



# Broadcast Newsletter

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## **HAPPY NEW YEAR!**

From everyone at our law firm, we wish you and your families a wonderful 2020, and look forward to serving you in the year ahead.

### **ONE MONTH LEFT TO FILE 2019 BIENNIAL OWNERSHIP REPORT**

The FCC's filing window for all commercial and noncommercial AM, FM, TV, Class A and LPTV stations, as well as entities with attributable interests in such stations, to file 2019 biennial ownership reports will close on January 31, 2020. All information reported must be as of October 1, 2019. Commercial stations filing a new biennial ownership report must remit a \$70 fee for each station.

### **LICENSE ASSIGNMENT & RENEWAL APPLICATIONS AFFECTED BY FCC REINSTATEMENT OF REPEALED OWNERSHIP RULES**

Earlier this year, a three-judge panel of the 3<sup>rd</sup> U.S. Circuit Court of Appeals ruled that the FCC's ownership rule changes were not supported by the record, and overturned the action. The FCC asked all of the 3<sup>rd</sup> Circuit's judges to reconsider that decision, but that request was denied. Faced with the mandate that those rules be reinstated, the FCC took several actions on December 20<sup>th</sup>.

The first action was an [Order](#) reinstating the repealed rules. The next two actions were public notices explaining how the reinstatement of the rules impacted [license renewal applications](#) for commercial stations and [license assignment or transfer applications](#). If your station is impacted, read the notices carefully in addition to the summary below.

Because the current license renewal application does not have a question regarding compliance with the multiple ownership rules, the FCC is requiring all pending commercial station license renewal applicants to file an amendment by January 19, 2020 certifying compliance with the ownership rules as reinstated. For future renewal

applications, commercial station applicants will use the application question about FCC violations during the preceding term to report either compliance or non-compliance with the rules, as reinstated. The FCC plans to add a specific renewal application question about the ownership rules in coming months and will announce when it does.

For license assignments and transfers of control, pending applications filed on Form 314 or 315 must amend their application by adding, at Exhibit 1, a statement certifying compliance with the reinstated ownership rules. If the applicant cannot certify compliance, an explanation must be provided. Until such an amendment is filed, the pending application will not be acted on. For any new applications filed on Form 314 or 315, the FCC is seeking approval from OMB to restore previous ownership language, but pending that approval, all applicants must use the existing ownership language in the form to certify compliance or non-compliance with all of the ownership rules.

Despite taking these actions, the FCC has reserved the right to file a further appeal to the U.S. Supreme Court.

## DEADLINE TO FILE FIRST ANNUAL CHILDREN'S TELEVISION REPORT EXTENDED TO MARCH 30, 2020

Ok, we're now on board with the view that the transition to the revised Children's Television reporting requirements has been anything but smooth and easy to understand.

In the latest wrinkle, the FCC issued a [public notice](#) announcing that the deadline for the first annual Form 398 Children's Television Report has been moved from January 30, 2020 to March 30, 2020. That's because the rule change making this an annual, rather than quarterly report, is not taking effect until January 21, 2019 and the FCC wanted to give stations some time to get familiar with the Form 398 changes.

The changes to that form have been approved, but are not yet available to review. In fact, the form won't even be available until January 30, 2020 for licensees to start populating and filing the report.

To help ease the transition to the new form, the FCC will hold a webinar on January 23, 2020 from 1:30-2:30 p.m. to review the functionality of and changes to the report.

But wait! There's more. Because the revision to the public file rule allowing station commercial limits certifications to be made annually instead of quarterly will not be effective until January 21, 2020, the FCC has clarified in the notice that stations must still complete and place a quarterly commercial limits certification in their public files covering the period from October 1 – December 31, 2019. That quarterly certification is due your public file by January 10, 2020.

Other rule changes that go into effect on January 21 include the elimination of the requirement to inform program guides of station E/I programming, the elimination of the E/I symbol for core children's programming on noncommercial stations, and the revised preemption rule.

## AUCTION 106 DATES, PROCEDURES AND FILING FREEZE ANNOUNCED

The FCC has issued two public notices announcing the final procedures and deadlines for the auction of 130 new FM permits in Auction 106, and an associated freeze.

Per this [Public Notice](#), the Auction Tutorial will be available via Internet by January 22, 2020, and the Short-Form Application (FCC Form 175) Filing Window Opens January 29, 2020 at 12:00 noon Eastern Time (ET) and closes February 11, 2020, 6:00 p.m. ET. Upfront Payments (via wire transfer) are due no later than March 20, 2020 at 6:00 p.m. ET. The FCC will hold a mock auction for qualified participants on April 24, 2020, and the auction will begin on April 28, 2020.

According to this [Public Notice](#), during the Form 175 filing window, no FM commercial or noncommercial educational minor change applications will be accepted. So, if you were planning one of those, get it on file before January 29.

## CHANGES ADOPTED TO NEW NCE FM AND LPFM APPLICATION PROCESSING RULES

The next time the FCC opens filing windows for new NCE FM and Low Power FM stations, a new set of processing rules will be in place. By [Order](#) adopted December 11, 2019, the FCC made numerous changes to those rules.

For mutually exclusive NCE applications, where a points system is used to determine which applicant is awarded the permit, applicants will no longer have to amend their governing documents to maintain localism/diversity in order to receive points for being established local applicants and diversity of ownership. In addition, if applicants end up in a tie after points are tallied, an applicant that was unsuccessful in prior FCC filing windows would receive a preference if all other tie-breaker criteria have not broken the tie.

New applicants will also have to certify that they have reasonable assurance for their proposed transmitter sites (that requirement exists now, but is not one that has to be certified in an application).

The FCC also reclassified as “minor” ownership changes to government applicants and to non-profit boards that have gradual changes. Previously, such changes were considered “major” and a pending application was dismissed as a result.

Once awarded, the old rule restricting a change in transmitter sites for permits awarded with a 307(b) preference has been eliminated, allowing winning applicants to change sites if a new underserved service area is as great from that site as the one originally specified on the permit. This rule often resulted in a winning applicant not being able to construct facilities after losing a transmitter site.

## LICENSE RENEWAL TIDBITS

With the radio license renewal cycle six months old, we’re beginning to get some perspective on how the Media Bureau is deciding license renewal fines. We know that the FCC drops the hammer on stations that have never completed and not uploaded issues/programs lists, fining them thousands and granting only 2-year renewals with

reporting conditions. We’ve seen that at least twice so far.

We now have some perspective on how much stations have to pay for filing their license renewal applications late -- [\\$3,000](#) for an FM station filing nearly three months late, [\\$1,500](#) for an FM translator renewal application filed three months late, and [\\$1,500](#) for a low power FM license renewal application filed nearly four months late.

The FCC recently made clear to NAB that staff members are carefully reviewing online public files for missing and late items, and still have several hundred stations that have not yet established an online file. We expect heavy fines for such violations.

## DATES TO REMEMBER

### January 1, 2020

**Radio Stations in Alabama & Georgia** – air third post-filing license renewal announcement and additional post-filing announcements on Jan 1, Jan 16, Feb 1 and Feb 16, 2020

**Radio Stations located in Arkansas, Louisiana & Mississippi:** broadcast third pre-filing license renewal announcement; the final pre-filing announcement should air January 16, 2020.

### January 10, 2020

**TV, Class A, AM & FM Stations (commercial & noncommercial):** complete 4<sup>th</sup> Quarter 2019 issues/program lists and upload to online public file.

**TV & Class A stations (commercial only):** compile and post to the public file records relating to the station’s compliance with children’s programming commercial limits for the period of October 1, 2019 – December 31, 2019; this is the last quarterly commercial limits certification as these are transitioning to annual certifications, with the certification for 2020 due on January 31, 2021.

**Class A TV Stations Only:** complete and post to your online public file a certification of ongoing Class A eligibility.

**TV & Class A stations** changing channels as part of the repack or based on voluntary receipt of auction funds should file a transition progress report in LMS (unless the station has already transitioned). Phase 8 stations are exempt from this quarterly filing because their 10-week transition report is due January 3, 2020, and another quarterly report would therefore be duplicative.

## January 17, 2020

**TV & Class A stations** assigned to Phase 7 of the post-auction repack must complete their transition to new channels.

## January 18, 2020

**TV & Class A stations** assigned to Phase 8 of the post-auction repack may begin testing on their new channels; deadline to transition is March 13, 2020

## January 19, 2020

Deadline for **all pending radio license renewal applicants** to file an amendment certifying compliance or non-compliance with the FCC's reinstated broadcast ownership rules.

## January 23, 2020

FCC webinar on revisions to FCC Form 398 Children's Television Report (1:30-2:30 p.m. ET)

## January 29, 2020

**Window opens for participants in Auction 106** for any of 130 new FM channels to file short form Form 175 applications; window closes February 11, 2020 at 6 p.m. Eastern time.

## January 31, 2020

**All Commercial and Noncommercial Radio, TV, Class A, LPTV Stations:** Last day to file 2019 Biennial Ownership Report or certification of no change in LMS filing system.

**All Commercial and Noncommercial stations that stream music programming** must pay the minimum fee to **SoundExchange**.

## February 1, 2020

**Radio and TV Stations located in Kansas, Nebraska, New Jersey, New York, Arkansas, Louisiana, Mississippi and Oklahoma:** if five (5) full time

employee threshold is met, prepare EEO public file report and post it to the station online public inspection file and on the station website.

**Radio Stations located in Arkansas, Louisiana & Mississippi** – air first post-filing license renewal announcement; additional post-filing announcements are due Feb 16, March 1 & 16, and April 1 & 16, 2020.

## February 3, 2020

**Radio Stations located in Arkansas, Louisiana & Mississippi** – deadline to file license renewal application and EEO program report.

## March 30, 2020

**TV & Class A stations (commercial only):** complete and electronically file via LMS the revised FCC Form 398 Children's TV Programming Report; this deadline was extended from January 30; this is the first annual report and will cover the period from September 15 - December 31, 2019.

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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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