



Broadcast Newsletter

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NATIONAL EAS TEST DATES, FORM DEADLINES ...AND NEW EAS REQUIREMENTS

All broadcast stations (except TV and FM translators) should have filed their EAS Form One by August 27, 2018. If stations have not filed the form or need to amend a previously filed EAS Form One, they should do so now.

The National EAS Test is scheduled for 2:20 p.m. EST on September 20, 2018. By 11:59 pm that day, all stations must also file the EAS Form Two in ETRS, which won't become available to work on/complete until the test is complete. EAS Form Three is then due on November 5, 2018. All forms are filed through the FCC's [ETRS web page](#).

In case you haven't heard, at its July meeting, the Commission [adopted](#) a soon-to-be effective requirement for stations to notify the FCC when they broadcast a false EAS alert. This notification is due within 24 hours of becoming aware of such a broadcast. For now, an email to the FCC Ops Center is required, but a further Notice of Proposed Rulemaking (comments due September 10) asks whether a more detailed reporting system should be created, potentially allowing the public and other interested organizations to report the false alerts. Be on the lookout for the effective dates of the new false EAS reporting requirement.

REGULATORY FEES DUE NLT SEPTEMBER 25

The FCC adopted its [final order](#) on FY 2018 regulatory fees, which are due no later than September 25, 2018. The FCC's [Fee Filer system](#) for submitting electronic payments is now open so stations can log in and see the precise amounts owed. These are not always 100% accurate, so carefully review to be sure all of your stations are listed (especially any you have acquired in the last year). All regulatory fee payments must be made by online Automated Clearing House (ACH) payment, online credit card, or wire transfer.

The amount that can be charged on a *credit card* for transactions with federal agencies is \$24,999.99. Any transactions greater than \$24,999.99 will be rejected. This limit applies to single payments or bundled payments of more than one bill. Multiple transactions to a single agency in one day may be aggregated and treated as a single transaction subject to the \$24,999.99 limit. Customers who need to pay an amount greater than \$24,999.99 should plan to do so on separate days so as not to exceed the limit, or consider available electronic alternatives such as Visa or MasterCard debit cards, ACH debits from a bank account, and wire transfers.

Under the Commission's *de minimis* rule for regulatory fee payments, a regulatee is completely exempt from paying regulatory fees if the sum total of all of its annual regulatory fee liabilities is \$1,000 or less for the fiscal year.

The FCC does not notify stations of their regulatory fee assessment, so checking the website is necessary. Late payments will likely again have the privilege of paying a penalty equal to a whopping 25% of the fee due. Another drawback to paying late? The FCC won't process any of your filed applications until you pay up.

POST-AUCTION REMINDERS/DEADLINES PUBLIC NOTICE

If you're a TV station that must transition to a new post-auction television channel, the staggering number and type of FCC filings is – let's be honest – overwhelming. Yes, we know, that states the obvious. So why give you this painful reminder? Well, the FCC actually issued a [reminder notice](#) recently that helps you to sort through what you have to file and when – all in the space of 12 pages instead of the nightmare of multiple different orders, notices and rules. We think that deserves some applause (ok, golf claps).

In a few places (mostly in footnotes) the FCC actually does some pretty decent tap dancing to change some of its former guidance on who has to file certain items, and when. Particularly helpful are the charts setting out the deadlines for seeking a permit extension, if necessary, and the date for the filing of transition progress reports 10 weeks prior

to a station's phase transition date (permit deadline). Many stations can only construct their new facilities by first reducing power or hanging a temporary antenna for continued pre-auction channel operations while construction is completed. In those cases, special temporary authority is required and must be filed for and obtained before such operations are commenced. The notice also reminds stations about required notifications as well as requests for waiver and modification of a station's assigned transition phase.

The testing period for phase one of the transition will begin on September 14, 2018. All stations assigned to phase one must complete the transition to their new post-auction channel no later than November 30, 2018.

2018 DIRS EXERCISE UPDATE

The FCC postponed the Disaster Information Reporting System (DIRS) exercise previously scheduled for August 23-24, 2018 due to Hurricane Lane, for which it activated DIRS in Hawaii. The new nationwide DIRS exercise has been rescheduled to September 13-14, 2018. The FCC has already sent emails to currently subscribed stations, but stations that are not currently subscribed to DIRS can sign up [here](#). Participation is voluntary but recommended, especially for stations in disaster prone areas. During emergencies, DIRS helps stations restore and maintain operations, with the government providing fast assistance with pre-positioned fuel, generators, transmitters and other equipment.

LPTV DISPLACEMENT REIMBURSEMENT NPRM COMMENT DEADLINE

Those wanting to chime in on the FCC's proposed procedures to reimburse displaced LPTV and TV translator stations have until September 26, 2018 to do so. Reply comments are due a month later on October 26, 2018. This timeline hopefully sets up for a decision on reimbursement procedures by the end of this year. The sooner the better, as some stations are already having to incur expenses to build out displacement facilities during the first phase of the post-auction repack, which starts September 14 and ends November 30, 2018.

WARNING TO OVERPOWER FM TRANSLATORS

Overpower FM translators be warned. The FCC recently handed out a \$12,000 fine against an FM translator licensee in California because FCC inspections revealed the translator was operating above its licensed power. The licensee even argued that the higher transmitter power output (TPO) was required to achieve its authorized effective radiated power. The FCC rejected the argument, stating that a grant of a construction permit, or at the very least, grant of an STA is required to exceed an FM translator licensee's authorized TPO. So, for you FM translator owners out there, be sure to get approval or seek a license modification before exceeding your licensed and authorized TPO.

SENATORS REQUEST EXAMINATION OF FCC LICENSE REVIEW PROCESS

On August 22, 2018, Senators Menendez and Booker of New Jersey filed a request with the Government Accountability Office of the Comptroller General of the United States requesting an examination of the FCC's license renewal process. The Senators' request arises out of their apparent frustration from the recent renewal of the license of WWOR-TV (Secaucus, NJ), which they alleged had failed to serve its community, and their claim that the FCC turned a blind eye in approving the renewal.

Based on the general accusations, the Senators asked the GAO to examine a list of questions that essentially address the FCC license renewal process relating to the needs of the local community, and to further determine what standards, if any, exist at the FCC in making renewal determinations.

The FCC has not commented on the request, but we don't see the request gaining much traction, as the FCC retains exclusive authority as an administrative agency to establish renewal guidelines. Nevertheless, every time the 8-year license renewal cycle rolls around, we generally see some machinations about license renewal criteria or terms (last time around, a Commissioner

was calling for 3-year license renewal terms instead of 8 years).

As we've written before, this kind of license renewal "angst" is quite possibly a harbinger of heightened scrutiny by various groups during license renewal, especially with respect to the primary means for third parties to determine how a station is serving its community – quarterly issues/program reports. With public files now being accessible online to anyone 24/7, it is really simple for someone to "dig" through your file to see how your quarterly issues/program reports measure up. Untimely, incomplete, or non-compliant quarterly issues/program reports will require a license renewal applicant to "fess up" in the renewal application. The first license renewal applications are due in 2019.

AM NIGHTTIME AND DAYTIME TRANSMISSION AT DIFFERENT LOCATIONS REJECTED

The FCC Audio Service Division recently dismissed an application requesting to move the nighttime service of a Class-D AM station by establishing a new nighttime antenna and transmitter at a different tower from its present co-located site with the daytime service. The proposed nighttime service would have originated from a site 48 kilometers away from the station's daytime transmitter.

The FCC classified the request as one that essentially splits the secondary, unprotected nighttime service of a class D AM station from daytime service. The FCC determined that the applicant provided no support for its request that ultimately would result in the continuing abandonment of the local community. Per the FCC, little-to-no public interest benefits were presented to support the change. The answer was a definitive no, and the request was dismissed. There were some complicating factors here that did not help the station (i.e., a prior change of community of license).

DATES TO REMEMBER

September 4, 2018

Deadline for Post-Auction **Phase One TV and Class A stations** to file for post-auction construction permit extensions.

September 5, 2018

Reply Comments due on the Commission's NPRM on how to simplify complaints about interference from new FM translators

September 10, 2018

Reply Comments due on the Commission's NOI regarding the creation of a new class of C4 FM Stations and to make changes to allow for more short-spaced FM stations using Section 73.215.

September 13-14, 2018

DIRS exercise for Broadcasters

September 14, 2018

Testing Period begins for Post-Auction **Phase One TV and Class A Stations**.

September 20, 2018

National EAS Test; 11:59pm EDT Deadline for all broadcast stations to file **EAS Form 2** in ETRS as part of EAS National Test.

September 21, 2018

Deadline for Post-Auction **Phase One TV and Class A stations** to file 10-week Transition Progress Report

September 24, 2018

Comments due on the Commission's report to Congress on the state of competition in the Audio Marketplace.

Comments due on the Commission's potential changes to Children's Television rules mandating the three hours of weekly educational and informational programming directed to children on each programming stream broadcast by a station.

September 26, 2018

Comments due on the Commission's Incentive Auction Repacking reimbursement of expenses incurred by LPTV stations, TV translators and FM broadcasters whose operations are affected by the repacking.

October 1, 2018

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.

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.

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. Reminder – the Form 397 requires that the station's last two EEO public file reports be submitted to the FCC.

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.

October 10, 2018

TV, Class A, AM & FM Stations (commercial & noncommercial): complete 3rd Quarter 2018 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 2018, and also compile and post to the public file records relating to the station's compliance with children's programming commercial limits for 3rd Quarter 2018.

October 10, 2018 (cont'd from page 4)

TV & Class A stations changing channels as part of the repack or based on voluntary receipt of auction funds should file a transition progress report in LMS.

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

October 17, 2018

Extended window-filing **deadline** for C-Band Earth Station Receive Only Registrations and other filings

November 5, 2018

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

November 30, 2018

Transition Deadline for Post-Auction Phase One TV and Class A stations to cease operations on pre-auction channels and commence operations on post-auction channels

December 1, 2018

Deadline for all digital television licensees that are providing ancillary/supplementary services 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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