

## FCC Proposes Revised Rules for Online Public File - Including Political File - and Discusses the Public Interest Obligations of TV Stations

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At its meeting today, the FCC vacated its [2007 Order](#) mandating an **online public file** and the filing of the **Form 355 “Enhanced Disclosure” form** that detailed the public interest service of television broadcasters. But these requirements are not gone, as the Commission has adopted a Further Notice of Proposed Rulemaking asking to reinstate an obligation for an online public file, and a Notice of Inquiry is apparently circulating at the FCC that would propose a substitute for the Form 355. The proposal for the new online public file apparently also suggests including new information in the online file, including information about sponsorship identification and copies of shared service agreements. While the text of the FCC order is not yet out, from the information provided at the FCC meeting, the following matters appear to be on the table at the FCC:

- The FCC proposes that TV broadcasters will need to have an online public file, submitted to and maintained on servers at the FCC rather than on each individual station's website
  - Several Commissioners suggest that the Commission will develop a mechanism for accessible storage of online public files, which may be searchable by the public
  - The online public file form will automatically import other FCC filings that are required to be in the file
  - Until the FCC electronic database is perfected, the documents will be placed online in their current formats
- Letters from the public concerning station operations are proposed to be excluded from the online file out of privacy concerns, though broadcasters will still need to keep those letters in a public file at the station.
- The online public file is proposed to include the political file, which was exempt under the 2007 rule as it would be too burdensome to update that report rapidly during an election season
- The online file is proposed to include additional material not now required to be in the public file, including:
  - Copies of **shared services agreements**
  - **Sponsorship identification information** that is now only broadcast on air in connection with the program in which sponsored material is included
- The FCC is currently considering a Notice of Inquiry, a draft of which is apparently circulating among the Commissioners now, that proposes some form of enhanced disclosure form that will replace the Form 355 (and the current Quarterly Programs Issues list) to document the public service provided by TV broadcasters

Reactions of the Commissioners varied. Commissioner Copps urged the FCC to not only require the compilation and accessibility of information about the public service provided by broadcasters, but also standards that would allow the public to complain if they did not believe that a station adequately served the needs of the local community. Commissioner McDowell (who voted against the adoption of the Form 355) said that he feared that the FCC was again moving down the road toward burdensome regulation, and might even be facing constitutional issues about some of its proposals. Commissioner Clyburn claimed that the public files of many broadcasters were in the deep recesses of broadcast stations, in dilapidated filing cabinets, and the materials in the files were prepared in small fonts – and visits to these files was time consuming and burdensome for those wanting to review this material. Chairman Genachowski principally talked about the efficiencies of electronic documents, cataloging the many ways that the FCC has provided information online, including moving many other FCC obligations to online filings.

This is obviously a very important issue for broadcasters, as the potential for new burdensome regulations clearly exists. We wrote about many of the problems with the Form 355 (see, e.g. our article [here](#)), and the new file may well impose similar burdens (especially in connection with the obligation to document sponsorship identification material, and at election time with respect to the political file). Moreover, while these proposals are for TV broadcasters only, one can expect that, if they are adopted, there will be proposals to extend them to radio at some point in the future. We will have more about this proposal once the text of the item is released, and will add links to this article once the statements of the Commissioners the FCC public notice are available.

**Update - 10/27/2012, 1:15 PM** - The Public Notice of the FCC action, which is not very informative, is available [here](#).

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