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FCC Orders TV Stations to Post Their Political Files Online

Starting August 2, 2012, affiliates of the four major television networks (ABC, CBS, FOX, and NBC) in the nation's 50 largest markets must transition from maintaining their "political file" records on paper to an FCC website. Among other disclosures, these stations must upload records of political advertising sales and inquiries immediately. Online access to stations' political files will benefit not only media buyers and political beat reporters, but also anyone who is considering buying broadcast time, such as advocacy groups and others that are not entitled to the lowest unit charge.

About the FCC Political File

For decades, the Federal Communications Commission (FCC) has required broadcasters and cable operators to make certain documentation regarding 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 place new materials in the political file immediately and help political file reviewers to make copies. Contents include the last two years' records of:

- Free air time given to campaigns (other than certain news coverage)
- Requests to purchase issue ad spots that relate to "any political matter of national importance" (i.e., including at least those ads that reference (1) a legally qualified candidate, (2) any election to federal office, or (3) a national legislative issue of public importance)
- Specific requests for broadcast time and whether the request is granted or rejected
- For each purchase or provision of broadcast time:
 - Sponsorship information for
 - Campaigns (candidate's name, election/office sought, treasurer's name, and campaign contact person's name, address, and telephone number) or

- Issue ad sponsors (purchaser's 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 rate charged, including any rebate
- Spot length
- Class of time (fixed-position, run of schedule, pre-emptible, etc.)
- Date and time when each spot actually aired

Campaigns' media buyers need this information to track their opponents' activity, obtain the FCC-mandated Lowest Unit Charge ("LUC") 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 Super PACs and issue advertisers are not entitled to equal time or the lowest unit charge, but they too review political files to determine what the campaigns are doing and how much they are spending on media.

Travelling to each outlet in a given Designated Market Area (DMA) is a challenge, particularly in presidential and senate elections that involve multiple DMAs and dozens of stations or cable systems. Often, media buyers do not have the time or resources to review political files 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 charge has been their only option.

Transition to Online Format

Only the "Big Four" television network affiliates (ABC, CBS, FOX, and NBC) in the Top 50 DMAs must start filing political file contents online at first. 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. They will not need to upload paper records created before August 2, 2012. Radio stations, cable television system operators, and satellite 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 April 27, 2012 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 inflict commercial damage by expanding commercial advertisers' access to proprietary political advertising rate information, the FCC has nonetheless ordered this transition.

The broadcasters appealed to the U.S. Court of Appeals for the District of Columbia Circuit, arguing that the FCC exceeded its authority in ordering the online political file transition. They also asked the FCC

and the court to delay implementation of the order pending the court's decision. Both refused to delay implementation; the court has not yet ruled on the merits of the broadcasters' appeal. Consequently, the online political transition will begin on August 2 despite the in-process appeal.

Impacts of the New Online Political File Rule

24/7 Internet access to the Big Four/Top 50 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 in most major races. According to the FCC, the Big Four/Top 50 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 federal campaign finance prohibitions against coordinating message content, timing, or venue with the campaigns a Super PAC supports.

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

Television stations in the other 150 markets have almost 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

- 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)
- 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)
- Arizona
 - Phoenix (# 13)
- 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)
- Pennsylvania
 - Harrisburg-Lancaster-Lebanon-York (# 41)
 - Philadelphia (# 4)
 - Pittsburgh (# 23)
- 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 Client Alert if you have any questions or would like to discuss the FCC's new political file rule.

To download the FCC's *Second Report and Order* (FCC 12-44), please [click here](#).

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