Fletcher, Heald & Hildreth®

Memorandum to Clients

August 2017 No. 17-08

FCC Incentive Auction Repack Status Update

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As our readers are well aware, the FCC's repacking of stations as part of the Incentive Auction is now underway. Initial construction permits have been filed for most stations, deadlines have been set for stations terminating operations or implementing channel sharing, and initial reimbursement allocation requests have been filed. While we are still in for a long process in implementing all of these changes, we wanted to take this opportunity to provide a brief update of where we are today, and where we are going in the months ahead.

(Please note that while some of the timeframes described below are based on official FCC releases, others are our best estimates based on our experience, and are subject to change. This list of deadlines also is by necessity a very broad overview and may not include all deadlines applicable to your specific situation.)

Post-Transition Facility Applications:

By July 12, the great majority of stations being repacked were required to file construction permit applications for their initial post-transition facilities. At this point most of these applications have been approved, some after informal requests for amendment. As a result, most stations have at least some authorization in hand for construction of a post-transition facility, although many stations may seek to further modify those facilities.

Inside this issue . . .

Between now and September 9, the FCC has opened a "First Priority" filing window for the filing of applications for construction permits for stations' initial post-transition facilities, or modification of the initial permits already granted.

This window is open only to a limited number of stations, including 1) those that received a waiver of the July 12 filing deadline, 2) any station (whether repacked or not) predicted to receive greater than one percent interference as a result of the repack, and 3) certain unprotected Class A stations displaced as part of the repack.

After processing the First Priority Window construction permit applications, the FCC will announce the opening of a Second Filing Window. During this window, any repacked or band-changing (UHF to VHF or high VHF to low VHF)

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Repack Status Update — *(Continued from page 1)*

station may amend a pending construction permit application or request modification of its granted construction permit to request expanded facilities or operation of a different channel. The Second Filing Window will close 30 days after it is opened.

Repack-Related Cost Reimbursements:

Also due on July 12 were initial reimbursable cost estimates on Form 399 for all broadcast stations eligible to receive reimbursements. Initial review of Form 399 filings is proceeding and, while many stations have been asked to file various amendments, we expect that this review should be completed by the middle of September.

As we near the end of that process, if you have not heard from the FCC staff requesting amendment, the chances are increasingly good that your initial Form 399 filing was satisfactory. For MVPDs expecting to incur reimbursable expenses, the deadline for submitting Form 399 was August 25, so processing of those filings could be expected to take somewhat longer, although the substance of MVPDs' submissions is almost certainly less complicated.

Once all initial Form 399s have been processed, the FCC will use the information in those filings to determine the initial allocations that will be made to each reimbursement-eligible entity (broadcast station or MVPD). Those initial allocations are unlikely to be made until at least the second half of October. After allocations are made, parties eligible for reimbursement may begin submitting actual invoices for costs and receiving reimbursements. Based on a mid to late-October initial allocation, actual reimbursement payments are unlikely to begin flowing until mid to late November.

Related to the Form 399 cost estimates, many licensees have also submitted their bank account and payment information on Form 1876, although there is no official deadline for that submission. While the FCC has begun processing some Form 1876s, many of those received so far have not yet been fully reviewed.

So, if you have submitted a Form 1876 to the FCC, but have not yet gotten a response, don't panic. When the FCC has completed its review, it will reach out to the authorized agents listed in the Form 1876 requesting that they enter the licensee's bank account information in the CORES Financial Module as well. The information entered in CORES must exactly match that listed in the Form 1876. If that information changes, a new Form 1876 must submitted. As a reminder, while there is no set deadline for submitting Form 1876, no reimbursements can be paid until the Form has been received and processed.

Channel Sharing:

The FCC is also currently processing, and granting, construction permit applications seeking approval of channel sharing arrangements. For stations that relinquished their spectrum in the auction and indicated a desire to channel share, initial permit applications for such arrangements must be filed by no later than November 22, 2017, and the channel sharing must be implemented by no later than January 22, 2018. For any channel sharing stations relinquishing spectrum and also applying to assign their licenses to another party, the FCC has (at least informally) adopted a policy that such assignments will not be granted until after a channel sharing arrangement has been implemented.

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Repack Status Update *— (Continued from page 2)*

Prior to implementing a channel sharing arrangements, both the sharer (host) and sharee (guest) stations must provide notice to MVPDs at least 30 days in advance. Sharee stations must also provide on-air notices to viewers. Two days before implementing a channel sharing arrangement, the sharee station must notify the FCC, and, within 10 days after implementation must file a license application to cover the construction permit authorizing the channel sharing.

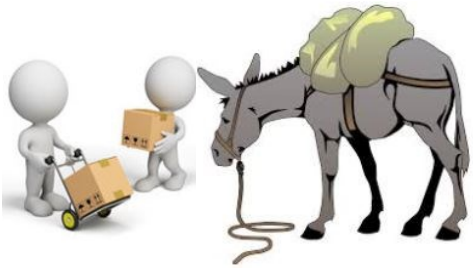
Status Reports and Relinquishment Stations:

All stations subject to repacking, or that are voluntarily changing bands, must file quarterly transition status reports. The first such reports will be due by October 10, 2017, and the second due by January 10, 2018. Licensees must continue to file reports until their transitions are completed.

Finally, stations that are relinquishing all rights and going off-air entirely must do so by no later than October 25, 2017. These stations must also broadcast on-air PSAs and crawls during the final 30 days before they go off-air and provide written notices to MVPDs by no later than 30 days before terminating operations. Two days before ceasing broadcasting, those stations must file a suspension of operations notice with the FCC. Stations must also, on the date they finally terminate operations, file a request to cancel their license.

While the incentive auction repack is clearly very far from over, the process is now well underway.

If you have any question about these requirements, or the transition in general, please let us know.



Must-Carry/Retransmission Consent Elections Due October 1

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Since the mid-90s, it has been the case that every three years, all full-power commercial television stations are required to make elections between must-carry or retransmission consent status on MVPDs serving their markets. This year is once again such an election year, so by no later than **October 1, 2017**, those stations must inform each MVPD whether they choose to be treated as a must-carry or retransmission consent station for the next three years (January 1, 2018 through December 31, 2020). This choice will dictate whether, during the next three years, the station is able to take advantage of the Communications Act provisions that allow it to require MVPDs to carry their programming (must-carry) or to require those MVPDs to obtain the station's affirmative consent prior to carriage (retransmission consent).

In the absence of an affirmative election, a station will default to must-carry status on "traditional" MVPDs (cable, IPTV, etc.) and will default to retransmission consent on satellite providers (DISH and DIRECTV). For many stations, making an affirmative election can be critically important. For must-carry stations, affirmative election can better secure channel positioning rights and ensure carriage on DISH and DIRECTV. For retransmission consent stations, failure to elect on cable MVPDs could lead to a loss of (potentially significant) retransmission consent revenue for the next three years.

In addition to sending election notices directly to the relevant MVPDs (via certified mail), FCC rules require that broadcast stations place copies of their election statements in their online public inspection files by no later than October 1.

The FCC's rules regarding must-carry and retransmission consent are complicated, and the stakes can be extremely high. For some additional background on the election process, as well as other issues related to carriage negotiations and enforcement of must-carry rights, you can view an archived version of a webinar conducted by FHH's carriage gurus Dan Kirkpatrick and Paul Feldman in late August. That webinar can be accessed at http://bit.ly/2iJJoRb .

And as always, please feel free to reach out to us with any specific questions.

EAS National Test to Take Place September 27; Additional ETRS Filings to Be Required

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The Federal Emergency Management Agency and the FCC have announced that a nationwide test of the Emergency Alert System (EAS) will take place **on September 27, 2017, at 2:20 PM EDT**. A backup date of October 4 has been set in the event that conditions on September 27 dictate a delay (*e.g.*, an actual disaster triggering the EAS taking place somewhere).

As a precursor to the national test, all EAS Participants (including most broadcast stations, along with cable and DBS operators) were required to file a "Form 1" in the EAS Test Reporting System (ETRS) by no later than August 28. Form 1 required providing details on the participant's location, service area, EAS equipment, and contact information.

Due to the impacts of Hurricane Harvey, the FCC has announced that it will continue to accept filings from entities affected by that event. We expect that in the coming weeks, FCC staff may be reaching out to EAS participants who did not file, as well as those whose initial filings raised any questions or concerns. Assuming your Form 1 was filed on time, and there are no changes to the information in that form between now and the day of the test, you should certainly be monitoring your EAS equipment on September 27. The FCC will expect that you to monitor the equipment and file a "day-of-test" ETRS Form 2 by no later than the end of the day on September 27.

While the FCC has not confirmed the content of this year's Form 2, if it mirrors last year, it will simply require you to certify whether you received and retransmitted the national test message.

Based on our experience with last year's test, the biggest issues that are likely to arise will be due to congestion in the FCC's ETRS filing system. Last year, the FCC staff ended up requesting that EAS participants attempt to stagger their filings based on the time zones in which their facilities were located. With the technical issues the revised ETRS system has experienced this year in the filing of Form 1s, we would expect that some additional steps may be taken between now and the 27th to help the system run more smoothly; keep watching www.commlawblog.com for updates on that front.

In addition to the "day-of-test" Form 2, all EAS participants will be required to file a post-test ETRS Form 3 by **no later than November 13, 2017**. Form 3 will require additional details about the participant's experience during the test. As with Form 2, the FCC has not yet released the specific details of this year's Form 3. However, based on last year's form, it will require participants to identify the specific times at which they received and retransmitted the test, the source from which they received the test, and any complications they experienced.

If you have any questions about the EAS National Test or ETRS systems, please contact us.

As end of GMR Interim License Period Approaches, fight over GMR's refusal to deal with Pennsylvania radio stations has implications for others around the country

RMLC Seeks PI; Attempts to Stay in PA, Avoid CA

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We've written (and talked) plenty about the fight between the Radio Music License Committee (RMLC) – which represents the interests of the commercial radio industry in negotiating licenses with performing rights organizations ("PROs") to perform musical works – and Global Music Rights (GMR) – the newest PRO representing the owners of musical works (mainly publishers and songwriters). Although GMR was originally founded in 2013, it really became a presence in late 2016 when negotiations with the RMLC broke down, exposing commercial radio stations around the country to potential copyright infringement lawsuits as of January 2017.

The RMLC ended up suing GMR in Pennsylvania (the U.S. District Court for the Eastern District of Pennsylvania, to be precise) in November 2016, alleging that the PRO had engaged in anticompetitive behavior that violated the Sherman Act (a key antitrust law in the United States). The RMLC immediately filed a Motion for Preliminary Injunction seeking, among other things, that GMR immediately grant licenses to commercial radio stations while fees are being negotiated. GMR then followed suit (literally!) by suing the RMLC in GMR's home state – California – just one month later, alleging that it was the RMLC, not GMR, who had committed antitrust violations by conspiring to lower music license pricing for radio stations.

Imminent danger of infringement suits against radio stations was avoided when the RMLC and GMR reached an interim license agreement in late December. The RMLC dropped its request for preliminary injunction in exchange for: 1) GMR's agreement it would not sue any commercial radio station before January 31, 2017 and 2) the offer to stations of an interim license agreement that would allow them to play GMR music over the air and online through September 30, 2017. The underlying litigation about GMR's anticompetitive behavior chugged along at a snail's pace that often is characteristic of federal court cases.

While we heard a few complaints about the seemingly high rate of this interim license, things seem to have been proceeding more or less smoothly. This, despite some hiccups in actually getting the license signed and payments submitted.

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RMLC Seeks PI — *(Continued from page 6)*

At least that's how it appeared on the surface; under the water, well… let's just say the fact that this happened during "Shark Week" isn't lost on us.

Negotiations between the RMLC and GMR regarding a possible extension of the interim license agreement have broken down, and the RMLC has returned to court in Pennsylvania seeking another Preliminary Injunction. Because we have been asked with increasing frequency in recent weeks "what happens to my GMR license come September 30," we'll note that the RMLC's main ask is for the court to order GMR to:

> continue to offer to all U.S. commercial radio stations an interim license to GMR's entire repertory on the same terms as the previous interim license that GMR agreed to offer in order to resolve Plaintiff's previous Motion for a Preliminary Injunction.

In other words, RMLC has asked the court to extend the interim license, without change in rates or terms, until the underlying litigation has ended. If granted, commercial radio stations would not have to re-negotiate anything with GMR for the time being.

With that out of the way, let's look at how we got here, what the RMLC is arguing, and what other interesting tidbits we learned from the RMLC's Motion for Preliminary Injunction, associated Memorandum of Law filed in support of that Motion and other supporting documents.

GMR had *publicly* stated via its website that it would be willing to offer interim extensions to all interested stations – inviting radio stations to reach out and begin this process. There was, however, one catch: all bets are off for Pennsylvania stations. In a "Notice to All Radio Broadcasters," GMR said that:

> radio station owners interested in securing the rights to perform works in GMR's catalog should contact GMR using the form below to negotiate the terms of a license or the extension of an existing license. Due to pending litigation with the RMLC, however, ***we cannot negotiate or enter licenses with stations owned by companies headquartered or based in Pennsylvania***. (emphasis added).

At the same time, according to the RMLC's filing, GMR's counsel *privately* told the RMLC's counsel that GMR might be willing to deal with Pennsylvania-based companies ***if*** those companies and the RMLC agreed that: 1) they would not use those licenses to fight GMR's attempt to transfer the case out of Pennsylvania AND 2) they would not later argue that the terms of those licenses were anti-competitive.

Why is Pennsylvania so important? Because, while the RMLC filed its action in Pennsylvania, GMR has reason to want the entire matter to be decided in the California case that it brought. Not only is California GMR's home turf, but the United States District Court for the Eastern District of Pennsylvania has proven friendly to the RMLC (and unfriendly to PROs) in the past, handing key rulings to the RMLC when it sued SESAC in a similar antitrust case that was eventually settled and recently has been resolved by an arbitration ruling highly favorable to the RMLC. (In case you missed our recent blog post on that development, you can access it here.) The RMLC, for its part, did not take too kindly to GMR's strategy of attacking Quaker

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RMLC Seeks PI — *(Continued from page 7)*

State companies and stations. Among other descriptions, it accused GMR of engaging in "retaliation," "public intimidation tactics," and "abuse"…" designed to frustrate this litigation."

It is no big mystery why GMR is so concerned about engaging in further activities in Pennsylvania – its California case is at serious risk of being transferred there. In an April 7, 2017 decision regarding a motion filed by the RMLC in California to do exactly that, the California court stated that the RMLC case had been filed first and that under the so-called "first-to-file" rule, GMR's later lawsuit, which involved the same parties and substantially similar issues, should be decided in Pennsylvania if that suit remained active. Rather than transferring GMR's case immediately, the court stayed the case until the Eastern District of Pennsylvania court had the opportunity to rule on GMR's own motion to move ***that*** case to California. (On August 1, the court referred that motion to the same magistrate who handled key parts of the RMLC/SESAC litigation.)

In other words, the RMLC and GMR are engaged in a giant game of jurisdictional ping pong at the moment to decide in which court the litigation ball will ultimately land, which has impeded the resolution of the underlying substantive issues that caused the parties to bring their lawsuits in the first place.

Speaking of substantive issues, we'll outline briefly the arguments the RMLC raises in support of its call for a preliminary injunction forcing GMR to continue to offer an interim license agreement with radio stations. Those arguments track the standard four factors widely used by courts to decide whether to issue a preliminary injunction:

1. the movant is likely to succeed on the merits of the underlying litigation;
2. the movant will suffer irreparable harm (*i.e.*, not reparable by monetary compensation) without preliminary injunctive relief;
3. the balance of harms favors the movant; and
4. the public interest will be served by the injunction.

Now, on to the RMLC's arguments. It has alleged that:

- RMLC is likely to win on the merits of its antitrust claim. This is because GMR has monopoly power it can show that:

  GMR has monopoly power (or at a minimum has attempted to exert monopoly power and has acted anticompetitively such that it is dangerously close to achieving monopoly power); and

  GMR has engaged in exclusionary conduct by:

  "strategically handpicking its affiliates and promising to pay them greater royalties than the other PROs could afford (at least 30% more), given their rate regulation";

  "engag[ing] in exclusive dealing with its affiliates that prohibits their direct licensing with radio stations";

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RMLC Seeks PI *— (Continued from page 8)*

preventing radio stations from reliably determining, "at any given time, the specific works in GMR's repertory that require a license from GMR";

"refus[ing] to offer stations alternatives to its blanket licenses, such as an adjustable fee blanket license, and before this litigation refused to offer *any* alternatives at all";

"misrepresent[ing] the extent of the rights that its licenses provide";

"misleading stations about the songs in its repertory"; and

"conditionally refusing to deal with Pennsylvania-based stations."

- Failure to grant the Preliminary Injunction would irreparably harm the RMLC (by "frustrate[ing] this litigation" and harming the RMLC's reputation) and commercial radio stations (by preventing them and the RMLC from fighting GMR's monopolistic abuses).
- The balance of harms to each side favors the RMLC, as the RMLC would be forced to waive critical rights, but any potential harm to GMR could be undone by retroactive adjustment of any interim license fees.
- The public interest favors entry of an injunction by ensuring unobstructed commerce and preserving listener choice in radio offerings.

Among the interesting points tucked away in the RMLC's filings:

- GMR's repertory currently contains 28,000 essential works from more than 70 songwriters. These include songs written, or performed, by the likes of "Adele, Aerosmith, the Beatles, Bruno Mars, Jay-Z, Madonna, Pharrell Williams, Ryan Tedder, Steve Miller Band, Taylor Swift, Tom Petty & The Heartbreakers, and U2"; the Prince catalog was added in January 2017.
- GMR only controls 100% of the public performance rights for a small percentage of its works. In other words, the majority of its rights are "fractional" – a fact that it doesn't readily disclose and that requires radio stations to obtain one or more separate licenses to remaining fractional ownership interests.
- GMR does not offer the same adjustable fee blanket licenses offered by other PROs or price reductions for stations that reduce the number of GMR plays – in fact before the RMLC filed its lawsuit, offered no alternatives to its blanket license at all.

We know that many of you are worried about what happens on October 1, 2017, when your interim licenses are scheduled to expire. We share your concerns. Please check back for updates on this case and feel free to contact us with questions before the interim license period ends on September 30.

FCC Tweaks Mic Rules, Microsoft Launches Spectrum Fight

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In late 2015, major wireless microphone manufacturers requested that the FCC "reconsider" various mostly-technical rules that it had adopted as part of a wide-ranging strategy to reallocate spectrum for wireless microphones. (We've written about recent regulatory changes for wireless mics here, here and here.)

The Commission now has responded via an Order aimed at fine-tuning the technical rules for wireless microphones.

One topic in this Order has stirred up controversy in what should have been an uneventful FCC proceeding: whether professional performing arts companies that use fewer than fifty microphones should receive interference protection from unlicensed white space devices. The Commission decided several years ago to allow those using fifty or more microphones to obtain a Part 74 license, a regulatory status that permits such users to register for protection in the white space database system, thereby preventing white space devices from turning on while in proximity to the performance location. At that time, the Commission thought that "fifty or more" microphones was a good proxy for "professional" productions.

Many performing arts organizations, as well as the microphone manufacturers, pointed out that this definition barred licensure for professional orchestras, playhouses and other performing arts groups that provided professional-quality performances yet use a smaller number of mics. The policy question for the FCC comes down to this: If you are attending a performance at the Shakespeare Theater here in Washington, D.C., the Houston Symphony at Jones Hall, or the Steppenwolf Theater in Chicago, do you want to hear the performance or do you want to have access to broadband to surf the web?

To resolve this situation, the Commission included in its Order a Further Notice of Proposed Rulemaking (FNPRM). The FNPRM proposes a path to Part 74 licensure if an entity can demonstrate both that it has "professional needs" and is capable of using the license correctly (a showing similar to what most other FCC licensees are required to make when first obtaining a license). Microsoft, which is looking to use white space spectrum to provide broadband, threw a wrench into this initial proposal, claiming that the rule change would burden the FCC staff and open the door to too many new licensees. As a result, Commissioner O'Rielly asked whether a different proposal, one that did not require a case-by-case review, wouldn't be better.

Comments on the FNPRM can be filed in Docket Nos. 14-165 and 14-166. (*Deadlines have not yet been set, but comments likely will be due in early September.*)

Meanwhile, for those interested in the actual revisions and clarifications to the technical rules, the Order is mostly a "win" for the wireless microphone community. Specifically, the Commission:

- Adopted the full ETSI (a European standards setting body) standard for out-of-band emissions, a must for future microphone design;

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FCC Tweaks Mic Rules — *(Continued from page 10)*

- Allowed microphone output power to be measured in EIRP or conducted power, increasing design flexibility for manufacturers (though the Commission declined to raise the power level for mics operating in the Duplex Gap);
- Provided for the use of standard antenna connectors by Part 15 (unlicensed) microphones;
- Set out procedures to modify existing equipment, whether via software or hardware changes, for continued use of mics after the repacking of TV stations that is part of the FCC's Incentive Auction;
- Revised the 169-172 MHz channelization plan to be more synced to the unique needs of wireless microphones;
- Left the 30 MHz limit on the use of the 1.4 GHz band, which requires specialized equipment and prior-coordination with the flight test frequency coordinator (AFTRCC), but provided that multiple users in the same area may each access up to 30 MHz so that the entire whole 90 MHz could be in use in aggregate so long as AFTRCC allows; and
- Spelled out coordination requirements for the new 941.5-944 MHz frequencies.

As always, check Commlawblog.com for updates on wireless microphone issues.

SAVE THE DATE

"Getting Your Radio Station's Public File Online Successfully" Webinar

Thursday, October 12th @ 12 p.m. EDT

On Thursday, October 12th at 12:00 p.m. Frank Montero and Steve Lovelady of the Washington FCC law firm Fletcher, Heald & Hildreth, will conduct a webinar for members of the Colorado Broadcasters Association covering the online public file requirements and procedures for those radio stations subject to the March 2018 deadline. This live webinar will allow for Q&A and will be archived for viewing at a later time.

Register by Wednesday, October 11th at 5:00 p.m. EDT

REGISTER

The FCC Re-Tweaks the Equipment Authorization Rules

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Some FCC regulations are carved in stone, changing about as often as the rules of chess. But not the equipment authorization rules, which lay out the procedures manufacturers and importers must follow to market devices having potential to cause interference to radio communications. The FCC likes to revise and update these every few years. This post reports on a recent set of rule changes adopted on July 13, 2017 (released on July 14, 2017), some of which could become effective immediately upon publication in the Federal Register.

Products subject to the equipment rules include transmitters, of course, and also some receivers, most digital devices, and a few other odds and ends. All of these add up to some large fraction of whatever plugs into the wall or takes a battery. Manufactures and importers should familiarize themselves with these changes.

Self-Approval Procedures

Manufacturers or importers of devices that pose a relatively low threat of interference can confirm compliance with the FCC's technical rules on their own, without getting an okay from anybody else. There used to be two procedures for doing this, called verification and Declaration of Conformity (DoC). The recent change now merges these into one, called Supplier's Declaration of Conformity (SDoC). This handy chart compares the requirements.

	***OLD* Verification**	***OLD* DoC**	***NEW* SDoC**
test in accredited lab	(optional)	Yes	(optional)
label with FCC logo	No	Yes	(optional)
include compliance statement with	No	Yes	Yes
responsible party in U.S.	(optional)	Yes	Yes

Those used to the former verification procedure will see added requirements: the product package must include a compliance statement; and the responsible party identified in the compliance statement must be located in the United States. Verified devices include most outdoor, fixed transmitters that don't communicate with mobiles and portables, and TV and FM receivers.

Users of the former DoC procedure will see relaxed requirements: compliance testing no longer needs an accredited lab, and labeling with the FCC logo has become optional. DoC devices include most products that contain digital circuitry.

Devices previously approved under verification or DoC can be continue to be marketed indefinitely without further action.

Electronic Labeling

Devices that pose a higher risk of interference must follow a more stringent FCC procedure called "certification." Affected devices include most mobile, portable, and unlicensed transmitters, fixed

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FCC Re-Tweaks the Equipment Authorization Rules — *(Continued from page 12)*

transmitters that communicate with mobiles and portables, low-power FM transmitters, and a few others. The responsible party (usually the manufacturer or importer) has the product tested for compliance with the FCC's technical rules. These cover power, bandwidth, out-of-band emissions, and sometimes other properties, depending on the device. The test results go to an FCC-approved entity called a Telecommunications Certification Body (TCB), which issues a certification on behalf of the FCC. The manufacturer must label the device with an FCC ID number that identifies it in the FCC's records, and for some devices, must label with other text as well.

As an alternative to physical labels, the FCC has long allowed electronic labeling (on displays) for certain narrow categories of equipment. Manufacturers like this approach and have asked the FCC to expand it. Congress stepped in with a 2014 statute that required the FCC to permit manufacturers to use electronic labeling. The statute also required the FCC to have done this two years ago, but hey, it's been a busy time.

The new rule allows most FCC-required labeling to be put on a device's electronic display (except for a few safety-of-life devices). The user must be able to access the labeling without special codes and in no more than three steps. Instructions for doing this can either be packaged with the product or provided on a product-related website. Temporary physical labels will be required in a few instances, to carry information needed before the device is first powered on. A device with no display must have a permanent physical label, as under the old rules. If the device has no display and is too small to carry the required labeling in four-point type (really small!), the information can go in the user manual.

Importation

A rule change brings the long-awaited elimination of Form 740, previously used to declare the regulatory status of imported devices. The FCC emphasizes, though, that some responsible party must stand behind the compliance of each device. The number of not-yet-approved devices allowed to be imported for trade shows is increased from 200 to 400. Where the present rule allows for the importation of up to three "unintentional radiators" (such as receivers or digital devices) for personal use, that permission now extends to certain narrow classes of both licensed and unlicensed transmitters.

Measurement Procedures

The FCC maintains complex rules on how to test devices for technical compliance. It has now made several changes to these. The changes are critically important to the test labs and TCBs, and perhaps also to some large manufacturers. but less so to the rest of us, so we will not spell them out here. Check the FCC document linked in the first paragraph above if these concern you.

# # #

Some of the new rules take effect immediately on publication in the Federal Register, without the usual thirty-day wait. Federal Register publication will probably happen in August. Rules that impose new or modified requirements for information collection must await approval from the Office of Management and Budget. How long that will take is anybody's guess.

Deadlines!

Upcoming FCC Broadcast Filing Deadlines

Do you know what FCC filing deadlines are coming up in September and the coming months? We do. Note our list is not comprehensive, and other proceedings may apply to you.

September 26, 2017 –

Annual Regulatory Fees – Annual Regulatory Fees will be due and payable for Fiscal Year 2017, and will be based upon a licensee's/permittee's holdings on October 1, 2016, plus anything that might have been purchased since then and less anything that might have been sold since then. The fees must be paid through the FCC's online Fee Filer, and once again this year, the FCC will not accept checks as payment of the fees but will require some form of electronic payment (credit card, ACH transfer, wire transfer, and the like). Please keep in mind that timely payment is critical, as late payment results in a 25 percent penalty, plus potential additional interest charges.

September 27, 2017 –

EAS National Test - Participants' ETRS Form Two Due – All EAS participants must be prepared for the national EAS test on September 27 at 2:20 p.m. EDT. Additionally, all participants must prepare and file in the EAS Test Reporting System (ETRS) a Form Two for each station by 11:59 p.m. EDT on September 27. This form is scheduled to become available at 2:20 p.m. EDT, immediately following the EAS test, and will provides information as to results of the test.

October 1, 2017 –

EEO Public File Reports – All radio and television stations with five (5) or more full-time employees located in Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, Mariana Islands, Missouri, Oregon, Puerto Rico, the Virgin Islands, and Washington 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.

EEO Mid-Term Reports – All radio stations with eleven or more full-time employees in Alaska, American Samoa, Guam, Hawaii, the Mariana Islands, Oregon, or Washington, and all television stations with five or more full-time employees in Iowa or Missouri must electronically file a mid-term EEO report on FCC Form 397, with the last two EEO public file reports attached.

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Deadlines!

(Continued from page 14)

October 10, 2017 –

Children's Television Programming Reports – For all commercial television and Class A television stations, the third quarter 2017 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 as has been the case for some time now, the required use of the Licensing and Management System for the children's reports means that the licensee FRN and password are necessary 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 online 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 commercial and noncommercial radio, television, and Class A television 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 in the top 50 markets and in an employment unit with five or more employees will have to place these reports in the new online public inspection file, while all other radio stations may continue to place hard copies in the paper file for the time being. Television and Class A television stations will continue 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.

Class A Television Continuing Eligibility Documentation – The Commission requires that all Class A Television maintain in their online public inspection files documentation sufficient to demonstrate that the station is continuing to meet the eligibility requirements of broadcasting at least 18 hours per day and broadcasting an average of at least three hours per week of locally produced programming. While the Commission has given no guidance as to what this documentation must include or when it must be added to the public file, we believe that a quarterly certification which states that the station continues to broadcast at least 18 hours per day, that it broadcasts on average at least three hours per week of locally produced programming, and lists the titles of such locally produced programs should be sufficient.

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Deadlines!

(Continued from page 15)

December 1, 2017 -

DTV Ancillary Services Statements – All DTV licensees and permittees must file a report in the LMS filing system 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. The report specifically asks for a list of any ancillary services, whether a fee was charged, and the gross amount of revenue derived from those services. Ancillary services do not include broadcasts on multicast channels of free, over-the-air programming for reception by the public.

March 2, 2018 -

Biennial Ownership Reports – All licensees and entities holding an attributable interest in a licensee of one or more AM, FM, TV, Class A television, and/or LPTV stations must file a biennial ownership report reflecting information as of October 1, 2017. Please recall that not only corporations and limited liability companies, but also sole proprietorships and partnerships composed entirely of natural persons (as opposed to a legal person, such as a corporation) are included in the licensees that must file reports. For the first time, noncommercial and commercial entities are required to file by the same date. Additionally, all persons holding an attributable interest in a commercial licensee must have acquired either an FCC Registration Number (FRN) or Restricted Use FRN. The FCC announced on September 1 that ownership reports originally due December 1, 2017 will now be due March 2, 2018, and cannot be filed before December 1, 2017.

Please contact **Anne Crump** or **Dan Kirkpatrick** if you have questions about any of these deadlines.

FHH - On the Job, On the Go

On August 14th **Francisco Montero** attended a gathering of NPR and public radio program directors for a "Celebration of the First Amendment " at the Newseum in Washington, DC, hosted by NPR affiliate WAMU, then on August 24th he attended and presented at the Puerto Rico Radio Show in San Juan, hosted by the Puerto Rico Broadcasters Association.

On September 5th, **Karyn Ablin** will be attending the RAIN Summit in Austin, TX.

Several FHH attorneys plan to attend the annual NAB Radio Show, September 5-8, in Austin, Texas. Those on the list include: **Karyn K. Ablin**, **Frank Jazzo**, **M. Scott Johnson**, **Dan Kirkpatrick**, **Michelle McClure**, **Matt McCormick**, **Frank Montero**, **and Davina Sashkin**. While there, ***Karyn*** will be on the panel, "*Shake Your Money Maker: Beating the Music Licensing Blues*" on September 7th. ***If you are planning to attend NAB and would like to meet, please let us know.***

On September 14th you can find **Francisco Montero** at the *Hispanic Heritage Awards* in Washington, DC, which will be televised by PBS, and then on Sept. 20th, he will be speaking on a panel at the *Energy, Technology & Education Festival ETE17* in Washington, DC.

On September 26-28th **Francisco Montero** will be attending the *Public Radio Super Regional* in Minneapolis where he will be presenting on FCC compliance.