



# Virginia Association of Broadcasters Legal Review



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February 23, 2016

## Legal Memorandum

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*In this issue, link to information about*

*Developments:* [Voluntary Regional EAS Test: February 24, 2016](#)  
[Form 338 for MDCL Operation Available March 3, 2016](#)

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### February 24: Voluntary Regional EAS Testing (Including VA)

Tomorrow, on February 24, there will be an opportunity for broadcasters in 22 states (including Virginia) and Puerto Rico, the U.S. Virgin Islands, and Washington, D.C., to test their Emergency Alert System (“EAS”) equipment for integration with the new EAS coding system. This **voluntary** regional EAS test will occur on **Wednesday, February 24, at 2:20 p.m. Eastern Time**. The purpose of the test is to ensure that broadcaster equipment is properly configured so that the use of the NPT (National Periodic Test) header code will integrate properly with NPT-Coded messages. FEMA will conduct the test using IPAWS (Integrated Public Alert and Warning System), and it will use the NPT code including an audio message replicating the sound of a standard RMT (Required Monthly Test).

Here are a few things to keep in mind about the February 24 voluntary regional test:

- It is not mandatory; it is voluntary.
- The FCC will not take enforcement action for failure of stations to participate nor for any equipment failures during the test (e.g., for unsuccessful EAS equipment integration revealed by the test).
- Participating stations will not be required to file a report with the FCC to account for the test results, but stations may be requested to verify that their receivers are configured to—and did, in fact—respond and relay the NPT code without delay.

- To maximize the “value” of voluntary participation in the test, stations may wish to check their EAS equipment in advance of the test to ensure proper configuration and readiness.
- Participation in the test does not replace or serve as a substitute for an RMT or RWT (Required Weekly Test).
- The jurisdictions that are part of the test are: Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Puerto Rico, South Carolina, Texas, the U.S. Virgin Islands and Virginia, and Washington, D.C.

Although it is a voluntary exercise, we encourage broadcasters to take this opportunity to ensure that their EAS operations are in sync with IPAWS. FEMA has encouraged that stations with questions about the test to contact Al Kenyon at [Alfred.Kenyon@fema.dhs.gov](mailto:Alfred.Kenyon@fema.dhs.gov).

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## New Filing Procedure for AM Stations to Commence MDCL Operations Begins March 3, 2016

In the AM Revitalization proceeding, the FCC adopted rules (which became effective on February 18, 2016) to make it easier for AM stations to employ Modulation Dependent Carrier Level (“MDCL”) control technologies; as of March 3, 2016, a new FCC form—FCC Form 338 AM Station MDCL Notification—will be implemented to facilitate the regulatory process for AM stations that wish to use MDCL.

In a nutshell, MDCL control technologies allow the licensee to reduce transmitter power consumption while maintaining audio quality and signal coverage. For about five years, AM stations have been allowed to seek rule waiver or experimental authorization to use MDCL control technologies or algorithms, and a number of AM stations have been operating pursuant to experimental authorization. (MDCL control technologies reduce the station’s antenna input power to levels not permitted by applicable FCC rules, which is why rule waivers or experimental authorizations were required for MDCL operations.)

In the AM Revitalization proceeding, the FCC amended its rules to:

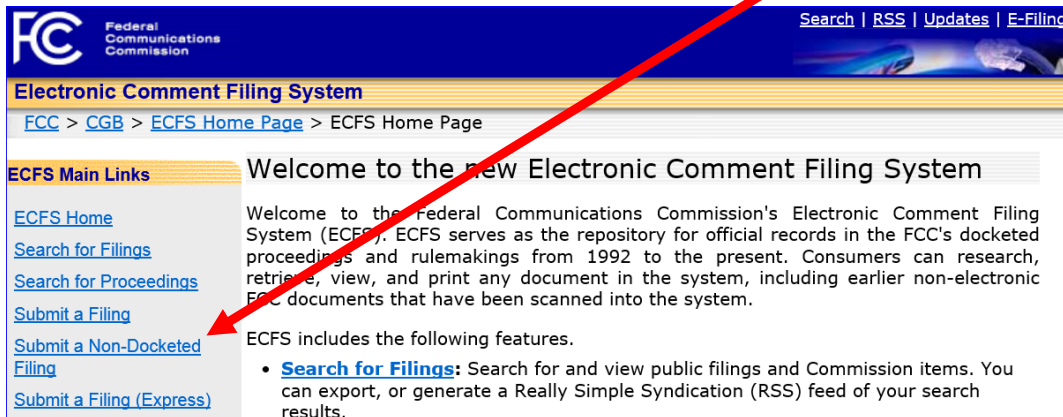
- (1) provide that an AM station may commence MDCL control operation without prior FCC authority, so long as the AM station notifies the FCC of the station’s MDCL control operation within 10 days after commencement of such operation (such notification must be done electronically via the FCC’s website on FCC Form 338 – AM Station MDCL Notification);
- (2) require, regardless of the MDCL control technology employed, that the AM station’s transmitter must achieve full licensed power at some audio input level, or when the MDCL control technology is disabled; and

- (3) require an AM station using MDCL control technology to disable it before field strength measurements on the station are taken by the licensee or others.

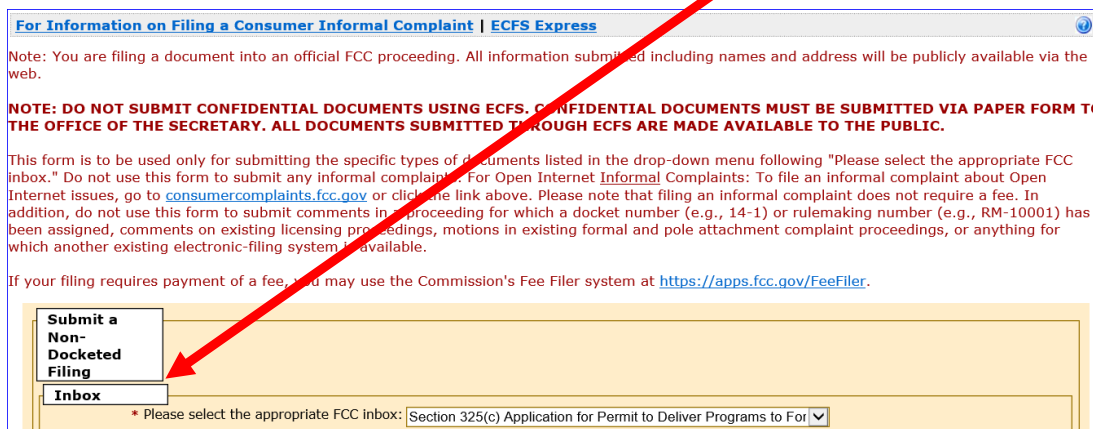
By [Public Notice](#) dated February 18, the FCC has announced that the use of Form 338 becomes effective on March 3, 2016. As noted above, AM stations that implement MDCL operations must use Form 338 to notify the FCC of the station's MDCL control operation **within 10 days after commencement of the operation**. Form 338 identifies the AM station and specifies the technical details of the Station's MDCL operation. And, now that Form 338 will be available, it should put an end to the recurring need for AM stations to file to extend experimental authority for MDCL operations.

According to the FCC's recent [Public Notice](#), FCC Form 338 will be available for downloading on the Commission's website at <https://transition.fcc.gov/Forms/Form338/338.pdf>. The station should complete the Form 338 and save it to a computer hard drive. Following completion of the form, the station must submit the completed FCC Form 338 through the Commission's Electronic Comment Filing System ("ECFS"). Here is how to file Form 338 via ECFS:

1. Go to the ECFS webpage at <http://apps.fcc.gov/ecfs/>.
2. On left side of page, select "Submit a Non-Docketed Filing."



3. On the next screen, using the dropdown box for "Inbox" select "Form 338: AM Station MDCL Notification."



4. Continue to scroll down the page to complete the “Contact Info” fields.
5. In the “Filing Type” section on the page, select “Other” in the dropdown box.
6. Continue to scroll down the page to complete the “Address” fields.
7. In the “Document” section, click the “Browse . . .” box in order to locate the completed FCC Form 338 saved to your hard drive and upload it.

**Document (s)**

File Name:  Browse... Custom Description:

[Add Another Attachment...](#)

8. Then, click on “Continue.”
9. On the next screen, click on “Confirm.”
10. At that point, a confirmation page will appear on the screen, and the station should print or otherwise keep a copy of the confirmation page.

There is no FCC filing fee associated with the submission of FCC Form 338. **Please note:** The only AM station application or notification that may be filed in ECFS using the process described above is FCC Form 338; according to the FCC, other AM station filings submitted to this ECFS Inbox using this procedure will be deleted from ECFS without staff review or action. As with any FCC application, notification, report or other filing, stations may wish to consult with their legal counsel and a qualified consulting engineer for assistance with a Form 338 filing.

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

*Stephen Hartzell, Editor*

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