



Broadcast Newsletter

IN THIS ISSUE:

THE FCC AND THE GOVERNMENT SHUTDOWN 1

RADIO STATION ONLINE PUBLIC FILE NONCOMPLIANCE EMAILS 2

LPTV DISPLACEMENT SETTLEMENT WINDOW CLOSES JAN 10TH 2

2018 NATIONAL EAS TEST RESULTS 2

THUMB TACK FREEDOM NEARS 3

FCC ENFORCEMENT BUREAU IS ACTIVE 3

DATES TO REMEMBER 3-4

HAPPY NEW YEAR

We appreciate the privilege of serving our clients and wish all of you, along with any non-client readers of this newsletter, a 2019 filled with happiness and success. We stand ready to help you execute your broadcast station goals and planning in the new year.

THE FCC AND THE GOVERNMENT SHUTDOWN

The U.S. Government shutdown has yet to impact the FCC, and it is business as usual through 12:00 midnight EST on January 2, 2019. That's when the FCC will run out of existing funds and begin limiting its operations.

The FCC's [Plan for Orderly Shutdown Due to Lapse of Congressional Appropriations](#) is pretty generic, so we can't definitively say what electronic systems will or won't be available. In the last major shutdown during the Obama Administration, the online public file system hosted by the FCC was not accessible. At that time, only TV stations were using the system, and the outage overlapped a deadline for filing quarterly reports, which wreaked havoc with having to later explain that quarterly reports uploaded after the deadline were the fault of the FCC, not the broadcaster. We ended up writing those very words in a number of renewal applications to explain the "late" uploads.

Just in case anyone at the FCC is listening, our vote would be to leave the online public file system fully operational for the entire government shutdown, especially since all broadcast stations are now using the online public file system. After all, the public file is all about the public having access, right? Who wouldn't want that, especially during a government shutdown? That would surely fit the "public interest", right? We admit that those last three sentences are a bit passive-aggressive, but then again, why not?

On the chance that the online public file is not accessible after January 2, it might just be a good idea to load up your station's 2018 4th quarter reports on Wednesday, January

2nd even though they are not due until January 10th. For radio stations, that would be the quarterly issues and programs list. For full power TV stations, that would include quarterly issues and programs lists, certification of compliance with children's television commercial limits, children's television reports (which have to be filed in LMS of course). Class A TV stations would upload the same items as TV stations, plus a certification of continued Class A eligibility. For any TV or Class A TV station that is transitioning to a new post-auction channel, throw in your quarterly transition progress report as well (also due January 10th). Oh, and for any noncommercial station that conducted third-party fundraising in the fourth quarter of 2018, add the report for that activity to your stack.

It is always possible that the FCC will issue a public notice on January 2, 2019 announcing extensions of filing deadlines, which would be helpful. We do anticipate a public notice of some sort, but what it will contain is anyone's guess. Here's a nugget of salient advice – check the FCC's website on January 2nd. That way, you have the very latest.

RADIO STATION ONLINE PUBLIC FILE NONCOMPLIANCE EMAILS

Last month, we reported that the FCC issued a general [reminder](#) to some radio stations that had not yet launched or populated their online public file. That was followed up by the FCC automatically activating missing public files by November 15. But that wasn't all. A few weeks later, the FCC employed the "nuclear" option for stations that were still noncompliant. Yes, the FCC sent an email to every individual that had ever appeared on an FCC application for the station in question. Oh, what fun.

The emails noted the specific noncompliance – i.e., no quarterly issues/programs lists uploaded – and flatly stated that the station had violated the FCC's requirements. Recipients were required to respond and provide reasons/updates. Let's just say that those were pretty uncomfortable email responses. We don't know whether the FCC plans to fine those stations now, or wait until renewal time and see if

the station admits (as it must) its error because it cannot then certify that it always timely placed items in its public file for the entire 8-year renewal period.

Failure to place documents in and properly maintain a public inspection file is perhaps the most significant source of fines for stations at license renewal time. With all stations now having online public files, the coming renewal cycle will likely ring the FCC's cash registers with fine payments. Don't let your station be one of them.

LPTV DISPLACEMENT SETTLEMENT WINDOW CLOSES JANUARY 10TH

The FCC's [announced](#) filing window for remaining mutually exclusive LPTV displacement filing window applicants to file technical amendments or proposed settlements to resolve their application conflicts will officially close at 11:59 p.m. ET on January 10, 2019. On the chance that LMS will not be available after January 2, 2019 due to the partial government shutdown, it might be a good idea to get your unilateral engineering or legal settlement amendments on file by midnight EDT January 2, 2019.

Applicants whose conflicts are not resolved with an acceptable amendment by the deadline will proceed to a highest-bidder-wins auction, probably sometime in 2019.

2018 NATIONAL EAS TEST RESULTS

If you're interested in finding out how broadcast stations performed in the 2018 National Emergency Alert System Test conducted in early October, the initial findings can be reviewed [here](#). TV stations did better in 2018 than they did in 2017, but radio stations slipped slightly from their previous highs in 2017. We fully anticipate that the FCC will run another National EAS Test in 2019, probably in the fall. So keep those codes handy, and the ETRS link in your saved links list.

THUMBTRACK FREEDOM NEARS

The FCC adopted an [order](#) on December 10, 2018 eliminating the requirement for stations to post a copy of their station license. Within thirty days of that order being published in the Federal Register, you'll be able to free the thumbtack on the station bulletin board. The online posting of the station license will be sufficient. Yours should already be posted on the landing page of your FCC hosted public inspection file, but it is worth a double check, especially if you've recently modified the station license.

FCC ENFORCEMENT BUREAU IS ACTIVE

Several recent notices of violation, orders, or consent decrees from the FCC's Enforcement Bureau carry important reminders of how to get into trouble with a federal agency. Here are a few examples:

- A Low Power FM Station relocating its transmitter site without first filing an application and receiving approval to do so (no fine yet)
- Lying to the FCC about your ownership in order to receive several million dollars from a winning TV Auction Bid (fine was \$2 million and license relinquishment)
- Operating an Unlicensed FM Station (\$25,000)
- Failing to award contest prizes, plus having an unauthorized transfer of control (\$12,000 plus an onerous compliance plan)
- Operating a Class A TV station at less than 80% output power, failing to seek temporary authority to operate at reduced power, failing to notate EAS logs with reasons that EAS test messages were not received, and monitoring a station other than an assigned station for EAS purposes without a waiver (no fine yet)
- Discontinuing operation of an FM translator without prior authority to do so (\$8,000)

We've noticed quite an uptick in enforcement actions from the FCC, especially over the past year. Stay cautious.

DATES TO REMEMBER

January 2, 2019

All Broadcast Stations: As of the publication of this newsletter, this is the announced deadline (midnight) for the FCC to run out of funds during the partial government shutdown. Consider filing now any required reports or certifications due January 10, 2019.

January 10, 2019

TV, Class A, AM & FM Stations (commercial & noncommercial): complete 4th 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 4th 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 4th Quarter 2018.

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 (unless the station has already transitioned).

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

LPTV Stations with pending mutually exclusive applications from the 2018 displacement filing window must file technical or legal resolution amendments by 11:59 pm EDT to avoid going to a highest-bidder-wins auction for a displacement permit.

February 1, 2019

AM, FM, TV and Class A Stations in Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York and Oklahoma: 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.

TV & Class A Stations in New Jersey and New York: 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.

January 14, 2019

Deadline for Phase Two TV Stations that are required to change channels as part of the post-auction repack to send written notices to MVPD providers. If an extension of the Phase Two April 12, 2019 transition deadline is needed, this is also the deadline to seek such an extension.

January 22, 2019

Comment deadline in AM Revitalization NPRM on Class A AM interference protection

April 12, 2019

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

© 2018 Hardy, Carey, Chautin & Balkin, LLP

For more info, contact Joe Chautin or Mark Balkin.

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