



Broadcast Newsletter

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HCCB AT NAB

HCCB Managing Partner Joe Chautin will be in Las Vegas April 11-15 for the National Association of Broadcasters Convention. Email Joe if you'd like to arrange a meeting. While at the convention, Joe can be reached at 504-439-2350. See you there!

RADIO ONLINE PUBLIC FILE UPDATE

A number of commenters, including individual broadcasters and national associations, have weighed in on the FCC's ongoing rulemaking considering whether and how to require radio stations to migrate their public files to an FCC online-hosted website.

Many voiced support for a small station exemption, and several organizations weighed in on allowing an exemption for NCE stations, or at least making participation optional. Reply comments are due no later than April 4, 2015. If you would like to peruse the comments already filed, use this [link](#). Given the newfound speed of the FCC on public file transparency, and political file 24/7 availability, we believe the FCC will act pretty quickly, perhaps adopting an order by late summer 2015.

A FEW NOTES ON LMS

What is the LMS, you ask? That is a good question, and one we hope every broadcaster is asking. LMS stands for "license management system" and it is poised to become the replacement for the CDBS online filing system, which broadcasters use to file applications and reports with the FCC.

Why should you care? Because it is already here for full power, Class A and LPTV construction permit and license applications, and is probably pretty near for those same applications by all broadcasters, or for other forms used by radio stations. So far, the FCC has added a form at a time, keeping it on the TV side for now.

We have a few early observations about LMS:

First, it still appears to be a work in progress, with the display of current authorizations and other license information being a little hit and miss in terms of accuracy. For example, license expiration dates are not always accurate. **Second**, upon filing a license application (and we presume a CP application, as well), applicants/contacts are not emailed when the FCC acts on the application. So you either have to check LMS for status, or wait until the FCC's daily releases report on the action, usually about 3-4 days later.

Third, once an application is granted, LMS doesn't produce a copy of the new authorization – you have to access the public CDBS to find the authorization. And **fourth**, instead of being at the top of the FCC applications list in the public CDBS, the new LMS actions appear at the bottom of the list (we don't know why). They have a special code, too – "LMApplication". And the traditional FCC file number has no letter abbreviation in front to help you figure out what kind of application it was. Instead, the file number is just a 10-digit number.

One more thing. LMS uses a "smart" form, known as Form 2100. Eventually, it will be the only form used by broadcast stations, with a series of sections, schedules or questions popping up depending on the action a station is trying to take. No ready-made blocks appear for explanations or exhibits – you just add them all at the end by uploading one or more PDFs with explanations or exhibits.

It's all new, and we're hopeful the FCC will refine it before expanding it to more stations or forms. Be assured, it takes some getting used to.

FCC IMPOSES MAXIMUM FINE ON TV STATION FOR INDECENCY

Just when everyone thought the FCC was done stirring things up with indecency fines, they've decided to enforce their indecency policy anew by assessing the maximum \$325,000 fine against a TV station. Pretty aggressive, huh?

Well first, the amount of the fine stems from a nearly decade old decision by the U.S. Congress to increase the amount of the fine the FCC could impose for indecency violations. Remember a Super Bowl Halftime Show and the "wardrobe malfunction"? That's what prompted Congress to act, all those years ago.

Second, the circumstances of the indecency involved in this case were egregious, with factors that were difficult to square with any journalistic standard. The offensive material appeared in the lead story of an evening newscast, produced by a station photojournalist who used a video shot taken from a less-than-reputable website, and contained content missed in the control room despite a video delay because the TV monitor border covered part of the screen visual content. Even worse, the offensive video, tucked away in an inset at the top right of the screen, played for 3 full seconds. And finally, there was no pixilation, blur or fleeting "difficult to tell" component of the video, which displayed a male body part. Viewers immediately responded to the content, clearly offended and outraged.

Though the station argued inadvertence and apologized, the FCC was not buying it. After an investigation, they issued a notice of apparent liability for \$325,000, wrapped in a comprehensive 15-page [decision](#).

The station has vowed to fight the fine on First Amendment grounds. Others have taken up the same call, claiming that broadcasters are treated differently than other media. This may well become the next test case for the U.S. Supreme Court on the FCC's indecency policy. Unlike the last one, which dealt with whether the FCC acted reasonably in adopting and enforcing its indecency policy, this case will likely be decided on First Amendment grounds.

We caution TV stations in particular to be diligent in controlling video content that is broadcast, and in the hiring and training of those who have access to the station's transmission facilities. Employee errors always land at the feet of the employer.

COMMERCIAL FM AUCTION 98 FREEZE

In advance of a planned auction of 131 vacant commercial FM construction permits, scheduled to begin July 23, 2015, the FCC has announced a freeze on the filing of certain applications. No applications to modify any of the FM allotments, no petitions or counterproposals to change channel, class, community or coordinates, and no applications, petitions or counterproposals that fail to fully protect any of the allotments can be filed. The freeze went into effect March 16th and will automatically terminate the day after the filing deadline for post-auction long-form applications.

If you have any stations nearby, or would like to peruse (we apparently like that word today; second use) the list of possible CPs in order to participate in the auction, it might be a good idea to click on this [list](#) of the 131 allotments.

FCC INCENTIVE AUCTION VISITS – APRIL 2015

The FCC plans to take its incentive auction “roadshow” to NAB in Las Vegas April 13-14, presenting to two general sessions. A week later, they will visit Richmond, Virginia April 21 and Baltimore, Maryland April 22. The month finishes out with visits to Seattle, Washington on April 27 and Denver, Colorado April 29.

TV stations that intend to make one of the FCC’s visits should know that the public notices for these are now suggesting that the FCC may not visit every one of the 50 planned locations announced in January on their blog. So if one gets close enough to you, or lands in a climate that is calling your name, make plans to be there.

NONCOMMERCIAL STATION FINED WITH SHORT-TERM RENEWAL

In the context of a consent decree, the FCC gave a college student-run noncommercial station a break on public file and ownership report rule violations, but issued a full fine for other rule violations – EAS CAP compliance and NCE station minimum operating schedule. The decision is a reminder that rule violations outside of the envisioned scope

of the student-run station leniency policy will not enjoy special treatment.

The 3-year compliance plan agreed to by the station is very detailed, involving quarterly tracking and training, and annual certification to the FCC. And one year after that plan concludes, the station will have the privilege of filing for license renewal. That’s because the FCC tacked on a short-term license renewal for four years, instead of the normal eight.

SESAC SETTLEMENT CHECKS ON THE WAY TO TV LICENSEES

Full-power TV licensees, watch your mailboxes for a letter from the TV Music Licensing Committee. TVMLC has reached a settlement in their anti-trust class action suit against SESAC and expect checks to licensees to begin rolling out soon. Only full-power television stations that obtained a performance license from SESAC at any time after January 1, 2008 are eligible to receive payments, which could amount to more than \$200 per station. To get the payment, eligible licensees must complete a form titled, “Settlement Antitrust Class Action Settlement Refund Payments” and send it back to the TVMLC within the allotted time. The form will be included in the letter to be sent to eligible licensees soon.

This windfall came about starting almost six years ago, when the TV Music Licensing Committee filed a class action law suit against SESAC on behalf of television broadcasters. The suit alleged that SESAC violated federal antitrust law by overcharging TV licensees for royalties from 2008-2014. The parties reached a settlement that includes \$58.5 million to be distributed to full-power television licensees who obtained a performance license from SESAC any time after January 1, 2008.

Going forward under the settlement, rates for 2014 and 2015 do not change but licensees will again be able to choose a “per performance” license if they do not play a lot of music. And, TVMLC will negotiate with SESAC in the future on behalf of television licensees for the 2016-2020 license period.

DATES TO REMEMBER

April 1, 2015: AM & FM Stations in Indiana, Kentucky, Tennessee, Delaware & Pennsylvania: 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.

AM & FM Stations in Texas: 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 Indiana, Kentucky & Tennessee: if full-time employee threshold is met, complete EEO public file report and post same in online 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 Texas: if full-time employee threshold is met, complete EEO public file report and post same in online public file as well as post on station website.

TV, Class A & LPTV Stations in Delaware & Pennsylvania: 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.

April 1 & 16, 2015: TV, Class A & LPTV Stations in New York and New Jersey: air your POST-filing announcements.

April 1 & 16, 2015; May 1 & 16, 2015; June 1 & 16, 2015: TV, Class A & LPTV Stations in Delaware & Pennsylvania broadcasting your POST-filing announcements

April 4, 2015: Reply comments in radio, cable and satellite online public file proceeding due.

April 13-14, 2015: Incentive auction general sessions and individual meetings in Las Vegas, NV

April 21, 2015: Incentive auction meetings and general information session in Richmond, VA

April 22, 2015: Incentive auction meetings and general information sessions in Baltimore, MD

April 23, 2015: TV, Class A & LPTV Stations in New York and New Jersey: complete and post to your public file documents relating to pre- and post-filing broadcast renewal announcements.

April 27, 2015: Incentive auction meetings and general information sessions in Seattle, WA

April 29, 2015: Incentive auction meetings and general information sessions in Denver, CO

June 1, 2015: AM & FM Stations in DC, Maryland, Virginia & West Virginia: 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 396 and place copy of filed report in your public inspection file. **NCE Stations Only:** also file biennial ownership report via Form 323-E.

AM & FM Stations in Arizona, Idaho, Nevada, New Mexico, Utah & Wyoming: if full-time employee threshold is met, complete EEO public file report and post same in online 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 Arizona, DC, Idaho, Maryland, Nevada, New Mexico, Utah, Virginia, West Virginia & Wyoming: NCE TV Stations in Michigan & Ohio: if full-time employee threshold is met, complete EEO public file report and post same in online public file as well as post on station website.

TV & Class A Stations in Michigan & Ohio: if full-time employee threshold is met, complete EEO public file report and post same in online 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 Michigan & Ohio: if full-time employee threshold is met, complete EEO public file report and post same in online public file as well as post on station website.

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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.

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