



Broadcast Newsletter

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OWNERSHIP REPORTING RULE CHANGES

In last month's newsletter, we reported that the three remaining FCC commissioners had adopted an order changing certain ownership reporting rule requirements. At the time, the FCC had not issued the actual language of the order providing the precise details of the rule changes. That order was finally released nearly a month later on May 5, 2009.

Under the new rules, full power commercial AM, FM, or TV broadcast stations that previously were required to file an ownership report every two years on the anniversary of the filing deadline for their license renewal application will now file their biennial ownership reports every two years on November 1st, beginning in 2009. Information on those reports must be current as of October 1 of the year the filing is made. The FCC is in the process of revising FCC Form 323 for purposes of the new report and is expected to revise the instructions and add questions specific to attributable interests and minority/female status. There is no projected timetable for the issuance of the new form.

The FCC's Order also requires broadcast licensees who are sole proprietors and partnerships made up only of natural persons to begin filing biennial ownership reports. Previously, such licensees did not have to file ownership reports. In addition, Class A and low-power television stations, also previously exempt from biennial filings, will now have to file ownership reports.

Finally, the FCC's order delegates authority to the Media Bureau to begin conducting random audits of the information submitted by licensees in ownership reports. We have no information at this time on how such audits will be conducted or when they will begin.

The rule changes do not go into effect until the Office of Management and Budget publishes an approval notice in the Federal Register. Until that time, station biennial ownership report filing requirements and deadlines remain in effect.

Importantly, non-commercial educational licensees were excluded from these rule changes -- for now. As part of an associated rulemaking, the FCC has requested comment on whether similar changes should apply to NCE licensees. The FCC has requested comment on its proposals. However, a deadline for filing those comments has not yet been set because the rulemaking has not yet been published in the Federal Register. Comments will be due 30 days after the rulemaking is published in the Federal Register.

There has been some public debate over whether the number of actions, including the changes to the form, can be completed in time for the initial filing date this November 1st for commercial stations. Part of the delay arises from electronic modifications that must be made to the form in the FCC's filing system. The other part of that delay is the necessity to obtain approval from the Office of Management and Budget for the new form and rules. We will continue to monitor this proceeding and report on further developments in this newsletter. Should you have any questions, we recommend that you contact your communications counsel.

ANTI-DISCRIMINATION AND SMALL BUSINESS CHANGES TO CERTAIN FCC FORMS TAKE EFFECT

By Public Notice, the FCC announced that certain changes made to FCC Forms 301, 314, 315 and 345 as a result of the FCC's December 2007 Report and Order on Broadcasting Diversity took effect on May 21, 2009.

A preliminary review of the changes made to the forms reflect an additional question added to Form 301, which is used to apply for new broadcast permits, indicate the addition of a question related to whether the application is an eligible entity under the definitions of the Small Business Administration. In certain circumstances, such entities are made specially eligible for bidding credits or specially designated exceptions designed to promote broadcast ownership by small business, which commonly include minorities and women.

With regard to the changes to FCC Forms 314, 315 and 345, which are used to assign or transfer control of existing broadcast permits and licenses, the Commission has added a certification that the seller or assignor in such transactions must make. The necessary certification is one that the assignor/ seller has not violated the Commission's prohibition against discrimination on the basis of race, color, religion, national origin or sex in the sale of commercially operated AM/FM, TV, Class A TV or international broadcast stations.

Regrettably, the FCC's 2007 diversity order only briefly addresses the scope of this prohibition, without providing examples or definitions to assist in the making of this certification. Applicants making this certification will most certainly have to consult with your communications counsel on the scope and meaning of the certification. Notably, the prohibition only applies to commercially operated broadcast stations. Sellers of non-commercial educational stations will be able to certify "N/A" to this question.

In addition, the assignee applicant (buyer or new controlling entity) will have to certify as to its "eligible entity" status and in certain cases where the station being sold is part of a cluster of stations grandfathered under prior versions of the multiple ownership rules, certain certifications regarding divesting stations as required by the FCC's rules within certain timeframes after consummating the acquisition. Again, careful consultation with communications counsel should be made prior to responding to the applicable questions/certifications.

ACTING-CHAIRMAN MICHAEL COPPS CALLS FOR 3-YEAR BROADCAST LICENSE RENEWALS

In a recent speech, acting FCC Chairman Michael Copps, as part of a suggestion that the government needs to "get serious" about defining broadcaster public interest obligations and reinvigorating the license renewal process, called for a change to a 3-year license renewal policy. Currently, broadcast licenses are issued for 8-year terms, with license renewal filed four months in advance of the license expiration every 8 years. Copps said in his speech that it was time to say "goodbye" to postcard renewal every 8 years, and that license renewal should have some "public-interest teeth".

Copps first called for shorter licensing approximately two years ago as part of the FCC's localism proceeding. This is not the first time that acting Chairman Copps has proposed an aggressive regulatory or enforcement approach to resolving matters which he perceives as deficiencies, such as acting in the public interest, promoting diversity in ownership of media voices, or EEO policy compliance. In comments made after several stations were fined for EEO violations late last year, Copps alleged that inadequate enforcement was the prime cause of a lack of diversity in media ownership.

The National Association of Broadcasters and other organizations have already voiced opposition to further public interest obligations or shorter license terms for broadcasters. It is unlikely that such a proposal would be adopted prior to the appointment of the new FCC Chairman, which is expected to occur later this summer. Nevertheless, Copps could initiate a notice of inquiry or other rulemaking proceeding to consider the issue.

NEW DIGITAL LPTV / TV TRANSLATOR FILING OPPORTUNITY

As part of an order adopting replacement DTV translator services for full-power broadcasters, the FCC responded to concerns expressed by many parties that the impact of the replacement DTV translator service would restrict or otherwise prohibit the introduction of new digital translator and LPTV stations, or major changes to existing stations.

In response to the concerns, the FCC announced that it will soon announce a date upon which it will begin accepting applications pursuant to the first-come first-served rolling 1-day filing window scheme for new digital translators and LPTV stations, something it originally promised in 2004. Those filings have been frozen for several years because of the digital television transition for full-power Broadcasters. This announcement is therefore significant.

Parties who are interested in filing for new stations should consider retaining consulting engineers to determine what spectrum may be available, as well as potentially running interference studies to support such filings.

FCC SET TO ADOPT RULES FOR FM TRANSLATOR USE BY AM STATIONS

An order that will allow limited use of FM translators by AM stations is currently circulating among the commissioners at the FCC and according to reports, will be issued very soon. It is our understanding that the order will define the circumstances under which AM stations may transmit signals using FM translators. This newsletter will report on the order once it is published.

DTV TRANSITION LESS THAN 30 DAYS AWAY

The Commission is continuing efforts to prepare consumers for the June 12 nationwide deadline for a transition to digital-only television. Approximately 60% of the nation's television broadcast stations continue at this time to air an analog signal. At midnight on June 12, 2009, those analog transmissions will cease.

On May 21, 2009, the FCC conducted a nationwide soft test to simulate for unprepared viewers what they would experience when the DTV transition occurs. During the soft tests, broadcasters interrupted regular programming with a warning for viewers still receiving analog signals, advising them that they were still not yet prepared for the transition. The FCC received over 55,000 calls from

viewers in response to the soft test.

Broadcast stations are continuing to air transition notices and complying with a myriad of FCC-imposed requirements to assist in consumer awareness. Those efforts have been ongoing, and any station still broadcasting in analog that is not performing such functions should immediately consult with communications counsel.

During May, the FCC also adopted rules for a new replacement DTV translator service which full-power stations can use for purposes of avoiding signal loss in areas where digital signal penetration is insufficient. The new replacement DTV translator service will be authorized on channels 2-51 as a secondary service. Such translators must receive and cannot cause interference to existing LPTV, Class A and full-power television stations. Replacement DTV translators will be linked to the full-power station's existing license, be restricted to fill-in digital service, cannot be separately assigned, and will have 3-year construction periods. Stations interested in filing for replacement DTV translators should do so immediately.

2009 REGULATORY FEES

The FCC has released a notice of proposed rulemaking and order related to the collection of regulatory fees for fiscal year 2009. Regulatory fees are typically due in September of each year.

As part of the proceeding, the FCC eliminated regulatory fees for international high frequency broadcast stations (shortwave stations) as well as international public fixed radio stations.

Consistent with past years, the FCC decided again that it will not assess 2009 regulatory fees for both digital and analog television licenses from a licensee that is in the process of transitioning from analog to digital. Stations that were broadcasting in both analog and digital on October 1, 2008 will therefore be assessed fiscal year 2009 regulatory fees for their analog license only. Stations that were broadcasting in digital only on October 1, 2008 will not be assessed regulatory fees for their digital license for fiscal year 2009. Beginning in fiscal year 2010, the FCC will collect regulatory fees from digital broadcasters. The FCC seeks comment on whether a rule change is necessary to enable its plan to collect those regulatory fees.

The FCC also seeks comment on whether it should require regulatees to enter certain information into the

automated, online fee filer system even if they do not pay regulatory fees thru fee filer. The Commission does not propose to require payment through fee filer, but strongly encourages regulatees to do so. The certainly of the online payment process eliminates the risk of late charges for payments not properly submitted on paper.

For all media services, regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2008. In addition, regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2008. Where a permit or license is transferred or assigned after October 1, 2008, responsibility for payment rests with the holder of the permit or license as of the fee due date.

For fiscal year 2009, the proposed schedule of regulatory fees for radio stations is calculated based upon the size of the population served and the service and class of radio station. For example, a Class A FM station serving a population of fewer than 25,000 will pay \$650, while a Class C FM station serving greater than 3 million people will pay a proposed fee of \$10,850.

The proposed fee for AM radio construction permits is \$480 and for FM radio construction permits \$650. Television station regulatory fees are based upon VHF/UHF status and market size. For example, a VHF television station in markets 1 through 10 will pay a proposed \$77,000, while a UHF station in markets 1 through 10 will pay a proposed \$24,250.

Comments on the FCC proposed rules and fees for FY2009 regulatory fees may be filed electronically with the FCC through June 4, 2009.

RULEMAKING LAUNCHED TO STREAMLINE RADIO ALLOTMENT AND ASSIGNMENT PROCEDURES, PROMOTE MORE RURAL RADIO SERVICE

The FCC has set July 13, 2009 as the deadline for comments to be filed in its proposed rulemaking proceeding regarding the further streamlining of allotment and assignment procedures in the radio services as well as efforts to promote more rural radio services.

The rulemaking is designed to determine whether the Commission's approach in various auctions and in processing applications for new or modified services is sufficient to ensure the fair distribution of broadcast licenses, particularly in smaller communities, rural areas and tribal areas. Some of the FCC's proposed rules would limit moves by existing stations away from smaller

communities. Current processing priorities give precedence to applicants based on larger population coverage, to the detriment of smaller communities that are outside of metropolitan statistical areas. The Commission is also seeking comment on granting a special priority for native-American and Alaskan native tribal groups serving tribal land.

In addition, the Commission has proposed an absolute restriction against downgrading proposed AM facilities if those facilities have received dispositive §307(b) preferences. The Commission is also interested in capping the number of AM applications that may be filed in an auction window, and providing the staff with flexibility in the deadlines for filing post-auction long form applications.

The rulemaking also proposes prohibiting FM translator band hopping applications for FM translator stations licensed in the last three and first three channels of the reserved and non-reserved bands.

The Commission's various proposals require a specific understanding of previous allotment and assignment policies and procedures followed by the FCC. Should you wish to file comments or have questions regarding the proposed rulemaking, we recommend that you contact your communications counsel.

FCC LAUNCHES NOTICE OF INQUIRY ON THE IMPACT OF ARBITRON AUDIENCE RATINGS ON RADIO BROADCASTERS

The FCC has recently issued a Notice of Inquiry seeking comment on issues related to the commercial use of a radio audience measurement device developed by Arbitron, known as the Portable People Meter or "PPM".

The FCC's Notice comes after broadcasters, media organizations and others raised concerns about the use of the PPM and its potential impact on audience ratings of stations that air programming targeted to minority audiences, and consequently, on the financial viability of those stations. Many broadcasters claim that the current PPM methodology undercounts and misrepresents the number and loyalty of minority radio listeners. As a result of the undercounting, those broadcasters allege that the figures are negatively affecting the ability of stations to compete for advertising revenues, which in turn affects the stations' ability to offer local service to minority audiences.

The deadline for filing comments in this proceeding will be 30 days after the notice is published in the Federal Register, which has not yet occurred.

FCC ANNOUNCES CERTAIN WORKING GROUPS AND COMMITTEES

The FCC has recently announced the formation of a working group to study digital closed captioning and video description issues. The purpose of the working group will be to conduct an assessment of closed captioning and video description technical issues associated with the switch to digital television and to recommend to the Commission solutions to any technical problems arising with these services in conjunction with the transition.

The FCC has also appointed members to a diversity committee whose purpose is to study and report to the Commission on various issues related to minority and female ownership of broadcast stations. In a speech recognizing this new committee, Chairman Michael Copps urged the committee to be thorough and aggressive. No timetable is set for when the committee is to report its findings to the Commission. Action on any such findings would come after the new FCC Chairman is appointed.

FCC ELIMINATES CONDITIONS FROM SATELLITE EARTH STATION LICENSES

Recently, the FCC's International Bureau announced that it will no longer require satellite earth station licensees to meet two conditions included on many earth station licenses. The license conditions require earth station licensees to keep the "precise frequencies" that they use on file with the Bureau and to update the Bureau within seven days if they change the "precise frequencies" in use. The purpose of these conditions was to assist the Bureau in resolving interference disputes. However, during the past decade only a handful of those disputes have been brought and the Commission has been able to resolve those cases without using the detailed frequency information.

PENALTY BOX

LPFM Station Returns License as Part of Consent Decree

The FCC recently adopted a consent decree with the licensee of a low-power FM station which cancelled an earlier \$8,100 fine. The fine had been imposed against the station for not operating the station in compliance with the FCC's technical rules.

In addition to canceling the fine, the consent decree terms included a termination of an ongoing investigation by the FCC of possible violations by the station for broadcasting announcements in violation of the Commission's underwriting rules. The low-power FM station also agreed to cancel its license for the station and refrain from applying for any new licenses for a 5-year period.

DATES TO REMEMBER

May 26, 2009

Comments on census reporting for statutory webcasters due to Copyright Royalty Board.

June 1, 2009

AM & FM Stations in DC, Maryland, Virginia & West Virginia: If employee threshold is met, complete annual EEO public file report, place in your public inspection file and post on station's website. In addition, unless exempt, complete and e-file biennial ownership report on form 323 or 323-E, and place copy in station public file.

Class A TV & TV Stations in DC, Maryland, Virginia, West Virginia, Arizona, Idaho, Nevada, New Mexico, Utah & Wyoming: If employee threshold is met, complete annual EEO public file report, place in your public inspection file and post on station's website.

AM & FM Stations in Michigan & Ohio: If employee threshold is met, complete annual EEO public file report, place in your public inspection file and post on station's website.

Class A TV & TV Stations in Michigan & Ohio: If employee threshold is met, complete and e-file mid-term FCC Form 397 EEO Report. Also, complete annual EEO public file report, place in your public inspection file and post on station's website.

TV Stations in Michigan & Ohio: unless exempt, complete and e-file biennial ownership report on form 323 or 323-E, and place copy in station public file.

AM & FM Stations in Arizona, Idaho, Nevada, New Mexico, Utah & Wyoming: If employee threshold is met, complete and e-file mid-term FCC Form 397 EEO Report. Also, complete annual EEO public file report, place in your public inspection file and post on station's website, if one exists. Unless exempt, complete and e-file biennial ownership report on form 323 or 323-E, and place copy in station public file.

June 4, 2009

Comments due on FY 2009 Regulatory Fees rulemaking.

June 11, 2009

Reply comments due on FY 2009 Regulatory Fees rulemaking.

June 12, 2009 (midnight)

All Full Power TV Broadcast Stations Still Operating in Analog: Cease all analog transmissions, and continue broadcasting in digital-only; file digital license-to-cover application for post-transition digital facilities if not previously done, unless station has obtained an extension of post-transition digital permit.

June 16-25, 2009

Window for filing Short Form 175 applications for commercial FM Auction 79.

Freeze on minor change applications for commercial and noncommercial FM stations/permits: This freeze is designed to avoid conflicts between modification applications for existing stations/permits, and the FM spectrum to be auctioned in Auction 79.

July 10, 2009

Commercial and NCE AM, FM, TV & Class A Stations: complete issues/program report for second quarter of 2009 and place in your public file.

Commercial TV & Class A Stations: complete and electronically file Form 398 (Children's Television Programming Report) for first quarter of 2009 and place in your public file. Also compile and place in your public file records to show station's compliance with the children's programming commercial limits during the last quarter.

July 13, 2009

Comments due on Radio Allotment/Processing Streamlining Rulemaking.

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