



# Broadcast Newsletter

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## **HCCB WISHES YOU A GREAT 2021!**

We count it as a privilege to serve many of our newsletter readers as FCC counsel, and look forward to assisting you in 2021. Best wishes for a safe, healthy and prosperous 2021!

### **FCC CHANGES**

Unlike the many rule changes for broadcasters that we’ve covered in the pages of this newsletter since Ajit Pai became FCC Chairman, this article is about some personnel changes. Chairman Pai has announced that he will resign his position as Chairman on Inauguration Day, ending a long tenure at the FCC, with his last four as Chairman. In our view, the scope and impact of the regulatory relief Chairman Pai pushed through for broadcasters puts him in rare territory among FCC Chairmen over the past 20-25 years.

The US Senate has approved Nathan Simington as a new Republican-appointed FCC Commissioner. With his addition and Pai’s departure, there will be a 2-2 split of Republican / Democrat commissioners until such time as a new commissioner can be appointed and approved by the new administration, likely by mid-2021. A new FCC Chairman will also be appointed by the new administration.

### **DEADLINE APPROACHING FOR 2020 CHILDREN’S TV REPORT AND COMMERCIAL LIMITS PUBLIC FILE CERTIFICATION**

January 30, 2021 is the deadline for commercial full power and Class A television stations to take two actions. The first is to upload materials to the station online public file necessary to show compliance with the FCC’s rules on commercial limits in children’s television programming for all of 2020. This requirement was previously completed quarterly by the 10<sup>th</sup> day of the first month of the quarter, but switched to an annual requirement due by the 30<sup>th</sup> day of January each year.

The second required action by January 30, 2021 is to complete and file the station's children's television report covering the period from January 1 to December 31, 2020. That report is available in LMS for completion now, and can be filed as early as January 1, 2021. Once logged in, select the facilities tab, and then select the station facility id, which will produce the "Applications" button with a pull-down menu that includes the children's television report.

The form enables the reporting of compliance based on certain flexible categories/options set forth in the rule, and requires the reporting of core programming hours aired by quarter on the main channel and digital multicast channels (if any). For example, stations selecting Category A, Option 1 would need to report a total of at least 156 hours for the year on the station main channel, with at least 39 per quarter to be in full compliance. The FCC eliminated the *requirement* for stations to air at least 3 hours per week of children's core programming on 24/7 digital multicast channels, but allowed stations to shift some core programming from the main to the subchannels by choosing a different compliance category. As a result, a Category A, Option 1 station with at least 156 hours on the main channel would be fully compliant reporting zeros in the quarterly blocks for digital subchannels in the form, but stations choosing Category A, Option 2, Category B, or Category C compliance would need to report the correct number of hours of their core programming that was shifted off of the main channel to the subchannels.

Remember that the reporting is for total hours in each quarter, **not** the number of average weekly hours as in the old form.

Also remember that there were changes to the definition of "core programming" for purposes of computing the number of hours. A "core" program is one that:

- (a) has serving the educational and informational needs of children ages 16 and under as a significant purpose,
- (b) is aired between the hours of 6:00 a.m. and 10:00 p.m.,

- (c) is a regularly scheduled weekly program (though there are some exceptions),
- (d) is at least 30 minutes in length (though there are some exceptions),
- (e) for commercial broadcast stations only, the program is identified as specifically designed to educate and inform children by the display on the television screen throughout the program of the symbol E/I,
- (f) the target child audience is specified in writing in the licensee's children's TV report, and
- (g) instructions for listing the program as educational/informational are provided by the licensee to publishers of program guides.

## RULEMAKING BEGINS FOR FM BOOSTERS TO ORIGINATE PROGRAMMING

The FCC has initiated a rulemaking [proceeding](#) seeking comment on a proposal by GeoBroadcast Solutions to allow FM booster stations to originate limited amounts of programming different from their primary station. The proposal would allow FM broadcasters to employ geographically targeted ads and news via FM boosters at locations in the primary station's service area. Technical and operational issues are at the forefront, especially with the potential for interference.

The FCC also asks whether FM boosters used for geo-targeting should have power limits, and how geo-targeting would work in an HD environment. It also proposes a limit on origination of 5% of hourly programming (3 minutes per hour), and asks whether there should be a limit on how many boosters a station should be authorized. Even the application process for new boosters is up for discussion/input.

With much to be decided, plus the delays triggered by the change in administration, this proceeding will probably take some time to materialize. Whether this novel concept can be captured in a manageable rule remains to be seen. Broadcasters interested in supporting or opposing the rulemaking should weigh in by the comment deadlines.

## FCC ADOPTS NEW RULES FOR BROADCAST INTERNET SERVICES

The FCC has continued its rule modifications to support the roll out and full use of ATSC 3.0, and in its latest efforts, has [adopted](#) new rules governing the provision of ancillary and supplementary services, whether those services are provided using the ATSC 1.0 standard or the new IP-based ATSC 3.0 standard.

As a reminder, ancillary or supplementary services are all services provided on that portion of a TV station's digital spectrum capacity or bitstream not needed to provide the required one free, over-the-air video broadcast signal to viewers, *except* that any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary. Ancillary or supplementary services include, but are not limited to, computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, or subscription video. Video content aired on a multicast channel that is free to viewers is not ancillary or supplementary. Stations that do provide ancillary or supplementary services have to remit 5% of revenues received from such services to the FCC by December 1<sup>st</sup> of each year.

In the Report & Order, the FCC clarified how the 5% fee is to be calculated when a station is leasing spectrum to third parties providing ancillary/supplementary services, noting that the lessee's revenue is not to be included as revenue in the 5% calculation unless the licensee and lessee are related. In addition, for NCE TV stations, the FCC decided that non-profit ancillary or supplementary services would only carry an annual fee of 2.5%.

The FCC reiterated that the requirement remains for TV stations to continue to offer at least one free over the air standard definition signal (i.e., a station can't offer all ancillary or supplementary services).

## DATES TO REMEMBER

### January 4, 2021

New FCC rules for voluntary all-digital AM radio go into effect.

### January 10, 2021

**TV, Class A, AM & FM Stations (commercial & noncommercial):** complete 4<sup>th</sup> Quarter 2020 issues/program lists and upload to online public file.

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

### January 30, 2021

**TV & Class A stations (commercial only):** compile and post to the station online public file records certifying compliance with children's programming commercial limits for all of 2020, **and** prepare and electronically file the Children's Television Report (Form 2100, Schedule H) in LMS documenting station compliance with children's educational and informational programming requirements for all of 2020. This form is loadable now in LMS so stations can begin working on it at any time.

### February 1, 2021

**Radio Stations located in Kansas, Nebraska and Oklahoma** – deadline to file license renewal application and EEO program report; on-air announcements and public file certifications are required under the new local public notice rule.

**Television Stations located in Arkansas, Louisiana and Mississippi** – deadline to file license renewal application and EEO program report; on-air announcements and public file certifications are required under the new local public notice rule.

**Radio and TV Stations located in Arkansas, Kansas, Louisiana Mississippi, Nebraska, New Jersey, New York and Oklahoma:** if five (5) full time employee threshold is met, prepare EEO public file report covering the period from February 1, 2020 – January 31, 2021 and post it to the station online public inspection file and on the station website.

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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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