



Broadcast Newsletter

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FORM 355 NOT YET APPROVED; FCC TO RECONSIDER “ENHANCED DISCLOSURE” RULES

As many of you may recall, earlier this year, the FCC adopted new “Enhanced Disclosure” Rules that would have imposed new recordkeeping, reporting and public access rules for all television broadcast stations. Part of the FCC’s decision included the adoption of FCC Form 355, which was to replace television broadcasters’ self-styled quarterly programs and issues report. The FCC’s decision and the FCC Form 355 raised an outcry from broadcasters, many of whom requested that the FCC reconsider its decision. In addition, at the Office of Management and Budget, which approves new information collection forms, a number of commenters opposed the new form as violative of the First Amendment of the United States Constitution as well as overburdensome for broadcasters.

As a result of those actions, the FCC Form 355 remains in “limbo” and has not become effective. Had the Form 355 been approved by OMB, broadcasters would have had to file the form by October 30 of this year, reporting on their activities for the third quarter of 2008. But because of the delays, broadcasters do not have to complete that form. Instead, the regular quarterly programs and issues list should be completed and placed in stations’ public inspection files by October 10, 2008.

In addition, the FCC’s adopted rules regarding other reporting and public access requirements, including the placement of a station’s Public File on station websites, if they existed, has also not become effective.

We are now hearing reports that the FCC is going to reconsider its new “Enhanced Disclosure” requirements, but the extent of that reconsideration is not yet clear. Some industry insiders believe that the rules adopted will be reversed. Others believe that the rules will only be tweaked to avoid court challenges and problems at the Office of Management and Budget. Some sources indicate that noncommercial stations will be exempt from some or all of the new requirements. Whatever the eventual outcome, the effective date of any new requirements – and therefore, the impact on TV stations -- is expected to be delayed even further.

At this time, broadcaster challenges pending at the DC Circuit Court of Appeal will not proceed until such time as the FCC has reconsidered its decision. Specific timelines for the Commission to take that action have not been provided, but action sometime this fall would not be unexpected. This newsletter will continue to update broadcasters on the status of these rules and forms.

EARLY DTV TRANSITION FOR WILMINGTON, NC TELEVISION MARKET

Recently, television broadcasters in the Wilmington, North Carolina market stopped all analog television transmissions and transitioned to digital-only operations as a test of the nationwide digital television transition slated to occur on February 17, 2008. Prior to the digital-only switch in Wilmington, the FCC and local broadcasters engaged in substantial local education efforts to minimize disruption of television service to the market population.

For the most part, the transition went smoothly. However, it contains valuable lessons for broadcasters in the remaining markets that will transition on February 17, 2009. Special call-in lines designed to handle complaints from citizens located in the Wilmington television market suggest that despite the FCC's and stations' best education efforts, a significant number of households in each market will be ill-prepared for the transition.

The largest number of complaints received related to consumers having difficulty with converter boxes designed to convert digital signals to analog so that stations can still be viewed, as well as consumers complaining that they had a problem receiving a particular channel or call sign. In addition, a number of consumers were either not aware of the transition, or were aware but did not take adequate actions to assure that they continued to receive television signals.

The above examples are illustrative of issues that all television broadcasters may face when the DTV transition arrives in February 2009. Those issues could even be more complex given that some

stations will independently transition to digital-only earlier than the transition deadline.

Station education efforts are critical to reducing the number of consumers who have problems after the transition in receiving your station's signal. The Commission has recently created a new television public service announcement and an educational video to help prepare consumers for the transition to digital. Copies have already been distributed by the Commission to broadcast stations. The PSA and video contain greater detail regarding the transition, specifically regarding converter boxes and the need for consumers to rescan for channels after the end of the transition so that electronic equipment will begin receiving the new channels.

While each market and each station is different, your continued DTV education efforts will go a long way in reducing a loss of viewers for your station after the transition. Should you have any questions regarding FCC requirements for DTV education or optional voluntary means to assist in the transition, contact your communications counsel.

FY 2008 REGULATORY FEES DUE NO LATER THAN 11:59 P.M. EDT, SEPTEMBER 25, 2008

The FCC has adopted the final amounts for regulatory fees for fiscal year 2008. With that action, the Commission sent annual regulatory fee notices to stations in mid-August, 2008. Those notices included information regarding fee payment methods and amounts, but did not set forth a deadline for making regulatory fee payments.

The FCC has since determined the regulatory fee payment deadline. The deadline is 11:59 p.m. EDT on Thursday, September 25, 2008. Stations not submitting their regulatory fees by that deadline will face penalties of 25%.

We strongly urge all stations to submit regulatory fees electronically through the FCC's Fee Filer system. The ease and dependency of that system provides assurances to regulatory fee payers that cannot be provided when filing by mail.

Should you have any questions regarding payment of your station's annual regulatory fees, please contact us.

COMMISSION NEARS APPROVAL OF AM STATIONS USING FM TRANSLATORS

At the open Commission meeting scheduled for September 25, 2008, the Commission is expected to approve the use of FM translators by AM radio stations.

Approximately two years ago, the FCC began granting special temporary authority to AM stations for use of FM translators within their 2 mv/m service contour, as long as the translator was co-owned by the AM station. Shortly thereafter, the Commission began a Notice of Proposed Rulemaking to modify its rules to permit the practice. The expected decision on September 25th is a culmination of those efforts.

In the proposed rulemaking, the FCC suggested a rule that would permit AM stations to operate FM translators in an area that was the lesser of a circle 25 miles from their transmitter site, or within their 2mv/m daytime service contour. The rulemaking sought comment on several other questions, including whether daytime-only AM stations should be allowed to originate programming on an FM translator during hours when they have no programming to rebroadcast. In addition, the FCC requested comment on whether the FM translator solution should only be available on FM translators co-owned by the AM stations, or whether an AM station should be able to "broker" time on a translator to provide service.

Though the Commission's decision on the new rules will be made on September 25th, a formal Report and Order adopting and putting the rules in place may not follow for 3-5 weeks.

PENALTY BOX

\$25,000 FORFEITURE FOR FAILURE TO MAKE EMERGENCY INFORMATION ACCESSIBLE TO PERSONS WITH HEARING DISABILITIES

The FCC recently assessed a \$25,000 forfeiture against the licensee of a television station in San Diego, California for the station's failure to timely make emergency information regarding wildfires accessible to persons with hearing disabilities. Twenty-two cited examples of violations were previously identified in the Notice of Apparent Liability (NAL) originally issued against the station in 2005. The recently issued forfeiture decision addressed the station's responses to the NAL, and concluded that a monetary forfeiture was appropriate.

Section 79.2 of the FCC's rules requires that video programming distributors (including TV stations) providing emergency information in the audio portion of programming must provide persons with hearing disabilities with the same access to such information which distributors provide to other viewers, either through a method of closed captioning or by using another method of visual presentation. The rule also provides that emergency information provided in the video portion of a regularly scheduled newscast, or a newscast that interrupts regular programming, must be made accessible to persons with visual disabilities. Finally, if emergency information is provided outside of a regularly scheduled newscast or a newscast that interrupts regular programming, an aural tone must accompany the video portion of such programming. Stations may not block existing closed captioning with the emergency information being transmitted, nor should closed-captioning block any emergency information being provided.

The proceedings against the San Diego television station focused heavily upon the definition of emergency information, which the Commission defines as "information about a current emergency that is intended to further the protection of life, health, safety and property, i.e., critical details regarding the emergency and how to respond to the emergency." As examples of critical details the

Commission cites "evacuation orders, detailed descriptions of the areas to be evacuated, approved shelters or the way to take shelter in one's home, and road closures."

Among other responses raised in opposing the NAL findings, the station argued that if information was not provided as part of an official order or from an official requesting help in disseminating the information, it was not of an emergency nature and did not need to be visually presented. While the Commission recognized that the station should have deference in how to meet the requirements of the rule, it declined to defer to the station's decision not to provide very critical details regarding the emergency to hearing disabled viewers, when it had done so for other non-impaired viewers.

The station also argued that it was required to confirm emergency information presented aurally before presenting it visually because of its journalistic obligation to provide accurate information. The Commission declined to accept this logic, stating that Section 79.2 imposed an obligation to provide hearing impaired viewers access to emergency information *at the same time* as it is made available to other viewers. The Commission further reiterated that while it appreciated that programmers make good faith judgments in times of emergency, the resulting decision should conform to the Commission's Rules.

If your television station provides emergency information at any time to viewers, a thorough review of Section 79.2 is strongly recommended. You should ensure that you have the means and staff necessary to comply with the Commission's Rule to provide emergency information to hearing and visually impaired individuals.

NEW FCC APPLICATION FEES ADOPTED

The FCC has recently adopted a new schedule of application fees for all communications services, including broadcast services. The new fee amounts are expected to go into effect on or about January 1, 2009.

In most cases, application fees increased approximately 3-5% over the previous fee amounts.

The fees apply to applications filed by commercial broadcast stations. Applications for minor changes to broadcast licenses or permits for full-power commercial television and radio stations increased from \$895 to \$940. License renewal applications for those same broadcast stations increased \$10 from \$160 to \$170. Similarly, license assignment applications increased from \$895 to \$940. Fees for ownership reports remain unchanged at \$60.

Under the FCC's electronic filing system, most applications must be filed electronically. In addition, application fees may be paid electronically. When applicants choose to do so, the amount of each application fee is automatically and accurately computed so that the application can be formally "accepted for filing" after receipt of fees is confirmed. If an applicant chooses instead to make a separate payment via mail, the applicant must accurately compute the application filing fee in order to avoid a dismissal of the pending application.

A complete copy of the new application filing fees will be available on the FCC's website at www.fcc.gov. Should you have any questions regarding application fees, please feel free to contact us.

DATES TO REMEMBER

October 1, 2008

ALL TV stations that elected DTV Education Option 1 must begin airing three 15-sec DTV Education PSAs and three 60-sec DTV Education crawls in each quarter of each day, with at least one PSA and one 60-sec crawl in prime time (8-11 p.m. Eastern/Pacific; 7-10 p.m. Central/Mountain. This schedule will continue through 3/31/2009. PSA's must be closed-captioned. Crawls must be (i) aired *during programming* at the same speed as news or sports crawls, (ii) be provided in the same language as the majority of programming on the station, and (iii) cannot block or be blocked by closed-captioning or emergency information.

ALL TV Stations, and any Class A/LPTV stations that are eligible must make a written election choosing either retransmission consent or

mandatory carriage against **cable systems** in their markets (in the case of Class A/LPTV stations, those cable companies with a principal headend within 35 miles). Elections must be sent by certified mail. These elections are for the period January 1, 2009 through December 31, 2011.

ALL TV Stations must make a written election choosing either retransmission consent or mandatory carriage against **direct broadcast satellite (DBS) providers** providing local-into-local service in their station's market. Elections must be sent by certified mail, with return receipt requested. These elections are for the period January 1, 2009 through December 31, 2011.

TV & Class A TV Stations in Iowa and Missouri: complete annual EEO public file report, place in your public inspection file and post on website, if station has one.

TV Stations in Alaska, American Samoa, Guam, Hawaii, Oregon, and Washington: complete and electronically file your biennial ownership report on form 323 or 323-E (if applicable). Also complete annual EEO public file report, place in your public file and post on station website, if station has one.

TV Stations in Florida, Puerto Rico and the U.S. Virgin Islands: complete and electronically file your biennial ownership report on form 323 or 323-E (if applicable) and place copy in public file.

TV & Class A TV Stations in Florida, Puerto Rico and the Virgin Islands: complete and electronically file your **mid-term EEO report on Form 397** (if applicable). Also complete annual EEO public file report, attach to Form 397 (if applicable), file in public file and post copy on station website, if station has one.

AM & FM Stations in Florida, Puerto Rico, Virgin Islands, Alaska, American Samoa, Guam, Hawaii, Oregon and Washington: complete annual EEO public file report, place in your public inspection file and post on station website.

AM & FM Stations in Iowa and Missouri: complete and electronically file your mid-term EEO review report via Form 397 (if applicable). Also complete annual EEO public file report, attach to

Form 397, file in public file and post on station website, if station has one. Finally, complete and electronically file your biennial ownership report via Form 323 or 323-E (if applicable) and place copy in public file.

October 10, 2008

TV, Class A TV, AM & FM Stations (Commercial & NCE): Complete quarterly issues/program lists and place in your public file.

TV & Class A TV Stations (Commercial only): Complete and file electronically Children's Television Programming report on **Form 398**. Place copy in public file. **ALSO**, compile and place in public file records relating to station's compliance with children's programming commercial limits.

Commercial & NCE Full-Power TV Stations: Complete and file **Form 388 (DTV Consumer Education Quarterly Activity Report)** for the second quarter of 2008 and place in station public file and post the report on the station's website, if it has one.

Note: Form 388 is now filed via CDBS, not ECFS.

October 20, 2008

All TV stations that have not yet completed construction of their Appendix B digital facilities must prepare and electronically file FCC Form 387 (DTV Transition Status Report).

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Actual resolution of legal issues depends upon many factors, including variations of facts and applicable Federal laws. This publication is not intended to provide legal advice on specific subjects, rather, it seeks to provide insight into legal developments and issues that we feel could be useful to our clients and friends.

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