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ATTORNEYS AT LAW

Broadcast Newsletter

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DEADLINE TWEAK FOR COMMERCIAL STATION OWNERSHIP REPORTS

The FCC has announced yet another tweak to the extended deadline for commercial stations to file biennial ownership reports. Due to a scheduled power outage that will affect the FCC's offices, the FCC has now clarified that commercial stations must have their biennial ownership reports electronically filed no later than 7 p.m. EST on December 20, 2013. That shaves five hours off of the previously announced extension that ran through midnight on that date. Late filers will receive coal in their license renewal stockings.

NEW CHAIRMAN CHANGES TV SPECTRUM INCENTIVE AUCTION GOAL TO 2015

Last month, we reported that the FCC's new chairman, Tom Wheeler, had publicly stated that he had immersed himself in incentive auction issues, and would soon decide how best to move the process forward. He's now made his first public statement on what he's been reading and reviewing, and he did so using the FCC's blog. Chairman Wheeler states his belief that the auction can be held "in the middle of 2015". That's an extension of several months from the previously announced 2014 date. According to Wheeler, the FCC must "check and recheck the auction software and system components" and proceed with the auction "only when our software and systems are technically ready, user friendly, and thoroughly tested." One could surmise (and probably correctly so) that Wheeler's cautionary tone might have something to do with the government's difficulties of launching the healthcare website in recent months.

Wheeler's blog post contained other tidbits as well. He suggests that an initial Report & Order will be ready for a vote in the spring of 2014, which adjusts the previously anticipated "end of 2013" deadline. Wheeler expects the initial order to be followed by public notices on auction procedures in the "second half of 2014."

TIME TO REVISE THE COMMUNICATIONS ACT?

According to the Chairman of the Energy and Commerce Committee, Fred Upton, it is time to examine how to modernize the communications Act to reflect the realities of the 21st century marketplace. The last time Congress adopted a major revision to the Act was in 1996, nearly two years ago. That revision brought broadcasters competitive auctions for broadcast construction permits, something that significantly slowed the FCC's issuance of new or major change authorizations, but raised significant revenue for the government. A more recent amendment authorized the TV incentive auctions.

At least one sitting FCC Commissioner, Ajit Pai, cheered Upton's announcement as sorely needed in a converged industry, where the FCC is still applying different rules to providers and technologies that compete in the same markets. Pai also stated that some provisions of the Act have not been changed since the Great Depression.

We can't help but cringe a little at what a significant revision would look like. But change is coming . . . again. It's sure to be another wild ride.

FCC Issues Heavy Fines For EEO Violations

The FCC audits a few hundred broadcast stations for EEO compliance each year, in addition to scrutinizing EEO issues at license renewal time. The audit process checks EEO compliance over a two-year period with a close examination of a station's EEO paperwork. That paperwork either confirms that a station is EEO compliant or, as in two recent instances, confirms that a station licensee must pay a large sum to the government. These aren't the largest fines that we've seen for EEO violations, but the basis for them does teach a few lessons.

Both decisions involve a station employment unit's failure to notify third parties about full time vacancies. Let's review that requirement. A broadcast station employment unit with at least five full time employees (30 hrs/week) must conduct broad outreach in connection with any efforts to fill a full-time vacancy. Part of that effort includes providing notice of the vacancy to third parties who elected – in response to earlier communications from the SEU – to receive notice of full time vacancies.

In the first case, a six-station SEU with 36 full time vacancies over a two-year period, failed to provide notification of 33 of those vacancies to every organization that had requested vacancy notification. The FCC also found that the SEU failed to analyze its recruitment program on an ongoing basis to address the vacancy notice issue. The total tab was $20,000 -- $16,000 for not sending the notices, and another $4,000 for failing to review its program. In addition, the FCC ordered reporting conditions for the SEU over a three-year period – essentially a rolling audit of the SEU's EEO program.

In the second case, only one vacancy notice was missed, but only one organization had requested notice. However, that lack of notice was gleaned by the FCC from the paperwork submitted with the licensee's audit response, and the licensee's audit response contradicted the paperwork by claiming it had not received any requests from organizations seeking vacancy notifications. So, in addition to failing to provide a vacancy notification, and failing to analyze its recruitment program to catch that error, the FCC found that the Licensee provided incorrect factual information of a material nature without a reasonable basis for believing that the information was correct and accurate. The total tab in this case was also $20,000, with just $1,000 for the missed notification and $2,000 for failing to review its program, but another $17,000 for providing incorrect factual information to the FCC. On top of that, the FCC imposed 3-years of reporting conditions as well. A little double checking might have avoided the extra $17,000, as well as unnecessarily flirting with a potentially far more serious finding of intentionally misleading the FCC.

The end of each calendar year usually brings another round of EEO audits. We'll be watching for those, and you should be too. The key to these audits is to have the paperwork related to your efforts to fill each full time vacancy. It is far easier to retain that paperwork in a file for each vacancy as you are filling it than to go back through materials and email deleted/sent items to reconstruct your outreach efforts when the FCC's audit letter arrives. It's best to periodically review your outreach program to ensure that it is effective.

TV Repacking Concerns Raised

NAB is sounding alarms on the FCC's plans to repack the TV spectrum after the incentive auction is held, warning that it will be far more complex than the DTV transition. According to NAB, while the DTV transition involved about 100 stations that each had a second channel to facilitate the transition, post-auction repacking will involve over 500 stations flash-cutting to a new digital frequency. Coordination with cable, satellite and other pay-TV providers will be critical, as will a well-informed public. NAB offered its views at a hearing of the Commerce Committee, and has presented them to the FCC's engineering team.

NAB has also expressed concern about the FCC's planned use of "proxy" channels to measure interference during repacking, claiming that such "approximizations" cut corners and could result in service losses or gains in a significantly large number of instances. In a study conducted by NAB, the latest version of the FCC's repacking software showed different results using proxy versus actual channels for interference analysis. For VHF channels, such differences showed up 77% of the time, with an 88% difference for UHF channels. Further, roughly a third to half of stations would experience a loss of service, and more than 500 stations had a loss of service greater than .5%, the proposed limit of new interference from the repacking. NAB has offered alternative approaches, including one that calculates interference for every possible channel that could be assigned in repacking, and another that would use the proxy channel system as a guide, but require the FCC to confirm between auction rounds that new interference would be limited to .5%.

Breakneck Speed for FCC LPFM Processing

During the recent LPFM filing window, the FCC received nearly 3,000 applications for new LPFM stations. The FCC is wasting no time processing these applications, issuing a dizzying array of dismissals, acceptances, and a long list of approximately 1600 mutually exclusive applications. Some applications were not filed by the proper entity (a non-profit) or were submitted more than once, and the FCC has quickly dismissed these applications.

Full power stations should pay close attention to the LPFM proceedings. Many applicants have requested waivers of the FCC's minimum distance separation rules for interference purposes, and the FCC appears to be processing these applications via their daily broadcast applications public notices, accepting them for filing and inviting petitions to deny within 30 days. The call signs of the stations for which a waiver is requested are listed.

On December 16th, the FCC issued a public notice identifying approximately 1600 mutually exclusive applications and announcing the opening of a 60-day settlement period and opportunities to file technical amendments or time-share agreements. Notably, the FCC has not made either acceptability or grantability determinations for any of these applications, leaving to applicants the sometimes difficult task of having to work toward a solution with another applicant that may not even be viable. Many of the MX groups are large (8-10 applicants), making settlements or technical amendments all the more difficult. Those applications not settled, technically amended, or time-shared by the FCC's deadline will proceed to a points determination based upon the points information supplied in each application filed in the window.

Some applications have already been the subject of informal objections. One entity filed objections against nearly 250 applications for various reasons, including impossible or ineligible main studio locations, as well as ownership issues.

Stream Online? Remember to File with SoundExchange by Jan. 31

If you send your signal or stream over the internet and it contains music, SoundExchange wants to hear from you by January 31, 2014. By that date, you must file your annual Statement of Accounts and make the minimum $500 payment for 2014. If you have elected to participate in one of the different settlement agreements reached in 2009, you must also re-elect for that plan in addition to filing the Statement of Account. If you fail to make an election, you will be subject to the default Copyright Royalty Board fees which require monthly reporting of all songs streamed. If you have questions about your responsibilities to SoundExchange, please contact your copyright counsel.

EARLY 2014 DEADLINES AND REMINDERS

Broadcasters should take care not to lose focus with end of year off-time and the blur of bowl games. January 10, 2014 is fast approaching and marks the deadline for when all AM, FM, TV and Class A TV broadcast stations must complete and place in their public inspection files the quarterly issues/programs list for the final quarter of 2013. Full power and Class A television commercial stations must also complete and file the FCC Form 398 Children's Television Report for the final quarter of 2013, and complete and place in the public file certifications that children's television commercial limits have been met. Class A TV stations should also complete and post in the public file a certification of continuing Class A eligibility.

DATES TO REMEMBER

December 20, 2013: NO LATER THAN 7PM EST all commercial AM, FM, TV, Class A & LPTV Stations: complete and file your ownership report with information current as of October 1, 2013.

December 23, 2013: AM & FM Stations in Alaska, American Samoa, Guam, Hawaii, Oregon & Washington: complete and post to your public file documents relating to pre- and post-filing broadcast renewal announcements.

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

January 1, 2014: TV stations intending to claim an exemption from Closed Captioning based on 2013 revenue: verify with accounting department that 2013 revenue did not exceed exemption levels. If not, consult counsel for new captioning obligations.

January 1 & 16, 2014: **TV, Class A & LPTV Stations in Kansas, Nebraska & Oklahoma**: air your PRE-filing announcements

AM & FM Stations in New Jersey & New York: air your PRE-filing announcements.

January 1 & 16, 2014, and February 1 & 16, 2014: **AM & FM Stations in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, & Vermont**: air your POST-filing announcements.

TV, Class A & LPTV Stations in Colorado, Minnesota, Montana, North Dakota & South Dakota: air your POST-filing announcements.

January 10, 2014: **TV, Class A TV, AM & FM Stations (commercial & non-commercial)**: complete 4th quarter 2013 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 4th Quarter 2013. 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.

January 21, 2014: comments on AM revitalization NPRM due.

January 31, 2013: minimum fees due to SoundExchange for 2014. Renewal of royalty plan may also be required.

February 1 & 16, 2014 and March 1 & 16, 2014: **TV, Class A & LPTV Stations in Texas**: air your PRE-filing announcements.

AM & FM Stations in Delaware & Pennsylvania: air your PRE-filing announcements.

February 3, 2014: **TV, Class A & LPTV Stations in Kansas, Nebraska & Oklahoma**: 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 New Jersey & New York: 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.

AM & FM Stations in Arkansas, Louisiana & Mississippi: 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 Arkansas, Louisiana, New York, New Jersey & Mississippi: 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 Kansas, Nebraska, & Oklahoma: if full time employee threshold is met, complete EEO public file report and place same in public file as well as post on website.

February 18, 2014: reply comments on AM revitalization NPRM due.

February 23, 2014: **AM & FM Stations in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, & Vermont**: complete and post to your public file documents relating to pre- and post-filing broadcast renewal announcements.

TV & Class A Stations in Colorado, Minnesota, Montana, North Dakota & South Dakota: complete and post to your public file documents relating to pre- and post-filing broadcast renewal announcements.

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