Communications

November 2015

Biennial Ownership Reports are due by December 2, 2015 for Commercial Radio and Television Station Licensees

By Lauren Lynch Flick and Scott R. Flick

The FCC extended the 2015 Biennial Ownership Report filing deadline for commercial stations from November 2 to December 2, 2015.

Licensees of commercial AM and FM radio stations and full power, Class A, and low power television stations must electronically file their Biennial Ownership Reports by **December 2, 2015**. Licensees must file using the online FCC Form 323 and must also place the form as filed in their station's public inspection file. Television stations must ensure that a copy of the form is posted to their online public inspection file at https://stations.fcc.gov. Ownership Reports must provide information accurate as of October 1, 2015. Permittees of new stations have a separate ownership filing requirement and do not file biennial ownership reports, but should review the Annual Report of Non-FCC Misconduct section below concerning that reporting obligation.

A separate Form 323 must be filed for each entity, such as a parent company, that has direct or indirect attributable ownership of the licensee of a station for which a biennial Form 323 is required. In addition, licensees must report all other attributable interests they or their principals hold, including Local Marketing Agreements that provide for the brokering of more than 15 percent of the broadcast time per week of another local station and Joint Sales Agreements that provide for the sale of more than 15 percent of the advertising time per week of another local station.

Licensees must pay an FCC processing fee when filing their biennial ownership reports. This year, the processing fee for Biennial Ownership Reports is $65.00 per station. For example, a multiple station owner filing a combined Biennial Ownership Report for an AM/FM combo plus two TV stations would incur a required fee of $260 (4 x $65). Those filers who are not licensees but are required to file due to an attributable interest in a licensee are not required to pay the biennial report fee, and instead should check the box indicating that their report is fee-exempt.

Failure to timely file a Biennial Ownership Report is a violation of Section 73.3615(a) of the FCC's Rules, and could subject a station owner to a fine. Given the complexity of the ownership filings, we recommend that you have your Biennial Ownership Report reviewed and filed by communications counsel.

Annual Reporting of Non-FCC Misconduct

Both permittees and licensees are reminded that the Commission requires all permittees and licensees of radio and television stations to report relevant non-FCC misconduct annually by the anniversary of their license renewal filing date. Historically, stations polled their owners and, if necessary, submitted reports at the same time as filing their ownership reports. However, when the Commission adopted the uniform ownership report filing date for commercial stations, it did not consolidate the two reporting obligations. Accordingly, stations should continue to poll their owners annually prior to the anniversary of their license renewal filing date and report any relevant non-FCC misconduct to the FCC at that time.

Licensees should send annual questionnaires concerning relevant non-FCC misconduct to all persons with an attributable interest in the permittee/licensee. Relevant non-FCC misconduct includes: (1) all felonies; (2) mass media-related antitrust violations; (3) mass media-related unfair competition violations; (4) false statements to government agencies or departments; and (5) adverse employment discrimination decisions.

Permittees and licensees must report adverse court or administrative agency decisions involving any of the above offenses. Pending cases not yet involving an adverse action do not need to be reported, but adverse decisions must be reported even while they are on appeal.

Misconduct involving non-broadcast companies that share an officer, director, or major shareholder/partner with a broadcast company must be reported in situations where the broadcast principal was in control of the other company or was found to be directly involved in the other company's misconduct. With regard to parent/subsidiary relationships, non-FCC misconduct has to be reported if: (1) there is a close ongoing relationship between the parent (or non-broadcast subsidiary) and the broadcast subsidiary; (2) the two have common principals; and (3) the common principals are actively involved in the operations of the broadcast subsidiary.

If any principals of your company were involved in such conduct, you should contact communications counsel for advice on how this information should be reported. If there has been no reportable adjudication, the FCC does not require the permittee/licensee to affirm that fact.

If you have any questions about the content of this Advisory, please contact the authors of this Advisory or the Pillsbury attorney with whom you regularly work.

Lauren Lynch Flick (bio)
Washington, DC
+1.202.663.8166
lauren.lynch.flick@pillsburylaw.com

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

About Pillsbury Winthrop Shaw Pittman LLP
Pillsbury is a full-service law firm with an industry focus on energy & natural resources, media, financial services including financial institutions, real estate & construction, and technology. Based in the world's major financial, technology and energy centers, Pillsbury counsels clients on global business, regulatory and litigation matters. We work in multidisciplinary teams that allow us to understand our clients' objectives, anticipate trends, and bring a 360-degree perspective to complex business and legal issues—

helping clients to take greater advantage of new opportunities, meet and exceed their objectives, and better mitigate risk. This collaborative work style helps produce the results our clients seek.