

Public Inspection File

The applicant has certified in the affirmative to the Online Public Inspection File (“OPIF”) Certification and wishes to provide some additional context to ensure the Commission Staff fully understands the context for certain items when reviewing the OPIF.

A. Non-Final Orders in the Political File

There are multiple files in the station’s online political file that are designated as “contracts” or “orders” but are merely initial records memorializing non-final orders for certain non-candidate issue ads. Given the degree of scrutiny focused on the online political file record keeping practices of broadcasters, the station tends to over-disclose from a record keeping perspective and now believes that further explanation of such over-disclosure is warranted.

By way of one example, non-candidate issue advertiser Truth and Prosperity made an inquiry with the station in late March 2020 in an effort to *reserve* time for the week of October 13, 2020, i.e., more than six months ahead of time from when the flight might actually air. To address the unknown circumstances—including whether or not the advertiser will actually wind up airing any advertising during that period of time—the station added a note (the “Non-Final Order Legend”) to the initial WideOrbit contract (which was uploaded to the OPIF on March 31, 2020, which is the same day it was generated) that says this:

“Reservation: Final total, class of time and rates subject to change. Order has not been accepted at this time. For inventory management purposes, this request will be evaluated again at a date closer to the election.”

See, e.g., WCWG 2020 Non-Candidate Issue Ads Folder, Truth and Prosperity Folder, File Titled TRUTH AND PROSPERITY 2001761, available at <https://publicfiles.fcc.gov/api/manager/download/b53f0919-4c7e-26eb-df4b-e401e9c7c537/f2294115-7903-4c8c-8201-0f69ec13e543.pdf>.



As noted in the Non-Final Order Legend itself, the purpose of generating the WideOrbit contract was to assist the station with inventory management and to “bookmark” the need to reconvene with the advertiser later in the year to determine whether there would be any final orders.

More recently, the station has inserted a statement into the folder to make clear that the class of time of the spots that the advertiser was attempting to reserve in late March 2020 (but which were not, at that time, “final orders”) is “immediately preemptible without notice.” *See, e.g.*, WCWG 2020 Non-Candidate Issue Ads Folder, Truth and Prosperity Folder, File Titled TRUTH & PROSPERITY CLASS OF TIME MEMO, available at <https://publicfiles.fcc.gov/api/manager/download/b53f0919-4c7e-26eb-df4b-e401e9c7c537/07f31113-20cb-4d90-978e-00d56a95each.pdf>.



In the normal course, as the time for the flight drew or draws nearer, the station would or will have naturally been in touch with the advertiser to firm up the schedule, discuss inventory pressure, review the substance of the ads themselves, and actually finalize the details of the order(s), including rates, class of time, etc. as referenced in the Non-Final Order Legend. In the course of that process, the station would/will in due course generate new, updated documentation which would include the final, agreed-up rates, times, class(es) of time, etc. in lieu of the Non-Final Order Legend quoted above. In other words, at some point later than the initial March 31, 2020, WideOrbit contract upload (for the Truth and Prosperity advertiser being used as the example here), the previously (or currently) non-final orders will have become “final orders” such that they trigger the record keeping requirements of the Commission and the Communications Act of 1934, as amended.

This approach is consistent with the Commission’s 2012 Second Report and Order in *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012), where the full Commission made clear that only “final orders” are required to be uploaded in response to “requests for time.” The relevant portion of the Commission’s pronouncement, including footnotes, is reprinted below.

41. *Substantive Political File Requirements.* We likewise are not persuaded by arguments that the rules regarding what material must be included in the political file are vague and that, therefore, the Commission should not adopt an online posting requirement.¹²⁸ As discussed above, this proceeding simply modernizes the procedures television broadcasters use to inform the public about information they are already required to disclose. If any licensee is unsure about any aspect of our political file requirements, it may request clarification of our existing substantive disclosure rules. To respond to specific questions raised in this record, however, we offer the following guidance. The political file rule requires that licensees “keep and permit public inspection of a complete and orderly record (political file) of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted.”¹²⁹ One commenter argues that it is unclear what “requests” includes.¹³⁰ Although we do not think that term is unclear, we clarify that licensees are required to place in their political files **any final orders** by candidates for specific schedules of time or availabilities within a specific schedule of time – in other words, orders to buy particular schedules (including programs or dayparts), amounts of time (including spot or program lengths), and classes of time for particular days (such as preemptible spots, Monday-Friday rotations, runs of schedule or specific placements).¹³¹ Licensees are not required to place in their political files general requests by candidates for advertising time stations have available to purchase, or rates for a general array of time.

¹²⁸ National Religious Broadcasters at 13-14; Joint TV Broadcasters at 5; Named State Broadcasters at 10.

¹²⁹ 47 C.F.R. § 73.1943. The same information, among other things, must be included with respect to issue advertising containing a message relating to a “political matter of national importance.” 47 U.S.C. § 315(e). These issue ads will also need to be included in the online political file, just as they currently need to be included in the local political file.

¹³⁰ National Religious Broadcasters Comments at 13-14.

¹³¹ We note that “any final orders” mean orders that station representatives reasonably believe to be a final, agreed-upon order. If the final order is later amended after being included in the on-line political file, a station can replace the previously final order with the amended final order, or may simply upload the amended final order.

In short, we hope that this explanation of these files is helpful for any Commission Staff that comes across any of these files with the Non-Final Order Legend during a review of the station's online political file.

B. Reminder Warranted for Two Timely-Uploaded Documents

In addition, a cursory review of WCWG's OPIF may result in the erroneous conclusion that a couple of documents were uploaded late, and we'd like to pro-actively address those issues as well. As a result of the government shutdown that affected the accessibility of WCWG's OPIF (and all other OPIFs) for upload purposes in January 2019, there are two documents that might, at first glance, appear to have been uploaded late. In each case, however, the documents were timely uploaded when the government shutdown is taken into account. More specifically, the Issues/Programs List for Fourth Quarter 2018 and the children's commercial time limits certification records for Fourth Quarter 2018 were timely uploaded (both on January 28, 2019) once the government shutdown is taken into account.

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