



Broadcast Newsletter

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FCC FILING SYSTEMS OFFLINE SEPTEMBER 2-8

In an unusual move, but one apparently aimed at a major overhaul of FCC computer, telephone and other information systems, the FCC has [announced](#) a 7-day temporary shutdown or reduced service period of its website, databases and filing systems. Yes, that scares us too, but the FCC claims it is necessary for a “significant IT upgrade.”

So first, if you have something to file with the FCC, you just might to try and pull that off before the start of the one-week blackout. We have a precise date and time for the start of the period – 6:00 p.m. Eastern time on Wednesday, September 2, 2015. The FCC anticipates (but notably did not guarantee) that all systems will again be available starting at 8:00 a.m. Eastern on September 6th. In fact, it uses words like “uncertainty” in projecting the return of systems to normal status.

Just what systems will be inaccessible? Well, for broadcasters, the important ones are the Consolidated Database System (CDBS) and License Management System (LMS), where most forms and reports are submitted, and the Antenna Structure Registration (ASR) system, where tower information is maintained. While not specifically mentioned, it appears that the TV Online Public File system will be inaccessible as well (one wonders at the loss of public accessibility and harm to the public interest!).

What if you have something to file by a certain deadline, or place in the online public inspection file, during this period? Not to worry, the FCC has you covered. All regulatory filing deadlines due on September 2, 3, 4 or 8 will automatically be extended to September 9, 2015. If you do have to make a filing on those dates, keep a copy of the “outage” notice handy to prove that your submission was timely. And don’t bother submitting a paper filing for something that has a mandatory electronic filing requirement – the FCC is not accepting those either.

We bet you’re wondering just how the FCC can waive filing deadlines that are statutorily mandated. We were too, but don’t worry. The FCC has cleverly dodged that bullet by deciding that it will not consider the FCC “open” for filing such documents during the down period, and that any such filings should therefore be

made on September 8th when systems return. To be clear, let's review – the FCC will be open for business, but just not “open” for statutory filings. Ok.

STAs expiring September 2-8, 2015 are automatically extended to September 9, 2015 (but good luck filing that extension request – you'll have to wait).

The FCC's website will remain available, but with reduced content and limited search capability. The FCC 24/7 Operations Center will be open. The FCC's telephones will work, but you will not be able to leave voicemails. And while you can send emails to FCC staff members, most staff will not have access to email, so don't expect a quick response.

FCC PREPARES FOR FALL OWNERSHIP REPORTING

Last month, we noted the fast-approaching deadline for commercial stations to file biennial ownership reports, and pointed to the existing rule setting November 1 as that deadline. We also took the occasion to note that in 2011 and 2013, the FCC extended the deadline by a month, primarily because of how time-consuming the form can be for entities with complex ownership structures.

No FCC staffers subscribe to our newsletter, but someone there must have been reflecting on the fall ownership reporting also. In the past few weeks, the FCC has embarked on an ownership reporting preparation tear of sorts.

First, as it did in 2011 and 2013, the FCC [extended the deadline](#) for commercial stations to file biennial ownership reports to December 2, 2015. The information in the report must still include information current as of October 1, 2015, so that's the first date that compliant reports can be filed. In case you're counting, that's 63 days to file the report or reports necessary for your station.

Second, the FCC announced that on September 22, 2015 from 12:00 – 1:30 p.m., it will host an “information session” on biennial ownership report filing, complete with a staff overview of the Form 323, a filing demonstration, and some notes about

coming filing errors. The session will be held at the FCC headquarters, but will also be streamed live, with open captioning. Further details can be found [here](#).

Finally, about a week after announcing the information session, the FCC published a new notice, announcing a September 9, 2015 Media Bureau Workshop on how to access and use the ownership data collected by the FCC. The workshop will last all day, with sessions broken down into segments addressing everything from the basic data collected from station owners, to how to query and merge that data with other government data (i.e., US Census Data). Those wishing to participate are strongly encouraged to pre-register, following the instructions in the [notice](#).

We believe the FCC's ownership reporting “push” stems from earlier analysis revealing that a high percentage of the broadcast station ownership data collected had errors or was reported incorrectly. They certainly seem to be making every effort to change that trend, and to make third parties aware of how the data can be mined for specified information.

TV INCENTIVE AUCTION ALMOST READY FOR PRIMETIME

On a 3-2 vote divided on party lines, the FCC adopted a controversial auction bidding procedures public notice in early August, setting the stage for the first steps of the TV incentive auction to begin on March 29, 2016. A few days later, the Chair of the Spectrum Auction Task Force, Gary Epstein [blogged](#) about what's next. A few more steps must be taken before next March.

First, the FCC will issue an Application Procedures notice in the “early fall” that will describe the nuts and bolts of the auction application process and post-auction procedures. This notice will have the opening dates for the application filing windows, filing deadlines and mock auction schedule. It will also list the information that will be required on the auction application forms.

Next, the FCC will publicly announce the reverse auction opening bid prices for all broadcasters.

That announcement will come no later than 60 days before the auction application filing deadline.

After the auction application filing deadline, the FCC will review the applications for completeness and accuracy, and broadcasters will have an opportunity to make minor modifications or corrections. By March 29, 2016, each broadcaster that has completed an application must commit to its preferred initial bid option. That commitment binds the broadcaster to relinquishing its spectrum usage rights at the opening price applicable to its preferred option. If during the auction, the price offered to the broadcaster drops, the broadcaster is no longer bound to relinquish its spectrum unless it elects to remain in the auction at the lower price.

Once the FCC has collected broadcaster commitments, it will determine the initial clearing target and band plan. Participants will then have an opportunity to participate in a mock auction (some are calling for more than one mock auction), and then the actual reverse auction rounds will begin.

There will be a few workshops this fall, including one each on the reverse and forward auctions. There will also be on-line interactive auction tutorials, which will walk potential reverse and forward auction participants through the application and bidding processes.

SEPTEMBER 1ST CLASS A TELEVISION DIGITAL TRANSITION DEADLINE

The Media Bureau has issued a [reminder](#) to all Class A television stations that September 1, 2015 is the deadline for transitioning to digital, and terminate analog service. Class A television stations must cease all analog transmissions as of 11:59pm local time Tuesday, September 1, 2015.

If Class A stations have not completed constructing their digital facilities, they may submit a request to toll their permit construction deadlines beyond September 1st, but must go silent while they complete construction. Stations may remain silent for not more than 30 days without further authority from the FCC; after that, they need temporary authority.

FCC TEES UP OTHER BROADCAST REGULATORY ISSUES FOR THE FALL

Some reform to old broadcast station regulations is finally closer to reality. At its [September](#) meeting, the FCC plans to vote on an order to allow broadcasters to publicize contest rules on station websites. And Chairman Wheeler has committed to issuing an AM Revitalization order this fall providing some regulatory relief to AM stations, though there are several issues that will be punted to a further rulemaking and comment proceeding. On the TV side, the FCC has taken up several issues related to video distribution, including scrutiny of retransmission consent negotiation practices and eliminating exclusivity rules.

RESERVATION OF VACANT TV CHANNELS FOR WHITE SPACE DEVICES AND WIRELESS MICS

Despite strong opposition by the broadcast industry, the FCC decided in early August to keep at least one TV channel in the post-auction repacked TV spectrum vacant for white space devices and wireless microphones.

The three Democratic FCC Commissioners went a step further, tentatively concluding that a *second* TV channel should be preserved to mitigate the potential impact on such devices in select markets around the country where a repacked TV station is assigned to the “duplex gap” or guard band between the paired broadband uplink and downlink frequencies.

The FCC [has asked for comments](#) on this proposal by September 30, 2015, with reply comments by October 30, 2015.

DATES TO REMEMBER

TBA September: annual regulatory fees due.

September 1, 2015: deadline for Class A television stations who are not operating in digital to transition and terminate analog service. Analog service must cease as of 11:59pm local time on 9/1/15.

September 2, 2015 – 6pm EDT – September 8, 2015 8am EDT: FCC will shut down access to probably all electronic databases, dockets and staff email. Only Network Outage Reporting System (NORS), Consumer Help Center (CHC) and Disaster Information Reporting System (DIRS) will remain available. It is unclear if the online public files for TV and Class A stations will be affected. Deadlines for all regulatory and enforcement filings that would otherwise be due on September 2, 3, 4, or 8, 2015 will now be due on September 9, 2015. Affected systems include fee filer, CDBS, LMS, ASR (as of 12am 9/2/15), EDOCS and CORES.

September 9, 2015: Media Bureau workshop on how to access and use the ownership data collected by the FCC.

September 22, 2015: FCC hosting information session on Biennial Ownership Reports (FCC Form 323) for commercial radio and TV stations. 12pm – 1:30pm EDT. A streaming version will be available later.

September 30, 2015: comments due on proposal to keep at least one TV channel post-auction vacant for white space devices and wireless microphones.

October 1, 2015: AM & FM Stations in Florida, Puerto Rico and 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. **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 Alaska, American Samoa, Guam, Hawaii, Oregon & Washington: 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 Alaska, American Samoa, Florida, Guam, Hawaii, Oregon, Puerto Rico, Virgin Islands & Washington: 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 Iowa & Missouri: 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 Iowa & Missouri: 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.

October 10, 2015:

TV, Class A, AM & FM Stations (commercial and non-commercial): complete 3rd quarter 2015 issues/program lists. TV & Class A stations post same to your online public file. Radio 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 2015. 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.

October 30, 2015: reply comments due on proposal to keep at least one TV channel post-auction vacant for white space devices and wireless microphones.

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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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