



Virginia Association of Broadcasters Legal Review



Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
Counsel to VAB • (919) 839-0300

250 West Main Street, Suite 100
Charlottesville, VA 22902 • (434) 977-3716

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Legal Memorandum

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Online Public File Requirements Expanded to Radio Stations

During its open meeting on January 28, 2016, the FCC adopted an Order explaining new rules that require broadcast radio stations to maintain their public inspection files (including political files) online as part of the FCC's online public inspection file database. (Television stations have been subject to these requirements on a staggered schedule since 2012, and the new Order also will require certain MVPDs to maintain certain records online as well.) For decades, public inspection files have been maintained in paper format at the local radio station studio; the new rules are intended to "modernize" the existing system. According to the FCC, the new requirements will reduce the cost of broadcaster compliance, increase station security by reducing public visits to the main studios, and provide more accessible information for consumers.

The FCC is taking a transitional approach to the requirements: Initially, only commercial stations in the top 50 Nielsen Audio markets with 5 or more full-time employees will be required to comply; subsequently, by March 1, 2018, all other radio stations will become subject to the new rules. In the meantime, however, any radio station—i.e., even those which are exempt until 2018—may voluntarily begin uploading material to the online public file database.

As of January 28, the FCC had not yet released the full text of the Order. Based on an FCC News Release announcing the decision, here are a few highlights for stations to consider:

The FCC Will Upload Some Documents and Records. The new rules will require radio stations to upload only those documents that are not already on file with the Commission or maintained by the Commission in its own databases. Just as the FCC has done with television online public inspection files, the FCC will automatically import to radio station online public files those records and documents that are already on file with the Commission.

Radio Political Files. Political file documents of radio stations will be required to be uploaded *only on a going-forward basis*. Existing political file material will be exempt from the online filing requirements but will be maintained by radio stations as part of their paper public files for the duration of their two-year retention period. Ultimately, each radio station that fully transitions to the online public file system will be able to cease maintaining local paper political files at the main studio, subject to the condition that they provide access to back-up political file material in the event that the FCC’s online public file database becomes temporarily unavailable.

Noncommercial Educational Radio Station Donor Lists. Noncommercial educational radio stations will ultimately be required to upload public file documents, including donor lists. However, in response to comments concerning the sensitive nature of donor lists, the Commission has indicated that it will consider, on a case-by-case basis, exempting the posting of donor lists to the online public file database system.

As noted above, the full text of the Order has not yet been released, which means that other, additional details and nuances are likely to be forthcoming. Moreover, the new rules are not yet in effect, and the effective date has not yet been determined. The new rules will become effective after the Order is published in the Federal Register. We will let you know when that occurs.

FCC Adopts New Ownership Reporting Rules

Data integrity, diversity identification, and a secure method of gathering the data have all now been woven into the broadcast ownership report filing rules by virtue of a [new Order](#) adopted by the FCC in January 2016. The Commission’s journey to adopt the rules began in 2009 and has gone through more than a half-dozen rulemaking iterations.

The Commission is charged by law with a mandate to “promote diversity of media voices and avoid excessive concentration of licenses by disseminating them to businesses owned by members of minority groups.” In its effort to fulfill its mandate, the FCC has made changes to the ownership reporting process, extended biennial ownership filing deadlines, reduced the number of filings required, and improved the protocols for reporting of other broadcast and newspaper interests. Here are some of the highlights of the FCC’s recent Order.

Greater Similarity Between Forms 323 and 323-E. FCC Form 323-E—the form required to be filed by noncommercial educational broadcast stations—has been revised to enhance uniformity with FCC Form 323, the form used by commercial stations. Both newly adopted forms will require information about race, gender, and ethnicity of existing, reportable attributable interest holders; the use of a unique identifier; and the biennial filing requirement.

“Restricted Use” FRN Replaces “Special Use” FRN. The Restricted Use FCC Registration Number (“RUFNR”) is in, and the formerly utilized Special Use FCC Registration Number (“SUFNR”) is out. According to the new rules, an RUFNR is to be used by individual persons solely for the purpose of filing of broadcast station ownership reports. The process of obtaining an RUFNR does not require individuals to disclose their full social security number to the Commission. (The Order acknowledges that under very limited circumstances, an SUFNR may still be used for ownership reports, but the FCC indicated that it would be monitoring reports to avoid abuse of SUFNRs.)

NCE Station Officers and Directors Will Need to Report Certain Demographic Information. After much debate, the Commission decided that because officers and directors of noncommercial educational (“NCE”) stations are defined as “attributable interest holders,” NCE stations should be required to disclose information about the race, gender, and ethnicity of their officers and directors. Because commercial stations were already required to report such demographic information about their officers and directors, NCE stations should have similar filing requirements. While this may be an uncomfortable development for officers and directors of NCE stations, the new SUFNR process may mitigate some of the concerns because some of the concerns voiced during the various proceedings were based on the premise that the disclosure of an interest holder’s social security number (“SSN”) would discourage individuals from serving on a board of directors or in some other governance capacity and/or motivate existing office holders to abandon their positions at NCE stations. Obtaining an SUFNR will now only require disclosure of the last four numbers of an individual’s SSN. Moreover, while the process to obtain an SUFNR also requires the reporting to the FCC of the name, home address and date of birth of the individual, none of that information will be made publicly available.

New Filing Deadline for NCE Stations. The FCC has decided to harmonize NCE biennial ownership reporting deadlines with the already-uniform deadline for commercial station biennial ownership reports. Once the new rules go into effect, all biennial ownership reports will be due on December 1 of every other odd-numbered year. That means the next biennial ownership reports will be due December 1, 2017, for all stations, and the information reflected in the reports will be required to be current as of October 1 of the corresponding reporting year.

Improvements to the Electronic Ownership Reporting Form and Filing System. In response to numerous broadcaster comments, the FCC has improved the functionality of the ownership report filing system. Changes include auto-fill mechanisms, data saving functionality, validation routines, and sub-form cloning. Under the processes established in the past, the filling of Forms 323 and 323-E have been burdensome and duplicative. The newly adopted processes will facilitate more streamlined filings. Some of the changes include:

- Filers will be able to input the required data all in one place. For example, a parent company with multiple subsidiary licensees will be able to file for each licensee using one form (previously, filers had to enter the same data multiple times on multiple reports).
- Reporting requirements relating to reporting the interests in daily newspapers were simplified for both Form 323 and Form 323-E.

- The use of ancillary spreadsheets in the reporting forms will be replaced by a feature allowing the filer to add station call signs directly into the form.
- Certain categories of reportable information have been added to the list of “check-the-box” options (such as whether the filer is an LLC) to eliminate separate entries.
- An option has been added to both Forms 323 and 323-E to allow (but not require) filers to indicate whether a licensee and/or attributable entity are Tribal Nations or Tribal entities.
- The reporting of certain capitalization information has been eliminated.

Searchability of Data. An objective achieved with this new process is providing efficiently searchable data which can be more effectively analyzed. For example: by inputting one special use federal registration number, all stations related to that number will be displayed.

Effective Date of New Ownership Reporting Rules. The effective date(s) of the new ownership reporting rules will be known after publication in the Federal Register occurs to announce approval of the new rules by the federal Office of Management and Budget.

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

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

Wade H. Hargrove
Mark J. Prak
Marcus W. Trathen
David Kushner
Coe W. Ramsey
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Julia C. Ambrose
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Eric M. David
Timothy G. Nelson

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