

COME AND GET IT! 130 FM Channels for Sale by the FCC (But You'll Have to Pony Up a High Bid to Get One)

by Peter Tannenwald

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The FCC has announced that on April 28, 2020, it will offer for sale at auction 130 FM channels that are currently vacant. These are channels formerly occupied by stations that lost or cancelled their licenses, channels sold to bidders who failed to pay their bids, channels that were offered but drew no bidders, and channels that have never been opened up to applications.

You can read the FCC's Public Notice [here](#) and view the construction permits in Auction 106 [here](#). They are spread throughout the country, but mostly in smaller communities. The largest market is Sacramento, CA, where applications will be accepted for the channel formerly occupied by KDND – a station that relinquished its license as part of a settlement of an FCC investigation.



By statute, if more than one entity applies for a given channel, the FCC must award the license by competitive bidding, *i.e.*, in an auction. The first step will be a time window for filing “short form” applications on FCC Form 175. A short form includes an expression of interest, detailed ownership information, and some basic technical parameters. If only one short form is filed for a channel, the filer will be invited to file a full “long-form” with all of the usual legal and engineering details of its proposal, along with the filing fee for an application for a new station. If more than one short form is filed, the FCC will hold an auction; and only the high bidder will file a long-form.

The FCC has invited comments on proposed up front deposits from prospective bidders (which are refunded to losing bidders) minimum opening bids, and how the auction should be conducted in terms of things like activity requirements and when the auction should end. Proposed opening bids range from \$100,000 for Sacramento to only \$750 for Essex, CA, Yakutat, AK, San Isidro, TX, and Wamsutter, WY. **Comments are due November 6, 2019, with Reply Comments due November 20.** If past is prologue, there will be multiple bidding rounds, the FCC will step up the pace by having more rounds per day as the auction proceeds, and when bidding activity falls below a certain level, the FCC will end the auction; but if enough people file comments saying that the system should be changed, you never know what the FCC might decide to try. It is unlikely that the FCC will change its policy that entities that make bids and then withdraw them, or that place a winning bid and fail to pay on time, should expect to be fined significant amounts. If you play, you have to play for keeps.

A critical aspect of FCC auctions is the anti-collusion rule. Once short forms are filed, no one who filed an application is permitted to talk to any other filer about anything relating to the auction in any community, not just the communities for which the two parties filed applications. You can't go to dinner, meet at a bar, post on Facebook, launch a blimp, or figure out some other way to let another applicant know your auction plans. Assuming the FCC applies their existing anti-collusion rules unchanged, those rules will also affect the ability of the attorneys at Fletcher, Heald & Hildreth to communicate with more than one applicant for a given com-

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munity regarding their bid or bidding strategies at any time after the short-form filing deadline. Any individual attorney will likely be further limited to representing a single auction participant, regardless of the channels for which that participant is bidding. Throughout the auction, we remain able to provide general regulatory and legal advice unrelated to the auction. We encourage any clients who are considering filing to participate in the auction to let us know at the earliest possible date. We will also be happy to answer any questions about auction procedures and to assist clients in preparing comments on how to make the auction effective, efficient, and reasonably accessible to entities of all sizes.

FCC Invites Comments on Request for Greater Flexibility for TV DTS Transmitters

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The FCC has invited comments on a [petition](#) filed jointly by America's Public Television Stations (APTS) and the National Association of Broadcasters (NAB), requesting a relaxation of restrictions on where digital television stations may locate Distributed Transmission System (DTS) antennas.

Digital television technology allows a station to broadcast from multiple transmitters on the same channel without each transmitter causing interference with the others. It is the same concept as cellular telephone systems. To keep the signal strength strong and even throughout the service area, phone systems have lots of transmitter sites, or "cells." If you have only one central transmitter site, the way most TV stations now operate, the signal will become weaker the further away you get, and terrain obstacles will also result in pockets of poor service. Multiple transmitter sites can alleviate this poor service problem.

DTS has not taken off under the Advanced Television Systems Committee's (ATSC) 1.0 digital TV standard, because of concerns about its actual effectiveness and whether any benefits exceed the costs. But DTS is easier to implement with ATSC 3.0 than with ATSC 1.0, and DTS improves the ability to reach mobile receivers; so TV broadcasters are now taking a greater interest in the technology.

The FCC's existing rule requires that the signal from a DTS transmitter be completely confined within the noise-limited service area of the primary transmitter. The idea is to prevent stations from using DTS to extend their service areas and become regional rather than local service providers. The downside, however, is that if you want to put up a DTS transmitter to fill

in a weak pocket near the edge of your service area, its effectiveness may be impaired if you have to point a directional signal back into the center of the primary transmitter's service area to avoid any leakage outside the permitted area. In other words, the more you push DTS transmitters back inside the main station service area, the less good they will do.

Another problem with the FCC's "keep it local" theory is that TV stations can establish regional service through translators. Some are already regional powerhouses, particularly in geographically expansive Designated Market Areas (DMAs) in the Mountain states. But the translators occupy additional channels, so they are less frequency efficient than DTS. Moreover, the day could come when TV stations become all "cellular"; i.e., they no longer have a primary centralized high-powered transmitter. How will the FCC define the permissible DTS service area then? Based on a hypothetical high-powered transmitter that does not exist?



The basic idea behind the APTS-NAB petition is to redefine the permitted coverage area to allow more flexibility in locating DTS transmitters. The noise-limited-service contour (41 dBu for UHF stations), is supposed to be the place where the signal drops out because of "noise," or interference, from other signals. The petition asks to redefine the DTS signal limit to be the primary transmitter's 36 dBu contour. That would allow DTS transmitter signals to ex-

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tend out beyond the main transmitter's service area at least a little and thus do a better job of filling in gaps in the station's fringe signal both inside and outside the noise-limited contour. The value 36 dBu was chosen because it will supposedly not result in new interference to other full-power stations and will also not interfere within the protected contour of Low Power TV (LPTV) stations (51 dBu on UHF channels).

We will let the engineers speak to the interference protection claims, although the FCC should take into account the fact that LPTV stations are freely permitted to accept incoming interference, so there may be some stations that will suffer an unexpected increase if the APTS-NAB proposal is adopted. On the other hand, there is merit in more flexibility, and some would say that the purpose of the FCC's rules should be focused on encouraging better overall service of the public, not preventing any slight expansion of a station's service area that might make it less "local."

The prospects for LPTV stations could also be improved if the FCC encouraged full power stations constructing DTS systems to relinquish digital replacement translators (DRTs and DTRT's) that were intended to fill in service area gaps that no longer exist after implementation of DTS. Relinquished translator channels could provide homes for LPTV stations that

were displaced in the recent repacking of the TV band and were forced to move to channels with less signal coverage.

Comments on the APTS-NAB petition are due by **November 12, 2019**, with Replies due **November 27**. If you have any questions regarding the preparation and filing of Comments and Replies, please contact your counsel.

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FCC Announces Extension of Filing Deadline for LPTV/TV Translator Reimbursement



As we wrote about in August on [CommLawBlog](#), Low Power TV (LPTV), TV Translator Stations, and FM stations intending to request reimbursement for expenses incurred as a result of the repack of full-power and Class A television stations were required to file their Initial Reimbursement Form (Form 2100, Schedule 399) by October 15, 2019. Now the Federal Communications Commission ("FCC") has announced in a [Public Notice](#) that the deadline to file the reimbursement forms **for LPTV and TV Translator stations** is pushed back from October 15 to November 14, 2019 (11:59 PM).

Please note: this only applies to LPTV/TV Translators filing reimbursement forms, not FM stations. The 11:59 PM, October 15, 2019 deadline is still in place for FM broadcast stations.

Additional details on eligibility requirements and what to include on the initial Schedule 399 are available in our [August blog post](#). Continue to check CommLawBlog for any announcements or changes and contact your counsel should any specific questions arise.

Upcoming FCC Broadcast and Telecom Deadlines for November – January

Broadcast Deadlines:

November 4, 2019

EEO Rules and Enforcement – Reply comments are due with regard to the FCC's NPRM requesting comments on how to improve EEO compliance and enforcement.

November 18, 2019

Public Notice of Broadcast Applications – Comments are due in response to the FCC's Further Notice of Proposed Rulemaking (FNPRM) regarding proposals to modernize and simplify the written and on-air public notices broadcasters must provide upon the filing of certain applications

December 1, 2019

License Renewal Pre-Filing Announcements – Radio stations licensed in Arkansas, Louisiana, and Mississippi must begin broadcasts of their pre-filing announcements with regard to their applications for renewal of the license. These announcements must be continued on December 16, January 1, and January 16.

Radio Post-Filing Announcements – Radio stations licensed in Alabama and Georgia that have filed license renewal applications must begin broadcasts of their post-filing announcements with regard to their license renewal applications on December 1. If the renewal application is not filed until the December 2 deadline, wait until then to begin the post-filing announcements. Either way, these announcements must continue on December 16, January 1, January 16, February 1, and February 16. Once complete, a certification of broadcast, with a copy of the announcement's text, must be posted to the online public file within seven days.

November 22, 2019

Assessment and Collection of Regulatory Fees for FY 2019, FNPRM – Comments are due with regard to proposed policies for next year's and following years' regulatory fees. Specifically, the FCC is looking at whether it should adjust downward the regulatory fees paid by UHF broadcasters in recognition of technical constraints of UHF broadcasting. Additionally, the FCC is seeking comment on whether it should adopt a lower regulatory fee for full-service AM and FM broadcast radio station incubator licensees that are a part of the Commission's program intended to create ownership opportunities for new entrants and promote diversity in the radio broadcast industry.

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December 2, 2019

License Renewal Applications Due – Applications for renewal of license for radio stations located in Alabama and Georgia must be filed in the Commission's License and Management System (LMS). These applications must be accompanied by Schedule 396, the Broadcast EEO Program Report, also filed in LMS, regardless of the number of full-time employees.

EEO Public File Reports – All radio and television station employment units with five (5) or more full-time employees and located in Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota, and Vermont must place EEO Public File Reports in their online public inspection files. For all stations with websites, the report must be posted there as well. Per announced FCC policy, the reporting period may end ten days before the report is due, and the reporting period for the next year will begin on the following day.

Public Notice of Broadcast Applications – Reply Comments are due in response to the FCC's FNPRM regarding proposals to modernize and simplify the written and on-air public notices broadcasters must provide upon the filing of certain applications

December 23, 2019

Assessment and Collection of Regulatory Fees for FY Year 2019, FNPRM – Reply Comments are due with regard to proposed policies for next year's and following years' regulatory fees, as outlined above.

January 10, 2020

Issues/Programs Lists - For all commercial and noncommercial radio, television, and Class A television stations, a listing of each station's most significant treatment of community issues during the past quarter must be placed in the station's online public inspection file. The list should include a brief narrative describing the issues covered and the programs which provided the coverage, with information concerning the time, date, duration, and title of each program and brief description of the program.

Class A Television Stations Continuing Eligibility Documentation – The Commission requires that all Class A Television Stations maintain in their online public inspection files documentation sufficient to demonstrate that the station is continuing to meet the eligibility requirements of broadcasting at least 18 hours per day and broadcasting an average of at least three hours per week of locally produced programming. While the Commission has given no guidance as to what this documentation must include or when it must be added to the public file, we believe that a quarterly certification which states that the station continues to broadcast at least 18 hours per day, that it broadcasts on average at least three hours per week of locally produced programming, and lists the titles of such locally produced programs should be sufficient.



January 30, 2020

Children's Television Programming Reports - For the first time, all commercial television and Class A television stations must file electronically annual children's television programming reports with the Commission, although the first one will cover only the portion of the year which began with the effective date of the revised rules (September 16 - December 31, 2019). These reports then should be automatically included in the online public inspection file, but we would recommend checking, as the FCC bases its initial judgments of filing compliance on the contents and dates shown in the online public file.

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Commercial Compliance Certifications – Assuming Office of Management and Budget approval in time, all commercial television and Class A television stations must upload an annual certification of compliance with the limits on commercials during programming for children ages 12 and under, or other evidence to substanti-

ate compliance with those limits, to the online public inspection file. Again, this “annual” report will cover only the period from September 16 through December 31, 2019.

Website Compliance Information - Television and Class A television station licensees must upload and retain in their online public inspection files records sufficient to substantiate a certification of compliance with the restrictions on display of website addresses during programming directed to children ages 12 and under. Again, this is an annual requirement but covers only the period during which the revised rule was effective; i.e., September 16-December 31, 2019.

January 31, 2020

Biennial Ownership Reports - All licensees and entities holding an attributable interest in a licensee of one or more AM, FM, TV, Class A television, and/or LPTV stations must file a biennial ownership report reflecting information as of October 1, 2019. Please recall that not only corporations and limited liability companies, but also sole proprietorships and partnerships composed entirely of natural persons (as opposed to a legal person, such as a corporation) are included in the licensees that must file reports. Please recall that noncommercial and commercial entities are required to file by the same date. Additionally, all persons holding an attributable interest in a commercial licensee must have acquired either an FCC Registration Number (FRN) or Restricted Use FRN.

Telecom Deadlines:

November 1, 2019

Quarterly Telecommunications Reporting Worksheet (FCC Form 499-Q) – FCC rules require telecommunications carriers and interconnected VOIP providers to file quarterly revenue statements reporting historical revenue for the prior quarter and projecting revenue for the next quarter. The projected revenue is used to calculate contributions to the USF for high cost, rural, insular and tribal areas as well as to support telecommunications services for schools, libraries, and rural health care providers. USF assessments are billed monthly.

November 14, 2019

Quarterly Percentage of Interstate Usage (PIU) Reporting and Certification – Prepaid calling card providers (PCCPs) must report the percentage of interstate use factors and associated call volumes to carriers that provide them with transport services. Additionally, PCCPs must file traffic information and a certification signed by a company officer stating that the provider is in compliance with the FCC’s PIU and USF reporting requirements.



FHH - On the Job, On the Go



On October 31, **Frank Montero** attended the Multicultural Media, Telecom and Internet Council's Access to Opportunity Conference in Washington, DC. This conference featured several current and past FCC Commissioners.

On November 1, **Karyn Ablin** will speak on 3 panels at the College Broadcasters' Students in Electronic Media Convention in St. Louis, MO.

From November 14-15, **Dan Kirkpatrick** will attend the Alaska Broadcasters Association Convention in Anchorage, AK.

On November 19, **Dan Kirkpatrick** and **Seth Williams** will deliver a webinar to Media Financial Managers broader membership in Arlington, VA.