September 21, 2021

Legal Memorandum

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# **FRIDAY, September 24, 2021:**

# FY 2021 FCC Regulatory Fee Payments Due

We wish to remind you that the deadline by which you must pay your FCC regulatory fees for fiscal year 2021 is fast approaching—all payments are due by **11:59 PM, ET, this Friday, September 24, 2021**. As you prepare your 2021 regulatory fee payments, please keep the following information in mind:

* Broadcasters must pay the FY 2021 regulatory fees using the Commission’s automated filing and payment system, called Fee Filer, which is available at the following link: <https://www.fcc.gov/licensing-databases/fees/fee-filer>.
* Unless a regulatee files for and satisfies the extraordinary showing necessary to obtain a waiver or deferral of FY 2021 regulatory fees, the FCC will impose a late payment penalty of 25% of any unpaid amount of regulatory fees owed immediately following the 11:59 PM ET deadline. Timely payment is critical!
* All payments must be made by wire transfer, or online via ACH (Automated Clearing House) payment or credit card. Other forms of payment, including checks, will be rejected.
* The maximum amount that can be charged on a credit card for transactions with federal agencies—including the FCC—is $24,999.99. Attempted transactions for amounts greater than $24,999.99 will be rejected. This limit applies to single payments, divided payments, and to combined payments of more than one bill. Thus, broadcasters who need to pay regulatory fees of an amount greater than $24,999.99 will need to use debit cards (Visa or MasterCard) or make payment by ACH or wire transfer.
* The FCC exempts regulated entities from paying regulatory fees when their total fee obligation is considered “*de minimis*.” The FCC has currently set the *de minimis* threshold at $1,000 or less.

*Payment Flexibility in Light of the COVID-19 Pandemic*. The Commission has decided to continue the temporary COVID-19 regulatory fee relief measures it adopted last year in recognition of the financial hardship caused by the pandemic, given that those financial hardships have continued into the 2021 fiscal year. Specifically:

* As was the case for FY 2020, the Commission will not require separate filings for requests for fee waivers, reductions, deferrals, or extended payment terms (i.e., installment payment requests) for financial hardship reasons related to the pandemic. Instead, it again will permit parties to submit a single request for all forms of relief. Such requests for relief may be submitted electronically to 2021regfeerelief@fcc.gov and must be submitted by **September 24, 2021**—i.e., the same deadline as that for 2021 regulatory fee payments.
* The Commission continues to partially waive its “red light” rule to allow broadcasters with outstanding debts that are experiencing financial hardship to request relief with respect to FY 2021 fees. As in FY 2020, however, broadcasters for whom the red light rule is waived are required to resolve all delinquent debt currently owed (although, depending on the severity of a broadcaster’s financial circumstances, such resolution may not require full or immediate repayment of all outstanding debt).
* For broadcasters whose businesses have been hurt by the pandemic, but not to the extent warranted to receive a waiver, reduction, or deferral, the Commission has indicated that it will reduce the interest rate charged on installment payments to a “nominal rate” and, as it did in FY 2020, waive the ordinary requirement to provide a down payment in order to be eligible for installment payments.
* In recognition of the fact that “demonstrating financial hardship caused by the pandemic may require different financial documentation than the documentation the Commission has traditionally accepted,” the Commission has instructed the Managing Director (who is responsible for the administration and management of the FCC) to “work with individual regulatees” who request relief to obtain any additional documents necessary to render a decision on the request.

 Further information regarding how to apply for the forms of relief set forth above (and the documentation applicants are recommended to submit) are described in the Commission’s September 10, 2021, [Public Notice](https://docs.fcc.gov/public/attachments/DA-21-1137A1.pdf).

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# **MONDAY, September 27, 2021:**

# ETRS Form Three for National EAS Test Due

Broadcasters have slightly less than one more week, until **September 27, 2021**, to file the third and final report—called Form Three—associated with last month’s [nationwide test of the Emergency Alert System](https://docs.fcc.gov/public/attachments/DA-21-680A1.pdf) (“EAS”).

 Form Three is the report on which stations provide detailed post-test data and describe any issues with receipt or retransmission of the nationwide test. We heard of several issues associated with the test back on August 11, and it’s quite possible some broadcasters may have a good bit of information to share on Form Three regarding their difficulties with the nationwide test. Accurately and comprehensively completing Form Three is essential so that the FCC and FEMA can identify and correct problems with the EAS. To that end, reporting issues with receipt or retransmission of the test does not automatically mean that there has been an EAS rule violation; the nationwide tests are intended to ensure emergency alerting readiness and identify potential weaknesses in the system and are not designed to “trap” broadcasters with enforcement action.

Form Three (like Forms One and Two) must be filed using the FCC’s ETRS ([EAS Test Reporting System](https://www.fcc.gov/general/eas-test-reporting-system)). Again, it must be filed no later than September 27.

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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.

The Commission Staff actually reviews the filed ownership reports, sometimes identifying inconsistencies and incomplete information. Stations should take the FCC’s ownership reporting requirements very seriously and may wish to consult with their communications counsel to ensure timely, complete, and accurate filings.

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

As of this writing, broadcasters who are eligible for reimbursement as part of the now-concluded spectrum repack and who were assigned to repack Phases 1–5 have slightly less than **three weeks 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.

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, 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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