November 24, 2021

Legal Memorandum

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With Thanksgiving just around the corner and the potential for holiday plans (and tryptophan!) to cut this work week short, we write with the following brief reminders regarding two important December 1st deadlines for broadcasters.

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# **December 1, 2021:** Biennial Ownership Report Filing Window Closes

Next Wednesday, **December 1, 2021**, marks the last day for broadcasters to timely file their FCC-mandated biennial ownership reports. All licensees of commercial and non-commercial full power television, Class A television, low power television, AM radio, and FM radio stations must file such ownership reports between October 1 and December 1, 2021.

The FCC’s 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 the relevant company and its broadcast subsidiaries and intermediary companies, if any; a list of various currently effective contracts or instruments to which the relevant company or its licensee subsidiaries are a party; and the capitalization of the company and its licensee and intermediary subsidiaries.

The Commission Staff reviews the filed ownership reports, sometimes identifying inconsistencies and incomplete information. Indeed, in a [Public Notice](https://docs.fcc.gov/public/attachments/DA-21-1239A1.pdf) released in October, the FCC warned that after the current filing window closes “Commission staff intends to pursue enforcement actions against licensees that fail to file their biennial ownership reports in a timely or complete manner.” Accordingly, 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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# **December 1, 2021:** DTV Ancillary/Supplementary Services Reports Due

Next Wednesday, December 1, 2021, marks another important deadline for those digital full power, Class A, low power, and TV translator licensees (as well as permittees operating pursuant to an STA) that offered—and received revenue from—“ancillary” or “supplementary” services during the prior year ending September 30. By December 1, any such broadcasters are required to electronically file DTV Ancillary/Supplementary Services Reports (formerly known as FCC Form 317; currently known as FCC Form 2100, Schedule G) and, ultimately, to remit 5% of the gross revenue derived from those “feeable” services.

“Feeable” ancillary and supplementary services are any services provided by a TV licensee that are not needed to provide the FCC-required single free over-the-air program stream and from which the TV licensee receives revenue beyond that from commercial advertisements used to support the broadcasting (e.g., a subscription fee or other charge for the service). For example, feeable ancillary and supplementary services would include computer software distribution and data transmissions, whereas typical, non-subscription multicast streams generally would not constitute a “feeable” ancillary or supplementary service.

You may recall that, until 2018, all TV licensees were required to annually file DTV ancillary/supplementary services reports regardless whether they offered feeable ancillary/supplementary services. Thanks to an FCC rule change, however, now only those very few broadcasters who do, in fact, provide such feeable ancillary/supplementary services in the relevant reporting year must file such a report.

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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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