



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

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[June 1, 2020: Deadline for Virginia Television and Radio Stations to Upload Annual EEO Public File Reports](#)

June 1, 2020: Deadline for Virginia Television Stations to File License Renewal Applications; Important Steps to Take Prior to Filing

With the COVID-19 situation currently dominating so much of our collective time and attention, other items may have been placed on the backburner. Accordingly, and to help ensure that Virginia television stations don't lose sight of upcoming, critical license renewal application deadlines, we write to remind Virginia television stations that their license renewal applications will be due in just a couple of weeks—on **June 1, 2020**.

There are several important steps stations need to take between now and then to be able to successfully complete and submit their license renewal applications, and the Commission has recently changed several fundamental aspects of the renewal form and process. Please read on to help set your station up for renewal success!

Filing Deadline—Waivers? As of May 14, the Commission has not extended the June 1, 2020, license renewal application filing deadline, and we don't expect a universal extension of the deadline to be issued. Please keep in mind, though, that if stations need relief based on their individual circumstances, they have the option to seek a waiver of the deadline from the

Commission. Please contact your FCC counsel to discuss the particulars of your situation to see if it's a good idea to seek relief.

Pre-Filing Announcements. In early April, the Media Bureau issued an [Order](#) waiving the requirement for Virginia television stations to schedule and air pre-license-renewal-application filing announcements. Additionally, although not expressly addressed by the Order, FCC Staff has informally advised us that the separate requirement to upload a pre-filing renewal announcement certification to the OPIF is also waived.

The Order suggests that stations that elect to take advantage of the waiver and not to schedule and air pre-filing announcements may wish to use the limited, newfound broadcast time to “increase . . . the broadcast of public service announcements and other coverage relating to the . . . pandemic,” but there is no requirement that they do so.

On the other hand, for stations that do not elect to take advantage of the waiver and have continued to air the pre-filing announcements, the broadcast dates for the four pre-filing announcements were/are April 1, April 16, May 1, and May 16, 2020, with at least two of the four pre-filing announcements airing between 7:00 a.m. and 9:00 a.m. and/or 4:00 p.m. and 6:00 p.m. local time. Additionally, if your station has gone ahead and made the pre-filing announcements, we recommend that you go ahead and, by May 23, 2020, place a pre-filing announcement certification in your station's online public inspection file; the certification should 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.

Please note: as discussed further below, the FCC has not waived the requirement for stations to air post-filing announcements on June 1, June 16, July 1, July 16, August 1, and August 16, 2020.

Filing Platform. The license renewal application for television stations contains a number of questions requiring applicants to certify that they have complied with various Commission rules throughout the license term. The form is available in electronic form and must be filed via the FCC's Licensing and Management System (“LMS”) filing platform (absent request and grant of a waiver of that requirement).

Due Diligence, Parties, Candor, and Online Public Files. It is important to understand that many certifications in the license renewal application apply not only to the broadcast licensee but also to “parties to the application” or “attributable parties.” In general, “parties to the application” include the following individuals and entities with respect to the licensee company, and its parent companies and intermediary companies:

- ✓ Corporate Officers
- ✓ Directors
- ✓ Trustees
- ✓ Owners of Stock Accounting for 5% or More of the Voting Stock
- ✓ Partners
- ✓ Limited Partners
- ✓ LLC Members
- ✓ LLC Managers

The most important principle to keep in mind in response to the questions and requests for certifications in the renewal application form is the duty of candor. In order to certify that a station has complied with a specific rule, the licensee has a duty to review the rule and its compliance with that rule so that the licensee has a reasonable basis for the certification. A station is not likely to lose its license for being a day late in filing a report or otherwise being out of compliance with the FCC's rules in some minor way. However, a station stands a greater chance of losing its license or being subjected to harsh enforcement action if the station misrepresents facts or fails to act candidly with the Commission. With this in mind, stations should remember that all information uploaded to the online public inspection file has a time and date stamp, meaning that FCC Staff can easily verify broadcasters' compliance with the online public inspection file rules. In short, stations would be well advised to immediately and carefully review their online public inspection files to ensure all required documentation is uploaded prior to filing the renewal application.

New Ownership Question and Children's Television Programming Report Certification. Additionally, the renewal application form has changed since we hosted our license renewal webinar for Association members back in early February. In a recent [Public Notice](#) (the "Notice"), the Media Bureau advised television licensees that the renewal application form has been updated to include (1) a question requiring television broadcasters to certify that they are in compliance with the Commission's recently reinstated broadcast multiple ownership and cross-ownership rules; and (2) a modified certification encompassing broadcasters' compliance with both the "old" and "new" children's television programming rules.

As to the ownership certification, the new question supersedes the Bureau's prior guidance for broadcasters to use the question labeled "FCC Violations during the Preceding License Term" to report any issues relating to compliance with the FCC's multiple ownership or cross-ownership rules.

As to the Children's Television Programming Report certification, broadcasters should note that their renewal application certification will cover compliance with both the "old" and "new" rules, including the first annual report covering broadcasters' compliance with the FCC's children's television programming rules throughout the period from September 16, 2019, to December 31, 2019, which, after further extension by the Media Bureau, is due to be filed by July 10, 2020. Importantly, for broadcasters who have not yet filed their first annual Children's Television Programming Report, the timing of the renewal application filing deadline is not a "get out of jail free" card—the FCC's rules require applicants to update a filed renewal application if they learn of any substantive information that would affect the contents of the application. So, for example, if after filing a license renewal application a television station were to discover that it failed to comply with the children's television programming rules from September 16, 2019, to December 31, 2019, the station would need to amend its application to address that failure. (And, of course, when considering renewal applications, FCC Staff will be able to review television broadcasters' first annual Children Television Programming Reports on or after the July 10, 2020, filing deadline.)

EEO Reporting Obligation for All Television Stations. On the same day the license renewal application is due, each television station is required to file a Broadcast Equal Employment Opportunity Program Report on FCC Schedule 396. This requirement applies to all stations, no matter how many full-time employees they have. Note that the EEO Report must actually be filed **prior to** the renewal application so that the renewal applicant can obtain and input into its renewal application the LMS file number that is generated and assigned to its filed EEO report.

Post-Filing Announcements. As noted above, as of this writing the Commission has **not** waived the requirement for Virginia television stations to air license renewal post-filing announcements. Accordingly, Virginia television stations should prepare and schedule the six required post-filing announcements, which must air on June 1, June 16, July 1, July 16, August 1, and August 16, 2020. (Note that in a recent [Public Notice](#) regarding television license renewals, the Media Bureau advised that post-filing announcements need only air on a broadcaster’s main channel.) For those six required post-filing announcements, three 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, one must air between 9:00 a.m. and noon local time, one must air between noon and 4:00 p.m. local time, and one must air between 7:00 p.m. and midnight local time. Additionally, by August 23, 2020, a post-filing announcement certification must be placed in stations’ online public inspection files; the certification must include (1) a statement indicating the dates and times that each of the post-filing announcements was broadcast, and (2) a copy of the text of each announcement.

TV Translator Post-Filing Publication in Newspaper. Finally, broadcasters operating TV translators must, upon filing a renewal application, immediately thereafter publish a notice of the filing in a daily, weekly, or biweekly newspaper of general circulation in the community or area served by the TV translator station. If there is no newspaper published or having circulation in the community or area served by the translator, the licensee should post the notice in a location frequented by the general public, such as the local post office or other public place, and keep a copy of the local public notice for reference. TV translators that operate in communities without a newspaper meeting the criteria referenced above should consult with their FCC counsel to develop an alternate post-filing publication plan.

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We hope the foregoing provides you with useful information regarding the “next steps” you need to take for the license renewal process. Please don’t hesitate to reach out to the Association or to contact the VAB Legal Hotline with additional questions, and good luck with your license renewal!

June 1, 2020: EEO Public File Reports Due for Virginia Radio and Television Stations

We write to remind all Virginia radio AND television stations with five or more full-time employees that the deadline to upload their annual EEO Public File Report (covering the period of June 1, 2019, to May 31, 2020) to their online public inspection file and post it to their website (if they have one) is fast approaching—the deadline is **June 1, 2020**. Recall that, for purposes of the FCC’s EEO rules, a “full-time” employee is one who works 30 or more hours per week.

As a reminder, the FCC’s EEO rules require broadcast stations to engage in specific non-vacancy outreach efforts. Every two years, stations that have more than 10 full-time employees and are not located in a “smaller market” must engage in at least four of the initiatives on the FCC’s “menu” of outreach options, and stations that are located in a “smaller market” or have five to ten full-time employees must engage in at least two of the initiatives. Stations with fewer than five full-time employees and religious broadcasters who apply religious qualifications to all

employees are not required to engage in any “menu option” activities. For Virginia television stations, the current two-year period in which to complete these EEO “menu options” ends June 1, 2020. (Virginia radio stations are currently in the middle of their two-year period, which will end June 1, 2021.)

As stations prepare their 2019–20 EEO Public File Report, they will want to keep in mind the Commission’s EEO recordkeeping requirements. Each year the Commission conducts random audits of radio and television stations for EEO compliance. Stations that pay close attention to the EEO recordkeeping requirements will be in a better position to respond if they find themselves subject to an EEO audit. The FCC sent out its first round of 2020 EEO audit letters in February, and the FCC typically sends out a second round of EEO audit letters later in the year.

Additionally, we wrote last week about an [Order](#) recently released by the Media Bureau announcing a limited waiver of the “broad outreach requirements” of the Commission’s EEO Rules in light of the COVID-19 pandemic. Specifically, broadcast licensees (and MVPDs) may re-hire certain full-time employees without first conducting broad recruitment or widespread outreach—the limited waiver applies only to those employees who (1) were laid off due to circumstances related to the ongoing COVID-19 pandemic, provided (2) the broadcast licensee re-hires those employees within nine months after the date they were laid off.

For specific details regarding the contents of the EEO Public File Report and EEO recordkeeping requirements, stations may wish to contact their communications counsel or call the VAB’s FCC Hotline at (434) 977-3716.

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