August 5, 2021

Legal Memorandum

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# **August 11, 2021:** National EAS Test; All Broadcast Stations Must Participate

The next nationwide EAS test is scheduled for **August 11, 2021, at 2:20 PM ET—i.e., less than one week from the date of this memorandum**! (The backup date, if needed, is August 25.) All broadcasters are required to participate in the August 11 nationwide test, and all broadcasters are required to timely file the forthcoming Form Two and Form Three reports associated with the nationwide test (all broadcasters should have already filed their Form One report back in July). **The Form Two report will be due August 12, 2021, the day after the nationwide EAS test**.

*Preparations for the August 11 Nationwide EAS Test*. As a reminder, for this year’s nationwide test the EAS message will only be disseminated using the “daisy chain,” a hierarchical, broadcast-based distribution system (as opposed to internet distribution via IPAWS). Because the EAS message will be disseminated via the daisy chain, the “full message text and multilingual messaging will not be available.” The message will comply with the FCC’s accessibility requirements and include both audio and visual elements. As in prior years when the national test was delivered solely via daisy chain, the stated “intent of conducting the test in this fashion is to determine the capability of the [EAS] to deliver messages to the public in the event that dissemination via internet is not available.”

To prepare for the August 11 test, stations are encouraged to take the following steps:

* Review the station’s state EAS plan;
* Ensure that a copy of the 2021 version of the [EAS Operating Handbook](https://www.fcc.gov/file/21268/download) is located at normal duty positions or EAS equipment locations and is immediately available to operators;
* Review the EAS Operating Handbook to become familiar with and prepare for the actions that will need to be taken upon receipt of the test alert;
* Ensure that the station’s EAS equipment operates in compliance with the FCC’s EAS rules and has the capability to receive and process the NPT (national periodic test) code and the “six zeroes” national location code;
* Upgrade, as needed, EAS equipment software and firmware to the most recent version; and
* Manually synchronize EAS equipment clocks to the official time provided by NIST (the National Institute of Standards and Technology), if the station’s equipment does not automatically synchronize to an internet time source.

*Form Two EAS Report Due August 12*. After the nationwide test occurs broadcasters must file two reports, called Form Two and Form Three, respectively. Form Two requires stations to report “day of test” information, and must be completed and filed in the FCC’s ETRS ([EAS Test Reporting System](https://www.fcc.gov/general/eas-test-reporting-system)) **on or before 11:59 p.m. E.T. on August 12**. Most of Form Two’s fields will auto-populate using the data each station provided in Form One. Form Two will ask broadcasters whether they received the nationwide EAS test message and whether they retransmitted the nationwide EAS test message. Form Two is intended to provide the FCC and FEMA only with a quick snapshot of the nationwide test.

We will have more information regarding completion of Form Three—which will be due by **September 27**—in a future memo. Remember that it is critically important that broadcasters provide truthful information in their EAS reports. Please consult with your FCC counsel if you have any concerns about your EAS compliance and/or nationwide testing issues.

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# **October 1, 2021:** Biennial Ownership Report Filing Window Opens

Broadcasters face another important filing in the next few months: **All licensees of commercial and non-commercial full power television, Class A television, low power television, AM radio, and FM radio stations must file biennial ownership reports between October 1 and December 1, 2021**.

The reporting form solicits information that is current “as of” October 1st of this year regarding the ownership of each broadcast licensee and its “attributable parties.” The term “Attributable Parties” includes, to the extent applicable, the following individuals and entities with respect to each broadcast licensee company and all parent companies and intermediary companies: corporate officers, directors, trustees, owners of stock accounting for five percent or more of voting stock, partners, limited partners, LLC managers and members, and certain lenders and other parties that hold same-market media interests.

The reporting information generally includes items such as: a list of and demographics regarding all attributable parties and their respective positions with or interest(s) in your company and its broadcast subsidiaries and intermediary companies, if any; a list of various currently effective contracts or instruments to which your company or its licensee subsidiaries are a party; and the capitalization of your company and its licensee and intermediary subsidiaries.

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# **October 8, 2021:** Deadline to Submit Reimbursement Invoices for Stations Repacked in Phases 1–5

As of this writing, broadcasters who are eligible for reimbursement as part of the now-concluded spectrum repack and who transitioned in Phases 1-5 have only approximately **2 months left** in which to submit reimbursement invoices to the FCC. As you likely recall, last fall the Commission [established](https://docs.fcc.gov/public/attachments/DA-20-1171A1.pdf) firm deadlines by which eligible broadcasters affected by the spectrum repack must submit all remaining reimbursement invoices and other documentation. The deadlines vary based on stations’ assigned transition Phases, as well as by type of broadcast service, as follows:

* **October 8, 2021:** Deadline for final reimbursement submissions from the more than 500 repacked stations assigned completion dates in Phases 1–5.
* **March 22, 2022:** Deadline for final reimbursement submissions from the approximately 440 repacked stations assigned completion dates in Phases 6–10.
* **September 5, 2022:** Deadline for final reimbursement submissions from FM, LPTV, and translator stations, as well as others.

The deadlines are calibrated to try and provide FCC staff sufficient time to process requests prior to the Reimbursement Fund’s reimbursement deadline that is required by statute: on July 3, 2023, any unobligated amounts currently earmarked for reimbursement will be released and deposited into the U.S. Treasury.

Although the October 8, 2021, deadline for repacked stations assigned completion dates in Phases 1–5 is still several months away, the FCC has emphasized that **broadcasters should submit reimbursement requests and initiate close‑out procedures “as early as possible.”** Expenses are reimbursable when incurred, and therefore can be submitted even while final construction remains ongoing. Importantly, thus far the Commission has taken a hard stance on the current reimbursement deadlines, emphasizing that it does “not anticipate a need to grant extensions of the assigned invoice submission deadlines” for reimbursement, and that extension requests will only be granted in extreme circumstances outside of the requesting entity’s control, such as local zoning or a “force majeure” event.

As a final reminder, recall that each broadcaster seeking reimbursement must retain all documentation relating to reimbursement for a period ending 10 years after the date on which the broadcaster receives final payment from the Reimbursement Fund. All reimbursement submissions are subject to Commission review to prevent waste, fraud, and abuse, and therefore all broadcasters seeking reimbursement may be selected for audits, data validations, and site visits at any time—i.e., before or after a station has received reimbursement.

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*Tim Nelson, Editor*

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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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