



Broadcast Newsletter

IN THIS ISSUE:

HURRICANE HARVEY.....	1
REG FEES DUE IN SEPTEMBER	1
NEW CROSS-SERVICE FM TRANSLATOR UPDATE	2
POST-INCENTIVE AUCTION – WHAT’S HAPPENING?	2
SEPT 27TH – NATIONAL EAS TEST – WHAT’S NEXT?	3
UNDERWRITING 101 – VIA CONSENT DECREE	3
DATES TO REMEMBER.....	4

HARVEY AND HCCB

Thanks to many of our clients and readers who have inquired as to whether our firm or its employees were impacted by Harvey. While we did receive some rain and light wind during Harvey’s second and third landfalls, all was well for us in southeastern Louisiana. Our thoughts and prayers are with those in Houston; we know all too well the disruption that storms can cause.

REGULATORY FEES WILL BE DUE IN SEPTEMBER

Commercial broadcast stations have long had the middle of September penciled in on their calendars each year as a reminder of regulatory fee payments that must be made to the FCC. As of the publishing of this newsletter, the Commission had not quite issued the order adopting the regulatory fee schedule and filing window, but it should be available by the end of this week. The filing window will probably be sometime during the second half of September, and the deadline will certainly be before the end of September. The FCC doesn’t notify stations, so checking the website is necessary. Late payments have the privilege of paying a penalty equal to a whopping 25% of the fee due.

We’re hoping that the FCC’s Fee Filer system is activated for regulatory fees soon, which enables stations to log in, see how much they owe, and pay the fees online (that’s the only way to remit the fees). You can access the [Fee Filer system](#) now, but it has a disclaimer that the FY 2017 Regulatory Fee module is not yet activated. Astute observers will see that there is a new way to access the system this year – via a CORES Username login (ugh). But luckily, there is still a way to login with the station licensee’s FRN and password as well. It would not surprise us if by next year, the only way to access the system is via a valid CORES Username.

OWNERSHIP REPORTING 2017

Last month, we reported that NAB had filed a request with the FCC requesting that the December 1, 2017 ownership reporting deadline for all AM, FM, TV and Class A broadcast stations be delayed. Since then, we've heard nothing. Maybe the FCC is thinking about it. Or maybe they are scurrying about, trying to get the software added to the licensing management system to enable the filing of ownership reports there, as had been planned. Or just maybe they are figuring out how best to cook the crow that they may have to eat if they rush to implement systems and migrate information and the whole thing goes south. Being from Louisiana and all, we know how to cook (and season) most things so they're really tasty, but no one from the FCC has contacted us for advice.

Amidst all this silence, you should plan on being ready to file biennial ownership reports this fall. The earliest that will be possible is October 1, 2017, and stations will have until December 1, 2017 to complete these filings. And if you're a commercial station, and your officers, directors, shareholders, members, or other attributable individuals or entities do not yet have an FCC Registration Number, they're required to get one and use it on the ownership report.

NEW CROSS-SERVICE FM TRANSLATOR UPDATE

The FCC's first filing window for Class C and D AM stations to file for new cross-service FM translator permits closed on August 2nd, with over 1000 applications filed, exceeding most expectations. In the few days following the end of the window, the FCC staff did some digging and dismissed a small percentage of the window-filed applications, most because the AM station specified as the primary station had previously been designated as the primary station in one of the two 2016 250-mile relocation filing windows.

So what's next? A singleton list, which many believed would have been issued by now. This would be the list of applications that are not mutually exclusive with another filed application, and can therefore proceed to a grant after the filing

of a full Form 349 application. So if your application is still pending, be ready for the singleton notice, which will include a deadline for the filing of Form 349.

Those applications that aren't singletons will be addressed in a notice that allows mutually exclusive applicants to settle via technical amendments or perhaps dismissal agreements. Those applicants may also have to address any deficiencies in their associated Form 175 auction disclosure forms.

If your Class C or D station missed this window, or yours is a Class A or B AM station, a second window will be held, so you haven't missed out. The timing of that second window is not known, and likely will turn on how quickly the FCC completes processing applications from the first window.

POST-INCENTIVE AUCTION – WHAT'S HAPPENING?

Deadlines and filing requirements. That's the best way to summarize the Post-Incentive Auction landscape for television stations.

In the past few weeks, several repacked TV stations that filed an estimate of their expenses on Form 399 have received requests from the FCC for additional clarifying information, quotes, or support/justification for certain expenses. These have typically come with a very short turn-around time, with a lack of response meaning an automatic adjustment to a station's reimbursement amount. And to make matters more complicated, that contact from the FCC has come via emails, some of which have found their way to spam folders. If your station filed a Form 399, we do recommend reviewing your spam folder to be sure there is not a request sitting there from the FCC related to your Form 399.

In coming weeks, the FCC will announce initial allocations of amounts available to stations for reimbursement of repack expenses. To draw down on those funds, stations will need to have filed Form 1876 and followed FCC instructions to link their bank accounts to their FRN.

We are also in the middle of the first priority filing window for a small group of repacked TV stations

that could not build out their assigned facilities or that the FCC has projected a population percentage loss of greater than 1% with their repacked facilities. The deadline for filing in that window is September 8, 2017.

And now, for all repacked stations and those that voluntarily changed from the UHF to VHF band, another (new) deadline is October 10, 2017. That's the last day of a 10-day filing window beginning October 1st for such stations to file a transition progress update summarizing actions taken toward construction. This will be a quarterly report, and must be filed during the 10 days following the end of each calendar quarter until construction of post-auction facilities is completed.

We have not heard an update on the pending legislation that authorizes more funds for repacked stations. But we are aware that NAB is pushing for passage of that legislation.

SEPTEMBER 27TH NATIONAL EAS TEST – WHAT'S NEXT?

By now, all broadcast stations should have filed their EAS Form One in advance of the scheduled National EAS Test. The date for doing so was August 28, 2017. If stations did not do so by the deadline, they should do so now. Plus, if any information on a station's EAS Form One changes before the national test, stations should access ETRS and file an update.

The test itself is scheduled for 2:20 p.m. Eastern Daylight Time on September 27th. By midnight that day, all stations must file EAS Form Two in ETRS, which won't become available to work on/complete until the test is complete. Following that, stations must file EAS Form Three by November 13, 2017; that form will also become available for filing as soon as the test is complete. Please be sure to review the EAS National Test [public notice](#). The ETRS home page also includes helpful information. As stations are reminded at certain points in the filing process, failure to submit the forms or accurate information can result in enforcement action.

Now for a bit of commentary. We know that the FCC announced in advance by [public notice](#) that

stations would need to obtain a CORES Username in order to access ETRS and file the EAS forms for the national test. But we must say, the entire process of having to get a username (especially the twisted password limitation and email verification process), associate it to a station's FRN (with an access/ request email often required), and then access and figure out the new ETRS system, including information that didn't auto-populate from last year, was – to put it mildly – a monumentally complex and time-consuming process. We could say more, but the better part of prudence suggests to us that some things just shouldn't be printed.

UNDERWRITING 101 – VIA CONSENT DECREE

Most noncommercial stations have, over the years, carefully honed the process of preparing underwriting announcements in a way that meets the FCC's standards, even though the minutiae of how to keep those legal is embodied in numerous FCC decisions over the last three decades. Notably, the frequency of FCC enforcement actions and published decisions about station violations of the noncommercial requirements has been sparse for the last several years (our best recollection is that the last decision was about two years ago, when the FCC dinged a station for listing too many product offerings in a row).

Well, the FCC has just taken an enforcement action against an NCE station, but in the form of a [consent decree](#) where the station "fesses up" to several violations of the underwriting rules, agrees to pay a fine (\$8,800), and agrees to implement a detailed "compliance plan," complete with compliance reports to the FCC for two years. The downside of a consent decree is that it does not offer details of the underwriting violations that occurred, and how the FCC interpreted them. We only know that the station admitted to them. The NCE station involved here is a low power FM station, which is required to operate noncommercially, and it did have other problems too. In fact, it was the subject of a petition for cancellation of its license for numerous rule violations, with the underwriting violations only being one area of noncompliance.

But, for all NCE stations out there, beware that (a) the FCC still cares about its underwriting policies,

and (b) complaints about underwriting announcement non-compliance often come from third parties. If it has been awhile since you've reviewed your NCE station underwriting policies, it might be a good time for a refresher. The Pai administration is certainly eliminating nonsensical regulations, but those that remain on the books will be enforced, and violators brought to account. We don't see the Commission going on an enforcement binge against NCE stations over the nuanced underwriting rules, but it always pays to be vigilant and compliant.

DATES TO REMEMBER

September 8, 2017

Post-Incentive Auction First Priority Filing Window Closes

September 27, 2017

EAS National Test date; midnight deadline for all broadcast stations to file EAS Form Two.

October 1, 2017

AM & FM Stations in Florida, Puerto Rico, the U.S. Virgin Islands, Iowa and Missouri: if five 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 in Florida, Puerto Rico and the U.S. Virgin Islands Only:** your Form 323-E ownership report that would have been due on this date has been suspended until December 1, 2017.

AM & FM Stations in Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon and Washington: if five 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:** your Form 323-E ownership report that would have been due on this date has been suspended until December 1, 2017.

TV & Class A Stations in Iowa and Missouri: if five 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:** your Form 323-E ownership report that would have been due

on this date has been suspended until December 1, 2017.

TV & Class A Stations in Florida, Puerto Rico, the U.S. Virgin Islands, Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon and Washington: if five full-time employee threshold is met, complete EEO public file report and post same in online public file and station website.

TV & Class A/LPTV Stations Entitled to Must-Carry: deadline for making cable and DBS carriage elections for the 2018-2020 three-year carriage cycle.

October 10, 2017

TV, Class A, AM & FM Stations (commercial & noncommercial): complete 3rd Quarter 2017 issues/program reports and place in public file.

TV & Class A stations (commercial only) and any LPTV station with must-carry rights: complete and electronically file via LMS the FCC Form 398 Children's TV Programming Report for 3rd Quarter 2017, and also compile and post to the public file records relating to the station's compliance with children's programming commercial limits for 2nd Quarter 2017

Class A stations only: complete and post to your online public file a certification of ongoing Class A eligibility.

November 23, 2017

Deadline for all broadcast stations to file EAS Form 3 in ETRS as part of EAS National Test.

November 24, 2017

Deadline for TV stations with winning auction bids that did not have pre-auction channel share agreements but preserved a right to enter into a post-auction channel share agreement to enter into a channel share agreement and file it with a minor modification application to modify the station's transmitter site to the shared location.

December 1, 2017

Deadline for all AM, FM, TV and Class A stations to file a biennial ownership report reflecting ownership information as of October 1, 2017.

Deadline for all digital television licensees to file the ancillary/supplementary services Form 317 in LMS.

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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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