



# Broadcast Newsletter

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## **MARCH 30<sup>TH</sup> DEADLINE FOR REVISED ANNUAL CHILDREN'S TELEVISION REPORT**

All commercial full power and Class A digital television stations have until March 30, 2020 to file the new Children's Television Report in LMS.

This first annual report will only cover the period from September 16 – December 31, 2019, but when stations log in, they will note that the form asks for information for all four quarters of 2019. No worries. The FCC staff has advised that stations should place a “zero” in the appropriate blocks for Q1 and Q2 of 2019, report only the number of core programming hours aired from September 16-30 in the Q3 2019 block, and then report all of Q4 2019 programming in the Q4 block. Stations must select the compliance option they used during each quarterly period. For the September 16 – December 31, 2019 period, at least 45 hours of core programming (prorated from the annual 156-hour requirement) must have aired to meet the FCC requirements.

If you're confused about the compliance “options” under the new rule, here's how that works. Stations have two options to satisfy their children's core programming obligations:

- 1) Broadcast an average of 3 hours/week of children's core programming, all of which must be regularly scheduled weekly programming, **OR**
- 2) Broadcast a total of 156 hours of core programming annually, with a minimum of 26 hours per quarter of regularly scheduled weekly programming **plus** up to 52 hours annually of core programs at least 30 minutes long that are not regularly scheduled on a weekly basis. The 52-hour portion could also be deemed satisfied with some shorter-form programming and interstitials that are not 30 minutes long.

Regardless of which of the two approaches a station chooses, those stations that multicast will be permitted to air up to 13 hours per quarter of regularly scheduled weekly

core programming on a multicast stream in lieu of the main channel, and still count it toward the total core programming aired under either of the options above.

Remember, stations are no longer required to air three hours per week of children's educational and informational programming on each multicast channel, so that significantly reduces the number of core children's programming overall. The only time such programming will occur on multicast channels is if a station decides to shift up to 13 hours per quarter of such programming from its main to a multicast channel.

As a general reminder, the definition of "core" children's programming changed under the new rules now must meet the following criteria: (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).

## (REALLY IMPORTANT) LICENSE RENEWAL TIDBITS

The FCC is trying really hard to avoid having to fine radio stations for failing to follow the new requirement to maintain an online public file and regularly place required items in the file. One might say they are bending over backwards to get stations to come into compliance with the rules by the time they file their license renewal application.

Through an error by an outside contractor hired by the FCC to create an algorithm that checks online public file folders, several of our clients received emails claiming that items were missing from online public files. We knew that to be inaccurate and brought it to the FCC's attention, and apology/retraction emails followed. But our conversations with staffers indicated that the FCC

was doing everything it could to get stations to comply by the time they file their license renewal applications. If stations are not compliant by the time they file for license renewal, the proverbial hammer will drop and fines are likely. Don't take our word for it – here is the message the FCC sends to recalcitrant stations:

*Our records indicate that the station \_\_\_\_\_ has not uploaded all required public inspection file material to the FCC's online public file system. It was required to do so by March 1, 2018. Our records indicate that the station has not uploaded the required Issues/Programs Lists and may be missing other information as well. Please act immediately to correct this problem and upload the required material. Failure to comply with the online public inspection requirements by the time the station's license renewal application must be filed will subject the station to a monetary penalty. If you have any questions about what should be uploaded or how to upload material, please call 1-877-480-3201 or check the Commission's public file web page at [publicfiles.fcc.gov](http://publicfiles.fcc.gov).*

That's a nice and clear warning. Do you see how nice the Audio Division is trying to be?

We applaud the FCC for its "judicious" approach to public file compliance for radio stations, but we note two things. First, the FCC's approach is likely a one-time extension of mercy, so stations are urged to take every action necessary to follow the online public file posting requirements on time, every time, especially if your station has been late in transitioning or posting. Second, we do not assess that TV stations will receive similar treatment when TV license renewals start this June. TV stations transitioned to the online public file during the last renewal cycle, and therefore have had sufficient time to get the hang of posting to the online public file.

## A REMINDER ABOUT THOSE QUARTERLY ISSUES/PROGRAMS LISTS

This is our annual reminder about what stations are required to include in quarterly issues/programs lists. You might ask why we revisit this from time to time. Good question. The answer is because we

often “see” quarterly issues/programs lists that are woefully inadequate (emphasis on “woefully”). Our concern is that one day, a station will get the privilege of paying a fine because their list does not even come close to complying with the rule, and will be therefore be disregarded – treated as though a list had never even been compiled.

So, let’s review. At the end of each calendar quarter, each commercial and noncommercial licensee of a TV, Class A TV, AM and FM station must complete and upload to their public file a list of programs that have provided the station’s most significant treatment of community issues during that preceding quarter. The list needs to contain a brief narrative describing what issues were given significant treatment and the programming that provided that treatment. The description must also at least include the time, date, duration and title of each program in which the issue was treated.

How does a station identify community issues? That is left to a licensee’s discretion. But at a bare minimum, the best way to identify community issues is to read, listen and watch local information sources. Listen to what your listeners or viewers are telling you are issues that are important to them.

How many issues/programs must be listed? The FCC does not set a specific number, but we suggest including at least 5-7 of these per quarter. You do not need to list every time during an entire calendar quarter that a community issue was addressed (that would be overkill and way too time-consuming). Public service announcements should not be your station’s only “programming” that addresses the issue (you should actually have the issue addressed as part of a program the station airs).

Do your quarterly issues/programs lists include the date, time, duration, title and issue treated in the program that addressed an issue in your station’s area? Hmmm. Go ahead and check by clicking on the public file [link](#) and typing in your station’s call letters. It will help you sleep better. We promise. And what could be better than good sleep?

## FCC ANNOUNCES FIRST EEO AUDIT OF 2020

On February 6, 2020, the FCC announced its [first EEO Audit](#) of the year, sending audit letters to over 300 radio and television stations. If your station is on the list, the deadline to respond to the audit is March 23, 2020. Consistent with last year’s audits, a station’s response is to be uploaded to the online public file instead of being mailed to the FCC. If you received an audit letter, the letter should be uploaded to your online public file now in the EEO section (there is a folder for audits).

This is a good time to remind stations that these audits come from the FCC’s Enforcement Bureau, not the Media Bureau. Enforcement of the EEO rules moved to the Enforcement Bureau last year. While we’ve not seen an uptick in enforcement actions for EEO non-compliance, we do note that broadcasters recently entered into three consent decrees with the Enforcement Bureau, paying substantial fines for rule violations. The Bureau’s review of your EEO program is an exacting one, so be prepared by precisely following the requirements.

The FCC audits about 5% of all broadcast stations each year for EEO compliance. The second audit usually comes in the summer, so if your station lucked out and wasn’t on this list, there is always a chance that it will make the next one.

## FCC ISSUES 4<sup>TH</sup> BROADCAST OWNERSHIP DATA REPORT

The FCC has issued its 4<sup>th</sup> [report](#) on broadcast ownership data, using information from biennial ownership reports filed in 2017. That was the first year that broadcast ownership reports had to be filed in the new LMS system. The revisions to the form and long transition to new data collection have now resulted in easily compiled information on the diversity of broadcast station ownership.

## DATES TO REMEMBER

### **March 13, 2020**

Deadline for TV stations assigned to Phase 8 of the post-auction repack to complete construction of their post-auction channel facilities

### **March 14, 2020**

TV stations assigned to Phase 9 of the post-auction repack may begin testing on their assigned post-auction channels. Linked stations must coordinate any testing.

### **March 23, 2020**

Deadline for radio and TV stations included in January 2020 EEO Audit to complete audit response and place it in the station online public inspection file.

### **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.

### **April 1, 2020**

**Radio Stations located in Indiana, Kentucky & Tennessee** – deadline to file license renewal application and EEO program report, and air first post-filing license renewal announcement; additional post-filing announcements are due April 16, May 1 & 16, and June 1 & 16.

**Radio and TV Stations located in Delaware, Indiana, Kentucky, Pennsylvania, Tennessee and Texas:** if five (5) full time employee threshold is met, prepare EEO public file report covering the period from April 1, 2019 – March 31, 2020 and post it to the station online public inspection file and on the station website.

**Radio Stations located in Michigan and Ohio, and TV Stations located in Washington DC, Maryland, Virginia and West Virginia:** broadcast first pre-filing license renewal announcement; additional pre-filing announcements should air April 16, May 1, and May 16.

### **April 10, 2020**

**TV, Class A, AM & FM Stations (commercial & noncommercial):** complete 1<sup>st</sup> Quarter 2020 issues/program lists and upload to online public file.

**TV & Class A stations (commercial only):** note that there is **no** requirement to compile and post to the public file records showing compliance with children's programming commercial limits for the 1<sup>st</sup> quarter of 2020. *This requirement has transitioned to an annual certification, with the certification for all of 2020 due on January 31, 2021. However, we recommend that you continuously confirm that commercial limits restrictions are being met.*

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

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For more info, contact Joe Chautin or Mark Balkin.

Phone 985.629.0777

Fax 985.629.0778

[www.hardycarey.com](http://www.hardycarey.com)

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.

 Hardy, Carey, Chautin & Balkin, LLP  
ATTORNEYS AT LAW  
1080 West Causeway Approach  
Mandeville, Louisiana 70471-3036