



Broadcast Newsletter

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NAB APPEALS TV INCENTIVE AUCTION REPORT & ORDER

It took awhile, but the FCC finally published its June 2014 TV Incentive Auction Report & Order in the Federal Register, which started the countdown for legal challenges to be filed. The National Association of Broadcasters wasted no time, taking potentially the fastest path to review by filing a petition with the District of Columbia Court of Appeals. The NAB's petition alleges that the FCC's decision to use its new TV Study software to compute television coverage areas pre- and post-auction wrongly reduces the value of spectrum or viewing audience. According to NAB, the FCC's action thwarts Congress' intent because it puts pressure on broadcasters to participate, and is therefore not truly voluntary.

An NAB press release made clear that the legal filing is not intended to delay the auction, but rather to correct its course by ensuring that broadcasters are not adversely affected. The FCC has responded with its own press release, stating that its Order complies with Congress' mandate. We kind of thought they would say that, as they went to great pains in the Order to explain their reasoning and address broadcaster concerns.

The court will now set a briefing schedule hearing the case. It is not yet clear whether the case will be heard on an expedited basis. While FCC Chairman Tom Wheeler has suggested a 2015 date for the auction, some are already suggesting that 2016 is more realistic.

We continue to await important, promised steps from the FCC related to the TV auction, including an outreach to stations on the value of their spectrum, a rulemaking on how to calculate total post-auction interferences to stations, an NPRM on how to help displaced LPTV and TV translator stations.

ONLINE PUBLIC FILES FOR RADIO STATIONS?



In 2012, when the FCC adopted an online public file requirement for TV stations, it strongly hinted that the same rule would come to radio, but that it wanted to "test" things first on TV. Apparently, the FCC thinks the "test" period is over. It has asked for comments on whether a rulemaking should be initiated on radio online public files.

We found the FCC's public notice announcing this matter a bit peculiar. First, the radio online public file question was a sub-title to the main focus of the public notice, which asked whether cable and satellite providers should have to place their public files online. Second, while the text of the public notice did ask whether the FCC should initiate a rulemaking on radio online public files, it also asked for comment on "an appropriate time frame for such a requirement." Seems to us that makes a presumption of sorts that a radio online public file requirement is coming. And if that's the case, then why ask whether a rulemaking should be initiated in the first place?

While we're scratching our heads, the [deadline for comments is August 28, 2014](#).

AN FM MINOR CHANGE FREEZE IS ON

In conjunction with a filing window for 3 non-reserved FM band allotments that opened August 8, 2014 and will close on September 8, 2014, the FCC announced a freeze on the filing of applications to modify the 3 allotments, or on minor changes to certain FM and NCE minor change applications located within 250 kilometers of the 3 allotments. If you have a minor change application teed up for filing, you might want to check to see if it conflicts with the freeze, as it will be dismissed without further consideration. The freeze ends on September 8, 2014.

REVISED TOWER REGULATIONS

The FCC has now concluded its proceeding considering whether to tweak its Part 17 tower rules. Some of its rules were a bit archaic, such as the one that referred to a telegraph as a means of communication. Some of the rules were internally inconsistent of the timing of notices. And some of the rules were different from similar FAA rules, creating confusion.

The revised rules clear up those issues, and while they do streamline things, they also change some rules that have been in place for some time. Every broadcaster should review the changes, most of which will go into effect in about another month. For

example, the way a tower owner currently posts the antenna structure registration number may need to be changed. And communication with the FAA on tower lighting outages is now more robust.

Tower sites are one of the FCC's richest sources of monetary forfeitures, and are often the first stop for field agents when they are out and about. If you've not received our summary of the rules but would like to, please send an email to admin@hardycarey.com.

TOWER CLIMBER SAFETY WORKSHOP ANNOUNCED

The FCC and the Department of Labor have announced a workshop to explore issues surrounding tower climber safety, injury prevention, and fatalities involving work on communications towers. The workshop is October 14, 2014 from 9 a.m. to 12:30 p.m. EDT at the FCC's offices in Washington. Audio and/or video coverage will be provided on the FCC's website.

COMMENT DEADLINE EXTENDED FOR FM C4 CLASS PETITION FOR RULEMAKING

The FCC has extended the comment deadline to September 18, 2014 in a proceeding considering a request by SSR Communications that the FCC create a new Zone II FM broadcast station class, or "C4" allocation. The reply comment deadline has also been extended through October 3, 2014.

CONSTRUCTING TOO EARLY HAS CONSEQUENCES

The FCC has fined a broadcaster for violating its policies against premature construction of a broadcast facility. The matter arose from a complaint filed with the FCC alleging, among many other things, that a permit holder had built a tower prior to obtaining a construction permit for a new broadcast facility.

The decision explains the FCC policy, and distinguishes between permissible and impermissible pre-authorization construction. The FCC noted that its premature construction policy arises from the Communications Act's requirement that the FCC

not issue a license to a station unless a construction permit has been granted. It explained that this requirement was enacted to ensure that applicants don't use incurred expenses as a means of exerting improper pressure on the FCC to grant an application. If the entire station has been constructed prior to a permit grant, the FCC is prohibited from granting a license.

However, some types of pre-authorization construction are allowed, such as site clearance, pouring of concrete tower footings, installation of tower base/anchors, installation of power lines, and purchase and on-site storage (but not installation) of equipment. Pre-authorization construction of towers or installation of radio antennas is strictly prohibited.

In this case, the applicant had completely constructed the tower before obtaining the permit, and argued to the FCC that it intended to use the tower for broader business purposes, leasing space to other tenants. But it did not produce any evidence showing those business purposes, and the FCC therefore rejected the argument, fining the company \$10,000 for that and other violations.

SOUND EXCHANGE IDENTIFYING AND REACHING OUT TO UNREGISTERED STREAMERS

We recently became aware that SoundExchange, the entity responsible for collecting royalties for on air streaming of music, has begun to identify and contact radio broadcasters who are streaming their content online but do not appear to have registered with the Copyright Office or remitted license payments to SoundExchange. For now, it appears that their outreach is designed more to elicit compliance than it is to punish, but it does have the power to seek out copyright infringers, including broadcasters. If you are streaming your content online and are not registered with the Copyright Office or SoundExchange, you should contact your intellectual property counsel soon to determine your options.

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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

August 28, 2014: radio online public file comments due.

August 29, 2014: reply EAS comments due

September 1 & 16; October 1 & 16: TV, Class A & LPTV Stations in California: air your POST-filing announcements.

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

September 5, 2014: lowest unit charge for federal election starts.

September 18, 2014: comment deadline on C4 class of FM stations.

September 30, 2014: end of FCC fiscal year. Regulatory fees should be due by this date.

October 1, 2014:

AM & FM Stations in Florida, Puerto Rico, Virgin Islands, American Somoa, Guam, Hawaii, Oregon and Washington: 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 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 station website. **NCE Stations Only:** also file biennial ownership report via Form 323-E.

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 station website. **NCE Stations Only:** also file biennial ownership report via Form 323-E.

TV & Class A 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 station website.

TV, Class A & LPTV 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. 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.

October 1 & 16, 2014; November 1 & 16, 2014 & December 1 & 16, 2014: TV, Class A & LPTV Stations in Alaska, American Samoa Guam, Hawaii, Oregon & Washington: air your post-filing announcements.

October 10, 2014:

TV, Class A TV, AM & FM Stations (commercial & non-commercial): complete 3rd quarter 2014 issues/program lists. TV & Class A stations post to your online public file. AM & FM stations place in your public file.

TV & Class A Stations (commercial only): complete and electronically file FCC Form 398 Children's TV Programming Report for 3rd Quarter 2014. Link to your report should be made automatically by 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.

TV, Class A & LPTV Stations in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island & Vermont: air your PRE-filing announcements.

October 23, 2014: TV, Class A & LPTV Stations in California: complete and post to your public file documents relating to pre- and post-filing broadcast renewal announcements.

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