



Broadcast Newsletter

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TV AUCTION DEVELOPMENTS; MARCH DATES AND DEADLINES

The FCC's steady march toward the TV Incentive Auction continues unabated, despite a few looming legal proceedings in the D.C. Circuit. The FCC last week declined to stay the auction on behalf of certain Class A TV license holders, and now that question will be decided by the D.C. Circuit, with a briefing schedule that will not conclude until after the March 29, 2016 initial preferred bidding option deadline.

Bottom line – if the auction is stayed, that stay will be ordered by a court, not the FCC. TV Auction participants should pay close attention to the [FCC's Auction Page](#) and trade publications for the latest. We're not making any prognostications on the outcome here, but it bears watching.

Otherwise, TV Auction participants should load their calendars with the important dates for the next 30 days. Today, **February 29, 2016**, the FCC's online tutorial regarding initial commitments will be available, as well as a user guide for the initial commitment module of the Auction System. That tutorial should also include some bidding and post-auction process information. There is no set time for the tutorial to become available, but we recommend that you periodically check the FCC's Auctions Page [Education Tab](#) or the FCC website home page. It will remain available for viewing at any time.

Participants should also be looking for the FCC's Second Confidential Status Letter, which will again confirm a station's "complete" status and contain information on making an initial commitment in the auction. We expect those letters to be arriving sometime this week or early next. They should arrive just as the first letters did, via overnight courier. The FCC is very serious about these communications,

and if the courier does not confirm delivery, the FCC will call you to find out what's going on and confirm how it can get the letter to you.

Next up is a **March 11, 2016** workshop on how to make an initial commitment in the reverse auction. Stations will be able to watch the workshop live as an "event" on the [FCC's Events Page](#) from 10:00 a.m. to 1:00 p.m. ET. Viewers watching live will be able to submit questions via email to auction1001@fcc.gov. This workshop will also feature a demonstration of the reverse auction bidding system for the clock phase of the auction (when multiple round bidding begins). [This public notice](#) has all the workshop details.

Finally, the FCC has released [another public notice](#) about the availability of the initial commitment module and the initial commitment filing window. Participants should review it carefully. **Initial commitments must be submitted during a 32-hour window from 10:00 a.m. ET on March 28, 2016 until 6:00 p.m. ET on March 29, 2016.** Applicants will be able to preview the submission process when the Auction System's initial commitment module becomes available beginning at 10:00 a.m. ET on March 24, 2016 until 10:00 a.m. ET on March 28, 2016. The FCC recommends that users log in to the module during the preview period to verify that they are able to access the system. The module will be available on the [FCC Auctions Portal](#) page. Users must log in with their FRN and password.

After the March 29, 2016 deadline passes, participants should expect to receive a 3rd Confidential Status Letter regarding their status in the auction, mock auction information, and dates for the start of the clock phase of the auction.

OVER 400 APPLICATIONS FILED IN FIRST 250-MILE FM TRANSLATOR MODIFICATION WINDOW

The FCC's first 2016 filing window for Class C and D AM stations to file modification applications relocating commercial band FM translators up to 250 miles opened on January 29, 2016, with over 400 applications filed that day.

The FCC has already processed and granted over 300 of those applications, and expects to act on the remaining applications by mid-March 2016. The FCC's lightning quick processing confirms what many have experienced -- very few applications filed were mutually exclusive with others and were therefore immediately granted. If a station did not file early in the window, it remains eligible to file now. The first filing window, during which applications are processed on a first-come, first-served basis, will not close until 11:59 p.m. ET on July 28, 2016.

The next day, July 29, 2016, will mark the start of the second 2016 filing window in which Class A and B stations (in addition to Class C and D stations that did not participate in the first window) can file to relocate and modify existing commercial band FM translator licenses or permits up to 250 miles. The second window closes at 5:59 p.m. ET on October 31, 2016.

We've helped many stations obtain FM translators as part of this window, and have noted an interesting development that we thought worthy of passing along. Many FM translator applications filed during the window specified a tower used by the AM station. While perfectly fine, many of those AM stations have towers that pre-dated the FCC's tower registration system and have therefore not been registered. In the vast majority of cases,

registration was not required because the tower is less than 200 feet above ground.

But in some cases where towers are located near airports, even towers less than 200 feet tall have to be registered because they are close enough to the airport to create safety of flight issues. The FCC staff ran airport proximity analyses on these towers as part of their review of FM translator applications, and a few were not grantable until a tower completed the registration process, which can take several months and requires an FAA determination of no hazard. So when choosing a tower for an FM translator 250 mile modification window application, stations using an AM primary station tower should confirm that the tower does not require registration.

FCC ANNOUNCES FIRST 2016 EEO AUDITS

Twice a year, every year, the FCC sends audit letters to broadcast stations around the country requesting information on their compliance with the FCC's EEO requirements. Typically, about 5% of all stations are audited each year.

The first EEO audits of 2016 were launched on February 24th, with 279 radio and television stations on the receiving end of EEO audit letters. If your station has received one, review it carefully, note the deadline for responding (April 11, 2016), and start gathering what you need to comply with the audit. Could you be on the list, but haven't seen the letter just yet? Possibly. Check [this list](#) for your station. And if you're curious about what an audit letter looks like and what it asks for, review the [February 24, 2016 letter](#), which is attached to the public notice announcing the audits. Even if your station is not on the list, use it to do a dry-run for responding, which will also be a good compliance double check for your program.

What if your station was audited last year? What if you need more time to gather information in order to timely respond to the audit? In both cases, email Lewis Pulley at the FCC at lewis.pulley@fcc.gov and he'll help out. The last thing you want to do is fail to respond, which is punishable by sanctions.

A few other notes. For privacy reasons, the FCC wants your response to exclude personal information about individuals such as social security numbers or home addresses. Also, the accuracy of your response must be certified by an officer, partner or other principal of the station licensee, so check vacation and work schedules to be sure your station's signatory will be around.

NEW FILING SYSTEM FOR CHILDREN'S TV QUARTERLY REPORTS

Starting with the first 2016 quarterly report, which must be filed between April 1-10, 2016 and will cover the first three months of the year, the FCC's Form 398 Children's Television Programming Report will have to be filed in the FCC's new Licensing and Management System (LMS). The FCC's [February 9, 2016 public notice](#) details the procedure to use for accessing the form once a station is logged in to LMS.

Previously, these reports were filed in the Children's Television Online Filing (KidVid) System, but the link to do so is now disabled. So be prepared with your FRN to log in to LMS at [this link](#). Full power, Class A and LPTV stations with must-carry rights must file the report by the 10th day after each quarter of the calendar year.

It is unclear whether any data from prior reports will be available in the LMS system, or auto-fill in the form, so you may want to allow additional time in case you must re-type form information.

Also, we have noted that forms filed in LMS periodically do not automatically appear in a TV station's online public inspection file. Stations should double check to be sure that the filed form appears in the online public file, and not just assume that it will. The FCC's public notice makes clear that if the report is not linked to the station's online public file by the deadline for filing the report, the station licensee must manually upload a copy of the report to the online public file.

Heads up – if you file a report on the 10th day after the quarter, it will likely not appear until the next day, and could mean that even though you timely filed it, you were late for placing it in the public file. Failure to timely place a report in the file may result in sanctions.

AM REVITALIZATION ROLLS ON; COMMENT DEADLINE FAST APPROACHING

In addition to the FM translator filing windows for AM stations, the FCC also adopted other rule changes in its order last October. One of those was an amendment to Section 73.1560 to allow AM stations to commence operation using Modulation Dependent Carrier Level (MDCL) control technology without prior FCC authority, provided that within 10 days after commencement of MDCL operation, the station submit a completed FCC Form 338, AM Station MDCL Notification. The FCC has now obtained approval for the form, and the rule change and Form 338 become effective on March 3, 2016. The FCC issued this [February 18, 2016 public notice](#) announcing the form.

There are a number of open issues that the FCC is still considering as part of its AM Revitalization efforts. Comments on these are due by **March 21, 2016**. So if you have an opinion on modifying AM station protection standards, the rule on siting of FM cross-service FM translators, modifying the partial

proof of performance and method of moments proof rules, the requirement for surrender of licenses by dual expanded band / standard band AM station licensees, utilization of the AM expanded band, or revisions to the main studio rules for AM station licensees, we urge you to file comments for the FCC's consideration.

Some of these issues could make a big difference for AM stations. The FCC has opened the door for some flexibility for AM station main studio staffing and location requirements, both of which could result in substantial monetary savings. Unfortunately, the FCC did not propose a rule change here, but decided to gather more information to figure out whether to initiate a rulemaking proceeding to modify the main studio rule. The more stations voice their support, the greater likelihood for money-savings rule changes down the road.

Also of particular interest is the FCC's consideration of whether to change the rule on where AM stations can locate an FM translator that retransmits the AM station's signal. Currently, the rule allows the translator to be located within the *lesser* of the 2 millivolts per meter (2 mV/m) contour or a 25-mile radius from the AM station's transmitter site. Many believe these limitations are too restrictive. The FCC has proposed that the rule be changed to allow AM stations to locate FM translators within the *greater* of the 2 mV/m contour or a 25-mile radius from the AM station's transmitter site, but with an absolute restriction that the FM translator's 1 mV/m contour not extend beyond a 40-mile radius from the AM station's transmitter site. This added flexibility would present a substantial additional opportunity to provide FM coverage to AM station listeners.

Comments can be filed electronically (and very easily) through the FCC's electronic comment

filing system (ECFS). Commenters can access the system via [this link](#).

NEW CONTEST DISCLOSURE RULE NOW IN EFFECT

The FCC's new online contest disclosure rules that were adopted in September 2015 became effective on February 12, 2016. The new rules allow stations to satisfy their obligation to disclose material contest terms either by broadcasting those terms or by making them available in writing on a publicly accessible internet website.

DATES TO REMEMBER

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

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

March 11, 2016: FCC workshop on how to make initial commitment in reverse auction. Event will be live from 10am – 1pm EST.

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.

April 10, 2016:

TV, Class A, AM & FM Stations (commercial & noncommercial): complete 1st quarter 2016 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.

April 11, 2016: April 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 **VIA LMS** FCC Form 398 Children's TV Programming Report for 1st Quarter 2016. Your report should be 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.

April 18, 2016: reply comments on AM revitalization due.

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For more info, contact Joe Chautin, Mark Balkin, or Elise Stubbe.

Phone 985.629.0777

Fax 985.629.0778

www.hardycarey.com

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.

 Hardy, Carey, Chautin & Balkin, LLP
ATTORNEYS AT LAW
1080 West Causeway Approach
Mandeville, Louisiana 70471-3036