



Broadcast Newsletter

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FCC DOUBLES DOWN ON FOREIGN SPONSORSHIP ID RULES WITH SECOND RULEMAKING; CONGRESS INTRODUCES RELATED LEGISLATION

This past summer, after the DC Circuit overruled the FCC's attempt to require broadcasters to check foreign entity/agent federal databases as part of new foreign sponsorship identification rules, the FCC Chairwoman circulated a follow-up rulemaking in lieu of challenging the decision. That Second Notice of Proposed Rulemaking has now been adopted and published for comment and actually expands the originally adopted rule (most of which the DC Circuit did not overturn).

While the originally adopted and now effective rule requires stations to exercise reasonable diligence in determining whether a program is sponsored by a foreign government, entity or agent, it did not specify how a station was to do so but did impose the now overturned obligation to fact-check two federal databases as a backstop if a programmer claimed it was not foreign-sponsored. The only time something needs to be made public is if a programmer confirms it is foreign-sponsored, in which case the station has to include an on-air announcement with the program and, on a quarterly basis, disclose details about those programs in its online public inspection file.

In the [new rulemaking](#), the FCC wants to specify exactly how a station must perform its diligence by mandating that the station obtain a signature from the programmer to a series of precisely worded certification statements specified in the new rule. For every lease of airtime where the signed questionnaire is obtained, the station must upload it along with the airtime lease agreement into the station public file. If a programmer won't provide the signature, the FCC wants to know and has proposed that the station email the FCC to report the non-signature. The FCC wants

comments on that, as well as whether the station should allow the program to air in such circumstances. Then, as an alternative, the FCC proposes a possible checking of the federal foreign entity/agent databases by the programmer itself and a follow-on certification, all of which appears to be a work-around to what the DC Circuit prohibited the FCC from requiring stations to do.

The Second NPRM does help shed some light on the applicability of the foreign sponsorship identification rules to NCE stations; we'll have more on that in an email to clients.

Just days after the Second NPRM release, a bill introduced in both the House and Senate entitled [Identifying Propaganda on our Airwaves Act](#) seeks to amend the Communications Act to specifically allow the FCC to require that stations check the foreign entity/agent federal databases as part of their diligence – a direct response to the DC Circuit's decision. But the legislation goes beyond the two databases the FCC originally wanted checked, and allows the FCC to add any additional outside sources for stations to check as well. Whether the legislation has a chance of success is unknown at this point, as is whether the legislation will affect the scope or timing of a Second NPRM decision. Chairwoman Rosenworcel did quickly issue a [statement](#) in support of the legislation.

Comment deadlines have not yet been announced. In our view, the Second NPRM tilts toward additional/higher compliance burdens, and unfortunately does not seek to further define "lease of airtime" to rule out shorter programs. Stations that have already taken actions to comply with the new rule as of September 15, 2022 do not need to take further actions or change what has already been accomplished.

FCC ADOPTS EAS RULE CHANGES

Earlier this month, the FCC adopted a [Report & Order](#) changing its EAS rules. The modified rules direct EAS participants, including radio broadcasters, television broadcasters, and operators of satellite, cable TV, and wireline video services, to transmit certain messages in an IP-based format rather than the versions in the legacy EAS format, which usually convey less information. In addition, the new rules require EAS participants to replace the technical jargon that now automatically appears in the text of certain messages, including EAS test announcements, with plain language that will be more easily understood by the public and provide more accurate information for individuals who cannot access the audio message.

Since most of these changes will be implemented through software changes, the effective date of the rule changes is still a year away, which means they likely won't be effective for the next EAS National Test in 2023. Most stations have been receiving and retransmitting the CAP-enabled messages as the primary anyway, but EAS equipment software changes will ensure that occurs. Stations should be on the lookout for and be sure to download any EAS equipment software updates.

TV ANCILLARY/SUPPLEMENTARY USE REPORTS AND PAYMENTS DUE DECEMBER 1, 2022

Annually every December 1st, for those commercial and noncommercial full power, Class A or low power television stations that are transmitting ancillary/supplementary services, a report must be filed detailing those services and remitting any payments due. A few years ago, because most stations were not transmitting such services, the FCC stopped requiring all stations to file the form and changed to rule so that only those stations

actually transmitting such services had to file the form.

With the further development of digital television and the introduction of the ATSC 3.0 standard and follow-on conversions, the likelihood of stations having transmitted some ancillary/supplementary services has increased. According to the FCC, ancillary and supplementary services include computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, or audio signals, and subscription video. However, that is not an exhaustive list, and other types of non-broadcast services might be included as well. What is clear is that transmitting free over-the-air video programming on multicast channels does not constitute ancillary/supplementary services.

If your station must file the report, it is submitted in LMS on FCC Form 2100, Schedule G. This year's report covers the period from October 1, 2021 to September 30, 2022. In connection with that filing, commercial stations must separately pay 5% of gross revenues from any ancillary or supplementary services provided. NCE TV stations pay 2.5% of gross revenue.

If you're not certain whether your station must file a report, or you need assistance with preparing and filing the report, please contact us.

FCC's REGIONAL OFFICES BUSY ISSUING NOTICES OF VIOLATION

The Enforcement Bureau's regional offices around the country have been regularly visiting stations and issuing notices of rule violations, especially in recent months. Agents from the Atlanta office visited an FM station in July, confirming that it was operating at an unauthorized location on a building rooftop

three miles away from its licensed operation with a different antenna. A notice of violation to the station requires an explanation of each violation and description of corrective actions planned. A fine is likely after that response.

Agents from the Dallas office visited an AM station with an unfenced tower, citing the station in a notice of violation. There, sections of the fence were down, leaving an unsecured active AM tower that posed a safety threat. Similar explanations are required in that notice, and a fine is also likely for the violations.

3RD QUARTER PUBLIC FILE UPLOAD DEADLINE EXTENDED FOR HURRICANE IAN AFFECTED STATIONS

Due to damage associated with Hurricane Ian for broadcast stations in Florida and South Carolina, the FCC's Media Bureau extended the October 11, 2022 deadline for 3rd Quarter public file uploads to December 12, 2022. The same deadline applies to Florida stations for their annual EEO public file report originally due October 1.

DATES TO REMEMBER

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 after filing.

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 supplementary 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.

January 10, 2023

TV, Class A, AM & FM Stations (commercial & noncommercial): deadline to complete and upload to online public file the 4th Quarter 2022 issues/program lists and any foreign sponsorship identification reports.

Class A TV Stations Only: deadline to complete and post to your online public file the 4th Quarter 2022 certification of ongoing Class A eligibility.

Noncommercial Broadcast Stations: deadline to complete and post to your online public file the 4th Quarter 2022 report for any 3rd Party Fundraising conducted during the quarter.

January 30, 2023

All Commercial Full Power and Class A Television Stations – deadline to submit annual children's television report and upload children's television commercial limits certifications to online public file.

January 31, 2023

Web Streaming Stations: deadline to remit annual license fee and related statement of account with SoundExchange for the statutory license allowing streaming of sound recordings on the web. Payment can be made on SoundExchange's online filing portal "Licensee Direct."

February 1, 2023

Radio and TV Stations located in New Jersey, New York, Kansas, Nebraska, Oklahoma, Arkansas, Louisiana and Mississippi: if five (5) full time employee threshold is met, prepare EEO public file

report covering the period from February 1, 2022 – January 31, 2023, upload it to the station online public inspection file and post it on the station website.

Television Stations located in New Jersey and New York – 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 after filing.

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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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