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

August 21, 2015

Legal Memorandum

In this issue, link to information about

Deadlines:

- Analog Class A TV Operations Must End September 1, 2015
- General Election LUC Window Opens September 4, 2015
- December 2, 2015 Biennial Ownership Reports Due

10-DAY COUNTDOWN:

Class A TV Stations Must Terminate Analog Operations By September 1, 2015 (Even If The Digital Facility Is Not Yet On The Air)

What do Cinderella and Class A television stations have in common? The time 11:59 p.m. (local time) is really important—especially on September 1, 2015. That is when *analog* Class A TV stations must go silent, unless they have completed their conversion to digital operations.

As we have previously reported, all Class A television stations must cease analog operations by 11:59 p.m. on September 1, 2015. If a Class A station has not yet finished constructing its digital facility, the station must go off the air while construction is being completed. If a station will remain silent for more than 10 days, it must notify the Commission of its temporary silent status, and if the station will be off the air for more than 30 days, it must file a request for Special Temporary Authority ("STA") by the 30th day of silence. (In addition, any broadcast station that fails to air programming intended for receipt by the public for any consecutive 12-month period will presumptively lose its license as a matter of law at the end of such 365-day period.)

Any Class A television station that (i) is not yet broadcasting in digital, or (ii) has not yet obtained a digital construction permit, or (iii) anticipates that it will not have its digital facility constructed by 11:59 p.m. September 1, 2015, should contact communications counsel immediately to determine what steps—if any—need to be taken, whether any filings need to be made at the FCC, and whether an extension of time to construct the digital facility may be warranted or obtainable.

September 4, 2015: LUC Window for November General Election Opens

The general election in Virginia is scheduled for November 3, 2015, when Virginians will be voting for members of the Virginia House of Delegates, Virginia Senate, and various county, city, and local officials. Consequently, the general election's "lowest unit charge" ("LUC") window will open on September 4, 2015.

Under the LUC requirement, during the 45-day period preceding the date of a primary or primary run-off election and during the 60-day period preceding the date of a general or special election, the charges made for the "use" of a broadcast station by a "legally qualified" candidate may not exceed the LUC of the station for the *same class and amount of time for the same time period*. This does not mean that a station must sell prime or drive time at a non-prime or non-drive time rate. Nor does it mean that "fixed position" announcements must be sold at "run of schedule" or "pre-emptible" rates. The LUC requirement applies only to charges made for the same "class" and "amount" of time for the same "period." Thus, a candidate who purchases a fixed position announcement in drive time may be charged the same rate charged other advertisers for a fixed position announcement in drive time—except the candidate is entitled to the benefit of a frequency discount even though he or she might not have purchased enough time to have "earned" it.

When determining the LUC, stations must remember that, generally, all spots, including bonus spots, must be allocated some value in a package arrangement. To minimize any adverse impact on your station's LUC during the political windows, stations should have allocated, in good faith, some value to bonus spots included in package arrangements through a separate writing at the time the contract was signed. On the other hand, not all types of advertising must be factored into a station's LUC analysis; for example, station trade-outs, "billboards," and program sponsorships are generally not required to be factored into LUC computations.

Candidates may complain if they suspect a station has not provided them with the LUC. Such a complaint may be informal (a phone call to the station or FCC, written demand, etc.) or it may involve a formal written complaint to the FCC. In order to avoid expending the resources and energy necessary to respond to a formal FCC complaint, stations may wish to follow these guidelines:

- If a station receives a candidate's letter demanding the rebate of alleged overcharges, the station should immediately consult with its own communications counsel and consider how best to respond. (Failure to respond promptly to such a letter may provoke the candidate into filing a formal complaint with the FCC.)

- In order to respond to a written inquiry or complaint concerning overcharges, stations should evaluate the specific allegations made by the candidate.

Determine if the station actually did overcharge the candidate—if so, refund the overage immediately with an explanation of how the mistake occurred.

- An ongoing review of rates charged political advertisers should be conducted by stations throughout the election period. The FCC has suggested that a weekly review would be sufficient. Such ongoing reviews will enable the station to determine if an overcharge has occurred and refund all overcharges in a timely fashion.

- In other circumstances, usually in response to a formal complaint, a station may opt to conduct an internal audit. This should not be done without advance consultation with the station's own communications counsel. Full internal audits can be time consuming and expensive. They involve a review of all advertising sold to the particular candidate and other advertisers in the time periods, and an evaluation of whether the price charged the candidate was the "lowest unit charge."

For detailed information on the LUC and other political broadcasting requirements, please contact the Association for the latest version of the publication *Nuts 'n Bolts of Political Broadcasting*, which was previously distributed.

BIENNIAL OWNERSHIP REPORTING DEADLINE FOR COMMERCIAL BROADCAST STATIONS EXTENDED TO DECEMBER 2, 2015

The deadline for commercial broadcast stations to file their 2015 Biennial Ownership Reports has been extended to December 2, 2015. The information in the Report(s) must be current as of October 1, 2015. The extension only applies to 2015 biennial filings. Reports are filed using FCC Form 323 and must be filed electronically. Stations can file Form 323 any time prior to December 2, 2015, so long as the information is current as of October 1, 2015.

Prior to this extension, according to the existing FCC rules, all full-power AM, FM, and TV stations, LPTV and Class A stations and entities with attributable interests in such stations would have been required to file the next biennial ownership report no later than November 2, 2015.

The FCC biennial commercial broadcast ownership report is designed to obtain data on racial and ethnic minority and female broadcast ownership – statistically valid broadcast ownership information data that can be compiled and aggregated and used as a source for further analysis.

As we previously reported, the FCC currently has an open proceeding relating to the use of FCC Registration Numbers ("FRNs") and so-called "special use" FRNs for ownership reporting purposes. The FCC is considering whether and to what extent it would be appropriate to allow individual officers, directors and certain shareholders with an attributable interest in a broadcast licensee to obtain and use a "special use" FRN without having to disclose certain sensitive information such as a person's Social Security Number.

While there has not yet been any final resolution of the special use FRN issues, commercial broadcasters may wish to go ahead and begin the process of gathering and compiling the demographic and other data they need in order to prepare and file their 2015 biennial ownership reports. Consultation with legal counsel is not absolutely necessary in all cases, but the nuanced biennial ownership reporting process is such that it may be prudent and wise to enlist the assistance of communications counsel.

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