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The Incentive Auction Cometh, Part I

Reverse Auction Homework: Getting Familiar with Form 177

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As the Broadcast Incentive auction continues its unstoppable advance, the Commission has begun to address the nitty-gritty practical steps that folks affected by the auction – whether auction participants or broadcasters who will be relocated as a result of the auction – will have to be taking. Most notably, the FCC has released an extensive set of instructions for Form 177, which is the form that broadcasters will have to file if they intend to participate in the Reverse Auction component of the process and an online tutorial with additional Form 177 guidance. (The Media Bureau has also released a "final" version of Form 2100, Schedule 399, which broadcasters seeking reimbursement of relocation costs will have to file if they want to tap into the cash the government will be doling out after the auction.)

Attention, TV licensees: this is all required reading for anyone who wants to be properly prepared for the auction and its aftermath. We'll walk you through the high points on Form 177 here. (Check out the separate article on page 2 for more information about Schedule 399.)

As we all know by now, Form 177 is the first step in Reverse Auction participation. Any eligible TV licensee planning on wielding a bidding paddle will have to file a Form 177 before January 12, 2016. (Note: that date is ***not*** a typo: while the deadline for Form 177 was initially announced as December 18, the Commission has since postponed it. As a result, the Form 177 filing window will open at noon on December 8 and will close at 6:00 p.m. (ET) on January 12.) The form itself still hasn't been officially released by the Commission, but we have tracked down a copy of the screens that will comprise the application. They have already been approved by the Office of Management and Budget, although a waiver of some Paperwork Reduction Act provisions was necessary to that approval so fast.

But those slides don't include any specific instructions. No problem – the Commission has separately released a set of detailed instructions ... but without the accompanying form. This seems counterintuitive: wouldn't it make more sense to provide instructions and application as a package, so that they could be reviewed in tandem? You bet – and that's where we in the *Memo to Clients* bunker come in. We have prepared a mash-up of the Form 177 slides and the later-released instructions ***and*** we have inserted links in the instructions to the applicable slides. So while you review the instructions, you can easily click back and forth to the form itself to get a solid idea of what the instructions are talking about.

We strongly recommend that any would-be Reverse Auction participant take the time to get *very* familiar with both the instructions and the form well in advance of the January 12 filing deadline. It will be essential that the form be completed fully and properly. With millions, tens of millions, or even hundreds of millions of dollars on the line, common sense dictates that participants should be maximally careful with their Form 177's – and such caution naturally entails getting up close and personal with the form (and its instructions) as soon as possible.

To help with that, the Commission has also posted a Form 177 tutorial on its website. This, too, is a must-view. It'll take you about 63 minutes just to review the whole shebang once through, but you'll probably want to do more than that. The show is set up for repeated viewings: you can re-review each separate screen as often as you want; you can search the whole tutorial for specific terms; you can choose to listen to the audio explanation of each slide or you can follow along with the script of that explanation; you can navigate through the slides as you wish. It's user-friendly. (The only arguable downside: the regrettably grating monotone of the audio voice gets old pretty fast. It's sort of like Sister Mary Ele-

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Inside this issue . . .

The Incentive Auction Cometh, II

Repack Homework – Long-term Assignment: How to Reap Repack Repayment

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In addition to the ins and outs of Form 177 – all of which must be mastered by would-be Broadcast Incentive Auction participants by January 12 – a less immediate, but no less important, learning opportunity involves the relocation reimbursement process. Since that process won't kick in until the auction is over, we all have a few months to get our arms around it. But now that the FCC has released its "final" form for seeking reimbursement, we may as well add "Review Schedule 399" to our to-do list.

Note that, while the Commission describes the currently available version of Schedule 399 as the "final" version, that version apparently hasn't yet even been submitted to, much less approved by, OMB. Additionally, the FCC has indicated that it has yet to "finalize development of the on-line Form" and that it will "take into consideration the practical suggestions offered by commenters to enhance the functionality of the Form". So there may still be some changes to come. But we can probably assume with some confidence that the main substantive portions of the form won't be changing much, if at all.

The substantive portions consist, in effect, of a catalog of expenses that TV licensees and MVPDs will most commonly encounter as a result of the post-auction spectrum repack. The list is not spelled out in simple list form, however; rather, it's "embedded" in the form. That means that you have to work your way through the form to determine which expenses are to be reimbursed and what information will be necessary to support a request for reimbursement in each category. The catalog is not necessarily exhaustive: each cost category includes an "other" entry so that each reimbursement applicant can include specific expenses not otherwise specified in the form.

Any station likely to be re-packed will eventually have to become very familiar with Schedule 399, but for now that's not an urgent project. At this point stations don't know exactly how the repack process will ultimately affect them, and until they do, they won't know what their likely expenses will be. Still, a quick look-see through the form now wouldn't hurt.

In connection with the release of Schedule 399, the Commission has announced an interesting and potentially important change in plans with respect to the reimbursement process. Initially the Commission had planned to use the U.S. Treasury's Automated Standard Application for Payments (ASAP) system to get the money into the hands of stations seeking reimbursement. But that's changed. Now the FCC plans to write the checks itself "via the agency's internal vendor payment system". The Commission figures that bringing this process in-house will be more efficient, easier and less expensive. And there's an upside for broadcasters, too: they won't need to enroll in Treasury's ASAP system to get reimbursed. (The Commission is developing a "user portal" that will let reimbursement applicants track their expense reimbursement history, as they would in the ASAP system.)

Applicants will be submitting reimbursement requests through the FCC's LMS filing system. Requests will be filed on an ongoing basis as costs are incurred, *i.e.*, not just at the beginning and end of the reimbursement period. Requests can be presented on an invoice-by-invoice basis, in which case the FCC will pay the vendor directly. Alternatively, applicants can pay expenses themselves and submit groups of claims in batches, in which case the FCC will reimburse the applicant for its out-of-pocket payments.

We still have a ways to go before the auction and the repack, but they are both coming for sure, and they will both entail elaborate and complicated chores for participants. To its credit, the Commission has repeatedly acknowledged this and it has promised both to design its systems to be as user-friendly as possible and to

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Election time – Again? Already?

The Political Broadcasting Rules: A Refresher Course

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The 2016 elections are a year away, but the race for presidential nominations is already heating up, and primaries themselves will begin in just a few months. With what is certain to be a contentious and hard-fought election season fast approaching, ***now*** is the time for broadcasters to review their systems to ensure that they will be in compliance with the FCC's political advertising requirements. A little advanced planning can go a long way in making this election season run smoothly (and, ideally, profitably) for your station.

The FCC's political broadcast rules generally cover: (1) who is entitled to access to broadcast advertising time; (2) how much they pay for that time; and (3) disclosure and recordkeeping requirements. We'll look at each of those areas below – but we highly encourage stations with questions to contact their communications counsel. The FCC's rules and policies are fairly complicated when it comes to political broadcasting, and the answers to many questions tend to be highly dependent on the specific facts at hand.

Central to understanding and complying with the political rules is the concept of a candidate's "use" of a broadcast station. As we will delve into in greater detail below, the "use" of a broadcast station by a candidate triggers several potential obligations, so it is important to know, as a threshold matter, (a) when someone is a candidate and (b) when they are considered to have made a "use" of a station.

Who is a "candidate"?

To be considered a candidate a person must:

- have announced his/her intention to run;
- be qualified to hold the office he/she is running for; and
- be qualified to be on the ballot or be eligible to be a write-in candidate.

A candidate for President must either be qualified in the state in which the station is located or qualified in at least ten states in total.

What is a "use"?

In general, a "use" is any positive appearance of a candidate whose voice or likeness is either identified or is readily identifiable. The appearance in question does ***not*** need to be approved by the candidate or the candidate's committee to be considered a "use" – third party ads may trigger a "use", as can appearances in entertainment programming (*e.g.*, an episode of *The Apprentice* in which Donald Trump appears). The candidate's appearance on the station must be "positive", so a third party attack ad against a candidate would not be considered a "use" by that candidate. Candidate appearances in certain types of programming do not count as "uses". For example, appearances by a candidate on "bona fide" news, news interview, or documentary programs are not considered "uses". Thus, coverage of a "bona fide" news event, such as a debate or candidacy announcement, does not constitute a "use" even if the candidate is featured prominently in that coverage.

> *"Use": Any positive appearance of a candidate whose voice or likeness is either identified or is readily identifiable.*

What candidates are entitled to "reasonable access", and what access is "reasonable"?

The FCC's rules (and the Communications Act) provide that "legally qualified" candidates for ***federal*** offices (*i.e*, President, Vice Presidential, House and Senate) are entitled to "reasonable access" to commercial broadcast stations for the broadcast of advertising. This means that, as a general rule, commercial broadcasters ***must*** make time available to candidates for federal offices. Demands for "reasonable access" can come only from a candidate or his/her authorized campaign committee. Third party advertisers and "issue advertisers" do *not* have reasonable access rights and, as discussed below, neither do candidates for state and local offices.

Although a federal candidate's reasonable access rights ensure access to a broadcast station's airtime, federal candidates do ***not*** have the right to demand time during specific programs or day-parts. In addition, stations may choose to exclude political advertising from news programming. But beyond those limited exceptions, the station must offer federal can-

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didates "reasonable" access to the station's full schedule.

Precisely what degree of "access" is "reasonable" is not always easily determined. Since federal candidates enjoy considerable discretion to tailor their campaigns as they see fit, stations should avoid setting flat limits on the total amount or types/classes of time available to federal candidates. Questions about what is "reasonable" in any given circumstance may need to be referred to counsel. In any event, in view of the clear requirement that federal candidates be afforded "reasonable access", stations should do some advanced planning about the amount of time likely to be required to reasonably accommodate political advertising. (For such planning, it is obviously wise to consider the number of candidates competing for the various federal offices, since a "use" by one candidate can trigger "equal time" claims by others running for the same office.)

In contrast to federal candidates, candidates for state and local offices (*e.g.*, mayor, county council, school board, etc.) are not entitled to "reasonable access". Thus, a station can choose not to sell any time to any candidate for a particular state or local office. BUT if the station does sell time to one candidate for a particular non-federal office, other candidates for that office will be entitled to insist on "equal opportunities" (see below). If a large number of candidates are vying for one particular non-federal office, selling time to one candidate for that office could result in a multiple demands for "equal time" from that candidate's competitors, which could in turn seriously reduce the station's commercial inventory. That being the case, stations should consider, in advance, the non-federal political races for which advertising time will be made available. Once that determination has been made, any restrictions should be included in the stations' disclosure statements (see below).

What are "equal opportunities"?

All candidates for the same office must be treated in an equal manner. This rule – known as the "equal opportunities" or "equal time" rule – applies to ***both*** federal ***and*** non-federal (*i.e.*, state and local) candidates; it is *not* restricted to a limited period of time before the election. The rule is triggered by a "use" of a station by a legally qualified candidate. Once a legally qualified candidate for a given office makes a "use" of a station, all other legally qualified candidates for the same office are entitled to the opportunity to make equal use of the station. That is, the station must make the same amount and kind of time available at the same cost.

In order to take advantage of this rule, a candidate seeking equal time must request it within seven days of the opposing candidate's triggering "use" of the station. Stations are not obligated to notify opposing candidates when a "use" is made but, as described below, stations must document all uses in their political files and make those files available for inspection. If a station does not make documentation publicly available in a timely manner, the seven-day deadline for equal time claims may be extended.

The equal opportunities rule can become a serious issue when on-air talent wish to run for office. All of their appearances on the station after becoming "legally qualified" count as free uses of the station. Similarly, if an actor or other entertainment personality becomes a legally qualified candidate, the broadcast of movies, TV shows or other material in which the actor/personality is identifiable would also count as free uses. Such uses would obligate the station to give equal amounts of free time to all opposing candidates.

Precisely what degree of "access" is "reasonable" is not always easily determined.

Equal time claims can also become a serious issue in the final days before an election, when some stations may need to monitor their available commercial inventory closely to ensure that they are able to accommodate equal time demands from eligible candidates.

What is "lowest unit charge" and when does that apply?

Perhaps the most troublesome question for many stations is the question of what rates may be charged for political advertising. All legally qualified candidates for any political office – state, local or federal – are entitled to the "lowest unit charge" (LUC) (or "lowest unit rate") during the 45 days before a primary election and the 60 days prior to a general election. (The 45/60 day periods are often referred to as "LUC windows".)

In general, the lowest unit charge is the lowest rate charged to any other advertiser for the same class and amount of time for the same time period, including all discounts and bonus spots. As a practical matter, political candidates are to be treated as the "most favored" advertiser during the LUC windows. This favorable treatment is available only to candidates or their authorized campaign committees for "uses" by the candidate; it is ***not*** available to any third-party advertisers, including political action committees, citizens groups and the like. As explained below, federal candidates also must make an affirmative certification that their advertisements meet certain criteria to qualify for the LUC.

Determining the exact amount of the lowest unit charge for any particular candidate's order can be tricky. It de-

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pends on what the candidate is buying (*e.g.*, ROS vs. fixed position, preemptible vs. non-preemptible, etc.). Stations must also take into account other factors that affect advertising rates charged to its non-political customers, such as day-part, discounts given for large purchases, the value of "bonus spots", etc. Most stations will have more than one lowest unit charge depending on the various classes of time sold on the station during the LUC window.

Because the calculation of the lowest unit charges can be complex, stations should begin considering the issue well in advance of the LUC window.

What are "Disclosure Statements" and are stations required to have them?

A disclosure statement is a written summary of the station's advertising rates and policies. Ordinarily, it should describe the classes of time available to advertisers, the lowest unit charge for each class, any make-good policies, policies on the preemption of ads, and any other sales practices or information that would be relevant to advertisers. Stations should provide the disclosure statement to any candidate, agency or group requesting political time (inside or outside of the LUC window). Of course, disclosure statements should be updated as often as necessary during the election season to ensure accuracy.

All political advertising must include some form of sponsorship identification.

The FCC's rules do ***not*** require that stations prepare written disclosure statements. Nevertheless, as a matter of routine prudence, every station should have one. Disclosure statements provide both station sales staffs and prospective advertisers a clear guide to the factors relevant to any advertising purchase; they also tend to limit after-the-fact disputes. Moreover, the process of preparing a complete disclosure statement forces the station to consider and resolve, in advance of the election season, a number of practical questions (*e.g.*, whether to decline to sell time to candidates for certain non-federal offices).

What sponsorship identification requirements apply to political ads?

All political advertising must include some form of sponsorship identification. Specifically, when a political ad is run there must be a statement that the ad was "paid for" or "sponsored by" the group or person purchasing the ad time. If the advertiser provides the station with a pre-produced spot that does not include the required sponsorship ID, the station must add this language on its own accord (if necessary, it can do so over the content of the spot – no free time need be provided). For television ads, the statement must be visual, run for at least four seconds, and occupy at least four percent of the screen.

Ads for federal candidates also must meet a variety of additional requirements imposed by the Bipartisan Campaign Reform Act (or "BCRA"). If the ad refers to an opposing candidate, BCRA requires a statement, spoken by the candidate who is purchasing the time, which identifies the candidate and the office sought and states that (a) he or she approves the broadcast, and (b) he or she (or his/her campaign committee) paid for the ad. Television ads must also display a clearly identifiable image of the candidate.

BCRA also requires that federal candidates or their authorized committees provide a broadcast station with a written certification stating whether or not the advertisement refers to another candidate for the same office. If it does refer to another candidate, the certification must state that the ad will comply with the "stand by your ad" announcement requirements described above. This certification must be provided to the broadcast station when the time is purchased. If the certification is not provided, the station is not obligated to give the candidate the lowest unit rate.

If the ad advocates the election or defeat of a specific candidate and is paid for or sponsored by a third party, then the ad must clearly indicate whether it was or was not authorized by a candidate. That is, the sponsor identification statement must include both the "paid for" or "sponsored by" language *and* the "authorized by" or "not authorized by" a particular candidate or campaign committee language. If it is not authorized, there must be an additional audio statement that the name of the entity purchasing the ad "is responsible for the content of this advertising". This is in addition to relevant state law, which may require more.

Can a station revise the content of a political "use"?

When a legally qualified candidate for office makes a "use" of a station, the station is ***NOT*** permitted to censor the candidate's message ***in any way***. While some political uses may contain content which the station might ordinarily choose not to broadcast, the station cannot alter the use at all. However, the station is protected from any liability that may result from the candidate's message. This "no censorship" provision applies ***only*** to candidate advertising and ***not*** to third party

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advertising. Thus, stations need to take potential liability into account when deciding whether to accept such third party ads.

What records need to be kept with respect to political advertising?

The FCC's political file rule requires stations to maintain, and allow public inspection of, records of all requests for political time. These records must include details of:

- the nature and disposition of the requests;
- the schedule of time provided or purchased;
- the classes of time involved;
- the rates charged; and
- contact information of the purchaser.

In addition to the FCC's political file requirements, BCRA requires that the broadcaster's public file contain all requests for time by anyone (including non-candidates) who seeks to communicate a message that refers either to: (1) a legally qualified candidate; or (2) any election to federal office; or (3) a national legislative issue of public importance.

Because the political file is often reviewed by parties seeking "equal opportunities", it is important for stations to keep the political file up-to-date at all times. All television stations must now maintain these files online. Note: since the political file is available for inspection by the public, care should be taken to remove or redact any confidential information, such as credit card or check numbers that might otherwise be included in the materials placed in the file.

As noted above, this is a thumbnail overview of the political broadcasting rules. In the coming weeks and months, stations should review the rules in detail and confirm that their disclosure statements and station policies are in place and up-to-date. As the election season approaches, station management should ensure that sales personnel are well-informed about what the rules require and the recordkeeping tasks that they will need to fulfill.

Once the political advertising season begins in earnest, questions and controversies can arise quickly. Those questions and controversies can be complicated and require careful analysis. Don't hesitate to call your friendly neighborhood communications counsel for help.

[*Editor's Note: This article is an adaptation of a piece first published by our friends at Radio World, who have kindly given us permission to provide it to our readers here.*]

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provide as much information about those systems to would-be participants as early as possible, to minimize any surprises. The materials described above are part of that effort. The Commission is clearly trying to make good on its promise. Potential auction and repack participants would be well-advised to take advantage of the FCC's efforts.

Interested parties should also note that the Media Bureau's public notice announcing the release of the form (which included the form itself as an attachment) has been published in the Federal Register. That publication specified that the form and the related policies described in the notice are effective as of ***November 30, 2015***. As a result, if you happen to be inclined to ask the Media Bureau to reconsider anything in the notice, or if you're thinking about asking the full Commission to review the Bureau's handiwork in one or more respects, you've got until ***December 30, 2015*** to get your petition for reconsideration or application for review on file.

FHH - On the Job, On the Go

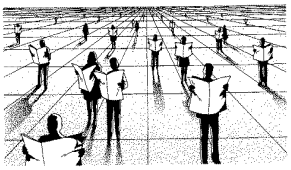
Scott Johnson will be attending the 2016 Winter Convention of the South Carolina Broadcasters Association in famously hot Columbia from January 21-22. On January 21 he'll be presenting an FCC regulatory program (with special emphasis on the hot topic of FM translators for AM stations). On the bill with **Scott** will be John George, of Radio Specialties Group, a familiar face at the SCBA (after all, he's co-chair of the SCBA Engineering Committee). In addition to AM translator question, the dynamic duo will be covering a wide range of important legal and engineering issues.

And now you can call him Your Furnitureship: **Frank Jazzo** has been named Co-Chair of the Advisory Board of the Rockefeller College of Public Affairs and Policy, University at Albany, State University of New York.

Stuff you may have read about before is back again . . .

Updates On The News

From our Spectrum Re-pack Files – As we reported last August, the Commission adopted two separate orders dealing with the new lay of the land for some 600 MHz users – namely, white space devices and wireless mics – who will be displaced by the post-Auction spectrum reallocations. One of those orders provided new spectrum allocations for licensed wireless microphones, while the other addressed Part 15 unlicensed use in the 600 MHz band. The wireless mic order showed up in the Federal Register on November 17, and the second one, which modifies the rules for unlicensed use of 600 MHz by both white space devices and unlicensed wireless microphones, joined it in the Register on November 23. The rule revisions adopted in the wireless mic order will thus take effect on ***December 17, 2015***. The rule revisions in this "Part 15" order will become effective as of ***December 23, 2015***.



Note, however, that this does ***not*** apply to the revisions to §§15.713(b)(2)(iv)-(v), (j)(4), (j)(10), and (j)(11), 15.715(n)-(q), 27.1320 and 95.1111(d). Those exceptions – rules governing the operations and administration of white space databases – involve "information collections." We all know what that means: they can't take effect until the Office of Management and Budget has reviewed and approved them pursuant to the hilariously-named Paperwork Reduction Act.

The Federal Register publications also started a couple of other clocks running: anyone inclined to ask the Commission to reconsider all or part of the wireless mic order has until ***December 17*** to get a petition for reconsideration on file; and anyone bent on seeking judicial review of that order has until ***January 18, 2016***, to get a petition for review on file with the federal court of appeals of their choice. On the Part 15 side, petitions for reconsideration of that order are due by ***December 21, 2015***, and petitions for judicial review are due by ***January 19, 2016***.

From our Channel-Sharing Files. Maintaining its break-neck pace with respect to all things Broadcast Incentive Auction, the Commission has published its two most recent orders on Channel Sharing in the Federal Register. Actually, the break-neck pace applied to only one of the two.

The first of the orders was released last June; the second, just last month. (We reported on each when it was released). Interestingly, both orders hit the Register on the same day, November 2. No explanation was given for the delay in getting the June order published.

As a result of their appearances in the Register, both the October order (technically, the "Second Order on Reconsideration") and the June order ("First Order on Reconsideration") will take effect on ***December 2, 2015***.

Anyone planning on asking the FCC to re-think its Second Order on Reconsideration should get the petition for reconsideration on file no later than ***December 2***. If, on the other hand, you're inclined to seek judicial review of the order, you've got until ***January 4***.

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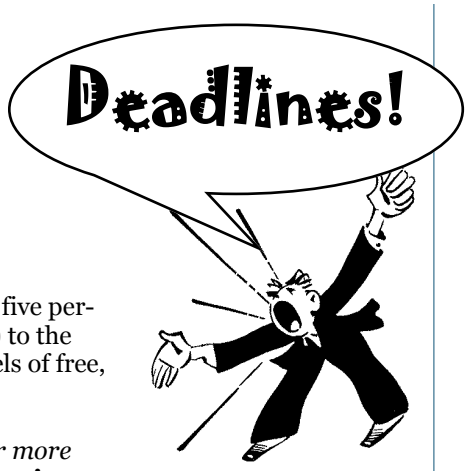
phant, without the funny parts. But considering the material the narrator was given to work with, she deserves kudos for making it all the way through.)

So how to process this veritable cornucopia of useful information? We all have different learning styles, of course, but it might make sense to go through the instructions and slides first, so that you have a detailed familiarity with the form, the questions asked and the FCC's expectations with respect to each of those questions. Then, armed with that knowledge, sit down with the tutorial, making sure that the understanding you have gained from your review of the form/instructions matches up with the tutorial's directions.

If, after all that, you still have questions, be sure to sit in on the Reverse Auction workshop the FCC will be presenting on December 8. And if you *still* have questions, you can check with your counsel or you can reach out to the FCC's auction staff directly – the Commission encourages such queries, and has repeatedly provided contact information for its auction staff. (Example: Slide 29 of the tutorial provides direct-dial numbers of staffers.)

So Reverse Auction participants now have a homework project. (You weren't planning on lollygagging over the holidays, were you?) Review the extensive information the FCC has provided and get familiar – *very* familiar – with it. It might even be a good idea to use the available slides to mock up your own application; that might help avoid any unpleasant surprises once you start to complete the form for real. There will be one, and only one, pass/fail test on the material, and that will occur when the Reverse Auction application window opens and closes.

December 1, 2015



DTV Ancillary Services Reports – All *DTV licensees* and *permittees* must file a report on through the Commission's Licensing and Management System ("LMS") stating whether they have offered any ancillary or supplementary services together with its broadcast service during the previous fiscal year. ***Please note that the group required to file includes Class A TV, LPTV, and TV translator stations that are offering digital broadcasts***. If a station has offered such services, and has charged a fee for them, then it must separately submit a payment equal to five percent of the gross revenues received and an FCC Remittance Advice (Form 159) to the Commission. Ancillary services do not include broadcasts on multicast channels of free, over-the-air programming for reception by the public.

EEO Public File Reports – All *radio* and *television* stations *with five (5) or more full-time employees* and located in **Alabama**, **Colorado**, **Connecticut**, **Georgia**, **Maine**, **Massachusetts**, **Minnesota**, **Montana**, **New Hampshire**, **North Dakota**, **Rhode Island**, **South Dakota** and **Vermont** must place EEO Public File Reports in their public inspection files. TV stations must upload the reports to the online public file. For all stations with websites, the report must be posted there as well. Per announced FCC policy, the reporting period may end ten days before the report is due, and the reporting period for the next year will begin on the following day.

Noncommercial Television Ownership Reports – All *noncommercial television* stations located in **Colorado**, **Minnesota**, **Montana**, **North Dakota** and **South Dakota** must file a biennial Ownership Report (FCC Form 323-E). All reports must be filed electronically.

Noncommercial Radio Ownership Reports – All *noncommercial radio* stations located in **Alabama**, **Connecticut**, **Georgia**, **Maine**, **Massachusetts**, **New Hampshire**, **Rhode Island** and **Vermont** must file a biennial Ownership Report. All reports filed must be filed electronically on FCC Form 323-E.

December 2, 2015

Biennial Ownership Reports – All *licensees* and *entities holding an attributable interest* in a licensee of one or more *commercial AM, FM, TV, Class A television, and/or LPTV* stations must file a biennial ownership report on the FCC Form 323. Please recall that sole proprietorships and partnerships composed entirely of natural persons (as opposed to a legal person, such as a corporation) must file reports, as well as other licensee entities. All reports must be filed electronically. The Ownership Report must reflect information as of October 1, 2015. For this purpose, all Class A TV and LPTV stations are considered to be commercial stations.

December 8, 2015

Television Incentive Auction – The FCC is providing a pre-auction tutorial on reverse auction processes. It will be available via Internet.

December 21, 2015

Foreign Ownership Policies – Comments are due with regard to the Commission's proposal to streamline the foreign ownership review process for broadcast licensees and applicants, and standardize the review process for broadcast, common carrier and aeronautical licensees and applicants.

January 11, 2016

Children's Television Programming Reports – For all *commercial television* and *Class A television* sta-

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tions, the fourth quarter 2015 children's television programming reports must be filed electronically with the Commission. These reports then should be automatically included in the online public inspection file, but we would recommend checking, as the FCC bases its initial judgments of filing compliance on the contents and dates shown in the online public file. Please note that there has been a notice about switching to the Licensing and Management System for the children's reports, and this system requires the use of the licensee FRN to log in; therefore, you should have that information at hand before you start the process.

Commercial Compliance Certifications – For all *commercial television* and *Class A television* stations, a certification of compliance with the limits on commercials during programming for children ages 12 and under, or other evidence to substantiate compliance with those limits, must be uploaded to the public inspection file.

Website Compliance Information – *Television* and *Class A television* station licensees must upload and retain in their online public inspection files records sufficient to substantiate a certification of compliance with the restrictions on display of website addresses during programming directed to children ages 12 and under.

Issues/Programs Lists – For all *radio*, *television*, and *Class A tel*evision stations, a listing of each station's most significant treatment of community issues during the past quarter must be placed in the station's public inspection file. Radio stations will continue to place hard copies in the file, while television and Class A television stations must upload them to the online file. The list should include a brief narrative describing the issues covered and the programs which provided the coverage, with information concerning the time, date, duration, and title of each program.

January 12, 2016

Television Incentive Auction – All *television* and *Class A television* stations wishing to participate in the spectrum incentive auction must file their applications on FCC Form 177 by 6:00 p.m. (ET). If an application has not been filed by this deadline, the station cannot participate in the incentive auction.

January 20. 2016

Foreign Ownership Policies – Comments are due with regard to the Commission's proposal to streamline the foreign ownership review process for broadcast licensees and applicants, and standardize the review process for broadcast, common carrier and aeronautical licensees and applicants.

February 1, 2016

EEO Public File Reports – All *radio* and *television* stations *with five (5) or more full-time employees* located in **Arkansas**, **Louisiana**, **Kansas**, **Mississippi**, **Nebraska**, **New Jersey**, **New York** and **Oklahoma** must place EEO Public File Reports in their public inspection files. TV stations must upload the reports to the online public file. For all stations with websites, the report must be posted there as well. Per announced FCC policy, the reporting period may end ten days before the report is due, and the reporting period for the next year will begin on the following day.

Noncommercial Television Ownership Reports – All *noncommercial television* stations located in **Kansas**, **Nebraska** and **Oklahoma** must file a biennial Ownership Report (FCC Form 323-E). All reports must be filed electronically.

Noncommercial Radio Ownership Reports – All *noncommercial radio* stations located in **Arkansas**, **Louisiana**, **Mississippi**, **New Jersey** and **New York** must file a biennial Ownership Report. All reports filed must be filed electronically on FCC Form 323-E.

Drone even go there – re-redux

FAA Looking to Update, Expand UAS (*i.e.*, Drone) Registration System

"Hobbyists" to be subject to registration requirements

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The FAA's efforts to get its arms around the massive proliferation of drones – which are technically referred to as "unmanned aircraft systems", or "UAS", in FAA parlance – continue. Those who have been following the situation know that Congress had given the FAA a September 30, 2015 deadline by which to develop and implement a plan "for the safe integration of civil unmanned aircraft systems into the national airspace system". That deadline, of course, came and went with no regulations proposed, much less implemented. But several weeks *after* that deadline, the FAA took a significant step: it issued a "clarification" on UAS registration.

The "clarification" means that the FAA will be imposing significantly more regulation on drones operated by amateurs and hobbyists.

One of the FAA's principal raisons d'être is to maintain safety in the national airspace. To that end, it has long required the registration of all aircraft operating in that airspace, including some, but not all, drones – the goal being to permit the FAA to easily identify and track any aircraft in operation. In deciding which drones to exempt from the registration requirement, the FAA historically drew an essentially arbitrary line: it did not require registration of "model aircraft". But in drawing that line, the FAA never bothered to define the term "model aircraft".

The number of UAS registered in the FAA's systems will be greatly increased.

Despite the lack of definition, the FAA's approach proved largely workable while the universe of "model aircraft" operators was limited to a relatively small coterie of hobbyists who tended to be happy to learn, and comply with, the FAA's guidelines for "model aircraft". But with the recent explosion of UAS sales, things started to unravel, fast. Suddenly, UAS were showing up everywhere, posing dangers to passenger planes, firefighters, police and ordinary citizens. And, thanks to the "model aircraft" exemption, the FAA had no way of effectively policing the problem. Hence the "clarification", which essentially says to the UAS community: "No more Mr. Nice Guy".

Going forward, the number of UAS registered in the FAA's systems will be greatly increased, and the registration process itself will be overhauled and modernized.

While this may be something of a hardship for UAS operators, it won't be a walk in the park for the FAA, either. The FAA's existing system for aircraft registration was designed to handle traditional, manned aircraft like airplanes and helicopters as well as "commercial" UAS (*i.e.*, drones that didn't fall within the undefined universe of "model aircraft"). The numbers of such craft have been relatively limited, so the burden on the FAA hasn't too been bad. But last year the FAA created the Section 333 exemption process providing for fairly quick authorization of certain UAS operations (discussed recently by my colleague Laura Stefani). That process mandates registration through the existing registration system. More than 2,000 UAS operators have since sought registrations, and the FAA realized that its existing system would be unworkable once ***all*** drones – including purely amateur "model aircraft" – were subject to mandatory registration.

A primary reason for that conclusion: the Federal Government has not fully moved into the digital age. Some applications (and AM radio licensees, in particular, will know what we're talking about here) must still be submitted on paper, as if it were the 1950s (at least carbon copies aren't required). Sure enough, the FAA still requires that applications for aircraft registration be submitted on paper.

So the FAA now has to figure out how to get the huge number of existing "model aircraft" UAS registered – and, perhaps more importantly, how to deal with the expected tsunami of such registrations once all the traditional December gift-giving, expected to include even huger numbers of UAS, is over. The FAA's first step: formation of a task force to look into overhauling the UAS registration system to allow for electronic registrations. It has also asked the public to weigh in on how best to re-design the registration system.

The 27-member task force included representatives of the FAA's UAS Integration Office as well as the head of Google X, the search giant's "moonshot" unit devoted to crazy new technologies like self-driving cars (and, you

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guessed it, UAS). Also participating were folks from companies that sell UAS to the public like Best Buy, Walmart, and Amazon (the latter two have made no secret of their own interest in UAS for their businesses) and a variety of manufacturers of consumer and commercial UAS (like Parrot, Precisionhawk, and GoPro). Also on board, of course, were representatives from traditional aviation interests, like the Air Line Pilots Association.

The Task Force has recently issued recommendations:

- Hobbyists *themselves* should register with their name and street address (mailing and email addresses, among other information, would be optional);
- Pilots under the age of 13 would have to have a parent or guardian register for them;
- Certain small, "easily breakable" UAS with a "maximum takeoff weight" of less than 250 grams – about half a pound – would be exempt. This proposal is based on the notion that such craft wouldn't post a risk to people or other aircraft. (Note that this is the maximum weight would include not only the aircraft itself, but also any payload and/or other associated weight.);
- The registration process should be Web (or app) based and require no filing fee. Successful registrants would receive a registration number to include somewhere on their aircraft;
- Non-registrants should be subject to fines for failing to comply. Because the current penalty structure for these kinds of violations was, as the Report noted, "established in order to address and deter suspected drug traffickers and tax evaders who failed to register aircraft as part of larger nefarious schemes" and carries a maximum fine of $25,000, the Task Force recommends that the FAA come up with a more "reasonable and proportionate penalty schedule."

The FAA is apparently figuring that a million UAS might find their way under Christmas trees.

It remains to be seen when the FAA might adopt a universal UAS registration requirement and, if it does, the extent to which the Task Force's recommendations will be included. The FAA, like many federal agencies, tends to move slowly – witness the fact that it is already more than two months overdue with respect to the Congressionally-mandated overhaul of its UAS rules. But the short-fuse deadline the FAA itself imposed on the Task Force suggests that the FAA has its eye on the fast-approaching gift-giving season. The FAA is apparently figuring that a million UAS might find their way under Christmas trees. If the FAA hopes to effectively regulate those newcomers along with the droves of as yet unregistered "model aircraft" already in operation, the pressure is on to get a workable registration system) in place as soon as possible.

While some have questioned the real significance of the threat posed by "model aircraft" drones, it is beyond question that serious concern has been expressed by the airline industry and public safety officials and that Congress has taken up the cause as well. That being the case, we can expect the FAA to press ahead on a fast track with its efforts to regulate all UAS more effectively. Its ability to achieve that result – whether in the short or long term – remains to be seen.

As always, check back with CommLawBlog as developments on the UAS front warrant.

We wish you the happiest of holidays and peace in the new year!

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