



# Broadcast Newsletter

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## **FCC NOMINATIONS APPROVED**

The US Senate has voted to confirm the appointment of Tom Wheeler as FCC Chairman, and Michael O'Reilly as a Commissioner. They will be sworn in shortly, and after several months, the FCC will once again have a sitting chairman and four commissioners. While acting Chairwoman Mignon Clyburn has moved some items forward while the nominations remain pending, the swearing in of Wheeler and O'Reilly clears the way for FCC action on more substantive, long-term issues, including the television incentive auction proceeding. The FCC's plan was to issue a Report & Order in that proceeding by the end of this year.

## **FCC SHUTDOWN AND AFTERMATH**

In connection with the Congressional debate on government funding and the shutdown of most government functions earlier this month, the FCC shuttered its doors and website for 16 days, from October 1-16, 2013. While we were not surprised that the FCC would not accept filings during the shutdown, we were not expecting that the FCC's website would be completely disabled such that stations were prevented from at least working on and saving drafts of reports or applications, or more importantly for TV stations, placing items in their FCC web-hosted online public files. In fact, by disabling its website, the FCC precluded the public from accessing TV online public inspection files, an action that – if taken by a TV station, either purposefully or inadvertently – would have warranted heavy fines from the FCC.

Left on the skeleton of a webpage was a somewhat cryptic message related to deadlines. It directed that the deadlines for any filings due during the shutdown would be moved to the first full business day after government funding was restored. Given that stations could not even prepare drafts of reports, the FCC's announcement left precious little time for stations to complete filings once operations were restored.

But alas, when funding was restored and the FCC returned to work on October 17<sup>th</sup>, the FCC decided to change its prior announcement, issuing a public notice suspending all filing deadlines that occurred during the shutdown or that would occur on or before October 21. Then, later that same day,

the FCC issued a 7-page all-encompassing public notice on revised filing deadlines, superseding its October 1<sup>st</sup> and 17<sup>th</sup> public notices. Confused yet?

Thankfully, the 7-page public notice has not been changed. With some exceptions, filings due between October 1-6 became due on October 22<sup>nd</sup>, and filings due between October 7-16 became due 16 days after the original filing date, an extension equivalent to the period of the FCC's closure. Further, the FCC extended any regulatory and enforcement filings due between October 17<sup>th</sup> and November 4<sup>th</sup> until November 4<sup>th</sup>.

Explaining that it could not waive statutory deadlines such as those associated with petitions for reconsideration, the FCC instead announced that it would not consider itself open for statutory deadline filings until October 22<sup>nd</sup> – in effect extending the deadline for such filings until that date.

Finally, the FCC announced that any STAs expiring between October 1-22 were automatically extended until November 4<sup>th</sup>.

No word from the FCC on whether the December 1, 2013 deadline for commercial station biennial ownership reports will receive an extension. But the loss of 16 days of a 62-day filing window for those reports could be critical to some broadcasters. If extended, the Media Bureau will issue a public notice announcing the extension.

We hope that another FCC shutdown doesn't arrive anytime soon. The compliance and deadline issues are a bit mind-warping, and broadcasters have enough to worry with already.

## **LOW POWER FM FILING WINDOW EXTENDED AND RULES CLARIFIED**

The FCC has announced that the Low Power FM Filing Window originally scheduled from October 15-29 has been extended until November 14, 2013 at 6:00 p.m. EST due to the government shutdown. In addition, the second LPFM webinar originally scheduled for October 3<sup>rd</sup> was rescheduled to October 24<sup>th</sup>.

When it returned to work, the FCC released a Report & Order (the sixth one on reconsideration) in the proceeding adopting the new LPFM rules. While it left in place its prior decisions on things like eligibility, 10 watt stations, and attribution, it did clarify some issues. LPFM applicants will not be permitted to improve their comparative points position with post-window amendments. In addition, LPFM applicants must protect FM translator input signals from both full-service and FM translator stations, but those input signals are only those in place as of June 17, 2013, the date that the LPFM window was announced. Finally, LPFM applicants will now measure predicted interference to third adjacent channels from the location of the receive antenna.

On the input signal issue, the FCC issued a separate public notice providing guidance to LPFM applicants on how to locate translator input signal station data in the FCC database.

## **FCC TO STUDY HISPANIC TELEVISION VIEWING**

Continuing its ongoing plans to encourage broadcast diversity, the FCC has announced that it will study the relationships among Hispanic television station ownership, programming, and viewing. The study will mark the first time the FCC has studied the Hispanic television market, and will incorporate data from the FCC's revised ownership report.

The FCC's notice cites to recent census data that 17 percent of the total US population is of Hispanic origin, the largest ethnic/racial minority in the country. The study will focus on select markets, and will also examine digital multi-casting's role in the availability of Hispanic-oriented programming.

## **INCENTIVE AUCTION UPDATE**

The FCC has rescheduled its workshop to discuss unlicensed spectrum issues in connection with the ongoing incentive auction rulemaking proceeding. Instead of the originally scheduled October 24<sup>th</sup> date for the workshop, the new date is November 8<sup>th</sup>. The workshop will be from 9:30 am to 12:30 pm EST. The workshop will focus on the use of

television band white space use by unlicensed devices in a post-auction environment.

In response to our inquiry, the FCC has advised that the deadline for comments on the reimbursement cost categories for television stations affected by repacking will be extended by a few days as well. The original deadline was October 31, 2013. The new deadline is November 4, 2013.

## MAIN STUDIO FORFEITURE PROCEEDING RAISES QUESTION ABOUT RULE

A recent proceeding involving a main studio staffing violation raised an issue that bears noting. The station involved had repeatedly not had any personnel at the main studio during FCC inspections, which led to a proposed forfeiture from the FCC for failure to maintain adequate staffing.

In response, the station claimed that the FCC did not have the authority to assess a forfeiture because main studio staffing requirements have never been adopted in a rulemaking proceeding, and do not appear in the main studio rule. It's a good argument, but one that the FCC dodged here with this explanation. In 1988, as part of a rulemaking addressing main studio issues, the FCC clarified that broadcast station main studios must "maintain a meaningful management and staff presence." Then, in subsequent decisions, the FCC says it provided "further guidance" by defining "meaningful presence" as full-time managerial and full-time staff personnel. According to the FCC, that guidance was an exercise of its authority to interpret its rules without being subject to the rulemaking requirements of the Administrative Procedure Act. And with that, the FCC rejected the station's argument. So that's how interpretations become rules, and violations of those interpretations lead to monetary forfeitures (or what we call "fines").

The only good news for this station was that the FCC agreed to reduce the original \$10,000 fine to \$1,500 based on the station's demonstrated inability to pay.

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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

**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:**

**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 15 – November 14:** LPFM filing window.

**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.

**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.

**November 4, 2013:** comments due on categories of expenses to be reimbursed for spectrum auction channel relocation and nationwide EAS test.

**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.

**December 1 & 16, 2013 and January 1 & 16, 2014:** TV, Class A & LPTV Stations in Kansas, Nebraska & Oklahoma: air your PRE-filing announcements

AM & FM Stations in New Jersey & New York: air your PRE-filing announcements.

**December 2, 2013:** AM & FM Stations in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, & Vermont: 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.

TV, Class A & LPTV Stations in Colorado, Minnesota, Montana, North Dakota & South Dakota: 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 Alabama & Georgia: 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 Alabama, Georgia, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island & Vermont: 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 Colorado, Minnesota, Montana, North Dakota & South Dakota: if full time employee threshold is met, complete EEO public file report and place same in public file as well as post on website.

**December 2, 2013:** Digital TV, Class A TV & LPTV Stations: prepare and file your Form 317 declaring any ancillary and supplementary services provided on your station for the period ending September 30, 2013.

**December 23, 2013:** AM & FM Stations in Alaska, American Samoa, Guam, Hawaii, Oregon & Washington: complete and post to your public file documents relating to pre- and post-filing broadcast renewal announcements.

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

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