



Broadcast Newsletter

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BROADCASTERS AND A GOVERNMENT SHUTDOWN

As Congress continues to debate budgetary legislation, the possibility of a government “shutdown” beginning October 1 looms. In prior government shutdowns, the FCC has prepared for and halted access to certain filing platforms. But thus far, the FCC has not issued any news releases or preparatory public notices about a shutdown or their potential operations during a shutdown. Given critical filings and deadlines in early October, we are hopeful that the FCC will continue business as usual, at least in the early days of a shutdown.

The filing window for biennial ownership reports opens October 1, and although it extends through December 1, the preparation and time needed for some reports means that the loss of any filing days because of a shutdown would throw a significant wrench into the works. The scheduled October 4th National EAS Test could also be affected, as would the required filing of test reports in the FCC’s ETRS system. A loss of LMS would interrupt preparations for the LPFM filing window as applicants work on applications for filing in the first week of November. If the FCC were to halt access to the online public file system, TV carriage elections due October 1st and quarterly reporting due October 10th could also be impacted. Finally, ongoing political races mean political ad requests are being received that must be uploaded to the online public file within 24 hours of receipt, which would not be possible if the OPIF system was unavailable. While the FCC would later extend filing deadlines, the chaos and strain on filing systems that follows can be frustrating for broadcasters trying to complete required compliance actions.

So, what can you do now? The best thing to do is complete any early October online public file uploads before the end of this month. This is especially critical for TV stations electing between must carry or retransmission consent for the 2024-26 carriage election cycle, the deadline for which is October 1. Late uploads of election statements can result in a loss of carriage rights. The other thing you can do is follow the FCC’s daily releases or check the website for any

announcements regarding filing systems and extended deadlines.

We sincerely hope there are no interruptions in FCC systems if there is a government shutdown. But if there is, we will be ready to assist stations in understanding and completing their compliance actions in accordance with any FCC announcements.

MEDIA BUREAU ISSUES SECOND BIENNIAL OWNERSHIP REPORT REMINDER

On September 18, 2023, the FCC's Media Bureau issued its second [reminder](#) that licensees of commercial and non-commercial full power television, Class A television, low power television, AM radio and FM radio stations must file biennial ownership reports between October 2 and December 1, 2023.

All information in the biennial report must be accurate as of October 1, 2023. For commercial stations, a filing fee of \$95 per station must be remitted at the time of filing. Paying the fee is a critical step, as failure to do so will result in a "dismissal" of the report fourteen days later, and the result (if not caught and remedied within the filing window) is that the station is deemed not to have filed a timely report. Non-timely or unfiled ownership reports are a significant matter before the FCC, and often result in inquiries or fines at license renewal.

Stations do have the opportunity to load and submit a prior report when there have been no changes from a prior biennial report. As of this writing, the ownership report is currently accessible in LMS for reviewing, but cannot yet be submitted (since it still has the prior October 1, 2021 date as the "current as of" date for reporting purposes).

NATIONAL EAS TEST IS OCTOBER 4TH

The National EAS Test is slated for **October 4, 2023 at 2:20 pm EDT**. ETRS Form 2 reporting a station's test receipt and retransmit information must be filed on or before **October 5, 2023**. Finally, ETRS Form 3 must be filed no later than

November 20, 2023 to report any test anomalies or difficulties (but it can also be filed right after stations file the ETRS Form 2 instead of waiting until October). Forms 1, 2 and 3 can be accessed and completed in the ETRS System at this [link](#) using a CORES Username. In the event that the scheduled Oct 4th test must be rescheduled due to conditions or events (i.e., a government shutdown), the fall-back date is October 11, 2023 at the same time.

All EAS Participants – including Low Power FM stations (LPFM), Class D non-commercial educational FM stations, and EAS Participants that are silent pursuant to a grant of Special Temporary Authority – are required to register and file the required forms in ETRS, with the following exceptions (1) analog/digital TV translator stations; (2) FM broadcast booster and FM translator stations entirely rebroadcasting other FM stations; and (3) analog/digital full power stations operating as satellites or repeaters of a hub station (or common studio or control point) and rebroadcast 100 percent of the programming of the hub station or common studio/control point).

Now is the time for stations to check EAS equipment to be sure it is fully functioning and operating with the latest software updates.

FM TRANSLATOR AND LPFM MINOR MODIFICATION FILING FREEZE CONTINUES THROUGH NOVEMBER 8

We are in the middle of a filing freeze on all LPFM and FM translator minor mod applications that began at midnight on August 31, 2023 and will not end until 6:00 pm EST on November 8, 2023. Minor mod applications filed before the freeze lifts will be summarily dismissed. LMS still enables stations to load and work on minor mod applications during the freeze.

FCC FIFTH COMMISSIONER SWORN IN; NET NEUTRALITY RULEMAKING CIRCULATED THE NEXT DAY

On September 25, 2023, Anna Gomez was sworn in to fill the seat of the FCC's fifth Commissioner and third Democratic appointee. The delay in filling the seat is unprecedented to our knowledge,

coming some two years and nine months after President Biden took office.

With a fifth Democratic-appointed commissioner on board, FCC Chairwoman Rosenworcel wasted no time in circulating what will be a controversial rulemaking proposal to adopt so called “net neutrality” regulations to give the FCC authority over broadband providers under Title II of the Communications Act, resulting in regulatory treatment of those providers as public utilities.

While we are certain that other rulemakings directly affecting broadcasters will follow, the net neutrality rulemaking will grab headlines for the near future. Republican Commissioners Carr and Simington have already issued statements lambasting the rulemaking attempt, noting that the U.S. Supreme Court will almost certainly overturn any new regulation under Title II as a violation of the “major questions” doctrine.

CERTAIN BROADCAST AUXILIARY LICENSES REQUIRE ACCURACY CERTIFICATIONS

Earlier this year, the FCC released a Notice of Proposed Rulemaking and Order proposing to repurpose some or all of the 12.7-13.25 GHz band spectrum for mobile broadband or other expanded use. That Order directed non-exempt fixed and mobile Broadcast Auxiliary Services licensees in the band to certify the accuracy of the information reflected on their licenses, including whether their facilities are operating as authorized. Doing so is designed to assist the FCC in identifying incumbent operations entitled to protection or relocation during an anticipated transition period.

Broadcasters with auxiliary authorizations in the 12.7 GHz band should take the actions outlined in [this public notice](#) issued August 31, 2023 to ensure they are protected. Broadcast Auxiliary licenses include the following types of licenses classified by the prefixes shown: RP-Broadcast Auxiliary Remote Pickup; AI-Aural Intercity Relay; AB-Aural Microwave Booster; AS-Aural Studio Transmitter Link; TI-TV Intercity Relay; TV-TV Microwave Booster; TP-TV Pickup; TS-TV Studio Transmitter Line; TT-TV Translator Relay; LP-Broadcast Auxiliary Low Power; and LV-Low Power Wireless

Assist Video Devices. Accuracy certifications are only required for broadcast auxiliary authorizations in the 12.7 GHz band, so if yours are in another band, no action is required.

Dates to Remember

October 1, 2023

All Commercial and Noncommercial Broadcast Stations, except for LPFM, TV Translator, or Radio Translator Stations: First date to file biennial ownership report in LMS. Information must be current as of October 1, 2023. The deadline for submitting the report is December 1, 2023. For commercial station licensee entities, the new filing fee of \$95 per station will apply.

Deadline for all Full Power Commercial and Noncommercial Television stations to place their 2024-26 carriage election statement in the public file (and if applicable, email the election to any MVPD providers for which carriage is initially being sought) **and** deadline for all **Class-A and Low Power Television** stations eligible for mandatory carriage and making an initial carriage election or changing carriage status to send notice of their 2024-26 carriage election via email to MVPD providers. Emailed notices or elections must be sent to the MVPD’s email address listed in the “Carriage Election Contact Information” in the MVPD operator’s online public file, and copied to the FCC.

Radio and TV stations located in Florida, Puerto Rico, U.S. Virgin Islands, Iowa, Missouri, Alaska, American Samoa, Guam, Hawaii, Marianas Islands, Oregon and Washington: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from October 1, 2022 – September 30, 2023, upload it to the station online public inspection file and post it on the station website.

Mid-Term EEO Review for Radio stations located in Florida, Puerto Rico and the US Virgin Islands: if station employment unit has **eleven (11) or more full-time employees**, an independent **mid-term EEO review** of your last two EEO public file reports by the FCC will occur in connection with the 2022-23 EEO public file report due August 1, and when uploading the report, indicate that the SEU has 11 or more full-timers using the “Mid-Term Review” tab in the OPIF settings section. If the SEU has **between five and ten full-time employees**, when uploading the 2022-23 report, indicate that the SEU has fewer than 11 full-timer employees using the “Mid-Term Review” tab in the OPIF

settings section (by doing so, no mid-term review of the SEU will take place).

October 4, 2023

National EAS Test @ 2 pm EDT -- All Non-exempt Commercial and Noncommercial Broadcast Stations should receive and retransmit the test as required in State EAS Plan

October 5, 2023

Deadline at midnight EDT for All Non-exempt Commercial and Noncommercial Broadcast Stations to file ETRS Form Two reporting station performance in the Oct 4 National EAS Test

October 10, 2023

TV, Class A, AM & FM Stations (commercial & noncommercial): deadline to complete 3rd Quarter 2023 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 2023 certification of ongoing Class A eligibility.

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

November 1, 2023

Filing window opens for new LPFM applications.

November 8, 2023

Filing Freeze Ends at 6 p.m. EST for LPFM and FM Translator minor modification applications; LPFM filing window closes at the same time.

November 20, 2023

Deadline for All Non-exempt Commercial and Noncommercial Broadcast Stations to file ETRS Form Three reporting any issues/anomalies from their participation the Oct 4 National EAS Test

December 1, 2023

Deadline for all Commercial and Noncommercial Broadcast Stations, except for LPFM, TV Translator, or Radio Translator Stations to file biennial ownership report in LMS. Information must be current as of

October 1, 2023. For commercial station licensee entities, the new filing fee of \$95 per station will apply.

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, 2022 and September 30, 2023. 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.

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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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