



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

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New Rules Proposed to Improve EAS Integration

The FCC has adopted a [Notice of Proposed Rulemaking](#) (the “Notice”) which proposes methods to improve the Emergency Alert System (“EAS”) through which broadcasters and other participants disseminate emergency information. Responding to the advancement of technology, the FCC is exploring new ways to utilize the technological improvements to make the EAS system more efficient and effective. Here are a few of the issues and proposals discussed in the Notice.

Governmental EAS Integration. The Commission has the stated goal of better coordinating federal, state and local government in the EAS process. The proposals are designed to encourage state and local innovation to meet the needs of their communities. Comments are sought regarding policy and jurisdictional issues which must be addressed in the proposed integration of state, local and federal systems. Additionally, the FCC seeks comment regarding the types of voluntary community exercises that can be implemented to achieve this integration.

The EAS and Social Media. With a significant number of people obtaining their information from social media platforms, the FCC is now considering how to use those platforms to improve the EAS. The FCC stated that it recognized that use of these platforms may allow for assessment of the scope of the emergency, the efficient triage of victim needs, and the ability to organize optimal deployment of emergency resources. The Notice seeks comment on how to assess and meet public expectations for receiving alerts as content is viewed across different platforms.

Meeting the Emergency Alert Needs of All Community Members. The FCC also seeks comment on how to implement community-based alerting exercises which can best meet the needs of individuals with limited or no English proficiency and individuals with disabilities.

New Online Filing System. State and local governments have long been required to file their emergency preparedness plans with the FCC. Currently, such filings are made on paper. The Commission proposes to utilize an online filing system for the filing of these emergency plans and to adjust existing administrative rules to streamline the process by which the FCC gauges the effectiveness of such plans.

EAS Security. The FCC is concerned with the security of EAS, and the Notice proposes to improve EAS security by requiring EAS participants to certify annually that they are following certain best practices for EAS security.

“Live” EAS Testing. The FCC seeks comment on whether state and local alert originators and/or EAS participants should be allowed to conduct periodic “live” EAS tests and alerts using the EAS tones. Comment is also sought on what steps can be taken to prevent public confusion when such “live” tests are conducted.

Use of EAS Tones in PSAs. The FCC seeks comment on whether broadcast stations should be permitted to broadcast Public Service Announcements (“PSAs”) to help educate the public about EAS. Currently, the use of EAS tones (or sounds that mimic EAS tones) for any purpose other than a test or actual alert is prohibited, and the FCC in recent years has imposed significant fines (some in the million dollar range!) on a number of EAS participants for the alleged violation of the prohibition. Under the FCC’s proposal, PSAs would be able to use the EAS tones only if they would not mislead the public or cause technical harm. While the proposal speaks only in terms of PSAs, stations may wish to consider providing comments to support the educational use of EAS tones in news stories as well.

Comment Deadlines. Comments will be due 45 days after the date of publication of the Notice in the Federal Register, and reply comments will be due 75 days after the date of publication in the Federal Register. As of February 19, 2016, publication has not yet occurred.

New Filing System Must Be Used for Children’s Television Programming Reports Starting with First Quarter 2016

Just in time for the next quarterly filing of Children’s Television Programming Reports (the “Reports”) by all commercial full-power and Class A television stations, the FCC has changed the filing interface for Reports, and all filers will be required to use the FCC’s Licensing and Management System (“LMS”). (Other than the new interface for the Reports, the FCC has not made any recent changes to the children’s television programming rules.) In a [Public Notice](#), the Commission announced that Reports **must** be filed via LMS beginning with first quarter 2016 Reports (which are due by April 11, 2016. Starting in April 2016, there will be no other filing option for Reports, and the FCC has stated that it will disable the link to the “old” KidVid filing

system (http://licensing.fcc.gov/KidVidNew/public/filing/submit_login.faces) as of March 31, 2016—as a result, after March 31, 2016, stations will be unable to file or amend Reports using the KidVid portal.

LMS is the same system that is used for a number of other television station filings, including construction permit and license applications and requests for special temporary authority. Use of LMS for children’s Reports is not entirely intuitive, and it would serve stations well to try the new system prior to the end of the first quarter.

To access LMS, visit <https://enterpriseefiling.fcc.gov/dataentry/login.html>. Then, to access and draft a Children’s Television Programming Report, follow these instructions:

- Log in using the licensee’s FRN and password.
- On the next screen, click on the “Facilities” tab towards the top of the page (next to the “Applications” and “Authorizations” tabs).
- On the next screen, there will be a list of one or more stations associated with the licensee’s FRN. (The list contains several columns of information.) Select the station by clicking on the hyperlinked facility ID number of the desired station, which is in the second column from the left.
- On the next screen, click the blue “File an Application” button. A drop-down menu will appear.
- Scroll down the drop-down menu and select “Children’s TV Programming Report.”

Then, begin the process of completing the various fields in the Report. As will become quickly evident, navigation through the Report is different than it was in the KidVid filing system, and the order of the questions in the Report is different. In addition, LMS will automatically pre-populate the Report with data pulled from the station’s most recently filed Report. As a result, it is important for all stations to carefully review each section and each question in the new version of the Report when drafting the first quarter 2016 Report. Finally, please note that LMS will alert you to errors detected in the Report (by use of a red “X”), and stations should not file a Report until all errors have been addressed.

The FCC routinely sanctions stations for failing to timely file Children’s Television Programming Reports and also for failing to publicize the existence and location of the Reports. Moreover, to avoid a violation of the public inspection file rule, best practices counsel that stations check their online public files one day after filing a Report via LMS to confirm that the FCC has imported a link to the filed Report in the “Children’s TV Programming Reports” section of the file. If a link to a filed Report does not appear in a station’s online public file within 24 hours of filing the Report via LMS, the station should manually upload a copy of the filed Report and should contact FCC counsel.

New Digital LPTV and TV Translator Rules Establish Digital Conversion Deadline and Allow Channel Sharing

Low power television and TV translator stations (collectively, “LPTV stations”) are faced with some new rules as the FCC adopted an order addressing the many challenges faced by LPTV stations in the post-auction spectrum world. Among other things, the [Third Report and Order](#) (the “Order”) extends the deadline for LPTV stations to complete their digital conversion, establishes a channel sharing regime for LPTV stations, updates the replacement translator rules for full-power TV stations, and eliminates the requirement that analog tuners be integrated into TV receivers. Here are some of the highlights of the new rules, which will become effective March 2, 2016 (except for the channel sharing rules, which still await OMB approval).

Suspension of Digital Transition Deadline for LPTV Stations. In early October 2014, the FCC adopted a [Notice of Proposed Rulemaking](#) in which the FCC recognized that the television spectrum auction and repacking process will impact LPTV stations, especially as they transition to digital operations. At the same time, in October 2014, the FCC released a [Public Notice](#) announcing the suspension of the expiration date and construction deadline for all unexpired digital construction permits for *new* low power television stations and television translator stations. Subsequently, on April 24, 2015, another [Public Notice](#) announced suspension of the September 1, 2015, digital transition date for LPTV stations pending final action in the rulemaking proceeding. In the December 2015 Order, the FCC has now established the LPTV station digital conversion deadline (discussed immediately below).

New Deadline Established for Digital Conversion of LPTV Stations. The FCC has set a new deadline by which all LPTV stations must transition to digital-only operations. This new deadline, according to the Commission, is a “hard” deadline. However, rather than being a fixed date like the prior September 1, 2015, deadline, the new deadline will be tied to the occurrence of a specific event. The new deadline will be 12 months after completion of the 39-month transition period during which full-power and Class A television stations move to their new channels to complete the post-auction repack. This deadline equates to 51 months after the post-auction channel assignments are announced by the Commission when it releases the so-called *Channel Reassignment Public Notice* (the public notice that the FCC will release upon completion of the incentive auction, which will specify the new channel assignments and technical parameters of broadcast television stations that are reassigned to new channels). (If an LPTV station’s transition is not achieved by the new deadline, the station will be required to go dark while digital construction is completed, in which case operations must be resumed within 12 months or, pursuant to the Communications Act, the license will expire automatically.) The new rules will allow for one “last minute” request for extension of the digital conversion deadline under specific circumstances and under specific conditions. The resulting extension, if allowed, will not exceed six months. The application for extension must be filed no later than four months prior to the new transition date and the applicant must (i) be able to show that the delay was due to circumstances that were either unforeseeable or beyond the station’s control or due to financial hardship; (ii) demonstrate that the licensee has taken all reasonable steps to resolve the problem; and (iii) provide detailed information supporting why the station will be unable to meet the new transition deadline.

Channel Sharing by LPTV Stations. The Order now opens the door for LPTV stations to enter into channel sharing agreements (“CSAs”) in order to channel share on a voluntary basis. Subject to certain requirements, the new rules will allow the parties to a CSA the flexibility to set forth terms and conditions of channel sharing that are specific to the parties’ mutual desires. Licenses and call signs will continue to be held separately by each party to the CSA, and each channel-sharing station will remain separately subject to all applicable Commission’s rules, policies and obligations.

LPTV stations and/or translator stations must enter into a CSA in order to secure FCC approval for channel sharing. The Commission requires that sharing partners have CSAs that address key sharing terms such as access to facilities, allocation of bandwidth, operation and repair of facilities, and termination or transfer of shared licenses. The CSA must also provide for spectrum usage rights which will support the transmission of at least one standard definition (SD) programming stream at all times. Subject to the SD requirement, the parties to the CSA may divide the remaining spectrum capacity in any way they deem appropriate.

The licensing of CSA participants will involve the following process: If the Sharer, or host station, requires no technical changes, then the sharee must file an application (including an exhibit of an unredacted copy of the CSA) for a digital construction permit for the same technical facilities as the Sharer station. If technical changes to the Sharer station are required, each station will need to apply for a construction permit.

The Sharee station may not move more than 30 miles from its original location, and the former and new protected service contours must overlap. Waiver of these requirements may be requested, but a waiver grant will be forthcoming only if the LPTV station demonstrates that there is no available channel for sharing within the boundaries of the requirements. Once the move is complete, the Sharee must notify the FCC that operations on the former channel have ceased. Additionally, both stations will then file for new licenses.

Digital-to-Digital Translator Service and Full-Power TV Stations. A new digital-to-digital replacement translator service (“D2DRT Service”) has been established that would allow full-power television stations to recover digital service area that is lost as a result of the spectrum auction. (In 2009, the FCC established similar digital replacement translator services to help stations recoup service area that was lost in the transition of full-power stations to digital-only operations.)

- Full-Power Stations Only. D2DRT Service will only be available for full-power stations.
- Eligibility. Eligibility for D2DRTs will be limited to full-power television stations reassigned in the repacking process who can demonstrate both (a) the loss of a portion of the full-power station’s pre-auction digital service area and (b) that the proposed D2DRT will be used solely to fill in such loss area.
- Processing Priority. Full-power stations will be allowed to apply for D2DRT services upon the opening of the post-auction displacement window for LPTV stations and ending one year after the completion of the 39-month repacking construction period. D2DRT applications will have priority over certain other types of LPTV applications and co-equal priority with certain other types. While some full-power operators may have preferred to

have been given absolute priority over all other applicants, the FCC attempted to strike what it believes to be an appropriate balance.

- Construction Period. D2DRT permittees will be provided three years to construct the facility.

Media Bureau to Help LPTV Stations Find New Channels. The FCC expressed its anticipation that LPTV stations displaced by the spectrum auction may have a difficult time finding a new channel. To assist with this process, the Commission plans to make available the use of “repacking software” to help displaced LPTV stations identify new channels.

Elimination of the Analog Tuner Requirement for TV Manufacturers. The FCC has eliminated the requirement that analog tuners be integrated into TV receivers. Notably, this will allow manufacturers to cease the production of devices with analog tuners before all LPTV stations have transitioned to digital. Depending upon consumer trends, LPTV stations that continue analog operations until the digital conversion deadline may experience a reduction in viewership.

Effective Date. The new rules will become effective March 2, 2016, except for the channel sharing provisions, which require approval by the federal Office of Management and Budget (the Commission will publish a document in the Federal Register announcing the effective date for the LPTV station channel sharing rules).

Further Rules Under Consideration. Along with the Order, the FCC also adopted a Fourth Notice of Proposed Rulemaking, in which it has proposed rules relating to channel sharing between LPTV stations on the one hand and full-power/Class A television stations on the other hand. (Comments are due February 22, 2016, and reply comments will be due March 3, 2016.) This channel sharing proposal raises a number of interesting questions, including the following:

- Should LPTV stations be afforded *de facto* interference protection by sharing with a primary station?
- Would it be appropriate to allow an LPTV station to obtain the coverage area of a full power or Class A television station by virtue of its channel sharing?
- Could the same benefits of channel sharing be obtained by an LPTV station entering into an agreement to be broadcast on a full-power or Class A television station’s multicast stream?
- Is the FCC’s tentative conclusion correct that an LPTV station that shares, as a Sharee, a channel with any other station, and a full power or Class A station that shares with an LPTV Sharer station, should have the same MVPD carriage rights on their new shared channels that the station would have at the shared location if it was not channel sharing?

Even in light of these new rules and further proposals, the long-term landscape remains relatively unsettled for LPTV stations. We will keep you advised of further developments, filing dates, and deadlines for LPTV stations.

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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