

ALERT

FCC to Require Online Television Public Files, While Phasing-In Online Political Files

April 27, 2012

Television broadcasters will have to place their public inspection files online under a Second Report and Order adopted at the April 27, 2012 meeting of the Federal Communications Commission (FCC or Commission). Political files will also migrate onto an FCC-hosted website under a phased-in approach that will begin with major network affiliates in the largest television markets.

Online Public File Requirement. The FCC's public file requirement largely mirrors an October 2011 Further Notice of Proposed Rulemaking (FNPRM) with two notable exceptions. First, television stations will not be required to include local news sharing agreements and shared services agreements in their online public files. Second, the Commission abandoned plans to require television stations to include information in their online public files about on-air sponsorship identification disclosures.

Nevertheless, in what FCC Chairman Julius Genachowski called a "common sense" requirement, television broadcasters will have to upload most of the items in their existing public inspection files within six months of the publication of approval of the rules by the Office of Management and Budget (OMB). Television broadcasters will not be required to upload documents filed with the FCC, which will be automatically included in the online public files. The Commission has touted this change as the online public file requirement's primary efficiency benefit for broadcasters. Additionally, the online public file need not include letters and emails from viewers.

The FCC is not specifying the format in which files must be uploaded and such files, at least initially, do not have to be searchable.

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Online Political File Requirement. The Commission adopted the majority of its original online political file requirement, but with a two-year phase-in period. Implementation will be according to the following 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 OMB's approval of the rules. The FCC estimates that this will cover approximately 200 television stations, or 10% of licensed stations.
- One year after the initial implementation of the political file requirement, the FCC will issue a public notice seeking comment regarding the effects of placing political files online.
- On July 1, 2014, all remaining television stations will be required to place political file information online.

The online political file requirement will only apply to documents created after the applicable effective date; stations will not have to retroactively upload political file information.

Commissioner Robert McDowell dissented as to the political file rules, citing concerns from broadcasters regarding the sensitive commercial nature of lowest unit charge data contained in the political file and likening the sharing of such information to collusion. However, the other two commissioners declined to adopt McDowell's proposal, which would have removed lowest unit charge information from the online requirement while seeking further comment on that issue. McDowell also questioned the sufficiency of the Commission's cost-benefit analysis, suggesting that the online political file requirement is an unfunded mandate that may violate the Paperwork Reduction Act.

Chairman Genachowski, however, was dismissive of broadcaster concerns, reframing the issue not as why online placement of political files should be required, but why political files should be excluded from the online public file requirement. Genachowski observed that Congress required broadcasters to make information about political advertising public and described a proposal to remove lowest unit rate information as "censor[ing] from online access information that Congress explicitly required broadcasters to make public." The Chairman also stressed that rate information is already available and reviewable by anyone with an incentive to do so.

Enhanced Disclosure. The FCC stated that it does not have a specific timetable for adopting revised standardized and enhanced disclosure requirements (to replace the now defunct Form 355). The Commission issued a Notice of Inquiry on that issue in November.

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We are in the process of preparing a more detailed memo summarizing the Second Report and Order that we will make available to our clients. If you have questions regarding the online public file and online political file requirements, please contact one of the attorneys listed below or the Wiley Rein attorney who regularly handles your FCC matters.