



Broadcast Newsletter

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MEDIA AND ENFORCEMENT BUREAUS ISSUE IMPORTANT COMPLIANCE REMINDERS

In recent weeks, the FCC's Media and Enforcement Bureaus have issued advisories or reminders on certain broadcast station obligations. Typically, such reminders are issued when the Bureaus begin seeing a recurring issue or realize that there may be some widespread non-compliance.

Both Bureau reminders were issued on March 12, 2021, but on different topics.

The Media Bureau [reminder](#) was to commercial broadcast stations about items that belong in the online public inspection file, specifically to ensure that every "sharing" agreement pertaining to the operation of the station be uploaded to the file. The Bureau noted the various types of such agreements, noting specifically those that involve the lease of airtime, the joint sale of advertising, or the sharing of operational services, and cited the rule requiring that a lease of broadcast time to a third party be uploaded to the public file within 30 days. The footnote to that example cited a 2010 case imposing a \$25,000 forfeiture on a station for failing to place a time brokerage agreement in its public file. The Bureau's notice went on to note that uploaded documents can have confidential or proprietary information redacted.

The Enforcement Bureau [advisory](#) reminded broadcast stations of their continuing obligation to provide sponsorship identification disclosures in accordance with FCC rules. Under Section 73.1212, when a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted, the station, at the time of the broadcast, must announce that the matter is sponsored, paid for, or furnished (whether in whole or in part), and by whom or on whose behalf such consideration was paid or supplied. Licensees must exercise reasonable diligence in obtaining the required information, including from its own employees.

NOT YET ANNOUNCED

Some of our readers and clients have recently asked about the status of a few items at the FCC, so we thought it best to also give an update here.

While the FCC has [announced](#) Auction 109 for four commercial AM and 136 commercial FM construction permits, and requested comment on proposed bidding procedures, it has not yet set the dates and deadline for interested applicants to file short form applications to qualify for the auction. We expect such an announcement sometime later this month or in early March. This auction replaces Auction 106, originally scheduled and cancelled in 2020 due to COVID. The permits available can be reviewed at this [link](#). Interested parties should complete all diligence now about frequencies they may bid upon.

Next up is the anticipated filing window of new NCE-FM construction permits. Despite an [announcement](#) in October 2020 that the FCC would hold a 2021 filing window for new noncommercial FM construction permits, the FCC has still not scheduled that filing window.

For the last such filing window nearly 14 years ago, the FCC gave about 60 days advance notice of when the window would be held, and the filing window itself was only 7 days long. For those possibly interested in participating in the filing window, we recommend a review of the FCC's [recent changes](#) to the way it decides who wins a noncommercial construction permit when there are competing applicants for the same spectrum.

Finally, we've had several inquiries about when and how the FCC will make lump sum payments for C-Band earth stations that elected and qualified for such payments. Winners in the C-Band auction are making payments now, so we expect some FCC announcement about lump sum payments/processes in the next 2-3 months.

Some of these items may have been slowed a bit by the changeover in administration. We're keeping an eye out for developments and will cover those in future newsletter additions.

REMINDER: RESPOND IMMEDIATELY TO SPURIOUS EMISSIONS

The Regional Director of Region Two of the FCC's Enforcement Bureau recently issued two Notices of Violation to broadcast stations whose operations were creating unattenuated and therefore spurious emissions on frequencies removed from their authorized frequency by more than the FCC's rules allowed. The two NOV's can be found [here](#) and [here](#).

In the second case, the spurious emissions were interfering with frequencies used by air traffic at Orlando International Airport, and the station didn't respond to requests to cease operations for 41 hours. The FCC's rules require stations in such situations to cease operations within three hours.

Like tower light outages, spurious emissions from broadcast transmitters are serious matters that can create imminent danger or cause death, and the FAA and FCC take them very seriously. Your station's phone number and contact information are important tools in these situations, so be sure that they are up to date and that someone answers the phone. Typically, the FAA will call a station when the spurious emissions identify the station call letters or provide other identifying information. Always respond, and remember your duty to cease operations within 3 hours. In the case above, the eventual cessation of station operations remedied the interference immediately.

EEO AUDIT RESPONSES DUE APRIL 26, 2021

For the 200 broadcast stations included in the FCC Enforcement Bureau's EEO Audit [announced](#) on February 25, 2021, the deadline to respond is April 26, 2021.

Audit responses must be uploaded to the FCC-hosted station online public inspection file in the EEO Audits, Investigations and Complaints subfolder. The station's facility identification number and an e-mail address of a station representative must be included. If a station needs more time to respond, it must email Elizabeth.Goldin@fcc.gov at least five days prior to the April 26th deadline, indicate the additional time

the station believes it needs to complete its response (not to exceed 45 days). Extensions will be granted only upon a showing of extraordinary circumstances, and unless and until an extension is granted, the original deadline remains in effect.

BROADCAST STATION RENEWAL APPLICATION DESIGNATED FOR HEARING

The FCC recently [designated](#) the renewal application of a broadcast station for a hearing before an administrative law judge on the question of whether the licensee is fit to remain so in light of the extended periods of station silence during the prior license term.

The Order notes that the basic duty of broadcast licensees is to serve their communities and provide programming responsive to local needs and interests. The AM station at issue had only operated for 16 days in 2018, 270 days in 2019, and two days in 2020. To avoid automatic license forfeiture for being silent for 12 consecutive months, the station would temporarily operate and then request new temporary authority to remain silent. The Media Bureau found the silent history to be wanting, and put the licensee into hearing. The licensee may end up losing the license or only getting a short-term renewal.

Most often, stations need to go silent because of equipment failures, and those shorter-term silent periods do not raise licensee fitness issues. But any time a station needs to be silent for extended periods, take extra caution and get back on the air as soon as possible. Silent STAs require that stations resuming operations file a resumption notice and notify the FCC staff of the resumption by email. Follow every procedure to prevent the FCC from inadvertently deleting the station license under the mistaken belief that it has been silent for 12 consecutive months.

TOWER OWNERSHIP CHANGES REQUIRE FCC FILING

The FCC regularly fines tower owners for failing to submit ownership changes in the FCC's Antenna Structure Registration System. A recent [reminder](#) of this requirement from the FCC included a note

that there is inconsistent compliance with the tower ownership change process.

The system for doing so was revised in February 2019 and requires the prior tower owner to initiate the process, specifying the FRN of the new tower owner. The new tower owner must then log in to the system and complete the filing, providing ownership and contact information. The FCC's notice recommended that the ownership change process be included as part of sales transactions so that it is not forgotten.

DATES TO REMEMBER

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 1st Quarter 2021 certification of ongoing Class A eligibility.

April 26, 2021

Deadline to respond to the FCC Enforcement Bureau's EEO Audit for those stations that were [included](#) in the February 25, 2021 audit announcement.

May 1, 2021

LPTV Stations Operating in Analog -- deadline to file minor modification applications of any issued digital flash cut or companion channel or construction permit.

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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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