



Virginia Association of Broadcasters Legal Review



Brooks, Pierce, McLendon, Humphrey &
Leonard, LLP
Counsel to VAB • (919) 839-0300

250 West Main Street, Suite 100
Charlottesville, VA 22902 • (434)
977-3716

January 12, 2017

Legal Memorandum

FCC Releases Filing Requirements for Post-Auction TV Transition Progress Reports and Proposes Mandating Progress Reports from Non-Reimbursed Stations

In connection with the ongoing broadcast Incentive Auction, the FCC, earlier this week, released a [Public Notice](#) providing additional information about post-auction progress report requirements for stations eligible for reimbursement from the TV Broadcast Relocation Fund (“Reimbursable Stations”). The Public Notice also seeks comment on the FCC’s new proposal to require post-auction progress reports from stations that are not eligible for reimbursement but that will be moving to a new channel assignment as part of the rest of the post-auction transition (“Non-Reimbursable Stations”). (Non-Reimbursable Stations include stations with winning auction bids to move from UHF to a VHF channel, stations that elect no reimbursement funds in exchange for receiving a waiver of the FCC’s service rules to allow such stations to provide non-broadcast television services on their reassigned spectrum, and a handful of Class A television stations previously deemed by the FCC not to be eligible for reimbursement of relocation costs.)

Reimbursable Station Transition Progress Reporting Requirements

Reimbursable Stations consist of full power and Class A television stations that are protected during the repacking process and involuntarily assigned to a new channel. According to the Public Notice, Reimbursable Stations will be required to file “Transition Progress Reports” on a quarterly basis, beginning the first calendar quarter after the FCC releases its public notice announcing the completion of the Incentive Auction and new channel assignments. The Transition Progress Reports must be electronically filed on a quarterly basis the tenth day of the month after the end of the relevant calendar quarter (i.e., January 10 for the fourth quarter, April 10 for the first quarter, July 10 for the second quarter, and October 10 for the third quarter).

The Public Notice includes a copy of the new Transition Progress Report form (FCC Form 2100 – Schedule 387), a copy of which is attached to this memorandum. All information provided in the reports will be made publicly available both in the FCC’s electronic filing system and in each station’s respective online public inspection file.

In addition to the quarterly reports, the Public Notice establishes that the FCC will require each Reimbursable Station to file a Transition Progress Report: (1) ten weeks before the end of the station’s assigned construction deadline; (2) ten days after completion of all work related to construction of the station’s post-auction facilities; and (3) five days after the station ceases broadcasting on its pre-auction channel. After a station files a Transition Progress Report certifying that it has completed all work related to construction of its post-auction facilities and that it has ceased operating on its pre-auction channel, it will no longer be required to file quarterly Transition Progress Reports.

This Public Notice is not the final word on Transition Progress Reports; the Public Notice specifically indicates that the FCC will provide, in a subsequent public notice at a later date, detailed instructions about how to file the new report form.

Proposal for Non-Reimbursable Stations to File Transition Progress Reports

The FCC is also using the Public Notice to solicit comment on its proposal to require Non-Reimbursable Stations to file Transition Progress Reports. In that regard, the FCC has tentatively concluded that Non-Reimbursable Stations should be required to file Transition Progress Reports on the same form, at the same intervals (i.e., quarterly, ten weeks before the end of the assigned construction deadline, ten days after completion of all work related to construction of the station’s post-auction facilities, and five days after the station ceases broadcasting on its pre-auction channel), and with the same degree of public disclosure (i.e., the reports would be publicly available in the FCC’s electronic filing system and in each station’s online public inspection file) as Reimbursable Stations. In support of its proposal, the FCC observed in the Public Notice that requiring progress reports from both Reimbursable and Non-Reimbursable Stations would allow regulators, broadcasters, engineers, and other industry participants “to promptly identify potential resource bottlenecks and stations that may have difficulty meeting their construction deadlines, or are experiencing other problems, and take steps to mitigate any adverse impact on the completion of the transition.”

In addition to seeking comment on the proposal to require Non-Reimbursable Stations to file Transition Progress Reports, the FCC has also asked whether some of the questions on the report form should not be required (and whether additional questions on the report form should be required) for Non-Reimbursable Stations and whether different filing intervals or filing mechanisms should be used for such stations. Comments are due January 25, 2017, and reply comments are due February 6, 2017.

If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

Stephen Hartzell, Editor

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

Wade H. Hargrove
Mark J. Prak
Marcus W. Trathen
David Kushner
Coe W. Ramsey
Charles E. Coble
Charles F. Marshall
Stephen Hartzell
J. Benjamin Davis
Julia C. Ambrose
Elizabeth E. Spainhour
Eric M. David
Timothy G. Nelson

This Legal Review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

© 2017 Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.

APPENDIX A

FCC Form 2100 - Schedule 387 (Transition Progress Report)

Transition Progress Certification (Must Answer All Items)

To be completed by full power and Class A television licensees with stations that are transitioning to a new channel as a result of the Broadcast Incentive Auction:

Licensee hereby certifies that the following steps towards constructing the Station's post-auction facility are not required or have been completed:

1. Does the Station require FAA approval (e.g., completion of FAA Form 7460-1 and a "No Hazard Determination") in order to construct its post-auction facility? (Y/N) (If No, go to Item 2; if Yes, go to sub items)
 - a. The Station has requested FAA approval for its post-auction facility (Y, N)
 - b. The Station has received FAA approval for its post-auction facility (Y, N)
2. Does the Station require Federal, State, and/or local permits, and/or a review of environmental impact, for its post-auction facility? (Y, N) (If No, go to Item 3; if Yes, go to sub items)
 - a. Station has requested necessary Federal, State and/or local permits and/or review of environmental impact for its post-auction facility. (Y, N) (If No, explain)
 - b. Station has received necessary Federal, State, and/or local permits and/or review of environmental impact for its post-auction facility. (Y, N) (If No, explain)
3. Are radio frequency (RF) tower studies required in order for the Station to construct its post-auction facility? (Y, N) (If No, go to Item 4)
 - a. RF tower studies have been started (Y, N)
 - b. RF tower studies have been completed (Y, N)
4. Are structural tower studies required in order for the Station to construct its post-auction facility? (Y, N) (If No, go to Item 5)
 - a. Structural tower studies have been started (Y, N)
 - b. Structural tower studies have been completed (Y, N)
5. The Station has placed orders for the following equipment, if required:
 - a. Main Facility Antenna (Y, N, NA)
 - b. Main Facility Transmitter (Y, N, NA)
 - c. Main Facility Transmission line (Y, N, NA)
 - d. Main Facility Mask Filter and/or RF Combiner (Y, N, NA)
 - e. Auxiliary antenna and related equipment (Y, N, NA)
6. Does the Station anticipate that it will receive all necessary equipment in time to meet the construction deadline for the Station's main facility? (Y, N, NA) (If No, explain)
7. Has Station received all required new broadcast equipment (antenna, transmitter, etc.) necessary to begin construction? (Y, N, NA)
8. Does the Station's post-auction facility require tower construction/modification work? (Y, N) (If No, go to Item 9)

- a. Does construction of the Station's post-auction facility require construction of a new tower or substantial modification of an existing tower? (Y, N)
 - b. Has all necessary tower work been scheduled? (Y, N) (If No, explain)
 - c. Has all necessary tower work been completed? (Y, N) (If No, explain)
9. Does the Station anticipate that all tower work, including antenna installation, will be completed in time to meet its construction deadline? (Y, N, NA) (If No, explain)
10. Does the Station require use of a new auxiliary antenna system? (Y, N) (If No, go to Item 11)
 - a. Has the Station started all outside tower work and made all necessary equipment upgrades to commence testing of its new auxiliary antenna system? (Y, N)
 - b. Has the Station completed all outside tower work and made all necessary equipment upgrades to commence testing of its new auxiliary antenna system? (Y, N)
 - c. Has the Station started testing on its new auxiliary antenna system? (Y, N) (If Yes, answer Question 10.d.)
 - d. Has the Station completed all testing on its new auxiliary antenna system such that it may now cease broadcasting on its pre-auction channel? (Y, N)
11. Has the Station completed all work, including construction, modification and/or installation, related to construction of its post-auction facility such that it is ready to begin testing on its post-auction facility? (Y, N) (If Yes, go to Item 12)
 - a. Has the Station completed all tower work? (Y, N)
 - b. Has the Station completed all in-building (equipment) work? (Y, N)
12. Does the Station have other issues that must be addressed before it can fully construct and/or operate its post-auction facility? (Y, N) (If Yes, explain)
13. Has the Station completed all construction work on its post-auction facility that is necessary to complete an application for a license to cover that facility? (Y, N)
14. Has the Station ceased broadcasting on its pre-auction channel? (Y, N)