



Broadcast Newsletter

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REQUIRED EAS ACTIONS IN NOVEMBER 2017

On the EAS front, two dates in November are important for all broadcasters – one is a deadline to provide information about station multilingual EAS capabilities, and the other is the deadline for filing EAS Form 3 as part of the now concluded EAS National Test.

Let's begin with the first one, which just popped up out of nowhere. A few years ago, while the FCC was updating its EAS rules, commenters pushed for the FCC to mandate EAS transmissions in other languages. The FCC declined to mandate such transmissions, but did indicate that it would gather information from broadcasters to see whether anyone was doing so or was capable of doing so, and adopted a rule requiring broadcasters to provide the information. The deadline for gathering the information was set for 12 months after the order's effective date, which turns out to be November 6, 2017. Those pushing for a multilingual EAS mandate were not happy, and a lawsuit resulted. The court just ruled (in the past week or so) that the FCC was not required to mandate multilingual EAS transmissions, and in reaching its conclusion, cited to the agency's efforts and rule about gathering further information from stations.

So here's what broadcasters now have to do (for every station). No later than **November 6, 2017**, each station, as an EAS participant, must provide the following information to their respective EAS State Emergency Communications Committees (SECC): (a) a description of any actions taken individually, in conjunction with other EAS Participants in the geographic area, and/or in consultation with state and local emergency authorities, to make EAS alert content available in languages other than English to its non-English speaking audience(s), (b) a description of any future actions planned, in consultation with state and local emergency authorities, to provide EAS alert content available in languages other than English to its non-English speaking audience(s), along with an explanation for the decision to plan or not plan such actions, and (c) any other relevant information that the EAS Participant may wish to provide, including state-specific demographics on languages other than English spoken

within the state, and identification of resources used or necessary to originate current or proposed multilingual EAS alert content.

It's ok if your station has not made any such attempts or taken any actions – this is just an information gathering process. The rule does not say how the information is to be provided to the SECCs, so you may wish to contact yours. Some state broadcaster associations have facilitated the gathering of this information by circulating emails and providing a repository for responses. Let us know if you require any assistance.

The second November EAS deadline to be aware of is **November 13, 2017**, which is the deadline to file the EAS Form 3 via the ETRS system. This form is the last in a series of forms stations were required to file in connection with the 2017 EAS National Test conducted in September.

FCC ELIMINATES MAIN STUDIO REQUIREMENT

In a 3-2 vote at its October 24, 2017 meeting, the FCC voted to eliminate the main studio requirement for all broadcast stations. The change will become effective 30 days after publication of the order in the Federal Register. Our estimate is that the FCC will move pretty quickly to publication and, as a result, the main studio requirement will officially come off of the books sometime in December 2017.

If you have a main studio and want to keep it, that's fine – it's just that the FCC isn't mandating that you have one any longer. If you have multiple stations, and are now required to have multiple main studios to be compliant with the rule, you'll be able to consolidate those or eliminate them altogether. And if you had a main studio waiver for a station, the waiver will become moot, since you no longer need to have a main studio in the first place.

There are a few caveats. First, you must maintain a toll-free telephone number in the community of license so that the public can reach you without incurring a long-distance charge. This is a requirement that is in the current rule and will remain. Second, for radio stations that have not yet transitioned to the online public file (your deadline is March 1, 2018 by the way), you can still close

your main studio now but until you've migrated all materials to the FCC's online public file portal and gone live with it, you'll have to keep a paper copy of the public file at a publicly accessible place in your community of license. Third, if you eliminate your main studio, you must still use your community of license for determining the issues affecting your community to address in your programming, all as part of your continuing obligation to prepare quarterly issues/programs reports addressing the station's most significant treatment of issues in the station's community of license.

Along with the elimination of the brick and mortar studio requirement (first adopted in 1939), the requirement to be able to originate programming from your main studio will also end when the elimination of the main studio requirement becomes effective. And the FCC's policy of requiring a "meaningful presence" of two full-time employees at the station studio during normal business hours will also end when the rule change becomes effective. Of course, station licensees must still be able to maintain full control over personnel, programming and finances, but the antiquated requirement to do so via the physical presence of two full-timers will no longer burden broadcasters.

ONLINE PUBLIC FILE DEADLINE NEARS FOR RADIO STATIONS

Radio stations that have not yet transitioned their public files to the FCC's online portal have a bit of work to do between now and the March 1, 2018 deadline for doing so. The good news is that you can start anytime. The FCC's system lets stations begin the process by gradually uploading documents before clicking the button to go "live" with the file.

But before you start, remember this: Many stations that still have paper public files have several file drawers packed full of documents from past years, and those files contain a slew of documents that should have long ago been discarded. So step one is to figure out what can be tossed before you start scanning documents from that bulky file cabinet that don't need to be in your online public file. Under the existing public file rule, you only have to have documents in your public file from your

current license period. And in certain cases, the retention period is even shorter than that. So, if you have documents in there from the 1970s, those definitely belong in the shred pile. The FCC's online public file system has a description of the documents required and retention periods at the top of each folder page.

When TV stations transitioned to the online public file a few years ago, FCC staff members started calling stations that did not complete the transition by the deadline. Let's see how we can say this. Umm, you don't want to get that call. The staffers aren't mean. But they write down your call letters as a station on the rule violation list. And that's never fun at license renewal time.

OWNERSHIP REPORT? DON'T PANIC.

We covered this last month, but thought it might be a good idea to remind you again in case you wake up in the middle of the night thinking that it's time to file your ownership report. Go back to sleep. It's not. The FCC [announced](#) a three-month extension of the normal December 1st deadline for all broadcast stations to file their 2017 Biennial Ownership Reports. As a result, reports that would have been due by December 1, 2017 are now due no later than March 2, 2018. The now one-year old suspension of ownership reporting for noncommercial stations was also extended through March 2, 2018.

We're still expecting the new ownership report form to be available around December 1. Hopefully, the new form is easier than the old one. The FCC has [announced](#) a webinar for November 28, 2017 from 1-3 p.m. EST to explain the new form.

COMMENTS SOUGHT ON TV ANCILLARY REPORTING AND LOCAL NOTICE RULES

The FCC has issued a [notice of proposed rulemaking](#) that seeks to lessen broadcaster reporting and notice burdens.

The reporting obligation at issue is Form 2100, Schedule G, an annual requirement for all digital television stations to report to the FCC whether they had any ancillary/supplemental uses of their

spectrum in the past 12 months. If revenue was received from such uses, stations had to remit 5% of it to the FCC. Only 15 stations nationwide were reporting such revenue in the past few years, so the FCC proposes to make this a required filing each year only for stations having such uses/revenue.

The notice rule at issue is found at 73.3580, a rambling four-page recitation of the kinds of notice that are required for the filing of various broadcast applications, some of which require that notice be given in local newspapers. This twisted amalgamation of regulatory mayhem is a favorite of broadcast attorneys, who often use it to train law clerks or new attorneys how to read FCC regulations. So we'll be sorry (at least a little bit) to see it changed or eliminated.

The local newspaper portion of the rule has become nearly meaningless, as newspapers have become sparse and any "ad" is never cheap. Given the FCC's transition to all things online (i.e., EEO vacancy recruiting, the public file, etc.), we tend to think that a website notice is sufficient (or perhaps just relying on the FCC's public notice, which is available to anyone). We encourage stations to chime in with comments on how to improve and lessen burdens associated with local notice requirements. Comments are due 30 days after publication of the NPRM in the Federal Register.

CROSS-SERVICE FM TRANSLATOR SETTLEMENT/RESOLUTION DEADLINE

The FCC has moved forward in its process of considering the over 1000 applications filed by AM stations for new FM translators in a special filing window earlier this year. Specifically, the FCC issued a [notice](#) identifying all of the filed applications that were "mutually exclusive" with others filed during the window, meaning that for technical reasons, applications included in each mutually exclusive group cannot be granted. A list of those applications and groups can be found [here](#). There are a total of 188 applications on the list, or about 20% of the total applications filed.

The notice sets November 29, 2017 for applicants to reach settlement agreements or file technical amendments to their applications to resolve the conflicts. For the limited purpose of these discussions/negotiations, the FCC's anti-collusion rules are waived.

For applicants that were not included on the list, the FCC will issue a separate notice (exactly when is not clear) for these "singleton" applicants to file a complete FCC Form 349 so that a permit can be granted. That notice will likely include a deadline for filing complete applications.

A second filing window is to be scheduled for all AM classes of stations (A, B, C & D) in coming months. At this point, it appears that the FCC wants to process the applications from the August 2017 window first before getting to the next filing window.

2ND POST-TV AUCTION PRIORITY WINDOW CLOSES NOV 2; TEMPORARY FREEZE LIFT COMING FOR NON-REPACKED STATIONS

The FCC's previously [announced](#) second priority filing window for all full power and Class A TV stations making a post-auction channel change will end at 11:59 p.m. on November 2, 2017. Several stations have already filed applications seeking pattern changes and power increases. If your station is being repacked, or is otherwise changing channels post-auction, don't miss this opportunity to apply for expanded facilities. Stations must pay an application filing fee and the cost of expanded facilities will not be reimbursed (i.e., this is elective).

For all those full power and Class A stations who are not being repacked, but have been wanting to seek expanded facilities since the FCC's April 2013 imposed freeze on such expansions, your chance is around the corner. In an unusual move, the FCC issued a [notice](#) announcing that it will (but not yet) temporarily lift the freeze for these stations to seek expanded facilities. One of the reasons for doing so is the FCC's coming displacement filing window for LPTV stations and TV translators. That window is slated for sometime in late March 2018. By allowing non-repacked full power and Class A stations to seek expanded facilities before the

LPTV window, the FCC is seeking to lessen the likelihood that newly permitted LPTV facilities will be further displaced by new full power and Class A filings after the LPTV window.

We anticipate that the FCC will formally do so by an additional notice shortly after the 2ND priority filing window ends. Expansions by non-repacked stations will have to protect those post-auction TV applications that were previously filed.

NOVEMBER FCC MEETING BIG FOR TV STATION OWNERS

One week before Thanksgiving, the FCC is set to vote on a number of actions at its monthly meeting (agenda [here](#)), perhaps none more significant than a TV ownership deregulatory action that promises to shake up the TV world.

The FCC's anticipated action, summarized in this draft [Report & Order](#) released under Chairman Pai's transparency initiative, actually dates back to an August 2016 FCC action. Under the prior administration at that time, the FCC voted 3-2 to leave the TV ownership restrictions in place. The two Republican FCC Commissioners at the time, now in the majority, voted against that order, noting that the ownership restrictions were outdated and unnecessary. Several parties filed petitions for reconsideration of the August 2016 R&O, and that's what the FCC is set to act on in November.

If adopted as drafted, the FCC will (a) eliminate the Newspaper/Broadcast Cross-Ownership Rule because it is no longer necessary to promote viewpoint diversity and prevents combinations that would enable both broadcasters and newspapers to better serve the public interest, (b) eliminate the Radio/Television Cross-Ownership Rule because it is no longer necessary to promote viewpoint diversity in the modern media marketplace, (c) revise the Local Television Ownership Rule to eliminate the Eight-Voices Test and to incorporate a case-by-case review option in the Top-Four Prohibition to better reflect the competitive conditions in local markets, (d) eliminate the attribution rule for television JSAs, finding that they are beneficial agreements that serve the public interest by allowing television broadcasters to better serve their local markets, (e) retain the

disclosure requirement for SSAs involving commercial television stations, and (f) adopt an incubator program and issue a Notice of Proposed Rulemaking on how to structure the program.

As part of this overall action related to ownership, the FCC has tentatively declined (for now) to change the radio ownership limits, which currently restrict a single entity from owning more than eight radio stations in the largest markets.

VOLUNTARY ATSC 3.0 ORDER EXPECTED IN NOVEMBER

The FCC is expected to adopt an order in a several-months-old proposed rulemaking authorizing TV stations to voluntarily begin use of “Next Generation” or ATSC 3.0 technology in their licensed television operations.

The draft order includes many details about how a station would transition to ATSC 3.0, and the associated requirement to continue broadcasting an ATSC 1.0 signal in the station’s DMA. A station’s ATSC 3.0 and 1.0 signals must be simulcast, and the FCC intends to temporarily license “simulcast” channels as part of a modification to a station’s single broadcast license (i.e., a station will hold one license, with authorization to transmit in 3.0 at one site, and 1.0 at another). The simulcast requirement will sunset in five years unless the FCC extends it. Stations’ ATSC 1.0 signals will be entitled to mandatory cable and satellite carriage.

The FCC’s draft [Report & Order](#) is a compelling must-read for every television broadcaster – full power, Class A, and LPTV -- especially for those interested in what is fast crystalizing into a futuristic-looking television band where stations become part of cooperative web of shared transmission arrangements. We’ll have more on ATSC 3.0 after the FCC adopts the new rules.

DATES TO REMEMBER

November 6, 2017

Deadline for all broadcast stations to notify their EAS State Emergency Communication Committee (SEC) about their status/efforts related to multilingual EAS message dissemination.

November 13, 2017

Deadline for all broadcast stations to file EAS Form 3 in ETRS as part of EAS National Test.

November 24, 2017

Deadline for TV stations with winning auction bids that did not have pre-auction channel share agreements but preserved a right to enter into a post-auction channel share agreement to enter into a channel share agreement and file it with a minor modification application to modify the station’s transmitter site to the shared location. This is also the deadline for winning auction bidders to request additional time beyond January 23, 2018 to continue operations on their pre-auction channel.

December 1, 2017

Deadline for all digital television licensees to file the ancillary/supplementary services Form 2100, Schedule G in LMS.

AM & FM Stations in Alabama, Georgia, Colorado, Minnesota, Montana, N. Dakota and S. Dakota: if full-time employee threshold is met, complete EEO public file report and post same in public file as well as post on station website. **NCE Stations in Alabama & Georgia Only:** the biennial ownership report that would have been due on this date has been suspended until March 2, 2018

AM & FM Stations in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont: if full-time employee threshold is met, complete EEO public file report and place same in public file as well as post on station website. If station has 11 or more full-time employees, prepare **and** electronically file mid-term EEO Form 397 and place copy of filed report in your public inspection file. **NCE Stations Only:** the biennial ownership report that would have been due on this date has been suspended until March 2, 2018.

TV & Class A Stations in Colorado, Minnesota, Montana, N. Dakota, S. Dakota: if full-time employee threshold is met, complete EEO public file report and post same in public file as well as on station website and prepare **and** electronically file mid-term EEO Form 397 and place copy of filed report in your public inspection file. **NCE Stations Only:** the biennial ownership report that would have been due on this date has been suspended until March 2, 2018.

TV & CLASS A STATIONS IN, ALABAMA, GEORGIA, CONNECTICUT, MAINE, MASSACHUSETTS, NEW HAMPSHIRE, RHODE ISLAND AND VERMONT: IF FULL-TIME EMPLOYEE THRESHOLD IS MET, COMPLETE EEO PUBLIC FILE REPORT AND POST SAME IN ONLINE PUBLIC FILE AND STATION

WEBSITE. **NCE STATIONS IN ALABAMA & GEORGIA:** THE BIENNIAL OWNERSHIP REPORT THAT WOULD HAVE BEEN DUE ON THIS DATE HAS BEEN SUSPENDED UNTIL MARCH 2, 2018.

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