



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

March 28, 2018

Legal Memorandum

In this issue, link to information about

Deadlines: [March 31: Deadline for Radio Stations to Extend GMR Interim License](#)
 [March 31: Deadline for Radio Stations to Opt-In to RMLC Representation](#)

Developments: [Ancillary/Supplementary Services Reporting: Soon a Thing of the Past?](#)
 [Mid-Term EEO Report On Chopping Block](#)

Music Licensing Alert: Action Required by **March 31**, 2018, for Commercial Radio Stations Seeking Extension of GMR Interim License

Commercial radio stations wishing to extend their interim license with performing rights organization GMR (Global Music Rights) must take action by **March 31, 2018**. As we have previously reported, GMR offered a 6-month extension to its initial 9-month interim license to radio stations pending the resolution of antitrust litigation filed by the RMLC (Radio Music License Committee) against GMR. Those current interim licenses expire on March 31, 2018.

As the RMLC and GMR antitrust litigation continues, GMR is offering to extend the interim licenses for an additional 6-month period—from April 1, 2018, through September 30, 2018. GMR is offering the license extension on the same terms as the existing 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 **March 31, 2018**, and the first monthly payment under the extended interim license is due no later than **April 30, 2018**.

According to the [RMLC website](#), GMR intended to send interim license extension offers to stations no later than March 1, 2018. 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 was formed in 2013 and 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 catalog. 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 September 30, 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 April 30, 2018; May 31, 2018, 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 offer 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.

Second Music Licensing Alert! March 31 Deadline to “Opt In” To RMLC Representation in SESAC Negotiations

Commercial radio stations should also be mindful of a second March 31, 2018, deadline having to do with music licensing. Stations have until **March 31, 2018**, to “opt in” to representation by the RMLC (Radio Music License Committee) in negotiations with SESAC for the license period that runs from January 1, 2019, through December 31, 2022.

Stations will recall that the RMLC represents commercial radio stations in music licensing matters with (and, often, *against*) performance rights organizations such as ASCAP, BMI, SESAC, and GMR. BMI and ASCAP licenses and rate-setting are governed by longstanding consent decrees, but SESAC licensing and rate-setting are not, and that set the stage for litigation between the RMLC and SESAC. The RMLC filed an antitrust lawsuit against SESAC in 2012; the case settled in 2015, and SESAC agreed that its license fees would be determined through negotiation (and, if necessary, binding arbitration) for the next 20 or so years.

The first round of RMLC-SESAC negotiation and arbitration was completed in 2017, and it covers the period January 1, 2016, through December 31, 2018. Eligible stations had until March 26, 2018, to formally and in writing “opt in” to the settlement terms reached between the RMLC and SESAC related to public performance music royalties for that 2016 to 2018 license period.

The RMLC and SESAC will soon begin negotiating terms for the 2019 to 2022 license period. According to the [RMLC website](#), Stations wishing to be represented by the RMLC in this new round of negotiations with SESAC should submit an authorization form, available [here](#), no later than **March 31, 2018**. Stations authorizing the RMLC to negotiate on their behalf agree to pay an administrative fee to the RMLC, and they may wish to speak with their communications counsel before submitting the authorization form.

FCC Appears Poised to Eliminate Ancillary/Supplementary Services Reporting Requirement for Most Stations

At its April meeting, the FCC is expected to adopt a Report and Order (a draft of which is available [here](#)) that will spare thousands of digital television broadcast licensees and permittees the time and resources associated with filing the annual “ancillary” or “supplementary” services report (formerly known as “Form 317” and currently known as Form 2100, Schedule G).

FCC Rules currently require all full power and low power digital television licensees to file annual reports about whether they have offered any “ancillary” or “supplementary” services

during the 12-month period ending on the preceding September 30—even if they did not provide any ancillary or supplementary services or receive revenue from those services during the relevant reporting period.

Acknowledging that only a small fraction of television stations actually offer these services, the Commission (as part of its Modernization of Media Regulation Initiative) adopted a [Notice of Proposed Rulemaking](#) last year proposing to modify the rules so that only those television stations that actually provide feeable ancillary or supplementary services would be subject to the annual reporting requirement. The Commission received unanimous support for its proposal; broadcasters would no doubt welcome the elimination of what has become an outdated reporting requirement. The FCC will vote on the Report and Order at its meeting on April 17, 2018.

FCC's Broadcast Mid-Term EEO Reporting Requirement May Also Be Eliminated

Another FCC reporting requirement may also be on its way out. Comments are due May 21, 2018, on the Commission's [Noticed of Proposed Rulemaking](#) ("Notice") that would eliminate FCC Form 397, the Broadcast Mid-Term Report. The FCC uses the current Form 397 in order to facilitate the FCC staff's review of the EEO practices of (a) all broadcast television stations in station employment units with five or more full-time employees, and (b) all radio stations in employment units with eleven or more full-time employees; those reviews come at the midpoint of each station's eight-year license term.

With one exception, however, the information that stations provide on Form 397 is already also available in stations' public inspection files. As such, the Notice tentatively concludes that eliminating the Form 397 filing requirement is consistent with the FCC's ongoing effort to modernize media regulations by revising or eliminating rules that are unnecessary or unduly burdensome.

The only piece of information required by Form 397 that is not, to date, already available in the public inspection file is whether the station has enough full-time employees to trigger a mid-term review in the first place. The Notice seeks comment regarding how the FCC should—if Form 397 were to be eliminated—identify which stations are subject to a mid-term review.

Note: even if Form 397 is eliminated, the FCC will continue to conduct mid-term reviews of the employment practices of stations with the requisite number of employees; because the Communications Act requires the Commission to conduct such reviews, the FCC cannot eliminate that process outright.

Reply comments on the Notice are due on or before June 19, 2018.

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

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

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

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.

© 2018 Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.