



Broadcast Newsletter

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TV SPECTRUM AUCTION UPDATE

The FCC is scheduled to vote on a Report & Order in the 15 month old TV incentive auction at its May meeting. According to the agenda issued for the meeting, to be held May 15, the Commission will consider adopting, via the Order, “key policies and rules for the broadcast television spectrum incentive auction, laying the groundwork for an unprecedented, market-driven process for repurposing spectrum for mobile broadband use, and promoting competition and innovation.”

A preliminary description of the draft Order being circulated at the FCC has described various aspects of the planned decision, but remains subject to change after circulation among the Commissioners. We hear that one of the most contentious issues – protection of coverage areas – will boil down to the FCC “doing the best it reasonably can” to replicate broadcast coverage areas, though it will be doing so using the newer (and less generous) OET-69 software for calculating signal coverage. That sounds like it tees up a legal challenge from broadcasters, but we’ll have to see.

As an FCC Chairman must, Tom Wheeler has expressed numerous views on the auction, some through the FCC’s Blog, but always with utmost confidence that the auction will occur in 2015 and be successful. In case you’ve wondered about the “macro” spectrum outlook, it is perhaps best expressed in Wheeler’s April 18th FCC Blog post – “getting the Incentive Auction right will revolutionize how spectrum is allocated. By marrying the economics of demand (think wireless providers) with the economics of current spectrum holders (think television broadcasters), the Incentive Auction will allow market forces to determine the highest and best use of spectrum.”

We’ll be watching for the Report & Order along with you.

AM REVITALIZATION PROCEEDING: STILL WAITING FOR FCC ACTION

It's now been over a month since the comment period closed on the FCC's AM Revitalization Proceeding, but the FCC has not made any decisions or provided any immediate relief for AM broadcasters. Verbal comments from FCC staffers at the recent NAB conference did focus upon a 2015 AM-only FM translator window, but the details of participation and opportunities are still unknown. When and if we hear of developments or an anticipated Order or interim action, we'll let everyone know. Patience is a virtue. It is especially so when survival is at stake.

FCC TO CLASS A TELEVISION STATION: PAY FINE OF OVER \$89,000

We've heard of lowering the boom, but this boom is a pretty heavy one. The FCC has issued a notice of apparent liability to a Class A station for \$89,200. Their sin? Well, there were many sins, but the biggest was refusing to permit inspection of the station on two occasions. When combined with main studio staffing violations and operating out of authorized parameters, the FCC decided to make the cash registers ring.

We'll focus on the details of the refused station access. The first time FCC inspectors tried to inspect the main studio, they were blocked by a locked gate. The inspectors called, but were told to wait at the gate. After 10 minutes, the manager showed up at the gate to explain that he was leaving for a doctor's appointment. He asked if the FCC inspectors could "come back the following day." The agents left without agreeing to come back the next day. Phone calls to the listed station owner were not returned, and a follow up call to the main studio netted the manager's cell phone, who promptly

informed the inspectors that he was still at his doctor's appointment.

Some 45 days later, the inspectors returned to the station during normal business hours. The studio was still inaccessible due to the locked gate. A call to the manager explaining that FCC inspectors were to be granted access only yielded a response that the gate was for security reasons.

Nine months later, the FCC dispatched a team to monitor the station's transmissions from its authorized tower, only to discover that the station was actually operating from a different – and unauthorized -- nearby tower.

Calling the actions of the station denying inspector access "simply unacceptable" and "a blatant disregard of and contempt for the Commission's authority," the FCC used the highest daily maximum fine authorized -- \$37,500 – and doubled it to \$75,000. It then added another \$14,200 for main studio and unauthorized transmissions.

Lesson – violating a rule is one thing, but getting FCC inspectors really angry at you will only produce additional dollar signs or decimal places in the forfeiture proceeding.

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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

May 1 & 16, 2014: TV, Class A & LPTV Stations in Arizona, Idaho, Nevada, New Mexico, Utah & Wyoming: air your PRE-filing announcements.

May 1 & 16, 2014; and June 1 & 16, 2014: TV, Class A & LPTV Stations in Texas: air your POST-filing announcements

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

May 6, 2014: reply comments due on proposed reimbursement costs for repacked TV stations.

May 12, 2014: reply comments on multilingual EAS due.

June 1, 2014: TV, Class A & LPTV Stations in Arizona, Idaho, Nevada, New Mexico, Utah & Wyoming: 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 Arizona, DC, Idaho, Maryland, Nevada, New Mexico, Utah, Virginia, West Virginia & Wyoming: 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 Stations in Michigan & Ohio: 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.

AM & FM Stations in Michigan & Ohio: 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 DC, Maryland, Virginia & West Virginia: 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. **NCE Stations Only:** also file biennial ownership report via Form 323-E.

June 1 & 16 and July 1 & 16: TV, Class A & LPTV Stations in California: air your PRE-filing announcements.

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

AM & FM Stations in Delaware & Pennsylvania: complete and post to your public file documents relating to pre- and post-filing broadcast renewal announcements.

June 30, 2014: rules related to quality of captioning using Electronic Newsroom Techniques take effect.

July 1, 2014: all television and Class A stations must begin to upload political files to online public inspection file.

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