Be Hosted By The Commission.* The FCC will host the online public files on its website. Stations will be required to upload and post required materials that are not otherwise available on the FCC website. Accordingly, the Commission will import materials that are already available electronically in certain of the FCC’s online databases, including the FCC’s Consolidated DataBase System (CDBS)—for example, children’s programming reports, ownership reports, and applications. (A complete list of the documents the FCC will import is provided below.) According to the *Order*, the FCC concludes that the “one-time” expense for stations to upload a station’s other required material to the online public file will be outweighed by long-term benefits of maintaining the documents electronically. For example, going forward, stations will be able to fulfill their website posting requirement for annual EEO reports by linking to their online public file page on the Commission’s website rather than hosting the reports on station websites.

* *Format For Online Posting.* The FCC will not require stations to post files online in a particular format. Where possible, the Commission expects broadcasters to upload native electronic, searchable formats such as Microsoft Word .doc format or non-copy protected .pdf format for text filings. For materials that are scanned, the FCC will undertake to process the files using optical character recognition (“OCR”) technology to make them text-searchable. The organization of the online public file will depend on the functionality provided by the FCC’s website. According to the *Order*, the Commission expects to allow some customization for each station—for example, stations may organize their political files using subfolders and subcategories that are consistent

with their own business practices. Obviously the precise appearance and functionality of the FCC's website is still a work-in-progress at the FCC.

* *Compliance Deadlines For Material Other Than Political.* Beginning August 2, 2012, the FCC will require stations to begin using the online public file. Stations will not be required to scan and upload their *existing* files immediately, but rather to post *new* material online on a going-forward basis beginning on the effective date. Stations will then have until February 2, 2013—6 months after the publication of approval in the *Federal Register*—to upload their *existing* public file (other than (a) existing political, as discussed above, and (b) letters/emails from the public, as discussed below). The process for uploading material is not yet known because the FCC has not made the online public file website available to the public. To be clear, the FCC did not eliminate any of the categories of documents required to be maintained in the public file. Thus, the materials required to be uploaded include all current categories of documents, such as citizen agreements, portions of the EEO file that are not available in CDBS, records concerning children's commercial time limits (commercial stations only), local public notice announcements, time brokerage agreements (commercial stations only), must carry/retransmission consent election notices (commercial stations only), must carry requests (noncommercial stations only), joint sales agreements (commercial stations only), and donor lists (noncommercial stations only).

* *Letters And Emails From The Public Exempted.* Under the new rules, letters and emails from the public will only be retained in a commercial station's local correspondence file. The FCC will not require stations to post this information in the online public file. This exemption is a departure from the FCC's earlier proposals. The Commission has rejected the proposal in response to commenters' concerns with respect to privacy and the burden of uploading all of these materials. Stations will still be required to maintain a local (paper or electronic) correspondence file and make the material available for public inspection. Importantly, stations will not be required to retain social media (e.g., Facebook, Twitter) messages in the online public file or in the local correspondence file.

* *Stations Should Check Contour Maps.* Contour maps available on the FCC's website will be placed in the online public file by the FCC. However, stations should review the maps and have their legal counsel contact the Media Bureau if they believe the maps are inaccurate. To review the station's contour map, station executives may visit the FCC's webpage at <<http://transition.fcc.gov/mb/audio/includes/78-mapinfo.htm>> and follow the instructions to generate a contour map.

* *Main Studio Information Posted In Online Public File; Link And Contact Information Posted On Station Website.* Stations must 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, and the location of the correspondence file and existing political file, to facilitate convenient access by the

public to these locally-maintained materials. Each station must also provide a link to its online public file on the home page of the *station's website*, if it has one, and 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.

* *Issues/Programs Lists To Be Posted Online.* As we have previously reported, the FCC is again considering a standardized disclosure form to replace the issues/programs list in its current form. While this proceeding is pending, stations will be required to post their issues/programs lists to the online public file. There are no changes to the content or format of the issues/programs list for now.

* *Letters Of Inquiry And Related Material To Be Posted Online.* The FCC has adopted its tentative conclusion that a station's online public file should contain all material relating to a Commission investigation. The FCC will post to the online public file—in its discretion—any material that it originates relating to an investigation (e.g., Letters of Inquiry and other investigative requests). Complaints other than Commission Letters of Inquiry or investigative requests will not be required to be posted online and should be retained locally at the station in the correspondence file.

* *Public File Document Categories The FCC Will Import Electronically.* In the *Order*, the FCC makes clear that the Commission will import the following documents into each television station's online public file: (1) station authorizations, (2) applications, (3) contour maps, (4) ownership reports and related materials, (5) portions of the Equal Employment Opportunity file held by the Commission (i.e., EEO Mid-Term Reports and EEO Program Reports filed at license renewal), (6) "The Public and Broadcasting" manual, (7) Letters of Inquiry and other investigative information requests from the Commission, unless otherwise directed by the inquiry itself, (8) Children's Television Programming Reports (commercial stations only), and (9) DTV transition education reports (if applicable). However, 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. When read along with the requirement that stations must "actively maintain" their online public files (discussed below), it is obvious that stations will need to be diligent in reviewing the contents of the online public file.

* *No New Disclosure Requirements For Sponsorship ID Or SSAs.* Fortunately, the FCC rejected its proposal to require new written disclosure of sponsorship ID information and shared services agreements, which would have imposed significant new burdens on broadcasters. We expect the Commission to revisit the shared services agreement issue in its ongoing ownership proceedings.

* *Maintenance Of Online Public File.* The FCC has ordered stations to "actively maintain" the online public file. While the FCC will ensure that items filed in CDBS are updated in the online public file as they are updated in CDBS, stations will be

responsible for maintaining all other online public file documents. For example, stations will be responsible for removing “timed out” political file records (political file documents are only required to be retained for two years). In the *Order*, the FCC recommends that “timed out” items should be removed in a “timely fashion,” but the new rules stop short of requiring stations to remove each item at the end of its mandated retention period.

B. Summary of Political Online Public File Rules That Will Be Phased In For All Television Stations, Starting With Top-50 DMA Big Four Affiliates

* *Phase-In Period For Political File Materials.* Initially, only Big Four network affiliates (i.e., television stations affiliated with ABC, CBS, Fox, or NBC) that are in the *top 50 DMAs in 2011-2012* will be required to post their political file materials. The affected top 50 DMAs are listed in Attachment A below. *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*. (By July 1, 2013, the Commission will seek comment on the impact of posting the political file before the rules go into effect for all stations in 2014—leaving open the possibility of future adjustments to the rules depending on the real-world experience up to that point in time.) In any event, no station will be required to upload its existing political file—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).

* *New Political File Material Must Be Uploaded Immediately.* As with the current paper political file, the FCC’s new online political file rules will require that political file materials be uploaded to the online public file “immediately absent unusual circumstances.” Unfortunately, the FCC was dismissive of industry arguments regarding the burden and expense that this requirement will create. However, the FCC did clarify 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 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.

* *Stations Must Maintain Back-Up Political Files.* The new rules require stations to maintain a back-up copy of their political file materials. Stations may choose to meet the political file backup requirement by periodically downloading a “mirror” copy of the online political file, but stations choosing this 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 will not be required to make the back-up copy of political file materials available to the public unless the FCC's online public file is unavailable, which, according to the *Order*, the FCC "believe[s] will only happen in rare instances, such as national or localized emergencies." The *Order* lacks clarity on how, exactly, stations must make the back-up political file available when the online public file is down.

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While the FCC rejected many of the concerns expressed by broadcasters concerning its new rules—in particular with regards to the online political file requirement—the Commission did decline to adopt several of its proposals which were particularly troublesome for broadcasters.

First, the Commission decided not to adopt its proposal to significantly expand the existing public file rule by requiring information concerning *all* on-air sponsorship identification to be posted online. Had that proposal been adopted, stations would be required to disclose online *all* sponsorships that require on-air disclosure, irrespective of the source, i.e., sponsorship ID disclosures made in local newscasts, disclosures made in syndicated and network programming, and disclosures made in paid programming and PSAs would all have been subject to the requirement.

Second, the Commission declined to adopt its proposal to require television stations to include all "sharing agreements" in their online public files. The contours of this proposal were never well defined by the FCC, and the category of documents could have been unmanageably expansive—for example, the proposal would have included posting local news sharing and shared services agreements. Thus, the FCC's decision not to adopt this proposal was also a victory for stations.

It remains to be seen whether August 2, 2012, will be the final date of compliance for television stations, or whether the deadline will be extended. But now that the FCC has announced the effective date of the rules, television stations must prepare to upload material in accordance with the new rules by that date. In the meantime, the FCC had stated in the *Order* that it would release additional information about access to its host website so that stations may familiarize themselves with the online public file and how it functions in advance of the effective date. To date, however, the FCC has not provided any further information. We will keep you updated.

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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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Top 50 Nielsen DMAs 2011-2012

2011-12 Rank	DMA Name
1	New York
2	Los Angeles
3	Chicago
4	Philadelphia
5	Dallas-Ft. Worth
6	San Francisco-Oak-San Jose
7	Boston (Manchester)
8	Washington, DC (Hagrstwn)
9	Atlanta
10	Houston
11	Detroit
12	Seattle-Tacoma
13	Phoenix (Prescott)
14	Tampa-St. Pete (Sarasota)
15	Minneapolis-St. Paul
16	Miami-Ft. Lauderdale
17	Denver
18	Cleveland-Akron(Canton)
19	Orlando-Daytona Bch-Melbrn
20	Sacramento-Stkton-Modesto
21	St. Louis
22	Portland, OR
23	Pittsburgh
24	Raleigh-Durham (Fayetteville)
25	Charlotte
26	Indianapolis
27	Baltimore
28	San Diego
29	Nashville
30	Hartford & New Haven
31	Kansas City
32	Columbus, OH
33	Salt Lake City
34	Milwaukee
35	Cincinnati
36	San Antonio
37	Greenvll-Spart-Ashevill-And
38	West Palm Beach-Ft. Pierce
39	Birmingham (Ann and Tusc)
40	Las Vegas
41	Harrisburg-Lncstr-Leb-York
42	Grand Rapids-Kalmzoo-B.Crk
43	Norfolk-Portsmth-Newpt Nws
44	Oklahoma City
45	Albuquerque-Santa Fe
46	Greensboro-H. Point-W. Salem
47	Austin
48	Louisville
49	Memphis
50	Jacksonville

Source: Nielsen Local Television Market Universe Estimates