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On April 27, the Federal Communications Commission (“FCC”) ordered the nation’s television broadcasters to transition filing their records of political air time sales from paper to a website the FCC will create and host. This new requirement will become effective 30 days after the FCC announces the U.S. Office of Management and Budget’s (“OMB”) approval in the *Federal Register*. Whether OMB approves the order, or if broadcasters are successful in their expected litigation, is unclear. Media buyers and political beat reporters will benefit the most from this new requirement if it is implemented. Advocacy groups will also benefit from enhanced access to the political file contents even if they are not entitled to campaigns’ rate discounts. Just knowing what others are buying, when their ads will run, and how much they are paying can help an advocacy organization better target its messaging strategy.

About the FCC Political File

For decades, federal communications law has required broadcasters and cable operators to make certain documentation regarding their political advertising available for review at their main studios. Any interested party—whether John Q. Public, candidates’ media buyers, or the press—can view this “political file” during regular business hours just by asking. Broadcasters and cable system operators must also help political file reviewers make copies. Contents include the last two years’ records of:

- Free air time given to campaigns (other than certain news coverage)
- Sales of issue ad spots that relate to “any political matter of national importance” (i.e., including at least those ads that reference (1) legally qualified candidates, (2) any election to federal office, or (3) a national legislative issue of public importance)
- Specific requests for paid time and whether the request is granted or rejected
- For each campaign or issue ad air time purchase:
 - Campaign information (candidate name, election/office sought, treasurer’s name, and campaign contact person’s name, address and telephone number) **or** issue ad sponsor information (purchaser name, address, and telephone number; contact person; list of the CEO/board of directors; issue to which the programming refers; and if applicable, the candidate and election/office to which the programming refers)
 - The exact rates charged, including any rebate
 - Spot length
 - Class of time purchased (fixed-position, run of

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- schedule, pre-emptible, etc.)
- o Date and time of when each spot actually aired

Campaigns' media buyers need this information to track their opponents' activity, obtain the FCC-mandated lowest rate during the 45- or 60-day pre-election "LUC windows" (days before the primary and general elections, respectively), and ensure equal access to the broadcaster or operator's air time.

Media buyers for national party committees, Super PACs, and issue advertisers cannot demand equal time or the lowest unit rate, but they too review political files. Super PACs find this information particularly useful because federal campaign finance law prohibits them from coordinating message content, timing or venue with the campaigns they support.

Travelling to each outlet in a given Designated Market Area ("DMA") is the challenge, particularly in presidential and senate elections that involve multiple DMAs and dozens of stations or cable systems. Often, a media buyer does not have the time or resources to review the political file in person. Relying on a salesman's over-the-phone analysis of the pertinent information and representation that the quoted price truly is the lowest unit rate has been their only option.

Transition to Online Format

Once the FCC's order goes into effect, the "Big Four" television network affiliates (ABC, CBS, FOX and NBC) in the Top 50 DMAs must start filing political file contents online. Other television stations in the Top 50 DMAs, and all television stations in the remaining 160 DMAs, have until July 1, 2014 to comply.

The FCC's order applies prospectively; the Big Four/Top 50 television stations must upload only new political file contents after this new requirement goes into effect. They will not need to upload paper records created before the effective date. Radio stations and cable television system operators are exempt from the online political file transition for the time being.

The National Association of Broadcasters and television station groups have objected to this online migration for years (the FCC's order also applies to the larger "public file," which includes programming- and FCC-license-related content beyond political materials). Despite their arguments that the paper-to-online transition would impose undue financial burdens, risk federal anti-trust violations, distort local advertising markets, cause political buyers to shift spending to less-regulated media, and cause commercial harm by expanding commercial advertisers' access to proprietary political advertising rate information, the FCC has nonetheless ordered this transition. Broadcasters very likely will challenge the FCC's order during the OMB review process and, should OMB approve the order as written, in the courts.

Impacts of the New Online Political File Rule

If the FCC's order survives OMB review as written, 24/7 Internet access to the Top 50/Big Four stations' new political file contents will spare media buyers from reviewing the materials in person or relying on station personnel to share the pertinent information over the telephone. This will increase their ability to respond quickly to campaign developments. According to the FCC, the Top 50/Big Four stations comprise 11 percent of all television stations, reach 65 percent of all Americans, and account for roughly 60 percent of the money spent for television political advertising in a major election cycle.

In particular, 24/7 Internet access to a station's political file will help Super PACs place ads in a more targeted fashion. Seeing where a favored campaign—or the opposition—has reserved time will help a Super PAC to avoid duplicative ad buys or to cover markets, stations or demographics that the campaign's ad buys have not reached. Accessing campaigns' air time purchases through the political file does not risk violating the anti-coordination rules.

Top 50/Big Four television stations would incur additional compliance costs and might lose some revenue through greater transparency of the lowest unit rate data. More worrisome for them, however, is the increased pressure from commercial advertisers for equivalent discounts.

Television stations in the other 150 markets have at least two years before this change will apply to them. Radio stations, cable systems, and satellite providers are not covered at all by the FCC's order, although future rulemakings may address their political file obligations.

Below is a list of the Top 50 DMAs. They are organized by groupings of "toss-up" competitive states in the 2012 presidential and senate elections, DMAs located adjacent to toss-up states, and other DMAs covered by the FCC's new political file rule.

Targeted 2012 Presidential/Senate Election DMAs

- Arizona
 - Phoenix (# 13)
- Colorado
 - Denver (# 17)
- Florida
 - Jacksonville (# 50)
 - Miami-Ft. Lauderdale (# 16)
 - Orlando-Daytona Beach-Melbourne (# 19)
 - Tampa-St. Petersburg (# 14)
 - West Palm Beach-Ft. Pierce (# 38)
- Massachusetts/New Hampshire
 - Boston (# 7)
- Missouri
 - Kansas City (# 31)
 - St. Louis (# 21)
- Nevada
 - Las Vegas (# 40)

- North Carolina
 - Charlotte (# 25)
 - Greenville-Spartanburg-Asheville-Anderson (# 37)
 - Greensboro-High Point-Winston-Salem (# 46)
 - Raleigh-Durham (# 24)
- Ohio
 - Cleveland-Akron (# 18)
 - Cincinnati (# 35)
 - Columbus (# 32)
- Pennsylvania
 - Harrisburg-Lancaster-Lebanon-York (# 41)
 - Philadelphia (# 4)
 - Pittsburgh (# 23)
- Virginia
 - Norfolk-Portsmouth-Newport News (# 43)
 - Washington, DC (# 8)
- Wisconsin
 - Milwaukee (# 34)

DMAs Adjacent to 2012 Presidential/Senate Election DMAs

- Connecticut
 - Hartford & New Haven (# 30, adjacent to Western Massachusetts)
- Illinois
 - Chicago (# 3, adjacent to Southeastern Wisconsin)
- Michigan
 - Detroit (# 11, adjacent to Toledo, Ohio)

Other DMAs

- Alabama
 - Birmingham (# 39)
- California
 - Los Angeles (# 2)
 - Sacramento-Stockton-Modesto (# 20)
 - San Diego (# 28)
 - San Francisco-Oakland-San Jose (# 6)
- Georgia
 - Atlanta (# 9)
- Indiana
 - Indianapolis (# 26)
- Kentucky
 - Louisville (# 48)
- Maryland
 - Baltimore (# 27)
- Michigan
 - Grand Rapids-Kalamazoo-Battle Creek (# 42)
- New York
 - New York City (# 1)
- New Mexico
 - Albuquerque-Santa Fe (# 45)
- Oklahoma
 - Oklahoma City (# 44)
- Oregon
 - Portland (# 22)
- Tennessee

- Memphis (# 49)
- Nashville (# 29)
- Texas
 - Austin (# 47)
 - Dallas-Ft. Worth (# 5)
 - Houston (# 10)
 - San Antonio (# 36)
- Utah
 - Salt Lake City (# 33)
- Washington
 - Seattle-Tacoma (# 12)

Please contact the authors of this article if you have any questions or would like to discuss the FCC's new political rule.

The FCC's *Second Report and Order* (FCC 12-44) is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0508/FCC-12-44A1.pdf.

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