

ALERT

Effective Date Set for Online Public File Requirement

July 3, 2012

As indicated in a previous Client Alert, the Federal Communications Commission (FCC or Commission) recently released a Second Report and Order (Order) that revised its rules to require that television licensees upload most portions of their public inspection files to a Commission-hosted website. On July 3, 2012, a notice in the Federal Register announced that the Office of Management and Budget (OMB) approved the revised rule, with an effective date of August 2, 2012.

As of August 2, 2012, the FCC will require television broadcasters to upload most new public file documents to its online system. For example, an issues/program report that is due to be created and placed in the public file after the effective date of the rules must be uploaded to the online file on that due date. Stations need not, however, upload complaints that do not lead to Commission action; licensees may maintain such complaints and any responses thereto in their local correspondence file.

As for materials already contained in the public inspection file, broadcasters will have until February 2, 2013, or six months from the effective date of August 2, 2012, to upload those materials. Once uploaded, stations no longer have to maintain these items in a paper file at their main studio. Further, only affiliates of the ABC, CBS, FOX and NBC networks located in the top-50 markets will be required to upload political file documents as of August 2, 2012; all remaining stations are subject to a two-year phase-in and will be required to place political file information online on July 1, 2014.

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Television broadcasters will not be responsible for adding to their online public files documents already available on the FCC's website. Instead, the Commission will automatically import these documents, which include station authorizations, applications and related materials, contour maps, ownership reports, The Public and Broadcasting manual and children's television programming reports.

Broadcasters should be aware that the August 2, 2012 effective date faces some hurdles. First, the FCC has yet to announce that it has developed the website where the files will be uploaded and hosted. Second, as public files contain personally identifiable information, FCC collection of this information subjects the agency to certain privacy laws. The FCC must prepare a "Privacy Impact Assessment" and it must also prepare a "system of records" and issue a "System of Records Notice" (SORN), which also must be published in the Federal Register. The July 3, 2012 Federal Register publication indicated that the FCC is still developing its system of records. Also, the publication of a SORN triggers a 40-day waiting period for OMB and Congressional review during which the agency may not implement the system. Though the FCC may seek a waiver of the 40-day waiting period, it may not seek waiver of an additional 30-day waiting period mandated by the Privacy Act that commences upon Federal Register publication of the SORN.

Additionally, on May 21, 2012, the National Association of Broadcasters (NAB) filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit, seeking to have the rule overturned on several grounds. Moreover, on June 11, 2012, a group of broadcasters filed a petition for reconsideration with the Commission, arguing that disclosure of sensitive rate information in the online political file would not serve the public interest.

We will keep our clients apprised of developments that could affect when television stations must begin the online public file transition.

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.