



# Broadcast Newsletter

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## ANNUAL REGULATORY FEE DEADLINE IS SEPTEMBER 23<sup>RD</sup>

Have you paid 2014 regulatory fees yet? If not, make sure you do before Tuesday, September 23, 2014, the deadline for all non-exempt broadcast stations to remit their annual regulatory fee to the FCC for the privilege of being an FCC licensee. Stations must use the FCC's online Fee Filer system, paying by credit card, ACH or wire transfer. Check or money order will not be accepted. The amount of your station's annual fee is listed in the Fee Filer system. You'll need your FCC registration number (FRN) and password.

If you do wait until the last minute to get this done, remember that fees must be submitted no later than 11:59 pm Eastern Daylight Time on September 23<sup>rd</sup>. Submissions after that will get hit with a **25% late fee**.

## **NEW TOWER RULES NOT EFFECTIVE YET**

Tower owners have a little more time to become familiar with and prepare for the FCC's streamlined and revised tower regulations. Though adopted in early August 2014, the rules do not go into effect until 30 days after the FCC publishes a notice in the Federal Register. So breathe easy for now, and take another glance at the rule revisions to be sure your towers are in compliance. One or two of the rule revisions will require approval of new information collection, so those will take longer to become effective. But most of the rules will take effect on the 30<sup>th</sup> day after Federal Register publication. We'll keep watching for it and tell you about it here. If you missed our concise summary of the new rules, email us at [admin@hardycarey.com](mailto:admin@hardycarey.com).

## **FCC: No AM INDUSTRY BOONS WHILE AM REVITALIZATION PROCEEDING LUMBERS ON**

The Audio Division has finally ruled on an application to relocate an FM translator that has been pending since November 2012. The application sought a waiver of the minor change rule to

permit relocation of the translator to serve an AM station. The city to which the applicant wanted to move was Tell City, Indiana. The application had become fondly known (in legal circles, anyway) as the “Tell City Waiver” application. The applicant also submitted letters of support from several third parties, including the mayor of Tell City, Indiana and NAB.

The waiver request sought a change that would have allowed FM translator relocations if the existing transmitter site was within the 0.025 mV/m interference contour of the AM station, which encompasses a much larger geographic area. Despite its best arguments to convince the FCC to grant the waiver, which included labeling the minor change rule as having “outdated public interest benefit” and being nothing more than a “procedural barrier”, the FCC said no.

The FCC denied the waiver request, in part, because doing so would have been a “general boon to the AM industry” and that any such change would best be considered as part of the ongoing AM Revitalization proceeding since it involved “regulatory change”. Even the applicant’s efforts to expand the *Mattoon* Waiver policy to include its application were rejected.

We have encountered similar resistance and reluctance by the staff, even to a request that fully comports with current regulations but has not traditionally been granted to commercial stations – namely, a main studio waiver for daytime-only AM stations. We find it hard to explain why the FCC continues to cling to outdated and no longer practical restrictions in the name of a rulemaking that is likely to produce (at least initially) only limited relief for AM stations. By the time the FCC gets around to rule and policy changes, there will be fewer AM stations around to benefit from them. We have our fingers crossed for Commissioner Pai’s “relief by Halloween” target date, but the Chairman controls the agenda.

## **FCC GETS AN EARFUL ON RADIO ONLINE PUBLIC FILES**

Remember that public notice last month asking for comments about online public files for cable and satellite companies? You know, the one where the

FCC whimsically added “and what about online files for radio too” as a subtitle, even though the petition that was filed said nothing about radio? Yeah, that’s the one.

Well, it turns out that whimsical subtitle may not have been one of the FCC’s brightest ideas. Radio broadcasters, either individually or through state associations, gave the FCC numerous good reasons to rethink their plan to squeeze in a rulemaking on radio online public files. Many commenters questioned the FCC’s ability to handle the volume of information given previously cited problems for TV, and more recent failings of other FCC online systems. Several provided data and input on the burden radio online public files would pose. Some noncommercial outlets expressed concern over sensitive data (donor names) required to be in their public files.

Individual broadcasters cited to the 2013 government shutdown when the FCC halted all access to TV online public files. Many others suggested that a separate rulemaking for radio online public files is necessary, as opposed to one combined with the political issues surrounding the push for cable/satellite. One commenter with many stations noted that no one ever accesses their public files, and questioned the need for online files based on the public’s lack of interest.

All in all, we think the FCC has some pondering to do. But that requires them to listen and read first. Perhaps a computer system overhaul at the FCC is a better first step.

Oh, and one final thought. If, as the FCC has held in the past, the internet alone is an insufficient means of advertising job openings under its EEO rules, how is it that the internet is the default answer for public file accessibility? Apparently, the public that the FCC thinks is not online to see job notices is very much online when it comes to public file accessibility. A little consistency would help.

## **TELEVISION CARRIAGE ELECTION DEADLINE FAST APPROACHING**

Television stations have until October 1, 2014 to let cable and DBS providers know whether the station

elects mandatory carriage or retransmission consent for the next 3-year carriage cycle. The next 3-year carriage cycle is from January 1, 2015 to December 31, 2017.

The election must be in writing and sent by certified mail, return receipt requested. The required content of the election letters is slightly different between cable and DBS providers, so stations should pay close attention. DBS providers must respond within 30 days to an election letter. Cable operators do not have an affirmative obligation to respond to election letters, but may do so if carriage is being refused or if there are signal reception problems or other issues.

## **MUTUALLY EXCLUSIVE LPFM TENTATIVE SELECTEES ANNOUNCED**

The FCC's Audio Division continues to process applications from the 2013 LPFM filing window at a record-setting pace. In its most recent action, the FCC announced the points-winners from 111 mutually exclusive LPFM application groups. Anyone objecting to the selection of the tentative "winners" has until October 6, 2014 to file an objection.

The same public notice gives a potential second chance to LPFM applicants that were not tentatively selected as winners. Those applicants have a 90-day period to make frequency or transmitter site changes to their applications and try to get a permit that way.

Full power stations should remain alert for LPFM modification applications, as many are requesting waivers on second adjacent channels. These regularly appear on public notice, and if there are interference concerns, full power stations only have 30 days to file objections. While there are a few LPFM applicants using qualified consulting engineers to do their engineering, the vast majority of applicants do not have such expertise on board, and errors are therefore more likely.

## **FCC CIRCULATING LPTV PUBLIC NOTICE AND RULEMAKING**

On the FCC's website, there is a little icon identified as "Items On Circulation". When you click on it, a list of various matters, by Bureau, are listed as being on circulation. We know our readers are curious, so what exactly does "on circulation" mean? It means that a Bureau's staff has completed an initial draft of a rulemaking or decision and that the FCC Chairman has directed that the draft be "circulated" among the Commissioners for comment. The various Commissioners' staffs then provide comment and suggested edits, and the Chairman decides whether to include them. Once that process is complete, the Chairman then decides whether to place the item on the agenda for a Commission meeting, or if there is a consensus, whether to move forward with releasing the item between meetings.

We routinely "spy" on the "Items on Circulation" list to see what's on the horizon, which can sometimes make us appear clairvoyant to our clients. Our most recent check produced two items of great interest to LPTV license or permit holders. The first is a proposal to suspend all expiration dates and construction deadlines for LPTV digital construction permits. It appears to be in the form of a public notice, as opposed to a rulemaking. The other LPTV item is a proposed rulemaking considering revisions to the current LPTV rules pursuant to the FCC's Incentive Auction Report & Order. This proceeding will likely consider displacement solutions for LPTV stations that must cease operation because of the auction or repacking.

The rulemaking could make an appearance on the Commission's September 30<sup>th</sup> meeting agenda. If not, it will likely show up in October. The public notice could come at any time.

## **LAWSUITS AND VERBAL SPARRING MARK THE INCENTIVE AUCTION LANDSCAPE**

On the heels of the NAB lawsuit filed with the U.S. Court of Appeals for the District of Columbia, Sinclair Broadcasting has filed its own lawsuit in the same court. Sinclair asserts that the FCC exceeded the authority Congress allowed them, and abused its discretion in adopting the Incentive Auction Report & Order. The lawsuit asks the court to set aside the R&O.

Outside of the courts, we counted 32 petitions for reconsideration of the R&O filed at the FCC by broadcasters and broadband companies. The FCC probably won't get to those until later this year or early next year. Petitions for reconsideration are a much slower way to challenge an FCC action, and can themselves ultimately result in legal challenges in the courts if the petitioner isn't happy with the FCC's decision on reconsideration.

Meanwhile, various FCC and NAB members exchanged verbal volleys in the past week, with the FCC accusing NAB of trying to delay the auction with its lawsuit, and the NAB responding that it filed early and asked for expedited action, and that any delay would be on the FCC's hands if the court finds that the FCC's R&O has legal defects.

Still no word on the FCC's outreach to broadcasters about the potential value of their spectrum. However, the office of engineering and technology has an item on circulation with the Commissioners related to an update to the OET-69 software, which is probably a partial response to various objections raised by NAB and other commenters.

## **MERITLESS COMPLAINTS AND ONLINE PUBLIC FILES**

When the FCC pushed through online public files for TV stations, one of the concerns raised was that they could subject stations to meritless complaints. To be clear, even when someone files a complaint that has no merit whatsoever, the station has to defend itself and that costs money.

We now have a case-in-point. Several "public interest" groups, from the comfort of their easy chairs, poked around in a few TV stations' online

public files and came up with the argument that the stations had not properly disclosed the identity of an entity that had paid for the broadcast of an "issue" ad. According to the groups, the stations should have dug a little deeper to find out who the real sponsor of the ad was. According to the FCC, that was not required, although it did say that if the groups had brought the info to the station's attention, a different outcome might have resulted.

With the advent of online public files, those with agendas in the political or public arena have a virtual treasure trove of opportunity to wage proxy wars and put pressure using information required to be placed in public inspection files. TV stations are caught in the middle. We anticipate more of these in the future, and not just on political issues. Sigh.

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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.

## DATES TO REMEMBER

**September 5, 2014 – November 4, 2014:** lowest unit charge for federal election in place.

**September 23, 2014:** Regulatory fees must be paid by 11:59pm Eastern time.

**October 1, 2014:**

**TV & Eligible Class A & LPTV Stations:** your must-carry letters to cable and DBS providers must be sent to elect carriage for the cycle commencing January 1, 2015.

**AM & FM Stations in Florida, Puerto Rico, Virgin Islands, American Somoa, Guam, Hawaii, Oregon and Washington:** if full time employee threshold is met, complete EEO public file report and post same to online public file as well as on station website.

**TV & Class A 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 station website. **NCE Stations Only:** also file biennial ownership report via Form 323-E.

**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 station website. **NCE Stations Only:** also file biennial ownership report via Form 323-E.

**TV & Class A 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 station website.

**TV, Class A & LPTV 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. 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.

**October 1 & 16:** TV, Class A & LPTV Stations in California: air your POST-filing announcements.

**October 1 & 16, 2014; November 1 & 16, 2014 & December 1 & 16, 2014:** TV, Class A & LPTV Stations in Alaska, American Samoa Guam, Hawaii, Oregon & Washington: air your post-filing announcements.

**October 10, 2014:**

**TV, Class A TV, AM & FM Stations (commercial & non-commercial):** complete 3rd quarter 2014 issues/program lists. TV & Class A stations post to your online public file. AM & FM stations place in your public file.

**TV & Class A Stations (commercial only):** complete and electronically file FCC Form 398 Children's TV Programming Report for 3rd Quarter 2014. Link to your report should be made automatically by FCC to your online public file. Also compile and post to online public file records relating to station's compliance with children's programming commercial limits.

**Class A Stations only:** complete and post to your online public file certification of ongoing Class A eligibility.

**TV, Class A & LPTV Stations in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island & Vermont:** air your PRE-filing announcements.

**October 23, 2014:** TV, Class A & LPTV Stations in California: complete and post to your public file documents relating to pre- and post-filing broadcast renewal announcements.

**November 4, 2014:** Election day.

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