Virginia Association of Broadcasters Legal Review

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Legal Memorandum

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Second Quarter "Transition Progress Reports" for Post-Auction Transitioning Stations Due July 10, 2018

This is a reminder for all full power and Class A transitioning stations that are changing channels in the post-Auction transition that the next quarterly Transition Progress Report—FCC Form 387—is due **July 10, 2018**. Transition Progress Reports must provide information regarding steps stations have taken toward construction of their post-Auction facilities, and transitioning stations have to file the Form 387 each quarter until the station ceases operation on its pre-Auction channel. The Form 387 will also have be filed at other specific times prior to and following the completion of construction. (Please contact your communications counsel for information about the non-quarterly deadlines for filing Transition Progress Reports.)

You may recall that two questions on Form 387 require each filer to indicate whether, as of the date the report is filed, the station expects to procure, install, and schedule all equipment and services necessary in a timely fashion to meet its transition deadline. Stations are encouraged—even if they are still on schedule to meet all applicable FCC transition deadlines—to include narrative descriptions of any potential issues that could possibly arise as their transition unfolds and progresses.

<u>30 Days</u> Left to Register Existing C-Band Downlink Earth Station Dishes!

And here's another reminder: Stations have just 30 more days—until **<u>July 18, 2018</u>**—to register their "existing" C-band earth stations. Many broadcast stations use C-band downlink earth stations to receive network and syndicated programming, but since the FCC's rules do not require receive-only earth stations to be licensed or registered, <u>many broadcasters who use such dishes have never registered them with the FCC</u>.

As we have reported previously, the FCC issued a Public Notice in April announcing a temporary freeze on C-band receive-only earth station registrations, <u>with the following important exception to the freeze</u>: Receive-only C-band dishes that were already in existence at stations—that is, downlink dishes that were constructed and operational as of April 19, 2018—can be registered if the registration application is filed **<u>by July 18, 2018</u>**.

The FCC filing fee for registering a downlink C-band earth station is $435, and the registration must be filed through the FCC's IBFS (International Bureau Filing System) filing platform. Also, if you have a current registration for your receive-only dish(es), you can make data corrections and similar modifications by July 18, 2018. The FCC has waived certain registration requirements (most significantly, the frequency coordination requirement) during this limited window to make the process faster, cheaper, and easier.

According to NAB, the Commission encourages broadcasters (and other C-band users) to register ALL of their downlink C-band antennas at a given site. Multiple co-located dishes can be identified on a single registration. Registration of all dishes provides a greater degree of interference protection against certain terrestrial microwave operations, and it is also likely to allow for reimbursement of costs associated with service restoration for each dish at such a site if the FCC at some point in the future reallocates the 3.7 – 4.2 GHz spectrum band (which earth stations use) to other users and implements a reimbursement process.

Again, the registration filing window will close on July 18, 2018.

Reimbursement Tip for Displaced LPTV/TX Licensees

Here's a tip for operators of low power television and television translator stations (collectively, "LPTV stations") who have to move to a new channel as a result of the post-Auction transition process: get detailed invoices—and save them.

As we have previously reported, many operators of LPTV stations will be eligible for some degree of expense reimbursement associated with their post-Auction moves, as Congress has allocated $150 million to defray certain displacement expenses for eligible LPTV stations. (Only stations that (i) were operating as of April 13, 2017, <u>and</u> (ii) made a filing during the Special Displacement Window—which closed June 1, 2018—will be eligible for reimbursement funding.)

Before LPTV stations can obtain any reimbursement funds, however, the FCC must launch and complete a rulemaking proceeding to determine how the reimbursement system will function and what procedures LPTV stations will need to follow. The FCC has not yet launched—let alone completed—the proceeding, and we will keep you posted on any developments in that regard.

In the meantime, however, the FCC has begun granting construction permits—and even licenses—for displaced LPTV stations that filed displacement applications during the Special Displacement Window. Between ordering equipment and paying consulting engineers, lawyers, and other vendors, many displaced LPTV station operators have already begun incurring expenses in connection with their displaced facilities. At some point in the future, the invoices for these expenses will need to be submitted to the FCC for reimbursement consideration.

In the context of the ongoing transition of full power and Class A television stations, the FCC has issued very specific guidance regarding the information that must appear on invoices to qualify for reimbursement processing. While we don't yet know for certain that the FCC will adopt identical requirements for displaced LPTV station reimbursement, the concepts at issue and the need for an audit trail are nearly identical, which means that the LPTV station reimbursement process is likely to look very similar to the full power/Class A reimbursement process.

Thus, in order to avoid having to chase down vendors for invoice details later, <u>we recommend that displaced LPTV stations require vendor invoices to meet the same requirements that vendor invoices must meet for transitioning full power and Class A television stations</u>. (These criteria are available in the FCC's Reimbursement FAQs for full power and Class A television stations.) Here are the criteria required to be included on full power and Class A transitioning station invoices:

- Name of the vendor providing the service or equipment;
- Invoice number (assigned by the vendor);
- Invoice date;
- Payment due date;
- EIN (employer identification number) or TIN (taxpayer identification number) of the vendor;
- Description of the service provided or equipment purchased;
- Total amount due; and
- Name of the station licensee <u>and</u> call sign or facility ID number.

In addition, requests for reimbursement for professional services applicable to transitioning full power/Class A television stations must be accompanied by a supporting vendor invoice that clearly identifies the period of time over which services were performed.

- *<u>Time and Materials Billing</u>*. For services performed on a "time and materials" basis, the invoice must specify the hours worked by resource, the associated rate(s) per hour, and a description of the activities performed by each resource included in the invoice. Note that project management services must be billed as time and materials and not as fixed fee.

- *__Fixed Fee Billing__*. For professional services in which the underlying vendor invoice is billed to an entity as a fixed fee, the entity must submit a copy of the vendor quote that provides a cost and activity "build-up" to support the fixed fee, in addition to the vendor invoice. Fixed fee invoices must specify the time period covered by the invoice, a description of the services rendered, and the amount due. Note that project management services must be billed as "time and materials" and not as fixed fee.

To reiterate, we cannot—at this time—guarantee that eligible displaced LPTV stations will be required to follow this same invoice guidance; nonetheless, we think it's reasonable to believe that the criteria will be virtually the same, and we believe LPTV station operators will be well-served to ensure that their vendor invoices meet these requirements now so that operators don't have to track down new versions of invoices later.

If you have any questions concerning the information discussed in this memorandum, please let us know.

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