

# **SCIARRINO & SHUBERT, PLLC**

## ***BROADCAST AND MEDIA LEGAL SERVICES***

### **Public Inspection File Requirements** **For Commercial Broadcast Stations**

The FCC's rules require that every AM, FM or TV broadcast applicant, permittee and licensee maintain a local public inspection file ("LPF") to be made available upon request by any member of the public for inspection during regular business hours. Television stations must now upload most of the materials required to be maintained in the public file to an online public file hosted by the FCC; unless otherwise stated with regard to particular materials in the paragraphs below, television licensees should assume that they must upload the required documents. A television licensee must post a link to the online public file from the home page of its own web site. For the present, radio stations must maintain their public files as they traditionally have, at their main studios; however, there is a pending rulemaking to transition radio broadcasters to the online public file system as well.

#### **I. CONTENT:**

##### **1. Current FCC Authorizations (47 C.F.R. § 73.3526(e)(1))**

Licensees are required to retain the station's most recent license, showing the station's operating parameters, along with any subsequent renewals, assignments, transfers or other modifications or conditional authorizations for the main station. These documents must be retained until a new authorization is issued. The FCC will link current television authorizations to the station's online public file. Under a separate rule, you are also required to post these authorizations at the transmitter control point. Please note that authorizations for broadcast auxiliary, earth stations and microwave authorizations are not to be placed in this folder as they do not relate to the main station's authorization. Such materials, however, must be posted.

##### **2. Applications and Related Materials (47 C.F.R. §73.3526(e)(2))**

All applications filed with the FCC, along with any related material (such as exhibits filed as part of an application, an amendment to an application or subsequent correspondence with the FCC concerning the application) must be kept in the file. Television stations need not upload applications filed via the FCC's consolidated database system ("CDBS") to their online public files; the FCC will automatically import such filings. These documents must be retained only until *Final Commission Action* has been taken on them, that is, until the period for taking appeals or reconsideration of the grant has expired. However, applications which are granted

pursuant to a waiver request must be retained for the duration of that waiver. Finally, short-term license renewal applications must be retained until *Final Commission Action* on the station's next license renewal application. Applications relating to broadcast auxiliary, earth stations and microwave stations should not be placed in this folder as they do not relate to the main station's authorization.

### **3. Citizen Agreements (47 C.F.R. § 73.3526(e)(3))**

If a station is subject to a citizen agreement, then it must retain a copy of the agreement in the LPF. Citizen agreements are agreements between a broadcast licensee and one or more citizens or citizen groups entered into primarily for non-commercial purposes. An example would be an agreement between the station and the NAACP regarding minority hiring practices. The agreement must be retained for the term of the agreement including any renewal or extension of the agreement.

### **4. Contour Map (47 C.F.R. § 73.3526(e)(4))**

The rule requires that a station retain the contour map from the station's original construction permit application (or most recent modification application) filed with the FCC showing the station's coverage area and any other information in the application showing service contours and/or main studio and transmitter location. This must be retained as long as the map reflects current and accurate information. For television stations, the FCC will automatically link the contour map to the online public file.

### **5. Ownership Reports and Contracts (47 C.F.R. § 73.3526(e)(5))**

Stations are required to retain only the most recent and complete Ownership Report on FCC Form 323 and any statements filed since then certifying that the current report is accurate ("Certifications of No Change in Ownership"). These items should only be retained until a new, complete ownership report is filed with the FCC. Contracts and documents listed in Section II, Question 9 of the Ownership Report must be made available to the public within seven days of a request. Since the Ownership Report is filed electronically on a Commission form, a television station need not separately upload it.

### **6. Political File (47 C.F.R. §§ 73.3526(e)(6) and 73.1943)<sup>1</sup>**

The FCC requires stations to keep records showing candidate requests for time, whether the requests were granted, the amount and classes of time sold to political

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<sup>1</sup> Political 101: A Broadcasters' Guide to the Basics, 2004 Edition is available at [www.sciarrinolaw.com](http://www.sciarrinolaw.com).

candidates, the rates charged to them, when the spots aired and a record of free broadcast time if provided. Retain documents in this file for two years. From August 2, 2012, television stations affiliated with a “Big 4” network (ABC, CBS, Fox or NBC) and located in one of the top 50 DMAs were required to upload political file materials to their online public files. As of July 1, 2014, *all* television stations have been required to upload political file materials to their online public files. However, a television stations was only required to upload political file materials from and after the date on which the online file requirement became applicable to it; earlier political files must be kept at the station in accordance with the prior rules for the applicable two year period.

**7. Annual Employment Reports (47 C.F.R. §§ 73.3526(e)(7) and 73.2080)**

Stations must place their Annual Public File Report (if required), FCC Form 397 (Mid-term Report) and FCC Form 396 (filed immediately prior to your renewal application), and other EEO reports must be place in the file. Annual Employment Reports must also be posted on the Station’s website, if they have one. These records must be maintained in the file until final action on the station’s next renewal application. You should be sure to maintain the documentation to back up each of the EEO reports for the entire license term (but do not place it in the public inspection file). For television stations, EEO reports filed with the Commission (e.g., Form 396) need not be uploaded to the online public file, but will be linked to the online file by the FCC.

**8. “The Public and Broadcasting Manual” (47 C.F.R. § 73.3526(e)(8))**

Stations must retain the June 1999 version of this manual in LPF at all times. The manual is available on the FCC’s website, at [http://www.fcc.gov/mb/audio/decdoc/public\\_and\\_broadcasting.pdf](http://www.fcc.gov/mb/audio/decdoc/public_and_broadcasting.pdf). The FCC will post this manual to the online public files of television stations.

**9. Correspondence From the Public (47 C.F.R. §§ 73.3526(e)(1) & 73.1202)**

Stations are required to retain letters and e-mails from the public regarding operation of the station. Television stations should *not* upload public correspondence to the public file, but are to retain those documents at the station in accordance with traditional practice. Obscene and defamatory letters and letters from people who have requested that their comments be kept confidential need not be placed in the LPF, though we suggest that stations retain such letters in a non-public file rather than discard them. The FCC not long ago revised this requirement to include only emails regarding station operations which are specifically transmitted to station

management or an email address publicly advertised by the station. Licensees may maintain a computer file of emails, to be made accessible to the public either via a terminal at the location of the LPF or by providing the emails on diskette upon request. Television and Class A stations must maintain programming and non-programming correspondence files and place the correspondence in the appropriate file. This correspondence should be kept in the LPF for three years from the date the station receives the letters or e-mails.

**10. FCC Investigation/Complaints (47 C.F.R. § 73.3526(e)(10))**

Stations must retain any material relating to an FCC investigation or complaint until notified in writing by the FCC that the material may be thrown out. For television licensees, the FCC may post its letters of inquiry and other investigative materials, or, it may order that such materials are to be excluded from the online public file. A television licensee receiving a letter of inquiry or similar document from the Commission should therefore review it for instructions as to what materials should or should not be uploaded to the public file.

**11. Quarterly Issues/Programs Lists (47 C.F.R. § 73.3526(e)(11)(i) & (e)(12))**

Retain the station's quarterly listing of the five to ten most significant community concerns and issues and a list of the programs which the station broadcast in the preceding three months in response to those concerns. Each of the quarterly lists should be placed in the LPF on the tenth day in the month following the end of the quarter. All lists should be kept in the file until the station's next license renewal application has become a *Final Commission Action*.

**12. Children's Television: Commercial Limits & Children's Programming Reports File (47 C.F.R. § 73.3526(e)(11)(ii) and (11)(iii) and 73.670)**

Commercial television stations are required to demonstrate that they are in compliance with rules that limit commercial advertising during children's programming. The station also has to show that it has provided programming in response to educational and informational needs of children. These records must be updated quarterly by the 10<sup>th</sup> day of the next month, and be maintained in the public file until the station's next license renewal application has become a *Final Commission Action*. The FCC will automatically post these reports to the online public file for the station.

**13. Local Public Notice Announcements (47 C.F.R. § 73.3526(e)(13))**

The station must certify that it has properly notified the public of its filing of a license renewal application. The station must keep records of the dates and times that pre-

and post-filing broadcast announcements relating to the station's license renewal application filing were aired and the text of those notices must be made part of the certifying statement. These records must be placed in or uploaded to the file, as the case may be, within seven days of the last broadcast of the particular announcement, and should be retained as long as the license renewal application to which it refers is retained.

**14. Time Brokerage Agreements (47 C.F.R. § 73.3526(e)(14))**

A copy of any time brokerage agreement, or "LMAs", must be kept both in the licensee's LPF and the LPF of the station on which the licensee brokers time for as long as the agreement is in effect. Confidential or proprietary information may be deleted from the agreements.

**15. Must-Carry/Retransmission Consent Status (47 C.F.R. § 73.3526(e)(15))**

Television stations must elect one or the other status with cable systems every three years. Copies of the statements electing a status must be kept in the LPF by the election deadline and maintained for the consent period.

**16. Joint Sales Agreements (47 C.F.R. § 73.3526(e)(16))**

Both television and radio stations must keep copies of agreements that involve the joint sale of advertising time, whether they involve stations in the same or different markets. Any confidential or proprietary information may be deleted from the agreements. This record should be kept for as long as it is in effect.

**17. Class A Continuing Eligibility (47 C.F.R. § 73.3526(e)(17))**

Every quarter, Class A television stations must comply with FCC rules that require a minimum of 18 hours a day of broadcasting, including at least 3 hours a week of locally produced broadcasting. Class A television stations must document this compliance in the LPF and the records should be updated every quarter.

**18. Sponsorship Identification (47 C.F.R. § 73.1212)**

The station is required to retain a list of the chief executive officers, executive committee members or members of the board of directors of any corporation, association, committee, unincorporated entity or other entity paying for or furnishing material that is political in nature or involves a controversial matter of public importance that is broadcast on the station. This material must be kept for two years.

## **19. Issues of National Importance (47 U.S.C. §315(e))**

The Bipartisan Campaign Reform Act of 2002 (BCRA) requires that stations maintain a record of all requests to purchase time related to any matter of national importance, including federal candidates, federal elections or national legislative issues. The record must contain 1) the request, 2) the station's disposition of the request, 3) rates charged, 4) class of time purchased, 5) the name of the federal candidate or issue discussed, 6) if purchased by a federal candidate, the name of the committee, candidate's name, and committee treasurer, and 7) if purchased by an organization or individual, other than a federal candidate, the contact name, address and phone number of the purchaser and list of the officers or board of directors of the organization. The online public file interface contains a folder for "non-candidate issue ads" to which television licensees must upload this material.

This document is provided to introduce the reader to the fundamental basics of broadcaster's obligations in maintaining their Local Public Inspection Files. It is imperative that licensees ensure that the LPF is updated regularly and available to the public. If the reader is unsure of their responsibilities, please seek advice from your communications counsel or the FCC staff.