



# Broadcast Newsletter

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## **HAPPY NEW YEAR!**

Hardy, Carey, Chautin & Balkin, LLP wishes all of our clients and newsletter readers a happy, fulfilling and safe 2016. It is our privilege to serve you, and we look forward to being with you at conventions and other gatherings during the year.

## **TV AUCTION FILING WINDOW REMAINS OPEN UNTIL JANUARY 12, 2016**

The window for eligible full power and Class A television stations to file FCC Form 177 has been open since December 8, 2015 and will close at 6 p.m. EDT on January 12, 2016. Stations that do not file an application in the window will have made final decisions not to participate in the auction. Stations filing the Form 177 will preserve their right to participate in the auction, but can still decide not to participate by not submitting an initial preferred bidding option by the March 29, 2016 deadline.

The application form is accessed through the [FCC's auction portal](#) using a station's FRN and password. From there, the form is a self-guided, multi-screen process that includes alerts about various requirements and any errors. A status bar update tells the user whether the form has been submitted or not.

The process has not been without glitches. In the first 48 hours of availability, the FCC's system was pretty temperamental, kicking out users for no apparent reason. That issue appears to have been resolved, but may have been due to the number of users at the time. For that reason, we caution stations not to wait until the last minute to file the Form 177, as things might get crowded then and bump up against the hard January 12<sup>th</sup> deadline.

Another glitch we noted (and the FCC sheepishly admitted) was a difference between a question asked during the form filing process and the wording of that same question on the printed version of a draft or submitted form. The question addressed a station's post-auction channel sharing intentions, asking during the application process whether a station had "a present intention" of channel sharing post-auction, but printing out as whether a station wished to "reserve a right" to channel share post-auction. That glitch is now fixed, and the correct question – whether a

station has a “present intention” to channel share post-auction – now appears in both the online application and printed version. Regardless of how this question is answered, stations will be completely free to decide whether or not to channel share post-auction.

The FCC has also given stations a brief overview of what will follow the FCC Form 177 filing window, and in particular how a station will place its initial and follow-on bids in the window. Participating stations should review [Section III of the public notice](#) to learn about post-filing window communications from the FCC and the issuance and use of SecureID tokens to place bids.

Formal FCC [guidance](#) regarding license assignments and transfers of control during the reverse auction became available December 17, 2015, and expanded upon a brief mention of the FCC’s policies hidden in the FCC’s earlier guidance on prohibited communications.

The other thing that caught our ear in the past few weeks was a statement made by FCC staff during the Form 177 filing webinar that the auction will proceed regardless of pending petitions for reconsideration or legal challenges to the FCC’s earlier TV auction orders. We note that a legal challenge pending in the DC Circuit regarding certain Class A stations’ eligibility to participate has been placed on an expedited briefing schedule that ends in mid-March 2016, and we expect the DC Circuit to rule quickly in that proceeding. The FCC will likely act on pending petitions for reconsideration before the March 29, 2016 deadline for stations to submit initial bids.

Stations should routinely monitor the [FCC’s Reverse Auction web page](#) for all deadlines, plus the latest developments and announcements.

## **FIRST 250-MILE FM TRANSLATOR MODIFICATION WINDOW FOR AM STATIONS OPENS JANUARY 29TH**

The FCC has [now set the dates](#) for the two 2016 filing windows for AM stations to modify FM translators by relocating them up to 250 miles to permitted locations within their coverage areas.

The first window will open on January 29, 2016 and remain open for six months for Class C and D AM stations to file modification applications for commercial band FM translators. AM stations can either be in the process of acquiring (or already own) the translator they want to modify, or have an agreement to retransmit the translator licensee’s signal. The first window will close at 11:59 pm EDT on July 28, 2016. Each AM station can only file one such application. Whether successful or not, the AM station will not be eligible to file in later windows or in a scheduled 2017 auction after the modification windows are concluded.

The second window, open to all classes of AM stations, will open on July 29, 2016 and close at 5:59 pm EDT on October 31, 2016. Again, only commercial band FM translators can be modified in this window.

AM stations participating in either window will electronically file their FM translator modification applications on FCC Form 349, and must indicate in Exhibit 1 of the form that the proposal is a “250-Mile Waiver Application.” While peculiar, this approach avoids the necessity of the FCC seeking a change to the application form, and also helps the staff to track the one-time right of an AM station to file such an application. Later application attempts by the same station will be rejected by the FCC.

In connection with its window date announcement, the FCC also launched its [FM Translator Channel Finder tool](#). The FCC cautions that the channel finder tool is limited to “tentatively” identifying available FM channels for relocated translators, but urges applicants to consult a qualified engineer to assist them in filing applications that are compliant with the FCC’s rules.

The [public notice](#) also includes some questions and answers that applicants may find helpful. We note that even AM stations that already have a translator are eligible to file for another one in the 250-mile application windows.

## **TOWER LIGHTING REQUIREMENTS UPDATED**

In early December 2015, the FAA announced that it was canceling and replacing its Advisory Circular

for Obstruction Marking and Lighting, amending the lighting requirements that apply to towers registered in the FCC's antenna structure registration system. The good news? The updated requirements only apply to new or altered antenna structures. However, any antenna structure alteration requiring the filing of a new Form 854 in the FCC's system will require compliance with the new lighting requirements.

Just what are the new requirements? There are several changes, but perhaps most significant is that lighting styles A, E and F for towers taller than 350 feet no longer allow L-810 steady burning side lights. Only flashing obstruction lights may be used. In addition, starting September 15, 2016, towers between 151-350 feet will require flashing (not steady) side lights for lighting styles A and E.

Tower owners can voluntarily change to the new lighting requirements for existing towers, but volunteering doesn't get owners a break on paperwork. Owners will have to first request a new No Hazard Determination from the FAA, and then file Form 854 with the FCC to amend the tower registration to reflect the new lighting. The FCC's Wireless Bureau encourages tower owners to eliminate steady burning side lights as soon as possible.

Why the changes? Well, according to the FCC's notice, eliminating non-flashing lights on towers may reduce migratory bird collisions by as much as 70 percent. In encouraging voluntary compliance for existing towers, the FCC also mentions a reduction in maintenance and energy costs for tower owners.

## **LPTV PRESERVATION STEPS**

The FCC has unanimously adopted a number of measures to help LPTV and TV translator stations continue to operate after the TV Incentive Auction. Acknowledging that many LPTV and TV translator stations will be displaced by the repacking and reallocation of the television bands after the auction, the FCC permitted channel sharing among LPTV and TV translator stations, extended the deadline for digital transition to 12 months after the 39-month post-incentive auction transition final

deadline, and offered assistance for finding new channels for displaced stations.

In the same proceeding, the FCC adopted a further notice of proposed rulemaking that among other things, tentatively decides that channel sharing between primary (full power and Class A) and secondary (LPTV) stations should be allowed. That's potentially beneficial in the long run for LPTV stations that may not be able to find a displacement channel post-auction, especially given that a channel share arrangement could use a small portion of the "sharer" station's spectrum and get much wider over-the-air coverage. But the FCC has yet to go the distance on this issue, so we'll have to wait for the outcome of the further rulemaking, which it says will be decided in a single channel sharing decision that includes full-power and Class A sharing issues.

The extent of the incentive auction's negative impact on LPTV stations won't be fully known until the auction is complete, but stations in or near more populated areas could face an uphill climb to remain on air. To read the entire order adopted by the FCC, an action we recommend, you can find it [here](#).

## **COPYRIGHT ROYALTY BOARD SETS 2016-2020 RATES**

As we reported a few months ago, the Copyright Royalty Board ("CRB") has been busy trying to decide how much services that stream music over the internet must pay in royalties to SoundExchange for the period starting in 2016. Just in the nick of time, the CRB has released its decision and rules.

The biggest change from prior years is that the overall rates have gone *down*. This is particularly newsworthy since SoundExchange was pushing hard for higher rates plus a cut of profits. Perhaps the years of complaints from smaller entities getting squeezed by these fees finally landed on not as deaf ears. With the lower overall rates, however, the prior sub-categories of special groups (broadcasters, small broadcasters, microcasters, small webcasters, etc.) have all been eliminated. This is not very surprising given that these

categories and their special rates or terms were created to give these groups a little bit of a break from the default rate load. Now that the rates for all non-subscription services, commercial or non-commercial is \$0.0017 per play, there is no need for these categories.

What has remained is the distinction between a commercial and non-commercial webcaster. Non-commercial webcasters are still defined as entities that are 501(c)(3) tax-exempt organizations or states or governmental entities who stream at least one non-subscription channel. Non-commercial webcasters will still pay the minimum \$500 fee (by January 31, 2016 – or within 45 days of beginning to stream) which gets them 159,140 Aggregate Tuning Hours' worth of plays per month. Anything in excess of the 159,140 ATH will be charged at the commercial rate of \$0.0017.

Commercial webcasters must still pay the \$500 fee (again by January 31, 2016) but they do not get the monthly allotment of tuning hours. The \$0.0017 rate kicks in from the first play. While it is very possible for a non-commercial webcaster to pay only \$500 for the year of streaming, commercial webcasters will pay at a minimum \$500 and the bill will go up from there depending upon performances.

Non-commercial educational webcasters who have stations that are directly operated by or are affiliated with domestically accredited school, college or other post-secondary degree-granting educational institution and are staffed substantially by students enrolled at said school, are governed by a separate agreement between College Broadcasters, Inc. and SoundExchange. These webcasters will pay the same \$500 fee and get the 159,140 ATH per month. However, they have an affirmative obligation to make good faith efforts to stay under the 159,140ATH each month. Should they go over, the noncommercial rate of \$0.0017 per play will apply. Non-commercial educational webcasters also have the option of paying \$100 per year to SoundExchange to not have to do census reporting.

In the years 2017 through 2020, the rates will be tied to the annual Consumer Price Index (CPI-U) of the prior year. Each year, at least 25 days before

January 1, the CRB will publish the adjusted rates in the *Federal Register* which will then take effect on January 1. This is a massive departure from the prior years' schemes that laid out of the fees per year ahead of time.

It is very likely that SoundExchange will appeal some if not all of the new rate scheme. For the meantime, however, these rates will take effect on January 1, 2016 and all webcasters must file their statement of use and minimum payments of \$500 per channel to SoundExchange no later than January 31, 2016.

## DATES TO REMEMBER

**January 1, 2016:** stations must begin captioning "straight lift" clips – a single excerpt of a program that was captioned when first shown on TV, with the same video and audio as broadcast – that are then uploaded to the internet for further viewing.

**January 10, 2016: TV, Class A, AM & FM Stations (commercial and noncommercial):** complete 4<sup>th</sup> quarter 2015 issues/program reports. TV & Class A Stations post same to your online public file. AM & FM stations place in your public file.

**Class A Stations Only:** complete and post to your online public file certification of ongoing Class A eligibility.

**January 11, 2016:** January 10 lands on a Sunday so the deadline is moved to the next business day. **TV & Class A stations (commercial only):** complete and electronically file FCC Form 398 Children's TV Programming Report for 4<sup>th</sup> Quarter 2015. Your report should be made automatically linked by the 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.

**January 12, 2016 6pm ET:** FCC Form 177 filing window CLOSSES for full power and Class A stations to participate in 2016 TV Reverse Incentive Auction.

**January 20, 2016:** reply comments due on FCC proposal to revise rules regarding foreign ownership of broadcast stations.

**January 29, 2016:** 1<sup>st</sup> AM window for Class C and D AM stations to file modification applications for commercial band FM translators. Window closes **July 28, 2016.**

**January 31, 2016:** minimum fees are due to SoundExchange for year 2016 for stations streaming on the internet.

**February 1, 2016:**

**AM & FM Stations in Arkansas, Louisiana & Mississippi:** 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 New York & New Jersey:** 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 Kansas, Nebraska & Oklahoma:** 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 Arkansas, Louisiana, Mississippi, New York & New Jersey:** 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 Kansas, Nebraska & Oklahoma:** 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**

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