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Broadcast Newsletter

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FCC LAUNCHES RULEMAKING TO IMPLEMENT LOW POWER PROTECTION ACT

On March 30th, the FCC launched a proposed rulemaking to implement the Low Power Protection Act (LPPA) which became effective on January 5, 2023. The Act provides a means by which existing low power television stations can qualify for and apply for Class-A station status. Congress required the FCC to initiate a rulemaking to implement the LPPA within 90 days of its adoption.

Aside from one very important limiting distinction, the LPPA and the FCC's proposed rules to implement it mimic the terms, scope and implementation of the Class A Protection Act in 2000. Unlike that Act, which enabled low power television stations anywhere to qualify for and seek Class A protection, the LPPA limits qualified stations to those located in television markets of fewer than 95,000 television households. The FCC concludes that this limitation reflects Congress' intention to convey the benefits of primary Class A status under the LPPA to small market LPTV stations that reach a relatively small number of potential viewers. The FCC proposes to use Neilsen's DMAs for the markets, but has asked for comment on other market size definition systems/measures that could be used. Using Neilsen's most recent DMA TV household figures, only stations in approximately markets 178-210 would qualify, most of which are in rural areas.

As with the 2000 Act, a station can only qualify if it was operating for at least 18 hours per day and originating at least three hours of locally produced programming per week for each of the 90 days preceding the LPPA effective date. The 90-day period is October 7, 2022 - January 5, 2023. Applicants will have to supply both a certification and documentation to prove the station met the requirements during the 2000 Act implementation. The FCC proposes that documentation would include electricity bills, program logs, EAS logs and agreements to air programming.

In connection with the qualifying criteria to air at least three hours of locally originated programming each week, the FCC suggests the submission of copies of any agreements to purchase and air such programming and/or identify the producer of any programming it claims is locally produced, the location where the programming was produced, and records of advertisements aired during locally produced programming showing that the programming was in fact aired. The FCC invites comment on other forms of documentation that might be acceptable. Once a station applies for Class A status, the LPPA requires that stations begin airing qualified children's television core programming and maintaining an online public file.

In the end, the market size limitation and the qualifying on-air activities during the 90-day period prior to LPPA effectiveness will be the two main limiting criteria for low power television stations to seek Class A status. Once adopted, the FCC will set dates for applications to be filed, which will be for a period of one-year from the effective date of the new rules.

New Media Bureau Filing Fee Guide Published

On March 6, 2023, the FCC published the FY 2023 Media Bureau Filing Guide, which reflects the increase in filing fees (and some new filing fees) that became effective March 2, 2023. These filing fees will auto-populate into feeable applications during the preparation process in LMS. In the draft phase of preparation, the fee should appear on the application summary page. Once submitted, LMS should generate a "pay fee" button on the screen that populates immediately following submission. Sometimes it glitches, and to pay a fee, the applicant must click on the yellow triangle next to the submitted application under the "Submitted" tab.

FCC Issues First Fines Under PIRATE Act

The FCC issued heavy fines against two pirate radio operators, one in New York and the other in Oregon. These are the first proposed fines under the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act). The New York pirate operator has fines of over $2.3 million, while the Oregon pirate operator has an $80,000 tab. Both fines are at the notice stage, so the operators can respond and contest the actions.

The PIRATE Act gave the FCC additional enforcement authority, including higher penalties of up to $100,000 per day. The FCC is also authorized to conduct periodic enforcement sweeps and take action against landlords and property owners that knowingly and willfully permit pirate radio broadcasting on their properties.

2023 EAS Operating Handbook Available

The FCC has issued a new 2023 EAS Operating Handbook. A copy (with the blanks for your station specific information filled in) is to be maintained at normal duty positions or EAS Equipment locations when an operator is required to be on duty, and be immediately available to staff responsible for authenticating messages and initiating actions.

The handbook summarizes actions to be taken by personnel at EAS Participant facilities when emergency alert notices, tests, or alerts are received.

EEO Mid-Term Reviews Beginning Soon

The Media Bureau used to require broadcasters that met certain employee thresholds to file the Form 397 Mid-Term EEO Report. In 2019, the FCC eliminated the filing requirement, but indicated that its staff would still conduct "reviews using publicly available information" for EEO compliance by those radio station employment units with 11 or more full-timers, and television station employment units with five or more full-timers. In other words, the FCC will be reviewing station online public files to perform its reviews.

Some radio stations will cross the "mid-term" of their current 8-year license term later this year. We believe the staff will most likely use the renewal application filing date – which is four months prior to license expiration – to conduct its reviews. For radio stations in Washington DC, Maryland, Virginia and West Virginia, that date is June 1, 2023. As a result, station employment units there should confirm that their EEO reporting is up to date and accurate as that date approaches. Since annual EEO public file reports do not have to include the number of total employees in a station employment unit, how will the FCC staff know whether a radio station employment unit has 11 or more full-timers? That remains a bit of a mystery at this point. The 2019 Order indicated that the FCC would add a "simple mechanism" in the online public file to indicate station employee levels, but that has not yet been implemented.

Also not clear – whether the staff intends to review every station, or just a sampling, for mid-term EEO compliance. Stand by for more on this issue, and in the meantime, be vigilant, accurate and timely in your EEO reporting and uploads.

Sohn's Withdrawal Leaves Questions

Earlier this month when it became clear that Gigi Sohn's nomination to be the third Democratically appointed FCC commissioner did not have enough votes in the Senate, she formally withdrew her nomination. In the immediate aftermath of that action, the White House did not have any prospective names as potential new nominees. Further, we have not heard of any names being floated since. Adding a new Commissioner is therefore likely several months away, at best.

These developments leave the FCC in a 2-2 deadlock on certain Democratic priorities at the FCC. For broadcasters, that means a lack of any new direction on the FCC's multiple ownership rules and a stalemate of sorts on new EEO initiatives. While the FCC has asked for new comments on its ownership rules under the rubric of a new quadrennial review, that action has been procedurally challenged, meaning that any action on that front is slim at best. On the EEO side, there had been a push to restore the FCC Form 395-B to report ethnicity and gender information about station employees, and a rulemaking to potentially refine a few rule provisions, including those exempting part-time employees from the FCC's broad outreach requirements. It will be interesting to see if the current slate of two Democratic and two Republican appointed commissioners can reach any compromise on the EEO items.

Dates to Remember

<u>April 1, 2023</u>

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.

<u>April 3, 2023</u>

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.

<u>April 10, 2023</u>

TV, Class A, AM & FM Stations (commercial & noncommercial): deadline to complete and upload to online public file the 1st Quarter 2023 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 1st Quarter 2023 certification of ongoing Class A eligibility.

Noncommercial Broadcast Stations: deadline to complete and post to your online public file the 1st Quarter 2023 report for any 3rd Party Fundraising conducted during the quarter.

<u>June 1, 2023</u>

Radio and TV stations located in Washington DC, Maryland, Virginia, West Virginia, Michigan, Ohio, Arizona, Idaho, Nevada, New Mexico, Utah, and Wyoming: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from June 1, 2022 – May 31, 2023, upload it to the station online public inspection file and post it on the station website.

Radio stations located in Washington DC, Maryland, Virginia and West Virginia: if station employment unit has eleven (11) or more full-time employees, an independent mid-term EEO review by the FCC is anticipated later this year as radio stations in these states approach the mid-point of their current license term. Review OPIF EEO uploads and compliance in advance.

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