



Broadcast Newsletter

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LMS AND OPIF TECHNICAL ISSUES REQUIRE EXTENDED DEADLINES

Toward the end of 2022, we began experiencing issues with the FCC's online public file system (OPIF), as well as the Licensing Management System (LMS). Issues varied from slow operation, to repeatedly being involuntarily logged out, to payment issues. Those same problems extended into early 2023 and prompted the FCC to initially extend January upload or filing deadlines until January 31, 2023. Just days before the end of the month, the FCC then [further extended](#) all upload and filing deadlines until February 28, 2023.

If your station missed the January 10, 2023 deadline for uploading 4Q 2022 issues/programs lists, Class A certifications, third-party fundraising disclosures for noncommercial stations, or the January 30, 2023 deadline for TV filing station children's television reports and uploading commercial limits certifications, you have until February 28, 2023 to complete those. The same applies to stations that have to file EEO program reports and license renewals, or upload EEO public file reports, as of February 1, 2023.

If you were able to upload or file any of these items, now is the time to double check whether the uploads or filings were successful, and confirm that application fee payments have been recognized. We are aware of a few situations where successful uploads or filings later fail to show up in the FCC's systems (which could be due to the FCC resetting database data to earlier dates as they work to stabilize the various impacted systems). While no precise reasoning for the widespread issues has been given, it could be due to a transition to new servers to handle the immense number of submissions.

If you are having difficulty, we recommend trying early in the morning, late in the evening, or on weekends. If you have questions about whether your station is in compliance, please let us know.

EAS PARTICIPANTS: ETRS FORM ONE FILING DUE FEBRUARY 28

The FCC's 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 remains in effect and early in January, a further [public notice](#) provided more details on filing requirements and procedures. While the system is functioning pretty well, the Form One does not always pre-populate with previously filed data, and station monitoring assignments may have changed. Stations should not wait until the end of February to file the Form One (it can be time-consuming and a rush of filers at the end may cause the system to shut down).

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 2022. 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 can be accessed at this [link](#). A CORES Username login is required to access and submit the form. If you have encountered problems with filing the EAS Form One, or have questions about an exemption, please let us know.

AUDIO DIVISION ANNOUNCES APRIL 1 EFFECTIVE DATE FOR USE OF 2020 U.S. CENSUS DATA IN APPLICATIONS

The Media Bureau's Audio Division has [announced](#) the availability of the most recent 2020 U.S. Census Bureau (U.S. Census) decennial census block, population, and cartographic boundary data. Effective April 1, 2023, petitioners/applicants submitting filings to the Audio Division must employ the most recent 2020 U.S. Census data available when determining a particular community's population in addition to the population served and overlap of service areas to communities and

Urbanized Areas. The FCC also noted that it will retain the 2010 definition of "Urbanized Area" since the 2020 U.S. Census modified the definition in a way that would have altered how applicants could make compliant showings when the FCC's rules or policies require consideration of Urbanized Areas.

While we don't expect the April 1 effective date to result in an application rush, we do note that in some situations, the difference between 2010 and 2020 census numbers might affect a station's ability to modify its facilities. Stations should consult qualified consulting engineers to determine potential impacts or incentives for filing an application prior to April 1.

2022 ANNUAL CHILDREN'S TV REPORT AND COMMERCIAL LIMITS CERTIFICATIONS STILL DUE

Despite the filing extensions referred to earlier in this newsletter, the 2022 Children's Television Report must still be filed, and the 2022 Children's Television Commercial Limits Certification must still be uploaded to the station public file.

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. We understand that numerous TV stations with reporting issues have had their renewal applications put on hold until the Video Division collectively refers all such applications to the Commission for action. Fines or detailed consent decrees are likely for those stations.

A FEW LESSONS LEARNED FROM THE 2021 NONCOM FILING WINDOW

With the FCC nearing the end of processing for the hundreds of applications filed in the 2021 filing window for new noncommercial FM stations, there are a few take-aways worth noting.

First, attention to detail matters. Simple errors can result in applications being dismissed. A good example is [this](#) recent case where an applicant specified the wrong tower company contact information for its tower reasonable assurance showing. Notably, in that case, the FCC used a formal “Notice of Inquiry” to an applicant to determine certain facts before rendering a decision. We have also seen coordinate errors create numerous issues, almost all of which ended up disqualifying an applicant. Two sets of eyes on window-filed applications is always a good plan for accuracy, as is planning well ahead so that applications are not rushed.

Second, retaining qualified consulting engineers as early as possible is key to filing applications that maximize applicant chances of prevailing in any mutually exclusive scenario. Challenges to predicted coverage figures can result in expensive legal proceedings that may have been avoidable. Legal counsel matters too, especially with ensuring that all required exhibits and explanations are provided during the window, and that application updates are filed when required to keep information accurate after the window closes.

The FCC is now down to only a few remaining applications after recently issuing a combined [order](#) deciding points winners in 34 mutually exclusive application groups. For those interested, it offers a bit of a primer on the application of the points system.

The next filling window for new NCE stations will likely not occur for several years. The last two NCE filing windows were separated by 14 years. While we don’t believe it will be that long before a new window is announced, we would not be surprised if there is no such window opportunity for the rest of this decade.

FCC ISSUES REPORT ON BROADCAST STATION OWNERSHIP AND SCHEDULES SYMPOSIUM

Using data compiled from the 2021 biennial ownership reports filed by broadcast stations, the FCC has issued its [Sixth Report](#) on Broadcast Station Ownership. The report covers commercial and noncommercial stations in five broadcast

services—full power television, Class A television, low power television, AM radio, and FM radio. While the report captures a “snapshot” of data on race, ethnicity and majority ownership across owners of all racial and ethnic backgrounds, it also provides insight into the status of minority and female ownership in the broadcast industry as of October 1, 2021. The FCC publishes these summaries for the benefit of the public, Congress, and the Commission because they provide an insight into the ownership of broadcast stations, that could be relevant to the Commission’s policymaking as well as used by interested parties.

The FCC has also [scheduled](#) a Media Ownership Diversity Symposium on February 7, 2023 to explore the challenges as well as possible creative solutions to increasing ownership opportunities for women and people of color to achieve success and viewpoint diversity in all facets of media – TV, radio, cable, and streaming. Several experts from both large and small media companies, research entities, thought leaders, and advertising/marketing companies will participate. Discussion areas included (i) Competitive Hurdles for Minorities in Media, (ii) Grooming Next-Gen Minority Leaders, CEOs & Owners, and (iii) Show Me the Money: Access to Capital, Investors and Ad Dollars for Diverse Owners. The symposium will be live streamed.

DATES TO REMEMBER

January 10, 2023 (Extended to February 28, 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 (Extended to February 28, 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 (Extended to February 28, 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 after filing under the new local public notice rule.

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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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