



# Virginia Association of Broadcasters Legal Review



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## Legal Memorandum

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### November 15: Deadline to Seek Reimbursement for C-Band Earth Station Registration Application Fee

Broadcasters hoping to be reimbursed the money they paid to register their existing C-band downlink earth stations must take action by **November 15, 2018**. You'll recall that satellite operator SES established a program under which it offered to reimburse stations in the amount of the FCC's filing fee incurred in connection with earth station registration.

Those seeking reimbursement must submit to SES proof of submission/payment of the FCC registration fee at [FCCregistration@ses.com](mailto:FCCregistration@ses.com) by **November 15, 2018**. Only new earth station registrations that were carried out between July 25 and October 31, 2018, are eligible for reimbursement. Reimbursement is limited to the registration fee of \$450 or \$435 per earth station (depending on the amount of the fee paid), and is at all times subject to the availability of funds by SES.

Once SES receives the required information from a requesting entity, it will be checked by SES to determine eligibility status. If eligible, reimbursement will follow. If not eligible for any reason, SES will notify the entity. Note: reimbursement by SES may be available to U.S. C-band earth station operators—including broadcasters, cable systems, DTH providers, video programmers, MVPDs, etc.—in the contiguous United States (i.e., not in HI or AK).

Reimbursement eligibility does not depend on the size of the entity seeking reimbursement. SES invites broadcasters to email ([FCCregistration@ses.com](mailto:FCCregistration@ses.com)) or call (609-987-4300) them with questions about the filing fee reimbursement offer.

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## November 19: EAS Form Three Due

This is a reminder that broadcasters have less than a week, until **11:59 p.m. on November 19**, to file the Form Three EAS Report. The Form Three report seeks detailed, post-test data related to the [nationwide test of the Emergency Alert System](#) (“EAS”), which took place on October 3<sup>rd</sup>.

Form Three is also the report on which stations will describe any issues with receipt or retransmission of the nationwide test. Form Three (like Forms One and Two) must be filed using the FCC’s ETRS ([EAS Test Reporting System](#)).

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## FCC to Turn “On” Any Radio Station Online Public Inspection Files Still “Off” on November 15

The Commission last week released a [Public Notice](#) (“Notice”) that provided a not-so-subtle hint to any radio stations that have yet to transition to the Online Public Inspection File (“OPIF”): the time to activate the OPIF is now.

You’ll recall that all radio stations were required to transition to the OPIF no later than March 1, 2018. Some stations, however, still have not “turned on” their OPIFs. As such, the Commission issued the Notice as a “reminder to all radio broadcast stations” that compliance with OPIF obligations is mandatory. The Commission also announced that it will activate any OPIF accounts that have not yet been activated on November 15, 2018.

Any station that has yet to go “live” with its OPIF account would be well advised to do so right away, and the Notice stresses to all stations to “immediately place all required documents in the online public file” on an ongoing basis.

The Notice may also signal a tougher approach, generally, from the Commission when it comes to enforcing its OPIF rules. Whereas the Commission stated back in 2016 (when the first radio stations transitioned to the OPIF) that it would focus on ensuring that transitioning stations understand the OPIF requirements rather than imposing fines for minor failures, the recent Notice provides no such language. So, even though the Notice does not impose any new obligations on stations that have already activated their OPIF accounts, it certainly provides an opportunity for stations to ensure that their files are up-to-date.

## FCC Fines Broadcaster \$5,000 for Premature Construction

An FCC fine levied this week against a broadcaster for “premature construction” serves as a good reminder—and cautionary tale—for stations that may be making (or are planning to make) changes to their facilities, whether as a result of the post-auction repack or otherwise. In an [Order and Notice of Apparent Liability](#) (“Order”) released on November 13, 2018, the Commission found that the licensee of a low power FM station in Texas willfully and repeatedly violated Section 319(a) of the Communications Act by constructing proposed facilities prior to obtaining permission to do so.

The broadcaster had filed a construction permit application seeking Commission authority to make minor changes to its station. Before the Commission acted on the application, however, the broadcaster mounted the station’s antenna on a tower at the location in the application and attached a transmission line to the antenna. The Commission fined the station \$5,000 for this violation.

The Order highlights the Commission’s premature construction rules at a time when we are seeing significant construction activity in the broadcast industry as a result of the repack. Commission rules strictly prohibit construction of towers and installation of radio antennas without FCC authorization.

However, the Commission has in the past allowed certain other station construction activities prior to grant of a construction permit. Such sanctioned activities have included site clearance, pouring concrete footings for a tower, installation of a tower base and anchors, installation of a new power line, purchase and on-site storage (but not installation) of radio equipment, and other preliminary steps that have no intrinsic broadcast use. Any station considering pre-authorization construction activities should consult legal counsel prior to undertaking any such activities.

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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.

*Tim Nelson, Editor*

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