



Broadcast Newsletter

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AUCTION 109 SCHEDULED FOR JULY 27, 2021

The FCC has issued a [Public Notice](#) scheduling Auction 109 for July 27, 2021. Auction 109 will determine the highest bidders and, therefore, winners of four commercial AM and 136 commercial FM construction permits. This list of available permits can be reviewed [here](#).

Auction 109 potential participants should study the public notice carefully, as there are numerous requirements and deadlines that are necessary for entities to qualify to participate. An auction tutorial is available online. The filing window for applications to file Short Form 175 and qualify for participation opened April 28 and will close at 6:00 p.m. ET on May 11, 2021. Upfront payments for those whom the FCC determines are qualified to participate will be due no later than June 16, 2021 at 6:00 p.m. ET. A mock auction is scheduled for July 23, 2021.

Any interested parties should also watch the auction [tutorial](#) provided by the FCC.

NONCOMMERCIAL FM FILING WINDOW SCHEDULED FOR NOVEMBER 2-9, 2021

After pre-announcing last October that a filing window for new noncommercial FM stations would be opened in 2021, the FCC has now [announced](#) November 2-9, 2021 as the one-week filing window, beginning at 12:01 p.m. EDT on the first day and ending at 6:00 p.m. EST on the last day. On the same day as its announcement, the FCC also issued a [public notice](#) establishing a ten application per applicant limit for the filing window.

The actual procedures for the filing window have not yet been released, but have been promised by the FCC at a future, undisclosed date. Though, for the last such filing window nearly 14 years ago, the FCC issued the procedures only about 60 days in advance of the window, they may do so earlier this time. For those possibly interested in participating in the filing window, we highly recommend a review of 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.

NATIONAL EAS TEST LIKELY THIS SUMMER

In 2020, the FCC did not conduct a National EAS Test as it had in the previous 3 years, but we understand that one will be conducted in 2021, probably this summer. Informally, FEMA has announced that it is planning to conduct a national test similar to the one in 2019. The FCC's Public Safety and Homeland Security Bureau will be part of the announcement, but has not yet issued any sort of public notice or potential dates. Usually, a primary and back up test date are announced at the same time.

The 2019 national test happened on August 7th, with the announcement of the window coming in early June. A similar timeline might be used this year. As stations may recall, prior tests required 3 filings with the FCC – one in advance, one on the day of the test, and one after the test. These filings require the use of a CORES username and password, so as preparation, stations may want to locate those now.

TV REPACK REIMBURSEMENT INVOICE FILING DEADLINE REMINDER

An April 8, 2021 FCC [public notice](#) reminds repacked TV stations eligible for reimbursement that deadlines to submit invoices are on the horizon. Though the deadlines represent the last day for submitting invoices, the FCC is encouraging all stations – in all repack phases – to submit invoices and initiate close-out procedures as early as possible.

Final invoice deadlines for full power and Class A TV stations are October 8, 2021 for stations assigned transition completion dates in phases 1-5, and March 22, 2022 for those assigned to phases 6-10. For LPTV and TV translator stations, the deadline is September 5, 2022. If a station was granted permission to change phases, it should follow the deadline associated with its revised phase completion date.

CALM ACT EFFECTIVENESS GETS FCC SPOTLIGHT

A letter to the FCC from Congresswoman Anna Eshoo complaining about loud commercials and questioning enforcement efforts has prompted the Media Bureau to [request](#) comments on the effectiveness of the FCC's rules mitigating loud commercials and whether they need to be updated. Comments are due June 3, 2021.

The original rules were adopted in 2011, with minor changes in 2013. While it may be a few months before the FCC issues any type of order on this issue, we suspect that there will at least be tweaks to the rules if consumers report continued issues with loud commercials.

SPONSORSHIP IDENTIFICATION RULES AMENDED

The FCC has adopted an [order](#) updating its sponsorship identification rules to require disclosures of foreign government-provided programming on broadcast stations in certain circumstances.

The new requirements apply when stations lease time to any entity or individual that is a foreign government, a foreign political party, an agent acting on behalf of such entities, or a U.S.-based foreign media outlet. Definitions of these terms are based on the Foreign Agents Registration Act of 1938 and the Communications Act of 1934. The order makes clear that the requirements, which include on-air announcements and timely placement of certain information in the station online public file, only apply where a block of time is leased to such entities, regardless of what those agreements are called, how they are styled, and whether they are reduced to writing. In those circumstances, the new rules require reasonable diligence by broadcast licensees to determine if its lessee is a foreign governmental entity such that disclosures are necessary.

SUPREME COURT REINSTATES FCC'S 2017 BROADCAST OWNERSHIP RULE CHANGES

In a unanimous [decision](#), the U.S. Supreme Court has overturned the Third Circuit and reinstated the

broadcast station ownership rule changes that were adopted by the FCC in 2017. In doing so, the Court emphatically underscored the principle that federal courts are required to defer to the decisions of expert federal agencies. In some circles, the decision is seen as a rebuke of the Third Circuit exerting its authority and oversight over the FCC's ownership rule reviews and changes, which has been ongoing for well over a decade.

In 2017, the FCC eliminated the newspaper-broadcast ownership ban, the radio-television cross-ownership restrictions, a test that required 8 other TV voices in a market before two TV stations could be owned in that market, and the blanket prohibition on combining two of the top four TV stations in a market. Each of those decisions was reinstated by the Court's decision.

Radio ownership rules are not directly affected by the Court's decision, as they were not part of the FCC's 2017 rule changes. A 2019 FCC proceeding had begun to examine whether radio ownership rules should be revised, but with the Third Circuit's action, the FCC halted that proceeding. The Commission now has to decide whether to proceed with a review of the radio ownership rules, and the Court's decision will certainly inform that analysis and any follow-on orders related to radio station ownership rules.

DATES TO REMEMBER

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.

May 11, 2021; 6pm ET

Deadline to file Short Form 175 application to participate in Auction 109.

June 1, 2021

Radio Stations located in Arizona, Idaho, Nevada, New Mexico, Utah and Wyoming – 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 Michigan and Ohio – 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 Arizona, Idaho, Nevada, New Mexico, Utah, Wyoming, Michigan, Ohio, District of Columbia, Maryland, Virginia and W. Virginia: if five (5) full time employee threshold is met, prepare EEO public file report covering the period from June 1, 2020 – May 31, 2021, upload it to the station online public inspection file and post it on the station website.

June 16, 2021

Deadline to remit upfront payments for those qualified to participate in Auction 109.

July 10, 2021

TV, Class A, AM & FM Stations (commercial & noncommercial): complete 2nd 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 2nd Quarter 2021 certification of ongoing Class A eligibility.

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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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