October 8, 2021

Legal Memorandum

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# **TODAY, October 8, 2021:** Deadline to Submit Reimbursement Invoices for Stations Assigned to Repack Phases 1–5

**TODAY, October 8, 2021, is the deadline for all broadcasters who are eligible for reimbursement as part of the now-concluded spectrum repack and who were assigned to repack Phases 1–5 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:

* **TODAY, 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 statutorily mandated deadline applicable to the Reimbursement Fund: on July 3, 2023, any unobligated amounts currently earmarked for reimbursement will be released and deposited into the U.S. Treasury.

Recall that expenses are reimbursable when incurred, and therefore can be submitted even while final construction remains ongoing. Importantly, the Commission has taken a hard stance on the current reimbursement deadlines, emphasizing that it does “not anticipate a need to grant extensions of the assigned invoice submission deadlines” for reimbursement, and that 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.

As a final reminder, recall that each broadcaster seeking reimbursement must 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 request submissions are subject to Commission review to prevent waste, fraud, and abuse; 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.

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# Biennial Ownership Reporting Window NOW OPEN—All Broadcasters Must File By December 1, 2021

The reporting window has officially opened for broadcasters to file their required biennial ownership reports. All licensees of commercial and non-commercial full power television, Class A television, low power television, AM radio, and FM radio stations must file their biennial ownership reports **between now and December 1, 2021**.

And, as indicated in an October 1, 2021, [Public Notice](https://docs.fcc.gov/public/attachments/DA-21-1239A1.pdf) (the “Notice”), the FCC is reminding broadcasters here at the outset of the filing window about the importance of ensuring the reports are completed fully and on time. The Notice, in addition to providing general information regarding filing procedures and requirements, specifically warns that **“**Commission staff intends to pursue enforcement actions against licensees that fail to file their biennial ownership reports in a timely or complete manner.” Based on our review, this type of language has not appeared in recent biennial ownership reporting Public Notices and likely signals that the current Commission staff will be actively reviewing broadcasters’ filings for timeliness and completeness. Accordingly, Stations may wish to begin preparing for this year’s filing well before the window closes on December 1, and may wish to consult with their communications counsel to ensure timely, complete, and accurate filings.

The reporting form solicits information that is current “as of” October 1 of this year regarding the ownership of each broadcast licensee and its “attributable parties.” The term “attributable parties” includes, to the extent applicable, the following individuals and entities with respect to each broadcast licensee company and all parent companies and intermediary companies: corporate officers, directors, trustees, owners of stock accounting for five percent or more of voting stock, partners, limited partners, LLC managers and members, and certain lenders and other parties that hold same-market media interests.

The reporting information generally includes items such as: a list of and demographics regarding all attributable parties and their respective positions with or interest(s) in the respondent and its broadcast subsidiaries and intermediary companies, if any; a list of various currently effective contracts or instruments to which the respondent or its licensee subsidiaries are a party; and the capitalization of the respondent and its licensee and intermediary subsidiaries.

In addition, the Commission recently hosted an information session on filing Biennial Ownership Reports; a recording of the session may be viewed on the Commission’s YouTube page [here](https://www.youtube.com/watch?v=KHKnRR1KQJw).

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# [International Bureau Releases New List of “Inactive/Non-Operational” C-Band Earth Stations](#_FCC_Proposes_Additional)

 As the C-band transition continues to move forward, the FCC’s International Bureau has released [another, new list of incumbent C-band earth stations](https://www.fcc.gov/document/identification-c-band-earth-station-antennas-may-be-inactive) that “may be inactive or otherwise not operational.” Inclusion on the list may have financial and other ramifications for broadcasters with earth stations (e.g., C-band downlink dishes) who are taking part in the current transition as “incumbents.” **Broadcasters with earth stations appearing on the list must file notices in the C-Band incumbency docket by December 27, 2021, or risk losing their authorization and incumbent status**. Please read on for further information and context.

*Background*. You may recall that in several of our recent legal memoranda we reported that the C-band “Relocation Coordinator” (i.e., RSM US LLP, or RSM) was conducting outreach to broadcasters with earth stations who appeared to have one or more “antennas for which none of the C-band satellite operators . . . has taken responsibility for implementing the transition.” Ultimately, that outreach by the Relocation Coordinator resulted in the FCC’s International Bureau issuing a Public Notice back in July 2021 in which it announced that it received from RSM a list of incumbent earth stations that may no longer be operational, or which RSM had been unable to contact regarding the forthcoming C-band transition. Broadcasters whose earth stations appeared on [that prior (released in July) list](https://www.fcc.gov/document/ib-identifies-inactive-c-band-incumbent-earth-station-antennas) must submit any necessary filings by October 21, 2021, in order to retain incumbent status.

Now, the International Bureau has released **another**, new [Public Notice](https://docs.fcc.gov/public/attachments/DA-21-1206A1.pdf) (the “Notice”) providing a supplemental list of earth stations that it asserts may not be “operational” for one of three reasons: (1) the C-band antennas (e.g., broadcaster downlink dishes) are inactive; (2) authorizations list more C-band antennas than are currently operational at a site (e.g., 10 antennas are registered, but only 8 antennas are present at the site); or (3) operational antennas are present but do not receive in the C-band (e.g., when a broadcaster’s downlink dish receives in the Ku‑band, rather than the C-band).

The Notice requests that all earth station operators (including broadcasters) with qualifying incumbent earth stations review the new list and, if any operator discovers that it appears on the list when it believes that it should not, file by December 27, 2021, a notice with certain required information in the C‑band incumbency docket (IB Docket No. 20-205). (And, as noted above, Broadcasters whose earth stations appeared on [the **prior** list (released in July)](https://www.fcc.gov/document/ib-identifies-inactive-c-band-incumbent-earth-station-antennas) still must submit any necessary filings related to that list by October 21, 2021.)

**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 stations in the forthcoming C-band transition.**

*How Can I Check the New List?* The new list is currently available as an Attachment—in either Microsoft Excel or PDF format—at the following link:

<https://www.fcc.gov/document/identification-c-band-earth-station-antennas-may-be-inactive>

Be aware that the Excel spreadsheet includes **four separate tabs**, each of which must be reviewed independently to determine whether your earth station appears in any of the spreadsheet’s four categories. The spreadsheet’s four categories are each organized in alphabetical order by applicant name. However, we recommend using several different search methods to confirm that none of your earth stations appears on any of the list’s four tabs/categories, such as searching each tab/category 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 New List?* Again, per the Notice, no later than December 27, 2021, you must submit a filing with required information in the FCC’s IB Docket No. 20-205. Such filing must include at least the following information:

* A statement affirming that your earth station antenna(s) that appear on the list remain operational in the 3.7 GHz band.
* A statement affirming that you intend for your earth station antenna(s) that appear on the list to participate in the C-band transition.

*What if One or More of My Earth Stations Appear(s) on the New List, and I Agree that the “Inactive”/“Non-Operational” Classification is Correct?* First, double-check that you agree with the “Inactive”/“Non-Operational” classification. **For the rest of this section to apply to you, you must be an earth station operator with an earth station that:**

1. appears on one of the lists, AND
2. either has, in fact, ceased operations; OR was/is incorrectly registered (i.e., there is no actual dish currently associated with the antenna identified on the lists); OR incorrectly identifies an antenna as receiving in the C-band when the antenna, in fact, receives in another frequency range (e.g., the Ku- or Ka-band), AND

(c) will continue to be non-operational for more than 90 days.

If you’ve double-checked, and agree that such extremely limited circumstances apply to you, then the Notice directs you to make a filing in the International Bureau Filing System to correct the information in your registration. However, we strongly recommend that you contact your communications counsel before making such a filing.

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*Tim Nelson, Editor*

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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.

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