



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

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April 1: First License Renewal Pre-Filing Announcement for Virginia Television Stations Must Air

We write today with a reminder for Virginia television stations that the first of the four required license renewal pre-filing announcements must be broadcast on Wednesday, **April 1, 2020**.

Scheduling and Timing of Pre-Filing Announcements. As you'll recall, at license renewal time, broadcast stations are required to air pre-filing (and post-filing) renewal announcements designed to alert viewers and listeners to the fact that the FCC will be considering their application for license renewal.

Virginia television stations are required to air the mandatory four pre-filing announcements on April 1, April 16, May 1, and May 16, 2020. At least two of the four pre-filing announcements must air between 7:00 a.m. and 9:00 a.m. and/or 4:00 p.m. and 6:00 p.m. local time.

We have previously sent the required text that must be included in the pre-filing announcements. Please reach out to us if you need us to resend that information.

Certificate of Broadcast of Announcements. A certificate of broadcast of the pre-filing (and post-filing) announcements must be signed and placed in each station’s online public inspection file within 7 days after the last of the announcements airs. For Virginia television stations, the pre-filing announcement certification must be placed in a station’s online public inspection file no later than May 23, 2020—we will send a reminder about this requirement in May.

The pre-filing announcement certification must include (1) a statement indicating the dates and times that each of the pre-filing announcements was broadcast, and (2) a copy of the text of each announcement.

Due Date for License Renewal Applications (and Accompanying EEO Report). Please keep in mind that license renewal applications for Virginia television stations are due no later than **June 1, 2020**. As of this writing, the FCC has not issued a blanket extension to any renewal license renewal deadlines, meaning that the June 1, 2020, application filing deadline currently remains in place.

Informal guidance from FCC staff suggests that the FCC is currently reviewing extension requests for April 1, 2020, license renewal filings (e.g., for Indiana, Kentucky, and Tennessee radio stations) on a case-by-case basis. We will continue to update you on the FCC’s extension policies as the circumstances surrounding COVID-19 evolve and as the license renewal deadline for Virginia television stations draws closer.

If Your Station Is Not Familiar with the FCC License Renewal Process If you are a Virginia television station and you aren’t familiar with the FCC’s license renewal process, we strongly recommend you contact your communications counsel immediately or call the VAB hotline.

March 31: Commercial Radio Stations Must Act to Secure Interim License Extension from GMR

We write with a deadline reminder for **commercial radio stations**. As you may recall from our legal memo earlier this month, performance rights organization Global Music Rights (“GMR”) has agreed to offer extensions for all interim licenses currently set to expire at the end of this month, on March 31, 2020.

The interim license extension offer **only applies to commercial radio stations**. Commercial radio stations that have not heard from GMR and wish to extend should contact GMR directly for station-specific paperwork and complete and return the extended interim license to GMR by no later than March 31, 2020.

You can contact GMR at radiolicensing@globalmusicrights.com and submit your signed extension to GMR at <https://globalmusicrights.com/rmlcform>. The new GMR extension runs through **March 31, 2021**, with terms mirroring the multiple prior extensions granted by GMR over the past several years.

To underscore the importance of securing a license extension: GMR filed a lawsuit last October in a California federal court alleging that a media company with “scores” of radio-station holdings has been violating the copyrights of GMR-affiliated songwriters for years.

Additional Background. As you know, the music licensing ecosystem can be a thorny one. Here’s a bit of additional information.

Commercial Television Stations and GMR. PRO licenses and rates for commercial broadcasters are generally negotiated at the industry level by the RMLC for commercial radio stations and the Television Music License Committee (“TVMLC”) for commercial television stations. The industry-negotiated licenses and license fees are available for broadcasters who timely authorize the RMLC or TVMLC, as applicable, to act on their behalf in negotiations with the PROs. However, at this point, there is no TVMLC-negotiated license agreement with GMR.

Noncommercial Television and Radio Stations and GMR. Unlike commercial broadcasters, the public performance of musical works by noncommercial educational television and radio stations is allowed under the terms of a “statutory” or “compulsory” license provided in Section 118(c)(1) of the Copyright Act. In accordance with Section 118, the PROs and representatives of noncommercial broadcasters generally negotiate rates and terms that are submitted to and approved by the Copyright Royalty Judges, which is a board of judges appointed by the Librarian of Congress to oversee the Copyright Act statutory licenses.

The current noncommercial broadcaster public performance royalty rates adopted by the Copyright Royalty Judges cover licenses from ASCAP, BMI, and SESAC for the 2018–2022 period. One set of rates applies to noncommercial radio stations licensed to colleges and universities (based on the number of students attending the school). Another set of rates applies to all other noncommercial radio stations that are not affiliated with NPR, including religious broadcasters (based on the population served by the station). And another set of rates applies to NPR-affiliated radio stations and PBS-affiliated television stations (which rates are subject to a confidentially agreement), and all other noncommercial television stations (\$1 per year).

However, because GMR failed to participate in the 2018–2022 rate proceeding, the public performance royalty rate for noncommercial stations is \$1 per year to cover GMR-controlled musical works (and any other works not controlled by ASCAP, BMI, or SESAC).

That said, recall that Section 118 does not cover Internet streaming. Accordingly, noncommercial television and radio stations that stream music from GMR’s library do need to secure a streaming license from the PRO.

More Space for White Space Devices? FCC Proposes New Rules for White Space Devices; Seeks to Balance Broadcaster Interests

It’s an understatement to say that there’s been a lot going on lately, with all of us focused on the COVID-19 situation. Accordingly, we’ve been a bit slow to report on a recently released [Notice of Proposed Rulemaking](#) (the “Notice”) in which the Commission seeks to expand the

coverage area for unlicensed white space devices operating in the TV bands. The Notice and its proposals are of significant interest to broadcasters, as the FCC's proposed increases in power and antenna height necessary to expand the coverage of such unlicensed white space operations have the potential to cause harmful interference to existing broadcast operations.

Background. White space devices operate in unused portions of the TV bands (so-called "white space"), and generally provide wireless services such as broadband. The Commission's current rules require such devices to operate at relatively low power (10 watts) and at antenna heights that do not exceed 250 meters above average terrain ("HAAT"). However, for years Microsoft and others have argued to the Commission that the current restrictions on unlicensed white space operations make it difficult to provide cost-effective broadband services to underserved areas, including parts of rural America. As part of its advocacy, in May 2019 Microsoft filed a petition for rulemaking (the "Petition") with the FCC, seeking to initiate a proceeding that would, ultimately, lead to greater flexibility in white space operations; Microsoft's Petition gave rise to the current Notice.

What the Notice Would Do. As a result of sustained discussion between NAB, Microsoft, and others who submitted comments in response to last year's Petition, the Notice attempts to strike a balance between enabling greater broadband deployment through unlicensed white space operations and ensuring that existing broadcast operations continue to be protected from harmful interference.

Although the Notice raises too many issues to exhaustively catalog in this memorandum, among other things, some of the Notice's most important proposals include those to:

- Increase the maximum permissible power from 10 watts to 16 watts for fixed white space devices operating in the TV bands, up to Channel 35, in "less congested" areas (that is, in "areas where at least half the television channels are unused for broadcast services and available for white space use");
- Increase the maximum permissible antenna HAAT for fixed white space devices from 250 meters to 500 meters;
- For white space devices operating with higher power and HAAT, establish minimum required separation distances from protected services in the TV bands;
- Allow higher power for mobile white space devices within "geo-fenced" areas (that is, in "a defined geographic area in which a mobile white space device may operate"); and
- Establish a unique set of rules for narrowband white space devices used in "Internet of Things" (i.e., "IOT") applications.

So what is the "broadcaster" view of the Notice's proposals? Well, according to the Notice, of the foregoing proposals NAB does not oppose the 10-to-16-watt power increase or the increase to maximum permissible antenna HAAT, so long as each is accompanied by measures sufficient to protect broadcasters from harmful interference. To address concerns previously raised by NAB, the Notice proposes increased separation requirements to help avoid any interference that might

otherwise result from the proposed power increase; however, the Notice offers less certainty regarding what (if any) procedures should be implemented to preemptively prevent harmful interference that may result from increased antenna HAAT. Both NAB and Microsoft had proposed that specific coordination procedures be used when white space devices operate with HAATs exceeding 250 meters, yet the Notice questions whether such procedures “are even warranted” and suggests that a notification delivered to a potentially affected broadcaster 48 hours prior to deployment of a fixed white space device might be sufficient. Accordingly, the Notice solicits comments on nearly all aspects of such a coordination or notification procedure.

Another area of particular concern for broadcasters is the Notice’s request for comment as to whether to allow white space devices to operate with higher power levels than currently allowed when located inside an adjacent TV channel’s service contour. NAB opposed allowing such higher-power white space operations entirely, noting that it is currently too early to meaningfully assess the impact of such operations on the deployment and use of Next Generation TV receivers. Nonetheless, the Notice seeks broad comment on the issue—and specifically solicits “technical detail and analysis.” Accordingly, broadcasters may wish to weigh in on this important open issue.

For each of the proposals listed above—as well as all other issues set forth in the Notice—the Commission asks commenters to provide information on attendant costs, benefits, impacts, and alternatives. Comments will be due 30 days after the Notice is published in the Federal Register, with reply comments due 60 days after such publication. We will keep you apprised of noteworthy developments in this important proceeding.

Tim Nelson, Editor

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