



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

FCC Filing Systems Will Remain Functional, TV Repack Deadlines Will Continue to Apply, and Other Details of Government Shutdown Implications for FCC Operations and Filings

In a [Public Notice \(“Notice”\) released this afternoon](#), the FCC details the impacts that the continuing, partial government shutdown will have on Commission operations. The Notice explains that the FCC will suspend most of its operations in the middle of the day on Thursday, January 3, 2019. The Notice discusses how the shutdown will impact FCC electronic filing and database systems; filing deadlines; fee payments; STAs; transaction shot clocks; and, crucially, incentive auction-related matters, among other things. The most significant items for broadcasters are discussed below.

Many Electronic Filing and Database Systems Will Remain Available. The Notice explains that several of the Commission’s electronic filing and database systems will remain available during the shutdown, including ECFS (where comments are filed), LMS (where many broadcast filings occur), CDBS (where some broadcast filings occur), CORES (the FCC’s system for FCC registration numbers and certain auction-related financial information), ULS (where wireless licensing—including STLs, TSLs, and other fixed and mobile wireless services—occurs), and the Daily Digest. However, with limited exceptions discussed below pertaining to spectrum auctions (including the broadcast incentive auction), no Commission support will be available with respect to these filing and database systems, and filings will not be reviewed or processed during the shutdown.

In other words, broadcasters will likely be able to make many of their usual electronic filings during the shutdown, but those filings won’t be reviewed or processed until after the shutdown ends. A full list of the electronic filing and database systems that will remain available,

as well as those that will be unavailable until normal agency operations resume, is contained in the Notice, a copy of which is attached to this memorandum.

Broadcasters should note that neither the OPIF system (the FCC's Online Public Inspection File system) nor COALS (the Cable Operations and Licensing System) is identified anywhere in the Notice. Because both of those platforms have repack-related implications, we are seeking clarity from the FCC Staff on the status of the OPIF and COALS during the shutdown.

In addition, the FCC's physical filing window and its mail operations will be closed for the purpose of receiving filings, except that they will remain open for the limited purpose of receiving filings related to spectrum auction activities.

Filing Deadlines (Except for Repack Deadlines!) Will Be Extended. The Notice states that the FCC will extend normal filing deadlines so that all FCC submissions that would be due during the shutdown period—including submissions due on January 3—will be due on the second day after resumption of normal operations. So, for example, if the shutdown ends on a Monday, the FCC would return to normal operations on Tuesday morning; submissions due either during the suspension of operations (including January 3) or on the Tuesday when operations resumed, would instead be due on Wednesday. (And, to avoid confusion, the Notice clarifies that January 3, 2019, will not be considered a day that the FCC is open for business at all for purposes of calculating submission deadlines.)

Note that the Notice only extends the due dates and deadlines for FCC filings that are scheduled to occur *during* the shutdown (including January 3) and/or on the day the FCC reopens. In other words, the Notice does not automatically extend the deadlines for any comment or filing periods that occur outside of the shutdown (and outside of the day the agency reopens). Instead, the Notice only states that the FCC may consider whether it is appropriate to extend other deadlines once normal operations resume.

Thus, it is important that broadcasters continue to prepare their filings with upcoming deadlines (for example, the rapidly approaching January 10 deadline for routine quarterly filings) because there is no guarantee of an extension of any deadlines. Thus, we strongly urge stations to move forward as usual to prepare (1) Issues/Programs Lists covering the period October 1 – December 31, 2018, for uploading to the OPIF by January 10; (2) Children's Television Programming Reports (FCC Form 398) covering the fourth quarter of 2018 (and file them in LMS); (3) records for upload to OPIF demonstrating compliance in fourth quarter 2018 with the commercial limits in certain children's programming; (4) OPIF documentation sufficient to demonstrate that Class A TV stations continued in fourth quarter 2018 to meet the eligibility requirements to operate as a Class A TV station; and (5) for certain noncommercial stations that conducted on-air fundraising for a third party non-profit during fourth quarter 2018, a report of such activity for upload to the OPIF.

Filings made during the shutdown period will be considered "accepted" by the FCC on the day following the day the agency returns to normal operations.

Spectrum Auction-Related Activities (Including Repack Activities, Deadlines, and Requirements) Are UNAFFECTED By the Shutdown. As mentioned, the Notice points out repeatedly that activities related to spectrum auctions, including the broadcast incentive auction, will not be affected by the shutdown and that such activities will generally continue as if the agency was operating on a normal schedule. As a result, all spectrum auction filing deadlines—including **repack deadlines**—will continue to apply, and there will be FCC staff support for and review and processing of filings related to spectrum auction activities in those electronic filing and database systems that will remain open (e.g., ECFS, LMS, CDBS, and the Auction Application System). Commission staff will be available to answer spectrum auction questions and may communicate with relevant parties regarding spectrum auction activities and requirements.

The notice directs broadcasters with repack reimbursement-related questions during the shutdown to contact the FCC via email at reimburse@fcc.gov and to email IATransitionlicensing@fcc.gov with any other repack-related questions. Stations with questions about reimbursement can also call 202-418-2009.

Repack Transition Progress Reports Are Still Due January 10. As noted above, all repack deadlines remain in effect during the shutdown, which means that fourth quarter 2018 Transition Progress Reports will still be due by January 10, 2019. The same holds true for any non-quarterly Transition Progress Reports that might come due during the shutdown.

MVPD Notifications for Transition Phase 2 Stations Must Be Mailed By January 12. As noted above, all repack deadlines remain in effect during the shutdown, which means that Transition Phase 2 stations (which must transition no later than April 12, 2019) must mail their MVPD notifications no later than January 12, 2019 (assuming a transition date of April 12; Phase 2 stations transitioning earlier than April 12 must send their MVPD notifications at least 90 days in advance of their transition date). Because repacked stations are required by the FCC's rules to use the FCC's COALS database for the mailing addresses of cable systems for the repack MVPD notifications, the availability/unavailability of COALS during the shutdown could become an issue; we are seeking further guidance from the FCC Staff about this.

Special Temporary Authority ("STA"). Any STA scheduled to expire during the shutdown will be extended to the day after regular FCC operations resume—except for STAs relating to the repack; repack STAs will continue to maintain their expiration dates even if they occur during the shutdown. In addition, broadcasters with emergency STA requests involving potential risks to life or property should contact the FCC Operations Center at 202-418-1122 during the shutdown.

Fees and Other Payments. The Notice explains that the FCC's Fee Filer System will not be available during the shutdown, and therefore no regulatory fee or application fee payments can be made through Fee Filer. However, the Notice does not extend the deadline for payments of all types; the payment deadlines are extended only to the extent a payment can only be paid through Fee Filer, in which case the applicable due date is extended in the same manner as the due dates for other regulatory filings discussed above. If a fee or payment can be paid in another manner, then payments must be timely made through US Bank (e.g., payments like civil penalties, miscellaneous debt, and installment payments).

Transaction Shot Clocks. According to the Notice, the FCC's informal 180-day time clock for review of transactions is suspended during the shutdown. As such, the individual time clock for each pending transaction is stopped as of January 2, 2019. The informal time clocks will be restarted on the business day following the day of return to normal operations.

Clearly, the Notice tackles several important items, but it does not do so in a crystal clear manner. Broadcasters would be well advised to consult with their communications counsel should they have any questions regarding how they are impacted by the government shutdown.

If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

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This Legal Review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.



PUBLIC NOTICE

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IMPACT OF POTENTIAL LAPSE IN FUNDING ON COMMISSION OPERATIONS

In the event of a continued partial lapse in federal government funding, the Commission will suspend most operations in the middle of the day on Thursday, January 3, 2019.

During a lapse in funding, the Network Outage Reporting System (NORS), the Disaster Information Reporting System (DIRS), the Public Safety Support Center (PSSC), the Licensing Management System (LMS), the Consolidated Database System (CDBS), the Electronic Comment Filing System (ECFS), the Universal Licensing System (ULS), the Electronic Document Management System (EDOCS), the Auctions Public Reporting System (PRS), the Auction Application System, the Auction Bidding System, the Daily Digest, and the Commission Online Registration System (CORES) will remain available.¹ All other Commission electronic filing and database systems will be unavailable to the public until normal agency operations resume.²

In addition, the Commission's filing window and mail operations will be open only for the purpose of receiving filings related to the spectrum auction activities authorized by section 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(j), including the broadcast incentive auction,³ and filings necessary for the protection of life and property. Content on the

¹ While ECFS, ULS, LMS, CDBS, and the Auction Application System will be available to the public, no support will be provided except as may be necessary for activities related to spectrum auctions authorized by 47 U.S.C. § 309(j), including the broadcast incentive auction. These systems will only be reviewed for information related to spectrum auction activities authorized by section 309(j), including the broadcast incentive auction; all other filings will not be reviewed or processed and will be considered accepted on the day following the day of return to normal operations. The Daily Digest will continue to be published to notify the public of releases related to spectrum auction activities authorized by section 309(j), including the broadcast incentive auction.

² The systems unavailable include, among others, the Consumer Complaint Center (including the main FCC Call Center and the American Sign Language Consumer Support Video Line), the Consumer Complaint Data Center, the Equipment Authorization System, the Electronic Tariff Filing System (ETFS), the Cellular Telephone Interference Reporting System (CTIX), the Experimental Licensing System (ELS), the International Bureau Filing System (IBFS/MyIBFS), the Section 43.62 Online Filing System, the FCC Form 477 Online Filing System, the Study Area Boundary Data Collection System, the Study Area Boundary Data Recertification System, the Tower Construction Notification System (TCNS), the Antenna Structure Registration System (ASR), the Electronic Section-106 System (E-106), Fee Filer, the Part 90 Class B Signal Booster Registration System, the Urban Rates Survey Data Collection Site, the Emergency Alert System Test Reporting System, and the 911 Reliability Certification System. This unavailability of systems will impact the work of any entities requiring access to such systems and information. For example, Telecommunications Certification Bodies will not be able to upload applications for equipment authorization or issue grants of certification without access to the Equipment Authorization System.

³ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402, 6403, 125 Stat. 156 (2012) (Spectrum Act), codified at 47 U.S.C. §§ 309(j)(8)(G), 1452.

Commission's website will remain accessible to the public, but will not be updated during the suspension of operations except as to matters related to spectrum auction activities authorized by section 309(j) and matters necessary for the protection of life and property.

Spectrum Auction Activities Authorized by Section 309(j). During a suspension of Commission operations because of a lapse in funding, Commission staff will continue to perform ongoing work related to spectrum auction activities authorized by section 309(j) of the Communications Act, 47 U.S.C. § 309(j), including the post-incentive auction broadcast transition. All spectrum auction filing deadlines will continue to apply. Commission staff will be available to answer spectrum auction questions and may communicate with relevant parties regarding spectrum auction activities and requirements. Commission staff will not be available to perform work other than the excepted activities described in this Public Notice and will not process any other materials delivered by U.S. mail to Commission facilities or any other materials received by the Commission electronically.⁴ The Commission's website will have active links to the electronic systems listed above as needed. The Appendix describes ongoing work by Commission staff related to the post-incentive auction transition that will continue during a suspension of regular Commission operations.

During a suspension of regular Commission operations because of a lapse in funding, relevant parties may contact the Commission about the Broadcast Incentive Auction Transition via email at reimburse@fcc.gov. For phone calls related to reimbursements from the Relocation Fund, parties should continue to call (202) 418-2009. For all other questions related to the Broadcast Incentive Auction, parties should email IATransitionlicensing@fcc.gov.

For matters related to spectrum auctions, including whether an activity is authorized under section 309(j) to continue during a suspension of operations, parties should call (202) 418-0660 or send an email to the appropriate auction-specific email address.⁵ For qualified bidders in Auction 101, the Auction Bidder Line and Auction Technical Support Hotline will remain available.⁶ If an activity is determined by Commission staff not to be authorized by section 309(j), staff will not take any further action on that activity during the suspension of regular Commission operations. As described below, parties should contact the FCC Operations Center at (202) 418-1122 for emergencies affecting the safety of life or the protection of property.

Extension of Filing Deadlines: We are extending the normal filing deadlines under the Commission's rules so that all Commission submissions that would be due during a suspension of operations, including submissions otherwise due on January 3, will be due on the second day of normal operations. Thus, for example, if a lapse in funding ended on a Monday, the Commission would return to normal operations on Tuesday morning. To accommodate the orderly resumption of business, submissions due either during the suspension of operations (including January 3), or on the Tuesday when operations resumed, would instead be due on

⁴ Such materials will be considered accepted by the Commission on the day following the day of return to normal operations.

⁵ For example, emails regarding Auctions 101 (Spectrum Frontiers (28 GHz)) and 102 (Spectrum Frontiers (24 GHz)), should be sent to auction101@fcc.gov or auction102@fcc.gov, and emails regarding Auction 100, AM Revitalization / FM Translators (2nd window), should be sent to auction100@fcc.gov.

⁶ The Auction Bidder Line will be available from 9:00 AM – 5:30 PM Eastern Time (ET), Monday through Friday. The Technical Support Hotline will be available at (877) 480-2101, option nine; or (202) 414-1250 from 8:00 AM – 6:00 PM ET, Monday through Friday.

Wednesday. We hereby waive the Commission's rules to the extent necessary to effectuate this extension. Further, in order to avoid confusion due to the shutdown of operations in the middle of the business day, we clarify that January 3, 2019, will not be considered a day that the Commission is open for business for the purpose of calculating submission deadlines. This extension of filing deadlines does not apply to NORs and DIRS filings and filings related to spectrum auction activities authorized by section 309(j), including the broadcast incentive auction. If the Commission is unable to restore electronic filing systems on the day the government reopens, the Commission may issue another Public Notice further extending filing deadlines.

This Public Notice affects only the due dates for filings with the Commission that are scheduled to occur during any shutdown, including on January 3, or on the day the agency reopens, as described in the preceding paragraph. We are not automatically extending the deadlines for any comment or filing periods that occur outside of this time period, but we will consider whether it is appropriate to do so once normal operations resume, and requests for extension of time will be considered consistent with the Commission's normal practice. This Public Notice also does not affect the effective date of Commission actions or other events, or dates for filings with entities other than the Commission,⁷ even if such filings are also made with the Commission.⁸ We stress that filings related to spectrum auction activities authorized by section 309(j), including the broadcast incentive auction, can and must be made by or before the previously announced deadlines.

Responsive Pleadings: To the extent the due dates for filings to which reply or responsive pleadings are allowed are extended by this Public Notice (other than those related to spectrum auction activities authorized by section 309(j), including the broadcast incentive auction), the due dates for reply or responsive pleadings shall be extended by the same number of days. As noted above, filings (other than those related to spectrum auction activities authorized by section 309(j)) submitted during the shutdown period (including January 3) or on the day normal operations are resumed will be considered accepted by the Commission on the day following the return to normal operations.⁹ Where due dates for reply or responsive pleadings to such filings would normally be counted from the date the underlying submission is filed, such due dates will be counted from the day after normal operations are resumed. Pleadings filed on January 2 will be counted as though the pleading were filed on the date that operations are resumed, to take into account that other parties may not have had access to that pleading until electronic systems become available again. Due dates for pleadings in reply or response to filings due or submitted prior to January 2 are not at this time extended beyond the day after the resumption of normal operations.

⁷ During the period that the E106 system is not in operation, FCC Forms 620 and 621 may be submitted directly to the State Historic Preservation Officer (SHPO) as provided in the Nationwide Programmatic Agreement (NPA), 47 C.F.R. Part 1, App. B, to the extent the SHPO will accept such filings. The deadlines set forth in the NPA for responses to the applicant or the SHPO shall be measured from the date of filing with the SHPO.

⁸ Any filings with fund administrators (Universal Service, Telecommunications Relay Services (TRS), North American Numbering Plan) or entities other than the Commission (such as state commissions, U.S. Territorial Governments, or Tribal Governments) still must be filed timely with such entity, even if the Commission has suspended operations. These programs will continue to operate, and services such as TRS will continue to be provided, during a shutdown. If such filings are also required to be filed with the Commission, they should be filed with the Commission pursuant to the deadlines established in this Public Notice.

⁹ See *supra* notes 1 and 4.

Special Temporary Authority (STA): Any STAs expiring during the suspension of regular Commission operations are extended to the day after regular Commission operations resume except to the extent that such STA relates to the post-incentive auction transition or other activities authorized by section 309(j) as described herein. Emergency STA requests involving potential risks to life or property will be processed through the FCC Operations Center ((202) 418-1122) while the Commission's electronic dockets and other online resources are unavailable.

Fee and Other Payments: The FCC's Fee Filer System will not be available while operations are suspended, and therefore no regulatory fee or application fee payments can be made through Fee Filer during such a period.¹⁰ No deadline for payments of any type is being extended by this Public Notice, however, except to the extent a payment can *only* be paid through Fee Filer, in which case the applicable due date is extended in the same manner as the due dates for other regulatory filings herein. Otherwise, we expect payments to be timely made through the use of US Bank. Any payments made through US Bank, such as for civil monetary penalties, miscellaneous debts, and installment payments, will continue to be processed by US Bank and will be posted to the FCC financial system effective as of the date paid. Auction-related payments, including down, final, and upfront payments, will continue to be processed consistent with deadlines and instructions to be announced by public notice.

Transaction Shot Clocks: The Commission's informal 180-day time clock for review of transactions is suspended. The individual time clock for each pending transaction is stopped on the day of review that coincides with the last full business day before the lapse in funding, January 2, 2019. The informal time clocks will be restarted on the business day following the day of return to normal operations. Thus, for example, if a lapse in funding ended on a Monday, the Commission would return to normal operations on Tuesday morning, and the time clocks would be restarted on Wednesday.¹¹

Employment Discrimination Filings. In an effort to preserve the rights employees and other aggrieved individuals may have under Federal employment discrimination statutes, the agency will receive and record receipt of discrimination complaints. Any such complaint must be submitted within forty-five (45) days of the alleged discriminatory action; anyone needing to file during the shutdown to meet this deadline should call (202) 418-1122 for further filing instructions. Please note that, while the agency will accept discrimination complaints that must be filed in order to preserve the rights of the aggrieved during a shutdown, discrimination complaints will not be investigated during the shutdown.

***Emergencies:* Finally, although the Commission will not be open for normal operations during a shutdown, it may be contacted in the case of an emergency affecting the safety of life or the protection of property through the FCC Operations Center at (202) 418-1122, which will remain staffed at all times.**

Pursuant to 47 C.F.R. § 1.3, and their respective delegated authorities, this Public Notice is issued by the Consumer and Governmental Affairs, Enforcement, International, Media, Public

¹⁰ Application fees are not required to submit a short-form application to participate in an auction.

¹¹ The Wireline Competition Bureau will release a separate Public Notice removing any necessary domestic section 214 transfer of control applications from streamlined processing, domestic section 214 discontinuance applications from the auto-grant process, and interconnected VoIP service provider numbering authorization applications from the auto-grant process during the pendency of the lapse in funding, as well as addressing other section 214 matters impacted by the lapse. 47 U.S.C. § 214; 47 CFR § 52.15(g)(3).

Safety and Homeland Security, Wireless Telecommunications, and Wireline Competition
Bureaus and the Offices of Engineering and Technology, Economics and Analytics, General
Counsel, and Managing Director.

-FCC-

APPENDIX: Broadcast Incentive Auction Activities

As more fully described below, Commission staff will continue to perform ongoing work related to the post-incentive auction broadcast transition during a suspension of regular Commission operations and all post-incentive auction filing deadlines will continue to apply. Commission staff may communicate with relevant parties to seek clarification or additional information or to answer questions related to repacking during a suspension of regular Commission operations.

Licensing for Broadcasters Being Relocated. Commission staff will continue to process broadcast applications related to the post-incentive auction transition. Commission staff is currently processing construction permit applications filed to effectuate the repack as well as applications for expanded or alternative facilities filed in two specific windows made available to the stations for this purpose. Staff will continue to process filings for special temporary authority and license to cover applications related to the post-incentive auction.

Transition Phases Modifications. Commission staff will continue to receive and process construction permits, extension requests, and requests for waivers and applications to alter transition phase deadlines. Filings should continue to be made through LMS which will be open for this purpose.

Transition Schedule Oversight. Commission staff will continue to monitor broadcaster and multichannel video programming distributor (MVPD) progress during the transition, identify and resolve transition-related problems and challenges that could endanger the transition schedule, and review and verify information. The Commission will continue to accept filing of Form 387 status reports related to the post-incentive auction transition. Filings should continue to be made through LMS which will be open for this purpose.

Displaced Low Power Television (LPTV) and TV Translators. Commission staff will continue to process applications of operating LPTV and TV translator stations displaced as a result of the post-incentive auction transition, including filings related to the mutually exclusive applications that are subject to a settlement period ending at 11:59 pm ET, January 10, 2019. Filings should continue to be made through LMS which will be open for this purpose.

Commission staff will also continue to complete a rulemaking to implement the reimbursement process for certain LPTV, TV translator, and FM stations that incur costs as a result of the post-incentive auction transition pursuant to Congress' direction in the Reimbursement Expansion Act.¹²

Reimbursement of Repacked Broadcasters and MVPDs. Commission staff will continue to receive, review for reasonableness, process, approve, and as appropriate submit for payment cost estimates and requests for reimbursement from the TV Broadcaster Relocation Fund (Relocation Fund) from eligible TV station and MVPDs involved in the post-incentive auction transition. The Commission has engaged an independent consulting firm, EY (formerly Ernst & Young), a contractor with extensive experience in television broadcast engineering services and Federal fund management (Fund Administrator), to assist the Commission in its efforts to reimburse

¹² 47 U.S.C. § 1452(j)-(n).

eligible entities, to allocate the Relocation Fund fairly across all eligible entities, and to be a prudent steward of taxpayer money in administering the TV Broadcaster Relocation Fund. The Fund Administrator will also continue to receive, review for reasonableness, and process cost estimates and requests for reimbursement during a suspension of regular Commission operations.

Review New and Revised Banking Information from Broadcasters and MVPDs. Commission staff will continue to receive, review, and verify Form 1876 “Payment Instructions from the Eligible Entity Seeking Reimbursement from the TV Broadcaster Relocation Fund” and banking information from eligible entities, i.e. broadcasters and MVPDs that will receive reimbursement of expenses related to the repack. Broadcast stations and MVPDs may revise their banking information throughout the transition period.

Eligible entities should submit new or revised Form 1876s to the FCC’s usual mailing address:

Federal Communications Commission
Travel and Operations Group
445 12th Street, SW
Washington, DC 20554

Repacked Broadcaster Consummation Notices. Commission staff will continue to receive and process consummation notices of ownership changes for broadcast television stations if a party to the consummation is an eligible entity to facilitate the reimbursement of eligible entities. Consummation filings should continue to be reported in CDBS which will remain open for this purpose. No new applications for ownership changes will be accepted during a suspension of regular Commission operations.

Consumer Educational Support for Post-Incentive Auction Transition. Commission staff will continue to provide educational support to consumers affected by the post-incentive auction transition due to the need to rescan over-the-air television sets and similar equipment. The Commission has engaged an independent public relations firm to assist the Commission in its efforts to educate consumers. The Commission has also engaged a contractor to provide a special call center to support consumer rescan activities. These contractors will also continue to develop and/or provide services to consumers.