



Broadcast Newsletter

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COMMISSIONER ROSENWORCEL APPOINTED ACTING FCC CHAIRWOMAN

President Biden has appointed FCC Commissioner Jessica Rosenworcel as Acting FCC Chairwoman. The appointment probably makes her the frontrunner to be permanently appointed in that role, an action that requires Senate consent and will likely take a few more months.

The implications for broadcasters remain to be seen from a Rosenworcel-led Commission, though we note that her “no” votes on matters that connected stations to their communities (i.e., the now defunct requirement to maintain a main studio and minimum staffing, and the multiple ownership rule changes) provide some insights, as do her positions on diversity in ownership and employment matters. We anticipate previously announced proceedings that were slated for 2021 such as the filing window for new NCE radio stations, and the potential rescheduling of Auction 106 for commercial FM frequencies, will take place barring unforeseen decisions or circumstances.

We have learned that Acting Chairwoman Rosenworcel will continue the transparency efforts of the former Chairman related to pre-publication of draft rulemakings or orders three weeks in advance of Commission meetings. In general, we found that practice helpful to the public and Commission in getting a new rule or rule change correct the first time, and avoiding confusion on the scope of proceedings.

TV LICENSE RENEWAL INSIGHT

Every broadcast license renewal cycle, there are always a few twists or tweaks in the FCC’s renewal application processing that are different from the prior cycle. But generally speaking, processing of license renewal applications always took about four months, consistent with the requirement that license renewal applications be filed four months prior to the station license expiration date.

But that processing norm seems to have taken a detour, of sorts, for TV station renewals. Unlike radio station license renewals, which are being handled by the Media Bureau's Audio Division, and are typically being granted this cycle within the four-month period and just prior to the station license expiration date, TV station license renewals, handled by the Video Division, are taking longer. We believe there are a number of factors in play that make processing TV renewal applications a longer process. But we're still a little perplexed as to why four months isn't enough. Staff working remotely due to COVID is certainly one factor, as we learned last fall when asking for a status update on a LPTV station license renewal that remained pending past its expiration date.

In another recent case we are aware of, the Video Division staff requested a minor remedial action on a TV renewal application that was still pending almost eight weeks after the license expiration deadline. It was the first contact by the staff on the application, which had been filed nearly six months earlier. The requested remedial action was for the addition of a signature on a single quarterly children's television commercial limits certification, which had inadvertently been uploaded unsigned years before. In context, it seems a bit trivial to us that a single unsigned certification may have delayed processing for such an extended period of time.

The take-away from that case for TV stations is that the Video Division staff is likely behind in reviewing TV renewal applications, but also that in doing so, it is very carefully reviewing children's television issues. TV stations that have not yet filed for license renewal should be scrutinizing their compliance on children's television issues – both commercial limits and core programming – to be sure everything is accurate and fully compliant. If not, and a "no" certification is necessary, an explanation will be necessary.

We also suspect that the transition to annual reporting for children's television core programming and commercial limits may have caused the staff to delay processing some applications until annual filings were complete and could be reviewed for compliance.

FCC ISSUES EAS ENFORCEMENT ADVISORY

In early January, the FCC's Enforcement Bureau issued an [advisory](#) reminding all Emergency Alert System (EAS) participants of their compliance obligations. All broadcast stations except LPFM and LPTV stations not originating programming are required to have operating EAS equipment and maintain EAS logs to reflect their various tests or if/when a piece of equipment is not functioning. We recommend a review of the advisory.

With 2020 being the exception, the FCC has conducted annual national tests of the EAS system, requiring stations to make various filings to certify their readiness, participation and problems. In 2019, the test was moved to the summer timeframe after previously having been consistently held in the fall months. No national test has yet been announced for 2021, but the advisory does specifically review that testing and reporting, even noting that a public notice announcing the test is usually issued two months in advance. Even if there is no national test, EAS participants are required to renew certain identifying information annually with the FCC in the EAS Reporting System (ETRS).

The advisory also includes a reminder that noncompliance with the EAS rules will subject the violator to sanctions, including substantial monetary forfeitures. While not specifically covered, the FCC also issues substantial fines against stations airing actual or imitation EAS warning tones in programming.

COST OF FCC FINES AND FILING FEES GOING UP

On January 15, 2021, the FCC's [Order](#) increasing its fines for rule violations were adjusted upward for inflation. Anyone fined after that date will have the privilege of paying the higher amounts.

Pursuant to an [Order](#) adopted at the end of last year, FCC broadcast application fees will increase in coming weeks. The increases are meant to account for the cost of staff engineering, legal and other reviews when filings are reviewed. Under the change, FM translator minor modification applications now have a \$210 filing fee. All license

renewal application fees increased as well. To see all of the changes, refer to pages 87-90 in the link above.

MEDIA BUREAU ACCOMPLISHMENTS SUMMARIZED AT PAI'S LAST FCC MEETING AS CHAIR

At outgoing Chairman Ajit Pai's last FCC open meeting in January, the various FCC Bureaus provided summaries of actions and accomplishments since 2017, which were numerous. We can only describe the last four years of broadcast regulatory oversight by the FCC as mind-bending given the number of proceedings, rule changes, and rule eliminations. If your head is still reeling like ours from the frenetic pace and scope of broadcast regulatory changes, we invite you to take a walk down memory lane with the [slides](#) from the Media Bureau's meeting presentation, which do give a precise summary.

POST-INCENTIVE AUCTION REIMBURSEMENT STATUS UPDATE

The Media Bureau and the Incentive Auction Task Force have provided the latest [status](#) of the post-incentive auction transition and reimbursement program, and announced a further allocation from the TV Broadcaster Relocation Fund for LPTV/Translator stations. As of January 4, 2021, 95% of all full power and Class A television stations had completed the transition and commenced operations on their final facilities.

If your station has not yet completed its reimbursement process, various deadlines are now in place to finish up. Consult your legal counsel or reimbursement contractor for assistance and guidance.

ENFORCEMENT BUREAU FINES ANOTHER LPFM STATION FOR UNDERWRITING VIOLATIONS

Another Low Power FM station has signed a [consent decree](#) with the FCC Enforcement Bureau and agreed to pay a fine for violating the FCC's rules prohibiting the broadcast of advertisements on noncommercial stations.

In this case, the Commission received a complaint alleging that the station broadcast prohibited advertisements and provided audio samples of advertisements allegedly broadcast and recorded on a single day.

In response, the Enforcement Bureau issued a letter of inquiry and in the LPFM station's response, it admitted to airing 9 announcements with prohibited promotional references which employed comparative and/or qualitative language to describe products or services, calls to action and/or the solicitation of future contact, used pricing language and/or offered inducements to do business, and employed "menu listings" (e.g., excessive arrayal) of products or services.

In addition to agreeing to pay a fine of \$10,000, the station also is required to establish a compliance plan and appoint a compliance officer.

DATES TO REMEMBER

January 30, 2021

TV & Class A stations (commercial only): compile and upload to the station online public file records certifying compliance with children's programming commercial limits for all of 2020.

February 1, 2021

TV & Class A stations (commercial only): 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. Deadline is 1/30/21, but because it occurs on a Saturday, the next business day rule applies.

Radio Stations located in Kansas, Nebraska and Oklahoma – deadline to file license renewal application and EEO program report; on-air/online 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/online 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, upload it to the station online public inspection file and post it on the station website.

April 1, 2021

Radio Stations located in Texas – deadline to file license renewal application and EEO program report; on-air/online announcements and public file certifications are required under the new local public notice rule.

Television Stations located in Indiana, Kentucky and Tennessee – deadline to file license renewal application and EEO program report; on-air/online announcements and public file certifications are required under the new local public notice rule.

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, 2020 – March 31, 2021, upload it to the station online public inspection file and post it on the station website.

April 10, 2021

TV, Class A, AM & FM Stations (commercial & noncommercial): complete 1st Quarter 2021 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.

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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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