



Broadcast Newsletter

IN THIS ISSUE:

ANOTHER RANDOM EEO AUDIT	1
A FIX FOR NATIONWIDE EMERGENCY ALERTS	1
COMMERCIAL FM AUCTION 98 FAST APPROACHING	2
FCC WINS TV INCENTIVE AUCTION LITIGATION, ISSUES FLURRY OF DECISIONS	2
WARNING TO REGISTERED TOWER OWNERS	2
RADIO ONLINE PUBLIC FILES – ALL QUITE (FOR NOW)	3
TOWER OWNERS FINED.....	3
DATES TO REMEMBER.....	5

ANOTHER RANDOM EEO AUDIT

Yes, it's true. Another 100 or so broadcast stations have just been randomly selected by the FCC for audits of the EEO program. The FCC's [public notice](#) lists the stations chosen and a deadline of July 27, 2015 to respond. This round of audits is the second in 2015, but this time, it only includes AM and FM radio stations.

Once stations submit their responses, the FCC review process generally takes 60 days on average. If your station passes, the FCC sends an "all clear" letter. If you haven't received such a letter in this or prior audits, an email or call to the FCC staff is recommended. Also, when the "all clear" or any other correspondence from the FCC arrives, read it carefully. In one recently issued letter, we noticed that the station referred to as having passed the audit was not the station to whom the letter was directed.

A FIX FOR NATIONWIDE EMERGENCY ALERTS

After conducting extensive investigations into the less than stellar results of the national Emergency Alert System test of 2011, the Commission has now adopted a [new set of requirements](#) designed to fix the problems that were identified in that test and to improve the overall national EAS testing system. The good news is that the vast majority of the work will need to be done by the EAS equipment manufacturers. The bad news is that broadcasters will be required to do more reporting.

EAS manufacturers are now tasked with figuring out how to get their encoders to accept the new National Location Code of six zeroes (000000) which is to be used to denote the national test. The last national test used the Washington DC origination code, which many systems rejected as not local and out of the area. The encoders will also need to be able to accept the new National Periodic Test Code (NPT), which is to be used as an alternative to the Emergency Action Notification. The NPT is also capped at 2 minutes.

EAS equipment will need to emit tests that meet the new baselines for test quality in display and speed. Stations may want to reach out to the manufacturer of their EAS equipment in the near future to determine what steps the manufacturer is taking to implement these changes, or what steps stations may need to take to download new updates.

Of course, the FCC can't take an action without adding a broadcaster reporting requirement. The Public Safety and Homeland Security Bureau has the unenviable job of implementing a new Electronic Test Reporting System (ETRS). When it launches, EAS participants will have 60 days to register. ETRS will also be used to report actions during tests. No announcement yet of when ETRS will go live, but we'll be sure to cover it here.

COMMERCIAL FM AUCTION 98 FAST APPROACHING

The FCC's Auction 98, featuring 131 commercial FM permits, is right around the corner. Upfront payments for the auction were due by June 29, 2015, and those who paid up will be eligible to participate. The Auction itself will begin July 23, 2015, but a mock auction will be available on July 20. For a review of auction rules and procedures, click [here](#).

FCC WINS TV INCENTIVE AUCTION LITIGATION, ISSUES FLURRY OF DECISIONS

You've seen the headlines. The last 30 days has been a whirlwind of news and developments for the TV Incentive Auction. First, the DC Circuit ruled in favor of the FCC in the litigation brought by NAB and Sinclair over the methodology for calculating coverage areas. That prompted a statement from FCC Chairman, Tom Wheeler, that contained the most specific timeframe yet for the auction – the first quarter of 2016.

The FCC then went into hyper-mode, issuing a flurry of decisions, including loosening up its proposed channel sharing rules in its [first reconsideration](#) of an earlier order, announcing the [pre-auction deadline](#) for eligible stations to certify their technical facilities, and a 93-page [second reconsideration order](#) of its original incentive auction order that rejected several requests for the

FCC to tweak its auction protection and procedural rules.

You'll have time later to review the larger orders, but full power and Class A stations must devote their immediate attention to the [pre-auction certification notice](#). The notice included a list of all stations and their eligible facilities for purposes of the auction. Stations have until **July 9, 2015** to prepare and file Form 2100, Schedule 381, certifying their facilities.

To file the form, stations must first review their license and all FCC technical databases (CDBS, LMS, ASR, etc), and then certify as to their accuracy. If inaccurate due to an FCC error, an explanatory exhibit is required. If a station is operating at parameters different than those listed, it must tell the FCC, file an application for a construction permit to obtain authority for its facilities, and file for special temporary authority to continue its present operations. In addition, the schedule 381 seeks information about station antenna type, mounting, and antenna structure details. The schedule must be filed in the FCC's new LMS filing system.

What's next? Among other things, the FCC has to issue an order on its auction procedures, including the mechanics of participation and critical issues like pricing. The rumor mill says that the FCC is going to jettison its original plan to use dynamic reserve pricing, which would have artificially lowered prices for station spectrum.

The other thing that is almost assured is more litigation. This time, LPTV stations (and perhaps others) plan to sue the FCC for its interpretation of the auction statute that made LPTV stations ineligible for the auction and unprotected/unreimbursed in the post-auction repacking of TV channels. Whether that lawsuit delays the auction is an unknown at this point; much will turn on the scope of that as-yet unfiled lawsuit.

WARNING TO REGISTERED TOWER OWNERS

In an unusual move, the FCC's Wireless Bureau has issued a [public notice](#) warning registered tower

owners of their ongoing responsibility to comply with the FCC's antenna structure registration rules. Apparently, the Bureau staff has done a little digging and located multiple instances in the ASR database where tower owners have not obtained FAA "no hazard" determinations or registered a structure prior to construction, failed to notify the FCC of construction completion, and failed to light or paint towers.

The Bureau also noted several instances where the actual location and height of a tower is materially different from a tower registration. Finally, there were several instances where tower owners had prematurely certified environmental compliance for structures. The Bureau warned that all such violations are subject to enforcement proceedings and fines.

Your first reaction as a broadcaster might be to write off this notice since it came from the Wireless Bureau, not the Media Bureau that oversees broadcasters. But that would be an error. The FCC's antenna structure registration system and database are maintained by the Wireless Bureau, and therefore the potential violations cited in the notice covered all tower owners, including those owned by broadcasters.

Now would be a good time to [pull up your station's tower registration](#) and make sure everything is in order. A very common problem we observe is that a tower owner takes the proper actions on the front end of a tower modification or construction, but forgets to file a notice of construction in the ASR system once tower construction is complete. The tower registration status therefore shows as "granted" instead of "constructed" in the system. A simple construction notification is all that is required to bring the registration into compliance.

If your tower is not registered, make sure that it is below 200 feet and not near an airport. If that's not the case, you might have a tower that should be registered and is in violation of the FCC's registration rules.

RADIO ONLINE PUBLIC FILES – ALL QUIET (FOR NOW)

We're not sure what happened to the FCC's incredibly fast push toward having radio stations place their public files online, but it's been all quiet since the deadline passed for reply comments a few months back. The July Commission agenda makes no mention of the proceeding.

Comments to the FCC were not lacking, so that could be one explanation for the delay. Another could be the FCC's pre-occupation with a certain auction of TV spectrum. We suspect that carving out exceptions to the policy might be a sticking point that is holding up the issuance of an order. In our perusal of the comments and reply comments, there appears to be ample support for some kind of small station and/or noncommercial station exemption, though whether and precisely how that is adopted remains to be seen.

TOWER OWNERS FINED

In two separate decisions, the FCC assessed \$17,000 in fines against two tower owners. In the first, a tower lighting outage that extended for over a week resulted in a fine of \$10,000 for the lighting outage and failure to adequately monitor the lighting system. The tower owner conceded that it had failed to do both.

In the second decision, the FCC assessed \$7,000 to an AM station tower owner whose engineer left the tower fence gate unlocked so that tower repair crews could access the site and provide repair estimates. The tower owner argued that the violation was not willful or repeated, but the FCC rejected those arguments, noting that the fence had been intentionally left unlocked by a tower owner representative and then remained unsecured for several days after the tower repair crew failed to re-secure the gate. The FCC noted that even inadvertent actions, or actions by third parties do not excuse violations as unintentional, and took the occasion to cite cases where tower owners were fined even when violations were attributable to acts of God.

We rarely make predictions in these pages, but for grins, we'll try one. Sometime this fall, the FCC will adopt online public file rules for most radio stations, and they'll be phased in such that stations in the largest markets (who aren't exempt) will have to transition to online public files by at least mid-2016 in time for the fall elections. After all, the original impetus for radio online public files were so that political files would be more accessible.

© 2015 Hardy, Carey, Chautin & Balkin, LLP

For more info, contact Joe Chautin, Mark Balkin, or Elise Stubbe.

Phone 985.629.0777

Fax 985.629.0778

www.hardycarey.com

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 29, 2015: upfront payments for Auction 98 due.

July 9, 2015: Form 2100 Schedule 381 due for all full power and Class A digital television stations.

July 10, 2015: TV, Class A TV, AM & FM Stations (Commercial and NCE): complete 2nd quarter 2015 issues/program lists and place in your public file (online for TV & Class A TV 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 2015. 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.

July 23, 2015: Auction 98 begins.

August 1, 2015: AM & FM Stations in North Carolina and South Carolina: 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 397 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 California: 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 North Carolina, South Carolina and California: 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 Illinois & Wisconsin: 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 ILLINOIS & WISCONSIN: 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.

 Hardy, Carey, Chautin & Balkin, LLP
ATTORNEYS AT LAW
1080 West Causeway Approach
Mandeville, Louisiana 70471-3036