



Broadcast Newsletter

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OPIF – A NEW ACRONYM FOR YOUR FCC LEXICON

Just when you thought there wasn't enough room in your brain for another acronym, the FCC has coined a new one. OPIF. Now, I know you're thinking that on some days, a four letter word might fit nicely for the agency that adopts, changes, and enforces regulations for your business. And we're sure that you can come up with other words that explain the OPIF acronym. But here's the skinny – it stands for Online Public Inspection File.

TV broadcasters will be familiar with such a concept, having labored in the online public file fields for these past few years. For them, it has been known as the BPIF – the Broadcast Public Inspection File.

As you may recall, the FCC recently expanded the online public file to many others – radio stations, cable systems, and satellite TV companies, to name a few. So they've created a one stop shop for online public files of all kinds (not just for broadcasters), and thus we now will have the OPIF.

The FCC has been working hard to develop the OPIF, and is now ready for others to test drive it, as explained in [this notice](#). Yes, that's true. By going to [this page](#), you can put in your station's facility identification number, obtain a passcode, and go for an OPIF drive to see the scenic byways and curious landmarks in the great territory of the online public file.

For TV stations, this test drive is particularly important because on **June 24, 2016**, the FCC is going to transition the current online public files into the OPIF system, and that will be the only way for TV stations to access their public file going forward. So taking a test drive now is important so that the new format is not completely foreign at the end of June. But a word to the wise: during your test drive, don't upload new items to the OPIF and assume that they will be there after the June 24th transition. They won't be. The test drive platform will simply be dumped in the internet ether

when the test drive period is over. So while you can practice uploading something in the new OPIF test drive, be sure that you are completing any required uploads into the current system as required.

For radio stations, the test drive is very important for those stations who will have the privilege of starting to use the OPIF earliest. That would be commercial radio stations in the top 50 Nielsen Audio radio markets in the country that have five or more full time employees. Those stations must begin using the OPIF on **June 24, 2016**. If your commercial station doesn't meet that criteria, it will enjoy a temporary exemption from the OPIF until **March 1, 2018**. The same temporary exemption applies to noncommercial radio stations. But these stations would be smart to take OPIF for a test drive now to get a feel for what will be necessary once the compliance deadline arrives.

Welcome to the new age of transparency, where all can see your online public file, and where inspections – for the public or the FCC – are as simple as a few clicks. Consider the upside – you won't have to have someone there to cheerily greet the public "inspector." You know – the person that you trained to handle a request to see the file contents by a member of the public, even though no one ever showed up. Ok, so that's a little sarcastic. But also true, right? In OPIF land, you'll never even know someone peeked in the file. So compliance will be all the more important. That's also very true.

If you need a fill-up during your OPIF drive, or have a question about something you're seeing along the way, let us know. We have an OPIF map and will help you find your way. Or better yet, you can participate in a webinar that the FCC has promised but has not yet been set. Don't worry, we are confident that an archived copy will be available for your viewing after the live webinar, and we'll provide a link to it in next month's newsletter. Safe driving!

MAY 31ST START FOR CLOCK PHASE OF TV AUCTION

That loud exhaling noise is a collective sigh of relief from the broadcast industry and all those

connected to it in some way. The clock phase of the incentive TV auction – where bids drop each round and stations that are participating decide whether to stay or go – will get underway on May 31st. No one can precisely say when the reverse auction will be over, but most are guessing that it will take 6-10 weeks. After that, the FCC will run the forward auction, where entities bid to purchase the spectrum vacated by broadcasters in the reverse auction. That will take a few months as well. Once the FCC determines that the criteria for a successful auction have been met, the auction will be declared over. The earliest this is likely to occur is late-October or sometime in November.

Could it go longer? Yes. If the FCC's satisfaction criteria are not met, it will have to reset the clearing target (currently 126 Mhz) to a lower target, re-start the reverse auction with those broadcast participants that remained at the end of the first phase of the auction, and have the entities that want the spectrum continue bidding until the satisfaction criteria are met. If this scenario comes to pass, the timing for auction completion becomes less clear, likely ending sometime in 2017.

The FCC only has one chance to complete the auction – there are no second bites at the apple. So that's why it has been designed with fallback phases so that failure is not an option, only less spectrum cleared.

If you're not playing in the auction, or find yourself on the outside looking in after either the FCC determines your station is not needed, or you decide that the FCC's offers don't align with your plans, all of your attention should be focused on how the FCC will "repack" the TV spectrum. We believe the FCC will announce various procedures and game plans for the repack in an order issued this summer. We'll be interested to learn whether the FCC takes an "all at once" nationwide approach to the repack, or a regional approach, or a "corners" approach where repacking starts in Vermont, Florida, California and Washington and moves toward the center of the country.

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

stations that are not participating in the auction that may receive information about the status or strategy of a participating station.

WEBINAR FOR TV AUCTION PARTICIPANTS

For those TV stations that remain eligible in the TV auction, the FCC plans to hold a webinar in advance of the mock auctions. A detailed agenda is available in [this notice](#). The webinar will be held on Tuesday, May 24, 2016 from 10 a.m. to 1 p.m. Eastern time.

The FCC's notice includes other important reminders for participants, including one to log in to the auction portal during a 32-hour preview period starting Monday, May 23 at 10 a.m. ET and ending Tuesday, May 24, 2016 at 6 p.m. ET. Stations can (and should) confirm their status in the auction during this preview period.

ANOTHER NATIONAL EAS TEST?

Yes, it is true. The FCC has plans for another national test of the Emergency Alert System sometime this fall. We don't have specific details yet, though we are hopeful that the lessons learned from the last national EAS test from a few years ago will be used to make this new test less problematic.

One of the biggest issues encountered during the last test was malfunctioning EAS equipment. If that occurred, it was something that had to be reported to the FCC. And while they reserved the right to take enforcement action against an EAS participant in those situations, none ever materialized. Whether such leniency remains in the FCC's EAS testing mindset is an unknown.

So while you're making your summer plans and checklists, add an item to have your engineer double check your EAS equipment to be sure that it is functioning properly during tests and is programmed to receive a national test. Once we know more details about the planned test, we'll let everyone know.

NALS AND FORFEITURE ORDERS

While it has been awhile since our last "Penalty Box" article in this newsletter, that doesn't mean that the FCC hasn't been busy issuing notices of apparent liability and collecting monetary fines from broadcasters. Popular rule violations that make the FCC's credit card chip reader work (or cash register ring) have been running the full gamut, including failure to file children's television reports on time, failing to place items in the public file on time, failure to operate within licensed parameters, and incorrectly certifying to compliance in applications filed with the FCC. Fines vary based on the FCC's schedule, but recent ones have ranged from \$3,000 to \$10,000.

Fines always spike with renewal applications (when oversights are often discovered), and now that the FCC has completed its processing of the last round of renewal applications, some of the forfeiture actions should taper off. But in the interim, be watchful of certain easily observable items like presence at the main studio, tower lighting and fencing, and EAS operation.

We don't wish to relentlessly beat the compliance drum (ok, yes we do), but the best way to ensure ongoing compliance and avoid a scare at license renewal time is to use two-person control for each FCC or public inspection filing. That way, if someone is out sick on a deadline day, their backup is able to cover the required filing.

DATES TO REMEMBER

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.

June 24, 2016: Commercial AM & FM Stations in the top 50 markets with 5 or more full-time employees: you must begin to use the online public inspection file (OPIF) and begin posting documents in real-time.

TV & Class A Stations: your files from the broadcast public inspection file (BPIF) will be migrated to the new online public file (OPIF) and you must begin to use the new system.

All Other AM & FM Stations: you can begin to use the online public file system, but are not required to do so until March 1, 2018.

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.

August 1, 2016:

AM & FM Stations in California, North Carolina & South Carolina: 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.

AM & FM Stations in Illinois & Wisconsin: 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 North Carolina & South Carolina: 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.

TV & Class A Stations in California, Illinois & Wisconsin: if full-time employee threshold is met, complete EEO public file report and post same in online public file and station website. **NCE Stations in California Only:** also file biennial ownership report via Form 323-E and place copy in public file.

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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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