
UPDATE **October 20, 2021**

MVPDs and the Public Inspection File: What You Need to Know

Over the past year, the FCC has targeted FCC licensees who failed to comply with the FCC's public inspection file rules, particularly the obligation to maintain certain political advertising documents and the obligation to maintain records demonstrating compliance with the children's advertising limits. Most of the FCC licensees targeted have been broadcasters, but all companies with public file inspection file obligations – including MVPDs – should take these actions as a reminder to keep their files up-to-date. For reference, below we summarize some of the key public inspection file obligations.

Background. Cable public file and recordkeeping requirements vary according to the size of the system. Systems with fewer than 1,000 subscribers have the fewest obligations. Systems with more than 5,000 subscribers have the most extensive obligations.

Online Public Inspection File. All cable systems with 1,000 or more subscribers must maintain their public inspection file documents in the FCC-hosted online public file database. Cable systems with fewer than 1,000 subscribers must maintain their local public inspection files at the system office the operator maintains for business purposes (or at another accessible place in the community served by the system).

Website requirements. Operators with websites must post a link, on their home page, to the first page of the operator's online public inspection file. Operators must also include contact information for a representative who can assist people with disabilities with issues related to the content of the public file, as well as contact information for an individual who can answer questions about the file in general.

Back-up political files. Operators must make back-up copies of their political file documents, so they can be produced if the FCC online database is unavailable. Operators may meet this back-up requirement by periodically downloading a mirror copy of their online public file, including the political file, or by maintaining a local back-up of the political file.

EEO Duplicative Obligation. With respect to a cable system's equal employment opportunity ("EEO") requirements, cable operators must continue to make their EEO materials available on their websites. Cable operators may meet this obligation by providing a direct link to their EEO materials in their online public file.

Third Party Vendors. If an operator relies on third-party vendors to provide required documentation that must be maintained in the public file (e.g., a third-party advertising insertion vendor that provides political advertising information, or NCTC, which provides necessary materials related to children's advertising limits), the MVPD may contract with that party to upload the necessary information. However, the MVPD remains responsible for ensuring that the materials are properly uploaded and maintained.

If you have questions about the cable public file rules or the requirement to post them online, please contact Scott Friedman at (314) 462-9000 or sfriedman@cinnamonmueller.com.

Key Political Advertising Requirements to Remember as Election Season Arrives

It's that time of year again! MVPDs should take the time now to review key political advertising requirements before receiving requests from candidates for advertising time. Federal law and FCC regulations govern the rates and terms for candidate advertising. Key provisions include:

- MVPDs are not obligated to provide political candidates access to cable systems. If a MVPD permits "use" of its system by a legally qualified candidate, it must afford "equal opportunities to all other candidates for that office."
- Candidate appearances on a bona fide newscast, bona fide news interview, bona fide news documentary (if the appearance of the candidate is incidental to the subject of the documentary), or on-the-spot coverage of bona fide news events (including political conventions) do not trigger the equal opportunity requirements.
- For candidate advertising – except for periods before a primary, general, or special election – the MVPD shall charge no more than the rates for comparable use of the system by commercial advertisers. Discounts and other terms offered to commercial advertisers must be disclosed and offered to political advertisers.
- During the 45 days before a primary, and the 60 days before a general or special election, the MVPD may charge legally qualified candidates for public office no more than the "lowest unit charge" for advertising time. The "lowest unit charge" is the amount that the system charges "its most favored commercial advertisers for the same classes and amounts of time for the same periods." In calculating the lowest unit charge, MVPDs must take into account any practices offered to commercial advertisers that enhance the value of advertising spots, such as bonus spots, time-sensitive make goods, and preemption priorities.
- MVPDs providing political advertising must maintain a political advertising file of all candidate requests for time and the disposition of those requests, **even if the advertising insertion is done by a 3rd party**. Any records maintained in the file must be kept for two years.

If you have questions about political advertising, please contact Bruce Beard at (314) 394-1535 or bbeard@cinnamonmueller.com or Scott Friedman at (314) 462-9000 or sfriedman@cinnamonmueller.com.

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