



Broadcast Newsletter

IN THIS ISSUE...

REGULATORY FEES PAYMENTS NOW DUE	1
ADVERTISING DISCRIMINATION AND LICENSE RENEWAL	1
BIENNIAL OWNERSHIP REPORT DEADLINE SET FOR COMMERCIAL STATIONS.....	2
WHEN YOUR ADDRESS CAN COST YOU.....	2
ANOTHER CONSENT DECREE FOR NONCOMMERCIAL RULES VIOLATION	2
INCENTIVE AUCTION UPDATE.....	3
FCC HOSTS LPFM WEBINARS.....	3
FCC REVISES RULES PROTECTING AM STATIONS FROM NEARBY TOWER CONSTRUCTION	3
DATES TO REMEMBER.....	4

REGULATORY FEES PAYMENTS NOW DUE

It's that time of year for commercial stations to pay annual regulatory fees. The FCC's automated filing and payment system, called "Fee Filer" is now available for filing and payment of FY 2013 regulatory fees. Stations need their FRN and password to log in and properly submit payment. Those payments must be received by 11:59 pm EDT on September 20, 2013.

In most instances, regulatory fees increased slightly over last year. Stations should remember to include auxiliary licenses in their payments (an extra \$10 for each). Late filings are subject to a 25% penalty, so paying on time is important.

ADVERTISING DISCRIMINATION AND LICENSE RENEWAL

The FCC has issued what appears to be its first written decision addressing an admitted violation of its policy requiring broadcasters to include non-discrimination clauses in advertising agreements. At license renewal, commercial broadcasters must certify that their advertising agreements do not discriminate on the basis of race or ethnicity and that all such agreements contain non-discrimination clauses.

In the FCC's decision, the licensee of a Class A television station disclosed in its renewal application that it had not come into compliance with the rule requiring advertising agreements to contain non-discrimination clauses until "several months" after the rule went into effect. The FCC's reaction to this disclosure was in a footnote, where it declared that "we will excuse this delay in compliance as a *de minimis* violation on this one occasion but caution the licensee of the importance of continued full implementation of this requirement."

The FCC always has discretion in deciding whether to fine a broadcaster for a rule or policy violation. There might have been a few factors at work in its decision not to do so here. First, the station did not air commercial "spots" but only sponsored text crawls. Second, the FCC simultaneously issued a \$9,000 fine to the station for Children's TV reporting, public file, and incorrect material factual information violations. We surmise that a third reason might be that the FCC's nondiscrimination policy, adopted in 2008, was modified in 2010 to change the originally adopted

“race and gender” language to “race and ethnicity,” leaving at least some question as to the effective date for compliance.

Now is a good time to check your station’s advertising agreements to ensure that they contain appropriate non-discrimination clauses. We doubt the FCC will be so generous in the future.

BIENNIAL OWNERSHIP REPORT DEADLINE SET FOR COMMERCIAL STATIONS

Commercial stations must file a biennial ownership report every two years (or every odd year for those of us looking for easy reminders). So that means that 2013 is an ownership report filing year. The good news is that the FCC is going to give stations more time to file those reports. The FCC has decided to extend the deadline for filing biennial ownership reports from the original November 1, 2013 filing deadline to December 2, 2013. No reports can be filed earlier than October 1, 2013 because that is the “as of” date for information to be reported. That gives commercial stations a 63-day window to file the reports this fall.

Ultimately, the FCC has proposed to make the December deadline a permanent one, but they continue to extend/delay the broadcast ownership rulemaking proceeding where they have proposed that permanent change.

WHEN YOUR ADDRESS CAN COST YOU

Sooner or later, the FCC will want to contact or send a station official correspondence, and when it does, the FCC staff will look up the station’s official mailing address in the FCC’s Consolidated Database System (CDBS). The accuracy of that address is always important, but can become critically so if the FCC is sending the station correspondence that requires a response. Under Section 73.015 of the FCC’s rules, the FCC may require written statements of fact relevant to a determination of any matter with their jurisdiction. Not responding to such a request can put a station in hot water.

A Class A television station in California recently found that out the hard way, when the FCC used its

CDBS address to mail it a letter requesting information from the licensee about its failure to comply with certain public file requirements. When no response from the licensee arrived, the FCC sent a second letter, this time to an address included in one of the station’s recent applications, as well as the CDBS address. The licensee finally responded, explaining that the CDBS address was to the station’s former treasurer. The FCC’s response? A \$6,000 fine because of the licensee’s failure to ensure that FCC correspondence delivered to its address on record would promptly reach the licensee. And that amount was on top of a \$10,000 fine for admitted public file violations. Ouch. It’s never good to get the FCC’s ire up by not responding. Check your CDBS address to be sure it is accurate.

ANOTHER CONSENT DECREE FOR NONCOMMERCIAL RULES VIOLATION

Ten or fifteen years ago, the FCC regularly issued decisions fining noncommercial stations for airing commercial matter. It was common to see at least a half dozen such decisions each year. But in recent years, that has changed dramatically, and to actually see a decision that fines a NCE station is now unusual. Part of the reason for that change is the consent decree. More stations are entering into consent decrees with the FCC to avoid heavier fines. Those decrees, however, do not always provide other broadcasters with a clear picture of the violation at issue. So the downside of the consent decree trend is that it is hard for broadcasters to have any “takeaways” for their day-to-day decision making and operations. Or even worse, the consent decree leaves out just enough detail to raise questions as to what may or may not be permissible.

The FCC’s latest consent decree for noncommercial violations is a good example. The decision states that “the underwriting announcements at issue here may have violated the underwriting laws by using the word “free,” which appears to exceed the bounds of what is permissible and within licensee discretion under the Act and pertinent Commission precedent.” The decision does not provide excerpts from actual underwriting announcements showing how the

word “free” was used. The “may have violated” language stops short of a finding that the broadcaster violated the FCC’s noncommercial policies by using the word “free,” but that is very likely only because of the consent decree context. And without an example, it is impossible to gauge whether the use was a close call, or egregious.

For years, the FCC has taken the position that the word “free” when used in connection with the cost of a product or service is an impermissible reference to price information. Price information includes any indication of savings or value associated with the product. While this decision does include a footnote referring to price information, there is no information provided on the context of how the word was used by the broadcaster. So that leaves us to scratch our heads and conclude that any time a NCE broadcaster considering underwriting copy sees or is inclined to use the word “free,” an internal alarm bell should sound. To the extent the word is in any way related to price (i.e., “interest-free”), it should be stricken. Similarly, if “free” is in any way an inducement to buy, sell, rent or lease (i.e., “six months free service”), it should be stricken. But if “free” is not related to price or an inducement (i.e., describing a living facility as “pet-free”), the word might pass muster, but should still be closely scrutinized to be sure that in the context used, it does not exceed a description of the product or service and become a comparative or qualitative statement.

Whew! Those mental gymnastics make us tired too. We salute those underwriting copy editors that walk the fine line of FCC noncommercial regulation.

INCENTIVE AUCTION UPDATE

The FCC continues to inch closer to a Report & Order on the TV spectrum incentive auctions, expected later this year. As part of those efforts, it continues to hold seminars and conduct various other actions to gather information necessary to adopt auction and repacking procedures.

On August 22, 2013, the FCC held a webinar to discuss the latest version of its TV Study software to be used in performing interference analyses

during the repacking process. We are now on Version 1.2.7 of the TV Study software. One of the latest changes allows cross-border interference studies for Canadian and Mexican stations.

An early August 2013 presentation to the Commission by the Incentive Auction Task Force included a few interesting notes. The Task Force is apparently working “directly” with broadcast and cable industries on transition planning and reimbursement issues, reviewing preliminary findings on cost models, timing, and logistics of the transition, and has begun long-term planning for a Fund Administrator. Next up on the reimbursement front is a planned release of “preliminary reimbursement cost guidelines” for public comment, and a workshop in September on “broadcaster transition and reimbursement processes.” As of this writing, no dates have been announced for the release or workshop. We suspect that a path forward on reimbursement mechanisms has been decided upon, and the release and workshop will present opportunities to understand and shoot holes in the FCC’s gameplan. That seems a little backward, but that’s no different than most of this process to date. All broadcaster eyes should be focused on this process, as the reimbursement mechanisms could well present a “make or break” situation for the future of a station affected by repacking.

FCC HOSTS LOW POWER FM WEBINARS

On August 20, 2013, the FCC hosted its first of two webinars to answer questions about its October 15-29, 2013 Low Power FM (LPFM) filing window. In the first webinar, the FCC staff discussed its LPFM Channel Finder program, how to create a CDBS account, and how to fill out the FCC Form 318 to be filed in the window by new applicants. The second webinar will be held in early October, with details to come. A recorded version of the FCC’s first LPFM webinar is available on the FCC’s website.

FCC REVISES RULES PROTECTING AM STATIONS FROM NEARBY TOWER CONSTRUCTION

The FCC has now clarified its rules for deciding when construction of a new tower can distort the antenna patterns of AM stations, and when tower

owners have to pay for interference remedies. New tower construction is classified as “significant” if distortion of an AM pattern by more than 2 db occurs, and are covered if they are within 3 kilometers (or 10 wavelengths) of the AM tower.

AM stations are also now entitled to a notice from a new tower owner at least 30 days before construction is to begin so that the AM station can study the potential impact. Unbuilt AM station permit holders are not entitled to notice.

The new rules only apply to tower owners owned by other FCC licensees, unless an FCC licensee seeks to operate from a non-FCC licensee owned tower. In that situation, the tower owner would have to comply even though it was not an FCC licensee.

DATES TO REMEMBER

September 1 & 16: TV, Class A & LPTV Stations in Iowa & Missouri: air your PRE-filing announcements

AM & FM Stations in Alaska, American Samoa, Guam, Hawaii, Oregon & Washington: air your PRE-filing announcements.

September 1 & 16, October 1 & 16: All AM & FM Radio Stations in California: air your POST-filing announcements.

All TV, Class A & LPTV Stations in Illinois & Wisconsin: air your POST-filing announcements.

September 20, 2013: 2013 annual regulatory fees due no later than 11:59pm EDT.

October 1, 2013: AM & FM Stations in Alaska, American Samoa, Guam, Hawaii, Oregon & Washington: file your renewal application electronically via Form 303-S. Also file EEO Form 396 with, if applicable, two most recent EEO public file reports. Place current EEO public file report in public file and post copy on station website, if applicable. **NCE Stations Only:** also file biennial ownership report via Form 323-E.

TV, Class A & LPTV Stations in Iowa & Missouri: file your renewal application electronically via Form 303-S. Also file EEO Form 396 with, if applicable, two most recent EEO public file reports. Post current EEO public file report to online public file and post copy on station website, if applicable. **NCE Stations Only:** also file biennial ownership report via Form 323-E.

AM & FM Stations in Florida, Puerto Rico & Virgin Islands: if full time employee threshold is met, complete EEO public file report and place same in public file as well as post on website. **NCE STATIONS ONLY:** also file biennial ownership report via Form 323-E.

TV & Class A TV Stations in Florida, Puerto Rico & Virgin Islands: if full time employee threshold is met, complete EEO public file report and place same in public file as well as post on website.

AM & FM Stations in Iowa & Missouri: if full time employee threshold is met, complete EEO public file report and place same in public file as well as post on website.

TV & Class A TV Stations in Alaska, American Samoa, Guam, Hawaii, Oregon & Washington: if full time employee threshold is met, complete EEO public file report and place same in public file as well as post on website.

October 1 & 16, November 1 & 16: AM & FM Stations in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont: air your PRE-filing announcements.

October 10, 2013: TV, Class A TV, AM & FM Stations (Commercial & NCE): complete 3rd quarter 2013 issues/program lists and place in your inspection file (online for TV and Class A; paper for radio)

TV & Class A Stations (Commercial Only): complete and electronically file FCC Form 398 Children’s TV Programming Report for 3rd Quarter 2013. The report should automatically link to your online public file. Also compile and post to online public file records relating to station’s compliance with children’s TV programming commercial limits.

Class A TV Stations Only: complete and post to online public file records relating to station’s continuing Class A eligibility

October 23, 2013: AM & FM Stations in Arizona, Idaho, Nevada, New Mexico, Utah & Wyoming: complete and post to your public file documents relating to pre- and post-filing broadcast renewal announcements.

TV, Class A & LPTV Stations in Illinois & Wisconsin: complete and post to your online public file documents relating to pre- and post-filing broadcast renewal announcements.

© 2013 Hardy, Carey, Chautin & Balkin, LLP

For more info, contact Joe Chautin, Mark Balkin, or Elise Stubbe.

Phone 985.629.0777

Fax 985.629.0778

www.hardycarey.com

Actual resolution of legal issues depends upon many factors, including variations of facts and applicable Federal laws. This publication is not intended to provide legal advice on specific subjects, rather, it seeks to provide insight into legal developments and issues that we feel could be useful to our clients and friends.

 Hardy, Carey, Chautin & Balkin, LLP
ATTORNEYS AT LAW
1080 West Causeway Approach
Mandeville, Louisiana 70471-3036