



Broadcast Newsletter

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\$86.4 BILLION PRICE TAG FOR AUCTION

After nearly a month of bidding by TV stations, the FCC's reverse auction ended on June 29, 2016. The "provisional winners" in the reverse auction will receive a total of \$86.4 billion to either go off the air, go to a low VHF channel, or go to a high VHF channel. That figure far exceeds most estimates of what the spectrum would "cost" for bidders in the forward auction.

The forward auction will start in coming days, and over the next several weeks, the FCC is going to find out if the spectrum is worth that much. If not, the FCC will reset to a lower clearing target then conduct stage two of the auction. Stage two will have both a reverse and a forward auction, but on the reverse side, only those stations that were provisional winners at the end of stage one will remain eligible to participate. So stations that never played, opted out after playing for a while, or were told that they were no longer needed, don't have to worry about taking another joy ride.

This is why the FCC uses the term "provisional winner". Those with that status after the reverse auction will only become paid up winners at the promised figure if the forward auction generates enough dollars. If not, provisional winners will get to find out in stage two if they remain provisional winners.

How long will the stage one forward auction last? That's the big question, and there are only guestimates at this point. We believe the reverse auction went faster than the FCC had anticipated, but the amount of time it will take the FCC to bring bidders up to \$86.4 billion (or find out they won't bid that high) in the forward auction is difficult to say given the number of variables in play.

Oh, and don't forget, the FCC needs to finalize and adopt a repacking plan during all of this auction madness... and decide how and when to let ATSC 3.0 become reality... and figure out their system for reimbursing repacked TV stations post auction. Seems the "busy" meter at the FCC is pegged at the moment. Wouldn't you agree?

OPIF Now A REALITY

All TV stations were “transitioned” to the FCC’s brand spanking new Online Public Inspection File (OPIF) system on June 24, 2016, and several radio stations were required to join them as well. Was your radio station supposed to join the OPIF crowd? Only if it was in the top 50 radio markets and had five or more full-time employees. Those stations were mandated to enjoy the thrill of using OPIF going forward, though they have until December 24, 2016 to upload any prior items from the old paper file.

Eager radio stations not meeting the required market/employee threshold shouldn’t feel left out. Their turn will come in early 2018, when OPIF becomes mandatory for all radio stations, unless of course, a station decides to leap into the OPIF world voluntarily before then.

For those now living in the OPIF world, don’t forget to upload your 2nd quarter issues and programs report by July 10, 2016. If you forget, and put it in late, the date-stamp on the upload will tell of your lateness to the FCC, and you will have no recourse but to admit your tardiness come license renewal time. And that admission can result in a cash payment to the FCC. So be extra careful!

EAS? TEST REPORTING? YES!

The living used to be easy in summertime. But just as we were all sipping lemonade and heading for the hammock, the FCC jolted broadcasters (and their FCC counsel) awake with a new registration and info collecting regimen called the EAS Test Reporting System (ETRS).

We know, your ice hadn’t even started to melt yet. We empathize.

Here’s the short story. The FCC wants to run another national test of the EAS system. The one they did five years ago was, in a word, horrible. And anything the FCC does poorly once, they try again. So except for TV translators and FM translators, each broadcast station must electronically register in ETRS and file ETRS Form One no later than **August 26, 2016**.

There’s more detail in this [public notice](#) and after you enjoy that summer reading, click [here](#) to complete the steps necessary for ETRS registration. Completing that will generate an email to authenticate you, and then you get to file ETRS Form One. That process is a bit hairy, but [this public notice](#) will help. We’ve been told by one client to ignore the map of China that generates next to your station coordinates during Form One filing. No, seriously, we saw a screen save of it. Honest. But we are *not* in China. We’re hopeful the FCC will fix that odd glitch.

Word on the street is that a national EAS test will happen this fall (not related, we’re assured, to a certain national election . . . ahem). So after you register and file Form One, keep the ETRS link on your favorites list, as you’ll be needing it to file Form Two and Form Three as part of that process. Couldn’t they have used Thing One, Thing Two and Thing Three instead?

Now that you’re aware of this new summertime requirement, we recommend you delegate it (if possible) to an able-bodied and earnest employee or trusted soul (but verify later) and head to your hammock to finish that book.

REGULATORY FEES GOING UP

Every year, the FCC issues a proposed rulemaking for collecting the fees that keep them operating. And every year, the figures they propose for annual regulatory fees are amazingly the ones that get adopted, even after comment.

Well, the proposed fees this year have spiked higher. So be ready to pay a few hundred dollars more per station, as the protests will likely fall on deaf ears.

Regulatory fees won’t be due until September, and a final posting of the FY 2016 fees will happen sometime in late July or early August. Following that, we’ll get guidance on the window for remitting fees. Miss it, then you pay a 25% penalty. Check this space for updates.

FCC PROPOSES TO ELIMINATE A REGULATION

Ok, we know we've been hard on our bureaucratic brethren in this newsletter, and this headline is a little tongue-in-cheek. Ok, maybe a lot. But our editorial board decided to go with it because we were feeling some of that independence before the start of the 4th of July weekend. And anytime you can declare yourself free of regulation, it harkens back to a time long ago when we declared ourselves free of tyranny, and celebrated.

Indeed, the FCC has proposed to eliminate a regulatory burden that is – quite frankly – a pain. Remember that public file? The one you have to keep so the public can review it? Well one of the items you have to place in the file is written comments from the public about your station operations. Those can be numerous, or nasty, or nonsensical. But they have to go in the file. And if you're already in online public file mode, these comments are an exception to the normal requirement to upload online because the FCC is concerned about the public's privacy. So OPIF users must still maintain a paper file with these comments back at the station. Really.

But wait! Enter the FCC in its best freedom garb! They are proposing to eliminate this requirement altogether. Not that they don't love the public and their comments, but they just see this as no longer necessary. Some Commissioners are concerned about safety at broadcast stations and because of the privacy/separate file issue, see this requirement as a dinosaur.

If you agree, celebrate the possibility of freedom by taking a peek at [this public notice](#) and filing comments in support.

And Happy Fourth of July! Stay safe!

DATES TO REMEMBER

June 24, 2016:

Commercial AM & FM Stations in the top 50 markets with 5 or more full-time employees must have begun to use the online public inspection file (OPIF) and begin posting documents in real-time.

TV & Class A Stations: your files from the broadcast public inspection file (BPIF) were migrated to the new online public file (OPIF) and you must begin to use the new system.

All Other AM & FM Stations: you can voluntarily begin to use the online public file system, but are not required to do so until March 1, 2018.

July 10, 2016:

TV, Class A, AM & FM Stations (commercial & noncommercial): complete 2nd quarter 2016 issues/program reports. **TV & Class A** stations post the report to your online public file. **AM & FM Stations** place in your public file (if already moved online, place in online public file).

TV & Class A stations (commercial only): complete and electronically file **VIA LMS** FCC Form 398 Children's TV Programming Report for 2nd Quarter 2016. Your report should be automatically linked by the 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.

July 28, 2016: 1st AM window for Class C and D AM stations to file 250-mile relocation modification applications for commercial band FM translators CLOSSES at 11:59 p.m. EDT.

July 29, 2016: 2nd AM window for Class A, B, C and D AM stations to file 250 mile relocation modification applications for commercial band FM translators OPENS.

August 1, 2016:

AM & FM Stations in California, North Carolina & South Carolina: if full-time employee threshold is met, complete EEO public file report and post same in public file as well as post on station website.

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. **If station has 11 or more full-time employees,** prepare and electronically file mid-term EEO Form 397 and place copy of filed report in your

public inspection file. **NCE Stations Only:** also file biennial ownership report via Form 323-E and place copy in public file.

TV & Class A Stations in North Carolina & South Carolina: if full-time employee threshold is met, complete EEO public file report and post same in public file as well as on station website and prepare and electronically file mid-term EEO Form 397 and place copy of filed report in your public inspection file. **NCE Stations Only:** also file biennial ownership report via Form 323-E and place copy in public file.

TV & Class A Stations in California, Illinois & Wisconsin: if full-time employee threshold is met, complete EEO public file report and post same in online public file and station website. **NCE Stations in California Only:** also file biennial ownership report via Form 323-E and place copy in public file.

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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.

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