

Incentive Auction Set to Begin March 29

The FCC has released a Public Notice to schedule the date for commencing the incentive television spectrum auction and to announce in 150+ pages a myriad of procedural rules that will govern it. The auction will begin on March 29, 2016. The event will include both a reverse auction in which full power and Class A television broadcasters can elect to sell their spectrum rights and a forward auction in which wireless service providers can bid on rights to use the spectrum being vacated by television stations, reconfigured into pairs of 5-MHz blocks for wireless uses. The amount of spectrum changing hands is contingent upon the number of television broadcasters who choose to give up some or all of their spectrum rights. Television stations whose licensees choose to remain in broadcasting generally will be “repacked” into the spectrum that is not reallocated to wireless services (although some stations may have to be assigned to channels in the 600-MHz band, mingled with the wireless licenses). The FCC’s models anticipate that the licensees in a range anywhere between 40% and 70% of all existing television stations will voluntarily decide to relinquish some part of their spectrum usage rights. The Commission says that a chief goal of its actions announced in the Public Notice is to attract a high level of broadcaster participation. What follows is an outline of the aspects of the

auction that will be of most interest to broadcasters.

Reverse Auction

To qualify to bid in the reverse auction, television licensees will have to submit applications by a deadline to be set in a subsequent public notice. Qualifying stations will be able to select from three possible options to relinquish their spectrum rights. These are: (1) go off the air; (2) move to a low VHF channel (available only to UHF and high VHF stations); or (3) move to a high VHF channel (available only to UHF stations). Stations can also opt to share a channel with another station. These stations would submit a commitment to go off the air because that would have the same effect on spectrum availability as going completely silent. As the auction progresses, a bidder may be able to change its strategy and move along a one-way hierarchy of bid options of diminishing levels of useful spectrum relinquishment, at reduced prices. Licensees that decide to retain all of their spectrum rights would not submit an application or participate in the auction. The contents of all applications, including an application’s very existence and the relinquishment option(s) selected by the applicant, will be confidential for a period of two years following the auction.

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Regulatory Fees Due September 24; Future Refinements Proposed

The FCC has set September 24 as the due date for payment of fiscal year 2015 regulatory fees imposed on broadcasters and other entities regulated by the Commission. The Communications Act requires the FCC to assess annual fees from most of the entities that the Commission regulates for the purpose of recouping the cost of operating the agency. For the fiscal year ending September 30, 2015, the Commission must collect \$339,844,000 in such fees. The chart on page 5 shows the amount for most of the fees relevant to broadcasters for this year. These figures are shown in comparison to the fees imposed in 2014, and those that were proposed earlier for this year in a *Notice of Proposed Rulemaking* in Docket 15-121. Fees for full power television stations were increased slightly over those proposed. Fees for radio stations remained constant from 2014. Broadcasters can determine the precise fee for specific facilities

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This is to preserve the ongoing business integrity of stations that file applications but are not ultimately selected to relinquish spectrum rights.

Reverse Auction Pricing

At least 60 days prior to the deadline to file applications, the FCC will publicly announce opening price offers for each bid option for each station eligible to participate in the auction. Opening price offers will be established with a formula that takes two factors into account: (1) a base “clock price” of \$900 per unit of “volume” (explained below) for a UHF station committing to go off the air; and (2) a station-specific “volume” factor that gives equal weight to the population in the station’s interference-free service area and the number of constraints the station would impose on the auction’s system to repack other stations. In other words, a station’s “volume” will be measured by units whose quantity will increase in proportion to the population covered and the number of other stations that it would preclude in the repacking process. The Commission will set out the formula for calculating volume in the subsequent public notice. The price offered will be entirely a function of the value of the station’s spectrum for the objectives of the auction and completely unrelated to the enterprise value of the station as a television broadcast facility.

The opening round price offered to a UHF station willing to go silent will be the base clock price (i.e., \$900) times the number of units of volume that its facility represents. Thus, for example, a UHF station willing to go silent and deemed by the FCC to be worth 10,000 units of volume would receive an opening round bid of \$9,000,000. Opening clock prices per unit of volume for other categories of relinquishment will be as follows:

UHF station to low VHF	75% of base, or \$675
UHF station to high VHF	40% of base, or \$360
High VHF station going silent	60% of base, or \$540
High VHF station to low VHF	35% of base, or \$315
Low VHF station going silent	25% of base, or \$225

Relinquishment Options

With these opening round offers on the table, the licensee for each eligible station will decide whether to submit an application to bid at the offered price. The applicant must select a relinquishment option. This commitment will constitute an irrevocable offer by the applicant to relinquish the relevant spectrum usage rights in exchange for the opening price offer for that bid option if accepted by the Commission. If a station fails to submit an application and make a commitment by the filing deadline for the opening round, it will not be eligible to participate in the auction at any stage.

Due to the limited availability of VHF channels and the technical constraints on repacking, the auction may not be able to accommodate every station that commits to move to a VHF channel. Therefore, to increase the likelihood of participation for more stations, an applicant that commits to move to a VHF channel as its preferred option may also select a fall-

back option if it so chooses. The auction process will attempt to accommodate the first choice option if possible. If that is not possible, the system will attempt to accommodate the second choice, if one was indicated. If a station cannot be accommodated in its first or second choice option, it will be designated to be repacked in its pre-auction band and will not participate in the reverse auction bidding.

Clearing Targets

The Commission will rely on the initial commitments from broadcasters as the basis for generating the “initial clearing target” -- that is, the estimate for the amount of spectrum that the auction will repurpose from broadcasting to wireless services. The post-auction band plan for the 600-MHz band calls for wireless licenses for pairs of 5-MHz blocks (one each for uplinking and downlinking). The uplink blocks will begin at the present television channel 51 (698 MHz). Below the uplink blocks there will be a duplex gap band of 11 MHz. Below that will come the downlink blocks, which will be separated from the remaining active television channels by another guard band. The number of pairs of blocks available will depend on how much spectrum broadcasters are willing to relinquish. The possible scenarios modeled by the Commission begin with a minimum of 42 MHz being repurposed to accommodate two pairs of 5-MHz blocks for wireless use. That would leave the existing television band intact from present television channel 44 downward. At the other extreme, the scenario for maximum repurposing would reallocate 144 MHz -- all frequencies down to the present television channel 26 (except channel 37 which will remain allocated to radio astronomy), permitting 12 pairs of wireless 5-MHz blocks.

Spectrum will be sold in the forward auction to the wireless operators in the paired blocks for geographic areas known as Partial Economic Areas, or “PEAs.” In attempting to clear PEAs of television signals and develop an efficient provisional television assignment plan, the Commission’s primary goal will be to minimize impairments to wireless signals in each PEA, giving priority to those with greater weighted populations calculated on the basis of a complex formula. Wireless licenses will be classified by the level of signal impairment they would be predicted to experience. Where the level of impairment, calculated as the sum of the percentages of weighted population affected by interference in the uplink and the downlink, is no more than 15%, the license will be classified as Category 1. The range of impairment for a Category 2 license will be from 15% to 50%. Obviously, impaired wireless licenses will be less valuable to buyers and will be less effective for the development of wireless services.

The chief source of such impairments is likely to be television stations that have to be assigned to co-channels and adjacent channels with wireless licenses in the 600-MHz band. The wireless operation may not interfere with the television station’s protected service area, and at the same

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time must accept interference from the broadcast station. Television stations will be assigned to these frequencies only as a last resort when no other channel is available. (No television stations will be assigned to channels 50 or 51 so as to avoid conflicts with wireless operations in the 700-MHz band.) The Commission says it needs this flexibility in order to accommodate the degree of market variation necessary to provide more wireless spectrum in areas where it is anticipated there will be greater demand. The clearing target will be selected with what the Commission describes as an appropriate trade-off between the amount of spectrum cleared and the overall impairment level. If aggregate impairments equal or exceed the equivalent of one spectrum block nationwide, the system would automatically move to the next lower clearing target. The Commission is confident that the “vast majority of PEAs will have no impaired blocks.”

Reverse Auction Bidding

Upon completion of processing the initial commitments from broadcasters, the Commission will establish the initial spectrum clearing target and the initial provisional television assignment plan. The Commission will send a confidential letter to each reverse auction applicant to inform it that either (1) it is qualified to participate in the clock phase of the reverse auction; (2) that it is not qualified because no initial relinquishment commitment was made and the station will be designated to be repacked in its pre-auction band; (3) the commitment(s) made by the station could not be accommodated and therefore the station will be designated to be repacked in its pre-auction band; or (4) the station’s channel was not needed and it will be designated to be repacked in its pre-auction band.

When the reverse auction begins, each participating bidder will bid to sell its spectrum usage rights at the opening price for that station’s currently held relinquishment option. As long as the auction system can find a feasible channel assignment for that station in its pre-auction band, the system will continue to make new, reduced price offers to that station. The licensee can submit the lower bid offered, switch to a different bid option (if available), or drop out of the bidding. If the licensee bids the new lower price, the system will continue to check for a feasible channel assignment in the station’s pre-auction band. The price will continue to decrease as long as a feasible channel can be found. In each round, the base clock price (i.e., the number to be multiplied by the station’s volume value) will be reduced by the larger of (1) five percent of the current base clock value, or (2) one percent of the opening base clock price (which would be \$900 for a UHF station going silent).

The auction system will establish a queue for processing the bids of stations bidding in the current round. The system will order stations in descending order of the per-volume difference between the station’s current price and its new price offer. That is, stations will be sequenced in descending order of their cost to the system. The system

will then sequentially conduct feasibility checks for each station in the queue to find the first station that can feasibly be assigned a channel in its pre-auction band. The system will give that station a provisional channel assignment, and move on to the next feasible station in the queue. The reverse auction stage will conclude when all of the feasible stations have been given provisional assignments. All other participating stations for which there is no feasible channel assignment will then be committed sell at their current bids. At that point, every participating station will either have its currently held option tentatively accepted for a price, or it will be provisionally assigned to a feasible channel in its pre-auction band.

Forward Auction

On the second business day after the reverse auction stage ends, the first stage of the forward auction will begin. The forward auction will more nearly resemble other spectrum auctions that the FCC has conducted. Applicants will bid on generic blocks of spectrum with ascending bids. The Commission has adopted a stopping rule for the forward auction that establishes reserve price conditions, that when met, will determine that the auction will conclude in the current stage with the current clearing target.

The reserve price formula has two components. The first of these is intended to ensure that the winning bids will reflect competitive prices. This condition will be satisfied if the proceeds of the auction meet a certain level derived from a formula based on a benchmark price of \$1.25 per MHz-pop, taking into consideration the prices in the largest PEAs and the total amount of spectrum cleared for wireless use. A license’s MHz-pop is the population of the PEA multiplied by the license’s bandwidth as measured in megahertz. Assuming that the second component is also satisfied, the auction will conclude at the end of the stage in which this level of revenue is achieved.

The second component of the reserve price mechanism is the sum of the costs that must be covered. There are three elements of cost that must be met: (1) the payments to be made to broadcasters for their winning bids in the reverse auction, (2) the FCC’s administrative costs in conducting the auction, which are estimated to be \$226 million, and (3) the cost of repacking and relocating the television stations that remain on the air after the auction – for which Congress allocated \$1.75 billion.

The first stage of the forward auction will conclude when applicants no longer place new bids. If the proceeds at that point do not satisfy both components of the reserve price, the process will recommence with another stage of the reverse auction with a smaller clearing target. Fewer television stations will have to be bought out to accommodate the smaller clearing target, resulting in reduced cost for the reverse auction. The forward auction stage that follows will have fewer licenses to offer. That decrease in supply will hopefully be met by more robust demand. Stages

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DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

- October 1, 2015 Deadline to place EEO Public File Report in public inspection file and on station's Internet website for all nonexempt radio and television stations in **Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, Mariana Islands, Missouri, Oregon, Puerto Rico, Virgin Islands and Washington.**
- October 1, 2015 Deadline to file Biennial Ownership Report for all noncommercial radio stations in **Alaska, American Samoa, Florida, Guam, Hawaii, Mariana Islands, Oregon, Puerto Rico, Virgin Islands and Washington,** and noncommercial television stations in **Iowa and Missouri.**
- October 1, 2015 Deadline to file EEO Broadcast Mid-term Report for all radio stations in employment units with more than 10 full-time employees in **Florida, Puerto Rico and Virgin Islands.**
- October 1, 2015 Deadline for all broadcast licensees and permittees of stations in **Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, Mariana Islands, Missouri, Oregon, Puerto Rico, Virgin Islands and Washington** to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s). Stations for which this is the license renewal application due date will submit this information as a part of the renewal application.
- October 10, 2015 Place Issues/Programs List for previous quarter in public inspection file for all full service radio and television stations and Class A TV stations.
- October 13, 2015 Deadline to file quarterly Children's Television Programming Reports for all commercial television stations.
- December 2, 2015 Deadline for all commercial radio and television stations to file Biennial Ownership Report with data accurate of as October 1.

Deadlines for Comments In FCC and Other Proceedings

Docket	Comments	Reply Comments
(All proceedings are before the FCC unless otherwise noted.)		
Docket 15-94; NPRM EAS event codes for extreme weather	Sep. 9	Sep. 24
RM-11753; Petition for Rulemaking Improvements for Low Power FM		Sep. 14
Docket 15-158; NOI Competition in the market for delivery of video programming		Sep. 21
Docket 15-146; NPRM White space devices in vacant UHF channels	Sep. 30	Oct. 30
Docket 15-121; FNPRM Regulatory fees	FR+30	FR+60
Docket 15-216; NPRM Good faith negotiations in retransmission consent agreements	FR+60	FR+90

FR+N means the filing deadline is N days after publication of notice of the proceeding in the Federal Register.

Cut-Off Date for AM and FM Applications to Change Community of License

The FCC has accepted for filing the AM and FM applications identified below proposing to change each station's community of license. These applications may also include proposals to modify technical facilities. The deadline for filing comments about any of the applications in the list below is **October 9, 2015**. Informal objections may be filed anytime prior to grant of the application.

Present Community	Proposed Community	Station	Channel	Frequency
Brantley, AL	Goshen, AL	WAOQ	262	100.3
North Shore, CA	Bermuda Dunes, CA	KVGH	286	105.1
Redlands, CA	Grand Terrace, CA	KCAL(AM)	N/A	1410
San Andreas, CA	Linden, CA	KARQ	207	89.3
Sandpoint, ID	Dear Park, WA	KPND	237	95.3
Clinton, MS	Kearney Park, MS	WHJT	228	93.5
Cloudcroft, NM	Capitan, NM	KNMB	244	96.7
Lawrenceburg, TN	Pulaski, TN	WKSJ-FM	294	106.7
Leakey, TX	Concan, TX	KHJQ	226	93.1
Wheeler, TX	Carter, OK	KOGC	202	88.3
Hoquiam, WA	Raymond, WA	KBSG	211	90.1
Grafton, WV	Loch Lynn Hts, MD	WDKL	240	95.9



DEADLINES TO WATCH



Rulemakings to Amend FM Table of Allotments

The FCC is considering amendments to the FM Table of Allotments to add and/or delete (indicated with a "D") the following channels. The deadlines for filing comments and reply comments are shown.

Community	Channel	MHz	Comments	Reply Comments
Grant, OK	286A	105.1	Aug. 31	Sep. 15
Pilot Point, TX	285C0(D)	104.9	Aug. 31	Sep. 15
Pilot Point, TX	285C1	104.9	Aug. 31	Sep. 15

Paperwork Reduction Act Proceedings

The FCC is required under the Paperwork Reduction Act to periodically collect public information on the paperwork burdens imposed by its record-keeping requirements in connection certain rules, policies, applications and forms. Public comment has been invited about this aspect of the following matters by the filing deadlines indicated.

Topic	Comment Deadline
Political broadcasting requirements for Satellite Radio	Sep. 8
Television channel sharing	Sep. 14
EEO Policy, Section 73.20800	Sep. 14
International broadcast station license renewal application, Form 422-IB	Sep. 21
EAS Electronic Test Reporting System	Sep. 22
Antenna Structure Registration, Form 854	Sep. 22

**DEADLINE FOR PAYING
FY 2015 REGULATORY FEES
SEPTEMBER 24, 2015**

FCC REGULATORY FEES FOR FISCAL YEAR 2015

(See story on page 1.)

Type of Authorization	Actual FY2014	Proposed FY2015	Actual FY2015
Full Power Television			
Markets 1-10	\$ 44,650	\$ 46,450	\$ 46,825
Markets 11-25	42,100	42,850	43,200
Markets 26-50	26,975	27,450	27,625
Markets 51-100	15,600	16,150	16,275
Remaining Markets	4,750	4,800	4,850
Construction Permit	4,750	4,800	4,850
Satellite Television Station (all markets)	1,550	1,550	1,575
Low Power TV, TV/FM Translators and Boosters	410	435	440
Satellite Earth Station	295	340	310
AM Radio Construction Permit	590	590	590
FM Radio Construction Permit	750	750	750

FY 2015 REGULATORY FEES FOR RADIO (UNCHANGED FROM FY 2014)

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM A, B1, C3	FM B,C,C0,C1,C2
0-25,000	\$ 775	\$ 645	\$ 590	\$ 670	\$ 750	\$ 925
25,001-75,000	1,550	1,300	900	1,000	1,500	1,625
75,001-150,000	2,325	1,625	1,200	1,675	2,050	3,000
150,001-500,000	3,475	2,750	1,800	2,025	3,175	3,925
500,001-1,200,000	5,025	4,225	3,000	3,375	5,050	5,775
1,200,001-3,000,000	7,750	6,500	4,500	5,400	8,250	9,250
3,000,001+	9,300	7,800	5,700	6,750	10,500	12,025

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with the Commission’s fee filer system online. Payments must be made by credit card, ACH or wire transfer. Checks and money orders will not be accepted.

Fees are based on the status of the facility as of October 1, 2014. If an authorization is transferred to a new owner during the year, the owner as of the due date is responsible for paying the entire fee. Nonprofit entities are exempt from regulatory fees, even for commercial stations.

Regulatory fees are generally correlated with the government’s cost incurred in regulating an entity. The Commission calculates this cost on the basis of staff time employed, measured in Full Time Equivalents (or “FTEs”). In the *Notice of Proposed Rulemaking* earlier this summer, the Commission pursued its ongoing analysis of the FTEs associated with each category of regulatee. Many of the questions raised in the *Notice* were left unresolved in the *Report and Order* setting the 2015 fees. Instead, the Commission continued its review of fee structures in the accompanying *Further Notice of Proposed Rulemaking*.

The Commission noted that the Media Bureau, the primary section of the agency that oversees broadcasters, has 169 FTEs. These can be categorized as follows:

Bureau front office	25 FTEs
Audio Division	51 FTEs
Industry Analysis Division	27 FTEs
Engineering Division	13 FTEs
Policy Division	29 FTEs
Video Division	24 FTEs

Duties of the Industry Analysis, Engineering and Policy Divisions are divided between radio and television. The Video Division is responsible for cable television as well as broadcast television. The Commission seeks further comment on whether and how to use these FTE figures as a basis for reform of the fee assessments for broadcasters.

Market size is a factor in determining fees for full power television stations. Stations are divided into five classes by market size with larger fees imposed on stations in the larger markets. Before VHF and UHF stations were combined in 2014 into a unified category, the ratio of fees for VHF stations in these five size classes was roughly 14:11:7:4:1. Among the fees announced for television for this year, the ratio is roughly 10:9:6:3:1. The Commission proposes to readjust the table for future years to restore the

principle that stations in the top 10 markets should pay about twice as much as stations in markets 26-50, and fix the ratio at approximately 12:9:6:3:1. The chart below shows the amounts that would have been imposed for 2015 under this formula. The Commission asks whether such a ratio should be established for calculating fees in the future.

TELEVISION REGULATORY FEES WITH NEW RATIO

	<u>FY 2105</u>	<u>Proposed</u>
Markets 1-10	\$ 46,825	\$ 55,025
Markets 11-25	43,200	41,270
Markets 26-50	27,625	27,515
Markets 51-100	16,275	13,755
Remaining Markets	4,850	4,484

The Commission also considers revamping the fee table for radio with three specific proposals:

(1) The radio fee table has previously featured six tiers of fees arranged by the size of the population covered by the station. The top tier until now has been for all stations covering populations of three million or more people. The Commission proposes to redefine that tier for population groupings from 3,000,001 to 6,000,000, and to add a new large population tier at 6,000,001 and up.

(2) The increments in fees from smaller population tiers to larger ones would be standardized so that the fee increases would correlate with population increases from tier to tier.

(3) The agency proposes to relate the size of the fee to the class and type of radio service. The fee for FM class B, C, C0, C1 and C2 stations would be twice that of an AM class A station. FM class A, B1 and C3 would be assessed 75% more than an AM class A station. The fee for an AM class A station would be 60% more than the fee for an AM class C station. The fee for an AM class B station would be 15% more, and for an AM class D station, 10% more than that of an AM class C station.

If all three of these proposals were implemented and used to calculate the fees for FY 2015, the amounts shown in the chart below would be the result. The Commission solicits public comment.

Comments can be filed in Docket 15-121 until 30 days after notice of this proceeding is published in the Federal Register. The deadline for reply comments will be 60 days after publication.

PROPOSED REALIGNMENT OF RADIO REGULATORY FEES

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM A, B1, C3	FM B,C,C0,C1,C2
0-25,000	\$ 910	\$ 655	\$ 570	\$ 625	\$1,000	\$1,140
25,001-75,000	1,370	985	855	940	1,495	1,710
75,001-150,000	1,825	1,310	1,140	1,255	1,995	2,280
150,001-500,000	2,735	1,965	1,710	1,880	2,995	3,420
500,001-1,200,000	4,560	3,280	2,850	3,135	4,990	5,700
1,200,001-3,000,000	6,840	4,915	4,275	4,705	7,480	8,550
3,000,001-6,000,000	9,120	6,555	5,700	6,270	9,975	11,400
6,000,001+	11,400	8,195	7,125	7,840	12,470	14,250

Retrans Good Faith Rules to be Updated

The FCC has released a *Notice of Proposed Rulemaking* in Docket 15-216 to consider updating aspects of the “Totality of the Circumstances Test” for good faith negotiations between television broadcasters and multichannel video programming distributors (“MVPDs”) for retransmission consent. Congress directed the Commission to undertake this review in the STELA Reauthorization Act of 2014.

MVPDs are prohibited from retransmitting a television station’s signal without the station’s consent – which is known as “retransmission consent.” Broadcasters and MVPDs are required to negotiate the agreement for that consent in good faith. The Commission has adopted a two-part regime for evaluating “good faith” in this context. First, the agency has a list of objective standards with which the parties must comply. Second, even if the objective standards are literally satisfied, the Commission may consider whether, based on the “totality of the circumstances,” a party has failed to negotiate in good faith.

The Commission asks for input on the question of whether there is a need to update the totality-of-the-circumstances test. Is there market failure? If so, what is its source? Does the current process for filing complaints about bad faith, including legal standards and evidentiary burdens, help promote legitimate negotiations? In prior rulings, the Commission has adopted the view that it could and should follow precedents in the field of labor law to assist in evaluating good faith efforts. The agency solicits comment about recent labor law developments and/or precedent from other areas of law that might be useful.

In a 2000 order, the Commission listed examples of bargaining proposals that would be presumed to be offered in good faith because they are consistent with competitive marketplace considerations. This list included:

- Proposals for compensation above that agreed to with MVPDs in the same market.
- Proposals for compensation that are different from the compensation offered by other broadcasters in the same market.
- Proposals for carriage conditioned on carriage of any other programming, such as broadcaster’s digital signals, an affiliated cable programming service or another broadcast station.
- Proposals for carriage conditioned on a broadcast station obtaining channel positioning or tier placement rights.
- Proposals for compensation in the form of commitments to purchase advertising on the broadcast station or broadcast-affiliated media.

- Proposals to allow termination of consent agreements based on the occurrence of a specific event (such as implementation of satellite must carry requirements).

The Commission asks whether changes in the marketplace since 2000 would warrant deletions, additions or amendments to this list. At the time this list was adopted, the good faith negotiation requirement applied only to broadcasters. Since then, Congress has expanded it to cover MVPDs as well. Does this change give rise to the need for including new items on the list?

The Commission has also previously developed a list of considerations that it would presume to frustrate the functioning of a competitive market, and therefore would weigh against a finding of good faith negotiations. These would include:

- Proposals that specifically foreclose carriage of other programming services by the MVPD that do not substantially duplicate the proposing station’s programming.
- Proposals involving compensation or carriage terms that result from an exercise of market power by a broadcast station or that result from an exercise of market power by another participant in the market (such as other MVPDs) which significantly hinder or foreclose MVPD competition.
- Proposals that result from agreements not to compete or to fix prices.
- Proposals for contract terms that would foreclose the filing of complaints with the Commission.

The agency explained that these examples are only illustrative and not intended to be a comprehensive list. Nonetheless, as with the previous list, the Commission requests comment about whether the items on this list should be updated or amended

The Commission has learned of various types of conduct that are occurring in retransmission consent negotiations on which it invites specific comment as to whether they should be presumed to be inconsistent with a competitive marketplace and therefore evidence of bad faith:

- A broadcaster prevents consumers’ online access to the broadcaster’s programming as a tactic to gain leverage over the MVPD.
- A broadcaster relinquishes to third parties (such as networks) its right to grant retransmission consent.
- A broadcaster insists on contract expiration dates, or threatens to black out a signal, just prior to a high visibility

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will continue, each time with a reduced clearing target, until the reserve price components can be satisfied or the clearing target is reduced to nothing.

In due course, the Commission will announce the final

results and the new television table of assignments. Television stations that have to be modified will have 90 days in which to file construction permit applications, and 36 months beyond that in which to construct the modified repacked facilities.

Retrans Good Faith Rules to be Updated continued from page 7

sports or entertainment event.

- A broadcaster prevents an MVPD from temporarily importing an out-of-market signal in cases where the broadcaster has blacked out its local signal during or after failed negotiations.

- A broadcaster demands that an MVPD place limits on its subscribers' use of lawful devices and functionalities.

- A broadcaster demands that an MVPD pay per-subscriber fees not only for viewers of the broadcaster's retransmitted signal, but also for subscribers that receive the broadcaster's signal over the air, or who receive an MVPD's Internet or voice service, but not its video service.

- A party refuses to provide information to substantiate reasons for positions taken when requested in the course of bargaining.

- "Surface bargaining" by a party, engaging in conduct designed to delay negotiations but that does not constitute an outright refusal to bargain.

- An MVPD-affiliated broadcaster discriminates in the terms for retransmission consent with other MVPDs.

- A party demands a contract based on "most favored nation" provisions.

- A broadcaster demands tier placement commitments which compel an MVPD to place broadcaster-affiliated networks in the most popular programming packages.

- A broadcaster demands a guarantee by the MVPD that programming networks affiliated with the broadcaster will reach a specified percentage of customers.

- A broadcaster fails to make an initial contract proposal at least 90 days prior to the expiration of the existing contract.

- A broadcaster prevents disclosure of the terms of an agreement by an MVPD to any government agency.

- A broadcaster discriminates in price among MVPDs in the same market absent direct and legitimate economic benefits to be derived from such price differences.

- A party fails to negotiate on the basis of actual market conditions.

- A party manufactures a dispute in the hope of encouraging government intervention.

It was common in early retransmission consent agreements for broadcasters to ask for carriage of related signals in lieu of cash. As such demands for bundling of programming have grown, are they also issues to be considered in the totality-of-the-circumstances test for good faith? What about an MVPD's demand for online distribution rights of the broadcaster's programming, or a broadcaster's refusal to grant such rights?

The Commission firmly iterated that it does not intend for the totality-of-the-circumstances test to serve as a back door inquiry into the substantive terms of contracts negotiated between the parties. Complaints that merely reflect commonplace disagreements encountered by negotiators in the everyday business world will be dismissed. However, the agency said that it does entertain complaints under this test alleging that specific proposals are sufficiently outrageous, or that the differences between agreements are not based on competitive marketplace considerations so as to trigger concerns about good faith negotiations.

The Commission seeks public comment on these issues, which will be due 60 days after publication of notice of this proceeding in the Federal Register. Reply comments must be filed within 90 days of that publication.

Commercial Biennial Ownership Reports Due Dec. 2

All commercial broadcast stations are required to file biennial ownership reports with the FCC in the fall of odd-numbered years on Form 323. The Commission's rules specify that the information in the reports is to be accurate as of October 1. Licensees typically have 30 days after the snapshot date in which to file the reports. This year, that filing deadline would ordinarily fall on November 2.

However, the Commission's Media Bureau has issued an *Order* postponing the filing deadline until December 2. The Bureau acknowledged that licensees of groups of stations may have a great deal of data to compile and a number of reports to file. The Bureau postponed the filing deadline to accommodate these workloads in the interest of obtaining reliable and accurate data.

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