

ALERT

The New Online Public File Rules Go Into Effect on June 24, 2016

May 12, 2016

The Federal Communications Commission (FCC or Commission) has announced that its new online public file rules, adopted in January of this year, will go into effect on June 24, 2016.

Beginning on **June 24, 2016**, the following entities must place all **new** public file material into the online public file database:

- Commercial Radio Stations located in the top 50 Nielsen Audio radio markets with 5 or more full-time employees;
- DBS providers;
- Cable systems with 1,000 or more subscribers; and
- SDARS licensees

By **December 24, 2016**, these same entities must have uploaded all **existing** public file material to the online public file database, except that existing political file material may be excluded.

Simultaneously with the expansion of the online public file obligations to cover new services, the FCC is rolling out a new public file database with enhanced capabilities. The new database will go live on **June 24, 2016**. The Commission will transition all existing public file material (for television stations) into this new database by that date. The expanded database will have several features requested by broadcasters, including the ability to:

- Connect to third-party web hosting services (i.e., Dropbox, Box);
- Upload a document into multiple folders;
- Move a document between folders while preserving the original upload date; and

Authors

Kathleen A. Kirby
Partner
202.719.3360
kkirby@wiley.law

Eve Klindera Reed
Partner
202.719.7404
ereed@wiley.law

Joan Stewart
Partner
202.719.7438
jstewart@wiley.law

Practice Areas

Media
Telecom, Media & Technology

- Update the Closed Captioning contact information.

Beginning May 12, 2016, the new public file database is available for users to test, and can be found here. Note that this database is only available for testing at this time. Any material uploaded here prior to June 24, 2016 will be deleted. Television broadcasters should continue uploading material to the existing public file database until June 24.

The FCC will also host a webinar to explain the features of the public file database at a date to be announced.

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 justifying a waiver. The Commission indicated that it will give “careful 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 of 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 generally cease to maintain a local public file. However, 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.