



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

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ONE WEEK COUNTDOWN:

September 26, 2017: Deadline to Pay Regulatory Fees

As we have previously advised, **the deadline for paying regulatory fees is 11:59 p.m. Eastern Time on September 26, 2017.** Payments that are even one minute late face a penalty of 25%; thus, for example, a station that owes \$5,000 in regulatory fees would have to pay \$6,250 if it misses the deadline. We have previously distributed tables setting forth the regulatory fees of greatest interest to broadcasters. A [Public Notice](#) released by the FCC on September 5 details the multi-step regulatory fee payment process. The FCC released a [Fact Sheet for Media Bureau](#) licensees (including radio and television stations) discussing the regulatory fees imposed on broadcast stations. (Of course, some broadcast stations hold licenses in certain services other than those governed by the Media Bureau, e.g., Part 25 earth station licenses, which are overseen by the International Bureau.) The FCC's [regulatory fees webpage](#) provides additional resources for broadcasters.

Payments by Check Will Not Be Accepted. All payments must be made by wire transfer, or online via ACH (Automated Clearing House) payment, or credit card. The FCC will reject all other forms

of payment (e.g., cash, checks, cashier's checks, and money orders). Further payment procedure details have been provided by the FCC in [this Public Notice](#).

Maximum Credit Card Transaction Level. The maximum amount that can be charged on a credit card for transactions with federal agencies—including the FCC—is \$24,999.99. Attempted transactions for amounts greater than \$24,999.99 will be rejected. This limit applies to single payments, divided payments, and to combined payments of more than one bill. More information about making payments is available in [this Public Notice](#).

Limited Extension of Deadline for Stations Affected by Hurricanes Harvey and Irma. Recognizing the significant damage and service disruptions that Hurricanes Harvey and Irma have caused, the [FCC has extended the deadline](#) to file FY 2017 regulatory fees for broadcasters in areas affected by those storms to 11:59 p.m. Eastern Time on **September 29, 2017**. The FCC mentioned the following areas as having been affected by the hurricanes: all of Florida, Puerto Rico, and the U.S. Virgin Islands as well as portions of Texas, Louisiana, Alabama, and Georgia.

Limited Exemption for De Minimis Regulatory Fees (\$1,000 or Less). Broadcasters whose total FY 2017 annual regulatory fee liability, *including all categories of fees for which payment is due*, is \$1,000 or less are exempt from payment of FY 2017 regulatory fees. This *de minimis* threshold is not a permanent exemption. Rather, each broadcaster will need to reevaluate its total fee liability each fiscal year to determine whether it meets the *de minimis* exemption. Regulatees are responsible for calculating their own total fee obligation to determine whether they qualify for this *de minimis* exemption, and the FCC might request documentation from a broadcaster demonstrating that it really meets the exemption.

Deadline to Revise Form One EAS Reports Is September 27; Form Two EAS Reports Due 11:59 p.m. ET September 27

As we have previously advised, the FCC and FEMA (the Federal Emergency Management Agency) have scheduled a nationwide test of the Emergency Alert System (“EAS”) for Wednesday, September 27, 2017. (The test is scheduled to occur at 2:20 p.m. Eastern Time.) In connection with the nationwide test, all broadcasters were required to file the Form One EAS report through the FCC’s ETRS (EAS Test Reporting System) by August 28. **Stations have until September 27 to make any corrections to, and re-file, their Form One reports.** Instructions for registering with the ETRS and submitting Form One have been previously distributed. Please contact your FCC counsel immediately if your station has not yet filed its Form One EAS report or if your station needs assistance in revising its filed Form One report.

Form Two requires stations to report whether they received and retransmitted the nationwide EAS test message. Form Two must be completed by 11:59 p.m. on September 27. Most of Form Two’s fields will auto-populate using the data each station provides in Form One. (If your station has not yet filed Form One, you should file it immediately.) Form Two will ask broadcasters whether they received the nationwide EAS test message and whether they retransmitted the nationwide EAS test message. Form Two is intended to provide the FCC and

FEMA only with a quick snapshot of the nationwide test. Form Three—which will be due 45 days after the nationwide test—is the report in which stations will describe any issues with receipt or retransmission of the nationwide test.

It is critically important that broadcasters provide truthful information in these EAS reports. Please consult with your FCC counsel if you have any concerns about your EAS compliance and/or nationwide testing issues.

Stations Must Print, Review, and “Fill in the Blanks” of the New EAS Operating Handbook By September 27

In late July, the FCC released a [Public Notice](#) announcing the issuance of a [new EAS Operating Handbook](#) for all broadcast stations. Here is a link to the new EAS Operating Handbook: <https://www.fcc.gov/file/12715/download>. Until now, stations should have been using the 2016 edition of the EAS Operating Handbook. Stations must implement the use of the 2017 EAS Operating Handbook in time for the September 27, 2017, nationwide EAS test. (The September 27 nationwide EAS test is scheduled to occur at 2:20 p.m. Eastern Time.)

All broadcast stations should print the [new EAS Operating Handbook](#) and post it at the location of the station’s EAS equipment. All prior versions of the EAS Handbook (including the 2016 version, the special 2011 nationwide EAS test version, and all other versions) are now outdated, superseded, and ripe for recycling. In addition, all stations should carefully review the 2017 EAS Handbook and take the opportunity to “fill in the blanks” where the Handbook gives stations the opportunity to do so—the FCC has made the 2017 EAS Handbook available as a “writable” PDF in an effort to facilitate each station’s customization of the document.

All station personnel involved in any aspect of EAS compliance—weekly and monthly tests; nationwide tests; state and local alerts; EAS logging; equipment procurement; etc.—should review the new EAS Handbook, contribute to the “filling in the blanks” process, and ensure that it is posted at the appropriate location(s). (**Please Note:** stations are not permitted to alter the existing content of the EAS Handbook, other than to complete the portions that are designed for station input.)

Music Licensing Alert: Action Required by **September 30, 2017**, for Commercial Radio Stations Seeking Extension of GMR Interim License

Radio stations wishing to extend their interim license with performing rights organization (“PRO”) Global Music Rights (“GMR”) must take action by [September 30, 2017](#). As we have previously reported, GMR (a relatively new PRO formed in 2013) offered a 9-month interim license to radio stations pending the resolution of antitrust litigation filed against GMR by the Radio Music License Committee (“RMLC”). Those interim licenses **expire** on [September 30, 2017](#).

As the RMLC and GMR antitrust litigation continues, GMR is offering to extend the interim licenses for an additional 6-month period—from October 1, 2017, through March 31, 2018. The extension GMR is offering is on the same terms as the initial interim license. There should be no change in your station’s license fee for the extended period.

License Extension is Not Automatic; Action Required. **The extension is not automatic. You must take action in order to extend the interim license for your station. You will need to obtain and sign a new agreement with GMR.**

The extension agreement must be signed and returned by September 30, 2017, and the first monthly payment under the extended interim license is due no later than October 31, 2017.

According to its [website](#), GMR claims to have sent an interim license extension offer to all RMLC members using the email address GMR had on file. GMR requests that a station or company that has not received an extension offer fill out the [form found here](#). In addition, if your station has not yet received such a GMR license extension agreement, you may wish to contact GMR directly at: radiolicensing@globalmusicrights.com.

Note that the license applies only to commercial stations.

You’ll recall that GMR is now the fourth performing rights organization operating in the United States—the others are ASCAP, BMI, and SESAC. Performing rights organizations grant licenses to broadcasters and other users of music (such as restaurants, bars, and retail establishments) for the right to perform music written by affiliated songwriters and publishers. In recent years, GMR has lured songwriters away from ASCAP, BMI, and SESAC by promising to pay them more royalties than those other PROs.

GMR’s repertory includes an estimated 20,000 essential songs, and most broadcast stations simply cannot avoid playing songs in GMR’s repertory. Absent a license to perform these songs, stations risk copyright infringement—for which statutory damages could be up to \$150,000 per song.

What the Interim License Covers. Here’s a summary of the key provisions of GMR’s interim license, which continue to be offered under the extension agreement through March 31, 2018:

- The interim license is on a “non-precedential basis,” meaning that your station and GMR each retain the right to seek a retroactive fee adjustment in future license agreements or as a result of the pending RMLC—GMR litigation.
- The interim license covers terrestrial, non-interactive digital simulcasts, and promotional websites owned by your station.
- The license fee is payable on a monthly basis, without monthly invoices from GMR. Fees are due on or before the end of each month during the term (e.g., on or before October 31, 2017; November 30, 2017, etc.).

- GMR is required to provide your station with a full and complete list of all songs owned or controlled by GMR, along with all ownership splits.
- Your station must provide substantially the same reporting data to GMR that it provides to ASCAP, BMI, and SESAC from time to time.
- The terms of the interim license—in particular, your specific license fee and GMR’s non-public client and song list—must be kept confidential.

Again, if your station has not already received its specific interim license extension agreement from GMR, you need to contact GMR directly.

You should continue to evaluate this new music licensing challenge and the risk of potential copyright infringement with your legal counsel. Whether, and when, to enter into a license agreement with GMR, or to extend your current GMR license, will depend on the unique circumstances of your station and your risk tolerance, as well as future developments in the RMLC—GMR litigation.

FCC’s Form 387 “Transition Progress Report” Is Now Accessible in LMS for Transitioning Stations; First Quarterly Report Due **October 10, 2017**

The FCC has released a [Public Notice](#) announcing that FCC Form 2100, Schedule 387 (“Form 387”) – the “Transition Progress Report” – can now be accessed in the FCC’s Licensing and Management System (“LMS”) by broadcasters who are ready to begin completing their first Form 387 report.

All full power and Class A transitioning stations that are changing channels in the post-auction transition will have to file the Form 387 Transition Progress Report on a quarterly basis, starting with third quarter 2017. The first filing deadline is **October 10, 2017**. Transition Progress Reports must provide information regarding steps stations have taken toward construction of their post-auction facilities.

Finding Form 387 in LMS. Navigating to Form 387 in LMS is not particularly intuitive. As such, here are instructions as to how to get to Form 387:

- Log into LMS using the FRN that is associated with the relevant station using this URL: <https://enterpriseefiling.fcc.gov/dataentry/login.html>.
- Click on the “Authorization” tab on the top left corner of the landing page.
- On the next page, click on “License Authorization” of the station for which the schedule is being submitted.

- On the next page, click on “File an Application”.
- From the options presented, click on “Transition Progress Report”.
- Complete the questions and, when ready and authorized, submit the application.

Form 387 is Due Each Quarter. Much like Children’s Television Programming Reports, the Form 387 must be filed electronically by the 10th day following the end of each calendar quarter. Transitioning stations will have to file the Form 387 each quarter until the station ceases operation on its pre-auction channel. The Form 387 will also have to be filed at other specific times prior to and following the completion of construction.

If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

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