



Broadcast Newsletter

IN THIS ISSUE:

EAS PARTICIPANTS: ETRS FORM ONE FILING DUE EARLY JAN 1

FCC APPLICATION FEES INCREASING 1

FCC EXTENDS COMMENT DEADLINES FOR FCC FOREIGN SPONSORSHIP ID RULE SECOND RULEMAKING 2

ANNUAL CHILDREN’S TV REPORT AND COMMERCIAL LIMITS CERTS DUE IN JANUARY 2

FCC COMMENCES 2022 QUADRENNIAL REVIEW OF BROADCAST OWNERSHIP RULES 3

LOW POWER PROTECTION ACT TO BE SIGNED INTO LAW 3

DATES TO REMEMBER..... 3-4

Best Wishes for 2023

Our very best wishes to our clients and newsletter readers in the new year. May your successes be many! We are thankful for the distinct privilege to assist commercial and noncommercial broadcasters throughout the United States as they serve the public, and look forward to assisting you during 2023.

EAS PARTICIPANTS: ETRS FORM ONE FILING DUE IN EARLY 2023

The FCC’s Public Safety and Homeland Security Bureau issued a December 15, 2022 [public notice](#) announcing that EAS participants must file their 2022 EAS Test Reporting System (ETRS) Form One no later than February 28, 2023. The EAS rules require that all EAS participants file Form One every year, but with the cancellation of the 2022 EAS National Test, most if not all EAS participants likely did not file Form One during the year. The Bureau waived any requirement to file the Form One in calendar year 2022 and extended the filing requirement through the end of February 2023. Participants should provide the latest information on its systems and alert protocols in Form One, reviewing any pre-populated data for accuracy. If a National Test is conducted in 2023, an update to Form One will be required.

ETRS will be open for filing Form One on January 3, 2023. EAS participants can log in to the site at this [link](#) and must use a CORES Username login to access and submit the form. An additional public notice with more details is forthcoming. We will contact clients at that time. If you have any questions or concerns now, please let us know.

FCC APPLICATION FEES INCREASING

By law, the FCC must adjust all of its filing fees every two years based upon increases in the Consumer Price Index. A December 16, 2022 [Order](#) announces the latest round of increases, which average out to about an 11.6% increase in fees across the board.

For example, ownership reports due next December 1, 2023 will cost \$95 per station, a \$10 increase. License assignment or transfer of control applications jumped from \$1245 to \$1390 per station, while minor modification applications for TV, AM stations, FM stations, and FM translator stations moved up to \$1490, \$720, \$1410 and \$235 respectively.

The increased filing fee amounts are not in effect immediately, but after publication in the Federal Register for 60 days, the Order will then become effective. We estimate the effective date to be around the end of February or in early March 2023. So, if you were planning on filing an application to modify your station's facilities, you can save a few dollars by filing early in the year.

FCC EXTENDS COMMENT DEADLINES FOR FCC FOREIGN SPONSORSHIP ID RULE SECOND RULEMAKING

The FCC has [extended](#) the comment and reply comment deadlines in its Second Notice of Proposed Rulemaking to further amend the Foreign Sponsorship Identification Rule. Comments must now be filed by January 9, 2023, with reply comments due January 24, 2023.

The [new rulemaking](#) aims to specify exactly how a station must perform its foreign entity diligence by mandating that the station obtain a signature from the programmer certifying to a series of precisely worded statements specified in the new rule. Under the proposed new rule, for every lease of airtime where the signed questionnaire is obtained, a station would have to 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. 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, a work-around to what the DC Circuit prohibited the FCC from requiring stations to do in a decision earlier this year.

ANNUAL CHILDREN'S TV REPORT AND COMMERCIAL LIMITS CERTIFICATIONS DUE IN JANUARY

By January 31, 2023, commercial full power and Class-A TV stations must prepare and file children's television reports for 2022 and upload children's television commercial limits certifications to their public file for all of 2022.

Failure to timely file the annual children's television report, or the reporting of less than the required amount of core children's television programming, can result in delays and fines during license renewal. If a station has not aired the minimum number of hours, other efforts can be documented that may be considered by license renewal staffers in determining whether to refer a station's license renewal to the full Commission for review.

Commercial limits compliance is also an ongoing requirement, but is documented once annually by stations and uploaded to the station online public file. Stations should conduct detailed reviews of their compliance for the year before uploading documents in support. The FCC's rules require that stations limit the amount of "commercial matter" appearing in programs aimed at children 12 years old and younger to 12 minutes per clock hour on weekdays and 10.5 minutes per clock hour on the weekend. The definition of commercial matter includes not only commercial spots, but also (i) website addresses displayed during children's programming and promotional material, unless they comply with a four-part test, (ii) websites that are considered "host-selling" under the Commission's rules, and (iii) program promos, unless they promote (a) children's educational/informational programming, or (b) other age-appropriate programming appearing on the same channel.

During the 3-year television license renewal cycle that will end in the summer of 2023, we have assisted numerous stations with children's television issues that arose during renewal application filing and processing. The staff closely scrutinizes every report and program for any anomalies. In some cases, renewals were held up for a full year before resolutions could be reached. Stations should devote adequate resources and personnel to ensuring that all children's television requirements are met, and reports are filed and uploads are made on time.

FCC COMMENCES 2022 QUADRENNIAL REVIEW OF BROADCAST OWNERSHIP RULES

Statutorily, the FCC is required to review its broadcast ownership rules every four years to determine whether they still serve the public interest. With little fanfare, the Media Bureau [announced](#) the next quadrennial review on December 22, 2022 in order to meet the statutory requirement.

This latest review comes even though the 2018 review remains pending due in part to a probable deadlock between the two Democratically appointed and two Republican appointed Commissioners on the outstanding issues. The vacant Commissioner seat remains so nearly two years into President Biden's presidency, though it appears that previously twice-nominated Gigi Sohn is likely to be re-nominated and voted on by the Senate sometime in 2023. If she is appointed and that translates into votes and decisions for the 2018 quadrennial review, those will impact the 2022 quadrennial review. If not, then the 2022 quadrennial review will ultimately consider the same broadcast ownership issues, including the radio ownership limits that have been in place and relatively unchanged for over a quarter century.

The 2022 announcement does re-ask the question that could create a cascade of changes in the ownership rules, namely whether technological change and the growth of streaming and other competitors should re-define the market in which broadcasters compete.

Comment deadlines have not yet been announced, but will probably fall sometime in the first quarter of 2023.

LOW POWER PROTECTION ACT TO BE SIGNED INTO LAW

Nearly a year after being introduced, the Low Power Protection Act has been approved in the Senate and House, and presented to the President for signature. The text of the legislation can be reviewed [here](#).

The Act is designed to protect low power television stations in smaller and more rural markets from

being displaced. The proposed protection mechanism is to allow those stations to convert to Class-A television stations. Class-A television stations enjoy interference protection in exchange for broadcasting a minimum of 18 hours per day and an average of at least three hours per week of locally produced programming each quarter. The FCC is required by the Act to issue a rule that entitles low power television stations in Designated Market Areas with no more than 95,000 television households to Class A protection.

The last time low power television stations could qualify for Class A status was over two decades ago, in 1999. To do so, stations had to certify that they met certain operating and local programming criteria as of a specific date. Based upon the Act, low power television stations in markets below 95,000 television households would only qualify for Class A status if they were meeting locally produced programming requirements 90 days *prior* to enactment of the legislation (i.e., when it is signed into law). The current FCC rule is similar – conditioning Class A eligibility by a date that was 90 days prior to adoption of the 1999 legislation.

DATES TO REMEMBER

January 3, 2023

All Broadcast Stations that are EAS Participants – first day that the EAS Test Reporting System (ETRS) will be open for the required filing of ETRS Form One.

January 9, 2023

Extended comment deadline in FCC's 2nd NPRM on its foreign government sponsorship identification rules.

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 complete and submit the 2022 children's television report in LMS and separately upload children's television commercial limits certifications for all of 2022 in the station 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 after filing under the new local public notice rule.

February 28, 2023

All Broadcast Stations that are EAS Participants – last day of the extended deadline to file the required ETRS Form One in ETRS.

April 1, 2023

Radio and TV Stations located in Delaware, Pennsylvania, Texas, Indiana, Kentucky, and Tennessee: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from April 1, 2022 – March 31, 2023, upload it to the

station online public inspection file and post it on the station website.

April 3, 2023

Television Stations located in Delaware and Pennsylvania – deadline to file license renewal application and EEO program report; on-air/online announcements and public file certifications are required

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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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