

FCC Requires Television Broadcasters to Place Political Files Online

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The Federal Communications Commission (FCC or Commission) has adopted new rules requiring television station licensees to place their public inspection files, including their political files, online. Under the rules, stations will migrate files currently stored in hard copy at television stations' main studios to an FCC-hosted website over the next two years.

As soon as the rules become effective (which is contingent upon Office of Management and Budget (OMB) approval under the Paperwork Reduction Act), stations will be required to upload new public file documents to the FCC website. Included in these documents is information about "political matter or matter involving the discussion of a controversial issue of public importance" broadcast on the station, such as non-candidate issue ads. Stations will then have six months to upload their existing public file documents, which includes most documents from their current license term (which can go back as far as eight years or more for some stations).

The FCC has adopted a discrete set of rules for broadcast stations' political files, which include information about candidate ads. Although stations also will be required to upload this information to the Commission's website, the FCC adopted a separate two-year phase-in schedule for the political file to accommodate broadcaster concerns. Under this schedule:

- Affiliates of the ABC, CBS, FOX and NBC networks located in the top-50 markets will be required to upload political file documents beginning 30 days after publication of the OMB's approval of the rules. The FCC estimates that the requirement

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will cover approximately 200 television stations, or 11% of licensed stations. Any station that believes compliance with the requirement will impose "an unreasonable burden" may apply for a waiver.

- No later than July 1, 2013, the FCC will issue a public notice seeking comment regarding the effects of placing political files online. The Commission will consider at that time whether any changes should be made before it expands the online political file requirement to other stations.
- On July 1, 2014, all remaining television stations will be required to place political file information online.

To facilitate the keeping of an orderly political file, the FCC will create subfolders for candidates and issues. The Commission also will provide stations with the ability to create their own subfolders and subcategories consistent with their own practices.

In a departure from its original proposal, the Commission limited the online political file requirement to documents created *after* the applicable effective date—*stations will not be required to retroactively upload political file information*. The FCC reiterated, however, that stations must upload new documents "immediately absent unusual circumstances" given their time-sensitive nature. The Commission explained that, as with the existing paper files, broadcasters need not place documentation regarding actual air time and preemption 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."

Responding to comments in the record about the scope of its political file rules, the Commission clarified the two primary components. First, the requirement that stations include "requests for time" in their political file includes only "final orders by candidates for specific schedules of time" and not general requests for rates and availability. Additionally, the "disposition" of such requests includes "the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased." Thus, broadcasters are not required to include negotiations or other communications in their political file, just information about the final order, including any make goods and rebates or credits.

The online political file requirements do not apply to radio broadcasters and multichannel video programming distributors at this time. Rather, the FCC stated that it will evaluate the effects of the online posting requirement for television stations before expanding that requirement to other platforms.

Before the new rules take effect, the FCC must publish them in the *Federal Register* and then solicit comments regarding the compliance burdens pursuant to the Paperwork Reduction Act. Only after OMB approves the rules will they become binding upon television stations. This process, as well as the potential for litigation, may slow implementation of the rules.