



Virginia Association of Broadcasters Legal Review



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TABLE OF CONTENTS

FCC SEEKS COMMENT ON PROPOSED REQUIREMENT FOR VIDEO
DESCRIPTION OF EMERGENCY INFORMATION1

The FCC recently issued a *Notice of Proposed Rulemaking* proposing to require broadcasters to video describe emergency information that is provided in crawls during non-newscast programming.

OPERATION OF TV WHITE SPACES DEVICES NOW AUTHORIZED
IN EAST COAST REGION1

As of December 6, 2012, approved database systems are now authorized to provide service in the East Coast region to unlicensed radio devices that operate in TV white spaces.

REMINDER: BROADCASTERS REQUIRED TO POST CERTAIN MATERIAL ON STATION WEBSITES2

As a reminder for all broadcast stations, the FCC requires that stations post certain information on their websites and, in some cases, in certain locations on their websites.

RADIO BROADCASTERS SUE SESAC FOR ANTITRUST VIOLATIONS4

The broadcast industry has again sued SESAC, the performing rights organization, for antitrust violations harmful to broadcasters.

NEW BILL IN CONGRESS PROPOSES TO CUT ROYALTY RATES FOR INTERNET RADIO.....4

A new bill was introduced in Congress proposing to adjust music royalty rates paid by webcasters.

ENFORCEMENT REMINDER: FCC FINES STATIONS FOR PUBLIC FILE VIOLATIONS5

The FCC continues to fine broadcast stations for public file violations.

POLITICAL FILE RECORDKEEPING: LESSONS FROM THE 2012 ELECTION SEASON6

With a busy political season passed, it’s a good opportunity for stations to take stock of their sales practices and work flow for maintaining their political files.

FCC SEEKS COMMENT ON PROPOSED REQUIREMENT FOR VIDEO DESCRIPTION OF EMERGENCY INFORMATION

The FCC recently issued a *Notice of Proposed Rulemaking* (the “*Notice*”) proposing to require broadcasters who provide emergency information to viewers through visual-only means during non-newscast programming, for example, through an on-screen crawl, to video describe the information concurrently on a secondary audio stream to make it accessible to people with visual disabilities. The *Notice* seeks comment on this proposed requirement.

The *Notice* also seeks comment on technical capability issues and a host of other questions related to implementation of the proposed rules. For example, the *Notice* asks what time frame is appropriate for requiring compliance with the proposed rules, and whether the information provided on the secondary audio stream must be identical to the information presented visually. The *Notice* invites comment on the extent to which stations must provide assistance to viewers who access secondary audio streams.

In this proceeding, the *Notice* also asks whether the Commission should update its definition of “emergency information.” Under the current rules, the definition includes information about tornadoes, hurricanes, floods, heavy snows, widespread power failures, or school closings. The Commission now seeks comment about whether the definition should be expanded (for example, to include information about severe thunderstorms).

The proceeding is moving forward on a compressed schedule, with comments due December 18, 2012, and reply comments due January 7, 2013.

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OPERATION OF TV WHITE SPACES DEVICES NOW AUTHORIZED IN EAST COAST REGION

The FCC has announced that, as of December 6, 2012, approved database systems are now authorized to provide service in the East Coast region to unlicensed radio devices that operate in the unused spectrum in TV bands (“TV white spaces”). Previously, the FCC permitted the operation TV white spaces devices on a very limited basis only in the geographic area of Wilmington, North Carolina.

In the East Coast region, large entertainment, sports, and similar venues may register their locations so that their unlicensed wireless microphone operations will be protected from potential interference caused by TV white spaces devices. The database systems also catalog for protection authorized services such as broadcast television stations; fixed broadcast auxiliary service (BAS) links; receive sites and channels of TV translator, low power, and Class A stations; and low power auxiliary facilities (such as licensed wireless microphones). Generally, this information is extracted from the FCC’s

databases and does not require registration or additional steps by broadcasters, with one notable exception being licensed wireless microphones. The database systems, in turn, only allow TV white spaces devices to operate on channels where they will not cause interference to authorized services or to unlicensed wireless microphones used by registered venues.

The two approved database systems currently in operation are Spectrum Bridge, Inc., available at the following website: <http://whitespaces.spectrumbridge.com/whitespaces/home.aspx>, and Telcordia Technologies, Inc., available at the following website: <https://prism.telcordia.com/tvws/home/>.

The Commission is expected to authorize TV white spaces operation nationwide in early 2013, and the database operators have already begun accepting registration by venues nationwide.

Broadcasters with questions about protection against interference from devices operating in TV white spaces may wish to become familiar with the information in the Spectrum Bridge or Telcordia databases, or consult with your communications counsel.

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REMINDER: BROADCASTERS REQUIRED TO POST CERTAIN MATERIAL ON STATION WEBSITES

As a reminder for all broadcast stations, the FCC requires that stations post certain information on their websites and, in some cases, in specific locations on their websites. Stations must include the following items on their websites:

* *Annual EEO Public File Reports.* Radio and television station employment units with five or more full-time employees must post the most recent annual EEO public file report on their station websites; for example, stations may post a copy of the actual report as a PDF file. (For television stations subject to the new online public file rule, a link to the EEO report on the station's public file will be sufficient to comply with the FCC's rules.) The FCC does not require that the reports be placed in a particular location on the station website, but stations would be well-advised to post the reports in a location that will be relatively easy for website visitors (including the FCC staff) to find it. If an individual station does not have its own website, but its corporate parent provides a page with information about the station, the report should be posted on that page. If a station's employment unit includes more than one station, the report must be posted on each station's website.

* *Closed Captioning Contact Information.* The FCC requires television stations to post closed captioning contact information on their websites. Stations must provide contact information for both immediate and non-immediate inquiries and complaints. Thus, a station should provide a phone number, fax number, and email address for immediate closed captioning concerns. A station must also provide the name of a contact person, address, phone number, and fax number for non-immediate closed captioning concerns. Closed captioning contact information must be updated on the station's website (and in the FCC's VPD database) within 10 business days of a change in the information. Although the contact information is not required to be placed on the main page of the station's website, it should be in a conspicuous location.

* *Internet Closed Captioning Contact Information.* Now that the first phase of Internet closed captioning requirements has taken effect, the FCC also requires television stations to provide contact information for inquiries and complaints regarding closed captioning of video programming delivered over the Internet. A station must post to its website the name of the contact person with primary responsibility for Internet closed captioning, along with the address, phone number, fax number, and email address for complaints about Internet closed captioning. Although the rules do not specify where this information must be placed on a station's website, the most logical location for Internet closed captioning contact information may be alongside the station's immediate and non-immediate closed captioning contact information.

* *Link To Online Public Inspection File.* Under the new online public file rules, television stations are required to post a link to the station's online public file on the main page of the station's website. Stations must also provide contact information for persons with disabilities who need assistance with issues relating to the content of the station's public inspection file.

* *DTV Consumer Education Reports (Form 388).* Although the filing obligation for digital television education reports ended after the DTV transition, television stations were required to maintain DTV Consumer Education Quarterly Activity Station Reports (Form 388) on the station website for one year from the date of filing. This requirement will likely have expired for most stations, because most stations would have filed their last reports in 2009.

* *No Requirement To Post Children's Television Programming Reports Or Issues/Programs Lists To Station Website.* Stations periodically ask if they are required to post quarterly Children's Television Programming Reports (Form 398) and quarterly issues/programs lists to their station website. The FCC does not require that these documents be posted to the station website. However, as of August 2, 2012, television stations must upload newly created issues/programs lists each quarter to the station's online public file. Television stations have until February 2, 2013, to upload to the online public file issues/programs lists from the current license term created prior to August 2, 2012. When Children's Programming Reports (Form 398) are filed with the FCC, these

reports are supposed to be automatically imported to the online public file by the Commission, but we advise stations to confirm that the reports have actually been imported in the station's online public file.

If your station has questions about what information should be posted to your station's website, or where it should be posted, please contact your communications counsel.

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RADIO BROADCASTERS SUE SESAC FOR ANTITRUST VIOLATIONS

Radio broadcasters have sued SESAC, the performing rights organization, for antitrust violations harmful to broadcasters.

The Radio Music Licensing Committee filed a lawsuit in federal district court in the Eastern District of Pennsylvania alleging antitrust violations based largely on SESAC's price increases for radio royalties over the last few years. The lawsuit accuses the organization of raising royalty rates each year to levels much higher than prices charged by ASCAP and BMI. Importantly, the lawsuit also alleges that SESAC engages in anti-competitive conduct because radio stations have no alternative to the high prices for a blanket license to SESAC's allegedly handpicked, exclusive content. The radio stations have asked the court to impose a preliminary injunction to stop SESAC from entering exclusive contracts with copyright owners and to require SESAC to make available to stations alternative licensing arrangements.

Two years ago, television broadcasters filed a similar lawsuit against SESAC complaining of the group's anticompetitive conduct. That case is still pending in the federal district court for the Southern District of New York.

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NEW BILL IN CONGRESS PROPOSES TO CUT ROYALTY RATES FOR INTERNET RADIO

A new bill was introduced in Congress proposing to adjust music royalty rates paid by Internet broadcasters. The bill, known as the Internet Radio Fairness Act (the "Act"), would apply market-based rates to webcasters, including radio stations that stream music on their station websites. The current rates require many webcasters to pay significantly higher performance royalty rates than other forms of digital radio, such as cable and satellite. Representatives Jason Chaffetz (R-UT) and Jared Polis (D-CO) introduced the bill in the House of Representatives, and Senator Ron Wyden (D-OR)

introduced the bill in the Senate. NAB has released a statement expressing support for the proposed legislation.

For now, satellite and subscription-based services are treated differently than Internet radio. Most industry members agree that the divided system of royalty rates is, at best, confusing, and, at worst, unfair to webcasters. The Act proposes to create a uniform standard for Internet webcasting under the same regime that applies to satellite and subscription-based services. On the other hand, a competing bill introduced by Jerrold Nadler (D-NY), called the Interim Fairness in Radio Starting Today Act, proposes to expand the “willing buyer/willing seller,” market-based approach across the board, which approach currently imposes higher royalties on most webcasters. The result under Nadler’s bill would likely increase fees for AM and FM stations’ online radio streams.

We will keep you apprised of significant developments related to the proposed legislation.

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**ENFORCEMENT REMINDER: FCC FINES STATIONS
FOR PUBLIC FILE VIOLATIONS**

The FCC has assessed more fines against broadcasters for public file violations. In recent cases, radio stations have been fined \$10,000 per station for failing to include quarterly issues/programs lists in the station’s public files. In most cases, as many as 9 or 10 issues/programs lists were not timely placed in the stations’ public files. The missing material was reported in the stations’ license renewal applications.

These fines are examples of continued enforcement by the Commission against stations for public file violations, and it serves as an important reminder to radio stations to maintain diligently their records for public inspection in the paper public file.

Full-power and Class A television stations should also take care to maintain their quarterly records in the new online public file. In addition to posting all new public file documents to their online public files on a going-forward basis, television stations must also upload by February 2, 2013, all historic materials from the station’s current license term (except for letters and emails from the public and political file records in existence prior to August 2, 2012).

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POLITICAL FILE RECORDKEEPING: LESSONS FROM THE 2012 ELECTION SEASON

With a busy political season passed, it's a good opportunity for stations to take stock of their sales practices and work flow for maintaining their political files. The 2012 political season brought new challenges as many stations navigated a heavy volume of candidate buys, Super PAC spots, and, for television stations affiliated with the Big Four networks located in the top 50 markets, the demands of the online public file.

The FCC's political file rule states that every licensee should place in the station's public file a complete and orderly record of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted. The disposition includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased. The records are required to be placed in the political file "immediately absent unusual circumstances" and must be retained for a period of two years.

One take-away from the 2012 election season is an important "lesson learned" for political file recordkeeping related to coordinated spending letters. Recently, the FCC staff informally advised that letters from a legally qualified candidate (or the candidate's campaign) authorizing a political party to purchase time on behalf of the candidate should be placed in the station's political file and, if applicable, uploaded to the political party's folder on a television station's online public file, for those TV stations subject to the requirement to post political file material.

As television stations executives know, this year only television stations who are affiliated with Big Four networks in the Top 50 markets were required to upload political file documents to the online public file. And the FCC will launch a proceeding in 2013 to determine whether, beginning in July 2014, all television stations—regardless of market—will be required to upload new political file documents to the station's online public file.

Stations with questions about the FCC's political rules and best practices for maintaining their political file will wish to contact their communications counsel.

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If you should have any questions concerning the information discussed in this memorandum, please contact any of the undersigned.

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This Legal Review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

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