

## The FCC Announces Major Changes to the Broadcast Local Public Notice Rule

by Keenan Adamchak  
(703) 812-0415  
adamchak@fhhlaw.com

On May 13, 2020, the Federal Communications Commission (“FCC” or the “Commission”) [released](#) a [Report and Order](#) (“Order”) announcing major changes to the local public notice obligations for broadcast applications. The Order eliminates the obligation to publish a public notice of certain broadcast applications in newspapers. Instead, applicants must now publish such notices online with links to the FCC’s Online Public Inspection File (“OPIF”) or application databases. The FCC, however, preserved the over-the-air public notice requirements for some broadcast applications – albeit with some significant changes.

As a reminder, a variety of routine and non-routine of broadcast applications trigger requirements for over-the-air and newspaper publication of local public notices. For example, all full-power stations must air announcements regarding their license renewal applications, but translator stations must publish these in a newspaper. Assignments of licenses, transfers of control, and certain applications for new licenses also require over-the-air or newspaper notices.

This article breaks down the major changes to the Broadcast Local Public Notice Rule, and how these changes will impact broadcasters. The FCC claims in the Order that the rule changes were implemented to streamline local public notice obligations for broadcasters in order to mitigate the compliance difficulties created by the complex requirements under the existing rules. In reality, the changes imposes many additional requirements on broadcasters – most notably the obligation to post public notices online for certain applications.

NOTE: with one exception for renewal pre-filing announcements, noted below, *these rule changes do not go into effect immediately*. The effective date is dependent upon publication of the Order in the Federal Register. We will post the effective date(s) here as they become known (expected in a few months).



### **Online Public Notice Replacing Newspaper Notices**

Broadcast applicants currently required to publish a public notice of application filings in a newspaper will now be required to post such notices online for a period of 30 days, beginning within 5 business days of the FCC’s acceptance of the application for filing.

Under the new rules, commercial broadcast applicants will be required to publish the notice on the website of either (in order of availability): (1) the station; (2) the licensee; or (3) the parent entity. If the applicant does not maintain or have access to their own website, however, the public notice may be published on a locally targeted, publicly accessible website serving the area served and/or to be served by the station (e.g., local government, local community bulletin board, local newspaper website, or state broadcasters association’s website). The Order also provides specific texts for online notices depending on the application type. The standardized scripts will also require broadcasters to provide information on accessing the application in the station’s OPIF or, for stations not required to maintain OPIFs (e.g., LPTVs, LPFMs, and TV/FM Translators), information on accessing the application in the relevant FCC database.

Notices published on applicant-affiliated websites, however, cannot be published merely on the home page of a station or licensee’s website. Instead, the

*(Continued on page 2)*

(Continued from page 1)

Order requires that the notices be published on a separate page of the website – with a link labeled “FCC Applications” displayed on the home page connected to a separate page containing the full text of the notice. While the FCC did not mandate that the “FCC Applications” link have a specific location on the home page, the Commission did require that the link be “conspicuously displayed” on the home page. This means that the link must be “displayed in such size, color, contrast, and/or location on the home page that it is readily readable, understandable, and locatable by visitors to that page.”

In addition, the Order requires that applicants maintain the separate online public notice page on an ongoing basis. This means that when the applicant does not have any pending applications filed with the Commission requiring online notice, the online public notice page must nevertheless state that there are no pending applications subject to the posting requirement AND indicate when the page was last updated. This requirement, of course, only pertains to broadcasters with applicant-affiliated websites, and not broadcasters having to use the locally targeted, publicly accessible website for public notices.

Non-commercial Educational (“NCE”) Stations: the FCC Order generally *exempts* NCE broadcast stations from these new online public notice requirements – unless such NCE stations are silent, not yet operational, or the notice is required during a period when the station is not operating pursuant to its licensed parameters. NCE stations will be permitted to continue airing announcements rather than publish online or in newspapers.

### **On-Air Announcements Changes**

The FCC also made significant changes to the on-air announcement requirements for broadcast station local public notices. First, the FCC finally eliminates the confusing and somewhat arbitrary rules dictating when the announcements should air depending on the type of application and the applicant. Instead, going forward, all applications requiring on-air public notices will follow a standardized set of requirements, directing that:

- Announcements shall air at any time between 7 AM and 11 PM, Monday-Friday;
- Stations must air six (6) announcements – which must be aired once a week for 4 weeks, with no more than 1 announcement per day (i.e., announcements airing the same week must be aired on different days) and
- Airing of announcements must commence no later than 5 business days after the application has been accepted for filing at the FCC.

The Order also announces standardized announcement scripts for on-air announcements. Similar to online announcements, the standardized scripts also require broadcasters to provide information on accessing the application in the station’s OPIF or, for stations not required to maintain OPIFs, information on accessing the application in the relevant FCC database.

With respect to on-air announcements for broadcast television applications, the Commission specifically noted that program crawls would *not* be required – as in the prior rule, the entire text of the announcement must be displayed on-screen while being read simultaneously by an announcer.

Additionally, the Order eliminates the requirement that broadcasters air pre-filing announcements for their license renewal applications – noting that the elimination will reduce the total number of on-air announcements for license renewal applications from 10 to 6. To that effect, the FCC’s Media Bureau simultaneously [released](#) its own [Order](#) waiving the pre-filing license renewal application requirement for all broadcasters in the 2019-2023 license renewal cycle until the Order becomes effective. Thus, beginning with the license renewals due on August 3, 2020 (i.e., AM/FM/LPFM stations in Illinois and Wisconsin, and TV/Class A/LPTV stations in North Carolina and South Carolina), broadcasters filing license renewal applications will not have

(Continued on page 3)

(Continued from page 2)

to run pre-filing announcements on their stations in advance of their renewal applications (*post-filing* renewal application announcements are still required).

### **Other Changes**

The FCC's Order also contains a litany of other requirements and clarifications regarding public notice of broadcast applications, including:

- **Channel Sharing:** Clarifying that each television station in a channel sharing arrangements must broadcast on-air announcements on its program stream.
- **Multicasting:** Clarifying that on-air notices are only required for multicasting stations on the digital television or radio station's primary over-the-air programming stream.
- **OPIF:** Retains the requirement that broadcasters required to run on-air announcements must add to their station's OPIF a certificate listing the dates and times that the announcement was aired. The FCC, however, removed the requirement that such certifications contain the script of the announcement since all on-air announcements will now follow standardized forms.
- Clarifying that LPFM stations will continue to follow the same public notice obligations as other NCE stations – i.e., on-air announcements only (except when the station is unbuild, operating at variance, or silent).

### **Conclusion**

Contrary to the Commission's conclusions, the new local public notice requirements will actually increase the burden of notice requirements upon broadcasters. First, broadcasters required to run online public notices will have to expend considerable costs and resources in revamping their websites to confirm with the new notice requirements. Second, for both on-air and online public notices, tying the notice schedule to the date on which the application is accepted for filing – rather than the actual date of filing – will require broadcasters and their representatives to constantly monitor multiple FCC databases for the public notice announcing the application's acceptance for filing.

Interestingly, the Commission dismissed concerns that this would not be a burdensome task, noting that many broadcasters already use third-party software to track FCC applications. Yet, the FCC's new Licensing and Management System ("LMS") database (which will eventually be the only database for all broadcast applications) does not readily support such third-party trackers.

Third, many broadcasters will have to file BOTH online and on-air announcements for the same application (e.g., assignment/transfer of control applications for commercial broadcasters) – effectively doubling the public notice requirements for a single application. Finally, both on-air and online public notices are now required to include links directly to the station's OPIF, or the FCC database in which the application was filed. Considering that there are presently multiple FCC databases (i.e., CDBS and LMS) in which broadcast applications are filed, this will likely lead to confusion among broadcasters in figuring out exactly which FCC database their application was filed in.

Generally speaking, the Order's provisions will be effective 30 days after publication of the Order in the Federal Register. However, changes to Section 73.3580 of the Commission's rules – which form the bulk of the Order's changes to the public notice requirements for broadcasters – first require Office of Management and Budget (OMB) approval prior to them becoming effective. Our firm will continue to monitor the Federal Register and will provide updates when certain provisions of the Order become effective. In the meantime, should you have any questions regarding your current or future local public notice requirements, please contact Keenan Adamchak at (703) 812-0415 or [adamchak@fhhlaw.com](mailto:adamchak@fhhlaw.com).

<b><i>Inside This Issue</i></b>	
FCC Announces Changes to Local Public Notice Rules	1
FCC Lobs More Fireballs at Robocallers and Spoofers	4
FCC Waives Some EEO Requirements for Rehires	5
New LPFM Rules Adopted as Anticipated	6
FCC Announces Full Electronic Filing Capability	7
Comment Deadlines Established for DTS Rules	7
Upcoming FCC Deadlines for June - August	8

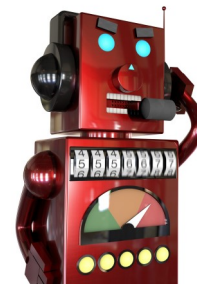
## FCC Lobs More Fireballs at Robocallers and Spoofers

by Peter Tannenwald & Seth Williams

(703) 812-0404 & (703) 812-0479

tannenwald@fhhlaw.com & williams@fhhlaw.com

The FCC has taken several steps in recent years to deter robocalls of all kinds, with some success, but not enough to give us poor ordinary folks the telephone peace and quiet for which we yearn. Last year, Congress passed the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (“TRACED Act”), giving the FCC more authority to punish violators of the Telephone Consumer Protection Act (“TCPA”) and requiring the FCC to take certain steps. (Needless to say, the TRACED Act followed the current custom of determining the acronym first and figuring out the full name of the statute later.) The FCC has now implemented some of its new statutory authority and has invited comments on what steps it should take next.



First, the FCC has issued an [Order](#) adopting three rule changes immediately, without inviting public comment, noting that they are doing what Congress directed them to do, so they would not have much discretion to make changes even if they did invite comments. First, the statute of limitations for fining robocall violators, senders of unsolicited faxes, and caller ID spoofers has been increased from one or two years to a uniform four years. (Robocalls use automated dialing systems or artificial or prerecorded voices to call residential numbers, except where the called party has consented or in emergency situations. Spoofing is substituting false caller ID information in place of the actual calling name or number, usually to mislead recipients as to who is calling and to encourage recipients to answer calls they don’t want to receive.)

Second, the FCC will exercise its authority to fine robocallers up to \$10,000 per call in addition to forfeitures otherwise authorized by the Communications Act. Third, the FCC will exercise its new statutory authority to issue Notices of Apparent Liability for Forfeiture without first issuing a warning citation to robocallers and spoofers – in other words, the FCC will no longer have to send a warning before it fires a shot.

Legitimate users of automated calling platforms (believe it or not they do exist and we’ve [written](#) about them) should pay particular attention to the FCC’s elimination of the warning citation requirement. Previously, any robocaller that was not otherwise subject to the FCC’s jurisdiction (which primarily covers telecommunications companies, private radio users, and broadcasters) had to be issued a citation, essentially a warning, saying that the FCC believed that the robocaller was violating the FCC’s rules and that if the robocaller continued its conduct, the FCC might take enforcement action. Now, even if a legitimate robocaller is not, or believes that it is not, intentionally violating the TCPA, the FCC may initiate enforcement action without warning. Because of this significant shift in the risk profile of using automated calling platforms, and in light of the considerable amount of ongoing litigation over what types of calls are legal or illegal, legitimate users may want to consult their TCPA counsel to ensure their practices comply with the law.

In a separate *Notice of Proposed Rulemaking*, the FCC invites comments – Initial comments are due on June 19, 2020 and Reply comments are due on July 6 – on how it should fulfill its obligation under the TRACED Act to take steps to prevent “one-ring” scams. This scam involves placing a call but hanging up after one ring, with the intent that the call recipient will dial the caller ID to find out who called. In another version of the scam, the caller leaves a message asking the recipient to call a certain number to schedule a delivery or to obtain some kind of reward. In both cases, the callback number is an international number that causes the consumer to incur charges, with revenues shared with the scammer. Why would anyone call back to an international number? Because some international numbers (particularly in some Caribbean countries) use the North American Numbering Plan with 10-digit formats that look like domestic numbers, leading consumers to believe erroneously that the call will be part of their unlimited calling plan. In other words, if you call Area Codes 646 (Turks and Caicos) or 809 (Dominican Republic), you may regret it.

(Continued on page 5)



(Continued from page 4)

The FCC is trying to find ways to discourage one-ring scams, including better consumer education, encouraging voice service providers to block the calls, and examining what obligations can or should be imposed on international gateway providers. (The FCC has [authorized](#) domestic telephone companies to block calls from gateway providers that don't cooperate in trying to block robocalls and scams and asked for information from seven gateway providers as to what they are doing to block the calls.)

One problem that both [the FCC and the telephone industry](#) face is how to figure out which calls to block, particularly since most of them originate from international locations where the FCC does not have jurisdiction to act at the source and where new bogus call detection techniques are not in play.

An interesting solution that the FCC has suggested is to require that whenever a call is dialed to an international destination, the caller receive a recording saying "this call is going to cost you big time – hang up now if you don't want to pay" before the call is connected and charges are incurred. That would certainly cause a lot of people to hang up.

Robocallers and scammers make millions of calls at almost no cost and don't have to succeed with more than a tiny fraction of them to make significant profits. That means that they are not going to walk away from the practice voluntarily, or even if they are slapped on the hand. The FCC is trying hard to do what it can to up the ante in a tough situation. It remains to be seen whether the new fireballs will explode with a really effective big "bang" or will fall into the ocean and fizzle.

## FCC Waives Some Broadcast EEO Requirements for Rehires

by Davina Sashkin  
(703) 812-0458  
sashkin@fhhlaw.com

As part of its efforts to provide relief to broadcasters reeling from the coronavirus pandemic, the FCC has [announced](#) a limited waiver of recruitment requirements for the re-hiring of employees who were laid off as a direct result of COVID-19 economic conditions.

Under normal conditions, radio and TV broadcast station employment units employing five or more full-time employees (and multichannel video programming distributors (MVPDs) employing six or more full-time employees) are required by the FCC to engage in broad recruitment outreach for all full-time job vacancies. That means placing ads in multiple places, in addition to the station website and over the air announcements. The idea is to encourage broadcast licensees to cast a wide net and ensure access to as many people as possible to fill open positions. The optimal result would have stations interviewing multiple people for each job posting, procured from multiple recruitment sources.

But, these are not normal times. The FCC Media Bureau appears to recognize that the cost and effort that would have to be undertaken by a station employment unit who laid off, for example, 5 people due to pandemic economic conditions to recruit, interview, and rehire for each of those positions would be incredibly burdensome, is waiving those requirements for re-hiring the same employees who were laid off – provided that the employees are rehired within 9 months of the date they were laid off.

Thus, for Equal Employment Opportunity (EEO) reporting purposes, if an employee who was laid off due to pandemic conditions is rehired within 9 months, broadcasters do not have to report a vacancy or conduct the typical recruitment for that opening. As always, contact your communications counsel if you have additional questions about how this limited waiver applies to your stations.

## New LPFM Rules Adopted as Anticipated

by Peter Tannenwald  
(703) 812-0404  
tannenwald@fhhlaw.com

On April 16, 2020, we [wrote](#) about new rules governing applications for and the operation of LPFM radio stations that were scheduled for adoption by the FCC at its monthly meeting on April 23. The new rules were indeed adopted, although by written vote of the Commissioners the day before the meeting. The [Order](#) is now available on the FCC's website.

The *Order* as actually adopted varies only a little from the earlier published draft. The most significant change is an expansion of the types of LPFM stations that may propose a directional antenna without submitting documentation proving that the antenna performs as predicted and was properly installed. Under the previous rules, only Travelers Information Service LPFM stations operated by public safety entities and LPFM stations that needed directional antennas to satisfy requirements to protect second-adjacent channel full power stations were exempt from proof of performance requirements. Under the new rules, LPFM stations near the Canadian and Mexican borders will also be exempt if they propose directional antennas to comply with treaty requirements by keeping interfering signals from crossing the international border.

All three exempt types of station are subject to specific rules that require them to eliminate any interference that they cause in practice and may not rely on meeting simple mileage separations from other stations. Stations not in those three classes sometimes do rely on mileage separations, so they will have to prove the performance of any directional antennas they propose.

The new rules make it clear that documentation must include not only field measurements of the actual antenna pattern, usually performed at the factory, but also certifications from a field engineer that the antenna was installed properly and from a surveyor that the antenna is aimed in the correct direction.

Beyond the directional antenna issue, the FCC adhered to its previously announced intent not to consider at this time modifying LPFM protection of TV Channel 6 stations or permitting LPFM power increases above 100 watts. It did include a few significant words (in footnotes, as is so often the case with government documents).

[Footnote 81] The Commission has required all secondary radio stations (LPFM, FM Translator, and Class D FM stations) proposing operations on FM reserved band channels 201 through 220 to protect full-service television and previously existing secondary service stations operating on TV6....We agree with NPR and remind LPTV stations operating on TV6 of their obligations to protect full service NCE stations (*CommLawBlog.com added the underlining*).

Then, responding to efforts by REC Networks to find a compromise that would allow more limited power increases about 100 watts, the FCC said: "REC's most recent attempt to address some of these concerns was filed too late for consideration at this time." But here comes a footnote again, opening the door to another try:

[Footnote 107] Our decision not to act on REC's latest proposal does not preclude REC or any other party from filing a separate petition for rulemaking seeking consideration of such issues in a future proceeding.

We anticipate a fair amount of activity by LPFM stations taking advantage of the ability to move up to 11.2 km rather than 5.6 km. It remains to be seen how many stations will be willing to invest in the cost of a directional antenna.

And since the door has been explicitly left open, the risk of betting on another shot at increasing the 100-watt power limit would be low.



## FCC Announces Full Electronic Filing Capability

Last month, the FCC released a [Public Notice](#) that announced 100 percent electronic filing capability for license applications in the Wireless Radio Services starting mandatorily on July 29, 2020. After 4 PM July 28, 2020, applications that are manually filed will no longer be accepted. This deadline will be strictly enforced. Categories that were previously exempt from electronic filing include: Special Temporary Authority (STA) applications in certain market-based services, sublease applications, and multi-step transactions. For the aforementioned categories, the FCC has made available an ECFS non-docketed filing solution (instructions for filing [here](#)).

Licensees can send an email copy of their application to [ULScc@fcc.gov](mailto:ULScc@fcc.gov) for urgent filing deadlines. Please reach out to your counsel if you are unfamiliar with these filing requirements.

## Comment Deadlines Established for Relaxation of DTS Re- strictions

On April 2, 2020, we wrote about proposals by the FCC to relax restrictions on Distributed Antenna Systems ("DTS") for full-power television stations and to make DTS newly available to Class A and Lower Power Television stations.

The proposals have now been published in the Federal Register, establishing deadlines for Initial Comments on June 12 and Reply Comments on July 13, 2020.

### FLETCHER, HEALD & HILDRETH, P.L.C.

1300 N. 17th Street - 11th Floor  
Arlington, Virginia 22209  
(703) 812-0400

**On Twitter** @CommLawBlog

**E-Mail:** [Office@fhhlaw.com](mailto:Office@fhhlaw.com)

**Website:** [www.fhhlaw.com](http://www.fhhlaw.com)

**Blog:** [www.commlawblog.com](http://www.commlawblog.com)

#### Editor

#### Contributing Writers

Keenan Adamchak  
Peter Tannenwald  
Seth Williams  
Davina Sashkin

**Memorandum to Clients is published on a regular basis by Fletcher, Heald & Hildreth, P.L.C. This publication contains general legal information which is not intended to be deemed legal advice or solicitation of clients. Readers should not act upon information presented herein without professional legal counseling addressing the facts and circumstances specific to them.**

**Distribution of this publication does not create or extend an attorney-client relationship.**

Copyright © 2020  
Fletcher, Heald & Hildreth, P.L.C.

All rights reserved. Copying is permitted for internal distribution.

## Upcoming FCC Broadcast Deadlines for June – August

### Broadcast Deadlines:

#### **June 15, 2020**

*Significantly Viewed Local TV Stations* – Reply Comments are due concerning the FCC’s NPRM examining whether to update the methodology for determining whether a TV broadcast station is “significantly viewed” in a community outside of its local television market and thus may be treated as a local station in that community and permitted under FCC rules to be carried by cable systems and satellite operators.

#### **July 10, 2020**

*Children’s Television Programming Reports* – For the first time, and after two delays, all commercial television and Class A television stations must file electronically annual children’s television programming reports with the Commission, although the first one will cover only the portion of the year which began with the effective date of the revised rules (September 16-December 31, 2019). These reports should be automatically included in the OPIF, but we would recommend checking, as the FCC bases its initial judgments of filing compliance on the contents and dates shown in the online public file.

*Issues/Programs Lists* – For all commercial and noncommercial radio, television, and Class A television stations, listings of each station’s most significant treatment of community issues during both the first and second quarters of 2020 must be placed in the station’s OPIF. The lists should include brief narratives describing the issues covered and the programs which provided the coverage, with information concerning the time, date, duration, and title of each program with a brief description of the program. Although with the postponed deadline, it should not matter whether these reports are formatted as one report or two, we would recommend retaining two separate reports and uploading one for each quarter to avoid confusing future reviewers.

*Class A Television Stations Continuing Eligibility Documentation* – The Commission requires that all Class A Television Stations maintain in their OPIF documentation sufficient to demonstrate that the station is continuing to meet the eligibility requirements of broadcasting at least 18 hours per day and broadcasting an average of at least three hours per week of locally produced programming. While the Commission has given no guidance as to what this documentation must include or when it must be added to the public file, we believe that a quarterly certification which states that the station continues to broadcast at least 18 hours per day, that it broadcasts on average at least three hours per week of locally produced programming, and lists the titles of such locally produced programs should be sufficient. Whether you upload one document or two in this category, make sure you include both the first and second quarters in the time period covered.

#### **August 1, 2020**

*Radio Post-Filing Announcements* – Radio stations licensed in Illinois and Wisconsin must begin broadcasts of their post-filing announcements concerning their license renewal applications on August 1. If the renewal application is not filed until the August 3 deadline, wait until then to begin the post-filing announcements. Either way, these announcements must continue on August 16, September 1, September 16, October 1, and October 16. Once complete, a certification of broadcast, with a copy of the announcement’s text, must be posted to the OPIF within seven days, or by August 23.

*Television Post-Filing Announcements* – Television stations licensed in North Carolina and South Carolina must begin broadcasts of their post-filing announcements concerning their license renewal applications on August 1. If the renewal application is not filed until the August 3 deadline, wait until then to begin the post-filing announcements. Either way, these announcements must continue on August 16, September 1, Septem-

(Continued on page 9)



(Continued from page 8)

ber 16, October 1, and October 16. Once complete, a certification of broadcast, with a copy of the announcement's text, must be posted to the OPIF within seven days, or by August 23.

### **August 3, 2020**

*Radio License Renewal Applications Due* – Applications for renewal of license for radio stations located in Illinois and Wisconsin must be filed in the LMS. These applications must be accompanied by Schedule 396, the EEO Program Report, also filed in LMS, regardless of the number of full-time employees.

*Television License Renewal Applications Due* – Applications for renewal of license for television stations located in North Carolina and South Carolina must be filed in LMS. These applications must be accompanied by Schedule 396, the Broadcast EEO Program Report, also filed in LMS, regardless of the number of full-time employees.

*EEO Public File Reports* – All radio and television station employment units with five or more full-time employees and located in California, Illinois, North Carolina, South Carolina, and Wisconsin must place EEO Public File Reports in their OPIFs. For all stations with websites, the report must be posted there as well. Per announced FCC policy, the reporting period may end ten days before the report is due, and the reporting period for the next year will begin on the following day.