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FCC Adopts New Rules for Television Station Public Files and Public Interest Disclosures

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The Federal Communications Commission has imposed new reporting and public file obligations on television licensees. Most of the contents of a television station's public inspection file must be placed on its website. In addition, the Commission has adopted a new standardized form to replace the issues/programs list.

The new rules apply to licensees of all full power and Class A television stations, both commercial and non-commercial educational. Similar requirements may be looming over the horizon for radio. The requirements were first announced in a news release on November 27, 2007; but the full *Report and Order* was not released until two months later on January 24, 2008. The rules are to take effect 60 days after announcement of approval by the Office of Management and Budget is published in the Federal Register. Accordingly, we expect the new rules will become effective sometime in April 2008.

Public File. Television licensees will be required to place the contents of their stations' public inspection file on their websites. The requirement only applies to stations with publicly accessible websites. A station that subsequently creates a website will be required to post the public file within 30 days after the website goes public. As an alternative, a station with a website, may post the public file on the website of its state broadcasters association, provided that there is a link to the public file on its own website.

Exceptions. The burden of this new requirement is partially minimized by the following exclusions:

- *Material on the Commission's or Other Website.* Stations are not required to post on their websites any material that is also available on the Commission's website, as long as they provide a link directly to the information on the Commission's website. Examples include links to the Commission's copy of *The Public and Broadcasting*, the station's ownership reports or pending applications. Likewise, licensees can provide links to other websites containing relevant information, rather than placing the information on the station's own website, provided that the other site is freely available to the public and no registration is required.

- *Children's Television Programming Reports (Form 398)*. The Report and Order specifically excluded Children's Television Programming Reports, provided a link is provided to the Commission's Children's Educational Television webpage.
- *Political File*. The Commission concluded that the burden of constantly updating and placing the political file on the Internet outweighed the potential benefits.
- *Letters from the Public*. Letters from the public are not required to be copied and reproduced on the station's website, provided that the website provides notice that a complete set of letters from the public is available at the station's main studio. **Note:** copies of e-mails are required to be placed on the website. E-mails should also be printed out and placed in the public file at the main studio.

Accessibility of Websites to Persons with Disabilities. In designing the public inspection file portion of their websites, television licensees must make them accessible to persons with disabilities by adhering to Conformance Level A of the World Wide Web Consortium's Web Content Accessibility guidelines, which are available at <http://www.w3.org/TR/WCAG10/>.

Station Identification. As a companion to the new public file obligations, the station identification requirements for all stations (including radio stations) have been modified to include a notice of the existence, location and accessibility of the station's public file. The notice must state that the station's public file is available for inspection and that consumers can view it at the station's main studio and on its website. The new modifications to station identifications are only required to be broadcast twice daily. At least one of the announcements must occur between the hours of 6 p.m. and midnight.

Standardized Public Interest Form. The Commission has also adopted a new *Standardized Television Disclosure Form* (FCC Form 355) to replace the quarterly issues/programs lists. The stated purpose of the form is to provide the public with easily accessible information in a standardized format on each television station's efforts to serve its community. The form must be filed electronically with the Commission and a hard copy of the completed form placed in the station's public file. **Note:** Both Form 355 and the Report and Order state that the form must be filed and placed in the public file by the 30th day after each quarter (January 30, April 30, etc.). The text of the accompanying rules, however, retains the old issues/programs schedule of 10 days after each quarter (January 10, etc.).

Although a copy of the PDF form was included with the Report and Order, as of the date of this memorandum, the form was not available on the Commission's form page or on the Commission's Consolidated DataBase System ("CDBS"). We assume that the CDBS form will resemble the Commission's other online forms, which will allow a licensee to print out a copy, as filed, for placement in the public file.

The information to be included on the new form is more extensive than the former requirements for the issues/programs list. The first section of the new form asks for general information on the station: the station's call sign, channel number, community of license, ownership information, name of the licensee and other basic facts that identify the station. The next section calls for calculation of the average weekly hours of programming over the primary channel and each other broadcast channel in the following categories during the preceding three month period: High

Definition; National News Programming; Local News Programming produced by station; Local News Programming produced by an entity (which must be identified) other than the station; Local Civic Affairs; Local Electoral Affairs; Independently Produced Programming; Other Local Programming; Public Service Announcements; Paid Public Service Announcements; and Closed Captioning.

The next section asks for more specific information concerning the programming provided in several categories. This information is to be furnished on a per program, per segment or per spot basis; i.e. a separate entry for each program, segment or spot that falls into a particular category. The Report and Order states that “[t]he requirement to present a comprehensive list of programming in each category, rather than merely samples of programming in each category, will provide the public with a better basis on which to evaluate whether a broadcaster has substantially fulfilled its public interest obligation to provide programming responsive to the needs and interests of its community. The more comprehensive disclosure will also allow the public to participate more effectively in license renewal proceedings.” The following categories are covered:

- National News that included significant treatment of community issues
- Local News that included significant treatment of community issues
- Local Civic Affairs Programming
- Local Electoral Affairs Programming
- Independently Produced Programming
- Local Programming not listed in any other category
- Public Service Announcements aired between 6 am and midnight that included significant treatment of community issues
- Paid Public Service Announcements aired between 6 am and midnight that included significant treatment of community issues
- Needs of Underserved Communities
- Religious Programming aired at no charge

Licenses are not required to air a prescribed percentage of programming in these categories. However, the absence of certain programming may provide ammunition to public interest groups seeking to deny station renewals.

Following this is a section that asks whether the licensee undertook any efforts to determine the programming needs of its community or designed any programming to address the needs identified and, if so, a description of the steps the licensee took.

Next, there is a section on the provision of service for persons with disabilities. It asks for information on closed captioning, voluntary video description efforts, current emergency information and the reasons why any such information was not accessible to the disabled.

The last section requires information about Local Marketing Agreements, Joint Sales Agreements or similar agreements with respect to the sale of three or more hours per day. Presumably, that means an average of three hours per day over the quarter, which roughly approximates the 15% of programming that triggers attribution under the ownership rules.

Copies of the *Standardized Television Disclosure Form* must be retained in the public file until final action has been taken on the station's next license renewal application.

Please feel free to call on us if you need assistance complying with the new rules or have any questions regarding these or other FCC matters.

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