



Broadcast Newsletter

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MARCH 29, 2016 REVEALED AS POSSIBLE START OF TV INCENTIVE AUCTION

These past 30 days have been a bit of high theater for the FCC's push toward starting the TV incentive auction in early 2016.

The highlight was a mid-July [last minute public disclosure](#) of a very limited number of auction scenarios, just before a vote by the Commission on its auction procedures. That brought howls from the Republican Commissioners, as well as a few well-placed U.S. Congressmen, all urging Chairman Wheeler to allow time for the data to be analyzed and more data released before the vote. Chairman Wheeler finally acquiesced, [delaying the vote](#), but immediately scheduling the auction procedures item for the FCC's August 6th meeting (a 3-week delay). He then confidently announced that the auction was still planned for the first quarter of 2016. The fallout from this spat was an early disclosure of the draft auction procedures report and order being circulated among the Commissioners' offices. And a peek at that draft revealed the proposed March 29, 2016 auction start date. Funny how transparency works, isn't it?

The FCC also adopted an [order](#) reconsidering and refining its earlier channel sharing decision. That order tweaked the guidelines for channel sharers, in large part adding flexibility for those considering channel sharing arrangements. The FCC then scheduled a July 22nd webinar to discuss those changes, but on the day it was to be held, suddenly decided to delay that webinar until August 13th. We suspect that the webinar delay may have been linked to the auction procedures vote delay. You can sign up for the webinar using [the link](#) in this public notice.

And of course, earlier in the month, the FCC's July 9th deadline passed for auction-eligible full power and Class A television stations to file a pre-auction certification of their technical facilities so that the FCC can finalize its databases before the auction. That flurry of filings, made through the FCC's Licensing Management System (LMS), revealed some interesting by-products of the FCC's migration of technical data into LMS.

From our perspective, the LMS data, which integrated tower information and in some cases auto-corrected station license

coordinates, was more accurate than the CDBS technical data. Both databases had to be certified, so in some instances, differences created by the FCC's LMS data integration process had to be pointed out in the certifications. That made things exciting (and more time consuming).

So what's ahead? First, adoption of the auction procedures order in early August, which will finalize exactly how the auction will work (and a few post-auction items also). Second, from what we hear, a likely lawsuit from LPTV groups who have pressed their case for post-auction protection and data but gotten nowhere. Assuming that occurs, it will be interesting to see whether it delays the planned 2016 auction start date. Third, some announcement in the fall of various deadlines or windows for those who plan to participate in the auction. And of course, for good measure, the FCC will probably throw in a few curve balls along the way.

FCC FIELD OFFICE REDUCTIONS ANNOUNCED

After some significant pushback from members of Congress and many broadcasters, the FCC recently announced a reduced number of field office closures than it had initially proposed.

According to a July 16th FCC [news release](#), it will continue to operate field offices in Atlanta, Boston, Chicago, Columbia (Md.), Dallas, Denver, Honolulu, Los Angeles, Miami, New Orleans, New York, Portland (Ore.), and San Francisco. Field offices in Anchorage, Buffalo, Detroit, Houston, Kansas City, Norfolk, Philadelphia, San Diego, San Juan, Seattle, and Tampa will be closed. No timeline for the closures was given.

The Enforcement Bureau will still maintain a field presence (not defined) in Alaska and Puerto Rico and field agents will also rotate periodically through Kansas City. To add flexibility, rapid deployment teams will be stationed in Columbia (Md.) and Denver to supplement the enforcement efforts of other field offices when necessary and to support high-priority enforcement actions nationwide.

The FCC also announced that going forward, all field agents will have to be electrical engineers.

FCC Field Offices perform a number of different functions, many of which are not directly related to broadcasters (i.e., assistance to Homeland Security on frequency use/monitoring). But one important role they do perform for broadcasters is policing pirates that use frequencies unlawfully and cause interference to properly licensed broadcast stations, a problem that is increasing in some cities. Of course, field office personnel are also frequently dispatched to monitor things like tower lighting and fencing, station studio availability and staffing, and other station operations.

FCC PROPOSES RULES FOR CHANNEL SHARING OUTSIDE THE INCENTIVE AUCTION

Yes, you read that headline correctly. When the FCC released its order on reconsideration addressing channel sharing issues in connection with the TV incentive auction, it simultaneously launched a [separate rulemaking](#) proposing rules that would allow full power and Class A TV stations to channel share outside of the incentive auction context.

How interesting is this turn of events? Well, considering that the FCC declined to consider non-incentive auction channel sharing in the earlier proceeding, the change of heart is a curious one. Why curious? Because the basis for the change of heart was the phrase "we now believe it is appropriate to do so" (for any hawks out there on government agency power, please take note).

Apparently, the FCC now believes that it is "in the public interest" to extend channel sharing rights beyond the incentive auction. We are at a loss to understand how it wasn't in the public interest just six months ago, but we digress. Spectral efficiency, help for small and minority-owned stations, and improvements in net income were all cited as reasons for allowing channel sharing outside of the incentive auction.

The FCC takes some time addressing the concern that channel sharers not increase the number of stations eligible for carriage on cable systems, and they propose various limitations that would ensure that result doesn't follow. Most of them relate back to the sharer station's carriage rights before the channel sharing agreement takes effect.

You can comment on the FCC's proposals, but you'll need to do so soon. Comments are due no later than August 13th, with reply comments by August 28th. See paragraph 69 of the [proposed rulemaking](#) for filing instructions. Note that this rulemaking does not apply to channel sharing for LPTV stations. The FCC is considering that issue in a separate proceeding.

COMMERCIAL STATION BIENNIAL OWNERSHIP REPORTING THIS FALL

Every two years, the FCC requires all commercial broadcast stations (and companies that hold attributable ownership interests) to file biennial ownership reports so the FCC can keep track of who owns and controls broadcast stations. The reporting obligation occurs in odd years, which means commercial broadcast stations need to make sure this is on their "to do" lists this fall.

So when exactly is are the reports due? Well, [the rule](#) says that the deadline for commercial stations to file these reports is November 1. But in 2011 and 2013, for a number of reasons, the FCC extended the deadline to December 1 (2011) and December 2 (2013). Sometimes, the information needed for attributable entities takes a while to gather and that translates into stations or groups having a hard time getting everything filed by the deadline. While we don't rule out the possibility of an extension this year, stations should prepare for the November 1, 2015 deadline.

The ownership information reported must be current as of October 1, 2015, so ostensibly, stations can file their reports up to thirty days early. Forms can even be loaded and worked on prior to that date. Also, ownership interests are not the only thing reported on the form – a list of still current contracts required to be on file with the FCC is also required. Commencement and expiration

dates for those contracts are needed, as is the name of the party with whom the station has contracted.

Here's one interesting wrinkle that we learned about in 2013. Back in the days before electronic filing of this report was required, if no ownership information had changed for a station since its last ownership report, the station could simply certify to the FCC in writing that the information on the last report was still accurate. Easy enough – just mail in a letter.

But with the advent of online filing, the FCC changed its rule to require that such stations revalidate and electronically submit its previously filed ownership report. Sounds innocuous enough, except that the earlier written certification process did not involve the submission of the form and was therefore fee-exempt. Not so for the "revalidate and electronically submit" approach. The FCC requires that such submissions remit the filing fee for the form because the action actually submits a "new" report. So be ready to remit your \$65.00.

The only silver lining? All reports by entities other than the station licensee are fee-exempt.

NEW LEVELS OF SCRUTINY

We've noted a new level of scrutiny by the FCC on license or permit assignment applications – enough of an uptick to write about it here. We aren't exactly sure what's behind this new "hyper-scrutiny" but we are certain that it has added days (and sometimes weeks) to the FCC's review and approval process.

Many years ago, the FCC transitioned to "certification" style application forms, which came along with various worksheets so applicants could ensure that transactions complied with the FCC's rules. In fact, virtually all applications now begin with a question requiring the applicant to certify that it has completed the worksheets and in doing so, confirmed that the proposed transaction complies with the FCC's rules and regulations. The original purpose of the certification-style approach, we believe, was to simplify the application process and make it faster. The FCC's staff would simply be

able to rely on applicant certifications instead of undertaking a time-consuming review of every aspect of a transaction to ensure compliance.

Well, despite the current “certification” nature of the FCC’s applications, the staff is not relying on those certifications but is instead undertaking its own review of them – in effect, performing a “trust but verify” task that was not envisioned in a “certification” world. At least in the license assignment application context, the first by-product of that is a bloating of the staff’s review period by some 25-30 days. A few years ago, the FCC would process a license assignment application within 45-50 days. Today, 75 days is not uncommon.

What’s taking so long? Document review. The staff is performing a checklist of its own for every purchase agreement, escrow agreement, time brokerage agreement, promissory note, or other contract related to a sales transaction. In the process, the staff has “overruled” existing precedent permitting exhibits to those agreements not germane to the FCC’s review to be excluded from filings, subject to the staff’s right to request them for review. As of a few weeks ago, all exhibits must be submitted, or the application won’t be processed.

Specific terms of agreements are also being scrutinized. We’ve had staffers call to confirm certain aspects of “consideration” for time brokerage agreements. And even the language in such agreements governing station staffing has been called into question, with written amendments required. Often, those staff phone calls include an instruction to ensure that all future agreements submitted with applications have clear language addressing a particular issue.

Some of this may be a backlash from a few high profile cases where applicants pointed out that various terms in transactional agreements had previously been “approved” in past license assignment applications. The FCC’s response to that position was clear. Approval of license assignment applications without specific referral to underlying documents or terms means that future applicants cannot rely on those grants as a stamp of approval on document language. While that policy remains, the FCC is certainly delving into the

details, testing, verifying, requiring amendments and confirming that every issue governed by an FCC regulation passes their review – even if they won’t specifically declare it to be so when they grant an application.

DATES TO REMEMBER

July 30, 2015: new EAS rules take effect except for broadcaster requirement to provide EAS information for database.

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.

August 13, 2015: comments due on full power/Class A station channel sharing agreements.

Channel sharing seminar conducted by FCC.

August 14, 2015: comments due on Mediacom Petition for Rulemaking to require TV stations in license renewal applications to certify that the licensee will not block any MVPD from carrying the signal of the station at the end of a retransmission consent agreement unless the

station is accessible over-the-air or by internet to at least 90% of homes in a market served by the MVPD.

Late August/Early September: annual regulatory fees due.

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