

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., WXII-TV 2020 Non-Candidate Issue Ads Folder, Truth and Prosperity Folder, File Titled TRUTH AND PROSPERITY 2001748, available at <https://publicfiles.fcc.gov/api/manager/download/d2013e62-94ab-e6a1-4394-9f02ad02f3ff/e959a522-2a58-4929-903b-66f332ad8997.pdf>.

 TRUTH AND PROSPERITY 2001748	140.66 KB	03/31/2020 3:39 PM
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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.*, WXII-TV 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/d2013e62-94ab-e6a1-4394-9f02ad02f3ff/44414819-b1cf-4128-ad16-cfc37b36f335.pdf>.

 TRUTH & PROSPERITY CLASS OF TIME MEMO	245.56 KB	06/25/2020 4:03 PM
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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. Two Fourth Quarter 2012 Documents (Ongoing Implementation of Then-New OPIF Rules)

The fourth quarter 2012 Issues/Programs List in WXII-TV's OPIF shows a date stamp of February 1, 2013. The fourth quarter 2012 children's commercial time limits records show a date stamp of January 29, 2013. Those dates would have been a few weeks after the regular January 10, 2013, upload deadline for such fourth quarter materials. Both documents were timely created and filed in the station's paper public inspection file (which, at that time, still existed in parallel to the newly-launched online public file). We have reviewed the "history" records and the "recycle bin" records in WXII-TV's OPIF as well as privileged and confidential communications between the station and legal counsel in an effort to determine the circumstances behind these apparently few-weeks-late uploads. We have been unable to determine with certainty whether these documents were actually uploaded late or whether they were initially uploaded in a timely fashion and subsequently deleted and re-uploaded.

Significantly, the ongoing circumstances at that time in January 2013 were that the OPIF requirements were still quite new (the original OPIF had only been launched a mere four+ months prior), and stations were still growing accustomed to the shift from paper public file records to online public file maintenance. The Commission had set a February 4, 2013, compliance deadline for the upload of all pre-August 2, 2012 public file documents but had required that post-August 2, 2012 public file documents be uploaded in real-time. Naturally and predictably, many stations were confused by the disparate upload deadlines, and it is plausible that WXII-TV's seemingly-late uploads of the two fourth quarter documents fall into the category of being victims of the "compliance gap" (i.e., that personnel responsible for the uploads incorrectly understood that the fourth quarter documents needed to be uploaded by February 4, 2013, instead of by January 10, 2013).

In any event, both of the documents were uploaded prior to the February 4, 2013, compliance deadline and had been timely created and maintained in the station's paper public file until that time. As such, we believe that the brief three-week period during which the materials were not uploaded was *de minimis* (especially in light of the then-extant ongoing conversion from paper to online public file requirements) and didn't prejudice access by anyone to those materials (since they were readily available in paper format at the station's main studio and have been available online since then).

C. Reminder Warranted for Four Timely-Uploaded Documents

In addition, a cursory review of WXII-TV's OPIF may result in the erroneous conclusion that four documents were uploaded late, and we'd like to pro-actively address those issues as well. As a result of two government shutdowns that affected the accessibility of WXII-TV's OPIF (and all other OPIFs) for upload purposes, there are multiple documents that might, at first glance, appear to have been uploaded late. In each case, however, the documents were timely uploaded when the respective government shutdown is taken into account. More specifically, the (i) Issues/Programs List for Third Quarter 2013, (ii) children's commercial time limits records for Third Quarter 2013, (iii) Issues/Programs List for Fourth Quarter 2018, and (iv) children's commercial time limits records for

Fourth Quarter 2018 were timely uploaded once the respective government shutdown is taken into account.

D. OPIF Technical Issues Currently Preventing Access to Children's Reports

It recently came to our attention that the Children's Television Programming Reports from prior to Fourth Quarter 2015 are not rendering properly when clicked on in WXII-TV's (or any other TV station's) OPIF. WXII-TV has periodically checked all of the documents in its OPIF and knows that these reports used to render properly, and it is unclear to WXII-TV precisely when this issue first arose. We have communicated with the FCC Staff about the issue and have been advised that they are already aware of the issue. These reports are still available and accessible via LMS, which means that neither the FCC Staff nor the public have been materially prejudiced by this technical issue, which is beyond the control of WXII-TV.

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