

# THE CARE AND FEEDING OF THE BROADCASTER'S PUBLIC INSPECTION FILE

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State Broadcast Association Webcast

October 2015

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# What We'll Cover Today

- Why the File is Important
- Hot Topics on the Public File
- What goes in the File, and for how long it must be kept
- What are the most common issues that lead to fines
- Details of some of the obligations

# Why?

- Public file meant to provide citizens with access to information about station operations and whether stations are operating in the public interest
- Many suggestions to reform or abolish rules – but no reaction from FCC
- Need to provide access, though access usually only comes when someone wants to make trouble
- Remember that there needs to be a public file for each station, and that it needs to be made accessible to anyone who wants to see it

# The New Importance of the Public Inspection File

- The single largest cause of license renewal fines was an incomplete file
- Problems discovered during FCC random inspections have led to fines
- State Association ABIP inspection prevents random inspections, but not inspections based on complaints
- More citizen's groups targeting public files

# Blame it on the Online Public File

- Why are citizen's groups announcing the targeting of public files?
- The online political file brings many to the file
- Groups can now target the TV Public file for inspection – from the comfort of their own home – leads to more complaints against stations

# A Few Words About the Online Public File

- TV Stations should have already figured it out
- In many ways, it makes compliance easier, as the FCC uploads all of the FCC applications, the coverage map and the Public and Broadcasting manual
- Obviously, it's a pain during political season – especially in “battleground states”

# More About the Online Public File

- Coming for radio – in time for the election?
- Top 50 market – Big 4 Network stations were first to comply in TV – maybe the same kind of rollout for radio?
- Some talk of exceptions for noncommercial stations and maybe small commercial stations

# Thinking About the TV Online Public File

- Must have a link to your station's online public file on your website, and name of person at the station to assist people who want to access it
- FCC uploads new applications automatically – but does not remove old applications – it's a station obligation that you ought to consider (more on this later)
- Need to add to the online file documents not filed with the FCC (e.g. EEO public file reports, Quarterly issues programs lists, political) and address and phone number of station
- Still need paper file for letters from the public
- Need back-up access for political information

# But Don't Forget About Access to the Paper File for Radio and TV

- Maintain a public file at your main studio, available for public inspection during “normal business hours” – for TV stations it is a file limited to letters from the public
- Can be kept on computer – if terminal available for anyone who visits
- Must make the File available to anyone who visits – no appointment necessary, no intimidation allowed
- Limited right to ask for identification
- Must make copies available within 7 days—reasonable charges for copying allowed

# Even Without the Online File, The Public May Not Need to Visit

- If your main studio is not in the city limits of your community of license, if requested by the public by phone or mail, you must make available copies of file documents – except political file
- Station pays the postage
- Station must help caller locate what he or she is looking for
- Caller pays copying, except for the Public and Broadcasting
- Obligation only to people in station's geographic service area – “Grade B” for TV (unclear what this means in a digital world), 1 mv/m for FM (except .7 mv/m for Class B1 and .5 for Class B stations), and .5 mv/m for all AM stations

# Think About Compliance

- Make sure that employees know where the file is, and that the public can access it
- Make sure that building security knows that people can insist on seeing the file, and must be allowed access (recent exceptions for college station in a dorm building – but need FCC permission)
- Consider having written instructions for temporary or substitute employees
- Think about file back-up and security
- For TV, think about changing access codes to online public file if employees change

# How Long Do You Keep the Documents

- Retention periods vary
- Some kept for entire renewal term – until the license renewal is granted giving you authority to operate in the next license term
  - In some cases this can last into subsequent renewal terms (e.g. hold-ups of renewal for indecency complaints or other renewal challenge – but must keep the documents until a renewal is granted)
- FCC applications kept until grant is “final” – sometimes a challenge to compute when that is – and the online file for TV does not do it for you

# So Just What Goes in the Public File?

- FCC Materials (for TV, these should be automatically uploaded):
  - FCC license – *kept until it is replaced by new one*
  - Contour map plus address of main studio and transmitter site
  - Pending FCC applications and related materials - *kept until they are final*
  - FCC Ownership Report – *kept until next one is filed*
  - Form 398 Children's Television Reports – *kept until next renewal is granted*

# Other Documents Related to the FCC Documents

- Contracts and Agreements that need to be identified on Ownership Reports – *kept as long as they are in effect*
  - Most are filed in 30 days at the FCC, but not electronically, so stations need to upload
  - Can put a list in the file and provide the actual documents for inspection within 7 days, if requested
- TV – quarterly compiled documents that show compliance with Children’s Television Commercial Limits – *kept for full renewal term*
- FCC Investigation or Complaints about which the FCC notifies you - and responses to the complaints – *keep until the FCC says that you can get rid of them*

# Quarterly Issues Programs Lists

- Biggest source of FCC fines in renewals
- Fines seem to be about \$10,000 per station if you miss more than 3 or 4 during a license renewal term (less for student-run college stations if first-time offender)
- The only real way to show the public interest programming that your station has broadcast
- Placed in the File on or before the 10<sup>th</sup> of January, April, July, and October
- FCC considering replacement of these lists for new form

# What's in the Quarterly Issues Programs Lists?

- The important issues facing your community in the prior quarter that you addressed in your programming
- The programs that addressed these issues
  - Title of program
  - Date and time it was broadcast
  - Duration of program or segment dealing with the issue
  - Brief description of the program
- *Kept for the entire renewal period*

# EEO Annual Public Inspection File Reports

- Placed in the file on the anniversary date of the renewal filing for stations in your state
- Place in file once each year
- Includes the following:
  - List of full-time jobs filled in prior year
  - Recruitment source of the person hired for each job
  - Recruitment sources used to fill these jobs
  - Contact person at each recruitment source
  - How many interviewees you had from each of the recruitment sources used
  - Supplemental efforts (non-vacancy specific activities to educate the public about broadcasting employment opportunities) – the “menu options”
- EEO Public File Reports *kept for entire renewal term*

# Political File

- Requests by candidates to buy time
- Disposition of the request
- When time is sold:
  - Schedule – class of time and daypart in which the spots are to run
  - Price
  - Actual times that spots ran
- Other “uses” by a candidate – like Hillary on SNL
- *Kept for two years* – not 2 years from election – just 2 years from document creation

# Other “Political” Requirements

- For third-party ads dealing with Federal candidates or Federal issues, same information as for a candidate ad – plus information identifying the issue
- For state issue ads, identification of the issue, and the name of the sponsor of the ad, and the principal officers or directors of the sponsor

# Miscellaneous Other Public File Materials

- The Public and Broadcasting manual published by the FCC
- Radio and TV LMAs and JSAs – financial terms can be excluded
- Certification of completion of the Pre-filing and Post-filing public notices of license renewal filing (*kept until application to which it applies is granted*)
- Must carry or retransmission consent elections – *kept for three year election cycle*
- Class A continuing eligibility documentation – for all Class A TV stations
- Citizen's Agreements – rarely relevant today – only for commercial stations

# Letters from the Public

- Only applies to commercial stations
- *Kept for three years*
- Letters from the public “regarding the operation of the station”
  - Can exclude obscene or other offensive letters
  - Exclude letters where writer asks for privacy
- Emails addressed to management or general email publicized by the station included in the file – but not social media comments (yet)
- Not part of the Online Public File – so TV stations still need to let the public in to view these communications

# Noncommercial stations

- Generally the same obligations as commercial stations
- Except:
  - Don't need letters from the public and citizen's agreements
  - Need to keep donor lists where donors contribute to specific program – *kept for 2 years from the date the supported program aired*

# What Not to Include in Your Public File

- Internal correspondence with station employees and management
- Letters from your lawyer sending material to go into the file or commenting on an FCC application or complaint
- Backing data for political file or EEO public file report – all of that is produced only if requested by the FCC

# A Word About Retention

- Online public file needs to be updated by broadcaster – as FCC does not weed out documents no longer needed
- For all stations, observe retention periods – no need to keep material longer than necessary
- When renewals are granted and “final”, there can be a purge party – tossing 8 years of EEO Public File Reports and Quarterly Issues Programs Lists
- 2 years after an election, purge material from prior election
- But can't purge material if FCC is investigating you

# Summary

- Keep the file up to date
- Keep it orderly
- Make sure that it is accessible
- Watch what you put into the file – don't add extraneous stuff
- Consider a back-up for the paper file
- Check it regularly to make sure that everything is still there

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