



Broadcast Newsletter

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TV SPECTRUM AUCTION – WHAT’S NEXT?

In the nearly two months since the FCC’s Incentive Auction Report & Order, not much has transpired, at least publicly. That’s a little surprising to us given the several additional rulemaking proceedings that are necessary before the auction can take place.

The Report & Order communicated certain urgency and planned additional rulemaking proceedings on many matters, including deciphering precisely how to calculate total post-auction interference to broadcasters, ways to assist LPTV and TV translator stations that are displaced, and more specifics on reimbursement costs, yet none of those proceedings have left the starting blocks. And despite hiring an investment firm for the job, the FCC’s promised outreach to broadcast stations on the value of their spectrum has not publicly begun either. In fact, we’ve not even seen publication of the Report & Order in the Federal Register, a necessary precursor to starting the shot clock on legal challenges.

Perhaps next month will present some action items, but that may depend on how many staffers take vacation during August, an historically popular month for a break from Washington D.C.

HANGING THAT RADIO FREQUENCY RADIATION WARNING SIGN MAY NOT BE ENOUGH

Nearly three years ago, the FCC fined a Utah broadcaster \$14,000, in part for failing to comply with the FCC’s requirement to post signs warning of radio frequency radiation (RFR) exposure at the station’s transmitter site. This month, the FCC reduced the forfeiture to \$9,200, but the decision suggests that simply posting RFR warning signs at a transmitter site may not always be enough to demonstrate compliance. That raised our curiosity level. We’ll explain.

In responding to the fine, the station claimed that the transmitter site was vandalized prior to the FCC inspection, and that the RFR signs previously posted at the site were stolen. The argument was a good one, based upon a nearly 30-year-old decision where the FCC cancelled a tower fencing violation based upon licensee-provided evidence of vandalism. The FCC noted its earlier decision, but distinguished it because the broadcaster there had been conducting regularly recurring inspections of the transmitter site, with the last one occurring shortly before the FCC's inspection. In the Utah case, the station's last transmitter site inspection had occurred 5 months prior to the FCC inspection. That was too long for the FCC, leaving open the possibility that RFR signage had been missing for some time at the site.

So when it comes to the FCC's requirement to post RFR warning signs, broadcasters should not simply nail them to a post and forget them. Instead, to make sure that the site is properly posted at all times, someone should be regularly visiting the site to make sure that the signs haven't been stolen, or haven't fallen or become dislodged. Add "RFR Signs Posted?" to your transmitter site checklist, and make sure someone visits on a recurring basis (we suggest at least once a month) and documents the status of the signs and other required items at the site.

LPTV PROTECTION FROM CONGRESS?

In its recent Incentive Auction Report & Order, the FCC interpreted Congress' Spectrum Act language and concluded that LPTV and TV translator stations were ineligible to participate in the auction, unprotected from interference and subject to displacement in the auction and repacking, and ineligible to receive reimbursement for displacement costs. It's reasoning? LPTV and TV translator stations are licensed on a secondary basis, and therefore do not meet the Spectrum Act's requirements.

Congress may have something to say about that interpretation. Rep. Joe Barton has drafted the LPTV and Translator Preservation Act of 2014 in an attempt to preempt the FCC from ignoring the impact of the auction on translators and LPTV

stations. The bill seeks to have the FCC avoid the termination of such stations by considering the benefits they provide.

One leading House Democrat has warned that the bill could interfere with the FCC's auction plans. Republican Rep. Walden, one of the authors of the Spectrum Act, supports the legislation, stating that he doesn't "want a runaway FCC that simply squishes LPTV and TV translator stations because they can."

TOWER OWNERSHIP REPORTING STRICTLY ENFORCED

If you own a tower and it meets certain height or location requirements, the FCC requires you to register the tower and obtain an antenna structure registration number. Registered towers often change ownership during broadcast station sale transactions, but unlike a broadcast license, which requires prior FCC approval of a licensee change, tower ownership can be changed without FCC prior approval, so long as the new owner modifies the registration by filing an ownership change notice.

Sometimes, the owners of newly acquired towers forget to file the ownership change notice after a sale closes. That oversight can result in a fine from the FCC, if discovered.

But what about a simple name change of the tower owner, where ownership does not change? The FCC recently answered that question in the context of issuing a fine for failure to file an ownership change notification. The tower owner in that case was a corporation that had undergone a name change, but no change in owner identity or percentage. It argued that because there was no ownership change, the failure to update the name of the tower owner was not a violation of the FCC's ownership reporting requirements. The FCC disagreed, noting that Section 17.57 of its rules "requires owners to notify the Commission of *any* change in ownership information, not only those involving a change of control."

Have you looked at your tower registration recently? Is the owner name correct? How about the address and phone number? Is the email address still accurate? If any of that information

should be different, file an update to the tower registration immediately to avoid the FCC's strict interpretation of this rule and potential fines.

EAS COMMENT DEADLINE

August 14, 2014 is the comment deadline in the FCC's proposed rulemaking considering several changes to the Emergency Alert System (EAS) rules, with reply comments due by August 29, 2014. This rulemaking was largely prompted by the 2011 nationwide EAS test, which revealed several gaps in the existing system.

ONLINE VIDEO CLIP CLOSED CAPTIONING

On July 11, 2014, the FCC adopted new rules requiring closed captioning of video clips posted online. The rules extend the Commission's 2012 Internet Protocol (IP) closed captioning rules, which covered full length videos online, to video "clips" if the original programming was shown on television in the US with captions. The rules apply to video programming distributors that air programming on television (including broadcasters) and then post clips on their own website or via their own mobile app.

Compliance deadlines will vary based on the type of video clip. For "straight lift" clips, which contain a single excerpt of a captioned TV program with the same video and audio that was presented on television, the compliance deadline is January 1, 2016. For "montages", which occur when a single file contains multiple straight lift clips, the deadline is January 1, 2017. Finally, for video clips of live and near-live TV programming, such as news or sporting events, the deadline for captioning those clips online is July 1, 2017.

If a video clip is already in a distributor's online library before an applicable compliance deadline, those clips are exempt.

The new rules do not extend to third party websites or apps, but the FCC has issued a further rulemaking considering whether to require them to caption online clips also.

LOW POWER FM TENTATIVE SELECTEES ANNOUNCED

On July 9, 2014, the FCC issued a public notice announcing a total of 79 remaining groups of mutually exclusive applications filed in the October 2013 filing window, and the tentative selectee from each group based on application points. These remaining groups, consisting of over 248 applications, represent those applications for which no amendment, settlement or time-share agreement was timely filed or was deemed unacceptable.

Applicants in each group have 30 days (until August 8, 2014) to file petitions to deny against tentative selectee applicants, and a 90-day period (until October 7, 2014) for applicants to file voluntary time-share proposals (point aggregation requests) and major change amendments.

MEDIA BUREAU CONSIDERING BLANKET EXTENSION OF LPTV DIGITAL CONSTRUCTION PERMIT DEADLINES

The FCC's Media Bureau has announced a comment deadline of August 14, 2014 on a petition filed by the Advanced Television Broadcasting Alliance (ATBA). The ATBA petition asks the FCC to issue a blanket extension of all current LPTV and TV translator digital construction permits to September 1, 2015, the current deadline for such stations to transition from analog to digital.

The move would help current digital permit holders to avoid the necessity of filing for six-month extensions of any expiring permit, and would avoid the expense of constructing digital facilities now, only to be displaced and forced to rebuild as a result of the spectrum auction, currently targeted for mid-2015. Comments can be filed using the FCC's Electronic Comment Filing System (ECFS).

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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

August 1 & 16: TV, Class A & LPTV Stations in Arizona, Idaho, Nevada, New Mexico, Utah & Wyoming: air POST-filing announcements

August 1, 2014: TV, Class A & LPTV Stations in California: 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 North Carolina, South Carolina & California: 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 North Carolina & South Carolina: 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.

AM & FM Stations in Illinois & Wisconsin: 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 TV Stations in Illinois & Wisconsin: 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.

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

August 1 & 16 and September 1 & 16: TV, Class A & LPTV Stations in Alaska, American Samoa, Guam, Hawaii, Oregon & Washington: air your PRE-filing announcements.

August 14, 2014: EAS comments due.

August 23, 2014: TV, Class A & LPTV 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.

August 29, 2014: reply EAS comments due

September 5, 2014: lowest unit charge for federal election starts.

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