
Commercial Broadcast Stations, Including Class A and LPTV Stations, Must File Biennial Ownership Reports on New Form 323 by July 8, 2010

by Lauren Lynch Flick and Scott R. Flick

The FCC's Media Bureau has announced that a new version of the Biennial Ownership Report Form for commercial broadcast stations, FCC Form 323, will be available on its website as of April 9, 2010. All commercial broadcast station owners must file their biennial ownership reports using the new form by July 8, 2010. However, the data used to complete the form must be accurate as of November 1, 2009.

The FCC originally announced its intent to implement a new version of the Form 323 in an Order released in May 2009 as part of its *Promoting Diversification in the Broadcasting Services* proceeding. The revision required, among other things, that each holder of a direct or indirect attributable interest in a licensee secure an FCC-issued Federal Registration Number ("FRN"). The revision also mandated that information regarding attributable interest holders and their other broadcast interests be reported repeatedly and in a precisely structured manner. As a result, the number of reports and the time to complete each report increased dramatically for many broadcasters with the ultimate result that the FCC's electronic filing system ground to a near halt and did not reliably save information entered into it. Based on these technical difficulties, the FCC stayed the filing obligation until it could improve the functioning of the form to account for these difficulties.

The FCC sent its revisions to the form to the Office of Management and Budget ("OMB") for approval on March 25, and OMB approved the modified form on March 26. The revised form uses a new XML Spreadsheet template that will allow information to be entered into the spreadsheet and then uploaded to the form, thereby reducing the time and effort needed to enter the data. The spreadsheet must be

downloaded from the FCC form and comes with detailed instructions regarding the proper use of the XML Spreadsheet. Of particular note are the following:

- The XML Spreadsheet comes with 25 empty rows for data entry that contain embedded validation codes necessary for the proper functioning of the form. Any licensee needing more than 25 lines must copy and paste the original 25 lines as many times as necessary and not create new lines.
- The XML Spreadsheet must be saved with an .xml extension, not the .xls or .xlsx extensions that the Excel program will assign by default.
- Licensees must not change or delete any data in Cell B1.
- Information must be entered in all capital letters.

The new version of the form also retains the requirement that each attributable interest holder secure an FRN. The instructions state that where, after a good faith effort, a licensee is unable to secure an interest holder's social security number, which is needed to complete the FRN registration process, a button on the form will allow the licensee to secure a Special Use FRN. The instructions to the form state that the Special Use FRN can only be used for the Biennial Ownership Report filing, and not for any other filing, such as a post-consummation Ownership Report filing.

The Commission's May 2009 Order also adopted November 1 as a new uniform reporting date for all commercial stations nationwide, regardless of the station's license renewal filing anniversary (the deadline previously used by the FCC). Because the original November 1, 2009 filing requirement was stayed while the form was revised, the reports filed by the new July 8, 2010 deadline must still reflect the ownership data as it existed November 1, 2009.

The substantial difference in time between the new filing deadline and the time for which ownership information is being reported leads to some interesting questions. For example, where a station has been sold since November 2009, should the report be filed under the name of the new licensee or the prior licensee? If it is to be filed by the new licensee, how will the FCC deal with the fact that the new licensee may not have any personal knowledge of the prior licensee's November 2009 ownership structure? These questions may be answered by a follow up public notice from the FCC, but if not, we will be pursuing them with the FCC's staff.

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

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