



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

FCC Announces Implementation Dates for Radio Online Public Files, Revamps TV Public File System, and Makes Demo Site Available; June 24 Is Initial Implementation Date

Late on May 12, 2016, the FCC released a [Public Notice](#) announcing the implementation dates for the new radio station online public file rules. The Public Notice also announced that the current version of the television online public file system will be decommissioned so that existing TV online public files can be combined with radio online public files in a new, universal online public file system (which will also include MVPD public files). Finally, the FCC announced that a demo site for the new online public inspection file system (the “OPIF”) is now available. Here are more details:

A. Radio Online Public File Implementation Deadlines

As we have previously reported, the FCC in January 2016 adopted new rules requiring radio stations to transition their public inspection files to an online format to be maintained in a database hosted by the FCC. The FCC has now announced the implementation deadlines for the rules. This memorandum is not intended to be a complete discussion of all of the materials required to be maintained in radio public inspection files nor a reiteration of all the various other requirements relating to radio online public files; this memorandum is intended only to discuss issues surrounding the actual implementation of the OPIF.

Definitions for Purposes of this Memorandum. This memorandum uses the terms “First Wave Stations” and “Second Wave Stations” for convenience. These are not terms that are defined by the FCC; they are a shorthand way to discuss the online public file implementation dates and obligations for radio stations. “First Wave Stations” refers only to commercial AM and FM radio stations in the top 50 Nielsen Audio markets with 5 or more full-time employees. “Second Wave Stations” refers to all other AM and FM radio stations. FM translator stations, LPFMs (i.e., Low Power FM Stations), and FM booster stations do not have public inspection file requirements and are not subject to the FCC’s online public file requirements.

Staggered Implementation Dates. Initially, only commercial stations in the top 50 Nielsen Audio markets with 5 or more full-time employees will be required to transition their public files to the OPIF (“First Wave Stations”). The FCC has established **June 24, 2016**, as the date that First Wave Stations must begin using the OPIF. Thus, as of June 24, 2016, First Wave Stations must begin uploading **newly-created** public file documents into the OPIF. Existing public file documents that are already in a First Wave Station’s public file as of June 23 are **not required to be uploaded by June 24**. The documents that are already in a First Wave Station’s public file as of June 23 must be uploaded by **December 24, 2016** (Happy Holidays!).

Subsequently, by **March 1, 2018**, all other radio stations (“Second Wave Stations”) will be required to have their then-existing public file materials uploaded to the OPIF and begin using the OPIF on a going-forward basis. (In addition, Second Wave Stations are allowed to begin voluntarily using the OPIF at any time after June 24, but if they do so, they must transition completely to the OPIF—more information about this option is below.)

OPIF Demo Site for Practice. Fortunately, the FCC is giving radio stations an opportunity to experience the new OPIF prior to the June 24 launch date; the FCC’s demo site is discussed below.

Only Newly-Created Documents Must Be Uploaded Beginning June 24! As noted above, June 24, 2016, is the date on which First Wave Stations must begin uploading new materials to the OPIF. Materials that are in a First Wave Station’s public file as of June 23, 2016, are not required to be uploaded until December 24, 2016.

Beat the December 24 Deadline! There is no reason for First Wave Stations to wait until December to begin uploading their existing public file documents. The key, of course, will be to be sure that your existing public file is complete so that when you upload the materials in time to meet the December 24 deadline, there are no “holes” or “gaps” that can cause compliance issues for the world (including the FCC Staff) to see.

Only Newly-Created Political File Records Need to Be Uploaded. Radio stations are required to upload only newly-created political file records (but may upload existing political file records if they wish to do so).

Thus, First Wave Stations must upload to the OPIF political file records that are created on and after June 24, 2016. Political file records that exist as of June 23, 2016, either must continue to be maintained and made available for public inspection at the main studio of First Wave Stations until they have “timed out” by the lapse of two years’ time, or they may, at the station’s election, be uploaded to the OPIF.

Second Wave Stations must upload to the OPIF political file records that are created on and after March 1, 2018 (except in the case of a Second Wave Station that voluntarily elects to begin using the OPIF prior to March 1, 2018; any such stations must upload political file records that are created on and after the date on which the station begins to voluntarily use the OPIF). With respect to political file records that exist as of the time the Second Wave Station commences use of the OPIF, each Second Wave Station either must maintain and make available for public inspection at their main studio the then-existing political file records for the remainder of the requisite two-year period or may, if it wishes to do so, upload the then-existing political file records to the OPIF.

Existing Political File Records Will Never Be Required to Be Uploaded (But May Be Uploaded Voluntarily at the Station's Option). A radio station will never be required to upload political file records that were already in existence as of the day prior to the date the station commenced use of the OPIF, but the FCC's rules allow each station to decide whether they would like to upload such political file records.

The Special Case of Second Wave Stations Electing to Begin Use of the OPIF Prior to March 1, 2018. As noted above, Second Wave Stations are allowed to begin using the OPIF prior to the March 1, 2018, deadline. Such stations may choose any date they wish to begin using the OPIF, and when they make the choice, they must transition completely to the OPIF at that time. Thus, for a Second Wave Station that wishes to transition to the OPIF on the same schedule as First Wave Stations, the June 24 and December 24 deadlines discussed above would apply. For a Second Wave Station that opts to transition to the OPIF on a different date—for example January 1, 2017—the station will need to have all its then-existing public file documents uploaded to the OPIF by January 1, 2017, and will be required to begin, as of January 1, 2017, uploading all public file materials created on and after January 1, 2017. When it adopted the new rules in January, the FCC indicated that the OPIF “will require users to indicate that they have transitioned to the online file.” Thus, Second Wave Stations that commence use of the OPIF early will need to be sure to make the appropriate indication in the OPIF.

B. Migration of Existing TV Online Public Files to New OPIF

Rather than add radio station and MVPD public files to the existing television online public file system, the FCC has created a new, universal system for all online public files. As a result, the existing TV online public file system will be migrated into the new OPIF as of June 24, 2016. And, as of June 24, 2016, the existing TV online public file system will no longer be accessible.

The FCC will migrate all existing documents and records from the existing TV system into the new OPIF, and television stations are not required to re-upload all existing materials into the new system. Beginning June 24, 2016, television stations will begin uploading newly-created materials into the OPIF. Many stations will have newly-created political file documents to upload on and after June 24, and all television stations will have the regular quarterly filings for Second Quarter 2016 due to be uploaded by Monday, July 11, 2016. Of course, other public file materials will need to be uploaded in a timely fashion as well.

According to the FCC's Public Notice, and based on our prior discussions with FCC Staff, the new OPIF will have better functionality in some regards than the existing TV online public file system. To that end, the Public Notice lists the following improvements:

- The OPIF will give stations the ability to place one document in multiple files through APIs (Application Programming Interfaces).
- When a station moves a document from one folder to another in the online file, the OPIF will display both the date the document was first uploaded as well as the date it was moved to a different online file location.
- The OPIF will permit stations to easily delete empty file folders.
- The OPIF will allow stations to update closed captioning contact information.
- The OPIF has improved .pdf conversion software that will speed uploads.

Other than these “improvements,” the new OPIF system will be similar in many ways to the existing TV online public file system. Certain elements of the layout are different, but station login information will remain the same, and the standard upload process is similar in appearance, function, and format. Fortunately, the FCC is giving TV stations an opportunity to experience the new OPIF prior to the June 24 launch date; the FCC’s demo site is discussed below.

C. Demo Site for New OPIF

The FCC has made available a demo site for the new OPIF. The demo site is already available, and it can be accessed at <https://publicfiles-demo.fcc.gov/admin/>. Both radio and television stations can practice uploading documents to the OPIF and familiarize themselves with the other features of the database. Because radio stations do not have existing online public files, they must first obtain a passcode in order to login to the demo system. (On the morning of May 13, when we attempted to obtain passcodes for radio stations, we were unsuccessful because the system gave us a blank page instead of a passcode—an apparent “glitch” in the system; we raised this issue to the FCC Staff’s attention, and on the afternoon of May 13 the FCC Staff advised that it has been addressed.)

The demo site also has a “public” side, which can be accessed at the following URL address: <https://publicfiles-demo.fcc.gov/find/>. This public-side demo is also only a demo, and it does not contain a copy of the current, complete online public files of television stations.

The demo site is for practice purposes only and will be deleted once the actual OPIF database goes live on June 24, 2016. It is critically important for stations to understand that any documents uploaded to the demo site **will be deleted and will not become part of the OPIF**. Accordingly, stations should not use the demo site to begin uploading public file documents for permanent retention. These same caveats are also provided by the FCC on the demo site:

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THIS IS A DEMO SYSTEM FOR TESTING PURPOSES ONLY.

Submissions on this site will NOT be considered as part of your Public Inspection Files but may become available in this test system.

TV Entities: This demo system contains a snapshot of your Public Inspection Files as of 01/15/2016, plus test filings made during the testing period. If you'd like to update your current Public Inspection Files, please use <https://stationaccess.fcc.gov/>.

Cable, FM, AM, SDARS and DBS Entities: This demo system only contains the FCC data applicable to your Public Inspection Files. Any updates made on this site will NOT be carried over to your Public Inspection Files when the system goes live.

The FCC's helpdesk is available to answer any questions regarding this system. You may contact the helpdesk at 1-877-480-3201 or 1-717-338-2824 (TTY) or you may submit requests online via <https://esupport.fcc.gov/request.htm>.

D. FCC OPIF Webinar

The FCC will conduct a live webinar—on a date (prior to June 24) to be announced in the future—to demonstrate the new OPIF. According to the Public Notice, the webinar will inform stations of the design and content of the OPIF, how to upload information to the file, and how file

sharing tools (e.g., Dropbox and Box) may be used for uploading. The FCC will also demonstrate the OPIF API during the webinar. More details about the webinar will be announced in a future public notice. We will advise you when more information is available.

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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