

Feb. 1 Deadline for Noncommercial Broadcast Stations to File Biennial Ownership Report

01.19.12 By Brendan Holland

Affected Station Groups:

- **Noncommercial Radio Stations in: Arkansas, Louisiana, Mississippi, New Jersey and New York**
- **Noncommercial TV Stations in: Kansas, Nebraska and Oklahoma**

By Feb. 1, 2012, **noncommercial radio** stations in **Arkansas, Louisiana, Mississippi, New Jersey and New York**, and **noncommercial television** stations in **Kansas, Nebraska and Oklahoma**, must prepare and file electronically a Biennial Ownership Report with the Federal Communications Commission (FCC) using the current noncommercial FCC Form 323-E.

Please note, this filing date applies only to **noncommercial** radio and TV stations in the states listed above. The FCC has revised its rules regarding the reporting of ownership interests for *commercial* broadcast stations, as well as revised the commercial Ownership Report, the FCC Form 323. Accordingly, commercial stations now file their biennial ownership reports on a single unified date, which will next occur on Nov. 1, 2013.

Noncommercial stations, on the other hand, continue to follow the previous rules for the filing of Biennial Ownership Reports on FCC Form 323-E, which has not been revised. The FCC has commenced a rule making proceeding to potentially change some of the ownership reporting rules for noncommercial licensees, but meanwhile, noncommercial broadcast stations continue to follow the existing rules.

Accordingly, as Feb. 1, 2012, marks the two-year anniversary of the filing of a Biennial Ownership Report for noncommercial stations in the above-referenced services and states, those stations must now file a Biennial Ownership Report to update their ownership information or affirm the information currently on file. Ownership Reports are filed every other year to report on changes in the licensee's ownership and update the information requested by the form. Ownership information must be provided for all attributable owners of the licensee (see below).

Other information to be noted in the report would include changes in broadcast interests of the licensee, and changes in the list of documents that need to be filed with the Commission pursuant to Section 73.3613 of the rules. Those documents are described in [Attachment A](#), but principally deal with agreements that could affect future ownership, or ones that in some way restrict the operations of the licensee. Examples of such agreements include Options, Rights of First Refusals, Stock Pledge Agreements, Security Agreements that place significant restrictions on the operations of the licensee, and programming agreements such as Time Brokerage Agreements or Television Network Affiliation Agreements.

Note that stations that are co-owned with stations in other states can elect a unified Ownership Report filing date, as long as the licensee has at least one station in a state with that reporting date. In that case, the licensee will file its report on every other anniversary of the renewal filing of the stations in the state it elects. If the licensee of a station in one of the states or territories listed above has made the election to file a consolidated report for all of its stations, and notified the Commission of that election, there is no additional obligation to file an Ownership Report on Feb. 1.

Attributable interests

While a full discussion of who has an attributable interest in a licensee would take many pages, there are some generalities that can be summarized here.

In noncommercial entities, the attributable owners are generally those who make decisions for the entity. In most nonprofit corporations, that would be the company's officers and directors. For other nonprofit entities such as a college or other institution, it would normally be the governing board of the entity.

An Ownership Report is not required for individuals

Under the FCC's Rules, if you hold a noncommercial station's license as an individual, or as a general partnership made up entirely of natural persons (i.e., individuals as opposed to corporations or other business entities), then you are not required to file a biennial Ownership Report. The reason for this is that if there are any changes in the ownership of a licensee owned by an individual or general partnership, prior FCC permission is required. For instance, if an individual adds a second owner, he has created a partnership, requiring approval on an FCC Form 314 (or possibly a Form 316 if the new owner has less than a 50 percent voting interest). Similarly, the FCC takes the common law view that change of partners in a general partnership creates a new partnership, thus requiring prior FCC approval.

Please note, the Commission has changed this rule with respect to commercial stations, such that stations licensed to individuals or to general partnerships made up of natural persons must now file Biennial Ownership Reports. It is not clear whether the FCC will eventually change the rule for noncommercial stations.

Basic questions when preparing the Biennial Ownership Report

If your station's information has changed since the last time you prepared and filed a Biennial Ownership Report, you should review it carefully and make any necessary changes. In particular, you should consider the following basic information as you review the report. While the FCC should be notified when some of this information changes even apart from the ownership filing deadline, the preparation of the biennial report gives the licensee a good opportunity to review the continuing accuracy of all this information.

- Is the licensee's contact information still accurate? If the address of the licensee has changed, that should be reported on FCC Form 5072 when the change occurs. Waiting to report that change until the Ownership Report could mean that important communications from the FCC may be missed.
- Are the call signs and communities of license listed on the form still accurate? Make sure that the actual community of license for each station is reported on the Form, not the market the station may serve.
- Have any of the officers, directors, or other parties directing the management of the licensee changed since the last report?
- Have the voting and equity percentages listed for the shareholders, partners, or members changed since the last report?
- Have any of the names or addresses of the principals changed since the last report?
- Has the station entered into any agreements that need to be filed at the Commission pursuant to Section 73.3613 (see [Attachment A](#))? If so, do the changes need to be listed on the report and filed with the FCC?

Character qualifications

While not actually filed with the Ownership Report, Section 1.65 of the Commission's rules requires that each licensee report to the Commission any adverse legal findings that could affect the character qualifications of a licensee. If there has been an adverse finding of a felony, any antitrust or unfair competition issue relating to media matters, any fraudulent statement to another government agency, or any discrimination matter, then the licensee must file a report with the Commission.

A report must also be filed if any business owned or controlled by an attributable owner is involved in such conduct, or if an attributable owner is directly involved in such conduct at another business. That report is to be filed on the anniversary date of the filing of the license renewal, so a report would be due at the same time as your Ownership Report. If such conduct occurs in the year that a Biennial Ownership Report is not due, then a report would still need to be filed on the anniversary date of the filing of the renewal. For companies with widely disbursed ownership, the licensee should survey its attributable owners to make sure that they have not been involved in such conduct.

Preparing and filing the Biennial Ownership Report

The FCC Form 323-E Ownership Report must be filed with the FCC electronically. Accordingly, the report must be prepared and submitted through the FCC's CDBS filing system, which can be accessed at the following website: www.fcc.gov/mb/cdbs.html.

If there have been no changes in the station's ownership since the last Biennial Ownership Report, the station must still prepare and file a new report; however, the CDBS filing system allows you to utilize information from a prior electronic Ownership Report, which should simplify the completion of the new form. If you do not already have a CDBS filing account, you can create one by following the directions at the FCC's website. In addition to the CDBS account number and password; you will also need the licensee's FCC Registration Number (FRN) and password when you are ready to submit the Form.

For more information about the FCC's ownership rules, or for assistance in preparing and filing your Form 323-E Ownership Report, please contact any of the lawyers in the Davis Wright Tremaine LLP Broadcast group.

Disclaimer

This advisory is a publication of Davis Wright Tremaine LLP. Our purpose in publishing this advisory is to inform our clients and friends of recent legal developments. It is not intended, nor should it be used, as a substitute for specific legal advice as legal counsel may only be given in response to inquiries regarding particular situations.