



Broadcast Newsletter

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CHAUTIN AT NRB CONVENTION

From February 24-28, HCCB Managing Partner Joe Chautin will be at the National Religious Broadcasters Convention in Nashville, Tennessee. If you would like to schedule a meeting with Joe and have not already, email him at jchautin@hardycarey.com.

FILE YOUR 2019 BIENNIAL OWNERSHIP REPORT

Today -- January 31, 2020 -- is the last day 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. All information reported must be as of October 1, 2019. The FCC's LMS system has been sluggish with so many filings, and the government's pay.gov site for remitting fees has been particularly troublesome. Bring your patience.

REVISED ANNUAL CHILDREN'S TELEVISION REPORT AVAILABLE; EXTENDED DEADLINE REMAINS MARCH 30, 2020

As promised, the FCC made the revised Children's Television Report available to commercial television stations on January 30, 2020. You can access the form by logging in to LMS with your FRN and password, selecting the "Facilities" tab, clicking on the station's facility id number, and then selecting the report from the pull-down menu by clicking on the "File an Application" blue button. Stations don't have to file that report until March 30, 2020 (extended from the normal January 30 deadline), but we recommend that you take an early look at the form and what it requires (in other words, it's a little complicated).

This first annual report will only cover the period from September 16 – December 31, 2019. Stations must select the compliance option they used during that period, and at least 45 hours of core programming (prorated from the annual 156-hour requirement) must have aired during that period to meet the FCC requirements. The FCC already conducted a webinar on the new form, the slide show for which can be accessed [here](#).

“Core” children’s programming under the new rules must (a) air between 6 a.m. and 10 p.m., (b) serve the educational and informational needs of children ages 16 and under as a significant purpose, (c) be regularly scheduled, except as allowed in compliance option 2, (d) be at least 30 minutes long, except as allowed under compliance option 2, (e) display the E/I symbol throughout the program (now for commercial stations only), (f) target child audience is specified in writing in the Form 398, and (g) instructions for listing the program as E/I are provided by the station to publishers of program guides (though such info will not have to include the specific age group any longer).

AUCTION 106 SHORT FORM FILING WINDOW OPEN; CLOSES FEBRUARY 11TH AT 6 P.M. ET

If you’re planning on participating in Auction 106 for a commercial FM permit, filing a short form 175 application is required before 6 p.m. Eastern Time on February 11, 2020. The Auction 106 “bible” is set forth in this [Public Notice](#), and is mandatory reading for participants. 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 itself will begin on April 28, 2020.

A NOTE ABOUT STATION ONLINE PUBLIC FILES

By now, almost every commercial and noncommercial broadcast station knows about and is maintaining an online public file on the FCC hosted platform. Because the FCC’s system places a date/time stamp on every document upload, there is no way to hide a late filing. That becomes relevant at license renewal time, when stations must certify whether they always timely uploaded documents in the public file. Even one late report will require a “no” response and the completion and upload of an explanatory exhibit.

We’ve printed the above public service announcement in these pages before, and it is worth repeating. But this article is about nightmarish hiccups that even well-intentioned and skilled personnel can create while working to comply with the rules. For example, if someone deletes a timely uploaded document because they

saw an error, and uploads a corrected one after the deadline for that item, the updated document will have the actual date/time it was uploaded and therefore be late. Be cautious about creating new folders for documents, as the act of placing them in the new folder has been known to change the date/time on each document. If a document is uploaded in the wrong folder, there is a “move” button to select so that when it reappears in the correct folder, it retains its original upload date/time.

As your station nears renewal and someone reviews the online file to be sure of compliance, only have them note a late or misplaced document in the folder. Instruct them not to attempt an immediate fix but instead to collect the information and consult with counsel or another skilled online file specialist. You do not want a well-intentioned fix attempt to create the wrong impression that one or more documents were uploaded late. If all else fails and problems are introduced on the eve of license renewal, there is a “history” tab that can provide helpful evidence of prior compliant actions so that a station can defend itself against fines for what appear to be late uploads.

FCC KICKS OFF 2020 WITH BIG SETTLEMENTS

We’re hoping it isn’t a New Year’s Resolution, but the FCC published three Consent Decrees settling various rule violations with broadcasters. In each, broadcasters agreed to pay large monetary penalties.

The [largest](#) was \$1,130,000 To Scripps Broadcasting for violations of the FCC’s tower light monitoring rules. The investigation into Scripps’ tower light monitoring began after a plane crashed into a station’s tower. The case also included instances where tower ownership changes were not timely reported to the FCC. Section 17.47(a) of the FCC’s rules requires antenna structure owners to monitor tower lighting by either making a visual observation every 24 hours or by providing an automatic alarm system that detects light failures. When a tower changes ownership, a change of ownership must be completed within five days.

[Next up](#) was a university radio station agreeing to pay \$76,000 for repeated violations of the FCC’s

underwriting policies. That case began with a complaint that recorded several commercials on the stations. The violations continued for an extended period.

Finally, another large broadcast owner agreed to pay \$50,000 for repeated violations of the FCC's rules prohibiting the broadcast of prerecorded programming as "live" without previously announcing that the programming is actually prerecorded. Under 73.1208 of the rules, any taped, filmed, or recorded program material in which time is of special significance, or by which an affirmative attempt is made to create the impression that it is occurring simultaneously with the broadcast, must be identified by the station as taped, filmed or recorded. This case began with a complaint from the public that the host of a program that sounded live violated the rule because the host had previously passed away.

In all three proceedings, the broadcaster also agreed to a compliance and reporting program. The requirements of such programs are tedious and time-consuming, and require periodic reports to the FCC on whether or not the remedial compliance efforts are being fulfilled. It's kind of like the FCC looking over your shoulder, sometimes for as long as three years. Exciting stuff.

LICENSE RENEWAL NOTES

You may remember that when your station files for license renewal, it must also file an EEO program report to certify (i) that there have been no judicial/administrative proceedings instituted against the station for employment discrimination, and (ii) whether the station has fewer than five full time employees. If a station has five or more full-time employees, then the last two annual EEO public file reports must be uploaded, a person responsible for EEO compliance must be specified, and a narrative statement provided that describes how the station has carried out its EEO obligations.

So, in essence, stations with five or more full-timers are undergoing an EEO audit of sorts at license renewal time. Of course, stations should always have their EEO house in order, but the two EEO public file reports that have to be submitted at

license renewal time should be carefully scrutinized to be sure they do not create an issue. If you have an EEO public file report uploaded to your station's public file now, and it has issues, don't delete it and upload a new one. That will cause the original report to appear as though it were uploaded after the required deadline. Instead, create an addendum and upload that separately.

DATES TO REMEMBER

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.

Radio Stations located in Indiana, Kentucky & Tennessee – air first pre-filing license renewal announcement; additional pre-filing announcements are due Feb 16, March 1, and March 16, 2020.

February 3, 2020

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

February 11, 2020

6 p.m. Eastern Time on this day is the deadline to file Short Form 175 for entities that wish to participate in Auction 106 for various FM frequencies

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 16 - 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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