

ALERT

Wiley Rein Reminds Clients to Ramp Up for Biennial Ownership Reports

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A recent Federal Communications Commission (FCC or Commission) Order extending the deadline for this year's biennial ownership reports serves as a reminder that broadcasters should familiarize themselves with the process and begin compiling the information necessary to complete the reports. Licensees of all full-power, Class A, and low-power television stations, as well as all full-power commercial AM and FM radio stations—and those with attributable interests in such licensees—are required to submit ownership information to the FCC biennially on FCC Form 323. This year, the reports are due December 2, 2013 (note that this is the Monday following Thanksgiving weekend), and the information provided must be current as of October 1, 2013.

Each licensee must file its own ownership report, and each entity in a licensee's organizational structure that holds an attributable interest must file a separate ownership report for each licensee. To give a simple example, if Licensee X is the licensee for stations A and B, and Licensee X is owned 100% by Holding Co. Z, both Licensee X and Holding Co. Z must file ownership reports. In addition, if Holding Co. Z also owns Licensee Y 100%, Holding Co. Z must also file a separate ownership report for Licensee Y's stations (in addition to Licensee Y's ownership report).

Subject to two major exceptions, the FCC's rules consider the following interests attributable: (1) holders of more than 5% of the voting stock of a corporation; (2) holders of general partnership interests; and (3) holders of limited partnership or limited liability company (LLC) membership interests, unless such interests are "insulated." To qualify as insulated, the partnership or LLC must certify that the limited partner or LLC member is not materially involved,

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directly or indirectly, in the management or operation of the media-related activities of the partnership or LLC.

The major exceptions are the passive investor exception, which allows qualifying investment companies, insurance companies, or bank trust departments to not report holdings of up to 20% of a broadcast station owner's voting stock, and the single majority shareholder exception, whereby if a the majority of the voting stock of a corporate licensee is held by a single individual or entity, other stockholdings need not be reported.

Interest-holders must disclose their name, address, gender, ethnicity, race, citizenship, positional interest (officer, director, member, etc.), FCC Registration Number (FRN), and percentage of votes, equity, and total assets. The reports also call for information pertaining to certain contracts and other instruments relating to ownership, capitalization, and a list of attributable interests in same-market newspapers or other AM, FM, or television stations.

Based on past experience, for many broadcast licensees, completion of the requisite Form 323s is time consuming and not necessarily intuitive. We're glad to assist our clients with the process.