

**Holland+Knight**

Tel 202 955 3000  
Fax 202 955 5564

Holland & Knight LLP  
2099 Pennsylvania Avenue, N.W.  
Suite 100  
Washington, D.C. 20006-6801  
[www.hklaw.com](http://www.hklaw.com)

## **PUBLIC INSPECTION FILE REQUIREMENTS**

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**\*Do Not Place this Memo in the Public File\***

## **EXECUTIVE SUMMARY**

Among the most common compliance issues for broadcast station licensees, often leading to FCC inquiries, delays in processing license renewal applications and forfeitures, are mistakes in maintaining public inspection files. This memo details the exact materials that the Commission requires to be maintained in public inspection files, how long to retain them, how to maintain the file and how to handle requests to view the contents of the public inspection file.

Attachment A to this memo is a two-page chart of required public file materials and their retention periods. It should be useful as a check-sheet.

We suggest that station managers familiarize themselves with this memo and that all station personnel who have any responsibility for providing materials that enter the public file, who maintain the file or respond to inquiries about it, review this memo thoroughly and keep a copy readily available. In addition, we suggest that our companion memo concerning non-public broadcast station records be reviewed and understood on the same basis.

All earlier editions of this memo should be discarded immediately and replaced with this one. As always, please feel free to contact us at any time that questions or concerns arise, including if additional or replacement copies of public inspection file materials are needed.

HOLLAND & KNIGHT LLP

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## **Public Inspection File Requirements**

### **I. INTRODUCTION.**

A broadcast station's public inspection file must be maintained in accordance with strict FCC requirements. The file may be maintained electronically (on a computer) or on paper. The purpose of the file is to allow all interested persons to inspect locally some, but not all, documents pertaining to a station that are available in the Commission's files in Washington, D.C., in addition to other documents such as "issues/programs lists" that are not ordinarily filed with the FCC at all. (Please refer to our companion memo describing records which broadcasters must maintain that are not placed in the public file.)

FCC rules specify precisely the documents required to be kept in the file. The penalties for failure to maintain the public inspection file properly are the same as for violating any other Commission rule or regulation. The "base forfeiture" for a violation of the public file rule is \$10,000. The Commission may fine licensees and may impose other sanctions for failure to comply with public file requirements. In filing renewal applications, all stations must certify that they have put all required materials in their public files. Petitions to deny renewal applications or other complaints filed with the FCC have in the past charged that station public files were incomplete or not available for examination when they should have been.

Many stations keep more material in their public files than is required. With a few exceptions noted in this memo, we do not recommend that anything more be kept in the file than is required by the Commission.

### **II. WHAT MUST BE INCLUDED IN THE PUBLIC INSPECTION FILE.**

Copies of all of the following documents must be included in your station's public inspection file. The documents must be kept there for the time periods set out later in this memo.

#### **A. Current FCC Authorization.**

A copy of the current FCC authorization to construct or operate the station (i.e., the license or, if there is no license, the construction permit), as well as any other documents necessary to reflect any modifications to the authorization or any conditions that the FCC has placed on the authorization.

#### **B. Applications and Related Materials.**

1. A copy of all main station applications tendered for filing with the FCC and all related material, as well as copies of Initial Decisions and Final Decisions in hearing cases.<sup>1</sup>

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<sup>1</sup> The FCC rule provides that a station should retain "any applications" tendered for filing with the FCC, which could technically be read to include applications for translators, auxiliaries, earth stations and private radio facilities. However, from our conversations with the FCC staff, we believe that the FCC did not intend to expand the filing requirement so broadly, and only intended to include applications concerning the main station.

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2. If a petition to deny is filed against an application and has been served on the applicant, a statement that such a petition has been filed must be maintained in the file together with the name and address of the party filing the petition. The petition itself need not be kept in the file.

### ***C. Citizen Agreements.***

A copy of every written citizen agreement, which is an agreement between a broadcast licensee and one or more citizens or citizen groups. Such agreements ordinarily concern programming and employment practices.

### ***D. Contour Maps.***

A copy of any signal contour map submitted with any application tendered for filing with the FCC, and any other information in the application showing signal contours and/or the station's main studio and transmitter location (*i.e.*, any engineering statement further explaining the contours of the service area).

### ***E. Ownership Reports and Related Materials.***

1. A copy of the most recent, complete ownership report filed with the FCC for the station, together with all related material. The most recent complete ownership report of entities in the direct chain of ownership of the licensee also must be in the file.
2. A licensee may choose to retain in the file either (1) copies of all currently effective contracts listed in its ownership reports as having been filed with the FCC or (2) an up-to-date list of such contracts. Licensees who choose to retain a list of contracts must provide a copy of any contract to requesting parties within seven days. In addition to network affiliation agreements between a TV station and a national network, these will include documents such as option agreements or stock pledge agreements which may affect current or future ownership of the licensee or permittee.

### ***F. Time Brokerage Agreements.***

For commercial radio and television stations, a copy of every agreement or contract involving time brokerage of the licensee's station or of another station by the licensee. Confidential or proprietary information may be redacted.

### ***G. Joint Sales Agreements.***

For commercial radio and commercial television stations, copies of all agreements for the joint sale of advertising time involving the station, whether the agreement involves stations in the same markets or in differing markets. Confidential or proprietary information may be redacted.

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### *H. Political Records.*

1. A binder consisting of all requests for broadcast time made by or on behalf of any candidate for public office over the past two years, together with notations showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted. These required notations include the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased. In addition, a list of the chief executive officers or members of the board of directors of the entity purchasing political time also must go into the public file. (Political broadcast obligations often are complex. Holland & Knight distributes detailed memoranda covering political broadcasting requirements, including suggested forms of disclosures and certifications which may be used in the public file, but generally, copies of political broadcast rate disclosure statements provided to candidates' time buyers should be placed in the public file.)
2. A record of any free time given to candidates over the past two years.
3. In addition to the FCC's rules concerning political time records, the Bipartisan Campaign Reform Act of 2002 ("BCRA") includes the following record keeping requirements for any request to purchase broadcast time made by or on behalf of candidates or that communicates a message relating to any "political matter of national importance" (*i.e.*, relating to a legally qualified candidate, any election to federal office, or a national legislative issue of public importance):
  - a record of each request to purchase time;
  - whether the station accepted or rejected the request (in whole or in part);
  - the rate charged;
  - the date and time on which the communication aired;
  - the class of time purchased;
  - the name of the candidate and office sought, the election to which the communication refers, or the issue to which the communication refers (as applicable);
  - for time requested by, or on behalf of, a federal candidate, the station must include the name of the candidate, the name of the authorized committee of the candidate, and the name of the treasurer of such committee;

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- for time requested by someone other than the federal candidate or his/her authorized committee, keep a contact name, address, and phone number for the purchaser and a list of the chief executive officers or members of the executive committee or of the board of directors of such purchaser.

In other words, the BCRA requires broadcasters to maintain a public file record for any request for paid programming, including third party spots, which refer to a legally qualified candidate, a federal election, or a national legislative issue of public importance.

If time is sold, a copy of the order and invoice should be placed in the file as soon as possible, as well as any changes or make goods. We recommend that a copy of a station's current political advertising disclosure statement be maintained in the political file as well.

### *I. Employment Reports.*

Stations must include a copy of the station's Annual Equal Employment Opportunity ("EEO") Public File Report (a list of full-time job vacancies filled during the preceding year, recruitment sources used to fill each vacancy, the recruitment source that referred the hiree for each full-time vacancy, the total number of persons interviewed for full-time vacancies during the preceding year, the total number of interviewees referred by each source, and a description of outreach initiatives undertaken in the preceding year). There is no official FCC form for this report. Also, if the station maintains a website, the Annual EEO Public File Report must be posted on the website in addition to being placed in the public file.

The Broadcast Equal Employment Opportunity Program Report (FCC Form 396) is filed with the FCC in conjunction with license renewal applications and is kept in the public file. The due dates for the Annual EEO Public File Report and for Form 396 vary by state. Please check with us for the due date for EEO reports for stations in your state.

In addition, commencing June 1, 2007, all stations must file FCC Form 397, the "Broadcast Mid-Term Report." That Form seeks certain information about the stations that comprise the employment unit, identification of the person responsible for EEO matters, and requires the submission to the FCC of the unit's two most recent EEO public file reports. The Form must be filed four years after the due date of the unit station's last license renewal application, which was four months prior to the station's last license expiration date. These due dates vary by state. Please check with us for the due date for filing Form 397 for stations in your state.

When an FCC Form 396-A ("Broadcast Equal Employment Opportunity Model Program Report") is filed with the FCC as part of an assignment of license or transfer of control, it also is placed in the public inspection file.

Finally, FCC Form 395-B ("Broadcast Annual Employment Report") will need to go into the public file if it is ever reinstated by the Commission. Licensees which may have filed FCC

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Form 395-B years ago that have not yet obtained license renewal must maintain copies of the old 395-B in the public file until final grant of license renewal.

### ***J. The Public and Broadcasting***

A copy of the most recent version of the manual entitled “The Public and Broadcasting,” a new version of which was made available by the FCC in 1999. This can be obtained from the FCC's website, at [www.fcc.gov/mb/audio/decdoc/public\\_and\\_broadcasting.html](http://www.fcc.gov/mb/audio/decdoc/public_and_broadcasting.html).

### ***K. Letters and e-mail from the Public.***

All written comments and suggestions received from the public regarding operation of the station must be included in the public inspection file, including letters to television stations concerning violence in programming, unless the letter writer has requested that the letter not be made public or unless the licensee reasonably feels that a letter should be excluded from public inspection because of the nature of its content, such as a defamatory or obscene letter. Anonymous letters should be included. Replies made to the correspondence by the station are not required to be retained in the file, although some stations choose to do so voluntarily.

It is particularly important to keep track of communications and suggestions received from the public that characterize a TV station's programming as constituting violent programming. An exhibit summarizing such comments and suggestions must be filed as part of the station's renewal application.

"Written comments and suggestions received from the public" includes e-mail messages if they were sent to station management or to an e-mail address publicized by the station. Personal e-mail messages sent to station employees need not be retained.

E-mail messages may be retained either on paper or in a computer file. Licensees who choose to maintain a computer file of e-mails must make the file available to the public by providing access to a computer terminal at the location of the paper public file, or by providing the public with a copy of such e-mails on computer diskette, upon request. In the case of identical communications, such as form letters or e-mails, licensees and permittees may retain one sample copy of the letter or electronic mail message together with a list of the names of people who sent identical communications.

Letters received by TV and Class A TV stations should be separated into two categories — those dealing with programming and those dealing with non-programming matters. If comments in a letter relate to both categories, file it under the category to which the writer has given greater attention.

### ***L. Material Relating to FCC Investigations or Complaints.***

Material having a substantial bearing on a matter which is the subject of an FCC investigation or complaint to the FCC of which the applicant, permittee, or licensee has been advised. For example, the station should retain the notice from the FCC that a complaint was filed, a copy of the station's response to the complaint, and any other relevant material. If a

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complaint to a station is purely private (that is, if the FCC is not involved), such material is not required to be retained.

### ***M. Station Programming Records.***

1. Issues/Programs Lists. This list includes a brief narrative describing what issues of public importance were given significant programming treatment during the preceding three month period. The description of the programs shall include, at a minimum, the time, date, duration, and title of each program in which the issue was treated. These quarterly lists must be filed by January 10, April 10, July 10 and October 10 of each year. (Please let us know if you would like copies of our memoranda on this subject.)
2. Commercial Time Limits. For television stations only, records concerning compliance with the commercial limits on children's programming. These quarterly records must be filed by January 10, April 10, July 10 and October 10 of each year. (Please let us know if you would like copies of our memoranda on this subject.)
3. Children's Television Programming Reports. For television stations only, on a quarterly basis, a completed children's television programming report (FCC Form 398). Again, these are to be filed by January 10, April 10, July 10 and October 10 of each year. The reports must be separated from other material in the public inspection file, and the licensee must publicize in an appropriate manner the existence and location of these reports. (Please let us know if you would like copies of our memoranda on this subject.)

### ***N. Local Public Notices.***

Certification and the text of local public notice announcements concerning renewals and other applications are to be kept in the public file. A certification that pre-filing and post-filing renewal announcements have been broadcast, together with the texts of the announcements and the dates and times they were broadcast, must be placed in the file within seven days following broadcast of the last post-filing announcement.

### ***O. Must-Carry or Retransmission Consent Elections.***

For television stations only, the must-carry or retransmission consent election letters that television stations send to all cable systems in the market every three years. In contrast, retransmission consent agreements do not go in the file.

### ***P. Class A TV Continuing Eligibility.***

Documentation sufficient to demonstrate that the Class A TV station continues to meet eligibility requirements.

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### **III. WHAT SHOULD *NOT* BE INCLUDED IN THE PUBLIC INSPECTION FILE.**

Many stations include documents in their public files that are not required, ordinarily an undesirable practice except for a few special items, such as ascertainment reports. The public inspection file is not an “FCC file” into which to dump all documents relating to the Commission, including letters from counsel. It is an official record file, not a work file. The following items are often unnecessarily included in a station’s public file:

- A.** FM or TV translator station or FM booster station licenses.
- B.** Earth station, private radio or broadcast auxiliary station (e.g., remote and TV pickup, STL and intercity relay) licenses.
- C.** Pleadings, briefs, transcripts of testimony, depositions, FCC decisions and other legal documents pertaining to hearings on an application.
- D.** Petitions to deny. As noted above, however, if a petition to deny is filed against an application in the file, a statement must be placed in the public file giving the name and address of the party filing the petition.
- E.** FCC press releases, public notices and printed opinions.
- F.** Materials from the NAB and other industry source materials relating to the FCC.
- G.** Newspaper articles and press releases on regulatory matters.
- H.** Financial reports and records.
- I.** Remote broadcast requests and authorizations.
- J.** Requests for authorized operation during natural disasters, wars, national emergencies and similar crises.
- K.** Applications, ownership reports and other documents relating solely to other stations of which the broadcaster is the applicant, permittee, licensee, or affiliate, but which do not concern the station in whose community the file is kept, or the direct chain of ownership of the station. All time brokerage contracts, however, must be included in the public file (see part II.F. of this memorandum).
- L.** Materials of any kind relating to other licensees.
- M.** Copies of station editorials and replies to station editorials.
- N.** Internal station correspondence dealing with complaints from the public.
- O.** Correspondence between the licensee or permittee and the Commission, except correspondence relating to applications and reports that are in the file or relating to official FCC investigations.

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- P.** All correspondence with anyone other than the Commission, including counsel, which is not either (a) included as an exhibit to an application or report in the file or (b) incorporated by reference in such an application or report.
- Q.** Legal memoranda, such as this one.
- R.** Station discrepancy reports.
- S.** Rate cards, except to the extent required for the political file.
- T.** “Fairness” time or other programming requests, unless considered to be letters from the public commenting on programming or station operations.
- U.** Statements of station policy and station operating manuals, other than those included in applications in the file.
- V.** Applications and reports which have not yet been filed with the FCC.
- W.** Television station retransmission consent agreements with cable systems.

### **IV. REQUIRED LOCATION OF THE PUBLIC INSPECTION FILE.**

- A.** The public file of each station must be kept in a station’s main studio, even if the main studio is outside the station’s community of license. A main studio may be located outside a station's community of license if it is either: (A) within the principal community contour of any station (of any service) licensed to its same community of license,<sup>2</sup> or (B) within 25 miles from the reference coordinates at the center of the station’s community of license. An applicant for a new station or change of community must locate its public inspection file at an accessible place in the proposed community of license or at its proposed main studio.
- B.** The complete file must be kept in one place, and only at the main studio. If a station decides to keep its public inspection file partly electronically and partly on paper, it should locate its public computer terminal near the paper file.
- C.** A licensee with two or more stations in a community of license must maintain a separate public file for each station. Since most applications and reports relate to only one station, ordinarily the files will not be duplicative. Copies of applications or reports that apply to more than one station in the same community — most frequently, ownership reports — must be maintained in the public file of each station if the stations are in different buildings. If public files for more than one station are kept in the same building, duplicate copies need not be inserted if the public files are clearly cross-referenced.

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<sup>2</sup> Reference coordinates for communities throughout the U.S. are listed in <http://www.atlas.usgs.gov/atlasftp.html#citiesx>. If no coordinates are listed for a community, the FCC expects the coordinates of the main post office to be used.

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### V. PROCEDURES FOR MAINTAINING THE PUBLIC INSPECTION FILE.

- A. In addition to the traditional paper files, the FCC permits stations to maintain their public inspection files electronically (on a computer), either wholly or partially. The FCC encourages licensees who maintain an electronic public file to post the file on their web pages. (It requires that the Annual EEO Report be posted on the station's website, if it has one.) If a station uses an electronic filing system, it must make a computer terminal available to the public at its main studio and must provide paper copies of public file materials on request made in person, whether such materials are kept in paper or electronic form. Under certain circumstances, the FCC requires stations to honor telephone and mail requests for public inspection file information and for copies (discussed below).
- B. Different locations for the public inspection file at the main studio will work better for different stations. It is often best if the paper file or computer terminal is kept and used in an office where employees are working. In this way, station personnel may keep an eye on the file or computer terminal while it is being used by a member of the public without assigning an employee to hover over the file user. The FCC has stated that setting aside an area with a table at which the public may inspect the records was "in keeping with the spirit of the Commission's public inspection requirements."
- C. Political time material should be kept in a separate binder or folder where it can be used by persons interested solely in political time purchases. All of the other public file materials may be kept in any convenient manner, such as a single file arranged in chronological order with the most recent item on top. Binding the file together with an ACCO or other fastener will reduce the likelihood of pages being stolen. Placing plain dividers between each item in the file will facilitate a quick check of it after it has been used to make sure no items have been removed. The Commission has not provided any guidance with respect to the organization of an electronic file. Presumably, so long as the information is easily accessible the Commission will be satisfied.
- D. The file should be kept separate from other station documents and files. It should not ordinarily be used by station employees for work purposes. If it does become necessary to do so because other copies of file documents cannot be located, station employees should not remove file documents from the room in which they are kept, except briefly for purposes of duplication.
- E. The file does not need to contain originals, only copies.
- F. Care should be taken that no marks are made on the documents in the public inspection file by station employees or members of the public using the file.
- G. It is usually best if one person is assigned the responsibility for filing documents in the public inspection file so that he or she is responsible for regularly checking the file to insure that the required, and only the required, documents are contained

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in it. Some stations find it convenient to assign this responsibility to the General Manager's assistant.

- H.** The file must be current, that is, materials required to be included must be inserted as soon as possible after they are filed at the Commission or completed, as the case may be. The only delay should be unavoidable mailing delays. In such a case, the Commission has held that making a draft copy available to a member of the public is a satisfactory temporary solution until the copy of the final document arrives in the mail. A renewal application must be placed in the file on the day the renewal is filed. In most cases, we can send you copies of filed applications in .pdf format via e-mail, which you can print out and put in the public file.

### **VI. WHO MAY ACCESS THE PUBLIC INSPECTION FILE.**

- A.** Any member of the public may inspect the files during the regular business hours of the station, or may request information about, or copies of, the file by telephone or mail request. Regular business hours include the lunch hour.
- B.** The station employee who has custody of the public file can and should request proper identification of each individual requesting access either in person or over the telephone. Proper identification means name and address only. The station employee may request, but cannot demand, that a person asking to use the file disclose his or her group affiliation and the purpose of the public file examination. A record of the names and addresses of all file users should be maintained by the station, but not as part of the public file.

### **VII. PROCEDURES TO FOLLOW IN PROVIDING ACCESS TO THE PUBLIC INSPECTION FILE.**

- A.** Stations are required to assist the public by telephone, and to a limited extent by mail, as well as in person. A member of the station's staff must, on request, describe the contents of the public inspection file — in general terms — to an interested caller. This would include, for instance, a general description of the kinds of information available, or a description of the number of pages and time periods covered by an ownership or children's programming report. A station is required under existing FCC law to maintain a local or toll-free telephone service to its community of license. There is no limit to the number of calls a member of the public may place. However, a licensee may seek a waiver or special relief from the FCC in special circumstances, such as a harassing caller.
- B.** Radio and television stations are required to make copies of any material in the public file for members of the public who want them. The station may impose a reasonable charge for copying and may require a guarantee of payment in advance (*i.e.*, require a deposit, obtain credit card information). However, no charge may be imposed for copies of the FCC's "The Public and Broadcasting." Stations are required to mail copies of materials requested by telephone callers only if the station's main studio is outside of the community of license and if the caller

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requesting copies is within the station's geographic service area (i.e. a TV station's Grade B contour, an AM station's 0.5 mV/m contour, or the 1 mV/m contour for all FM stations except Class B1 stations, 0.7 mV/m and Class B, 0.5 mV/m). Even in these limited cases, a station is not required to mail any portion of the political file in response to a telephone request. Reproduction must be made within seven days of a valid request. If copies are mailed, the station must pay for postage.

- C. Any person requesting the public file or information about the file should be treated courteously by all station personnel. We recommend that some responsible management person talk with all persons requesting the public inspection file. Many problems and questions can be answered and misunderstandings avoided by an informal discussion. Such a discussion may also reveal why the file is being reviewed. Note, however, that a user of the file has the right to refuse to talk to station personnel.
- D. Political file materials are an important exception to the rules concerning telephone inquiries. No station is required to respond to telephone requests for copies from the political file or for information from it, unless the request is for information about a last minute candidate buy when the station has not yet had a chance to place complete documentation concerning the buy in the public file. If a station nonetheless chooses to answer questions about the political file over the telephone or send out political materials, it must deal with all such requests impartially by not favoring any one campaign over any other.
- E. A station employee is not required to stay with the files during an inspection. While some stations insist that an employee sit with any person using the file, we believe that such a practice can be unnecessarily irritating to the inspecting party. It is wise to check the file before the inspecting party leaves the building to insure that no documents have been removed.
- F. A station may want to notify counsel when a request for the public file has been made, and should do so if its renewal application or any other major application is pending at the time.

## VIII. HOW LONG DOCUMENTS MUST REMAIN IN THE PUBLIC INSPECTION FILE.

- A. FCC Authorization. The current FCC authorization, whether a license or construction permit, must be retained until replaced by a new authorization, at which time a copy of the new authorization and any related materials shall be placed in the file.
- B. Applications and Related Materials.
  - 1. **Renewal Applications.** A renewal application must be retained until a station's next renewal grant is final — that is, one granted renewal

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application must always be in the file. Because the standard license renewal period for all stations is eight years, this means that a station will usually retain renewal applications for more than eight years. The FCC Form 396 ("Broadcast Equal Employment Opportunity Program Report") filed with the license renewal application should be retained for the same period of time. For example, if a station's renewal period ends in November 2007, it will retain its granted 1999 renewal until its 2007 renewal application is granted. Short term renewal applications also must be retained until the next renewal is granted.

2. **Other applications.** Any other application must be retained until the FCC has taken final action on the application. If the FCC grants an application pursuant to a waiver, however, the application must remain in the file for as long as the waiver is in effect.
- C. **Citizen Agreements.** Citizen agreements should be retained for the term of the agreements.
- D. **Contour Maps.** Contour maps should be retained as long as they reflect accurate information.
- E. **Ownership Reports and Related Materials.** The most recent complete ownership report must be retained until it is replaced by a more recent complete ownership report. Copies of contracts, or a list of them, associated with ownership reports must be retained so long as they are in effect.
- F. **Time Brokerage Agreements.** A time brokerage agreement must be retained as long as the agreement is in force.
- G. **Joint Sales Agreements.** Joint sales agreements should remain in the public inspection file for as long as they remain in effect.
- H. **Political Records.** Political records are required to be kept for only two years. We strongly recommend that no older materials be kept in the political file.
- I. **Employment Reports.** EEO public file reports are retained until the next renewal application is granted and becomes final.
- J. **The Public and Broadcasting.** This manual should remain in the public inspection file until its replacement by a more recent version.
- K. **Letters and e-mail from the Public.** Letters and e-mails from the public should be kept in the file for three years after they are received. However, as part of their renewal applications, television stations must offer the FCC a brief summary of viewer comments concerning violence in programming, so letters on this subject should be retained in station files for the entire license term or summarized before being discarded.

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- L. Material Relating to FCC Investigations or Complaints. Material in the file having a substantial bearing on a matter which is the subject of a claim before the FCC against the licensee, or relating to a Commission investigation or a complaint to the Commission must be retained until the station is notified by the FCC in writing that the material may be discarded. If the matter is a private one (i.e., if it does not involve the FCC), the material should not be in the file at all.
- M. Station Programming Records. All programming records, including the issues/programs list, the records concerning commercial limits, and children's television programming reports must be retained until the grant of the next renewal application becomes final (ordinarily at least eight years for the oldest records).
- N. Local Public Notices. Certifications that pre-filing and post-filing renewal announcements have been broadcast must be retained in the public inspection file for as long as the renewal applications to which they refer.
- O. Must-Carry or Retransmission Consent Elections. Each must-carry or retransmission consent election statement must be retained for the three year period to which the statement applies.
- P. Class A TV Continuing Eligibility. Documentation demonstrating that a Class A TV station continues to meet eligibility requirements must be retained in the public inspection file for as long as the station continues to operate as a Class A TV station.
- Q. Voluntary Retention. After the period has expired during which an item must be retained in the public file, the station may still voluntarily retain it in the public file or elsewhere. Some materials retained in this way must still be made available to the public upon written request and at a time and place convenient to the station and the inquiring party. To avoid this inconvenience, you may wish to discard items you are no longer required to keep and which you no longer need for other purposes, assuming that doing so would be consistent with your non-FCC record retention policy.

### **IX. ASSIGNMENT OR TRANSFER: WHO MAINTAINS THE PUBLIC INSPECTION FILE.**

The seller maintains the public file until the assignment or transfer is consummated. The buyer then maintains the file from the day notice of consummation is filed with the Commission until the time when the seller could have discarded the documents. For instance, the buyer must retain the last renewal application and associated material until grant of the next renewal application. Buyers are not held responsible for correcting omissions in the file that existed at the time of the sale. However, both parties are expected to make "good faith" efforts to correct deficiencies.

## Public Inspection File Requirements

### X. PROCEDURE IF PUBLIC INSPECTION FILE MATERIALS ARE MISSING.

Replace them promptly!

### XI. CONTRACTS THAT MUST BE FILED WITH THE FCC.

As part of the requirement to maintain ownership reports and related materials in a station's public file (described in Section II.E above), a station must maintain either a list of contracts filed with the FCC, or copies of such contracts. Contracts that must be filed with the FCC include (1) network affiliation contracts between a full power or Class A TV station and a national network, (2) contracts relating to ownership or control of the station (i.e. articles of partnership or incorporation, bylaws, and any agreements regarding future ownership rights or voting rights), (3) personnel contracts (i.e. management consultant agreements with independent contractors, contracts related to outside management or contracts that provide for percentage of profits and loss with people who are not officers, directors or regular employees of the station),<sup>3</sup> and (4) time brokerage agreements (that is, LMA agreements) involving time brokerage of the licensee's station or of another station by the licensee, whether the agreement involves stations in the same markets or in differing markets. Sensitive financial information may be redacted from LMA agreements. If the station maintains a list instead of copies of the documents, the station must provide copies of the documents within seven days to parties who request them.

### XII. LPTV, TV TRANSLATOR AND BOOSTER STATIONS: RECORD-KEEPING REQUIREMENTS.

Although the public file requirements do not apply to LPTV, TV booster and TV translator stations, such stations do have certain record-keeping requirements. (Class A low power television stations have the same public file obligations as ordinary full power television stations.) LPTV, TV translator and TV booster stations must retain the following records for at least two years, although we recommend that you retain them for the entire eight year license period:

- o Current license and any other FCC authorization concerning the construction of the station or manner of operation;
- o Official correspondence with the FCC;
- o All operating and maintenance records that may be necessary to resolve conditions of actual or potential interference, rule violations or deficient technical operation;
- o Measurements of carrier frequencies of the station's output channel (which must be performed at least once each calendar year), along with the date that the measurements were taken;

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<sup>3</sup> Personnel contracts specifically do not include agreements with regular employees of the station, contracts with program managers or program personnel, contracts with attorneys, accountants or consulting radio engineers, contracts with performers, contracts with station representatives, contracts with labor unions or any similar agreements.

## Public Inspection File Requirements

- o Contracts (including network affiliation agreements) and other documents pertinent to station operations;
- o Appropriate entries as to the time the tower lights are turned on and off each day (if manually controlled) and the time the daily check of proper operation of the tower lights is made (if an automatic alarm system is not employed);
- o Documentation of any known extinguishment or improper functioning of a tower light, including the nature of the extinguishment/improper functioning, the date and time it was observed or noted, the date, time and nature of adjustments, repairs or replacements, the name of the FAA Flight Service Station that was notified of the failure of any code or rotating beacon light not corrected within 30 minutes, the date and time such notice to the FAA was given, and the date and time that notice to the FAA was given that the required illumination was resumed;
- o Documentation of any service or maintenance which may affect a station's proper operation. In such a situation, the station operator must sign and date an entry in the station's records that contains the pertinent details of all transmitter adjustments performed by the operator or under the operator's supervision;
- o Permission for rebroadcasts (if the TV translator station rebroadcasts another U.S. broadcast station, a copy of the written consent of the licensee originating the program must be kept by the licensee of the station retransmitting the program);
- o LPTV stations with five or more full-time employees must place all forms and reports listed in Section II. I. of this memo ("Employment Records") in the public inspection file. TV translator stations and TV booster stations are not required to keep EEO records, regardless of the number of employees;
- o If a station broadcasts political matter or matter involving the discussion of a controversial issue of public importance, and a corporation, committee, association or other unincorporated group or entity is paying for the matter, the station must keep a list of the officers or members of the committee or board of directors available for public inspection;
- o A list showing the names, addresses and telephone numbers of individual advertisers broadcasting "want ads" or classified ads. This list must be made available to members of the public who have a "legitimate interest" in obtaining the information in the list.

The station records must be maintained for inspection at a residence, office or public building, place of business, or other suitable place in the station's community of license. If the station has more than one community of license, the records may be kept in any of the

## Public Inspection File Requirements

communities of license. The station records of a booster or translator station licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. Station records must be made available to FCC officials upon request (*but not the public*, with the exception of the lists pertaining to advertisers broadcasting “want ads,” as discussed above).

Station records must be made in an orderly and legible manner by a person who is competent to do so and who has actual knowledge of the facts. In addition, any station records requiring a signature must be signed by a person who has actual knowledge of the facts. Station records may not be deleted nor destroyed. Any necessary corrections may be made only by the person who made the original entry, who must strike out the erroneous portion, initial the correction made, and provide the date the correction was made.

In addition to maintaining the records, the station needs to post the following information at the transmitter site: the call sign of the station, the name, address and telephone number of the licensee (or local representative of the licensee if the licensee does not reside in the community served by the station), the name of the person keeping the station records, the antenna structure number (if the structure has one), and the address of the place where the station records are maintained. This information must be in legible condition and posted at the transmitter site on the structure supporting the antenna, so as to be visible to a person standing on the ground.

HOLLAND & KNIGHT LLP

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## Public Inspection File Requirements

### ATTACHMENT A – Required Records and Retention Periods Chart

RECORDS THAT MUST BE KEPT IN THE PUBLIC INSPECTION FILE	PERIOD FOR WHICH RECORD MUST BE RETAINED IN THE PUBLIC INSPECTION FILE
FCC Authorization	Until replaced by a new authorization.
Renewal Application	Until next renewal grant is final.
Other Application	Until FCC has taken final action on it.
Citizen Agreement	For the term of the agreement.
Contour Map	For so long as it reflects accurate information.
Complete Ownership Report	Until replaced by a more recent report.
Contract Associated with Ownership Reports	For so long as the contract remains in effect.
Time Brokerage Agreement	For so long as the agreement remains in effect.
Joint Sales Agreement	For so long as the agreement remains in effect.
Political Records	For two years only.
Employment Reports	Until the next renewal application is granted and becomes final.
"The Public and Broadcasting"	Until replaced by a more current version.
Letters and e-mail from the Public	For three years. (see note re: comments concerning violence in Part VIII.K.)

## Public Inspection File Requirements

Material Relating to FCC Investigations or Complaints	Until FCC notifies station <u>in writing</u> that the material may be discarded.
Station Programming Records	Until the grant of the next renewal application becomes final.
Local Public Notices	For so long as the renewal applications to which they refer are retained in the file.
Must-Carry or Retransmission Consent Elections	For the three-year period to which the statement applies.
Class A TV Continuing Eligibility	For so long as the station continues to operate as a Class A TV station.