



Broadcast Newsletter

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FCC CONTINUES PROACTIVE BROADCASTER ACTIONS DURING CORONAVIRUS OUTBREAK

At the end of March, we reported a number of FCC actions taken that were helpful to broadcasters in light of access, economic and other issues resulting from the coronavirus pandemic. The FCC continued those types of actions in April, and more may be forthcoming. Our firm has raised questions regarding potential relaxation of some EEO requirements, and we anticipate some action on that front in coming weeks.

Below are short summaries on the Media Bureau's coronavirus actions in April.

On April 3rd, the Media Bureau [waived](#) the sponsorship identification requirements in situations where advertising entities donate previously purchased airtime to be used for the airing of public service announcements prepared by or on behalf of the CDC or other governmental authorities regarding COVID-19. Normally, the sponsorship ID rules would require identification of the entity that donated the time, but that has been waived. This waiver will remain in place through June 30, 2020 and be re-evaluated then.

In an April 9th [public notice](#), the Media Bureau granted television broadcasters a temporary, limited waiver of their obligations to air weekly, regularly scheduled children's programming in order to enable them to more easily air live and taped same-day local content, like religious services in those time slots. There will be no requirement that such preempted children's programming be rescheduled. This waiver ends April 30th.

By [Order](#) dated April 9th, the Media Bureau waived the remaining pre-filing renewal announcements requirement for radio and TV stations scheduled to file license renewal applications June 1, 2020. Radio stations in Michigan and Ohio were in that group, as well as TV stations in DC, Maryland, Virginia and West Virginia. Post-filing renewal announcements are still required. It is possible that the FCC will extend similar relief to stations in the next renewal group, but be prepared to air them as normal.

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.

The FCC's open window for hand-delivery filings remains closed; procedures in this [public notice](#) should be followed on how to submit such filings.

A NOTE ABOUT YOUR ONLINE PUBLIC INSPECTION FILE

If you've recently logged in to or just accessed your station's online public file, you may have noticed an "alert" banner notice at the top of the page noting that the FCC has implemented database caching on OPIF document uploads as of April 3, 2020 and that up to a one-hour delay may be experienced between when a file is uploaded and when it can be viewed. The caching action has resulted in a much quicker response to the publicly available FCC public file page (it used to pause for 10 seconds or more). On the other hand, for stations that have gotten into the habit of uploading a document and then checking the publicly accessible page to confirm the upload, your efforts may be frustrated for up to an hour while the cache process updates.

LICENSE RENEWAL DEVELOPMENTS

License renewal for broadcast stations is rolling right along, with several recent developments in that should draw your attention.

First, the Media Bureau issued a [public notice](#) announcing its procedures for television license renewal, which begin with filings in June 2020 and continue through June 2023. The notice captures the various license renewal requirements for TV stations, making a few clarifications along the way (some in footnotes). Stations are reminded that failure to comply with public inspection file requirements prior to the deadline for filing a station's renewal application may result in forfeitures and may impact a station's license renewal application. This hints at the possibility of receiving "forgiveness" for not timely uploading a document when it was due, so long as it is

corrected before you hit the submit button on the renewal application. Fingers crossed. Pre- and post-filing renewal announcements will follow the existing rule, but licensees are advised that such announcements need only be aired on the main channel. We encourage all TV broadcasters to review the notice.

Next, the Enforcement Bureau [issued](#) guidance for FCC licensees or their attorneys who are requesting information about "enforcement holds" that may affect the processing of license renewal applications. Sometimes, Enforcement places a "hold" on an application because of a complaint that they are processing about the licensee or the station. The Enforcement Bureau will give an update on whether there are any pending enforcement cases or investigations that are delaying a renewal application grant, but only to the licensee or its designated attorney. Third parties, such as lenders or prospective station purchasers cannot receive such information. A proper request should receive a response within seven (7) business days.

Finally, the Media Bureau [announced](#) an update to the license renewal form for commercial radio stations. The form now has a new question about compliance with the FCC's multiple ownership rules during the license term, which requires a yes, no, or n/a response. A no or n/a response requires an explanation. The addition of this question was previously announced as forthcoming, and arose as a result of the U.S. 3rd Circuit Court of Appeal's decision rejecting the FCC's planned changes to the multiple ownership rules. The FCC recently filed an application seeing U.S. Supreme Court review of that decision. For now, the new question is required for commercial radio stations. Commercial TV stations already have such a question on their renewal application.

MANY DISPLACED LPTV/TV TRANSLATOR STATIONS STILL NEED TO FILE FORM 1876

The FCC has previously notified almost 900 LPTV/TV displaced translator stations of the total amounts allocated for their station channel change expenses. But many stations that qualify for reimbursement have not submitted a critical

document to the FCC that establishes the station's bank account that will receive reimbursement dollars. The form is known as Form 1876, and must be submitted in original, executed form at a specific address in order to be processed. The FCC recently sent emails to stations urging those that have not yet filed Form 1876 to do so. If your station requires assistance with completing and submitting this form, please let us know.

FM ZONE-CASTING PETITION GETS FCC'S ATTENTION

A company called GeoBroadcast Solutions has filed a [petition for rulemaking](#) with the FCC that seeks to allow FM boosters to "zone-cast" within a full power FM station's service area. The FCC has asked for initial comments by May 4, 2020 to gauge whether it should proceed with a formal rule change proceeding. Comment filers should use the ECFS and submit comments under "RM-11854" proceeding.

GeoBroadcast is asking the FCC to modify the current FM booster rule that requires boosters to simulcast 100% of a full power station's programming. If boosters are only required to substantially duplicate the programming of the full power station, they would be able to air commercials, news or other content on the booster only, targeting specific areas by being hyper-local. The FCC's request for comments on the proposal asks whether the voluntary use of such boosters should be allowed.

FCC WANTS HIGH COURT'S REVIEW OF OWNERSHIP RULES DECISION

The FCC has filed a legal [brief](#) requesting the U.S. Supreme Court review the recent decision of the U.S. 3rd Circuit Court of Appeal rejecting the FCC's 2017 attempt to loosen the broadcast multiple ownership rules. In the request and in an issued [statement](#) by the Chairman, the FCC says that its efforts have been unlawfully stymied by the same 3-judge panel that has overturned FCC attempts to change ownership rules on three different occasions over the past 17 years.

Getting the high court to accept the case is no easy task, as they grant review in only about 100 cases

each year. However, the Supreme Court has recently honed in on legal issues concerning judicial review of administrative agency decisions, and the FCC's case could be attractive to the Court for that reason. Even if accepted for review, the case would likely not be briefed and decided for months.

BROADCAST LOCAL PUBLIC NOTICE RULE CHANGES ON THE HORIZON

The FCC's May meeting [agenda](#) includes an item that would substantially revise the existing rules requiring stations to locally announce when they file certain applications, both on the air and in local newspapers. The [draft Report & Order](#) has its origins in a 2017 proceeding that included a 2019 further notice of proposed rulemaking seeking input on the rule changes.

If adopted as drafted, the FCC would require shorter and more uniform public notices for all broadcast station applicants, and mandate that online notices provide the public with a more meaningful opportunity to comment on these applications by providing links to the actual applications in existing Commission databases. It would also replace costly newspaper publication requirements with written public notice posted online on an applicant-affiliated website or, if none exists, on a locally targeted, publicly accessible website, with a link to the application in the station's online public file. Finally, the proposed rule change would eliminate pre-filing on-air announcements currently required of broadcasters before filing license renewal applications.

If adopted at the FCC's May 13th meeting, most of the rule changes would not become effective for a few months.

LOW POWER FM RULES CHANGES ADOPTED

At its April 23rd meeting, the FCC adopted a number of rule changes for Low Power FM stations. The [Report & Order](#) provides all the details and is worth reviewing.

Among the numerous rule changes, the Order (a) expands permissible use of directional antennas,

(b) redefines certain LPFM minor changes, and (c) allows LPFM stations to own FM booster stations. The FCC deferred a decision on changing its rules requiring protection of TV channel six operations, declined to increase LPFM maximum ERP from 100 to 250 watts, rejected a proposal to eliminate LPFM stations from EAS requirements, and declined to change the LPFM rule requiring protection of FM translators.

FCC FINES BROADCASTER \$20,000 FOR IMPROPER USE OF EAS TONES

The FCC's Enforcement Bureau has issued a [Notice of Apparent Liability](#) to a station in New York City for improper use of the EAS Tone in a parody the station aired about the first National EAS Test. Although the tone used lasted only for one second, and aired on only one station, the FCC issued the fine.

The FCC has wide latitude to issue substantial forfeitures for improper use of EAS Tones, and does so frequently. Such improper uses undermine the integrity of the emergency alert system, cause confusion, or result in alert fatigue that can cause people to ignore life-saving warnings.

We've not yet heard whether there will be a National EAS Test this year, but fully expect there to be one. Those are typically announced in early summer, and are conducted in September. But stations did recently receive an email from the FCC urging them to ensure the security of existing EAS equipment.

FORGOT TO FILE YOUR RENEWAL APPLICATION?

We don't mean to cause you panic with that headline, but we recently saw something that seemed worthy of passing along. Figuring out the deadlines for a station's various renewal requirements, including the application filing deadline, can be confusing. But if a station finds itself in a situation where it missed the renewal application filing deadline, all is not lost.

Obviously, step one will be to prepare and get the application on file as soon as possible. Depending on how late you are, your FCC attorney might

advise that a request for special temporary authority be filed to allow the station to continue operations. But it potentially won't come to that because at some point, the FCC is most likely going to send an email to any email address it has from prior station filings and alert (hopefully you) to the fact that an application was not timely filed. This email will typically be sent just after the missed renewal application filing deadline. It will give you the option of not renewing, or of filing the renewal application late.

In an email like this that we were recently privy to for a station that should have filed a renewal application by April 1, 2020, the FCC noted that if the station wants to renew its license "without adverse action" it should file the application by May 1, 2020. We thought that to be a kind and generous gesture (i.e., file 30 days late and not be fined). But it was followed with a warning that if the application was filed after May 1, 2020, a fine would be issued. And on the off chance that a renewal application was not filed by August 1, 2020, the notice made clear that the license would be cancelled.

But don't wait on second chances. Double check dates and facilities. Don't forget those translators, whether they're located in the same state as the primary and will be renewed with the primary, or whether they're located in a state with different renewal deadlines, and need to file a renewal application on their own.

FCC INITIATES RULEMAKING PROCEEDING FOR DTS FLEXIBILITY TO SUPPORT ATSC 3.0

The FCC has adopted a [Notice of Proposed Rulemaking](#) seeking comment on certain technical rule changes that would give TV stations greater flexibility to use distributed transmission systems (DTS) as ATSC 3.0 is deployed. DTS uses two or more synchronized, same-channel transmission sites in a station's service area to improve indoor and mobile reception. Part of the rulemaking would allow minor expansions of DTS service areas beyond a station's existing coverage, which could impact neighboring stations and low power or TV translator stations, which are secondary. Comment deadlines have not yet been set.

DATES TO REMEMBER

May 4, 2020

Comments due in FM booster zone-casting [proceeding](#).

June 1, 2020

Radio Stations located in Michigan and Ohio – deadline to file license renewal application and EEO program report, and air first post-filing license renewal announcement; additional post-filing announcements are due June 16, July 1 & 16, and August 1 & 16.

Television Stations located in DC, Maryland, Virginia and West Virginia – deadline to file license renewal application and EEO program report, and air first post-filing license renewal announcement; additional post-filing announcements are due June 16, July 1 & 16, and August 1 & 16.

Radio and TV Stations located in Arizona, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, West Virginia, Wyoming and the District of Columbia: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from June 1, 2019 – May 31, 2020 and post it to the station online public inspection file and on the station website.

Radio Stations located in Illinois and Wisconsin, and TV Stations located in North Carolina and South Carolina: broadcast first pre-filing license renewal announcement; additional pre-filing announcements should air June 16, July 1, and July 16.

July 10, 2020

TV & Class A stations (commercial only): for those stations that did not already do so on previously announced deadlines for this report, complete and electronically file via LMS the revised FCC Form 398 Children's TV Programming Report; this is the first annual report but covers only the period from September 16 - December 31, 2019.

TV, Class A, AM & FM Stations (commercial & noncommercial): complete 2nd Quarter 2020 issues/program lists and upload to online public file. For those stations that did not complete and upload 1st Quarter 2020 issues/programs lists due to the FCC's extension of that April 10, 2020 deadline, the FCC has [extended](#) this deadline to July 10, 2020 as a result of the

coronavirus and those 1st quarter reports should be uploaded by that deadline as well.

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 2nd 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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