



# Broadcast Newsletter

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## NATIONAL EAS TEST

The FCC's pre-planned National EAS test took place as advertised on September 28, 2016. A day or so before the test, the FCC emailed participants recommending that EAS Form Two – due on the same day of the test – be filed in certain time windows based on the time zone where the station was located. This hinted to us that the ETRS system might not be able to handle the overload of all broadcast stations filing the form.

Well, it turns out that the ETRS performed pretty well despite the likely overload of filers. It did pause or slow down periodically, but we'll give it an A-minus. Good for the FCC and FEMA – they seem to have avoided a debacle. In fact, early reports say that the national test was successful.

With the filing of EAS Form Two now complete, it would be easy to breathe a sigh of relief that it's all over. Not so fast. There is yet another form to file (ok, we could see your grimace from here). Since it is the third form broadcasters have to file for this national test, the FCC (or FEMA) has conveniently designated it as EAS Form Three. In this form the FCC wants to know the precise times you received and transmitted tests, along with other details (such as problems you encountered, translators that also carried the test, etc.).

To file EAS Form Three, you must log in to the [EAS Test Reporting System \(ETRS\)](#) using the same access codes that were required for Forms One and Two. **The deadline to file EAS Form Three is November 14, 2016.** If you've thrown up your hands in disgust at this point, or if you encountered a problem during the test and would prefer to have legal counsel assist in preparing the language describing the issue, we are available to assist.

## SECOND FM TRANSLATOR WINDOW FOR AM STATIONS OPEN UNTIL HALLOWEEN

The second FM translator filing window for AM stations originally opened on July 29<sup>th</sup>, but applications can continue to be filed in the window until it closes October 31,

2016. All classes of AM stations are eligible to file applications in the window seeking to relocate non-reserved band translators up to 250 miles for use with an AM station.

The FCC continues to process and grant singleton applications (i.e., those that are not mutually exclusive with others filed on the same day). If an application is mutually exclusive with another same-day filed translator application, the FCC looks to the filing parties to both determine and resolve the mutual exclusivity (though, as we recently learned, it does send an email advising of the mutual exclusivity). Agreements to dismiss and modify are permitted, as are payments to incentivize a party to dismiss or modify, provided that appropriate disclosures are made to the FCC.

## INCENTIVE AUCTION: STAGE TWO

So, we've reached stage two. The stage that follows the one that did not match supply with demand (by a long shot) and therefore became necessary. Stage Two of the Incentive Auction, that is, meaning that the TV broadcasters that remained after stage one must make it through round two of a reverse auction, with the FCC offering a declining sum of money for their spectrum, and then seeing if the wireless companies will buy it at that overall price in round two of a forward auction. What a mouthful. The FCC is trying to clear 114 Mhz (the equivalent of nineteen 6 Mhz TV channels) in stage two.

At the moment, we're getting to the end of the reverse auction portion of stage two, after which the FCC will announce the total amount offered for the spectrum, and then flip to the stage two forward auction to see if bidders will bid that high. The stage two forward auction probably won't end until mid to late October. In case you've forgotten, the FCC's Incentive Auction began back in July, and is projected by

many to be headed to at least stage three, and probably stage four.

The next sentence of this paragraph is – admittedly – a repeat of a line from the last paragraph of our last newsletter auction article. Ready? *This could go on for a while folks.* Our guess is that a stage three could finish as early as the end of November, and if a stage four is needed, it's debatable as to whether that could be completed in December. That would roll us into 2017.

Meanwhile, the TV world holds its breath and no one buys or sells stations because values are distorted in the absence of clarity on what the post-auction TV landscape looks like. Sounds harsh, but that's the reality.

Hey FCC, we agree that patience is a virtue. But no one ever quantified patience quite the way you do. We think your definition of patience makes us all very, very virtuous.

## REGULATORY FEES NOW PAST DUE

If you somehow forgot to pay your annual regulatory fees, or thought you didn't have to but later learned that you did, it is still possible to do so using the FCC's Fee Filer link, but you will get the privilege of also paying a 25% penalty on top of your normal fee. Note -- it is better to pay it now, as the FCC will start to charge interest in addition to the penalty.

The other reason to pay the fee and penalty as soon as possible? So that the FCC doesn't "red light" any application you may file -- because of your outstanding debt. That's not a maybe. It's a certainty. Being red-lighted means exactly what it suggests – the FCC receives your application but sees the red light and stops processing it until you pay the debt. Never fun.

## DATES TO REMEMBER

### October 1, 2016:

**AM & FM Stations in Florida, Puerto Rico, Virgin Islands, Alaska, American Samoa, Guam, Hawaii, Oregon and Washington:** 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 Iowa and Missouri:** 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 Florida, Puerto Rico and the Virgin Islands:** 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 Iowa, Missouri, Alaska, American Samoa, Guam, Hawaii, Oregon and Washington:** 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 Alaska, American Samoa, Guam, Hawaii, Oregon and Washington:** also file biennial ownership report via Form 323-E and place copy in public file.

### October 31, 2016

Second AM Station FM Translator window closes at 5:59 p.m. eastern time.

### November 14, 2016

Deadline for all broadcasters to file EAS Form Three using the EAS Testing Registration System (ETRS). This is the last filing required by the National EAS Test conducted in September.

### December 1, 2016

**ALL digital Full Power TV, Class A and TV Translator Stations** must electronically file FCC Form 317, Annual DTV Ancillary/Supplementary Services Report.

**AM & FM Stations in Alabama, Georgia, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont:** 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 Colorado, Minnesota, Montana, N. Dakota and S. Dakota:** 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 Alabama and Georgia:** 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 Colorado, Minnesota, Montana, N. Dakota, S. Dakota, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont:** 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 Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont:** also file biennial ownership report via Form 323-E and place copy in public file.

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For more info, contact Joe Chautin or Mark Balkin.

Phone 985.629.0777

Fax 985.629.0778

[www.hardycarey.com](http://www.hardycarey.com)

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.

 Hardy, Carey, Chautin & Balkin, LLP  
ATTORNEYS AT LAW  
1080 West Causeway Approach  
Mandeville, Louisiana 70471-3036