



Broadcast Newsletter

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NATIONAL COLLEGE MEDIA CONVENTION PRESENTER

HCCB managing partner **Joe Chautin** will be presenting at the 92nd ACP/CMA National College Media Convention in New Orleans, Louisiana at 10 a.m. on October 24, 2013. His presentation will cover various FCC subjects, including the FCC's new policy on forfeitures for student-run college stations, and license renewal issues. The convention is from October 23-27, and is returning to New Orleans after more than a decade. Drop Joe a line if you plan to be there. He will post his presentation on the www.hardycarey.com website after the convention.

FCC DURING GOVERNMENT SHUTDOWN

The FCC has published a 4-page plan for operations during any government shutdown. FCC employees will report to work for four hours of the first day of the shutdown to complete a series of actions necessary to shutter operations (including cancelling travel, training, and public sessions). A skeleton crew of 38 employees will remain on duty during the shutdown for protection of life and property purposes. The FCC's announcement does not include any statement about the continued availability of online filing systems during a government shutdown. We presume that they will remain available, at least until maintenance or other monitoring requirements are triggered for which personnel may not be available.

AM RADIO REVITALIZATION RULEMAKING ON ITS WAY

Acting Chairwoman Mignon Clyburn announced during her remarks at the recent NAB Radio Show that she has circulated a proposed rulemaking to consider ways the FCC can revitalize the AM radio service. The reference to the rulemaking being "circulated" is to a procedure that precedes the release of a written rulemaking proceeding, where the proposal is circulated for comment and input from the FCC's sitting commissioners and their staffs. We would not be surprised if the NPRM is released in October.

The draft proposal will clearly include something that AM stations have been seeking for sometime – a special filing window, open to AM stations only, for new FM translators. While the FCC's rules currently allow AM stations to use FM translators in limited

circumstances, many stations have been frustrated in trying to obtain an existing FM translator or permit and moving it underneath their AM pattern. The tidbits of information available at this point do not provide much information on how the FM translator window would work, or its viability given the LPFM / FM Translator “co-equal” status created recently by Congress.

Other proposals suggest that the FCC will take a hard look at its interference and day/nighttime rules. We'll keep you posted on when there is a formal proposal for comment.

LICENSE RENEWAL PENALTIES TURN ON HOW BAD YOU'VE BEEN

For most broadcast stations, license renewal is straightforward and uneventful. But for some who have not always followed the rules to the letter (or have suffered from temporary amnesia as to whether there are rules), life is not so nice during renewal. This past week teaches that how the FCC treats you when your renewal has a few regulatory “warts” can range from a lenient hand slap to an eviscerating blow.

Lenient first. Two television stations that filed their license renewal applications 10 and 11 days late respectively received admonishment letters from the FCC along with a full license renewal. The FCC cautioned that it might have more severe sanctions for any future late-filing.

Now for the eviscerating blow. A noncommercial FM radio station in New Mexico filed for license renewal, voluntarily reporting that for six years, it had failed to complete or place in its public file the required quarterly issues/programs list. The FCC found this oversight to be a “serious” violation of its rules, characterized the licensee's actions as “cavalier,” fined the station \$12,000 and then renewed the license for a shortened term of only four years (half the normal eight-year term). The FCC stated that the shortened term would afford it another opportunity to review the Station's compliance.

A FILING WINDOW FOR COMMERCIAL STATION BIENNIAL OWNERSHIP REPORTS

It's a world of filing windows at the FCC, and they've now created one for the biennial ownership reports that commercial stations must file in 2013. Since the reports must include information no earlier than October 1, 2013, the filing window will open that day, and will then remain open for 63 days until December 2, 2013. All commercial broadcast stations must file a biennial report during the filing window using FCC Form 323.

The Media Bureau's filing window public notice encourages filers to “use care in preparing” the reports and to submit them “well in advance” of the deadline. Stations cannot submit reports on paper; they must be electronically filed.

EAS IMPROVEMENTS SOUGHT

The FCC's Public Safety and Homeland Security Bureau, responsible for the first-ever nationwide EAS test in 2011, would like input from EAS “stakeholders” to address issues that remain from the nationwide EAS Test. Earlier this year, the Bureau released the results of the 2011 test, concluding that EAS was “fundamentally sound”, but noting several problems that impeded the ability of some EAS participants from receiving and/or retransmitting the nationwide test.

Comments are sought on the ability of equipment to recognize and process EAS “Header Code” elements, the timing of the release code, issues related to the location code, visual crawl and audio accessibility issues, national test event codes, and length of message impacts. Comments are due October 23, 2013, with reply comments by November 7, 2013. Electronic and paper comments are allowed. The Bureau plans to make several recommendations for EAS improvements at the conclusion of this proceeding. From there, the Media Bureau would have to implement those recommendations with respect to broadcasters.

LPTV DIGITAL BUILD OUT EXTENSION?

The FCC recently issued a long-delayed decision on several petitions for reconsideration of its LPTV digital transition rules. None of the petitions gained any traction, but in at least one instance, the FCC dropped a hint about its previously adopted September 1, 2015 deadline for all LPTV stations to complete the transition to digital and cease analog operations.

In denying a petition for reconsideration of the transition deadline, the FCC acknowledged that since it adopted the September 1, 2015 deadline, Congress had authorized the FCC to conduct an incentive auction to reclaim broadcast television spectrum. In light of that development, the FCC "conditioned" its refusal to change the deadline as "without prejudice to the Commission's ability to consider making adjustments to the timing of the LPTV transition" in the incentive auction rulemaking as it develops the schedule for holding the incentive auction and repacking.

More definitive information on whether the deadline will be extended should be forthcoming in the FCC's Incentive Auction Report & Order, expected later this fall.

ELIMINATION OF TV UHF DISCOUNT PROPOSED

The FCC has voted to open a proceeding to consider eliminating a provision of its ownership rules that gives special treatment to UHF channels when computing the national television ownership cap. Currently, the rule prohibits a single entity from owning stations that reach, in the aggregate, more than 39% of total television households nationwide. The UHF discount allows owners of UHF stations to only count 50% of the television households in the UHF station's market. Application of the discount therefore allows a single entity to own stations that reach more than the 39% aggregate limit.

The FCC's logic? UHF stations aren't considered "technically inferior" to VHF stations any longer because of the digital transition, where often, UHF station digital signals are considered superior to VHF in terms of interference and signal penetration.

Although titled a "Notice of Proposed Rulemaking," the FCC already appears sold on the idea, presenting the rule change in terms of tentative conclusions it has already made, and seeking comment on those conclusions. However, it does not simultaneously consider whether the 39% national ownership cap should also be changed. And without that discussion, eliminating the UHF discount will necessarily tighten the national ownership cap. The FCC's "proposal" could therefore significantly influence the marketplace – all before a decision is ultimately made on whether to eliminate the UHF discount. That missing discussion and those potential consequences led Commissioner Ajit Pai to dissent from the FCC's decision.

With the incentive auction looming, the ultimate effect of the FCC's mere "proposal" to eliminate the UHF discount introduces significant uncertainty for station owners as to what stations they may be able to own post-auction. Though the proposed UHF discount elimination includes some consideration of grandfathered situations, those are not clear in the least. The "proposal" could therefore pressure station owners to consider auctioning off spectrum of stations they may not be able to own post-auction. Call us cynics, but that seems way too convenient for an incentive auction that depends on broadcaster participation to be successful. Not surprisingly, unlike other proceedings where the FCC wants to proceed with all haste, the UHF discount elimination proposal doesn't even have deadlines yet for comments and reply comments – in other words, it is on a slow train.

INCENTIVE AUCTION UPDATE

Speaking of the incentive auction, while it continues to grapple with the basics of how to design the TV spectrum auction, the FCC has jumped ahead to consider the details of channel relocation and cost reimbursement during repacking after the spectrum auction. On the cost reimbursement front, the FCC's latest public notice publicizes a proposed rulemaking on a "Catalog of Eligible Expenses" that breaks down various channel relocation expenses into broad categories. Without saying so, this

notice strongly suggests the FCC plans to reimburse affected post-auction stations on an "estimated" basis instead of using a dollar-for-dollar approach.

While the NPRM asks for comment on the categories of expenses it proposes, and potential additions/changes to those, it also seeks input on the pricing of those categories. The NPRM also seeks comment on whether broadcasters affected by repacking should have to get competitive bids when buying equipment or services, methods for cost reduction such as bulk purchase requirements, and potentially limiting certain reimbursement costs (like HVAC) to the prices offered by vendors to federal agencies.

Comments in this proceeding can be filed electronically through the FCC's Electronic Comment Filing System, or by regular mail. The deadline for comments is October 31, 2013, with reply comments due November 14, 2013.

LOW POWER FM FILING WINDOW OCTOBER 15-29; WEBINAR OCTOBER 3

Unless the government shutdown interferes, the FCC is scheduled to host the second of two LPFM webinars to discuss the process for applying for new LPFM stations in the LPFM filing window slated for October 15-29, 2013. The webinar will be broadcast live over www.fcc.gov/live from 1:00-2:30 p.m EST, and will primarily be a question and answer session with the Media Bureau staff.

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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

September 30, 2013: (assuming no government shutdown) 10am EST – Workshop on TV broadcast relocation fund reimbursement and related issues at FCC. Live streaming available at <http://www.fcc.gov/live>.

October 1, 2013 – December 2, 2013: all commercial AM, FM, TV, Class A & LPTV Stations: complete and file your ownership report with information current as of October 1, 2013.

October 1, 2013: AM & FM Stations in Alaska, American Samoa, Guam, Hawaii, Oregon & Washington: file your renewal application electronically via Form 303-S. Also file EEO Form 396 with, if applicable, two most recent EEO public file reports. Place current EEO public file report in public file and post copy on station website, if applicable. **NCE Stations Only:** also file biennial ownership report via Form 323-E.

TV, Class A & LPTV Stations in Iowa & Missouri: 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 Florida, Puerto Rico & Virgin Islands: if full time employee threshold is met, complete EEO public file report and place same in public file as well as post on website. **NCE STATIONS ONLY:** also file biennial ownership report via Form 323-E.

TV & Class A TV Stations in Florida, Puerto Rico & Virgin Islands: if full time employee threshold is met, complete EEO public file report and place same in public file as well as post on website.

AM & FM Stations in Iowa & Missouri: if full time employee threshold is met, complete EEO public file report and place same in public file as well as post on website.

TV & Class A TV Stations in Alaska, American Samoa, Guam, Hawaii, Oregon & Washington: if full time employee threshold is met, complete EEO public file report and place same in public file as well as post on website.

October 1 & 16: All AM & FM Radio Stations in California: air your POST-filing announcements.

All TV, Class A & LPTV Stations in Illinois & Wisconsin: air your POST-filing announcements.

October 1 & 16, November 1 & 16: AM & FM Stations in Connecticut, Maine, Massachusetts, New

Hampshire, Rhode Island and Vermont: air your PRE-filing announcements.

All TV, Class A & LPTV Stations in Colorado, Minnesota, Montana, North Dakota & South Dakota: air your PRE-filing announcements.

October 1 & 16, November 1 & 16, December 1 & 16: TV, Class A & LPTV Stations in Iowa & Missouri: air your POST-filing announcements

AM & FM Stations in Alaska, American Samoa, Guam, Hawaii, Oregon & Washington: air your POST-filing announcements.

October 3, 2013: Webinar on LPFM filing window from 1 – 2:30pm EST at www.fcc.gov/live.

October 10, 2013: TV, Class A TV, AM & FM Stations (Commercial & NCE): complete 3rd quarter 2013 issues/program lists and place in your inspection file (online for TV and Class A; paper for radio)

TV & Class A Stations (Commercial Only): complete and electronically file FCC Form 398 Children's TV Programming Report for 3rd Quarter 2013. The report should automatically link to your online public file. Also compile and post to online public file records relating to station's compliance with children's TV programming commercial limits.

Class A TV Stations Only: complete and post to online public file records relating to station's continuing Class A eligibility

October 15 – 29: LPFM filing window.

October 23, 2013: AM & FM 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.

TV, Class A & LPTV Stations in Illinois & Wisconsin: complete and post to your online public file documents relating to pre- and post-filing broadcast renewal announcements.

October 23, 2013: comments due on nationwide EAS test.

October 31, 2013: comments due on categories of expenses to be reimbursed for spectrum auction channel relocation.

November 7, 2013: reply comments due on nationwide EAS test.

November 14, 2013: reply comments due on categories of expenses to be reimbursed for spectrum auction channel relocation.



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