



Broadcast Newsletter

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TV AUCTION CLOCK PHASE – WHERE ART THOU?

After forecasting that the clock phase of the TV Incentive Auction would likely begin at the end of April or early-May, everyone expected the third confidential letter to be sent around mid-April, with mock auctions in late April. The FCC apparently has other plans.

As of this writing, applicants who made an initial commitment in the auction by the March 29th deadline are still waiting on the third confidential letter, which will also announce the mock auction schedule and start of the clock phase of the reverse auction. During the clock phase, the FCC will conduct at least one and probably two rounds per day, Monday through Friday. Bidders will find out their status electronically after each round.

And so we wait. The auctions portal remains inaccessible at the moment, likely a purposeful action by the FCC to prevent hacking or other nefarious activities. It will resurface when the FCC is ready. Participants should watch for overnight deliveries. And we'll all be watching for the FCC's announcement of the clearing target, which will establish the initial goal for how much TV spectrum the FCC hopes to clear. Could all of this happen late on the last Friday in April (today)? Quite possibly.

As a reminder, the FCC's anti-collusion rules remain in place until the end of the reverse auction. Be cautious in your communications with others to stay clear of any rule violations.

FOCUSING ON POST-AUCTION LANDSCAPE

The FCC has recently heard from the TV industry on two critical issues that will affect the post-auction television landscape.

The first is repacking the TV band, where many issues remain unresolved and the industry is pushing for repacking to be done on a regional basis as opposed to all at once on a nationwide basis. Citing the major crunch on tower climbers and antenna manufacturers, regional repack

proponents believe a geographically restricted approach makes more sense. The FCC has not made any official comment on the regional repack proposal as of yet.

The second item receiving attention is a proposal by major representatives of the TV industry that the FCC modify its rules to allow a voluntary transition to new digital television standard ATSC 3.0, which will use 6 Mhz of TV spectrum to deliver signals via an IP based protocol and the use of multiple sites within a station coverage area.

The [proposal](#), filed two weeks ago, asks for recognition of the protocol so that stations can decide on their own to transition to the new standard, on a time schedule that they chose. Some stations may be interested in making such a transition during the post-auction repack.

The FCC has acted quickly on this proposal, with the Chairman welcoming it with a “hooray” comment at the recent NAB convention in Las Vegas, and a [public notice](#) establishing a May 26, 2016 comment deadline so that the FCC can later consider it in a rulemaking proceeding. Comments can be filed electronically through the FCC’s [electronic comment filing system](#).

FCC PUBLISHES STUDIO ON HISPANIC TV OWNERSHIP

In its latest effort to study diversity in ownership, the FCC has published an extensive study of Hispanic television stations in the United States. The study examines the relationship between Hispanic-owned television stations, the programming they offer, and the impact on Hispanic viewing.

The [study](#), which is currently being peer-reviewed, suggests that Hispanic station ownership is associated with higher viewing by the Hispanic population, particularly of local programming.

The FCC intends to seek comment on the study when the peer-review process is complete. A copy of the FCC’s public notice announcing the posting of the report for review can be found [here](#).

FCC DENIES REQUEST FOR FURTHER AM BOOSTER EXPERIMENTAL LICENSE

A broadcaster in Puerto Rico, previously authorized to use AM synchronous boosters under the FCC’s experimental rules, has been denied a request for a third booster station that would have extended beyond the AM station’s .5 mV/m groundwave contour.

Ultimately, the FCC characterized the request for another booster as an attempt to circumvent its rule authorizing new AM stations, noting that the experimental authorization for the other two boosters had existed for a long period and that nothing new would be gained by adding a third booster. The FCC’s Media Bureau had previously denied the request, and the applicant appealed to the full Commission. The Commissioners denied the request by a [Memorandum Opinion](#).

FCC Commissioner Ajit Pai, a strong proponent of the FCC’s ongoing AM revitalization efforts, issued a [statement](#) clarifying that while he voted to deny the appeal, other AM stations should not take that to mean that the FCC was stifling efforts at innovation in the AM band.

In Commissioner Pai’s words, “given its unique factual context, this Order should not deter any AM broadcasters who wish to perform legitimate experiments with AM synchronous boosters from coming to the Commission. If broadcasters wish to test whether synchronous transmission systems can help improve signal quality within their coverage area, I believe that the Commission should facilitate such experiments as we search for ways to revitalize the AM band.”

COMMISSION DENIES PERMIT TOLLING REQUEST ALLEGING CDBS HACKING AND GENDER DISCRIMINATION

The holder of a construction permit for a new AM station that had already been tolled two years has been denied a request for further tolling based on, among other things, allegations of CDBS and FRN account hacking, along with gender discrimination. We thought these arguments novel enough to give them some space here.

Apparently, the permit holder's CDBS and FRN information was somehow accessed and used to file various FM translator applications that were not authorized. These became the subject of a lawsuit in Utah. The flaw in this argument? Well, the applicant admitted that its principal's husband might have had some role in the "hacking" since he knew answers to personal security questions for the account numbers.

But that didn't matter, of course, and the applicant went so far as to blame the Commission staff for releasing certain codes, even amongst the claims of hacking. This "hacking" scheme deterred the applicant from timely filing for a license application for the AM permit, in fear that the application would be hijacked by the hackers.

But wait, there's more. The applicant also claimed gender-biased discrimination because the FCC had previously denied various applications of the applicant's principal, a female. No other evidence was provided.

Interesting arguments, to be sure, but ultimately unpersuasive. The FCC thought so, pointing to the unverified nature of the petition and its allegations, dismissing it as speculation, and upholding the Media Bureau's initial determination that tolling was not warranted.

Still curious? For a complete review of the drama, you can read the [full decision](#) here, including its interesting footnotes.

DATES TO REMEMBER

May 9, 2016: comments due on EAS NPRM.

June 1, 2016:

AM & FM Stations in Michigan & Ohio: 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 DC, Maryland, Virginia & West Virginia: if full-time employee threshold is met, complete EEO public file report and post same in public file as well as on station website and 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 Arizona, DC, Idaho, Maryland, Nevada, New Mexico, Utah, Virginia, West Virginia & Wyoming: 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 Michigan & Ohio: if full-time employee threshold is met, complete EEO public file report and post same in online public file and station website.

TV & Class A Stations in Arizona, Idaho, Nevada, New Mexico, Utah & Wyoming: if full-time employee threshold is met, complete EEO public file report and post same in online public file and on station website. **NCE Stations Only:** also file biennial ownership report via Form 323-E and place copy in public file.

July 10, 2016:

TV, Class A, AM & FM Stations (commercial & noncommercial): complete 2nd quarter 2016 issues/program reports. TV & Class A stations post same to your online public file. AM & FM Stations place in your public file.

TV & Class A stations (commercial only): complete and electronically file [VIA LMS](#) FCC Form 398 Children's TV Programming Report for 2nd 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.

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

July 28, 2016: 1st AM window for Class C and D AM stations to file modification applications for commercial band FM translators CLOSES.

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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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