



Broadcast Newsletter

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A UNIQUE PERSPECTIVE

Sixteen years ago, our boutique FCC law firm experienced Hurricane Katrina, which disrupted and permanently readjusted our personal and work lives. We rebuilt everything on a resilient model that eliminated uncertainty and made it possible to work for clients anywhere, anytime. The lessons we learned then apply to today’s coronavirus crisis. Adjusting, refocusing and changing are part of the path forward. Faith is also. Eventually, life and work do return to normal, and familiar routines resume. When they do, we’ll all be a bit more wise, humble and thankful.

As our email of two weeks ago indicated, we are available to serve you as needs arise, and will communicate new FCC developments as warranted. All that we do is cloud based, so we can immediately access client files and promptly take actions when needed. Our office phone lines are “twinned” to our cell phones, so dial us either way. If you somehow reach our voicemail, we receive email notices of those and will respond the same day. We regularly text with clients if that makes more sense for your situation.

Zero interruption; prompt responses; timely counsel. It remains our privilege to serve you. Let us know how we can help. We’ll be there.

FCC ACTIONS DIRECTED AT BROADCASTERS DURING CORONAVIRUS OUTBREAK

During the second half of March, as coronavirus measures across the United States began to impact broadcasters, the FCC took several proactive measures designed to facilitate and help broadcasters manage through those impacts. Several are highlighted in this article. The FCC’s leadership and Media Bureau personnel are continuing to be proactive, and we have easily reached staffers and received prompt responses. We expect this to continue in the weeks to come. Except as noted in this article, regular deadlines remain in place, so please plan accordingly. If your circumstances prevent you from completing a required

action, please let us know as soon as possible, preferably in advance.

If you left your office without the passcode for your station's online public file, you can use your FRN and password at this owner dashboard [link](#) to produce the passcode you need for each station. If you need help, let us know.

The FCC's Audio Division began working remotely first (the rest of the FCC Media Bureau and other staff followed). When the Audio Division began working remotely, they issued this [public notice](#) addressing interruptions to noncommercial stations on university campuses that closed and on how to make certain types of non-electronic filings and/or who to email in certain circumstances.

Late on Friday, March 27, 2020, the Media Bureau issued a [public notice](#) extending the deadline for commercial full power and Class A television stations to file their children's TV report from March 30th to July 10th. Also, the deadline for all broadcast stations to file their 1st quarter 2020 issues/programs list was moved from April 10 to July 10. In both instances, the FCC urges stations that can to follow the original deadline.

The FCC [indefinitely delayed](#) Auction 106 for new commercial FM stations, suspending all deadlines, and dismissing previously filed FCC Form 175 short form applications. For those entities that remitted their upfront payments, the FCC will reimburse those funds approximately 2 weeks after receiving the request.

The Media Bureau issued [guidance](#) clarifying that stations providing free advertising to companies during the coronavirus pandemic need not include those free spots in their political lowest unit charge ad rate calculations. On a related note, as voting primaries are rescheduled to later dates, the lowest unit rate time periods (45 before a primary, 60 days before a general election) for candidate ads get pushed back as well.

The Media Bureau also [established](#) a temporary waiver process for allowing entities providing important coronavirus news/information via

brokered television stations so that they can exceed the amount of programming provided and not violate the television ownership/attribution rules.

For television stations in phases 9 and 10 of the post-auction repack, the FCC issued a [public notice](#) that any station scheduled to complete its transition in phase 9 that believes it may be unable to meet the May 1, 2020 deadline will be granted a waiver of the phase 9 deadline and reassignment to phase 10, which begins on May 2, 2020, and ends on July 3, 2020. The extension/reassignment is not automatic. A request must be filed in LMS and copied via email to FCC staff.

The FCC also closed its open window for hand-delivery filings and issued a [public notice](#) on how to submit such filings.

In addition to all of these broadcast-related actions, the FCC has taken numerous, almost daily actions to ensure that Americans have enough bandwidth to telework and promote telehealth. Their March meeting will be held as scheduled via teleconference.

As mentioned above, broadcast stations should not presume that any construction permit, temporary authority, EEO reporting, license renewal or other regulatory deadlines have been relaxed. Unless mentioned above, or in future FCC releases, all general and specific regulatory deadlines remain the same. If your station has unique circumstances that require special relief, let us know right away and we'll seek/obtain that relief for you.

HOMELAND SECURITY LETTERS ALLOW BROADCASTERS MOVEMENT & ACCESS TO FUEL

If your station staff requires access to station studio, transmitter or tower facilities during a time when movement has been restricted locally, the Dept. of Homeland Security letter at this [link](#) can be used to allow movement of and access by staff members to facilities. A second [letter](#) will prioritize access to fuel should there be a shortage or limit on fuel facilities.

DISPLACED LPTV/TV TRANSLATOR REIMBURSEMENT PROCESS MOVES FORWARD

This past week, many (if not all) LPTV/TV translator stations that were displaced due to the repack of television stations into channels 2-36 and filed initial reimbursement estimates last fall received emails from the FCC.

The first email was an initial verification of the estimated displacement cost for a station, sometimes for the amount claimed, and sometimes for an adjusted, lower amount. The second email notified those stations that 85% of the verified cost estimate amount became available for use by stations.

The FCC issued a [public notice](#) about the allocation, which also notified LPTV/Translator stations that they may immediately begin submitting documentation of actual expenses incurred for approval to be drawn down against their individual allocations by uploading invoices or receipts and resubmitting the reimbursement form in the Bureau's Licensing and Management System. Invoices for actual expenses incurred that have already been submitted will also be reviewed and processed for payment upon approval. The FCC does not just pay a lump sum to a station. Instead, it pays by invoice, sending funds from the station's allocation only once an expense is incurred/proven. For example, if your transmitter or antenna manufacturer requires a 50% deposit before beginning to process your order, an invoice with those terms will result in the FCC's approval of those funds, and direction to the U.S. Treasury (where your allocated funds are held) to distribute those funds to the station bank account that you specified in the Form 1876.

If your displaced facilities have not yet been constructed, or if you're in the process and coronavirus delays may be frustrating your attempts to complete construction, stop and review your construction permit deadline. Permit deadlines are nearly impossible to extend under FCC rules, but we've already seen the FCC grant relief to full power stations when tower crews became scarce, or those in phase 9 whose construction schedules have been upended by

coronavirus issues. If your current efforts are being delayed for coronavirus related reasons, let us know so we can assist in getting you more time.

If you own a displaced LPTV/TV translator that was determined to be eligible for reimbursement, but did not receive the emails above, something could be amiss. Let us know and we'll assist you in determining whether there is a problem.

DEADLINE FOR REVISED ANNUAL CHILDREN'S TELEVISION REPORT EXTENDED TO JULY 10

As mentioned earlier in this newsletter, all commercial full power and Class A digital television stations now have until July 10, 2020 to file the new Children's Television Report in LMS. The FCC [extended](#) the deadline due to the coronavirus. For those that filed the report before the previously extended March 30 deadline, good for you but please do read the rest of this article to be sure that your filed report doesn't contain a popular error.

As a reminder, this first "annual" children's television report only covers the period from September 16 – December 31, 2019, so "zeros" should be used for Q1 and Q2 in the report because stations previously filed those quarterly reports in 2019.

For Q3, the only time period covered by this report is September 16-30, 2019 and stations should put in the total of core programming aired during those two weeks. For Q4, the thirteen-week period from October 1 – December 1, 2019 is covered, and the total hours of core programming aired during those weeks should be entered.

A common error we are seeing in filed reports is that stations are reporting average number of hours aired each week instead of actual total number of hours aired. The new rules require stations to air at least a total of 156 hours of core children's programming each year, or 39 hours per quarter. Thirty-nine hours computes to 3 hours for each of the 13 weeks in each quarter. So, if you're airing 3 hours a week, you are meeting the required minimum. But be sure to report it that way. For the last two weeks of Q3 2019, the reported number should be at least 6 hours to meet the minimum

requirement. For Q4 2019, the reported total number of core programming hours should be at least 39 hours to meet the minimum requirement.

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.

AN ONLINE PUBLIC INSPECTION FILE ORDER NOW?

Yes, that headline is accurate. The FCC released an [Order](#) in its broadcast public inspection file docket on March 17, 2020. It makes non-substantive, editorial revisions to the broadcast station public file rules to eliminate language that is unnecessary or no longer has any applicability.

Things like the word "local" as a modifier of the words "public inspection file" was replaced with the word "online." Language in the rule temporarily exempting radio stations from the online public file was deleted because radio licensees were no longer exempt from the online public file rule requirement as of March 1, 2018. You get the idea. But if were so routine, why are you reading about it here?

Good question. We're writing about it because there is something in a footnote that caught our eye. After reviewing that the rule exempted stations from uploading *existing* political file material through the March 1, 2018 deadline for all stations to transition to the online public file, allowing a hard-copy to be maintained instead, the Order then noted that "the transition to the online public file will be complete" as of March 1, 2020 -- two years after those hard copy political file materials could be removed from the file. Footnote 10 followed that sentence, and rather bluntly declared:

Upon completion of the transition to the online public file, we expect that all entities subject to the online public inspection file requirements will be

fully compliant. Broadcast stations that are not in full compliance will be required to self-disclose any non-compliance in their renewal application during the current renewal cycle, and we anticipate that the Media Bureau will initiate enforcement action when necessary as part of the renewal review.

Now you see why that footnote caught our eye. Perhaps what earlier appeared to be leniency for radio renewals thus far that had public file compliance issues was more of a function of the rule's effectiveness date rather than the scope of the Media Bureau's mercy. As always, compliance is key to avoiding fines during license renewal.

DATES TO REMEMBER

March 30, 2020

Extended - TV & Class A stations (commercial only): complete and electronically file via LMS the revised FCC Form 398 Children's TV Programming Report; this is the first annual report and will cover the period from September 16 - December 31, 2019. The FCC has [extended](#) this deadline to July 10, 2020 due to the coronavirus, but encourages those stations who can to file the report by March 30.

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

Extended - TV, Class A, AM & FM Stations (commercial & noncommercial): complete 1st Quarter 2020 issues/program lists and upload to online public file. The FCC has [extended](#) this deadline to July 10, 2020 as a result of the coronavirus but encourages those broadcasters who can to upload the 1st Quarter issues/programs list by April 10, 2020.

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 1st 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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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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