November 3, 2020

Legal Memorandum

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# New Local Public Notice Procedures

# for Broadcast Applications Now In Effect

As of this past Friday, October 30, 2020, the FCC’s new local public notice rules and procedures—which are triggered upon the filing of various FCC applications—**are now in effect**. The new rules require most broadcasters to “expeditiously” generate new online content, and the new rules and procedures otherwise apply to any FCC applications requiring local public notice that are filed on October 30, 2020, or thereafter. Accordingly, going forward, all broadcasters should carefully review and be prepared to follow the FCC’s new local public notice procedures, which include the following important items:

* Broadcasters’ on-air post-filing announcement obligations have changed in many important ways, including the text required in the announcements, the frequency of announcements, and the timing of their broadcast.
* Newspaper notice has now been replaced with written online notice, subject to specific website placement, timing, and other requirements.
* All broadcasters with a website for their station, the broadcaster’s company, or the broadcaster’s parent company must create and maintain on their website a link labeled “FCC Applications” that links to a web page containing new standard online notice text and the date on which the webpage was last updated. All such broadcasters—even those who do not have any currently pending or soon-to-be-filed applications—must “expeditiously” create new webpage content under the new rules.

As we’ve previously reported, the FCC adopted these new rules in a May 2020 [Second Report and Order](https://docs.fcc.gov/public/attachments/FCC-20-65A1.pdf) (the “Order”); the new rules recently obtained the final regulatory approval necessary for them to take effect.

*Background*. Per decades-old federal law, applicants for certain broadcast authorizations are required to give notice of the filing of their applications in the principal area that a station serves (or will serve). The FCC’s prior local public notice rules were, generally, outdated—and they failed to harmonize with many of the Commission’s other, more up-to-date rules. For example, several aspects of the prior local public notice rules continued to direct the public to local broadcasters’ studios to review copies of FCC applications despite the realities that broadcasters are no longer required to maintain a main studio, and must file their applications electronically and maintain their public inspection files online. The new rules are calculated to address the disconnects created by those outdated requirements and to generally shift the focus of the local public notice procedures online.

*Effective Date for New Rules.* As noted above, the new rules are effective as of October 30, 2020. Notably—aside from the requirements outlined below to generate new web content—the new rules and procedures only apply to applications filed on or after October 30, 2020. According to a [Public Notice](https://docs.fcc.gov/public/attachments/DA-20-1289A1.pdf) (the “Notice”) issued when the new rules took effect, applicants must use the version of the local public notice rules that “was in effect on the date the application was accepted for filing by the Commission.” So, if you filed an application on or before October 29, 2020, then the prior version of the FCC’s local public notice rules apply to that application such that you must fulfill any continuing obligations under the old rules (such as, for example, providing newspaper notice over the applicable weeks-long period specified in the old rules, if you were required to provide such notice under the old rules).

*Changes to Local Public Notice Procedures*. Citing the Commission’s continuing efforts to modernize its media regulations, the FCC’s adopting Order stated that the revisions to the local public notice rules and procedures should “simplify broadcasters’ local public notice obligations in a manner that reduces costs and burdens on applicants, while facilitating robust public participation in the broadcast licensing process.” Although this memorandum does **not** exhaustively catalog every single change and requirement set forth in the new (still very lengthy!) local public notice rules, some of the most important items of which broadcasters need to be aware are as follows:

* **Online Notice Generally:** The new rules replace the requirement that notice of the filing of certain applications be published in a newspaper, and instead require “written notice” to be posted on a publicly accessible website for 30 continuous days, beginning within five business days of the FCC’s acceptance of the application for filing (i.e., when the Media Bureau issues a *Public Notice* announcing that the application has been accepted for filing). Acknowledging that not all broadcasters have a website dedicated solely to each station, the new rules establishes a “hierarchy” or sorts for notice publication online such that a broadcaster must post the notice on the first available of the following websites: “(1) the website of the applicant station; (2) the website of the applicant station’s licensee; (3) the website of the applicant station’s parent entity or, if there is no applicant-affiliated website, (4) on a locally targeted, publicly accessible website,” as specifically defined by the new rules. (In other words, if an applicant doesn’t have a station website, it will have to post the notice on the licensee’s website; if it doesn’t have a licensee website, it will have to post the notice on the parent entity’s website; and so on.)

Although broadcasters are generally not required to file or upload to their OPIF any form of certification of compliance with the new online notice rules (unlike the required OPIF upload of on-air announcement certifications, discussed further below), the FCC’s adopting Order suggests that broadcast applicants “should consider maintaining appropriate records of online notices.” For example, broadcasters may wish to generate and retain in their private files documentation verifying that compliant online notice was posted throughout the required period—such as relevant screenshots or certification(s) from any staff member(s) responsible for posting the notice—which could prove very useful in the unlikely event that an application were to be contested for failure to adhere to the Commission’s local public notice rules.

* **New Website Content Requirements:** The new rules also establish specifics regarding the way in which online notice must be provided. According to the recently issued Notice, because the new rules apply to all broadcast licensees, most broadcast licensees must “expeditiously”—and “in no event later than when the licensee or applicant files an application requiring . . . online notice”—take the following actions:
  + **Create an “FCC Applications” webpage.** This new webpage must (1) contain information regarding the station’s currently pending FCC applications and (2) indicate the date on which the page was last updated. If the station has any currently pending FCC applications subject to the new online notice rules, the page must contain the full notice text described below. If the station does not have any pending applications requiring online public notice, the page should indicate that there are no pending applications subject to the posting requirement.
  + **Create and conspicuously place an “FCC Applications” link on the website’s homepage.** Just as stations are currently required to have certain links on their station websites (such as a link to their OPIF), the new rules require broadcasters to create—and conspicuously place on a compliant website’s homepage—a permanent link or tab labeled “FCC Applications” that links to the page described immediately above. The link or tab placed on the website’s homepage must be “conspicuously displayed” such that the link or tab is “readily readable, understandable, and locatable by visitors to that page, and thus may be quickly found among other web content.”
* **Required Online Notice Text:** The rules require the following, specific texts for online local public notices:
  + **For authorized stations (i.e., those with a granted construction permit or license):** On [DATE], [APPLICANT NAME], [PERMITTEE / LICENSEE] of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [INSERT HYPERLINK TO APPLICATION LINK IN APPLICANT’S OPIF OR, IF THE STATION HAS NO OPIF, TO APPLICATION LOCATION IN THE MEDIA BUREAU’S LICENSING AND MANAGEMENT SYSTEM].
  + **For proposed stations that have not been authorized:** On [DATE], [APPLICANT NAME], [APPLICANT FOR] [A NEW (STATION TYPE) STATION ON] [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE MEDIA BUREAU’S LICENSING AND MANAGEMENT SYSTEM].

Per the Order adopting the new rules, stations should complete the “Type of Application” field by providing a brief but complete statement of the purpose of the application, for example: “for renewal of its broadcast license”; “to assign its broadcast license to X Broadcasting Corporation”; or “to change its community of license from Raleigh to Durham, North Carolina.”

* **On-Air Announcements – Frequency and Timing:** As we have previously reported, the new rules do away with on-air **pre**-filing announcements, and establish new form, frequency, and timing requirements for on-air post-filing announcements. Under the new rules, a broadcaster filing an application that requires notice via on-air announcements must provide on-air notice as follows:
  + beginning no later than five business days after release of the *Public Notice* announcing that the application was accepted for filing;
  + air a total of six on-air announcements;
  + over four consecutive weeks;
  + with at least one announcement—and no more than two announcements, which may not air on the same day—airing per week;
  + at any time from 7:00 a.m. to 11:00 p.m. local time, Monday through Friday (i.e., announcements on weekends do not count toward compliance).

For example, a station could comply with the new on-air announcement requirements by airing an announcement on Monday, at 4:00 p.m., for four consecutive weeks, with an additional announcement airing on the first and last Friday of the four-week period, at 4:00 p.m.

* **On-Air Announcement Scripts:** Under the new rules, all broadcasters are required to use whichever of the following scripts applies to their station, and television broadcasters are required to display the entire text on-screen while it is read by an announcer:
  + **For stations with an OPIF:** On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit publicfiles.fcc.gov and search in [STATION CALL SIGN’S] public file.
  + **For stations without an OPIF:** On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions can visit www.fcc.gov/stationsearch, and search in the list of [STATION CALL SIGN’S] filed applications.

As with the online notice text described above, stations should fill in the “Type of Application” field with “a brief but complete statement of the purpose of the application.” Additionally, within seven days of broadcasting the final post-filing announcement, stations are still required (as they were by the old local public notice rules) to upload to their OPIF a certification (1) that the station complied with 47 C.F.R. § 73.3580 (i.e., the FCC’s local public notice rules) and (2) that lists the dates and times the required on-air announcements were broadcast; however, stations are no longer be required to upload the on-air script used for the announcements (thus removing the prior requirement to upload such scripts).

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Again, the above is merely a summary of the most important changes to the local public notice rules and procedures. We strongly encourage you to carefully review the new rules for application to your particular factual circumstance, and to reach out to legal counsel as needed.

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*Tim Nelson, Editor*

[BROOKS, PIERCE, McLENDON,](http://www.brookspierce.com/)

[HUMPHREY & LEONARD, L.L.P.](http://www.brookspierce.com/)

[Mark J. Prak](mailto:mprak@brookspierce.com)   
[Marcus W. Trathen](mailto:mtrathen@brookspierce.com)  
[David Kushner](mailto:dkushner@brookspierce.com)  
[Coe W. Ramsey](mailto:cramsey@brookspierce.com)  
[Stephen Hartzell](mailto:shartzell@brookspierce.com)

[Julia C. Ambrose](mailto:jambrose@brookspierce.com)

[Elizabeth E. Spainhour](mailto:espainhour@brookspierce.com)

[J. Benjamin Davis](mailto:bdavis@brookspierce.com)

[Timothy G. Nelson](mailto:tnelson@brookspierce.com)

[Patrick Cross](mailto:pcross@brookspierce.com)

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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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