
Preparing to Post Your Full-Power or Class A Television Station Public Inspection and Political Files on the FCC's Website

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While most broadcasters have only seen a demonstration of the FCC's new online Public Inspection File database, they must begin to use it in just one week's time. Advance preparations and a good understanding of the filing requirements are needed to minimize the impact of this dramatic shift in the FCC's rules on television broadcasters' operations.

Recently, the FCC adopted a new regulation requiring television broadcast stations to migrate their paper-based public inspection files as well as their political files, all of which are currently maintained at their main studios, to the Commission's website. Once that is accomplished, anyone with access to the Internet will be able to view those files. Despite the high compliance stakes involved in crowd-sourcing the FCC's enforcement function with the entire Internet and in granting the whole world a deep dive into candidates' advertising activities, broadcasters have received little information from the FCC as to how to comply with this looming deadline.

This Advisory is intended to serve as a resource for television stations to know what items must be uploaded and where, as well as to assist stations in making advance preparations to shorten the learning curve once the FCC's database is functional. Because the deadlines for compliance are different for the political portion of the public inspection file and the remaining portions of the file, this Advisory generally treats the "Political File" and the "Public Inspection File" as two separate files.

Question: When does the new rule go into effect?

Answer: The new rule is scheduled to go into effect on August 2, 2012, but contains some phase-in provisions. As a result, there are effectively four deadlines associated with the new rule.

- August 2, 2012: Effective on this date, all commercial and noncommercial full power and Class A television stations must upload any newly-created "Public Inspection File" document into the FCC's "TV Station Profiles & Public Inspection Files" database at the time such document is created. Stations will then have five additional months, or until January 1, 2013, to complete the process of uploading their pre-August 2, 2012 Public Inspection File documents into the FCC's public file database.

- August 2, 2012: Also effective on this date, television stations affiliated with the top four television networks and located in the Top 50 television markets must upload any newly created “Political File” documents into the database as such documents are created. Note that no stations will have to upload pre-August 2, 2012 Political File documents.
- January 1, 2013: As noted above, effective this date, all commercial and noncommercial full power and Class A television stations must have uploaded any pre-existing “Public Inspection File” documents into the database.
- July 1, 2014: Effective this date, commercial television stations in markets below the Top 50, as well as non-network stations in the Top 50 markets, must upload any newly-created “Political File” documents into the database as they are created.

Questions Concerning The New Online “Public Inspection File”

Question: What are the “Public Inspection File” documents that a station must upload?

Answer: The Commission’s intent is to replicate online what a television station has been required to maintain in its paper-based Public Inspection File at the station’s main studio. However, the Commission has stated that it will not require a station to upload letters and e-mails from the public concerning station operations. In addition, the FCC will not require stations to upload any document that was “filed in the [FCC’s] Consolidated DataBase System (‘CDBS’) or that the Commission already maintains on its own website,” e.g., a station’s Children’s Television Programming Reports, as long as the document remains available online.

As a result, a station will be responsible for uploading the following categories of documents on a going forward basis:

- Citizen’s Agreements
- Annual EEO Public File Reports, EEO Audit Letters and responses thereto (Stations that maintain websites must either continue to upload their most recent EEO Public File Reports to their websites or simply provide a link on their website to the most recent report contained in the FCC’s database.)
- Quarterly Issues/Programs Lists (or a subsequent reporting form adopted by the FCC)
- Records Concerning Commercial Limits in Children’s Programming (Commercial Stations only)
- Local Public Notice Announcements
- Time Brokerage Agreements
- Joint Sales Agreements
- Must-carry or Retransmission Consent Election Letters (Must-carry Requests in the case of Non-commercial Stations)
- Donor Lists (Noncommercial Stations only)
- Documentation of Continuing Eligibility for Class A Television Status (Class A Television Stations only)

- Materials Relating to An FCC Complaint or Investigation (Notices of Inquiry or other FCC investigative materials, unless the FCC tells the licensee otherwise, or posts the material to the file itself)
- Section 73.1212 Sponsorship Identification Materials (a list of the chief executive officers, members of the executive committee, or members of the board of directors of a corporation, committee, association or other unincorporated group, or other entity sponsoring the broadcast of material that is political matter or involves the discussion of a controversial issue of public importance)
- Political File documents (to the extent described below)

With the exception of Political File documents described below, because the FCC has given a six-month phase-in period to upload pre-August 2 Public Inspection File documents, there will not likely be an immediate need to make filings to the FCC's website on August 2, 2012 itself. Unless a station enters into a Citizen's Agreement, Time Brokerage Agreement, or Joint Sales Agreement, needs to update a Donor List, or responds to an FCC complaint or investigation between August 2 and October 10, the first time many stations will have to meet a specific deadline in making a filing using the new database will be on October 10, 2012. At that time, stations will need to upload their newly-created Third Quarter 2012 Quarterly Issues/ Programs list, evidence of compliance with the commercial limits in children's programs (commercial stations only), and Documentation of Continuing Eligibility (Class A stations only). This fortuitous gap in filing due dates will allow broadcasters that are exempt from the online Political File rule until 2014 a little breathing room after the August 2, 2012 effective date of the rules to learn how to upload documents before having to comply with a hard and fast deadline. During this time, stations can take the preparatory steps outlined at the end of this Advisory and even begin uploading their pre-August 2 Public Inspection File documents.

Question: What are the "Public Inspection File" documents that a station need not upload?

Answer: A television station will not usually be required to upload onto the FCC's website the following categories of "Public Inspection File" documents, as it is expected that the FCC's CDBS will contain them and the FCC will populate the station's profile page with them:

- Station Authorizations
- FCC Applications and Related Materials
- Contour Map
- Ownership Reports and Related Materials (It is unclear at this time whether the FCC intends to scan and upload to its own website PDF copies of the Articles of Incorporation, ByLaws, certain loan documents, etc. that stations may have previously filed on paper.)
- The Public and Broadcasting Manual
- DTV Transition Education Reports

Question: What if the FCC makes an error in uploading or not uploading a required document regarding my station?

Answer: It is vital that licensees remain familiar with the FCC's public file requirements and monitor what items are included in their online Public Inspection and Political Files. Where the FCC has erroneously omitted or deleted an item falling in one of the above categories, the licensee will be responsible for uploading the missing item. Licensees will also have the ability to remove items that have been uploaded to their files that do not belong there.

Question: Will the online public file include contact information should a member of the public have a question?

Answer: Yes. Stations will be required to include 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. Note that, if the station's main studio is located outside of the station's community of license, a local or toll free telephone number must also be provided.

Question: What if a member of the public comes to my station website instead of the FCC's website?

Answer: Stations that maintain websites must include on their Home page a link to the online public file on the FCC's website. Stations must also include on their Home page contact information for a station representative who can "assist any person with disabilities with issues related to the content of the public files."

Questions Concerning The New Online "Political File" Rule

Question: When will stations have to upload political file documents?

Answer: Commercial television stations that are located in the Top 50 markets according to Nielsen and that are affiliated with the ABC, CBS, NBC, or Fox television networks must upload Political File documents that come into existence on August 2, 2012 or later, as they are created. All other television stations in the country must comply with the new online Political File rule beginning on July 1, 2014. However, the Commission has stated that its Media Bureau will release a Public Notice in approximately one year, that is by July 1, 2013, seeking comments on the impact of the new rule. That inquiry could result in changes to the rule or its effective date for the remaining stations.

Question: What documents must be included in a station's "Political File"?

Answer: Section 73.1943 of the Commission's Rules requires licensees "to keep and permit public inspection of a complete and orderly record (political file) of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such request, and the charges made, if any, if the request is granted." The FCC has clarified that this includes:

- Final orders by candidates for specific schedules of time or availabilities within a specific schedule of time, including orders to buy particular schedules (dayparts or programs), amounts of time (including spot or program lengths), classes of time for particular days (such as preemptible spots, Monday-Friday rotations, runs of schedule or specific placements); and
- Charges made, as well as any subsequent, relevant reconciliation information about the order, including the times the spots actually aired, make goods provided for preempted time, rebates or credits issued.

Note that stations do not need to include general requests by candidates for advertising time stations have available to purchase, or rates for a general array of time.

In addition, the Bipartisan Campaign Reform Act (BCRA) requires that, where third party groups purchase time supporting or attacking a federal candidate or addressing a federal issue, stations place essentially the same information as they would for a candidate purchase in the Political Inspection File.

Question: How often does my station have to upload its Political File documents?

Answer: The FCC has always considered the contents of the political file to be “time-sensitive.” Therefore, stations must place records in their political files “immediately absent unusual circumstances.” The Commission has stated that, as with the existing paper files, broadcasters need not place documentation regarding actual air time and preemptions in the online file on an immediate basis. Instead, broadcasters may provide information regarding the order “with a notation that the station will, upon request, provide immediate assistance and access to the station logs or other information concerning actual air time,” and thereafter place written documentation about the final disposition in the file at a later time consistent with business practices – usually when final billing is compiled for the purchase on a monthly basis.

Question: In uploading the station’s Political File documents onto the FCC’s website, must the station arrange them in any particular order?

Answer: The general requirement is that the file be neatly maintained. However, the database will be set up with files for national, state and local races that are then further sub-divided all the way down to the candidate’s name. This information will be imported from the Federal Election Commission’s databases, but stations will be able to customize the files to at least some extent.

Questions Concerning The FCC’s Filing Interface

Question: What format do documents need to be in to be uploaded?

Answer: The FCC has stated that for both the online Public Inspection File and the online Political File, “stations can use widely available formats such as Microsoft Word (.doc) or rich text format (.rtf), or convert the files to portable document format (.pdf). The filing interface will allow stations to then drag and drop those files to the Commission’s online public file.” For the time being, there is no requirement that documents be uploaded in a “searchable” format. Nor is there any requirement that a licensee “create or preserve metadata in the online public file.”

Recently the Commission gave a demonstration, providing the public with an introduction to its hosted website for the Public Inspection and Political Files. Stations can view that demonstration at <http://www.fcc.gov/events/demonstration-online-public-inspection-file-interface>. The FCC’s promised additional educational efforts will be similarly archived.

Question: What steps should stations take to insure a reliable record of having uploaded each document on a timely basis?

Answer: It is recommended that after each upload of a document, the television station go online to make sure that the document in fact appears online. It is further recommended the station maintain, in at least electronic form, confirmation of the date and time of the uploading of each document so that the station can defend itself if a question is raised by the FCC or a third-party. The FCC has stated that it is working on tools to allow stations to be assured they have a mirror version of what is on the FCC’s website.

Question: Once a television station uploads a document on the FCC’s website, will it have any further responsibility?

Answer: The answer is yes. The Commission has stated that it expects each television station to maintain its FCC-hosted online public/political files in an orderly fashion. This means that each station is expected to monitor “its” FCC-based Public Inspection and Political Files for completeness and currency. Even if the Commission is at fault in not incorporating a document into a station’s FCC-hosted Public Inspection and Political Files, the station should monitor for any problems and bring such matters to the Commission’s attention for correction. Furthermore, the Commission expects a television station to delete from its FCC-hosted public/political file any document that is no longer required to be maintained in its public/political file as in the case where the retention period for the particular document has expired. Specifically, the FCC does “not require stations to remove each item at the end of its retention period, but note that stations are still required to maintain an orderly file. Each station’s online public file should not become so overgrown with out-of-date documents that it is difficult to access relevant materials. To assist in this process, the Commission will strive to facilitate the identification and management of aging material. . . . At a minimum, [the FCC] will require stations to remove expired contracts when and if replacement agreements are uploaded.”

Question: Must a Television Station Continue to Maintain a Local “Public File” and/or a “Political File” at the Station’s Main Studio?

Answer: To some extent, stations will continue to have files at their main studios. As mentioned above, the Commission is not requiring stations to upload any past or future letters and e-mails concerning station operations received from members of the public. However, the FCC expects stations to continue to maintain those documents “in a paper file, or electronically on a computer located at the main studio,” for inspection by the public during normal business hours, including during lunch time. It should be noted that, stations are not required “to retain comments left by the public on social media websites, like Facebook” and thus are not required to maintain them in the correspondence file.

The Commission is not requiring stations to maintain back-up copies of all public files. The Commission intends to develop “tools to allow stations to easily copy mirrors of their online public files, which contain the political files.” In that latter regard, the FCC is requiring television stations to maintain “local back-up electronic files” of their political files at their main studios just in case the FCC’s “database becomes unavailable or disabled.” Some of the parties challenging the new regulation have asked the Commission to allow stations the flexibility to maintain those back-up files in paper or electronic format.

Based on this, subject to advice of the station’s communications counsel, it would appear that stations may wish to give consideration to removing from their public files and discarding any documents that they have verified are currently available online in the FCC’s database for the station.

Question: Will Waivers of this new Online Political File Requirement be Entertained?

Answer: The Commission has stated that it is willing to entertain waivers of the new requirement, but that any station seeking such waiver must provide the Commission “with information documenting the economic hardship the station would incur in complying with this requirement, its technical inability to do so or such other reasons as would warrant waiver under our general waiver standards.”

Recommended Preparations for the Effective Date of the New Rule

- 1. Conduct a Due Diligence Review of the Station’s existing paper-based Public Inspection File.**
First, in consultation with communications counsel, be certain that all required documents are currently in the file and add missing ones. Also in consultation with communications counsel, remove any items that were never required to be placed in the Public Inspection File or whose retention periods have

expired. The ultimate effort to upload these existing paper files will be made all the easier if unnecessary items are removed now. Once a station's Public Inspection File is available on the FCC's website, any gaps can be easily discovered by the FCC's staff and anyone with Internet access.

2. **Conduct a Due Diligence Review of the Station's CDBS Account.** Make sure that every document contained in the "no uploading required" category for the FCC-hosted Public Inspection File is in fact currently available online at the FCC. If, for example, the station has in its paper-based public inspection file a document that was required to be filed with the FCC as well as be placed in its public file, but such document is not for some reason available online at the FCC, the station should contact communications counsel to determine a course of action before the new requirement becomes effective.
3. **Educate Station Staff With Respect to the New Online Filing Requirement.** Consider which members of the station's staff are responsible for creating Quarterly Issues/Programs Lists, commercial limits documents, and each of the other documents in the "uploading required" categories. Educate and train each of them to be aware that the next document of a particular type that they may create may have to be uploaded to the online Public Inspection File. Network affiliates in the Top 50 markets should conduct the same "sensitivity" training with those of their staff who are responsible for creating Political File documents.
4. **Establish Procedures for Effectuating the Actual Uploading of Documents to the FCC's Database.** The FCC has stated that stations will need to use their Federal Registration Number (FRN) and FRN Password to log into the FCC's online filing interface. Decide now which employees will be permitted access to that information. In addition, during its demonstration, the FCC showed how stations could use collaboration and file sharing tools to create Political File documents and file them. The station's staff should examine now whether it will use such tools, and if so, assure that all those on staff who will need to use the tools receive training.

If you have any questions about the content of this advisory, please contact the Pillsbury attorney with whom you regularly work, or the authors of this Advisory.

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