



Virginia Association of Broadcasters Legal Review



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URGENT Legal Memorandum

FINAL REMINDER: December 24 Deadline for “First Wave” Radio Stations to Upload Pre-June 24 Public Inspection File Materials

On June 24, 2016, the FCC launched its new online public inspection file (“OPIF”) database system, and certain radio stations were required to begin using it to upload newly-created public inspection file records. This memorandum is a reminder that radio stations who began using the OPIF on June 24 will be required to finish uploading pre-June 24, 2016, public file records by December 24, 2016. Given that the deadline for uploading pre-June 24 public file records to the OPIF is December 24, time is about to run out to accomplish this significant requirement. This memorandum is not intended to provide a complete review of the OPIF or an exhaustive discussion of the contents of radio public inspection files, and we have previously distributed a public inspection file “checklist” for radio stations.

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. The June 24, 2016, and December 24, 2016, OPIF deadlines apply only to commercial radio stations in the top 50 Nielsen Audio markets with 5 or more full-time employees (“First Wave Stations”). As noted above, June 24, 2016, was the date that First Wave Stations were required to begin using the OPIF, at which time such stations were required to begin uploading newly-created public file documents into the OPIF. Public file documents that existed in a First Wave Station’s public inspection file as of June 23 were not required to be uploaded by June 24; those documents are subject to the December 24 upload deadline and, thus, must be uploaded to the OPIF no later than December 24, 2016.

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 to 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 prior to March 1, 2018, but if they do so, they must transition completely to the OPIF—more information about this option is below.)

The December 24 Deadline Is Pretty Much Tomorrow! First Wave Stations need to upload their pre-June 24 public file documents now! The key, of course, will be to be sure that your existing public file is complete so that when you upload the pre-June 24 materials in time to meet the December 24 deadline, there are no “holes” or “gaps” that can cause compliance issues for the world to see.

Political Files: Only Newly-Created Political File Records Need to Be Uploaded. With respect to political file materials, radio stations are required to upload only newly-created political file records (but may upload pre-June 24 political file records if they wish to do so).

Thus, First Wave Stations have been required to upload to the OPIF political file records created after June 23, 2016. With respect to pre-June 24 political file records, First Wave Stations have two options: (i) First Wave Stations must continue to maintain and make pre-June 24 political file records available for public inspection at the main studio until they have “timed out” by the lapse of two years’ time, **or** (ii) First Wave Stations may, if they wish, upload pre-June 24 political file records to the OPIF.

Pre-June 24 Political File Records Will Never Be Required to Be Uploaded (But May Be Uploaded Voluntarily at the Station’s Option). As noted above, radio stations 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 voluntarily 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 would need to have its then-existing public file documents (except for then-existing political file records) uploaded to the OPIF by January 1, 2017, and would be required to begin, as of January 1, 2017, uploading all public file materials created on and after January 1, 2017 (including newly-created political file records). Any Second Wave Station that is considering transitioning “early” to the OPIF would be well-advised to consult with legal counsel prior to making the transition.

After Uploading Pre-June 24 Public File Materials, Radio Stations Must Certify That They Have Done So. First Wave Radio stations are required—at the appropriate time—to complete a certification indicating that they have uploaded all pre-June 24 public file materials. (Second Wave Radio stations are subject to the same requirement.) This certification should be made only after a station has uploaded all required public file materials that existed in the station’s public file

prior to June 24, 2016. Because the deadline for First Wave Stations to upload such existing material is essentially one day from now—**December 24, 2016**—many First Wave Stations have not yet completed this certification.

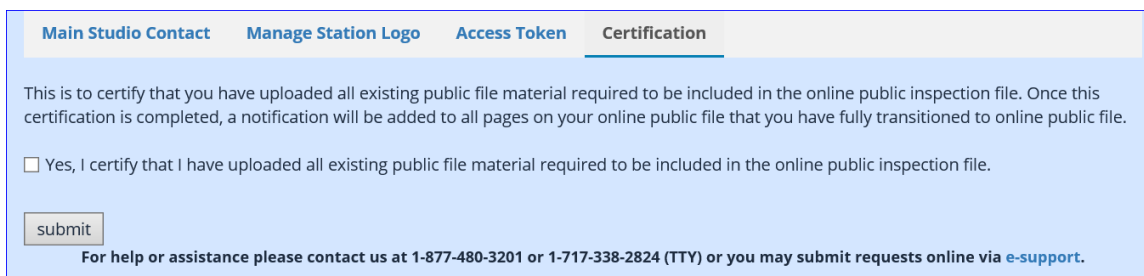
After a radio station has uploaded its pre-June 24 public file materials to the OPIF, it will be ready to make the certification. To access, review, and complete the certification, click on “settings” in your online public file (as shown below)



and then select “certification” from the selections shown below.

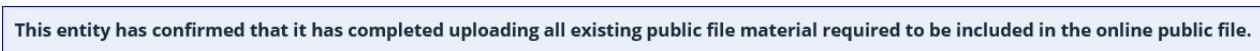


The certification that will appear when you click on “certification” will resemble the image below:



The “certification” option will appear on the “settings” bar only after you have toggled the public view of your online public file from “OFF” to “ON.” Thus, it is important to remember that this certification is a separate, additional process from turning on the station’s file for public view, which, of course, all First Wave Stations should have done on June 24, 2016. **Because this certification is an affirmative representation being made by the station to the FCC, stations may wish to consult with their FCC counsel to ensure their files are complete prior to submitting the certification.**

After the certification has been submitted, the following message will appear on the pages of your online public file in the OPIF system:



Best Wishes! The time is nigh. Roughly one day stands between your station and the compliance deadline. Happy holidays—from the FCC to you!

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

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