

ALERT

FCC Announces New Online Public File Functionality; Expands Requirement to Broadcast Radio, Satellite Radio, Cable, and DBS

February 1, 2016

The Federal Communications Commission (FCC or Commission) has expanded both the functionality of its online public file and the services to which it applies. Since August 2, 2012, certain full power and Class A television stations have been required to upload new public inspection file documents to the FCC's online public file system. On January 29, 2016, the Commission released a Report and Order extending that requirement to broadcast radio stations, satellite radio (SDARS) licensees, cable systems, and DBS providers. Political files and existing public file information will also migrate onto an FCC-hosted website under a phased-in approach that will begin with commercial radio broadcast stations in the top 50 markets with five or more full-time employees, cable systems with 1,000 or more subscribers, DBS providers, and SDARS licensees.

Improvements to Online Public File System

In the *Report and Order*, the Commission announced five improvements to the online public file system since it first launched in 2012:

- The online public file is now fully cloud-based, allowing the FCC to increase network capacity during periods of high demand;
- The system is now designed to allow the upload of a single document to multiple public files;

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- If a document is moved from one folder to another, the online public file system will now display both the original date that the document was uploaded and the date that it was moved;
- The online public file system will now allow for the deletion of multiple files or folders at a time; and
- The Commission has released an application programming interface (API) that will permit third-party services to connect to a station's online public file and upload documents on its behalf.

These improvements apply to existing television station users and the expanded group of users. Users taking advantage of the new API functionality should beware that the FCC expressly declined to provide a safe harbor for entities using a third party site, although it did emphasize that initial enforcement efforts will focus "on ensuring that entities understand and comply with the online file requirements . . . rather than on imposing fines for minor failures to comply with the rules."

Transition Schedule for Services Newly Subject to the Online Public File Mandate

Broadcast radio stations, SDARS licensees, cable systems, and DBS providers will transition their public inspection files online according to the following schedule:

- *Within 30 days of the publication of approval of the rules by the Office of Management and Budget (OMB):* Commercial broadcast radio stations in the top 50 markets with five or more full time employees in their station employment unit, cable systems with 1,000 or more subscribers, DBS providers, and SDARS licensees must begin uploading new public inspection file material and new political file material to the online public file. Cable systems with between 1,000 and 5,000 subscribers initially will be exempt from the requirement to upload new political file material.
- *Within six months of the publication of approval of the rules by the OMB:* Commercial broadcast radio stations in the top 50 markets with five or more full time employees in their station employment unit, cable systems with 1,000 or more subscribers, DBS providers, and SDARS licensees must complete the process of uploading their existing public file material to the online public file.
- *March 1, 2018:* Commercial broadcast radio stations outside the top 50 markets or with fewer than five full-time employees in their station employment unit and all NCE radio broadcast stations will have until March 1, 2018 to upload their existing public inspection file material to the online public file. From that date forward, such stations must also upload new public inspection file material and new political file material to the online public file. Additionally, cable systems with between 1,000 and 5,000 employees must begin uploading new political file material to the online public file by this date.

Existing political file material is exempt from the online filing requirement and should be maintained locally.

Entities that are not required to transition to the online public file with the first group may move their public files online prior to the applicable deadline. However, to avoid confusion about what documents are online and what documents are in the local public file, an entity that transitions early must upload all documents on a going-forward basis, including all new political file material, to the online public file.

The FCC will entertain waiver requests from entities that believe that transitioning to the online public file will impose an undue burden. Parties requesting a waiver must provide information documenting the economic hardship that they will incur, their technical inability to comply, or other reasons for which a waiver is justified. The Commission indicated that it will give “favorable consideration” to requests by commercial radio stations with between five and ten full time employees and that it will be “favorably inclined” to grant requests from very small radio stations with fewer than five full time employees that require additional time.

Online Public File Requirements

As with the existing online public files for broadcast television stations, covered entities are required to upload all documents not filed with the FCC using one of the Commission’s online systems (CDBS, LMS, CARS). Users may upload electronic documents in their existing format, to the extent feasible. The FCC will also permit users to create new folders to comply with state and local public file requirements, provided that: (1) the information is kept separate from the FCC public file information; and (2) the Commission is not preempting state or local regulations that may require the information to be maintained locally.

Covered entities are not required to keep a backup copy of public file materials; rather, they can request that the FCC create a mirror copy of the public file for use if the data in the online file are compromised. However, covered entities are required to maintain a backup copy of their political file to make available immediately if the online public file becomes unavailable. Entities can comply with the political file backup requirement by periodically downloading a mirror copy of the public file as long as they maintain copies all documents uploaded since the last backup.

Covered entities with websites must place on the home page of their website: (1) a link directly to the front page of the entity’s online public file; and (2) contact information for a representative who can assist any person with disabilities with issues related to the content of the public file. Broadcast radio, SDARS, cable, and DBS entities must also continue to make EEO materials available on their websites, although they can satisfy this requirement by providing a direct link to the location of such materials in their online public file.

Once an entity has fully transitioned to the online public file, it may cease to maintain a local public file. Because of privacy concerns, commercial broadcast licensees should not place letters and email from the public in their online public files, but must continue to maintain a local correspondence file containing these materials.

Requirements Specific to Each Service

- *Broadcast Radio*: Radio broadcast licensees must upload citizen agreements, certain EEO materials, issues/programs lists, local public notice announcements, time brokerage agreements, joint sales agreements, materials relating to FCC investigations or complaints (subject to any limitation directed by the Commission and not including investigative material originated by the FCC, such as letters of inquiry or other investigative requests), information about the location of the station’s main studio, and any new political file material. The FCC will upload EEO forms that are filed with the FCC, The Public and

Broadcasting Manual, and Letters of Inquiry and other investigative requests from the FCC (unless the inquiry directs otherwise). AM stations have the option to maintain Form 302-AM locally or to upload it to their online public file. The FCC will create contour maps for the online file for both AM and FM stations. Noncommercial radio broadcasters must upload donor lists to their online public files; however, the FCC will consider requests for waiver if online disclosure of donor information about a particular program could discourage contributions or subject donors to unwanted attention or crime.

- *SDARS*: SDARS licensees must upload their political file documents to the online public file. Additionally, SiriusXM, the sole U.S. SDARS licensee, must upload information relating to its voluntary non-commercial set-aside.
- *Cable Operators*: Cable operators must upload all documents and information required to be maintained in their public file except their EEO program annual report (which the FCC will upload to the public file). In addition, cable systems with between 1,000 and 5,000 employees must upload information regarding sponsorship identification, EEO records, and commercial records for children's programming, even though this information currently must only be made available upon request. When establishing their online public files, cable operators will be required to provide a list of the five-digit ZIP codes served by each cable system and to identify the employment unit number or numbers associated with each system. In lieu of uploading information regarding their current channel lineups, cable operators may provide a link to an online channel lineup maintained by the cable operator. Finally, the FCC clarified that cable operators do not need to upload the following documents to their online public files: FCC Form 325 (Annual Cable Operator Report), proof-of-performance information, and signal leakage information.
- *DBS Operators*: DBS operators must upload channel capacity measurements and other records related to the use of and requests for noncommercial capacity, records related to compliance with children's commercial limits, certain EEO materials (although not the EEO program annual report, which the FCC will upload to the public file), and new political file material. DBS operators no longer will be required to honor telephone requests for political file materials as long as those materials are available online.

If you have questions regarding the online public file and online political file requirements, please contact one of the attorneys listed on this client alert or the Wiley Rein attorney who regularly handles your FCC matters.