



Virginia Association of Broadcasters Legal Review



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ONE WEEK COUNTDOWN: MAY 29, 2015, IS THE PRE-AUCTION LICENSING DEADLINE FOR FULL POWER AND CLASS A TELEVISION STATIONS

As we have previously reported, the FCC in February released a [Public Notice](#) establishing May 29, 2015, as 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. In mid-May, the FCC released a second [Public Notice](#) to remind stations of the significance of the May 29 Pre-Auction Licensing Deadline. The Pre-Auction Licensing Deadline will also determine which facilities are eligible for voluntary relinquishment of spectrum usage rights in the Incentive Auction. **With the May 29 deadline only one week away, any station that has not yet turned to the task of evaluating the implications of the Pre-Auction Licensing Deadline should do so immediately.** As we previously advised, here are the important points addressed in the FCC Public Notices relating to the May 29 Pre-Auction Licensing Deadline.

Protection of Digital Facilities for Class A Stations. 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 do not 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.

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 Pre-Auction Licensing Deadline.

It Is Time for All Full Power and Class A Television Stations to Fix FCC Database Errors! (May 29 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 forthcoming 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.” There is more information about the Pre-Auction Technical Certification Form below. According to Pre-

Auction Technical Certification Form, if a station identifies discrepancies in the 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. Accordingly, if you have not already done so, each full power and Class A television station should **immediately** review the operating parameters identified on the station’s 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.

Stations that identify any issues should contact their communications counsel immediately.

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TELEVISION STATIONS CAN BEGIN COMPILING INFORMATION FOR PRE-AUCTION TECHNICAL CERTIFICATION FORMS

In a recent [Public Notice](#), the FCC released the new Pre-Auction Technical Certification Form (FCC Form 2100, Schedule 381). The form not only requires stations to certify the accuracy of certain technical data in the FCC’s databases and certain information that will be distributed in an upcoming public notice, but also the form solicits specific information about each station’s technical facilities. Thus, to be prepared to complete and timely file the Certification Form, stations should begin compiling information now. (To be clear, the FCC has not yet announced the deadline for filing the Certification Form. The deadline will be announced in an upcoming public notice.)

Because summer is on the horizon and the Certification Form is likely to be due during the summer, stations may wish to begin compiling the requisite information now so that they are prepared when the FCC’s public notice is issued. That way, summer vacation plans and short staffing do not create a “fire drill” situation when it is time to submit the required information and Certification Form to the FCC. Here is a [link to a PDF version](#) of the FCC’s Certification Form to help you understand what information to compile and the full nature of the required certifications.

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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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