



Virginia Association of Broadcasters Legal Review



Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
Counsel to VAB • (919) 839-0300

250 West Main Street, Suite 100
Charlottesville, VA 22902 • (434) 977-3716

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PARTIAL CHANGE IN JANUARY 15, 2015, COMPLIANCE DEADLINE FOR CLOSED CAPTIONING RULES: QUALITY STANDARDS DELAYED UNTIL MARCH 16, 2015, BUT CERTAIN RECORDKEEPING REQUIREMENTS STILL GO INTO EFFECT JANUARY 15

On December 17, 2014, the NAB circulated an email memorandum advising stations that the new closed captioning quality standards that were set to go into effect on January 15, 2015, will be delayed by 60 days (making the new effective date Monday, March 16, 2015). Significantly, the sixty-day delay applies only to the quality standards portions of the new rules, and all other portions of the new rules that were to become effective on January 15 will still become effective on January 15, 2015. On October 17, 2014, we distributed a Legal Memorandum summarizing the new rules subject to the January 15, 2015, compliance deadline. Immediately below is a refresher of the recordkeeping requirements that will still go into effect on January 15, 2015. To the extent that your station has not yet adopted practices and implemented operational protocols to ensure compliance with the requirements discussed below, you should make it one of your highest priorities to do so immediately.

A. New Recordkeeping Requirements Will Still Become Effective January 15, 2015

The FCC’s new rules impose significant recordkeeping obligations—which become effective on January 15, 2015—on television broadcasters to document certain of their activities related to captioning.

* *New Recordkeeping Requirements; Two-Year Retention Period.* Under the new recordkeeping rules, stations must keep detailed records of their activities related to the maintenance, monitoring, and technical checks of their captioning equipment (the next bullet below contains a brief review of the underlying monitoring and maintenance requirements that have been in effect since April 30, 2014). The records are intended to comprise “sufficient data to respond to consumer complaints and provide the Commission with information needed to make a determination as to the [station’s] compliance with the closed captioning requirements.” The new rules specify that such records *must include* information about the station’s efforts to monitor, maintain, and conduct technical checks of its captioning equipment and other related

equipment to ensure the pass-through of captions to viewers. These records must be maintained at the station for 2 years. Stations should be prepared to submit such data to the FCC upon request in the event of an enforcement proceeding. In our experience, some stations already routinely include some closed captioning information in their daily discrepancy reports; nonetheless, even those stations should review their practices immediately to ensure that relevant personnel (MCOs, etc.) understand the scope of the mandatory monitoring and reporting requirements and that discrepancy reports are formatted appropriately to capture all required captioning information. Discrepancy reports may be one convenient way to document that closed captions are being monitored and equipment is being maintained, but they are not necessarily the only way that stations can maintain the required records; stations should use whatever recordkeeping system works best and most reliably for their own needs, so long as it captures all required information.

* *Brief Review of Equipment Monitoring and Maintenance Requirements that Became Effective April 30, 2014.* When the new rules were adopted in early 2014, the FCC reaffirmed its long-existing “policy” that stations take steps needed to monitor, maintain, and correct their equipment and signal transmissions as part of their obligation to ensure that captioning reaches consumers. The FCC also adopted the rule (which became effective April 30, 2014) requiring technical equipment checks to take place in a manner that is sufficient to ensure that captions are passed through intact to viewers. Stations must be able to demonstrate that they have monitored their equipment and signal transmissions, have performed technical equipment checks, and have promptly undertaken repairs as needed to ensure that equipment is operational and in good working order. The monitoring mandates apply to all video programming distributors (including MVPDs and television stations) which is good news for TV stations who often find that MVPDs tell subscribers that closed captioning problems are the station’s fault. As noted in the first bullet above, stations will need to begin maintaining written records of their monitoring and maintenance practices as of January 15, 2015.

B. New Rules Governing Quality Standards and Requirements to Obtain and Provide Written Compliance Certifications Will NOT Become Effective January 15, 2015

As stations (and programming providers) should already be aware, the FCC has adopted non-technical quality standards to govern closed captioning. The new rules establish four key components of quality: (1) accuracy, (2) synchronicity; (3) completeness, and (4) placement. Beginning March 16, 2015, video programming on television must comply with these four components. For more information about the quality standards, please refer to our October 17, 2014, Legal Memorandum.

As part of the quality standards rule, the FCC also will require stations to obtain from all video program providers written certifications of compliance with the quality standards. (To the extent that a station, itself, is a program provider for another station, the station providing the programming will be required to provide the written certification.) Many program providers and stations have recently been in the midst of gearing up to request and/or provide these new written certifications to meet the January 15 compliance deadline, but these requirements have now also been delayed and will not be effective until March 16, 2015. For more information about the requirements relating to requesting and providing certification letters, please refer to our October 17, 2014, Legal Memorandum.

C. ANOTHER CLOSED CAPTIONING INQUIRY BY THE FCC WAS RECENTLY RELEASED

On December 15, 2014, the FCC released another [Notice of Proposed Rulemaking](#) (called the “Second Further” Notice of Proposed Rulemaking) relating to its closed captioning rules. In a nutshell, the FCC is now requesting comment on issues such as whether television stations and MVPDs should be responsible for monitoring the closed captioning compliance of program providers and whether program providers should have to make certain closed captioning filings at the FCC. In the interest of helping stations keep all the closed captioning deadlines and requirements straight and separate from any new proposals, we will cover this new Notice of Proposed Rulemaking in a separate Legal Memorandum in the coming days.

by Stephen Hartzell

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FCC AND FAA ANNOUNCE STREAMLINED PROCESS FOR TOWER OWNERS TO NOTIFY FAA OF LIGHTING PROBLEMS

The notification process for tower owners whose towers are in need of lighting repairs is going to get a bit easier early next year. That’s because owners of towers with faulty lighting will be allowed to self-select the amount of time they will need to make repairs.

The Federal Aviation Administration (“FAA”), working together with the FCC’s Wireless Telecommunications Bureau (“Bureau”), plans to streamline its processes related to Notices to Airmen (“NOTAMs”), according to a [recent Advisory from the Bureau](#) (the “Advisory”). NOTAMs identify towers with extinguished or faulty lighting, alerting pilots and others of the problems to avoid crashes.

Under current FCC rules, tower owners are generally required to notify the FAA within 30 minutes of discovering a lighting outage or malfunction of any top steady burning light or any flashing obstruction light, regardless of its position. The tower owner is then required to repair the lighting problems as quickly as practicable and then to notify the FAA that the repair has been completed and lighting restored. Currently, tower owners typically notify the FAA of such lighting problems by calling the national NOTAM phone line at 877.487.6867. A tower owner’s call to the NOTAM phone line results in the issuance of a NOTAM.

Here’s the “problem” that the new procedures are intended to address: under the current NOTAM system, NOTAMs automatically expire after 15 days, and sometimes it takes a tower owner more than 15 days to make repairs. In such cases, a tower owner has to remember to repeatedly call to extend the NOTAM until lighting repairs are complete. This creates unnecessary burdens on tower owners as well as on FAA and FCC staff who process and monitor the NOTAM submissions.

To combat this problem and increase efficiency, the FAA plans to revise its NOTAM submission system in order to allow tower owners to use an online system to choose the amount of time they will need to repair tower lighting. The change is expected to take effect in mid-

January of 2015. As noted above, under current procedures, the FAA and FCC require tower owners to notify the FAA promptly after tower lights have been repaired. The Advisory is silent on the issue of whether the post-repair notification will still be required under the new system.

But that doesn't mean tower owners will be able take as long as they want to make repairs.

In the recent Advisory, both the FCC and FAA reminded tower owners that "every outage should be corrected as soon as possible" and that the FCC and FAA "will respond aggressively if they discover tower owners are abusing a system designed to protect aviation safety." The FCC warns that its staff will continue to monitor NOTAM referrals it gets from the FAA and that "FCC staff may investigate cases where a tower owner selects an unusually long time period to make a repair, where multiple NOTAMs appear to have been submitted for a single tower within a relatively short period of time, where a tower owner repeatedly fails to cancel NOTAMs after repairs are complete," or where other circumstances require a closer look.

Once we learn that the new system is up and running, we will provide another update.

by Tim Nelson

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COMMENT DATES ESTABLISHED IN PROCEEDING TO "MODERNIZE" THE FCC'S STATION-CONDUCTED CONTEST REGULATION

In our November 25 Legal Memorandum, we reported on the FCC's proceeding to "modernize" its decades-old station-conducted contest rule. In that proceeding, the FCC has proposed, among other things, to give stations two options to disclose the "material terms" of each station-conducted contest that is mentioned on-air. The first option is to comply with the current version of the rule which, in relevant part, requires stations to disclose on-air all "material terms" of each contest a "reasonable" number of times during the contest. The second option is the "modernized" one, and it would allow stations to meet their contest disclosure obligations by directing listeners and viewers on-air to a public website to find the material terms of the contest in writing.

The FCC's Notice of Proposed Rulemaking in that proceeding is scheduled to be published in the *Federal Register* on Friday, December 19, 2014, which means that initial comments will be due February 17, 2015, and reply comments will be due March 19, 2015. For further information about the scope of the proceeding and issues on which the FCC seeks comment, please refer to our November 25 Legal Memorandum. Because the changes proposed by the FCC have the potential to ease the burdens associated with the daily operational challenges of the FCC's current contest disclosure requirements, stations may want to consider filing comments in the proceeding.

by Elizabeth Spainhour

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

Stephen Hartzell, Editor

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

Wade H. Hargrove
Mark J. Prak
Marcus W. Trathen
David Kushner
Coe W. Ramsey
Charles E. Coble
Charles F. Marshall
Stephen Hartzell
J. Benjamin Davis
Julia C. Ambrose
Elizabeth E. Spainhour
Eric M. David
Timothy G. Nelson

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