



Broadcast Newsletter

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FCC READY TO SUPPORT BROADCASTERS AFFECTED BY HURRICANE IAN

The FCC has a number of resources ready to help broadcast stations affected by Hurricane Ian. A 24/7 FCC Operations Center can be contacted at 202-418-1122 or fccops@fcc.gov. The Operations Center has and can send you a Reentry Letter to allow post-storm access to storm impacted areas. Our firm has a copy of that letter as well.

Information about using emergency antennas and filing applications for special temporary authority to either remain silent or operate with other than licensed parameters can be found at this [link](#).

The FCC’s Disaster Information Reporting System (DIRS) is another tool for affected stations. DIRS is a voluntary, web-based system through which the Commission collects operational status and restoration information from communications providers during major disasters and subsequent recovery efforts. During times of crisis, DIRS enables communications providers, including broadcasters, to quickly report service degradations and request assistance. In turn, the FCC compiles the data and provides network status information to federal emergency management officials as well as publishes public reports of aggregated restoration information. The FCC’s analysis informs restoration efforts by federal partners and the agency’s own assessments of communications reliability during disasters. The infrastructure status information reported in DIRS is presumed confidential. DIRS enrollment can be completed [here](#).

FCC REGULATORY FEE PAYMENT AND WAIVER/REDUCTION DEADLINES EXTENDED

Originally set for September 28, 2022 at 11:59 p.m. EDT, the FCC has now extended the 2022 Regulatory Fee payment deadline until September 30, 2022 at 11:59 p.m. EDT due to payment system issues and Hurricane Ian.

The FCC called the system issues “technical challenges” but from direct experience, the CORES payment module was not advancing to the payment portal and was timing out users. The system was also randomly logging out users. Our suspicion is that the system became overloaded as broadcasters sought to pay fees in the final two days before the original deadline. With 25% automatic penalties for late payments, broadcast licensees had growing concerns that system issues might trigger late payments and penalties. This latest FCC system anomaly gives us a good opportunity to repeat advice we have long offered clients – do everything possible to avoid complying with FCC deadlines on the day prior or day of the deadline. Inevitably, issues arise that slow or cause malfunctions, and extensions do not always follow. The earlier a deadline-driven action can be taken, the better.

The FCC also extended the deadline for filing requests for waiver, reduction, deferral and installment payment of the 2022 Regulatory Fees to September 30, 2022 at 11:50 p.m. EDT. For stations impacted by Hurricane Ian that had not paid by the time the storm made landfall, this extension presents opportunities to lessen immediate financial burdens as storm and economic recovery efforts get underway. Waiver requests filed after the deadline will not be dismissed for late filing, however, fees not paid in full for which a waiver/deferral request is not filed by the deadline will automatically be assessed at 25% late fee.

Licensees whose total fees are less than \$1,000 do not have to remit payment, but with fee increases this year, fewer stations will enjoy that relief. Non-profit licensees of commercial stations are exempt from annual regulatory fees, but must have submitted proof of non-profit status to the FCC. Non-profit licensees of commercial stations should check the status of their station in the FCC’s systems to confirm that they are indeed exempt and have not been assessed a fee.

Payments can only be electronically submitted via credit card or electronic funds transfer. We recommend credit card, as it is the simplest method. CORES username logins are needed to submit fees at this [link](#). Information on all aspects

of 2022 Regulatory Fees, including the just announced extensions, can be found [here](#).

FCC EXTENDS OPIF QUARTERLY DEADLINES FOR HURRICANE FIONA AFFECTED STATIONS; IAN AFFECTED STATIONS LIKELY NEXT

By [public notice](#), the FCC extended the deadline for stations affected by Hurricane Fiona to upload required information for the 3rd quarter of 2022 to November 14, 2022. Such uploads are normally required by the 10th calendar day following the quarter, unless it lands on a weekend or holiday, in which case the deadline is the next business day. This quarter, the deadline is October 11, 2022, but has now been extended for these stations.

We anticipate that the FCC will take a similar action for stations affected by Hurricane Ian, but as of the time this newsletter was completed, a notice had not been issued. Stations should check the Media Bureau’s page for updates. The most recent Hurricane Ian FCC Impacts Update indicates that the FCC will have the authority to extend deadlines by 30 days upon the President’s issuance of a State of Emergency Order.

OUTDATED ANALOG TV RULES CLEANUP RULEMAKING LAUNCHED

In a [news release](#), the FCC announced that it has adopted a rulemaking to eliminate outdated analog television rules that are no longer necessary because of the completion of the digital television transition. The rulemaking is available [here](#). It is quite lengthy but especially worth reading where the FCC proposes to clarify a rule based on prior adopted orders – a few of those might alter station rights going forward.

This item marks the first comprehensive review of the television rules since the digital transition. Specifically, the NPRM asks for comment on a number of proposals, including eliminating rules regarding analog operating requirements that no longer have any practical effect given the digital transition. The NPRM also proposes to delete outdated rules that are no longer valid given past changes in Commission-adopted policy. In addition,

the NPRM proposes to reorganize a portion of the Commission's technical television rules to make the rules easier to find and more practical for users. Certain rule revisions affect all stations, not just television.

\$38,000 TOWER REGULATIONS REMINDER

The FCC's Enforcement Bureau recently entered into a [Consent Decree](#) that included a \$38,000 fine and compliance plan requirements related to tower construction violations. The recipient? An electric cooperative that had begun construction on multiple towers without first getting FAA clearance, registering the towers, or conducting required pre-construction environmental reviews.

For any broadcaster that owns or leases tower space, this consent decree is a good reminder that building a new tower or adding on to an existing tower requires several regulatory steps, and violating any of them poses a threat to air safety that the FCC takes very seriously. These days, constructing a new tower that is over 200 feet tall – depending upon location – can involve so many requirements and issues that simply getting approval may take 1.5 to 2 years. Consult qualified advisors when considering tower construction of any kind so that requirements and a timeline can be fully understood. Our firm routinely works with clients in such matters and can assist when needed.

BROADCAST STATION EEO AUDIT RESPONSE DUE

The FCC Enforcement Bureau issued its second broadcast station EEO audit of 2022 in August and the deadline for all responses is October 7, 2022. The notice and list of stations can be found [here](#). Stations no longer have to mail documents to the FCC to respond to EEO audits – an upload to the station public file by the deadline is sufficient. Unless exempt from having to respond, stations on the audit list are required to post the audit letter, response, and any later correspondence in the EEO Audits folder of the public file, and maintain it there through the end of the current station license term.

WHOPPING FINE FOR CHILDREN'S TV COMMERCIAL LIMITS VIOLATIONS

If your television station does not have clear review protocols set up to screen children's programming for commercial limits compliance before airing, the FCC's recent [Notice of Apparent Liability](#) will surely prompt you to clarify or adopt them now.

The children's television commercial limits rule restricts the amount of commercial matter that may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. In addition, a program associated with a product, in which commercials for that product are aired, is treated as a program-length commercial with the entire program counted as commercial time. Full power and Class A commercial television stations must verify compliance with the limits and upload an annual commercial limits certification to their public inspection file.

In this case, Sinclair, Nexstar and other television stations aired a commercial for Hot Wheels Super Ultimate Garage during eight 30-minute episodes of Team Hot Wheels. Sinclair disclosed this violation in its renewal applications for 82 stations. Other stations that aired the episodes disclosed the violation in renewal applications, while some did not.

The FCC's notice of apparent liability seeks to fine Sinclair \$2,652,000 -- \$32,000 for each station – citing the occurrence of the overages over an extended period of time, program-length commercial time, inadequate claim of simple inadvertence, and lack of an adequate compliance plan to avoid such overages. Separately, the FCC fined Nexstar stations \$26,000 per station, and other owners \$20,000 per station. The fact that the commercials were embedded in programming provided by others was insufficient to escape liability. The NAL with all exhibits is 31 pages long.

The worst time to find out about a commercial limits violation – especially one that results in an entire program being counted as commercial matter – is after the fact and/or at renewal time. Commercial limits violations are high on the FCC's radar and

will not be excused without some action being taken. Having a thorough compliance gameplan that is periodically reviewed and cross-checked is key.

While the required certification of children's television commercial limits is now an annual requirement instead of quarterly, such programs should be continuously reviewed for compliance. Stations should not wait to review compliance until the end of the year. Relying on a certification from a program provider is not enough – stations will not be excused by stating they didn't know or were relying on a third-party certification in making their own. If an overage occurs, the station will pay for it one way or another. As with any FCC regulatory requirement, vigilance is critical. Review your compliance controls today to avoid headache in the future.

DATES TO REMEMBER

September 30, 2022

All Commercial Broadcast Stations – extended deadline to remit 2022 Regulatory Fees; fees can be paid until 11:59pm EDT using CORES.

October 1, 2022

Radio and TV Stations located in Alaska, American Samoa, Florida Guam, Hawaii, Iowa, Missouri, N. Mariana Islands, Oregon, Puerto Rico and Washington: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from October 1, 2021 – September 30, 2022, upload it to the station online public inspection file and post it on the station website.

October 3, 2022

Television Stations located in Alaska, American Samoa, Guam, Hawaii, Marianas Islands, Oregon and Washington – 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.

October 7, 2022

Stations that received EEO Audit Letters in August – deadline to upload audit response to the station online public file.

October 10, 2022

TV, Class A, AM & FM Stations (commercial & noncommercial): deadline to complete 3rd Quarter 2022 issues/program lists and upload to online public file.

Class A TV Stations Only: deadline to complete and post to your online public file the 3rd Quarter 2022 certification of ongoing Class A eligibility.

Noncommercial Broadcast Stations: deadline to complete and post to your online public file the 3rd Quarter 2022 report for any 3rd Party Fundraising conducted during the quarter.

December 1, 2022

Radio and TV Stations located in Alabama, Georgia, Colorado, Minnesota, Montana, North Dakota, South Dakota, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from December 1, 2021 – November 30, 2022, upload it to the station online public inspection file and post it on the station website.

Television Stations located in Connecticut, Maine, Massachusetts, New Hampshire, Vermont and Rhode Island – 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.

Full Power TV, Class A, and LPTV Stations: Deadline to file FCC Form 2100, Schedule G, and pay 5% of gross revenues from any ancillary or supplementary services provided between October 1, 2021 and September 30, 2022. NCE TV stations pay on 2.5% of gross revenue. Ancillary and supplemental services do not include free over the air video content, but do include computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, or audio signals, and subscription video. Stations that provided no such services do not have to file a report.

December 9, 2022

All broadcast stations with political file consent decrees – deadline to submit compliance report and compliance certificate for three-month period ending November 8, 2022.

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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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