

NEW FCC PUBLIC FILE PROPOSAL

The FCC has abandoned its 2007 effort to expand public file reporting and disclosure obligations. Instead it proposes a more modest migration from paper files to an on-line system it plans to host. Although initially applicable only to television, the new plan is apt to serve as a model for future radio station obligations.

The Commission's fundamental intent is to remain committed to its 1965 requirement that all broadcast stations maintain a public inspection file as a means of encouraging the public to play a more active role in monitoring and influencing station performance. In 2007 the Commission adopted a standardized public interest form for television (Form 355) requiring detailed breakouts of numerous categories of non-entertainment programming and services, as well as a rule mandating that most of the public file contents be posted on station websites.

Asserting that the complexity of the form outweighed its claimed benefits, broadcasters sought reconsideration, filed court appeals and sought to block approval by the Office of Management and Budget. In the meantime, this past June the FCC issued a comprehensive report on the information needs of communities that attempted to balance the empowerment of citizens to ensure that broadcasters served their communities against a need to eliminate unnecessary burdens upon the industry. Now the Commission seeks a fresh start and solicits cost/benefit analyses of its new proposals.

Placing the public file online – Noting the inconvenience of requiring the public to visit a physical file location, the Commission reasserts its plan for television stations to provide on-line access from all locations at all times through the Internet. Bowing to industry cost concerns and the burden of searching for individual station websites, the Commission proposes to host a centralized online public file system on its own website. However, stations would retain the obligation to post and update relevant material and to maintain electronic backup copies for use in the event that problems were to develop with the Commission's site. The Commission asks whether certain time-sensitive items (such as information needed for candidates to assess equal opportunities) should be accorded additional access.

Contents of the online public file – As a starting point, all information currently required to be in a local public file would be uploaded. Materials already available in other areas of the FCC website, such as contour maps and the "Public and Broadcasting" procedural manual, would not need to be duplicated. The Commission is also considering possible exemptions from the online posting requirement for some other categories of materials presently required in the paper public file. For example, the Commission feels that posting letters from the public could discourage comments due to privacy concerns (that possibly could be alleviated by redacting personal information).

The Commission tentatively rejects an on-line posting exemption for political files on the ground that most political buys are made electronically nowadays and thus can be uploaded immediately with little effort. However, the Commission emphasizes that the requirement of a “complete and orderly” political file may require organizational protocols to facilitate finding information that candidates need. The Commission disfavors a further exemption for material relating to FCC investigations or complaints, on the ground that they are material to public review of licensee performance, but will consider exemptions for indecency to which children should not be exposed and for other particular information and situations for which confidentiality might be appropriate.

On-line additions to the current file contents could include main studio location, disclosure of “pay for play” arrangements (to the extent that they already require on-air announcement) and agreements among licensees to share news and other services such as administrative, sales and programming support (beyond the time brokerage and joint sales agreements that already are required to be in the public file).

Online public file format – Although the June community service report had urged that publicly-available information be put into standardized machine-readable formats to facilitate analysis, the Commission recognizes the cost and delay of conversion and suggests that current formatting of public file materials be retained for now. However, it seeks comment on how to implement an advanced searchable database in the future.

Public File Announcements – The 2007 rule was to have required twice-daily announcements of the existence, location and accessibility of each station’s public file. The Commission seeks comment as to the content and frequency of such announcements (it suggests three per week), as well as the inclusion of contact information to be used by persons with disabilities.

New Standardized Programming Report Form – Although not part of the present rulemaking summarized above, the notion of mandating a standardized disclosure form to replace the current issues/programs lists is far from gone. Rather, in the near future the FCC intends to launch an inquiry to explore this matter further.

Despite some relatively minor reservations, all four current FCC Commissioners released statements strongly supporting the new proposal, and so its implementation seems likely – as well as its eventual extension to radio.

A complete copy of the *Order on Reconsideration and Further Notice of Proposed Rulemaking* (FCC 11-162) is available on the FCC’s website at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1027/FCC-11-162A1.pdf.

If you have any questions concerning any of these matters, please contact [Peter Gutmann](mailto:Peter.Gutmann@wcom.com) at (202) 857-4532 or pgutmann@wcsr.com, or one of our other Womble Carlyle [Communications Law](#) professionals.

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