April 9, 2021

Legal Memorandum

*In this issue, please find information about*

|  |  |
| --- | --- |
| *Reminders:* | **6-Month Warning:** [Repack Reimbursement Invoices Due October 8, 2021, for Eligible Stations that Were Assigned Completion Dates in Phases 1-5](#_Consent_Decree_Imposes)  **April 19, 2021:** [FCC Filings Due for C-band Earth Station Operators Listed on FCC’s Inactive / Nonresponsive List](#_April_19,_2021:) |
| *Headlines:* | [FCC Considering Changes to EAS System Per Congressional Command](#_FCC_Considering_Changes) |

# 6-Month Warning: Repack Reimbursement Invoices Due October 8, 2021, for Eligible Stations that Were Assigned

# Completion Dates in Phases 1-5

In a [Public Notice](https://docs.fcc.gov/public/attachments/DA-21-404A1.pdf) released yesterday (the “Notice”), the FCC issued a reminder that broadcasters who are eligible for reimbursement as part of the now-concluded spectrum repack and who transitioned in Phases 1-5 have only **6 months left** in which to submit reimbursement invoices to the FCC. As you likely recall, last fall the Commission [established](https://docs.fcc.gov/public/attachments/DA-20-1171A1.pdf) firm deadlines by which eligible broadcasters affected by the spectrum repack must submit all remaining reimbursement invoices and other documentation. The deadlines vary based on stations’ assigned transition Phases, as well as by type of broadcast service, as follows:

* **October 8, 2021:** Deadline for final reimbursement submissions from the more than 500 repacked stations assigned completion dates in Phases 1–5.
* **March 22, 2022:** Deadline for final reimbursement submissions from the approximately 440 repacked stations assigned completion dates in Phases 6–10.
* **September 5, 2022:** Deadline for final reimbursement submissions from FM, LPTV, and translator stations, as well as others.

The deadlines are calibrated to try and provide FCC staff sufficient time to process requests prior to the Reimbursement Fund’s reimbursement deadline that is required by statute: on **July 3, 2023**, any unobligated amounts currently earmarked for reimbursement will be released and deposited into the U.S. Treasury.

According to the Notice, as of April 6, 2021, only 28 repacked stations and 86 LPTV and/or TV translator stations have initiated interim close-out procedures (i.e., the first of the FCC’s two-step close-out process to complete participation in the Reimbursement Fund). And 341 entities have not submitted any invoices at all, including 8 repacked stations, 168 LPTV and/or TV translator stations, and 10 FM stations. As compared to the number of stations affected by the repack, the Notice emphasizes that “[b]ecause 953 repacked stations are operating on their final facilities but only 28 repacked stations and 86 LPTV/translator stations have initiated interim close-out procedures, we are concerned that many entities may be unnecessarily delaying making final submissions to the program and initiating interim close-out procedures.”

In light of those concerns—and although the October 8, 2021, deadline for repacked stations assigned completion dates in Phases 1–5 is still approximately sixth months away—the FCC has emphasized that **broadcasters should submit reimbursement requests and initiate close‑out procedures “as early as possible.”** Expenses are reimbursable when incurred, and therefore can be submitted even while final construction remains ongoing. As a corollary, the Notice also reemphasizes that the Commission does “not anticipate a need to grant extensions of the assigned invoice submission deadlines” for reimbursement, and extension requests will only be granted in extreme circumstances outside of the requesting entity’s control, such as local zoning or a “force majeure” event.

Finally, each broadcaster seeking reimbursement must remember to retain all documentation relating to reimbursement for a period ending 10 years after the date on which the broadcaster receives final payment from the Reimbursement Fund. All reimbursement submissions are subject to Commission review to prevent waste, fraud, and abuse, and therefore all broadcasters seeking reimbursement may be selected for audits, data validations, and site visits at any time—i.e., before or after a station has received reimbursement.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# April 19, 2021: Filing Deadline for C-band Earth Station Operators Listed on FCC’s Inactive / Nonresponsive List

**April 19, 2021**, marks the deadline by which “inactive” and “unresponsive” incumbent earth station operators must file notices in the C-band incumbency docket or risk losing their authorization and incumbent status. Please read on for further information and context.

*Background*. You may recall that, against the backdrop of the ongoing C-band transition, earlier this year the FCC’s International Bureau issued a [Public Notice](https://docs.fcc.gov/public/attachments/DOC-369398A1.pdf) (the “Notice”) announcing that the C-band “Relocation Coordinator” (i.e., RSM US LLP, or RSM) had filed two important lists: (1) [one](https://docs.fcc.gov/public/attachments/DOC-369398A3.xlsx) list comprised of earth station operators (i.e., broadcasters with C-band downlink dishes) whose earth station(s) qualify for incumbent status but whom RSM and/or the applicable incumbent C-band satellite operator was unable to contact regarding the forthcoming C-band transition; and (2) [one](https://docs.fcc.gov/public/attachments/DOC-369398A2.xlsx) list comprised of earth station operators who have one or more earth station antennas (i.e., C-band downlink dishes) that qualified for incumbent status but were reported as no longer operational.

The Notice requests that all earth station operators with qualifying incumbent earth stations review these lists and, if any operator discovers that it appears on either list when it believes that it should not, file by April 19, 2021, a notice with certain required information in the C‑band incumbency docket (IB Docket No. 20-205).

**The Notice indicates that operators who appear on either list but who do not make this required filing will: (1) have the earth station authorizations that appear in the lists terminated by operation of law; (2) have those authorizations terminated in the International Bureau Filing System; and (3) have their listed earth stations removed from the incumbent earth station list, thus forfeiting interference protection and the possibility of reimbursement for the costs of transitioning those earth station in the forthcoming C-band transition.**

*How Can I Check the Lists?* The lists are currently available as “[Attachment A](https://docs.fcc.gov/public/attachments/DOC-369398A2.xlsx)” (the “Inactive List”) and “[Attachment B](https://docs.fcc.gov/public/attachments/DOC-369398A3.xlsx)” (the “Unresponsive List”)—in either Microsoft Excel or PDF format—at the following link: <https://www.fcc.gov/document/ib-identifies-inactiveunresponsive-c-band-incumbent-earth-stations>. Both lists are arranged in alphabetical order. However, we recommend using several different search methods to confirm that none of your earth stations appears on the list(s), such as searching each list not just for your registrant/licensee name (the “ApplicantName” field), but also for you earth station’s call sign (the “Callsign” field) and registration number (the “FileNumber” field).

*What if One or More of My Earth Stations Incorrectly Appears on the Lists?* Again, per the Notice, no later than April 19, 2021, you must submit a filing with required information in the FCC’s IB Docket No. 20-205. The Notice indicates that such filing must include at least the following information:

* A statement that your earth station antenna(s) that appears on the list remains operational.
* For those operators who appear on the “Unresponsive List”:
  + A statement that your facilities intend to participate in the C-band transition.
  + A statement identifying the satellite from which each of your earth station antennas that appears on the list receives service.

*What if One or More of My Earth Stations Appear(s) on the Inactive List, and I Agree that the “Inactive” Classification is Correct?* First, double-check that you agree with the “Inactive” classification. **For the rest of this paragraph to apply to you, you must be an earth station operator with an earth station that (a) appears on the “Inactive List,” (b) has, in fact, ceased operations, and (c) will continue to be non-operational for more than 90 days.** If you’ve double-checked, and agree that this extremely limited circumstance applies to you, then the Notice directs you to make a filing in the International Bureau Filing System to remove those antennas as “no longer operational,” as required by FCC rule. However, we strongly recommend that you contact your communications counsel before making such a filing.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# [FCC Considering Changes to EAS System Per Congressional Command](#_Repack_Status_Update;)

The FCC recently issued a [Notice of Proposed Rulemaking and Notice of Inquiry](https://docs.fcc.gov/public/attachments/FCC-21-36A1.pdf) (separately, the “NPRM” and “NOI”; collectively, the “Notices”) “to explore opportunities to improve the way the public receives emergency alerts on their mobile phones, televisions, and radios.” Among the various issues the Notices raise, several address Congressional commands issued in legislation earlier this year, including for the FCC to adopt rules to ensure that mobile devices cannot opt out of receiving Wireless Emergency Alert System (“WEA”) alerts from the Administrator of FEMA and to seek comment on whether it is technically feasible to deliver Emergency Alert System (“EAS”) alerts through the internet, including through streaming services.

The NPRM and NOI raise too many technical issues to exhaustively catalog in this legal memorandum; the items that are likely to be of greatest interest to broadcasters are those related to (1) “false” EAS alerts and (2) the feasibility of deploying EAS through the internet. Insofar as “false” EAS alerts are concerned, the NPRM proposes adopting rules that would permit FEMA and state, tribal, local, and territorial governments to notify the FCC when a “false” EAS (or WEA) alert is transmitted. This new, permissive governmental reporting rule, if ultimately adopted, would supplement the existing FCC rule that requires broadcasters (and all other “EAS Participants”) to report “false” EAS alerts to the FCC Operations Center at FCCOPS@fcc.gov. Relatedly, the NPRM notes that neither the FCC’s rules nor relevant legislation define what, precisely, constitutes a “false” EAS alert for purposes of the reporting requirements, and therefore seeks comment on whether and/or how to define such alerts.

Turning to the NOI’s internet- and streaming-specific inquiries, the FCC requests comment on an appropriate definition of “streaming” services, including whether to adopt the current definition provided by the 3rd Generation Partnership Project, or 3GPP: “the ability of an application to play synchronized media streams like audio and video streams in a continuous way while those streams are being transmitted to the client over a data network.” The NOI also seeks comment on multiple technical issues related to any potential deployment of EAS to streaming services, including how to implement safeguards to prevent the transmission of inauthentic alerts; how (if at all) streaming services could geographically differentiate between end-users so that only relevant EAS alerts are received; and whether existing EAS hardware could interface with streaming services or if new, software-based EAS equipment would need to be implemented instead.

Comments on the NPRM are currently due April 20, with reply comments due May 4. Comments on the NOI are currently due May 14, with reply comments due June 14.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Tim Nelson, Editor*

[BROOKS, PIERCE, McLENDON,](http://www.brookspierce.com/)

[HUMPHREY & LEONARD, L.L.P.](http://www.brookspierce.com/)

[Mark J. Prak](mailto:mprak@brookspierce.com)   
[Marcus W. Trathen](mailto:mtrathen@brookspierce.com)  
[David Kushner](mailto:dkushner@brookspierce.com)  
[Coe W. Ramsey](mailto:cramsey@brookspierce.com)  
[Stephen Hartzell](mailto:shartzell@brookspierce.com)

[Julia C. Ambrose](mailto:jambrose@brookspierce.com)

[Elizabeth E. Spainhour](mailto:espainhour@brookspierce.com)

[J. Benjamin Davis](mailto:bdavis@brookspierce.com)

[Timothy G. Nelson](mailto:tnelson@brookspierce.com)

[Patrick Cross](mailto:pcross@brookspierce.com)

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

© 2021 Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.