January 25, 2022

Legal Memorandum

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# **January 31, 2022:** Annual Children’s Television Programming Reports and Commercial Time Limits Certifications Due

 We write to remind commercial full-power and Class A television broadcasters that the deadline for filing their annual Children’s Television Programming Reports and Commercial Time Limits Certifications will be here in less than one week. The deadline to file and/or upload each is **Monday, January 31, 2022** (typically, the annual deadline falls on January 30th; however, because January 30, 2022, falls on a Sunday, the deadline is extended by FCC rule until the next business day).

*Children’s Television Programming Reports*. As a brief refresher, in late 2019 the FCC did away with quarterly reporting of children’s television programming in favor of filing an annual report. The annual Children’s Television Programming Report reflects efforts made by the station during the preceding calendar year to serve the educational and informational needs of children. A station’s report should be (1) filed through the FCC’s LMS filing system, which can be found at <https://enterpriseefiling.fcc.gov/dataentry/login.html>; and (2) uploaded to the station’s online public inspection file (“OPIF”). Although the FCC should automatically import into the OPIF a station’s filed Children’s Television Programming Report, each station may wish to check its OPIF after filing to verify that the report is, in fact, automatically imported, available, and complete.

 In January 2020—the year in which the first annual report was due—the FCC gave an online tutorial webcast to provide an overview of the new, annual report form. As of this writing that webcast remains archived at <https://www.fcc.gov/sites/default/files/kidvid_webinar.mp4> for those who might find it helpful as a refresher regarding the interplay between the various areas of the report. Because stations now have less regular contact with the reporting form (as compared to when the report was required to be filed quarterly), a review of both the FCC’s rules and the nuances of the reporting form will likely prove beneficial.

Stations with any fact-specific questions regarding their compliance with the children’s television programming rules across 2021 (for example, regarding last year’s many preemptions, interruptions, and JIPs), would be well advised to consult with legal counsel.

*Children’s Commercial Time Limits Certifications*. As part of the same late-2019 rule changes noted above, the FCC also changed from quarterly to annual the required certification for commercial full-power and Class A television stations regarding their compliance with the limits on commercial matter in children’s programming. The rules governing commercial time limits in children’s programming are complex. (For example, recall that the definition of children’s programming for purposes of the commercialization rules differs from the definition of “Core Programming” for purposes of the annual Children’s Television Programming Report—the commercial time limits apply only to children’s programming that is primarily directed to children ages 12 and under.) We encourage stations to contact the Association Hotline or their communications counsel with any questions regarding their compliance obligations.

*Importance of Timely Filing and/or Uploading*. Remember, the **OPIF system “date-stamps” all uploads, so it will be readily obvious to the FCC if you don't timely upload by January 31, 2022, your children’s commercial time limits certification.**  Similarly, LMS will date-stamp your Children’s Television Programming Report once filed such that it will be readily obvious to the FCC if the report is not filed by the January 31, 2022, filing deadline.

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# **January 31, 2022:** Deadline for Commercial Radio Stations to Sign and Return Conditional GMR License Agreement

Commercial radio broadcasters have less than one week left to decide whether they wish to sign and return the conditional license agreement that Global Music Rights (“GMR”) transmitted to stations several weeks ago. If a sufficient number of commercial radio stations sign and return the agreement by the **January 31, 2022, deadline,** the agreements appear likely to take effect and the long-pending litigation between the Radio Music License Committee (“RMLC”) and GMR appears likely to be settled.

*Background*. As we have previously written, over the past approximately five years GMR has offered commercial radio broadcasters multiple “interim” license agreements covering the rights necessary for such stations to be able to broadcast any of the more than 63,000 works administered by GMR (including any GMR music that may be contained in commercials and network and syndicated programming). Those interim agreements have reflected the uncertainty of the ongoing litigation between RMLC and GMR regarding whether GMR should be subject to the same antitrust principles that apply to the rates set by other performing rights organizations (“PROs”), such as ASCAP and BMI.

Recently, GMR and RMLC reached a conditional settlement of that litigation; however, the settlement will only be able to be finalized if a sufficient number of commercial radio stations enter into the conditional license agreement that has been transmitted to them. Because the terms of both the conditional settlement and the station-specific conditional license agreements are confidential, there is uncertainty regarding the precise number of commercial radio stations that must enter into the agreement in order for the settlement to be finalized.

*January 31, 2022, Decision Deadline*. Commercial radio stations who have received and are evaluating whether to sign and return the conditional license agreement must make a decision (and sign and return the agreement, if desired) by no later than **January 31, 2022**. Although, as noted above, the terms of both the conditional settlement and each station-specific conditional license agreement remain confidential, the RMLC and GMR have clarified that the license fees reflected in the agreement you have received should have been established by reference to your current interim license price, and should be “consistent” across “similarly situated radio stations.” In this regard, GMR has further explained that the fees in your agreement should take into account the format of your station. If the agreement takes effect (i.e., if a sufficient number of commercial radio stations sign and return the agreement), it would begin on April 1, 2022—the day after the current interim license agreement expires (on March 31, 2022).

 Ultimately, the decision whether or not to sign and return the conditional license agreement is a fact-specific determination that must be made by each individual station. We encourage you to promptly contact your communications counsel with any concerns you may have regarding your station’s specific conditional license agreement.

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# **March 22, 2022:** Two-Month Warning! Repack Reimbursement Submissions for Phases 6 to 10 Due by March 22, 2022

By recent [Public Notice](https://docs.fcc.gov/public/attachments/DA-22-72A1.pdf), the FCC has reminded all full-power and Class A TV stations of the forthcoming **March 22, 2022,** reimbursement submission deadline for stations assigned transition completion dates in phases 6 to 10 of the now-concluded spectrum repack.

As you likely recall, the Commission has [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, with the following two deadlines remaining:

* **March 22, 2022:** Deadline for final reimbursement submissions from the approximately 462 repacked stations either initially assigned or granted permission to change to transition completion dates in Phases 6–10 (this deadline also applies to the small number of stations that were moved from the October 8, 2021, invoice filing deadline to the March 22, 2022, deadline due to circumstances beyond their control).
* **September 6, 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 statutorily mandated deadline applicable to the Reimbursement Fund: on July 3, 2023, any unobligated amounts currently earmarked for reimbursement will be released and deposited into the U.S. Treasury.

Recall that 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 request submissions are subject to Commission review to prevent waste, fraud, and abuse; 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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