



Broadcast Newsletter

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FCC ISSUES PLAN FOR POSSIBLE GOVERNMENT SHUTDOWN

While Congress considers passing legislation to continue funding government operations after September 30, government agencies have dusted off shutdown plans from the 2013 government shutdown so that they are ready in the event Congress cannot pass a continued funding resolution. The FCC issued their ["Plan for Orderly Shutdown Due to Lapse of Congressional Appropriations"](#) on Monday.

The FCC's plan is about three-and-one-half pages long, with the shutdown of agency operations taking about four hours. The Chairman and four Commissioners will continue to be paid during the shutdown because their compensation comes from resources other than annual appropriations. In addition, another 120 employees working on TV Incentive Auction related issues will also continue to work because their compensation funding is also from resources other than annual appropriations. Finally, a few "essential" personnel will be retained to protect life and property, conduct interference detection, carry out treaty activity, conduct oversight and address critical information technology issues. Everyone else will be furloughed and sent home.

No detail is provided in the plan as to whether FCC information systems will continue to be available during a shutdown. However, in the 2013 shutdown, those systems were unavailable, and we expect that will be the same if a shutdown occurs this year. For TV licensees, that means your online public file will not be available, and quarterly reports that must be filed by October 10th will not be able to be filed (or drafted). The FCC will provide guidance on these matters after any shutdown ends.

FCC IT UPGRADE HITS A FEW SNAGS

Earlier this month, the FCC announced a 7-day shutdown of information systems for an information technology upgrade. That shutdown stretched to 10 days as the FCC found out it needed more time to reconnect its servers, which had been relocated off-site. Some systems came back into service earlier, but ones critical to broadcasters were not available until the end.

We did note a few glitches for items filed just prior to the system shutdown. Some of those filings were not automatically recognized by the FCC's systems once they were returned to service. A few emails to FCC staff did the trick. If you filed something electronically in the hours before the IT system shutdown, it is probably a good idea to go back and check on it to be sure it is recognized in the system.

We've also noticed that some of the FCC's filing systems, including CDBS, have had temporary, unannounced outages since the IT upgrade. The FCC has not announced such outages ahead of time (or acknowledged them after they occur), so we suspect that these are unexpected outages that may be related to ongoing efforts on the IT upgrade front.

COMMERCIAL STATION OWNERSHIP REPORTING WINDOW OPENS OCT 1ST

Commercial broadcast stations may begin filing biennial ownership reports on October 1, 2015, and have until December 2, 2015 to complete all report filings. Information in the reports must be current as of at least October 1, 2015 (i.e., not earlier than that date).

The FCC conducted a commercial station ownership report filing demonstration on September 22, 2015, and it is available for public viewing [here](#). It goes into excruciating detail about the form and even covers certain quizzical behavior of the CDBS filing system software. We give them an "A" for thoroughness, but a failing grade for not providing access to headache medicine (though that might have involved another filing).

The information on broadcast station ownership reports is gathered and categorized by the FCC to measure ownership diversity as well as other ownership indicia. In time, we anticipate the FCC using that collected data to make policy decisions in the broadcast ownership arena. The FCC has acknowledged that some of the data includes or suggests errors in reporting, and their educational efforts on the filing process and form are aimed at eliminating such errors as much as possible.

TV INCENTIVE AUCTION UPDATE

Sometime in October, we expect the FCC to take two important actions on the TV Incentive Auction front – publicly announcing the reverse auction opening bid prices for all broadcasters, and issuing an Application Procedures notice 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.

We also expect some workshop announcements, including one each on the reverse and forward auctions. On-line interactive auction tutorials are also anticipated.

Legal challenges from the LPTV community still loom as a possibility, with important deadlines for those challenges falling in early October. But at this point, it is full-steam ahead for the auction at the FCC (see above article on 120 employees sticking around to work on auction issues even in the event of a government shutdown).

We note that Sprint has just publicly announced that it will not be participating in the forward auction for repurposed spectrum, stating that it already has enough spectrum. FCC Commissioner Ajit Pai quickly issued a statement about Sprint's announcement, noting that it intensifies doubts about how competitive the bidding will be and whether the public will receive fair compensation for the spectrum. Pai cited Sprint's announcement as supporting his belief that the FCC's action placing artificial limits on carriers' participation was a mistake.

AM REVITALIZATION STILL PERCOLATING

A furious lobbying effort by those for and against an FM translator filing window opportunity limited to AM broadcasters has been unfolding in recent weeks at the FCC. Minority broadcasters are the latest to join in the fray, citing a desperate need for such a window to buttress and preserve broadcast ownership diversity. The AM-only FM translator

window has been cited by various FCC Commissioners as holding up an order in the long-pending AM Revitalization proceeding.

As of this writing, the FCC has not yet announced its October meeting agenda, so whether the AM Revitalization item will be addressed at the October meeting remains to be seen.

BROADCAST CONTEST RULES MODIFIED

The FCC has acted on and adopted changes to the broadcast station contest rules, allowing publication of contest details online, with some restrictions or requirements. The full Report & Order can be found here, and the text of the new rule is included in the appendix.

Broadcasters cannot start following the new rule yet though. The FCC has to follow certain procedures before the revised rule becomes effective. We will include an announcement about the effective date of the new rule in this newsletter.

COMMISSIONER O'REILLY CALLS FOR CHANGE IN PUBLIC FILE ACCESS RULE

To improve safety to broadcasters and their employees, FCC Commissioner O'Reilly, in a [post on the FCC's official blog](#), has called for the FCC to adopt a rule change allowing broadcasters who post their public file online to no longer be required to make their facilities open to the public.

Interestingly, O'Reilly's proposal is not limited to only those broadcasters who are required to have their public file online, such as TV broadcasters. Instead, he includes all stations, even if their online public file access is voluntary. Commissioner O'Reilly refers to the FCC's [open proceeding](#) considering an online public file requirement for all radio stations (with some exemptions) in which he called last December for comments from stations on studio access and safety issues. He noted that on his review of the record, there are few comments on the issue, and he called for the submittal of more information into the record on the physical threats and actual harms experienced by broadcast station personnel.

The blog post suggests to us that a decision in the months-old and still open radio online public file proceeding may be in the works, though a draft order has not yet appeared on the "Items on Circulation" list, which denotes those issues where draft decisions are being circulated among the Commissioners.

To submit any comment or information related to this matter, broadcasters should specify Media Bureau Docket 14-127 and submit electronically using the FCC's [electronic comment filing system](#).

FCC FINES PIRATE BROADCASTER

The FCC has issued a \$15,000 notice of apparent liability to an unlicensed radio station operating on 91.9 MHz in Passaic, New Jersey. The operator of the station had previously been warned by the FCC that the station was illegal (a lot of good that did). However, the FCC used that unheeded warning to increase the base forfeiture of \$10,000 to \$15,000.

The FCC's notice details repeated efforts by field office personnel to locate and measure the strength of the unlicensed radio transmissions and identify the responsible party. Those efforts began in 2012, and all efforts to have the responsible individual respond to demands to cease operation were unsuccessful.

FORM 317 DEADLINE ON HORIZON FOR TV BROADCASTERS

Every year by December 1st, all digital television stations must file Form 317 with the FCC reporting on whether it transmitted any ancillary or supplementary services via its digital spectrum. Those services include computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, and subscription video. To the extent a station has transmitted such services, it is required to remit 5% of any revenue received on those transmissions, as measured during the 12-month period ending on the September 30th just prior to the filing.

Now is a good time to assess whether a fee will be due by your station this December, and the amount. Stations that have not transmitted any ancillary or supplementary services must still file Form 317 indicating that no such services have been transmitted.

DATES TO REMEMBER

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 1 – December 2, 2015: BIENNIAL OWNERSHIP REPORT WINDOW OPEN. Filing required for all commercial stations including LPTV and TV translators. Information must be accurate as of September 30, 2015.

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.

DECEMBER 1, 2015: Form 317 due for all digital full-power TV, Class A TV, LPTV and TV translators.

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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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