



Broadcast Newsletter

IN THIS ISSUE:

FCC SCHEDULES AUCTION 109 FOR COMMERCIAL AM/FM PERMITS 1

FINES AND CONSENT DECREES CONTINUE FOR LICENSE RENEWAL APPLICANTS 2

No NCE RADIO FILING WINDOW SCHEDULED YET 2

C-BAND LUMP SUM REIMBURSEMENT PAYMENTS GETTING CLOSER 2

FCC CHARACTER POLICY FRONT AND CENTER IN HEARING PROCEEDING 2-3

DATES TO REMEMBER 3

FCC SCHEDULES AUCTION 109 FOR COMMERCIAL AM/FM PERMITS

The FCC has [announced](#) Auction 109 for four commercial AM and 136 commercial FM construction permits, and requested comment on proposed bidding procedures. This auction replaces Auction 106, originally scheduled and cancelled in 2020 due to COVID. The permits available can be reviewed at this [link](#).

The filing window for short form applications to qualify for the auction has not yet been announced, but the auction itself will begin on July 27, 2021. In the weeks prior to the auction, the FCC will announce deadlines for upfront payments, which have already been determined and are shown in the list of available permits.

For interested parties that filed initial short-form applications for Auction 106 in 2020, all of those applications have been dismissed and are not accessible. New short form applications will need to be filed. That auction did not include AM construction permits. The four AM construction permits added to Auction 109 are from previously licensed AM stations whose pending license renewal applications were dismissed and the call signs deleted in an administrative hearing proceeding.

In connection with the Auction 109 notice, the FCC [announced](#) a freeze for applications proposing to modify any of the vacant FM allotments to be auctioned, petitions/proposals to change a channel, class, community or reference coordinates for any of the FM allotments, and any applications, petitions and counterproposals that fail to fully protect any Auction 109 FM allotment.

As is the norm in FCC auctions, applicants are solely responsible for due diligence related to the available permits.

FINES AND CONSENT DECREES CONTINUE FOR LICENSE RENEWAL APPLICANTS

Over the past two weeks, the FCC has issued several consent decrees and monetary forfeitures to license renewal applicants.

The consent decrees – a few of which are available [here](#) and [here](#), are being issued to applicants whose political files have political ad time requests uploaded late. Typically, stations signing these consent decrees agree to several measures designed to educate staff and ensure timely uploads are made. Those include the appointment of individuals to monitor programs, periodic reporting to and reviews by the FCC via a detailed spreadsheet, voluntary reporting of violations, and the potential for further action by the FCC if compliance is wanting. To date, stations signing consent decrees receive renewal grants, and do not have to pay monetary fines (due to COVID impacts).

The monetary fines issued to renewal applicants have all been due to missing the deadline for filing renewal applications. Those decisions – examples are [here](#) and [here](#) – usually result in fines of \$3,000 for full power stations and \$1,500 for LPFM and FM translator stations. As a reminder, license renewal applications must be filed four months prior to the date a station's license expires. For example, a station with an August 1, 2021 license expiration date must file its license renewal application no later than April 1, 2021.

NO NCE RADIO FILING WINDOW SCHEDULED YET

Despite an [announcement](#) in October 2020 that the FCC would hold a 2021 filing window for new noncommercial FM construction permits, the FCC has yet to schedule that filing window.

While the October 2020 announcement also asked for comments on a proposed limit on the number of applications that a single applicant could file in the window, the comment period for that was very brief and ended in December 2020. So the FCC likely has all it needs on that issue to proceed. But there could be some other complexities that the FCC is trying to nail down so it avoids controversy or

complexities that create grey areas. The FCC last held an NCE filing window for full power FM stations fourteen years ago in 2007, and the lack of an application limit for that filing window created chaos that was not fully resolved until an after-the-fact limit was applied and legal challenges to that decision were decided.

For the 2007 filing window, 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. Those thinking of possibly participating would do best to secure the services of a consulting engineer and counsel early. Now is also a good time to review the FCC's [recent changes](#) to the way it decides who wins a noncommercial construction permit when there are competing applicants for the same spectrum.

C-BAND LUMP SUM REIMBURSEMENT PAYMENTS GETTING CLOSER

The FCC's C-Band auction clearing a portion of the band for mobile broadband use has now concluded, and winners will soon make payments against their winning bids. Once those payments are made, broadcasters and others holding C-Band licenses that elected lump sum reimbursements for vacating the spectrum should expect a public notice from the FCC announcing actions necessary to receive their lump sum payments.

We do not anticipate that those who made lump sum elections will receive individual email, mail or phone call notices from the FCC when the time arrives for reimbursements. Instead, the general public notice will likely be the method used by the FCC to communicate the procedures. For those our firm assisted with qualifying for lump sum reimbursements, we will reach out to you when the FCC announces reimbursement procedures.

FCC CHARACTER POLICY FRONT AND CENTER IN HEARING PROCEEDING

The FCC is set to apply its character policies in a case where it recently designated several license renewal applications for hearing.

In the case, the 100% shareholder of the licensee was convicted of several felonies under Alabama law - two counts of soliciting or receiving a thing of value from a principal, one count of using an official position for personal gain, two counts of representing, for compensation, a business entity before an executive department or agency, and one count of using public property for private benefit. The FCC's hearing designation [order](#) states that the shareholder is in the custody of the Alabama state penal system for a four-year sentence.

As a consequence of the convictions, the FCC stated that substantial and material questions exist as to whether the individual possesses the basic character qualifications to hold Commission authorizations.

Under the Commission's Character Qualifications Policy [Statement](#), non-FCC misconduct can raise a substantial and material question of fact concerning a licensee's character. In assessing character qualifications in broadcasting matters, the Commission considers, as relevant, evidence of any conviction for misconduct constituting a felony. Because all felonies are serious crimes, any conviction provides an indication of an applicant's or licensee's propensity to obey the law.

Almost every FCC application contains certifications related to felonies in connection with any party to the application. Parties to an application include officers, directors and most shareholders of a licensee entity. Broadcast licensees should exercise caution when adding individuals to hold those positions, as they can create issues that disqualify the licensee entity from being a broadcast licensee.

DATES TO REMEMBER

March 13, 2021

LPTV Stations Operating In Analog -- deadline to file for a final 180 day extension of any associated digital flash cut or companion channel permit.

April 1, 2021

Radio Stations located in Texas – deadline to file license renewal application and EEO program report; on-air/online announcements and public file certifications are required under the new local public notice rule.

Television Stations located in Indiana, Kentucky and Tennessee – deadline to file license renewal application and EEO program report; on-air/online announcements and public file certifications are required under the new local public notice rule.

Radio and TV Stations located in Delaware, Indiana, Kentucky, Pennsylvania, Tennessee and Texas: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from April 1, 2020 – March 31, 2021, upload it to the station online public inspection file and post it on the station website.

April 10, 2021

TV, Class A, AM & FM Stations (commercial & noncommercial): complete 1st Quarter 2021 issues/program lists and upload to online public file.

Class A TV Stations Only: complete and post to your online public file a 1st Quarter 2021 certification of ongoing Class A eligibility.

May 1, 2021

LPTV Stations Operating in Analog -- deadline to file minor modification applications of any issued digital flash cut or companion channel or construction permit.

© 2021 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