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## Details, Details, Details: Reading Between the Lines of the FCC's Online Public Inspection File Rulemaking

by Lauren Lynch Flick

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Beyond ensuring broader access to station information, the proposed rules seek to create searchable databases and information repositories for researchers and advocates worldwide, providing a powerful weapon to influence on-air content and monitor local broadcasters' operations.

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*Comments to the FCC are due **December 22, 2011**, with Reply Comments due **January 6, 2012**. In addition, comments concerning the proposals' impact under the Paperwork Reduction Act are due at the Office of Management and Budget by **January 23, 2012**.*

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The FCC's recently-announced Further Notice of Proposed Rulemaking (FNPRM) proposes to replace nearly all of a television station's paper public inspection file with a more expansive online file hosted by the FCC. The FNPRM has now been published in the Federal Register, making Comments on the proposals due on December 22, 2011, with Reply Comments due on January 6, 2012. This is an important proceeding, as it has the potential to create fully searchable databases of uniform information about broadcast stations and their programming. This could result in pressure on broadcasters to favor certain on-air content and business practices. Below is a summary of the major proposals contained in the FNPRM.

### Searchable Formats

The FNPRM states that the FCC is moving towards making the entire content of the public file machine-readable, readily searchable, and easy for programmers to incorporate into new programs and applications and to save to other computers. It also notes that the new form it is proposing to adopt in a separate proceeding to replace stations' Quarterly Issues Programs Lists will similarly be machine-readable and searchable, and that these actions are being taken at the urging of researchers and advocates.

While the FCC will not require items that already exist in the public file be re-created in such a format, it indicates that it is disposed towards requiring stations to upload items that are originally created in a searchable format – such as annual EEO public file reports created in Word or Excel – to be uploaded in that format or a searchable pdf form. It further asks whether metadata should also be made available, so that it can be determined when an item was uploaded and by whom.

### On-Air Disclosure of File's Existence and Location

Consistent with its goal to increase public participation in the broadcast licensing process, the FCC proposes to reinstate the previously adopted requirement that broadcasters air announcements notifying the public as to the existence and availability of their public files on the FCC's website, and to have a link to their public files on the home page of their station websites. The FCC seeks comment on the cost of requiring that such announcements be aired three times per week, including once in prime time.

### Impact on Radio Stations

Radio licensees should be aware that the FNPRM states that the transition of the television public files to an online format will provide a roadmap for how to ultimately transition radio public files to an online format as well.

### Maintenance and Back Up Copies

The FCC proposes to import from its online filing system any online filings that it has regarding the station. This would include items such as authorizations; applications; ownership reports; EEO Forms 396, 396-A and 397; Children's Television Programming Reports, contour maps, and its own The Public and Broadcasting publication. However, licensees will be required to "actively" maintain the public file and affirmatively remove items when they are no longer required to be in the station's public file under the rules. In addition, stations will have to maintain an electronic backup copy of all public file items in case the FCC's database should become unavailable. The FCC asks for comment on the retention period for such backups.

### The Political File

The FCC has proposed to require that a station's political file be maintained online. During the busy political season, the file would have to be updated immediately, except in extraordinary circumstances. The FCC believes that this will not be a burdensome requirement for stations to comply with because it believes that much of the political ad placement process is already done electronically. The FCC revisits this issue in a number of places in the FNPRM, asking what steps can be taken to make this information even *more* readily available to the public and what procedures the FCC should put in place to increase the speed with which this information is available to the public and campaigns. It also asks numerous questions as to how this portion of the file should be maintained so that it is "orderly." It asks whether there should be subfolders for each type of race (federal, state, local) and whether the FCC should establish those subfolders or permit stations to do so.

## One Last Paper File

While the FCC is persuaded that privacy concerns dictate that letters and emails from the public not be maintained in the online public file, advocacy groups have proposed that these items still be made available to the public in a paper "correspondence file" kept at a station's main studio. They also propose that broadcasters update their online public file each quarter and report the number of letters available in the paper file at the station's studio. While the FCC seems inclined to adopt the "correspondence file" requirement, it asks for comment on the utility of cross-referencing it in the online public file.

## Complaints and Investigations

Currently, when a station is the subject of an FCC complaint or investigation, it must place material related to that matter in its public file. The FCC asks whether it should expand this disclosure so that the FCC itself would automatically insert any Notices of Violation, Notices of Apparent Liability, or citations into stations' online public files. It also asks whether licensees should have to upload their responses to such items as well.

## Sponsorship Identification

The FCC's working group paper, *The Information Needs of Communities*, stated that many broadcasters have allowed advertisers to "dictate, shape, or sculpt news or editorial content." It recommended that the FCC require stations to include information in their public file regarding such instances of "pay-for-play." In the FNPRM, the FCC proposes to require that information be placed in the public file regarding all instances where an on-air sponsorship identification is required, not just those involving news programming. The FCC states that this will "allow interested parties to keep track of the number and extent of such sponsorships." It also asks what the appropriate retention period for these items would be.

## Shared Services Agreements

The *Information Needs of Communities* report also noted that some stations "outsource" their news production or have cooperative newsgathering arrangements with other broadcasters. In response to this finding, advocacy groups have proposed that sharing agreements, including those for administrative support, be placed in the public file because they may impact "control" of a station and its editorial content. The FCC seeks comment on this proposal.

## Conclusion

As noted, the impact of this proceeding involves more than the mere mechanics of maintaining the public file in a more modern fashion. Although, as shown above, the mechanics are very involved and increase administrative burdens on stations. This is particularly true with respect to the political portion of the file where constant updating will be needed.

The FNPRM proposes to implement additional disclosure requirements – about sponsored programming and shared services agreements (both of which are permissible under the FCC's rules – as well as increased reporting of complaints and investigations regarding a station. In making these proposals, the FCC states that they will assist interested parties in monitoring certain aspects of broadcasters' operations. All broadcasters should consider how these changes would impact their operating costs and efficiencies, as well as whether such "monitoring" will affect their programming practices.

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

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