



# Broadcast Newsletter

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## **HCCB AT NRB IN NASHVILLE**

Attorneys Joe Chautin and Elise Stubbe will be attending the National Religious Broadcasters convention and expo in Nashville, Tennessee from February 23-26, 2015. Joe will be sitting on the FCC Legal panel on Monday, February 26<sup>th</sup> from 2:00 - 3:30 p.m., which will be packed with informative information. Make plans to attend.

Also, if you'd like to meet with us while we're there, and haven't already set something up with us, just email us at [admin@hardycarey.com](mailto:admin@hardycarey.com). We're looking forward to seeing many of our newsletter readers! Safe travels!

## **RADIO ONLINE PUBLIC FILE: NO COMMENT DEADLINES YET**

For all the speed the FCC mustered in moving to a [rulemaking proceeding](#) to consider migration of radio public files to an FCC-hosted site, they have yet to announce the comment deadlines. The trigger for those deadlines is publication of the notice of proposed rulemaking in the Federal Register, which has not yet occurred. As of this writing, over 40 days had passed since the FCC adopted the rulemaking in December 2014.

Whenever the FCC does get around to doing so, comments will be due 30 days after that publication date, with reply comments 60 days after the publication date. The rulemaking proposed a gradual transition to the online public file, phasing in stations over two years based on market size and number of employees. In addition, the FCC has requested comment on whether smaller stations and non-commercial educational stations should be permanently exempt from the new requirement. Comments must be filed electronically via the FCC electronic comment filing system.

## **FCC ANNOUNCES PRE-INCENTIVE AUCTION LICENSING DEADLINE**

In a [public notice](#), the FCC has announced May 29, 2015 as the Pre-Auction Licensing Deadline for full power and Class-A television stations. Per their 2014 Order, the Commission committed to announcing this deadline with at least 90 days

advance notice. They have done so with about 120 days notice.

For most full power and Class A television stations, this deadline is not applicable because as of February 22, 2012, they already held valid licenses for their constructed facilities, and those licenses accurately reflect their current operation. But read carefully!

In its 2014 Order, the FCC used its discretion to carve out a small group of potential stations that *could* be licensed and protected, even after February 22, 2012. While some of those stations have since become licensed, and therefore need not take any action related to the May 29, 2015 deadline, some still remain unlicensed. Stations that fall into the following categories need to construct and either obtain a license or file a license application by the May 29, 2015 deadline in order to receive protection. The categories: (i) full power stations with channel substitution permits, (ii) full power or Class A stations that hold modification permits issued on or before April 5, 2013, or that were issued permits after April 5, 2013, that complied with the FCC's TV freeze, but are still unbuilt, and (iii) Class A station initial digital facilities that were not initially licensed until after February 22, 2012.

Also – **and very important** – if a full power or Class A station's licensed operation does not match the parameters on its current license, the FCC has given formal notice that this is the last opportunity before the Pre-Auction Licensing Deadline for all full power and Class A licensees to modify their licenses to fix any errors previously made in providing their operating parameters to the FCC, and to have those modifications protected in the repacking process. Such modifications will be protected so long as a modification application that complies with the current freeze (i.e. does not expand a station's coverage area) is obtained now and a license to cover application is filed, by May 29, 2015.

Finally, for any Class A station that holds a digital construction permit that expires on September 1, 2015, the May 29, 2015 deadline still controls for purposes of incentive auction protection.

For any full power or Class A stations that intend to participate in the auction, instead of sitting it out and waiting for protection in the repack, the May 29, 2015 deadline is equally important, as the station's licensed facilities as of that date will be used to compute the value of the station's spectrum.

An important side note – full power stations that need to file an application prior to the May 29, 2015 deadline will be using the new Form 2100, which is decidedly different from the old permit or license application form.

## CONTEST RULE CHANGE COMMENT DEADLINES FAST APPROACHING

As previously reported, the FCC had decided to update its contest rules to allow broadcast stations to post rules online in order to satisfy disclosure requirements. The rule deadlines for comments in that proceeding are fast approaching. Comments are due no later than February 17, 2015, with reply comments due March 19, 2015. Comments can be filed electronically via the FCC electronic comment filing system.

## INCENTIVE AUCTION: WEBINARS AND TRAVELING SHOW

To help make better sense of its 167-page rulemaking on the Incentive Auction Bidding and Repacking process, the FCC held three webinars in January. As we can observe from our participation, there was not much "new" to glean from the webinars, which essentially summarized the proposed plans for conducting the forward auction, reverse auction and integration/repacking.

In particular, we were surprised at the brevity of the reverse auction webinar presentation, which took only about 15 minutes and simply outlined the bid choices broadcasters will have and described the flexibility of those choices as the auction rounds proceed. Plus, none of the webinars discussed repacking reimbursement mechanisms. And although during the question and answer session staffers invited comments on specific issues, the presentations themselves had a tone of finality (that could just be our skepticism, however).

The auction is currently scheduled to kick off in early 2016. The FCC plans to open a filing window this fall for eligible broadcast stations to indicate their willingness to participate in the auction. With at least 60 days remaining in that filing window, the FCC will announce initial prices, either in a single public document, or individually with broadcasters. Prior to the filing window (likely mid-to-late summer 2015), the FCC will require all broadcasters to file a certification of their licensed operating parameters.

The FCC also announced the dates and markets for their [first six local visits to TV markets](#) to explain the incentive auction and meet confidentially with broadcasters (if requested). When initially announced, the FCC indicated it planned to visit at least 50 markets. They will announce the next markets in subsequent notices, one month at a time. We think March, April and May to be very busy for the FCC's traveling show.

Why is that, you ask? Well, if only six visits per month were scheduled, the FCC wouldn't finish the visits before the filing window opened. TV stations in the [planned 50 markets](#) should keep an eye out for the visit announcements. Important note – in order to find out exactly where the local sessions are being held, or what time, you have to email or call the FCC using the contact info provided. Same thing for setting up a confidential meeting.

Speaking of dates, you can still file comments in the auction procedures rulemaking. The deadlines were extended to February 13, 2015 (initial comments) and March 13, 2015 (reply comments).

## DEBT TO FCC CAN HAVE SERIOUS RAMIFICATIONS

From time to time, we write about the FCC assessing monetary forfeitures (fines) against broadcast licensees for violating FCC rules or policies. Some pay those fines; others wait until the FCC asks the Department of Justice to actually begin an action to collect the fine.

Licensees can also become indebted to the FCC via other means, such as forgetting to pay annual regulatory fees, or paying too little. There, a 25% penalty plus interest begins to run from day one.

The fact that a licensee owes the FCC is one thing. But in the meantime, the FCC has the power to do things that make a licensee's life difficult. For example, they can "red light" a licensee. The red light reference really does mean "stop" because the FCC stops processing any application you might file until the amount in arrears is paid up. In some cases, the online system can even prevent a licensee from submitting a filing in the first place.

Two recent examples are illustrative. In one, the FCC mistakenly assessed a regulatory fee to a prior licensee for a broadcast station that had been sold. The new licensee was exempt from regulatory fees, so the FCC should not have assessed a fee for the station at all. Yet the "overdue" regulatory fee, with penalties, had already been sent to a collection agency, and they were aggressively pursuing the station for the "debt" owed. An email to the FCC's Revenue and Receivables Department explaining the mistake luckily averted any further action, and the collection agency was instructed to stand down. But in the meantime, the prior licensee had been red lighted, meaning that any other licenses it held were affected. All based on a mistake.

In the other, the FCC considered a licensee's request that it reconsider a \$5,000 fine resulting from a seven-month failure to seek temporary silent authority from the FCC. The FCC found no reason to change its mind, ending its decision with "we will withhold grant of the renewal application until Licensee has completed payment of the forfeiture." For some, a delayed renewal might not be a big issue given that continued operation is permissible. But a non-renewal might trigger defaults in a broadcaster's loan, for example, or cause potential buyers to lose interest if the station were being marketed.

The FCC normally has significant power over licensees anyway. But when a debt to the FCC enters the picture, that power is multiplied and potentially significant ramifications follow. Tread carefully.

## LPTV POST-AUCTION NPRM REPLY COMMENT DEADLINE EXTENDED

The FCC has granted a one-week extension for reply comments to be filed in its ongoing rulemaking proceeding addressing post-incentive auction issues affecting LPTV stations. The extended reply comment deadline is February 2, 2015.

## DON'T MESS WITH EAS TONES

The FCC continues to pound away at the sanctity of the audible tone used in official emergency alert system messages.

First, after a lengthy investigation into a Univision FM station that transmitted emergency warning tones in a comedy sketch, Univision settled the matter by agreeing to pay a \$20,000 civil penalty and implementing a comprehensive 3-year compliance and reporting plan for not only the FM station in question, but all of Univision's radio stations across the country. As part of the comedy sketch, the disc jockey had repeatedly used the EAS tones even after openly acknowledging to the public that doing so was illegal. Not good.

Second, the FCC fined Viacom and ESPN \$1.4 million (yes, you read correctly) for misusing EAS tones in promotional advertisements for the movie "Olympus Has Fallen", which portrayed a terrorist attack in Washington, DC.

You can read more about these cases, and link to the settlement or orders [here](#). In the meantime, you might just want to re-emphasize to anyone with on-air access at your station that misuse of EAS tones is a very serious matter.

## FCC WEBINAR PLANNED FOR LPTV

Approximately two weeks after the comment periods close in the FCC's proceeding addressing the impact of the incentive auction on LPTV and TV translator stations, the Media Bureau plans to host a webinar to – in their words – “facilitate public input and understanding of issues” related to the anticipated impacts. That strikes us as odd, given

that the recognized time for comments will have already passed. Whatever. The webinar is scheduled for Tuesday, February 17, 2015 at 10:30 a.m. EST. Another notice with details on participation is expected in coming days and will be posted on the FCC's LEARN webpage [www.fcc.gov/learn](http://www.fcc.gov/learn).

## THE NUMBERS REPORT

During the first several days of each calendar year, the FCC unceremoniously publishes a one-page news release on the total numbers of broadcast stations licensed as of the end of the prior year. This year's [news release](#) happened on January 7, 2015. We took a little time to compare it to last year's report, just to see what station categories had changes. We also found an FCC [webpage](#) that contains a link to an excel spreadsheet tracking station totals all the way back to 1969 (and beyond).

Not surprisingly, the most significant change in 2014 occurred with AM stations, with a loss of 22 AM stations. As of the end of the year, 4705 AM stations were licensed by the FCC. The highest number of AM stations ever licensed was 4990, which occurred in 1991. So in the last 23 years, 285 AM stations have ceased operation.

Forty more commercial FM stations were added to the rolls in 2014, and non-commercial FM stations jumped by 56. Another 195 FM translators were licensed in 2014. TV station totals remained static, though another eight (8) Class A UHF stations were licensed. Finally, another 166 LPFM stations were licensed in 2014, bringing that total to 942.

## SLEW OF TOWER FINES

In early January 2015, the FCC's Enforcement Bureau's Western Region Director issued four forfeiture orders on the same day, fining tower owners from Alaska to Nevada for violating the FCC's tower rules.

The fines included one for \$6,000 and three for \$8,000, all for failing to exhibit required lighting. Efforts to promptly correct lighting outages, or excuses like power outages, did not sway the FCC.

In a few cases, history of prior compliance was considered to slightly reduce the fines.

Even in remote tower locations, the FCC is paying attention. Tower owners – in remote areas or not -- should remain vigilant, monitoring, reporting and logging tower outages and repairs to avoid fines.

## TV STATION FINED FOR CHILDREN'S TV VIOLATIONS

The FCC has fined a TV station \$3,000 for filing several quarterly Children's Television reports late, and admonished the same station for failing to comply with the FCC's limits on the amount of commercial matter in children's programming.

According to the station's renewal application, four quarterly reports were filed late, varying from one day to 16 weeks late. The FCC's decision says differently, claiming that reports were late for eight quarters, one as much as seven months late. Normally, the FCC assesses \$1,000 for each late quarterly report, but here the station somehow got a much better deal, with the FCC apparently only focusing on the more egregious late-filed reports.

The commercial matter violation occurred in connection with the improper display of an internet website address in a children's program. The licensee admitted that the URL address for the website [www.lazytown.com](http://www.lazytown.com) appeared during the closing credits of an NBC-supplied children's program, LazyTown. The FCC's rules restrict the display of internet web addresses during children's programming for kids 12 and under.

Specifically, Section 73.670(b) permits the display of internet website addresses during program material or promotional material not counted as commercial time only if it meets the following four-prong test: (1) the website offers a substantial amount of bona fide program-related or other non-commercial content; (2) the website is not primarily intended for commercial purposes, including either e-commerce or advertising; (3) the website's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and (4) the page of the website to which viewers are directed by the website address is not used for e-commerce, advertising, or other

commercial purposes (e.g., contains no links labeled "store" and no links to another page with commercial material).

Whew. Before you get confused or hit the panic button, the key words in the preceding rule summary are "not counted as commercial time." In other words, you can include an internet website address in children's programming so long as it appears during allowable commercial time adequately separated from the program material. The problem arises when internet website addresses appear in the portions of the program not counted in your commercial time. There, you have to make sure that the website address meets the four-prong test. If it doesn't, you have a problem because the improper web address "converts" the rest of the program to commercial time, causing a station to exceed the allowed commercial limits.

Here, the FCC considered that the single website inclusion error was an "isolated incident" and only admonished the station.

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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

**January 31, 2015:** minimum fees due to SoundExchange for 2015. Renewal of royalty plan may also be required.

**February 1 & 16, 2015: TV & Class A Stations in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont:** air your POST-filing announcements.

**February 1 & 16, March 1 & March 16: TV, Class A & LPTV Stations in Delaware and Pennsylvania:** begin your PRE-filing announcements.

**February 2, 2015:**

**Reply Comments due on LPTV incentive auction NPRM**

**AM & FM Stations in Arkansas, Louisiana, Mississippi, New Jersey and New York:** 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 Arkansas, Louisiana and Mississippi:** if full-time employee threshold is met, complete EEO public file report and post same in online 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 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 station website.

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

**TV & Class A Stations in Kansas, Nebraska & Oklahoma:** if full-time employee threshold is met, complete EEO public file report and post same in online public file as well as post on station website.

**TV, Class A & LPTV Stations in New Jersey and 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. 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.

**February 2 & 16; March 1 & 16; April 1 & 16, 2015: TV, Class A & LPTV Stations in New York and New Jersey:** air your PRE-filing announcements.

**February 9, 2015:** FCC Incentive Auction Broadcaster Information Session in **Philadelphia, PA**

**February 10, 2015:** FCC Incentive Auction Broadcaster Information Session in **Wilkes Barre-Scranton, PA**

**February 11 – 13, 2015:** FCC Incentive Auction Broadcaster Information Session in **New York, NY (covering tri-state area and Albany)**

**February 13, 2015:** comments due on proposed incentive auction procedures

**February 17, 2015:** comments due on new proposed contest rules.

FCC webinar on LPTV issues in spectrum auction

**February 23, 2015: TV & Class A Stations in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont:** complete and post to your public file documents relating to pre- and post-filing broadcast renewal announcements.

**February 24, 2015:** FCC Incentive Auction Broadcaster Information Session in **Nashville, TN**

**February 25, 2015:** FCC Incentive Auction Broadcaster Information Session in **Atlanta, GA**

**February 26, 2015:** FCC Incentive Auction Broadcaster Information Session in **New Orleans, LA (including Hattiesburg, MS)**

**March 16, 2015:** new closed captioning rules take effect, including maintenance of records of monitoring and maintenance, rules regarding captioning quality and standards and captioning best practices.

**March 19, 2015:** reply comments due on new proposed contest rules.

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