



Broadcast Newsletter

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NEW NCE-FM FILING WINDOW WILL HAPPEN IN 2021

In a recent [Public Notice](#) seeking comment on whether the FCC should cap the number of applications one entity can file during a filing window for new noncommercial FM construction permits, the FCC directed the Media Bureau to open a filing window for those applications during 2021. No date was announced, but the Notice promised to provide dates and details in a separate public notice “during the next several months.” We’ll go out on a limb and predict a late spring-early summer filing window, but it is anyone’s guess.

Interested parties can file comments on the applications cap, which the FCC has tentatively decided will be ten. But the Notice contains other interesting clues to the anticipated filing window, including that unlike the last such window in 2007, major modifications to existing stations will not be allowed. Instead, those seeking to expand coverage will have to file an application for a new station and agree to turn in the existing license when the new station is built.

Back in 2007, the FCC gave about 60 days advance notice of when the window would be held, and the filing window itself was only 7 days long. If you’re thinking of possibly participating, now is a good time to secure the services of a consulting engineer and counsel. Now is also a good time to review the FCC’s somewhat recent changes to the way it decides who wins a construction permit when there are competing applicants for the same spectrum.

BROADCAST STATION LOCAL PUBLIC NOTICE RULE CHANGES NOW EFFECTIVE

The FCC’s recently adopted [Order](#) substantially revising the broadcast local public notice rule became effective on October 30, 2020 with its publication in the Federal Register. The new rule permanently eliminated the need to publish any newspaper notices about filed applications, which were costly and more difficult to accomplish as newspapers folded.

Stations will now publish such notices online, using a station or substitute website with a conspicuous link and text that includes a hyperlink to the filed application.

Beginning October 30, 2020, commercial broadcast stations will need to establish and maintain a permanent website link dedicated to online public notices. When a station must post an application online notice, the notice must appear at the link. When there are no pending applications for which online public notice is required, the link must state so and include the date the page was last updated. If your commercial station has not already taken care of this, it is time to call the website master and get it done.

Another important change with the new rule relates to on-air announcements. The days, times, and text of those announcements are now standardized. Under the new rule, any application requiring an on-air announcement must (i) begin within five (5) business days after the FCC's public notice that the application has been accepted for filing, (ii) air between 7 am and 11 pm, Monday-Friday, and at least six (6) times over a four (4) week period, with at least one (1), but no more than two (2), announcements per week, and (iii) in the weeks with two (2) announcements, the announcement must be aired on different days. Yes, we know, it makes our head hurt too.

If your station has a pending license renewal application, you should continue airing post-filing renewal announcements in the manner in which you began doing so. But for those with upcoming license renewal applications due December 1, the new rule will apply to your post-filing announcements. Consult counsel or the new rule language to be sure you complete those announcements using the new rule and certify them properly.

ALL-DIGITAL AM IS NOW A REALITY

At its October meeting, the FCC adopted a [Report & Order](#) enabling AM stations to voluntarily convert to all digital operation, which has advantages over the currently authorized hybrid mode. Based on testing and evaluation, the FCC concluded that all-

digital AM has the potential to significantly aid in the revitalization of the AM service. The Commission cited comments that all-digital operation can alleviate many of the problems stemming from hybrid operation, allowing AM broadcasters and listeners to take full advantage of the potential benefits of digital broadcasting. Because an all-digital signal does not include a modulated analog component, the digital sidebands are more powerful and closer to the center of the channel, helping to overcome noise and interference from other stations than are hybrid stations.

Transition to all-digital operation will be left to the discretion of AM broadcasters. Those doing so will be obligated to provide at least one free over-the-air digital programming stream that is comparable to or better in audio quality than a standard analog broadcast. Beyond that requirement, an all-digital licensee will be able to use its additional digital bitrate capacity for either broadcast or non-broadcast services consistent with the FCC's technical rules.

To convert to all-digital, AM stations will have to electronically file an enhanced Form 335 notification, providing additional information and certification about planned operations, and wait 30 days before commencing all digital operations. In addition, during that 30-day period, stations must provide reasonable notice to listeners that reception with analog receivers will no longer be possible.

The details are worth reviewing at the link provided, and we are available to answer any questions you may have.

FCC SETS DEADLINES FOR FINAL TV REPACK INVOICES

In an October 7th [Public Notice](#), the FCC's Incentive Auction Task Force and the Media Bureau have set specific deadlines for TV stations eligible for reimbursement as part of the post-auction repack of television channels. If a station was assigned a transition completion date in Phases 1-5, it must submit all remaining invoices for incurred repack expenses by October 8, 2021. For stations assigned transition completion dates in Phases 6-10 of the repack, the invoice submission deadline is March 22, 2022. A station granted permission to

change phases will have the deadline associated with its revised phase completion date. All other participants in the program (which includes displaced LPTV or TV translator stations) must submit any invoices by September 5, 2022.

Extensions are not anticipated except in unique circumstances. The Commission anticipates that most stations are ready to close out the reimbursement process now, and urges stations not to wait until the announced deadline. The Notice includes a reminder that the FCC continues to have and exercise audit authority to ensure that funds received by broadcasters have been spent on the repack expense items for which the funds were provided. At any time, the FCC may request copies of cancelled checks, financial institution statements detailing disbursements or payments, credit card statements or other relevant third-party information to demonstrate proper payment of funds to third party vendors. These audits can be done even after the submission deadline, and all Fund participants are reminded that they must retain documents for 10 years after the date they receive their final payments from the Reimbursement Fund.

FCC LIFTS FREEZE ON TV MINOR MOD APPLICATIONS AND RULEMAKING PETITIONS

Effective 15 days after publication of this [Public Notice](#) in the Federal Register, the FCC has announced that it will lift several long-running freezes on certain types of television station applications. Specifically, the freeze will be lifted on (a) petitions for rulemaking to change channels in the DTV Table of Allotments, (b) petitions for rulemaking for new DTV allotments, (c) petitions to swap in-core channels, (d) petitions for rulemaking to change communities of license, and (e) modification applications that increase a full power or Class A station's service area beyond an area that is already served.

It is possible that these filings will displace low power and TV translator stations due to their secondary status. In footnote 4 of the Notice, the FCC notes that such displaced stations will not be eligible for reimbursement for displacements caused by the filing of new applications arising from

the freezes being lifted. By statute, reimbursement from the auction-related TV Broadcaster Relocation Fund for secondary stations includes only station expenses incurred to construct facilities permitted pursuant to applications granted from the April 10 to June 1, 2018 Special Displacement Window and not the construction of any other displacement facilities. There are currently no freezes on the filing of minor modification, displacement, or digital companion channel applications for low power television and television translator stations. However, there is currently a freeze on the filing of applications for *new* LPTV/translator stations. The Media Bureau will keep this freeze in place given the fact that licensed and permitted LPTV/translator stations are still being displaced as a result of modifications by full service stations as they technically adjust to their new repacked channel locations.

DECEMBER 1 FILING DEADLINE FOR DIGITAL TELEVISION FEEABLE ANCILLARY/SUPPLEMENTARY USE

December 1, 2020 is the deadline for digital television stations that used digital capacity for feeable ancillary/supplementary uses during the period from October 1, 2019 – September 30, 2020 to file Schedule 2100(g) Ancillary/Supplementary Use report and remit any fees due.

Ancillary/supplementary uses are defined as computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, or subscription video (i.e., anything other than over-the-air broadcasts). Stations that did not make any such uses for a fee do not have to file the schedule or take any other action.

PERMIT CONSTRUCTION DEADLINE WAIVERS REMAIN AVAILABLE FOR SOME FM TRANSLATORS

The FCC has [announced](#) that it will consider COVID-19 related requests for waiver of the expiration date for certain FM translator construction permits that were awarded as part of Auction 99 or 100.

Permits expiring on or before June 30, 2021 are eligible to apply now for a 6-month waiver of the deadline. The procedure for seeking the request is easy enough (email a letter requesting the waiver to robert.gates@fcc.gov or larry.hannif-ali@fcc.gov). However, simply stating that COVID-19 has caused financial difficulties or loss of revenue will not be enough. A showing must be made that demonstrates the impact of the pandemic on the permittee, and may include such evidence as financial statements demonstrating the pandemic's economic impact; affidavits or other evidence of the unavailability of components or tower crews, or copies of equipment orders and delays.

FOREIGN BROADCAST CONTENT DISCLOSURE RULEMAKING

The FCC has adopted a proposed rulemaking that would require broadcast stations to disclose when they broadcast content that is sponsored or provided by foreign governments. The [NPRM](#) delves into numerous issues that will ultimately inform broadcasters as to how diligent they will need to be in obtaining the information necessary for disclosure, how the disclosure requirements might apply to time brokerage or local marketing agreements, and how the proposal comports with the First Amendment. We recommend a read through the rulemaking to see if any issues might impact how your station conducts operations and the steps that may be necessary to ensure compliance.

FCC MOVES TO NEW HEADQUARTERS BUILDING LOCATION

Effective October 15, 2020, the FCC's new headquarters location is at 45 L Street NE, Washington, DC 20554. The rules have already been amended to reflect the new address.

DATES TO REMEMBER

December 1, 2020

Digital Full Power, Class A or LPTV Stations: Deadline for digital television stations that used digital capacity for feeable ancillary/supplementary uses during

the period from October 1, 2019 – September 30, 2020 to file Schedule 2100(g) Ancillary/Supplementary Use report and remit any fees due.

Radio Stations located in Colorado, Minnesota, Montana, North Dakota and South Dakota – deadline to file license renewal application and EEO program report, and air first post-filing license renewal announcement; additional post-filing announcements are due December 16, January 1, January 16, February 1 and February 16.

Television Stations located in Alabama and Georgia – deadline to file license renewal application and EEO program report, and air first post-filing license renewal announcement; additional post-filing announcements are due December 16, January 1, January 16, February 1 and February 16.

Radio and TV Stations located in Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota and Vermont: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from December 1, 2019 – November 30, 2020 and post it to the station online public inspection file and on the station website.

January 10, 2021

TV, Class A, AM & FM Stations (commercial & noncommercial): complete 4th Quarter 2020 issues/program lists and upload to online public file.

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

January 30, 2021

TV & Class A stations (commercial only): compile and post to the station online public file records certifying compliance with children's programming commercial limits for all of 2020, **and** prepare and electronically file the Children's Television Report (Form 2100, Schedule H) in LMS documenting station compliance with children's educational and informational programming requirements for all of 2020. This form is loadable now in LMS so stations can begin working on it at any time.

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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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