



Broadcast Newsletter

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HCCB IN ANAHEIM

HCCB Managing Partner Joe Chautin will be in Anaheim, California for the 2019 National Religious Broadcasters Convention from March 25-29 and will host the FCC Update Legal Panel there on Wednesday, March 27 from 1:30-3:00 p.m. in the Anaheim Convention Center, Hall D. If you'd like to meet with Joe separately at the convention, please email him ahead of time at jchautin@hardycarey.com. At the convention, Joe can be reached by email or cell at 504-439-2350. Looking forward to seeing several of you in California!

EEO FORM ELIMINATION, NEW RUMBLINGS, AND A NEW ROUND OF AUDITS

As anticipated, the FCC adopted a [Report & Order](#) at its February meeting that eliminated the requirement for radio stations with at least 11 full-time employees, and TV stations with 5 or more full-timers, to prepare and file the FCC Form 397 – EEO Mid-Term Report. The information submitted in the Form 397 is already available in a station's online public file, and therefore the filing of the form to facilitate the submission of the information or a mid-term EEO compliance review is no longer necessary.

Despite the elimination of the form, the FCC will still conduct reviews of station EEO compliance at the license term mid-point by accessing a station's online public file and reviewing the EEO public file reports there. How will they know which stations to review? For TV stations, any completing EEO public file reports that have the 5 or more full-timers necessary to trigger a mid-term review. For radio, only those stations with at least 11 full-timers are subject to mid-term review, and the FCC staff will use a new online public file feature to determine which stations are reviewed. The new feature will ask radio stations – every time they upload an EEO public file report -- to respond yes/no as to whether they have 11 or more full-time employees.

The [Report & Order](#) included an interesting addition that was not part of the previously released draft, namely that the FCC will, within 90 days of adoption of the order, seek comment in a further notice on the FCC's EEO enforcement track record and how the agency can make improvements to EEO compliance and enforcement. In a related footnote (48), the FCC notes that calls for collection and publication of broadcast licensee employment data are part of a separate proceeding. A lengthy [statement](#) released by newly seated Democrat Commissioner Starks suggest that a long dormant decision suspending EEO Form 395-B, which would collect certain employment data, needs to be resurrected. These rumblings suggest that more scrutiny is coming to broadcast EEO efforts and compliance, right as we begin the license renewal cycle. Broadcasters should stay vigilant in their ongoing efforts to comply with the FCC's EEO broad outreach requirements.

Finally, the FCC issued a mid-February [public notice](#) announcing the first round of random broadcast station EEO audits. Double check to be certain whether your station is on the list included with the public notice. While you're there, peruse the audit letter to get a feel for the scope of these audits and spot check your station's EEO procedures. Audit responses for the listed stations are due no later than April 1, 2019. Like the last audits, the response will be completed by uploading it to the station online public file by the deadline. The FCC staff will review it there and either issue "all clear" letters to audited stations, or request additional information.

FCC ISSUES TV REPACK STATUS REPORT

On February 11, 2019, the FCC released a detailed [report](#) on the status of the post-auction television station repack, noting that the repack is slightly ahead of schedule, and expressing optimism that stations in the final eight phases of the repack will be able to meet their construction deadlines. In our firm's experience, the FCC staff is glued to station progress reports and contacts station representatives or sends reminders immediately when anything seems amiss. As construction deadlines approach, regular emails and phone calls

are commonplace to ensure that stations are completing their transitions.

In recent days, stations in future phases have begun receiving special reminders if they are in linked groups to be certain that they are coordinating channel changes with other stations whose channel changes are dependent on channel changes of other stations in the same phase. These emails note that coordination between linked stations should result in an agreed upon transition schedule for all linked stations in the set detailing when they will conduct testing and commence operations on post-auction channels.

Of particular note are paragraphs 22-30 of the report, where the Commission outlines certain closeout reimbursement procedures for the first time. There, the FCC announces that once a station completes its transition and has submitted all reimbursement documentation (or no later than an FCC-announced deadline), it is required to submit the Form 399 Reimbursement Form to notify the FCC that all requests for reimbursement have been submitted. The form will then be locked and the station will not be able to submit any further requests for reimbursement. The Fund Administrator will then provide the station with a financial reconciliation statement so that final amounts can be tallied and either funded or returned to the FCC if there were overpayments. Following a certification of that statement, the Media Bureau will then issue the station an interim close-out letter. Later, when the FCC allocates all remaining funds for reimbursement payments, a final close-out letter will be issued. Audits are possible at any time. Stations are to retain all paperwork for reimbursed expenses.

LPTV DISPLACEMENT REIMBURSEMENT DRAFT ORDER RELEASED

For LPTV and TV translator stations displaced by the post-auction repack of television stations between channels 2 and 36, answers to questions about reimbursement of displacement expenses are right around the corner. The FCC has released a [draft order](#) setting forth who will be reimbursed and what expenses are reimbursable. A vote of

approval is expected at the Commission's scheduled March 2019 meeting.

The draft order tracks pretty closely to the proposed rulemaking, with the FCC set to adopt most of its tentative conclusions from the rulemaking. Among other things, the draft order concludes that

- (i) LPTV/translator stations are eligible for reimbursement if they filed an application during the Commission's Special Displacement Window, obtained a construction permit, and were licensed and transmitting for at least 9 of the 12 months prior to April 13, 2017;
- (ii) the FCC will reimburse LPTV/translator stations for their reasonable costs to construct the facilities authorized by the grant of the station's Special Displacement Window application;
- (iii) full power and low power FM stations and FM translators that were licensed and transmitting on April 13, 2017, using the facilities impacted by the repacked television station are eligible for reimbursement for costs incurred to permanently relocate, temporarily or permanently modify their facilities, or purchase or modify auxiliary facilities to provide service during a period of time when construction work is occurring on a collocated, adjacent, or nearby repacked television station's facilities; and
- (iv) there will be no reimbursement of LPTV/translator or FM stations for costs for which reimbursement funding has been received from other sources.

The draft order also includes provisions that will require LPTV/translator and FM stations seeking reimbursement to file with the Commission one or more forms certifying that they meet the eligibility criteria established for reimbursement, providing information regarding their current broadcasting equipment, and an estimate of their costs eligible for reimbursement. Following that, the Media Bureau will provide a station with an allocation of funds to be available for draw down as the entities incur expenses.

Once adopted, we expect the Bureau staff to quickly implement the order's reimbursement procedures so that cost estimates can be submitted and funds allocated. The actual process of expense approval and funds transfer does take time and patience, though and delays are often

encountered. Stations submitting invoices for payment must ensure that the invoices themselves include:

- (i) the name of the vendor providing the service or equipment,
- (ii) an invoice number assigned by the vendor,
- (iii) invoice date
- (iv) payment due date,
- (v) vendor EIN/TIN,
- (vi) description of service or equipment purchased,
- (vii) total amount due, and
- (viii) name of the station licensee and call sign or facility identification number.

RULEMAKING FOR NCE PERMITTING AND LPFM PROCESSING

At its February meeting, the FCC adopted a [proposed rulemaking](#) to review various aspects of how noncommercial educational permits are awarded. The rulemaking proposes to:

- (i) eliminate requirements to amend non-profit governing documents related to established local applicants or claiming diversity points,
- (ii) establish uniform divestiture pledge policies,
- (iii) expand tie-breaker criteria,
- (iv) revise time-sharing procedures, and
- (v) modify the "holding period" rules.

For LPFM, the rulemaking proposes:

- (i) prohibiting amendments to cure Section 301 violations by application parties,
- (ii) permit time-sharing agreements prior to tentative selectee designations, and
- (iii) establish procedures for remaining tentative selectees after dismissal of time-sharing amendments.

Comments can be filed now. Deadlines for initial and reply comments will follow 60 days after publication of the NPRM in the Federal Register.

NEW TOWER OWNERSHIP CHANGE PROCEDURES ANNOUNCED

Beginning February 14, 2019, the FCC has put into place a new process for reporting ownership changes for towers and other antenna structures registered in the Antenna Structure Registration

System. As a result, instead of one party being able to report a tower ownership change, both the old and new owners will have to make separate application inputs for a filing to occur. Details can be found in this [public notice](#).

EFFECTIVE DATES ANNOUNCED FOR ELIMINATION OF LICENSE POSTING AND CHANGES TO STATION DOCUMENT FILING REQUIREMENTS

The FCC's earlier decision to eliminate the need to post and maintain a broadcast station license at a physical location became effective on **February 8, 2019**. In addition, as of **January 22, 2019**, broadcast stations are no longer required to file paper copies of Section 73.3613 documents with the FCC, but must continue to make the documents available to the Commission and the public via the station online public inspection file.

DATES TO REMEMBER

April 1, 2019

AM, FM, TV and Class A Stations in Delaware, Indiana, Kentucky, Pennsylvania, Tennessee and Texas: 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. Under FCC EEO rules, a full-time employee is one that works 30 hours per week, on average.

TV & Class A Stations in Delaware and

Pennsylvania: if five full-time employee threshold is met, 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. Under FCC EEO rules, a full-time employee is one that works 30 hours per week, on average.

Deadline for TV and radio stations included in the FCC's EEO random audit to upload their responses to the station online public inspection file.

April 10, 2019

TV, Class A, AM & FM Stations (commercial & noncommercial): complete 1st Quarter 2019 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 1st Quarter 2019, and also compile and post to the public file records relating to the station's compliance with children's programming commercial limits for 1st Quarter 2019.

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.

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

April 13, 2019

First day of post-auction new channel testing for Phase Three TV and Class A stations.

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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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