



May 12, 2009

MEMORANDUM TO CLIENTS

Re: **FCC Makes Changes to Form 323 (Ownership Report)**

The Federal Communications Commission (FCC) has released a Report and Order and Fourth Further Notice of Proposed Rulemaking that expands the scope of information collected by FCC Form 323 and establishes a uniform filing date.

In 1998, the FCC began collecting information on Form 323 regarding the gender and race/ethnicity of individuals with attributable interests in full-power broadcast licensees. The purpose for gathering this information was to determine the current state of minority and female ownership and track the success of any Commission efforts to promote such ownership in accordance with its statutory mandate under Section 309(j) of the Communications Act.

The Commission has now concluded that its current data collection efforts are not adequate for determining the state of minority and female ownership, and therefore it has adopted a number of changes to the requirements for filing of Form 323. The changes are as follows:

- ***More licensees must now file Form 323.*** LPTV stations (including Class A stations) as well as commercial broadcast stations licensed to sole proprietors and partnerships must now file the Form 323. These entities previously were exempted from the filing requirement.
- ***More ownership interests must now be reported on Form 323.*** Single majority interests and interests held in eligible entities that would be attributable but for the higher Equity/Debt Plus threshold must now be reported.¹ These interests were previously exempt from reporting.
- ***Form 323 must be filed by all parties on a common biennial filing date, beginning November 1, 2009.*** All licensees must file the revised Form 323 no later than November 1, 2009, with all information on the filing current as of October 1, 2009. A new Form 323 must be filed every two years thereafter with information on the form current through October 1 of the filing year. For subsequent filings after the

¹ Under the Commission's "equity/debt plus" (EDP) standard, interests are attributable if, when adding together both the equity and debt, the interest exceeds 33 percent of the total asset value of a broadcast station licensee or other entity subject to the Commission's broadcast multiple ownership rules and the interest holder also: (1) holds an attributable interest in another media outlet in the same market that is subject to the multiple or cross-ownership rules, or (2) supplies over 15 percent of the total weekly broadcast programming hours of the station in which the interest is held.

initial November 1, 2009 submission, licensees that had not experienced any ownership changes will be able to simply recertify their previous filing on the FCC's CDDBS system. Previously, licensees filed their biennial ownership reports based on the anniversary dates of their license renewal application submissions.

- ***The mechanics of Form 323 filings will require additional information and effort.*** First, in cases where a licensee must file multiple ownership reports to report holders of attributable interests, each filing entity will be required to identify the FRN of the entity below it in the ownership chain. Second, Form 323 will be altered so that all ownership data is entered in a way that can be electronically searched, aggregated, and cross-referenced.
- ***The Media Bureau will begin auditing Form 323 filings.*** Beginning with the November 1, 2009 Form 323 filings, the Media Bureau will begin conducting random audits of Form 323 submissions. It is not clear how these audits will operate, and what level of engagement, if any, the Bureau will have with individual stations during the audits. What is clear is that these audits will *not* result in additional penalties beyond those already permitted by FCC rules. As always, willful false statements on the Form 323 will remain punishable by fine and/or imprisonment, revocation of a station's license, and/or forfeiture.

We would be pleased to respond to any questions regarding the foregoing.

FLEISCHMAN AND HARDING LLP