



MEMORANDUM TO CLIENTS

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Political Broadcasting Rules Q&A: Updated for 2019

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With primaries in some states happening as soon as March, and the Democratic primary contest already hotly contested by a large field of candidates, the 2020 election cycle is certain to be one of the most contentious and hard-fought in recent memory – as well as one of the longest. While far more limited in scope, 2019 elections in some states, and many localities are also rapidly approaching. For all stations, **now** is the time for broadcasters to review their systems to ensure that they will comply with the FCC's political advertising requirements. Now that all broadcast stations are required to place political files online, it is increasingly important for all radio and television stations to ensure compliance with the political broadcasting rules – not just the substantive rules but the recordkeeping portions as well. A little advanced planning can go a long way in making this (seemingly perpetual) election season run smoothly (and, ideally, profitably) for your station.

The FCC's political broadcast rules generally cover: 1) who is entitled access to broadcast advertising time; 2) how much they pay for that time; and 3) disclosure and record-keeping requirements. We'll look at each of those areas below but we highly encourage stations with questions to contact their communications counsel. The FCC's rules and policies are fairly complicated when it comes to political broadcasting, and the answers to many questions are highly dependent on the specific facts at hand.

Central to understanding and complying with the political rules is the concept of a candidate's "use" of a broadcast station. As we will delve into in greater detail below, the "use" of a broadcast station by a candidate triggers several potential obligations. Therefore, it is important to know as a threshold matter: a) when someone is a candidate and b) when they are considered to have made a "use" of a station.

Who is a "candidate"?

To be considered a candidate a person must:

- have announced his/her intention to run;
- be qualified to hold the office he/she is running for; and
- be qualified to be on the ballot or be eligible to be a write-in candidate.



What is a "use"?

In general, a "use" is any positive appearance of a candidate whose voice or likeness is either identified or is readily identifiable. The appearance in question does **not** need to be approved by the candidate or the candidate's committee to be considered a "use" – third-party ads may trigger a "use," as can appearances in entertainment programming. The candidate's appearance on the station must be "positive," so a third party attack ad against a candidate would not be considered a "use" by that candidate. It is worth noting that in this context, "positive" really means something closer to "neutral" or "non-negative," so even an appearance in entertainment programming that would generally be considered neutral in regards to the candidate's campaign would be treated as a "use."

Candidate appearances in certain types of programming do not count as "uses." For example, appearances by a candidate on "*bona fide*" news, news interviews, or documentary programs are not considered "uses." Thus, coverage of a "*bona fide*" news event, such as a debate or candidacy announcement, does not constitute a "use" even if the candidate is featured prominently in that coverage.

What candidates are entitled to "reasonable access" and what access is "reasonable"?

The FCC's rules (and the Communications Act) provide that "legally qualified" candidates for **federal** offices (*i.e.*, President, Vice President, House of Representatives and Senate) are entitled to "reasonable access" to commercial broadcast stations for the broadcast of advertising. This means that, as a general rule, commercial broadcasters **must** make time available to candidates for federal offices. Demands for "reasonable access" can only come from a candidate or his/her authorized campaign committee. Third-party advertisers and "issue advertisers" do **not** have reasonable access rights and, as discussed below, neither do candidates for state and local offices.

Although a federal candidate's reasonable access rights en-

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sure access to a broadcast station's airtime, federal candidates do **not** necessarily have the absolute right to demand time during specific programs or day-parts. In addition, stations may choose to exclude political advertising from news programming. But, beyond those limited exceptions, the station must offer federal candidates "reasonable" access to the station's full schedule.

Precisely what degree of "access" is "reasonable" is not always easily determined. Since federal candidates enjoy considerable discretion to tailor their campaigns as they see fit, stations should avoid setting flat limits on the total amount or types/classes of time available to federal candidates. Questions about what is "reasonable" in any given circumstance may need to be referred to legal counsel. In any event, given the clear requirement that federal candidates be afforded "reasonable access," stations should do some advanced planning about the amount of time likely to be required to reasonably accommodate political advertising. (For such planning, it is obviously wise to consider the number of candidates competing for the various federal offices, since a "use" by one candidate can trigger "equal time" claims by others running for the same office.)

In contrast to federal candidates, candidates for state and local office (*e.g.*, mayor, county council, school board, etc.) are not entitled to "reasonable access." Thus, a station can choose not to sell any time to any candidate for a particular state or local office. BUT if the station does sell time to one candidate for a particular non-federal office, other candidates for that office will be entitled to insist on "equal opportunities" (see below). If a large number of candidates are vying for one particular non-federal office, selling time to one candidate for that office could result in multiple demands for "equal time" from that candidate's competitors, which could in turn seriously reduce the station's commercial inventory. That being a possibility, stations should consider, in advance, the non-federal political races for which advertising time will be made available. Once that determination has been made, any restrictions should be included in the station's disclosure statements (see below) – and consistently applied.

What are "equal opportunities"?

All candidates for the same office must be treated in an equal manner. This rule – known as the "equal opportunities" or "equal time" rule – applies to **both** federal **and** non-federal (*i.e.*, state and local) candidates; it is **not** restricted to a limited period of time before the election. The rule is triggered by a "use" of a station by a legally qualified candidate. Once a legally qualified candidate for a given office makes a "use" of a station, all other legally qualified candidates for the same office are entitled to the opportunity to make equal use of the station. That is, the station must make the same amount and kind of time available at the same cost.

In order to take advantage of this rule, a candidate seeking equal time must request it within seven days of the opposing candidate's triggering "use" of the station. A station is not obligated to notify opposing candidates when a "use" is made but, as described below, it must document all uses in its political files, which are now part of the station's online public inspection file. If a station does not post such documentation to its public files promptly, the seven-day deadline for equal time claims may be extended.

The equal opportunities rule can become a serious issue when on-air talent wishes to run for office. All of that person's appearances on the station after becoming "legally qualified" count as free uses of the station. Similarly, if an actor or other entertainment personality becomes a legally qualified candidate, the broadcast of movies, TV shows or other material in which the actor/personality is identifiable would also count as free uses. Such uses would obligate the station to give equal amounts of free time to all opposing candidates.

Equal time claims can also become a serious issue in the final days before an

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election, when some stations may need to monitor their available commercial inventory closely to ensure that they accommodate equal time demands from candidates.

What is “lowest unit charge” and when does that apply?

Perhaps the most troublesome question for many stations is the question of the rate that may be charged for political advertising. All legally qualified candidates for any political office – state, local or federal – are entitled to the “lowest unit charge” (LUC) (or “lowest unit rate”) during the 45 days before a primary election and the 60 days prior to a general election. (The 45/60 day periods are often referred to as “LUC windows.”) For the 2019 general election the window opened on September 6, and for the November 4, 2020 general election, the window will open on September 3.

In general, the LUC is the lowest rate charged to any other advertiser for the same class and amount of time for the same time period, including all discounts and bonus spots. As a practical matter, political candidates are to be treated as the “most favored” advertiser during the LUC windows. This favorable treatment is available only to candidates or their authorized campaign committees for “uses” by the candidate; it is **not** available to any third-party advertisers, including political action committees, citizen groups and the like. As explained below, federal candidates also must make an affirmative certification that their advertisements meet certain criteria (and the advertisements must, in fact, meet those criteria) to qualify for the LUC.

Determining the exact amount of the LUC for any particular candidate order can be tricky. It depends on what the candidate is buying (*e.g.*, ROS vs. fixed position, preemptible vs. non-preemptible, etc.). A station must also take into account other factors that affect advertising rates charged to its non-political customers, such as day-part, discounts given for large purchases, the value of “bonus spots,” etc. Most stations will have more than one LUC depending on the various classes of time sold on the station during the LUC window.

Because the calculation of the LUC can be complex, stations should begin considering the issue well in advance of the LUC window, and should consult with legal counsel as necessary.

What are “Disclosure Statements” and are stations required to have them?

A disclosure statement is a written summary of the station’s advertising rates and policies. Ordinarily, it should describe the classes of time available to advertisers, the LUC for each class, any make-good policies, and policies on the preemption of ads, as well as any other sales practices or information that would be relevant to advertisers. The station should provide the disclosure statement to any candidate,

agency, or group requesting political time (inside or outside of the LUC window). Of course, disclosure statements should be updated as often as necessary during the election season to ensure accuracy and stations should be sure to comply with any policies set forth in the statements.

The FCC’s rules do **not** require that stations prepare written disclosure statements. Nevertheless, disclosure statements provide both station sales staffs and prospective advertisers a clear guide to the factors relevant to any advertising purchase; they also tend to limit after-the-fact disputes. In addition, the process of preparing a complete disclosure statement forces the station to consider and resolve, in advance of the election season, several practical questions (*e.g.*, whether to decline to sell time to candidates for certain non-federal offices).

Once the political advertising season begins in earnest, questions and controversies can arise quickly. Those questions and controversies can be complicated and require careful analysis. Don’t hesitate to contact your legal counsel.

What sponsorship identification requirements apply to political ads?

All political advertising must include some form of sponsorship identification. Specifically, when a political ad is run, there must be a statement that the ad was “paid for” or “sponsored by” the group or person actually purchasing the ad time. If the advertiser provides the station with a pre-produced spot that does not include the required sponsorship ID, the station must add this language on its own accord (if necessary, it can do so over the content of the spot – no free time need be provided, and this type of addition is exempt from the usual non-censorship rules that apply to candidate advertising). For television ads, the statement must be visual, run for at least four seconds, and occupy at least four percent of the screen.

Ads for federal candidates also must meet a variety of additional requirements imposed by the Bipartisan Campaign Reform Act (BCRA). If the ad refers to an opposing candidate, BCRA requires that a statement be spoken by the candidate who is purchasing the time and that the ad identifies the candidate and the office sought. BCRA requires that the candidate state that: a) he or she approves the broadcast,

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and b) he or she (or his/her campaign committee) paid for the ad. Television ads must also display a clearly identifiable image of the candidate.

BCRA also requires that federal candidates, or their authorized committees, provide a broadcast station with a written certification stating whether or not the advertisement refers to another candidate for the same office. If it does refer to another candidate, the certification must state that the ad will comply with the “stand by your ad” announcement requirements as described above. This certification must be provided to the broadcast station when the time is purchased. If the certification is not provided, the station is not obligated to give the candidate the LUC.

If the ad advocates the election or defeat of a specific candidate and is paid for or sponsored by a third party, the ad must clearly indicate whether it was or was not authorized by a candidate. That is, the sponsor identification statement must include both the “paid for” or “sponsored by” language *and* the “authorized by” or “not authorized by” a particular candidate or campaign committee language. If it is not authorized, there must be an additional audio statement that the name of the entity purchasing the ad “is responsible for the content of this advertising.” This is in addition to relevant state law, which may require more.

Can a station revise the content of a political “use”?

When a legally qualified candidate for office makes a “use” of a station, the station is **NOT** permitted to censor or otherwise alter the candidate’s message **in any way** (other than by adding a missing sponsorship identification). While some political uses may contain content which the station might ordinarily choose not to broadcast, the station cannot alter the use at all. However, the station is protected from any liability that may result from the candidate’s message. This “no censorship” provision applies **only** to candidate advertising and **not** to third-party advertising. Thus, stations need to take potential liability into account when deciding whether to accept such third party ads.



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What records need to be kept with respect to political advertising?

The FCC’s political file rule requires stations to maintain, and allow public inspection of, records of all requests for political time. With the advent of the online public file requirements now applicable to all broadcast stations, these materials will now be available for review by anyone with internet access. The records placed in the political file must include details of:

- the nature and disposition of all requests;
- the schedule of time provided or purchased;
- the classes of time involved;
- the rates charged; and
- contact information of the purchaser.

In addition to the FCC’s political file requirements, BCRA requires that the broadcaster’s public file contain all requests for time by anyone (including non-candidates) who seeks to communicate a message that refers either to: 1) a legally qualified candidate; or 2) any election to federal office; or 3) a national legislative issue of public importance. Because the political file is often reviewed by parties seeking “equal opportunities,” it is important for stations to keep the political file up-to-date at all times. (**Note:** since the political file is available online for inspection by the public, care should be taken to remove or redact any confidential information, such as credit card or check numbers that might otherwise be included in the materials placed in the file.)

As noted above, this is a thumbnail overview of the political broadcasting rules. We also invite readers to review our firm’s [archived webinar](#) from early September that was presented with the FCC’s Bobby Baker on the political broadcasting rules. In the coming weeks and months, stations should review the rules in detail and confirm that their disclosure statements and station policies in place are up-to-date. As election season heats up, station management should ensure that all sales personnel are well-informed about the substantive rules and the recordkeeping obligations related to political broadcasting.

FCC Announces Extension of the Biennial Broadcast Ownership Report Filing Deadline

The FCC has announced in an [Order](#) published on September 17, 2019 that it will delay the filing deadline to January 31, 2020, for broadcast ownership reports (two months later than the original deadline). This applies to licensees of commercial and noncommercial AM, FM, TV, Class A, and Low Power Television (LPTV) stations, as well as entities with attributable interests in such stations. The purpose of shifting the filing window is to allow the FCC time to make the appropriate improvements to the Form 323/323-E report as it relates to the electronic filing system. The Order also delays the opening of the window to file biennial ownership reports from October 1, 2019 to November 1, 2019.

Filers take note, the new FCC Order **does not** shift the required “as-of” date of the information reported on Form 323/323-E biennial ownership reports. The information reported on this form must still reflect ownership interests existing on October 1, 2019.

This order will provide filers with additional time to prepare their forms, as has been the case for past years’ filing of biennial ownership reports.

New Developments in Broadband – September

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Capitol Hill

As the year’s legislative calendar winds down, a large new infrastructure spending program with dedicated funding for broadband appears dead. Attention now is on smaller but important pieces of bi-partisan broadband legislation such as the [Secure and Trusted Communications Act](#), introduced in the House of Representatives on September 24. The bill would prohibit the use of federal funds to purchase communications equipment or services that pose a national security risk, and appropriates \$1 billion for the Federal Communications Commission (“FCC” or the “Commission”) to establish a \$1 billion “Secure and Trusted Communications Reimbursement Program” to assist small communications providers in removing and replacing compromised equipment (so-called “rip and replace”). Broadband mapping also continues to be a focus with a number of bills circulating in both the House and Senate.



Congress has reportedly authorized \$550 million in United States Department of Agriculture (USDA) ReConnect funding in 2019 (as compared to \$600 million in 2018). Meanwhile, the Fiber Broadband Association [has released a study](#) finding that half of all households will be passed by all-fiber networks by 2025 and that it will cost \$52 billion to reach 80% and another \$18 billion to reach 90% by 2029. The study is [available here](#) (registration required).

In September Senator John Thune (R-SD) (chairman of the Subcommittee on Communications, Technology, Innovation, and the Internet) held a field hearing on rural broadband at the Southeast Technical Institute, in Sioux Falls, SD. The witness list and testimonies [are available here](#). A recording of the event is available for streaming at the link.

National Telecommunications and Information Administration (“NTIA”)

The October NTIA webinar is on “[Broadband’s Role in Revitalizing Main Street](#)” and will be held on Wednesday, October 16. The September webinar on “Measuring the Economic Impact of Broadband” was held on September 18, 2019, with speakers from Purdue and Oklahoma State; more [information here](#). Information from past webinars is available in the [webinar archive](#).

The [BroadbandUSA Newsletter for September](#) includes notable state news from Arkansas, Maine, North Carolina, and Wisconsin (among others). Of particular note from the August newsletter (available [here](#)) is a [link to a recent report by](#)

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[the Federal Reserve Bank of Kansas City on the digital divide](#). On that note, the Federal Reserve Bank of Richmond is hosting a workshop entitled [“Investing in Rural America” on October 2, 2019, in Harrisonburg, VA](#), with a morning session on solving the last mile broadband problem featuring a distinguished panel including Karen Hanson, from NTIA, and Harold Feld from Public Knowledge.

[NTIA now hosts a searchable database](#) featuring 50 federal broadband funding opportunities across a dozen federal agencies. The NTIA [Broadband USA main page](#) (scroll down) features a state-by-state summary of state broadband programs.

USDA – Rural Utilities Service

ReConnect Program

A map showing all proposed and approved ReConnect projects is available [here](#). We are expecting a new ReConnect funding opportunity announcement later this year with funding expected to be comparable to last year’s \$600 million. USDA will have a day-long workshop on the ReConnect program in Casper, WY on October 10, 2019 ([registration link](#)). The workshop will provide an overview of the ReConnect application process.

Precision Agriculture

In April, USDA issued a [report on rural broadband infrastructure focused on next-generation precision agriculture](#). Meanwhile, the [FCC announced](#) the formation of a federal advisory committee on precision agriculture.

Federal Communications Commission

The agenda for the Commission’s October 25 Open meeting has not yet been posted. The September 26 FCC Open meeting included an order allocating \$950 million to rebuild and harden communications infrastructure in Puerto Rico and the U.S. Virgin Islands, items on the upcoming 3.5 GHz auction and access fee arbitrage, and several broadcast-related items. The meeting video and links to all items considered are available [here](#).

T-Mobile/Sprint Merger Approval

On August 14, 2019, Commissioner Pai [announced](#) the circulation of a draft order approving the T-Mobile/Sprint Merger. Meanwhile, an investigation by the Oregon Public Utility Commission has uncovered problems with Sprint’s compliance with the Lifeline program, [leading the FCC to announce](#) (on September 24) that 885,000 of Sprint’s Lifeline customers – 30% of its Lifeline subscriber base – were apparently violating the “non-usage” rule (requiring lines to show service usage at least once per month). Whether this will impact the Commission’s merger decision is unclear.

Universal Service Fund (“USF”) Spending Cap Notice of Proposed Rulemaking (NPRM)

The [USF spending cap NPRM](#) proposes an overall spending cap to all four universal service programs in the aggregate, in addition to any program-specific caps or budgets that currently exist. Initial comments were filed July 29 and replies August 26 ([unofficial compilation of principal comments here, replies here](#)). Most recently, 30 Democratic Senators led by Sen. Ed Markey (D-MA) have [sent a letter to Chairman Ajit Pai](#) opposing the cap. Meanwhile, on September 12, the [Commission announced](#) the contribution factor for next quarter will reach 25% – a record high – with the increase driven increasingly by an eroding contribution base rather than programmatic spending.

\$100 Million Connected Care Pilot Program

The Connected Care Pilot program continues to move forward at the FCC with [the release of the notice of proposed rulemaking](#). The proposed pilot would award an unspecified number of projects across the country funding to defray the broadband costs associated with providing “connected care” to low-income Americans and veterans. Connected care is generally remote patient monitoring and telehealth services that provide care for chronic health conditions to patients in their homes. Connected care is increasingly being deployed to address diabetes management, opioid dependency, high-risk pregnancies, pediatric heart disease, mental health conditions, and cancer. Initial comments on the NPRM were due August 29, 2019, with replies due September 30. An unofficial compilation of initial comments are [available here](#).

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Broadband Deployment and Mapping

USTelecom and major industry groups have filed [a summary of their pilot efforts](#) (in Virginia and Missouri) to establish new mapping protocols. The pilot showed that as many as 38% of additional rural locations in Virginia and Missouri are unserved by participating providers in census blocks that would have been reported as served in today's FCC Form 477 reporting approach. Filings in the FCC's newly established mapping docket (Establishing the Digital Opportunity Data Collection, WC Docket No. 19-195) are available [here](#).

Rural Digital Opportunity Fund

The Commission in August approved an NPRM for a proposed \$20.4 billion Rural Digital Opportunity Fund (RDOF). The new fund would use reverse auctions to allocate a portion of High-Cost program universal service funding (*i.e.*, the Connect America Fund (CAF)) over a ten-year period to deliver a minimum of 25/3 Mbps broadband service to 4 million rural homes and businesses. Priority would be given to faster speeds. Phase I of the RDOF would allocate \$16 billion for "wholly unserved" census blocks through a multi-round auction. Phase II would allocate the balance to partially unserved census blocks and wholly unserved areas not awarded in Phase 1. The \$20.4 billion in RDOF funding is coming out of current High-Cost support mechanisms such as unused or termed-out CAF funding and the never-deployed Remote Areas Fund – with the money targeted to eligible telecommunications carriers (ETCs). The RDOF NPRM is available [here](#). Initial comments were filed September 20 and an unofficial compilation is available [here](#); replies are due October 21.

E-rate

Texas Carriers' E-rate Rulemaking Petition on Overbuilding

On May 30 the [FCC sought comment](#) on [a petition for rulemaking in the E-rate program](#) filed by several small Texas telcos that claimed E-rate rules are supporting improper overbuilding of their networks. [Comments were filed](#) on July 1 with [replies filed](#) on July 16. At stake is whether the FCC should open a rulemaking to consider changes to program rules governing fiber construction. Dueling filings by interested parties continue, most notably from the [Cochise County, New Mexico, school superintendent](#) responding to [an accusatory letter from Commissioner Michael O'Rielly](#).

Category 2 Budgets

On July 17, the NPRM proposing to make Category 2 (Cat2) budgets a permanent feature of the E-rate program [was published in the Federal Register](#) (establishing comment deadlines of August 16 and September 3). This NPRM was expected after the Wireline Bureau issued its report earlier this year finding that the Cat2 budget approach was working well. The 2014 E-rate Modernization Order had adopted a five-year interim approach for the budget approach – with that five-year period over this year. The NPRM also requests comments on further ways to improve E-rate administrative burdens. Note some commenters are requesting the Commission increase the per-student budget for Cat2 to \$250 from the current \$159. Some commenters also support adding cybersecurity as an eligible Cat2 service. ([Cox Communications](#) and [Aruba](#) have made similar requests in recent comments to the FCC's annual Eligible Services List.)

Rural Health Care Program

2019 Funding Demand

The Universal Service Administration Company (USAC) has not yet published gross funding demand information (the gross number of funding applications) even though this information is known in July after the annual application window closes. Failure to release this information fuels speculation that demand again exceeds the potentially available funding of \$677 million ([\\$594 million plus \\$83 million in rolled-over unused funding in prior years](#)).

Rural Health Care (RHC) Reform Order

The Commission on August 20 released a comprehensive [Report and Order in the Rural Health Care program](#) that re-

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flects the most thorough reform and restatement of the RHC program since its inception in 1997. While many of the new rules were expected and reflect needed improvements, the Commission made fundamental and controversial changes to the RHC Telecom Program and instituted a new funding prioritization system. Some of the new rules are scheduled to go into effect for the next funding year (FY 2020), while others will wait until FY 2021. The next procedural step is a formal publication of the new rules in the Federal Register with that publication date starting the clock on petitions for reconsideration or clarification, or judicial appeals – all of which are possible.

Net Neutrality

[On October 1, the DC Circuit upheld in significant part the FCC's 2017 repeal of net neutrality rules](#), as well as the so-called transparency rule which requires carriers to disclose changes in their terms of service. The decision in [Mozilla vs. FCC](#) was not a complete win for the FCC however, as the Court remanded several minor issues to the FCC and reversed the FCC on blanket preemption of state net neutrality rules.

Federal Courts:

- [Mozilla Corporation, et al. v. FCC](#) (DC Circuit Court of Appeals challenge to the 2017 Restoring Internet Freedom Order) – Final briefs have been filed and oral arguments occurred in early February 2019.
- [Eastern District of California](#). On October 3, 2018, SB 822, the California Internet Consumer Protection and Net Neutrality Act of 2018 was [challenged in federal district court in California by the Department of Justice \(DOJ\)](#) and several industry groups ([in a separate suit](#)). DOJ sought a preliminary injunction but on October 26, 2018, the court agreed to a request by all parties to stay the case after California agreed not to enforce the law pending outcome at the DC Circuit decision on the FCC's "Restoring Internet Freedom" order (*Mozilla v. FCC*).
- [Vermont District Court](#). On October 18, 2018, the same industry groups – American Cable Association (ACA), CTIA - The Wireless Association (CTIA), NCTA - The Internet & Television Association (NCTA), and USTelecom [challenged Vermont's net neutrality law and executive order](#) in federal district court there and in January 2019 [sought summary judgment](#). The [parties in March 2019 agreed to stay further proceedings](#) pending a decision in *Mozilla v. FCC*.

States

In California, a dispute has erupted about whether the state Public Utilities Commission (PUC) has the authority to study the affordability of broadband services in the state. Cable and telecom providers are arguing the PUC has no jurisdiction because broadband is an "information service" and not a public utility. This debate is an obvious byproduct of the FCC's 2017 Restoring Internet Freedom decision.

The National Conference of State Legislators (NCSL) features a state by state summary of net neutrality efforts for 2019 [here](#) (still not updated since May 6, 2019).

The agenda for the FCC's next monthly open meeting on October 25 will be available here.

Upcoming FCC Broadcast and Telecom Deadlines for October – December

Broadcast Deadlines:

October 1, 2019

License Renewal Applications – Applications for renewal of license for radio stations located in Florida, Puerto Rico, and the Virgin Islands must be filed in the Commission’s Licensing and Management System (LMS). These applications must be accompanied by Schedule 396, the Broadcast Equal Employment Opportunity (EEO) Program Report, also filed in LMS, regardless of the number of full-time employees.



Radio Post-Filing Announcements – Radio stations licensed in Florida, Puerto Rico, and the Virgin Islands must begin broadcasts of their post-filing announcements with regard to their license renewal applications on October 1. These announcements then must continue on October 16, November 1, November 16, December 1, and December 16. Once complete, a certification of broadcast, with a copy of the announcement’s text, must be posted to the online public file within seven days.

License Renewal Pre-Filing Announcements – Radio stations licensed in Alabama and Georgia must begin broadcasts of their pre-filing announcements with regard to their applications for renewal of the license. These announcements must be continued on October 16, November 1, and November 16.

EEO Public File Reports – All radio and television station employment units with five (5) or more full-time employees located in Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, the Mariana Islands, Missouri, Oregon, Puerto Rico, the Virgin Islands, and Washington must place EEO Public File Reports in their online public inspection files. For all stations with websites, the report must be posted there as well. Per announced FCC policy, the reporting period may end ten days before the report is due, and the reporting period for the next year will begin on the following day.

October 10, 2019

Children’s Television Programming Reports - For the last time, all commercial television and Class A television stations must file electronically the third quarter 2019 children’s television programming reports with the Commission. These reports then should be automatically included in the online public inspection file, but we would recommend checking, as the FCC bases its initial judgments of filing compliance on the contents and dates shown in the online public file. The Commission has changed the requirement to an annual filing, but that change is not effective until after the filing of the third quarter 2019 reports. Comments are due for the Office of Management and Budget (OMB) consideration of the new annual reports by October 7, 2019.

Commercial Compliance Certifications - For all commercial television and Class A television stations, a certification of compliance with the limits on commercials during programming for children ages 12 and under, or other evidence to substantiate compliance with those limits, must be uploaded to the online public inspection file. As with the children’s TV programming report, the FCC has acted to change this filing requirement to be an annual rather than a quarterly obligation, but the effective date of the change must wait for OMB approval.

Website Compliance Information - Television and Class A television station licensees must upload and retain in their online public inspection files records sufficient to substantiate a certification of compliance with the restrictions on display of website addresses during programming directed to children ages 12 and under. Again, the effectiveness of the FCC action changing the filing requirement to specify annual rather than quarterly filing is awaiting OMB approval.

Issues/Programs Lists - For all commercial and noncommercial radio, television, and Class A television stations, a listing of each station’s most significant treatment of community issues during the past quarter must be placed in the station’s online public inspection file. The list should include a brief narrative describing the issues covered and the programs which provided the coverage, with information concerning the time, date, duration, and title of each program.

Class A Television Stations Continuing Eligibility Documentation – The Commission requires that all Class A Television Stations maintain in their online public inspection files documentation sufficient to demonstrate that the station is continuing to meet the eligibility requirements of broadcasting at least 18 hours per day and broadcasting an average of at

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least three hours per week of locally produced programming. While the Commission has given no guidance as to what this documentation must include or when it must be added to the public file, we believe that a quarterly certification which states that the station continues to broadcast at least 18 hours per day, that it broadcasts on average at least three hours per week of locally produced programming, and lists the titles of such locally produced programs should be sufficient.

October 15, 2019

Children's TV Programming – Support for Educational and Informational (E/I) Programs on Other Stations - Reply comments are due in response to the FCC's Further Notice of Proposed Rulemaking (FNPRM), which seeks to further revise the children's television programming rules and policies to establish standards that would give broadcasters greater flexibility to meet their obligation to serve the educational and informational needs of children, at least in part, by supporting educational and informational programming aired on other stations in the market. This option has historically been available but, without standards, has not been useful to broadcasters.

Closed Captioning - Comments due in response to the FCC's Public Notice (CG Docket 05-231, DA-19-776A1) requesting comments on a Petition for Declaratory Ruling and/or Rulemaking on Live Closed Captioning Quality Metrics and the Use of Automatic Speech Recognition Technologies by Telecommunications for the Deaf and Hard of Hearing, Inc.

October 30, 2019

Closed Captioning - Reply Comments due in response to the FCC's Public Notice (CG Docket 05-231, DA-19-776A1) requesting comments on a Petition for Declaratory Ruling and/or Rulemaking on Live Closed Captioning Quality Metrics and the Use of Automatic Speech Recognition Technologies by Telecommunications for the Deaf and Hard of Hearing, Inc.

November 4, 2019

EEO Rules and Enforcement – Reply comments are due with regard to the FCC's NPRM requesting comments on how to improve EEO compliance and enforcement.

December 1, 2019

License Renewal Pre-Filing Announcements – Radio stations licensed in Arkansas, Louisiana, and Mississippi must begin broadcasts of their pre-filing announcements with regard to their applications for renewal of the license. These announcements must be continued on December 16, January 1, and January 16.

Radio Post-Filing Announcements – Radio stations licensed in Alabama and Georgia that have filed license renewal applications must begin broadcasts of their post-filing announcements with regard to their license renewal applications on December 1. If the renewal application is not filed until the December 2 deadline, wait until then to begin the post-filing announcements. Either way, these announcements must continue on December 16, January 1, January 16, February 1, and February 16. Once complete, a certification of broadcast, with a copy of the announcement's text, must be posted to the online public file within seven days.

December 2, 2019

License Renewal Applications – Applications for renewal of license for radio stations located in Alabama and Georgia must be filed in the Commission's LMS. These applications must be accompanied by Schedule 396, the Broadcast EEO Program Report, also filed in LMS, regardless of the number of full-time employees.

EEO Public File Reports – All radio and television station employment units with five (5) or more full-time employees and located in Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota, and Vermont must place EEO Public File Reports in their online public inspection files. For all stations with websites, the report must be posted there as well. Per announced FCC policy, the reporting period may end ten days before the report is due, and the reporting period for the next year will begin on the following day.

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Telecom Deadlines:

November 1, 2019

Quarterly Telecommunications Reporting Worksheet (FCC Form 499-Q) – FCC rules require telecommunications carriers and interconnected Voice Over Internet Protocol (VOIP) providers to file quarterly revenue statements reporting historical revenue for the prior quarter and projecting revenue for the next quarter. The projected revenue is used to calculate contributions to the USF for high cost, rural, insular and tribal areas as well as to support telecommunications services for schools, libraries, and rural health care providers. USF assessments are billed monthly.

November 14, 2019

Quarterly Percentage of Interstate Usage (PIU) Reporting and Certification – Prepaid calling card providers (PCCPs) must report the percentage of interstate use factors and associated call volumes to carriers that provide them with transport services. Additionally, PCCPs must file traffic information and a certification signed by a company officer stating that the provider is in compliance with the FCC's PIU and USF reporting requirements.



FHH – On the Job, On the Go



On October 8, Frank Montero will attend and speak at the New Jersey Broadcasters Association board meeting.

On October 12, Frank Montero will attend the George Washington University Law School Alumni Board meeting in Washington, DC.

From October 15-17, Matt McCormick, Frank Montero, and Bob Winteringham will attend the Public Radio Super Regional Conference in New Orleans, LA.

On October 16, Peter Tannenwald will attend the Federal Communications Bar Association's "Meet and Greet the FCC / NTIA Bureau and Office Chiefs Reception," in Washington, DC.

From October 16-18, Jeff Mitchell will attend the SHLB Annual Conference AnchorNets 2019 in Crystal City, VA. He will be moderating a panel on the 17th.

On October 23, Frank Montero will attend the 20th-anniversary celebration of the NAB Leadership Foundation's Broadcast Leadership Training Program, where he is on the faculty in Washington, DC.