



Broadcast Newsletter

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TV SPECTRUM AUCTION ORDER – THE FIRST STEP

It took a few weeks after their narrow 3-2 vote, but the FCC did publish its Incentive Auction Report & Order (“R&O”) in early June, the first step of many in a long process that could repurpose some TV spectrum for wireless use. If you’ve taken the time to find it, you already know that the R&O is 484 pages long, which may be a record for the FCC (we’re checking). We are still deciphering the order and will advise clients on the specifics in July.

In the meantime, the FCC is now on an all-out blitz to convince broadcasters to voluntarily participate in the auction (remember, without participation, the spectrum auction will fail). And they’re not wasting any time, or sparing anything. The FCC has already hired a New York based investment firm, Greenhill & Co. (reportedly for \$150,000). The firm is apparently preparing a “book”, including a financial analysis, to help station owners decide whether to throw in the towel.

Meanwhile, the NAB has publicly taken the position that the Incentive Auction R&O and accompanying rule changes do not follow Congress’ edict that broadcaster auction participation be voluntary. Litigation over the order is likely. At the same time, NAB is continuing its efforts to obtain information about the FCC’s repacking plans. At NAB’s urging, the FCC has finally released the data files used in the new OET-69 interference software, though interestingly, that move came only after the FCC, in the auction rulemaking, rejected every NAB argument opposing use of the new software for bid selection and repacking. The data release is a critical step, as this software will be used to optimize TV channel assignments during the repacking process (though this could be central to NAB’s legal challenge). Optimization/repacking decisions will happen very quickly during the actual auction process so the FCC can determine which bids to accept or reject.

In a related action, the FCC has asked for comment by July 11, 2014 on how they plan on measuring the interference potential from wireless LTE (long-term evolution) to DTV receivers. That decision will factor into how the FCC structures adjacent LTE/DTV spectrum bands.

As a backdrop to all of this, the two FCC Commissioners who dissented from the auction R&O as unfair to TV station owners are decrying the recent impact of the FCC's ownership decision making TV joint sales agreements attributable, which has forced some station owners to shut down stations in order to come into compliance with the ownership rules.

In short, the landscape is as muddled as it has been on the TV front in some years, but perhaps never as interesting in terms of a modern-day spectrum duel that will play out incrementally.

EEO AUDIT TIME!

Oh, fun! The FCC has announced its latest round of EEO audits for broadcasters, targeting about 190 radio stations to provide paperwork and proof of their EEO compliance. The public notice includes the text of the letter those stations received. Responses are due July 25, 2014 unless a station asks for and receives an extension.

The notice also reiterates the website posting requirement for stations required to prepare annual EEO public file reports, and confirms that the website posting requirement will be examined as part of the audit and that stations are subject to forfeiture for not complying.

Audited or not, this is your station's opportunity to do an EEO compliance "checkup." This is the first of two annual random audits of broadcasters. The second round usually comes later in the year.

Anyone responding to the audit should exercise special care to ensure that documents submitted do not contradict statements or reports prepared. If you need assistance with an EEO audit response, or are just doing an internal compliance check, let us know.

TV JOINT SALES AGREEMENT ATTRIBUTION EFFECTIVE DATE

Back in April, the FCC changed its ownership attribution rules to make television joint sales agreements count against same market TV ownership limits if they involve more than 15

percent of the weekly advertising time for the brokered TV station. The move aligned the TV rule with the radio JSA attribution rule.

The effective date of the new TV JSA attribution rule is June 19, 2014, which means that affected stations have two years – until June 19, 2016 – to come into compliance with the new rule. Broadcasters are pushing Congress to take action that will override the FCC's decision.

DIGITAL REPLACEMENT TV TRANSLATOR AND LPTV DISPLACEMENT FREEZE

Citing an April 2013 freeze that limited the expansion of full power and Class A TV coverage areas, the FCC decided in June 2014 that there should be little need for and therefore implemented a freeze prohibiting the filing of new digital replacement translator stations or LPTV displacement applications. While waivers to the freeze can be granted in narrow circumstances, the freeze will stop such applications until after the incentive auction has been concluded, when the FCC plans to open a new filing window for adversely affected TV translator and LPTV stations.

FORFEITURE ROSTER

From EAS to children's television, the FCC actively added to its cash reserves in June by assessing forfeitures against broadcasters.

A full power TV station in Montana received a **\$1,000** fine for failing to publicize the existence and location of its quarterly children's television reports via on-air announcements during a one-year period.

An FM station in Pennsylvania received a **\$6,000** fine for failing to have operational EAS equipment during an FCC inspection, even though it was technically possible for the station to transmit an EAS message by switching the station's audio source to a co-owned station with EAS equipment. Though it was possible, the engineer admitted that a test had never been transmitted that way.

ASCAP/BMI CONSENT DECREES TO BE REVIEWED BY DOJ

All broadcasters are very familiar with BMI and ASCAP since they must be paid royalties every year for use of songs in their repertoires. What you may not have known is that since 1941, ASCAP and BMI have been parties to anti-trust consent decrees with the US Department of Justice since, between them, they control 90% of the commercially available songs in the US. The concern was and remains that given the huge market power concentrated with only two organizations, they have an unfair advantage in setting the rates that others must pay to have a license to perform their musical works.

As part of the consent decrees, BMI and ASCAP must grant a performance license for all of its musical works to any user who makes written application for it and if the parties cannot agree on a fee, a federal judge must determine a reasonable fee (also known as "Rate Court"). It also cannot treat users differently in rates or rights.

The DOJ announced earlier this month that it was undertaking a review of the consent decrees to examine their effectiveness and operation since the last revisions were made in 1994 for BMI's decree and 2001 for ASCAP's. The revisions may not necessarily change the rates that broadcasters pay, but may result in a change in how those rates are set. Both ASCAP and BMI are requesting that the decrees be modified to allow rate disputes to be subject to mandatory arbitration, necessarily taking the rate-making power out of the hands of the court.

Other parties, namely publishers, are urging that the consent decrees be scrapped entirely in favor of allowing those publishers to charge whatever they want to digital providers such as Sirius and Pandora (and presumably, broadcasters).

Comments are due to the DOJ by August 6. If you would like assistance in filing comments, please contact your communications counsel.

NEW FCC FEES TAKE EFFECT JULY 3, 2014

Get ready to pay a little more for your applications and reports at the FCC. Starting July 3, the new fee schedule will take effect. Fees have not been adjusted since 2009 and in the interim five-year period, there have been increases in the consumer price index which triggered the most recent review and increase.

An application to renew your license will now set you back \$190, \$15 more than before. Want to assign a license via a long form 314? It will be \$1,050, or \$80 more. Short form assignments and transfers via form 316 are only \$10 more at \$150. Ownership reports only went up a modest \$5 to \$65. STAs will now set you back \$190. Since almost all filing is now done electronically, it will be up to the CDBS and other systems to advise of the correct fees. Still, it doesn't hurt to know how much an application or report will set you back before you hit send.

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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

June 30, 2014: rules related to quality of captioning using Electronic Newsroom Techniques take effect.

July 1, 2014: all television and Class A stations must begin to upload political files to online public inspection file.

July 1 & 16: TV, Class A & LPTV Stations in California: air your PRE-filing announcements.

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

July 3, 2014: new FCC fees take effect.

July 10, 2014: TV, Class A, AM & FM Stations (Commercial and NCE): complete 2nd quarter 2014 issues/program lists and place in your public file (online for TV & Class A and paper for radio).

TV & Class A Stations (commercial only): complete and electronically file FCC Form 398 Children's TV Programming Report for 2nd Quarter 2014. 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 Stations Only: complete and post to online public file records relating to station's continuing Class A eligibility.

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

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.

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