
Reminder—All Commercial Television and Radio Stations Must File Their Biennial Ownership Reports by **July 8, 2010**. FCC Announces Waiver Procedures for Recently Sold Stations, and a Last Minute Effort Is Underway to Have the FCC's New Biennial Ownership Report Form Declared Unlawful.

by Scott R. Flick and Paul A. Cicelski

As we wrote in an [April 8, 2010 Client Alert](#), the FCC revised its Ownership Report form for commercial stations, Form 323, and announced that the deadline for all commercial broadcasters to file the new Form 323 is July 8, 2010. The FCC also expanded the types of entities and licensees required to file Form 323, and announced that owners of all commercial AM, FM, TV, LPTV and Class A TV stations would need to file the new form.

While you should proceed on the assumption that the July 8, 2010 date will hold, we note that yesterday the FCC filed an Opposition to a Petition filed by a group of broadcasters who have asked the United States Court of Appeals for the District of Columbia Circuit to prohibit the FCC from implementing the revised Form 323. Specifically, the broadcasters' Petition asserts, among other things, that in imposing the new requirement that all "attributable" principals provide their Social Security Numbers to obtain a Federal Registration Number (FRN) to complete the new Form 323, the FCC violated the Administrative Procedure Act and the Privacy Act. In its Opposition, the FCC responds that it has complied with these statutes. The FCC also argues that the broadcasters' claims are now moot because filers are not actually required to use Social Security Numbers, and can instead use a "Special Use FRN" if they do not "have [a person's] permission to use a Social Security Number." The court has not yet ruled on the matter and we will issue a subsequent alert if an order from the court alters the July 8, 2010 filing deadline.

Remember also that while the filing deadline is July 8, 2010, the information required to be listed on the form must reflect ownership interests as they existed on **November 1, 2009**. In addition, the FCC issued a Public Notice yesterday providing clarification regarding biennial ownership report filings for stations that have been or are being assigned/transferred after the November 1, 2009 reporting date. According to the Public Notice, for stations assigned/transferred between **November 1, 2009** and **June 23, 2010**, and stations for which an assignment/transfer application was approved by the FCC between **November 1, 2009** and **June 23, 2010** but which has not yet been consummated, the FCC will accept written requests for waiver of the biennial Form 323 ownership filing requirement. The waiver requests must include a statement that “the assignee/transferee will be the licensee of record as of July 8 and will be unable to file the Form 323 because it either does not have and cannot obtain the required information from the prior owner or cannot certify to the accuracy of the information because it lacks the necessary information to support such a certification.”

For currently pending assignment/transfer applications and any assignment/transfer applications filed between **June 23, 2010** and **July 8, 2010**, the Public Notice states that the FCC will require the seller to file ownership reports on or before the July 8, 2010 filing deadline as a condition of grant of those pending applications. Specifically, the assignor/transferor must file the new Form 323 either: (i) on or before consummation of the assignment/transfer or (ii) by July 8, 2010, **whichever is earlier**.

Additional information regarding how to complete the new Form 323 can be found at the FCC Media Bureau website, <http://www.fcc.gov/form323>, which includes a “Frequently Asked Questions” section.

If you require assistance in completing the new Form 323, please contact any of the attorneys in the Communications Section.

Scott R. Flick ([bio](#))
Washington, DC
+1.202.663.8167
scott.flick@pillsburylaw.com

Paul A. Cicelski ([bio](#))
Washington, DC
+1.202.663.8413
paul.cicelski@pillsburylaw.com

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