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## **HCCB AT NRB CONVENTION**

Joe Chautin and Elise Stubbe will be in Nashville for the National Religious Broadcaster's convention February 22-26, 2016. We look forward to seeing you there. If we don't yet have a meeting planned with you, or if you are not a client but would like to meet with us, please email us so we can arrange a time to meet.

## **FIRST 250-MILE FM TRANSLATOR MODIFICATION WINDOW FOR AM STATIONS OPENS TODAY**

Despite the snow and several days of being closed, and many private calls for a delay, the FCC has stuck with the January 29, 2016 opening date for the first of 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. That means the window opened **today** for Class C and D AM stations to file modification applications relocating commercial band FM translators up to 250 miles.

This first window will close at 11:59 pm EDT on July 28, 2016. Each AM station can only file one such application. And remember, 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.

If you are a Class A or B AM station, you have to wait until the second window, which 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. Class C and D stations that did not participate in the first window can participate in this one as well.

## **OWNERSHIP REPORTING EVOLVES AGAIN**

Since back in 2008 when the FCC adopted goals to increase diversity in broadcasting, they've been trying to conceive of concrete actions that can be taken to promote

diversity in broadcasting. To establish a basis for doing so, the FCC has sought data to determine current broadcast station ownership by minorities and women. Ironically, the FCC's own data collection efforts – in the form of revised ownership reporting – have perhaps become the largest obstacle to arriving at accurate minority and women broadcast station ownership.

The largest reason for the confusion is a lack of clear instruction on ownership reporting procedures, and layers of reporting required for parent and subsidiary reporting. A number of modifications to the ownership reporting form, and litigation over the FCC's requirement that owners obtain registration numbers for accurate tracking, have failed to provide the clarity the FCC believes it needs. The solution? Issue a new order and make new changes.

In a lengthy, detailed January 2016 order that has clearly been in the works for several months, the FCC tweaked the ownership reporting form again, mandated that all reportable owners obtain at least Restricted Use FCC Registration Numbers (which only require the last 4 social security number digits). Then, they blew the dust off of their long forgotten proposal to have all noncommercial stations file on the same schedule as commercial stations (i.e., once every two years by the same date), and adopted that requirement. Those non-profit board members and officers will also need RUFNRs (sigh), and will have to disclose race/ethnicity. Next, the FCC tweaked the two-year deadline from November 1 to December 1 of the filing year.

And on top of it all, the ownership reporting forms are going to be migrated into the new License Management System (LMS), which will add yet another curveball to report preparation. For those that aren't aware, the LMS software designers are skilled at making forms "smart" to dictate rule

provisions, and sometimes even things that aren't rules. So surprises may await.

While the FCC has decreed that these changes will apply to ownership reports filed in 2017, the rule changes won't take effect for a few months until they are published in the Federal Register. In the meantime, NCE stations with upcoming biennial reports due on their renewal application anniversary dates still have the joy of preparing and filing the Form 323-E.

We're still combing through the lengthy order and will notify clients on all detail in coming weeks. If you have a question, please let us know.

## **FCC ADOPTS RADIO ONLINE PUBLIC FILE REQUIREMENT**

We don't know all the details because the Report & Order had not yet been released as of this writing, but the FCC has voted to adopt a requirement that radio stations migrate public files to the FCC's online system that has been used by TV stations the past few years.

From the news release, which includes summary bullet statements of the new rules adopted, we can tell that initially, the new online public file requirements will apply to commercial stations in the top 50 Nielsen Audio markets with 5 or more full-time employees. Other stations will have two years before mandatory online public file requirements apply to them. If a station is "temporarily exempt from part or all online public file requirements," they can still upload material to the online file voluntarily before the delayed effective date of their online file requirement.

There is no summary item indicating that any stations are permanently exempt, but again, without having the full Report & Order, we're not certain. Exceptions for smaller and noncommercial stations had been urged by many groups. But from reading Commissioner statements, it sounds as though no one is exempt.

## **WEBCASTER MINIMUM PAYMENTS DUE TO SOUNDExchange BY FEB. 1**

If you are a broadcaster and also stream your broadcast on the web (i.e. “webcast”), you owe some money to SoundExchange by February 1. Webcasters need to make the minimum \$500 fee per channel to SoundExchange by the February 1 deadline. If you are not webcasting, but plan to do so in the future, your payment to SoundExchange would be due no later than 45 days after you begin streaming.

Commercial webcasters – i.e. those that are not operated by non-profits, government agencies or schools – must also submit monthly reports of use identifying information about every song played during the month (also known as “census reporting”) no later than 45 days from the end of the month for which the report is being made.

Non-commercial webcasters – i.e. those that are operated by non-profits or government agencies but are not schools – are allowed to do sample reporting, whereby they submit quarterly reports showing two weeks’ worth of reporting. Sample reporting, however, is only available to those webcasters who stay under the 159,140 aggregate tuning hours per month. If a webcaster exceeds the tuning hours maximum in a month, it must revert to monthly census reporting.

Non-commercial educational webcasters – i.e. those operated by schools where a substantial portion of the staffing comes from students – that do not exceed 80,000 ATH per month can elect to pay an additional \$100 fee for a waiver of the reporting requirements entirely. If the webcaster does not elect to pay the fee or the webcaster exceeds the 80,000 ATH per month, the station can do sample reporting showing two weeks’ worth of reporting per quarter. If the webcaster exceeds 159,140 ATH per month, it must do monthly census reporting.

All webcasters must also submit a statement of account with their \$500 payment.

## **TV AUCTION: WHAT NOW?**

The January 12, 2016 deadline for filing FCC Form 177 to become eligible to participate in the TV Incentive Auction has now passed. So what’s next for broadcasters? For those that chose not to qualify by the deadline, there is nothing to do until the auction is complete and the FCC makes decisions on repacking remaining TV stations into the smaller TV band that remains. Stations being repacked will have several action items; those that are not being repacked will continue business as usual.

For those stations that did qualify to participate in the auction, the FCC is reviewing Form 177’s and will be communicating with you in coming weeks. Though their guidance on this was somewhat cryptic, stations that filed an incomplete Form 177 will be so advised and given a deadline to fix the issue. In addition, stations with a complete Form 177 will be notified that they are either still needed in the auction and eligible to file an opening bid, or not needed in the auction and will therefore be subject to repacking.

On February 29, 2016, the FCC will launch a tutorial on bidding and the post-auction process. The tutorial will provide important details on the actual bidding process as well as important deadlines and action items.

By 6 p.m. Eastern Time on March 29 2016, stations that remain eligible and intend to participate in at least round one of the auction must make an initial commitment to their opening round bid option. The FCC will likely open a short “window” in the days prior to this deadline so that stations can make this initial commitment earlier than March 29<sup>th</sup>. The FCC controls this process by making the bidding software available through the auction portal. Until they do so, bidding will not be possible.

When are things like the clearing target and band plan going to be decided? That comes after the March 29<sup>th</sup> deadline, along with mock auctions. Absent glitches, live round bidding will likely begin around the end of April 2016.

Stations should routinely monitor the [FCC's Reverse Auction web page](#) for all deadlines, plus the latest developments and announcements. In addition, stations that submitted a Form 177 should be watching the mail or overnight delivery service, as well as email In Boxes, for FCC communications.

## FCC CONTINUES EAS IMPROVEMENT EFFORTS

The FCC has proposed various rule changes to further strengthen the Emergency Alert System. Among other things, the proposed rulemaking seeks new coordination and improvements with state and local authorities, would authorize state and local alert originators to conduct EAS tests, and allow local and state governments to use the EAS attention signal if not misleading. Also out for comment are possible security improvements for EAS equipment and participants. No date has yet been set for comments to be filed.

## DATES TO REMEMBER

**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.

**February 1, 2016:** minimum fees are due to SoundExchange for year 2016 for stations streaming on the internet.

**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 and place copy in public file.

**AM & FM Stations in New York & New Jersey:** if full-time employee threshold is met, complete EEO public file report and post same in public file as well as post on station website. **NCE Stations Only:** also file biennial ownership report via Form 323-E and place copy in public file.

**AM & FM Stations in Kansas, Nebraska & Oklahoma:** if full-time employee threshold is met, complete EEO

public file report and post same in 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 Stations Only:** also file biennial ownership report via Form 323-E.

**February 29, 2016:** tutorial on bidding and post-auction process.

**March 21, 2016:** AM revitalization NPRM comments due.

**March 29, 2016:** at 6pm EST, last time for eligible full power and Class A TV stations to make an initial commitment to their opening round bid option. The beginning of the window will be announced later.

**April 1, 2016:**

**AM & FM Stations in Indiana, Kentucky & Tennessee:** 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 and place copy in public file.

**TV & Class A Stations in Delaware, Indiana, Kentucky, Pennsylvania & Tennessee:** 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.

**AM & FM Stations in Delaware & Pennsylvania:** if full-time employee threshold is met, complete EEO public file report and post same in public file as well as post on station website. **NCE Stations Only:** also file biennial ownership report via Form 323-E and place copy in public file.

**AM & FM Stations in Texas:** if full-time employee threshold is met, complete EEO public file report and post same in public file as well as post on station website.

**TV & Class A Stations in Texas:** 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.

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