



# Virginia Association of Broadcasters Legal Review



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## **MAY 29, 2015, IS THE PRE-AUCTION LICENSING DEADLINE FOR FULL POWER AND CLASS A TELEVISION STATIONS**

The FCC has released a [Public Notice](#) to announce that May 29, 2015, is the Pre-Auction Licensing Deadline by which full power and Class A television facilities must be licensed (or have a license-to-cover application filed and pending at the FCC) in order to be eligible for protection in the Incentive Auction’s repacking process. The Pre-Auction Licensing Deadline will also determine which facilities are eligible for voluntary relinquishment of spectrum usage rights in the Incentive Auction. While the Public Notice is barely more than two pages long, it contains a great deal of important information for all full power and Class A television stations.

*Certain Television Facilities May File License Applications by May 29, 2015, and Still Be “Protected”.* As we have previously reported, all full power and Class A television facilities that were licensed as of February 22, 2012, are entitled to mandatory protection in the repack. In addition, the FCC has limited discretion to “protect” (for purposes of the Incentive Auction and repack) certain categories of television facilities that were not licensed as of February 22, 2012, so long as such facilities are licensed (or have a license-to-cover application filed and pending at the FCC) by the Pre-Auction Licensing Deadline. More specifically, according to the Public Notice, there are still authorized television facilities in the following categories that currently remain unlicensed:

- \* Full power facilities authorized in outstanding construction permits (“CPs”) issued to effectuate a channel substitution for a licensed station (including CPs for stations seeking to relocate from channel 51 to a lower channel);
- \* Modified facilities of full power and Class A television stations that were authorized by CPs granted on or before April 5, 2013, or that have been authorized by CPs granted after April 5, 2013, and are in compliance with the “freeze” imposed by the FCC in April 2013; and
- \* Class A stations’ initial digital facilities that were not initially licensed until after

February 22, 2012, including those that were not authorized until after the April 2013 “freeze.”

All facilities in these three categories (with limited exception for stations affected by the destruction of the World Trade Center) must be licensed or have an application for a license to cover the CP on file by **May 29, 2015**, in order for these facilities to be protected in the repacking process. While this portion of the Public Notice affects a relatively small number of stations, it is important that such stations take prompt action and develop a plan to ensure they will meet the May 29, 2015, Pre-Auction Licensing Deadline.

*It Is Time for All Full Power and Class A Television Stations to Fix FCC Database Errors! (May 29, 2015, Filing Deadline).* This part of the Public Notice has the potential to affect virtually all full power and Class A television stations. In the Public Notice, the FCC has given “notice of the last opportunity before the Pre-Auction Licensing Deadline for all full power and Class A licensees to modify their licenses to fix errors they have made in providing us their operating parameters and to have those modifications protected in the repacking process.” This means that each full power and Class A television station should promptly review the operating parameters identified on its license, in any outstanding CPs, in the FCC’s CDBS database, on the corresponding antenna structure registration (if any), and actually used by the station for actual operations. To the extent that there are inaccuracies and/or discrepancies in such data, stations will need to correct them, and it is critical for stations to understand that such corrections will be “protected” only if a modification application that complies with the April 2013 “freeze” is filed and granted, and a license to cover application is filed, by **May 29, 2015**.

*Forthcoming Technical Certification Form.* In a subsequent public notice, the FCC will list the facilities licensed (including those with license-to-cover applications filed and pending at the FCC) by the Pre-Auction Deadline, as reflected in the Commission’s records. According to the FCC, licensees will then be required “to certify in a Pre-Auction Technical Certification Form (FCC Form 2100, Schedule 381) that they have reviewed their authorization and underlying database technical information for their eligible facility, and to confirm that all information is correct with respect to actual operations or identify any discrepancies.” (This will be similar to the certification process that full power stations went through in advance of the 2009 DTV Transition.) According to the draft version of the FCC Form 2100, Schedule 381 that the FCC filed with the Office of Management and Budget several weeks ago, if a station identifies discrepancies in the certification form, the station will be required to file to modify its authorized operating parameters and may also need to file for Special Temporary Authority during the pendency of its modification application—of course, at that point, the applied-for parameters will not be “protected” for purposes of the Incentive Auction and repack, which is why each full power and Class A television station should begin **now** to review the operating parameters identified on its license, in any outstanding CPs, in the FCC’s CDBS database, on the corresponding antenna structure registration (if any), and actually used by the station for actual operations.

*A Final Word About Class A Facilities (Analog vs. Digital).* Finally, the Public Notice emphasizes that each Class A television station must be licensed (or have a license application filed and pending) by the Pre-Auction Licensing Deadline in order to be afforded protection in

the repacking process. While Class A stations may wait until the September 1, 2015, digital transition deadline to complete construction and license their digital facilities, those that do not have their digital facilities licensed (or have a license-to-cover application filed and pending at the FCC) by May 29, 2015, will be afforded protection based only on the coverage area and population served by their analog facilities.

The May 29, 2015, deadline is important, and stations should promptly develop a plan to take stock of how the Public Notice and Pre-Auction Licensing Deadline may affect them.

*by Stephen Hartzell*

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### **HOW MUCH SPECTRUM DOES THE FCC WANT IN YOUR MARKET? NAB RELEASES NEW MODEL**

Over the past several months, the FCC has released various data and technical information relating to the Incentive Auction. This information includes estimated payouts that could be available to broadcasters who relinquish television spectrum rights in the auction, and scenarios modeling potential interference to stations remaining after the auction. The FCC's "repacking" models consider scenarios with the FCC reclaiming either 120 MHz (20 TV channels) or 84 MHz (14 TV channels) of the UHF broadcast spectrum. One piece of information missing from the FCC's data is the number of UHF stations that the FCC may need to relinquish spectrum in any given market.

NAB has recently released an interactive model that contains this missing information, as well as a snapshot of other information that the FCC has provided on a market-by-market basis. NAB's interactive model can be accessed here:

<http://www.nab.org/spectrumAuctions/participationbyMarket.asp>

For any given market, NAB's model shows:

- The FCC's proposed opening bid prices;
- The FCC's estimated high-end payouts to broadcasters; and
- The NAB's analysis of the maximum and minimum number of stations needed to participate if the FCC reclaims either 120 MHz or 84 MHz of spectrum.

The number of stations that may (or may not) be needed in each market under NAB's model is particularly interesting. For example, there are 37 markets where the FCC may need more than half of the stations in the market to participate in the auction, and there are 55 markets where the FCC may need no stations to relinquish any spectrum. Where no spectrum relinquishment is necessary, this may mean that the FCC would not need to accept any bids from stations in those markets. These data may help stations assess the likelihood that their frequency will actually be needed in the auction, and if needed, the potential value of such frequency.

In a related note, in markets where numerous stations are needed to relinquish spectrum, Kagan Media Appraisals has released a new study indicating that demand for that spectrum will be high. The study, commissioned by the Expanding Opportunities for Broadcasters Coalition, finds that Verizon, AT&T, T-Mobile, and Sprint will be “fully engaged and sufficiently capitalized bidders” for this spectrum. Kagan estimates that receipts from all bidders in the auction could be in the range of \$60 billion to \$80 billion. Kagan’s report is on the heels of the recently completed AWS-3 spectrum auction, which resulted in over \$44 billion from the wireless industry.

As you know, there will be more—much more—to come on the Incentive Auction.

*by Coe Ramsey*

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### **COMMISSIONER O’RIELLY INVITES FCC TO MODERNIZE EEO “WIDESPREAD DISSEMINATION” RULE**

In a [blog post](#) released February 20, Commissioner [Michael O’Rielly](#) publicly invited the FCC to consider modernizing its EEO rules to take account of the near-ubiquity of the Internet as a tool for recruiting employees. Although just a blog post at this stage, Commissioner O’Rielly’s comments should be welcome news to broadcast stations subject to the FCC’s EEO rules that find themselves using “legacy” recruitment sources that are sometimes of limited utility in locating qualified job applicants.

Since 2003, the FCC’s EEO rules have, among other things, required broadcasters with five or more full-time employees to use recruitment sources for each full-time job vacancy that are sufficient, in the broadcaster’s reasonable, good faith judgment, to “widely disseminate” information concerning the vacancy. That sounds simple enough, but, over the years, the Commission has repeatedly made clear that broadcasters cannot meet the requirement to “widely disseminate” full-time job vacancy notices by relying only on Internet recruitment sources (for example, Indeed.com, Monster.com, the station’s own website), or a combination of Internet recruitment sources and “private” sources (for example, word-of-mouth referrals). That means broadcasters have continued to send vacancy notifications to non-Internet sources, such as colleges and universities, newspapers, newsletters, and similar recruitment sources—even if such recruitment sources were not fruitful sources of qualified candidates. (Caution: In some cases, a station is required to use certain recruitment sources—Internet or non-Internet—because the source has specifically requested that the station send vacancy notifications, and broadcasters subject to the rules are required by a separate provision to continue providing notifications to such sources. This requirement, however, is not the subject of Commissioner O’Rielly’s blog post.)

The Commission’s “ban” on Internet-only recruitment or Internet recruitment in combination with private sources has been justified based on the fact that not everyone has access to the Internet. But this rationale has become less compelling over time, and especially in

light of the Commission’s broadband policy objectives and the widespread availability of the Internet in the twelve-plus years since the EEO rules were adopted. In fact, Commissioner O’Rielly noted that, according to one study, as of December 31, 2013, 99% of Americans have access to wired and/or wireless broadband. Today, according to Commissioner O’Rielly, the Internet is a key tool for career networking and for job seekers to identify and apply for job vacancies, and, according to the blog post: “Even the FCC requires applicants to apply online unless it would be a hardship.”

Commissioner O’Rielly made clear that he is *not* in favor of changing the overall EEO requirements, but instead said he would like the Commission to “recognize the current marketplace realities in terms of what types of communication should qualify as ‘widely disseminated.’”

It remains to be seen if a rulemaking or other policy change may ultimately follow from Commissioner O’Rielly’s blog post; at this point, it is simply the opinion of one Commissioner. We will keep you apprised of any developments in this area.

*by Elizabeth Spainhour*

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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*

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