



Broadcast Newsletter

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RED ALERT: FCC ZOOMS IN ON POLITICAL FILE COMPLIANCE

As part of investigations dating back to 2019, the FCC recently [concluded](#) that stations owned by six large groups had violated its rules requiring public file disclosure related to political advertising. Due to COVID-19 impacts, the FCC declined to impose monetary fines, but each station group entered into consent decrees that require a series of compliance and reporting actions over the next few years to ensure that the political ad information is properly and timely placed in station public files. For stations that routinely run political advertising, it’s worth reviewing [one](#) of the consent decrees to see the scope of the additional compliance requirements agreed to – all of which will take a significant amount of time and require detailed documentation.

Four more Consent Decrees have followed those six, and we have just received word that more than 200 stations have also just received emails noting political file noncompliance issues in connection with license renewal. Those emails, sent by FCC staffers, include a draft consent decree, a deadline to sign it in exchange for getting license renewal grants, no fine, but language in the email that says the decree terms will not be altered. From contact with other attorneys practicing before the FCC, it appears that these consent decree emails do not distinguish between situations where only a few political ad requests were uploaded late, versus others with a consistent problem.

Let’s review the rule requirements. The FCC’s rule requires stations to place specific information in the political section of the online public file -- each request for time made by or on behalf of a candidate for public office; notations showing the disposition of such request (rejected or accepted), date/time spots are scheduled to be aired (and after airing, the date/time aired), the rate charged, and the class or classes of time purchased. The name of the candidate and authorized committee, and the treasurer of the committee must also be included. If free time is provided to candidates, stations must upload information about the time, date and length of time that a candidate appeared on the station (except for an exempt appearance, e.g., in a news story).

The time of the upload is critical, and appears to be the focus of the FCC's recent enforcement efforts. The information should be uploaded as soon as requests are made/orders placed or a use is made of the station. The rule says "as soon as possible" and defines that as "immediately absent unusual circumstances," which enables opposing candidates to obtain information quickly and make decisions about their own responsive ad buys. Some believe that in hotly contested races, computer "bots" may be being used to scan a station's political file for activity to assist candidates or campaigns in responsive ad buys. These can spawn complaints on timeliness of uploaded information.

Issue ads also require political file uploads. For all local and state issue ads, the name of the group and its executive officers or directors must be placed in the political file (the rate charged does not have to be disclosed). For federal elections, a third party attack/support ad or an ad dealing with an issue of national importance requires political file disclosure of the name of the group, officers/directors, name/address/phone number of a contact person, each request to purchase time, accepted/rejected status, rate charged, date/time spots are scheduled to be aired and actually aired, name of the candidate to which the spot refers and office sought (for an issue ad, the issue to which the spot refers).

Be vigilant. If your station's renewal has not come up yet, get ready by reviewing your political file to see if required uploads are timely (if they're not, take notes on which ones are late as that will need to be disclosed in the renewal application). The materials that are required in the political file do not have to stay there forever – retention is for a period of two years – so remove anything from the political file that is greater than two years old.

If you have questions about station political ad or public file requirements, we are available to assist.

LPFM STATION FINED \$15,000 FOR AIRING COMMERCIALS

We don't often see enforcement actions for violations of the FCC's underwriting restrictions for noncommercial stations, so any such published action gets our attention. On July 2, 2020, the FCC issued a [Notice](#) to a low power FM station that it must pay \$15,000 for airing commercials (LPFM stations must operate noncommercially). All NCE stations should take the time to read the notice.

The Notice took some time to identify which announcements constituted violations of the FCC's non-commercialization policies, breaking down announcements that were too long and those that used promotional comparative/qualitative language, pricing language, or menu listings. The decision reiterates that shorter is better (it flags an announcement over 30 seconds, though we recommend 20 seconds as a guide). The menu listings cited had numerous items/services (we recommend not exceeding three).

Perhaps the most interesting aspect of the Notice is that after receiving numerous complaints, the FCC's field office actually engaged in active monitoring of the station's content. We don't recall a prior instance where FCC personnel carried out active monitoring of an NCE station for compliance with underwriting rules. That's as good an indication as any that the FCC wants NCE stations to comply with its rules.

JULY 31 DEADLINE FOR CARRIAGE ELECTION CONTACT INFORMATION

Full power commercial and noncommercial television stations are required to supply a carriage election email address and phone number in their online public file by July 31, 2020. The FCC issued a reminder [public notice](#) about this on July 15, 2020. To do so, log in to the station online public file and select the "settings" tab. From that screen, select the "cable election contact information" tab and add the required info in the spaces provided. Be sure to save it, or the file won't update.

Class A TV stations that are qualified for mandatory carriage do not have this data field in their online public file. Instead, these stations must ensure that the address and contact information in LMS is accurate for the station.

LPTV stations that are qualified for mandatory carriage have no online public file. Instead, they must ensure that the address and contact information for the station in LMS is accurate.

Cable and DBS providers will use this contact information in connection with the upcoming 2021-23 three-year carriage election period and for any other notices that are to be given to broadcasters. Stations should be sure that the email and phone number are monitored and that any contact from such a provider is acknowledged and responded to promptly.

October 1 is still the deadline for eligible stations to make an election between mandatory carriage or retransmission consent for the 2021-23 cycle, but that procedure has been substantially simplified and will be completed in the public file via a "Carriage Election Statement." Depending on the type of station, or differences in elections compared to the currently ending 3-year election cycle, stations may also have to send emails to cable or DBS providers notifying them of the election being made.

FCC FINES STATIONS FOR CONTEST RULE VIOLATIONS

The FCC's Enforcement Bureau recently issued two separate decisions fining stations for violations of its contest rules.

The [first](#) was for a station's failure to conduct a station contest as advertised. A caller won concert tickets, but the station never delivered them despite the winner's multiple attempts to pick them up. The Bureau found that even though the contest rules did not specify a date/time for pickup, the concert was for a particular date and tickets were not provided by that date. The proposed forfeiture

amount is \$6,000, issued even though the station later provided tickets to another concert with airfare/hotel.

The [second](#) was also for a station's failure to timely award a contest prize (resort trip) when the contest terms required the winner to pick up the prize within 30 days. Two years later, the station had still not awarded the prize. The promotions director never told management that the resort had reneged on its commitment. After the complaint was filed, the station made a cash payment to the individual, who signed a settlement agreement that included an obligation to rescind the complaint filed with the FCC. The Bureau noted the settlement, but issued a \$5,200 fine anyway.

Be careful with station contest rule disclosure and prize delivery. Prize winners want their prize, and they will complain to the FCC if they don't get it. By the way, settlement agreements with terms restricting someone's right to complain or maintain a complaint with the FCC are not a good idea. Just thought we'd drop that in here.

REMINDER: CHILDREN'S TV COMMERCIAL LIMITS PUBLIC FILE CERTIFICATION IS NOW ANNUAL, NOT QUARTERLY

Commercial television stations have grown accustomed to placing documentation in their online public files each quarter related to their compliance with the FCC's rules limiting the amount of commercial material in children's television programs. In fact, that habit has become so ingrained that many stations are still doing so each quarter even though this requirement changed to an annual schedule.

Yes, that's right. This is now an annual requirement (not quarterly). The next deadline for uploading documentation showing compliance with this rule will be January 31, 2021, and will cover all of 2020. In the meantime, do keep a careful eye on children's programs to be sure that they contain no more than 10.5 minutes of commercials per hour on weekends, and 12 minutes per hour on weekdays.

ANALOG LPTV AND DIGITAL REPLACEMENT TRANSLATOR DEADLINES ANNOUNCED

With the three-year post-auction transition now complete, the FCC's Media Bureau has [announced](#) certain deadlines that were previously mandated by the statute authorizing the TV auction.

Specifically, LPTV stations still operating in analog have until July 13, 2021 to terminate all analog operations, even if their digital facilities are not yet operational. No extensions of that deadline are possible.

LPTV or TV translator stations that experience difficulties with building out their permitted digital facilities may seek one extension of time, of not more than 180 days, but must do so by March 13, 2021. Extensions must be justified.

Finally, eligible full power television stations have until July 13, 2021 to seek digital-to-digital replacement translators for any lost digital service area resulting from the repacking process.

DATES TO REMEMBER

July 31, 2020

Full Power TV Stations (commercial and noncommercial): deadline to supply cable carriage email and phone number on landing page of the station online public inspection file.

Class A and LPTV Stations Qualified for Mandatory Carriage: deadline to ensure that contact address and phone number information in LMS is current.

LPTV and TV Translator Stations whose pending digital applications are mutually exclusive: deadline to file amendments to resolve mutual exclusivity and avoid going to auction.

August 3, 2020

Radio Stations located in Illinois and Wisconsin – deadline to file license renewal application and EEO program report, and air first post-filing license renewal announcement; additional post-filing announcements are due August 16, September 1, September 16, October 1 and October 16.

Television Stations located in North Carolina and South Carolina – deadline to file license renewal application and EEO program report, and air first post-filing license renewal announcement; additional post-filing announcements are due August 16, September 1, September 16, October 1 and October 16.

Radio and TV Stations located in California, Illinois, Wisconsin, North Carolina, and South Carolina: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from August 1, 2019 – July 31, 2020 and post it to the station online public inspection file and on the station website.

August 17, 2020

Deadline for comments in the FCC's Broadcast Internet rulemaking proceeding.

August 31, 2020

Extended deadline for FCC's waiver of 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.

Deadline for reply comments in the FCC's Broadcast Internet rulemaking.

October 1, 2020

Deadline for all **Full Power Commercial and Noncommercial Television** stations to place their 2021-23 carriage election statement in the public file, and deadline for all **Class-A and Low Power Television** stations eligible for mandatory carriage to send notice of their 2021-23 carriage election via email to MPVD providers

Radio Stations located in Iowa and Missouri – deadline to file license renewal application and EEO program report, and air first post-filing license renewal announcement; additional post-filing announcements are due October 16, November 1, November 16, December 1 and December 16.

Television Stations located in Florida, Puerto Rico and the Virgin Islands – deadline to file license renewal application and EEO program report, and air first post-filing license renewal announcement; additional post-filing announcements are due October 16, November 1, November 16, December 1 and December 16.

Radio and TV Stations located in Florida, Puerto Rico, Virgin Islands, Iowa, Missouri, Alaska, American Samoa, Guam, Hawaii, Marianas Islands, Oregon, and Washington, : if five (5) full time employee threshold is met, prepare EEO public file report covering the period from October 1, 2019 – September 30, 2020 and post it to the station online public inspection file and on the station website

October 10, 2020

TV, Class A, AM & FM Stations (commercial & noncommercial): complete 3rd 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 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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