

BloostonLaw Telecom Update

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Preparing for an All-Electronic Wireless Filing System

As we reported in last week's edition of the BloostonLaw Telecom Update, the FCC has taken the final steps to transfer to an electronic-only filing system for wireless filings. Once these final steps are effective, the FCC will no longer print and mail paper authorizations, reminder letters and other important correspondence to licensees and applicants, making it critical that our clients carefully maintain their contact information (including email addresses) in the FCC's ULS database. **If the FCC sends correspondence about e.g., a proposed modification or termination of your license, and it goes to an expired email address of someone no longer with the company, you may suffer a loss of your license rights.** Our clients may therefore want to establish a separate email address such as "FCCcompliance@acmewireless.com" to use as the contact email they provide to the FCC, which email will go to multiple persons at the company, so that it is less likely an important communication from the FCC will be missed because the recipient is retired, terminated, on vacation or suffering computer problems.

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Headlines

FCC Denies Petitions for Reconsideration of RDOF Order; Clarifies Eligibility of Certain Areas

On September 29, the FCC issued an *Order on Reconsideration* denying two petitions for reconsideration filed by the Illinois Office of Broadband and the Vermont Department of Public Service. The FCC also clarified certain aspects regarding the eligibility of areas for Phase II of the Rural Digital Opportunity Fund in response to the petition of Heartland Telecommunications Company d/b/a Premier Communications.

Specifically, both the Vermont Department of Public Service and the Illinois Office of Broadband petitions asked the FCC to reconsider its decision exclude from Auction 904 census blocks that receive state broadband subsidies. Premier sought “clarification that the FCC has not definitively resolved the question of what areas will be included in the RDOF Phase II auction” or foreclosed the possibility of providing ongoing support in areas that currently receive Connect America Fund (CAF) Phase II model-based support, but where continued service is unsustainable without such support.

The FCC denied both the Illinois Office of Broadband and the Vermont Department of Public Service requests, but clarified the process by which the blocks relevant to the petitions – namely, those receiving state broadband funds – were removed from RDOF consideration. The FCC also clarified that it has **not** yet made a final determination on the areas eligible for Phase II of the Rural Digital Opportunity Fund, in response to Premier’s petition.

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New License Renewal and Construction Requirements Became Effective September 28, 2020

The FCC’s long-adopted rules which define (a) the expanded requirements for renewal of wireless licenses and (b) when a station is deemed to have “permanently discontinued” operation became immediately effective on September 28, 2020, upon the FCC’s announcement in the Federal Register that it had received approval from the Office of Management and Budget (OMB) for the information collection required under the new rules. These rules were originally adopted in August 2017, but were delayed due to delays in obtaining OMB approval.

Discontinuance of Operation

For those of our clients who operate under geographic area licenses (such as those won at auction or purchased from an auction winner) or that provide commercial radio services (such as SMR, paging or for-profit trunked dispatching), the time period during which a licensee can provide no commercial service is 180 days. **If service is not at least partially restored by the end of the 180th day, and service provided to at least one unrelated paying customer, the license automatically cancels.** While a 90-day discontinuance rule has been in place for years governing cellular and paging services, the new 180-day rule applies to all commercial services, such as PCS, AWS, 700 MHz, 600 MHz, and the recently sold 3.5 GHz licenses.

The FCC’s rules concerning permanent discontinuances of operation remain largely unchanged for private internal radio operations. For site-based licenses (which are the vast majority of the licenses held by our clients), a licensed facility will be deemed to have permanently discontinued operation if it has not operated a transmitter for a period of 365 consecutive days.

It is important to note that the operation of a “Channel Keeper” (a device which transmits test signals, tones, color bars or some combination) does not constitute station operation and will therefore not stop a discontinuance of operation clock, since service must be provided to at least one unrelated, paying customer. Thus, the FCC could conclude that your commercial station had permanently discontinued operation if you had no customers, even though the station was fully operational and you were ready, willing and able to provide service if requested.

License Renewal

As described in previous editions, the FCC has adopted a license renewal standard which is designed to ensure standardized review of license renewal applications. In particular, the FCC has created different safe harbors for site-based and geographic area licensees which will require certifications regarding license operations over the prior license term:

Site Based

- Licensee must certify that it is continuing to operate consistent with its most recently filed construction notification (or most recent license authorization if a construction notification was not filed); and
- Licensee must certify that no permanent discontinuance of service occurred during the license term

Geographic Area (Private Systems)

For a licensee in its initial term with an interim performance requirement, the applicant must certify as follows:

- It has met its interim construction performance requirement and that over the portion of the license term following the interim construction performance requirement, it continued to use its facilities to further its private internal communications needs or public safety needs; and
- It has met its final construction performance requirement and continues to use its facilities to provide the minimum level of operation required by its final construction performance requirement through the end of the license term.

For a licensee in any subsequent license term, the licensee must certify as follows:

- It continues to use its facilities to further its private business or public safety needs at or above the level required to meet its final construction performance requirement, and
- No permanent discontinuance of operation occurred during the license term.

Geographic Area Licenses (Commercial)

For a licensee in its initial license term with an interim performance requirement, the licensee will be required to certify, as follows:

- It has met its interim performance requirement and that over the portion of the license term following the interim performance requirement (up and until the deadline for meeting the final performance requirement), the licensee continues to use its facilities to provide at least the level of service or operation required by its interim performance requirement and

- It has met its final performance requirement and continues to use its facilities to provide at least the level of service required by its final performance requirement through the end of the license term.

For a licensee in its initial license term with no interim performance requirement, the licensee must certify that it has met its final performance requirement and continues to use its facilities to provide at least the level of service required by its final performance requirement through the end of the license term.

For a licensee in any subsequent license term, the licensee must certify that it continues to use its facilities to provide at least the level of service required by its last performance requirement through the end of any subsequent license terms.

Partitioned/Disaggregated Licenses

For licenses where there is no performance requirement because the original licensee previously met the performance requirement, the licensee must use and continue to use its facilities to either provide service to the public or to further the licensee's private, internal business or public interest/public safety needs.

The licensee will also be required to certify some level of service or operation over the subsequent license term. All licensees will be required to make certifications regarding permanent discontinuance of operation with respect to their license renewal applications.

Regulatory Compliance Certification

In addition to certifications concerning the physical operation of the license to be renewed, the FCC is also requiring each license renewal applicant to certify that it has "**substantially**" complied with all applicable FCC rules, policies and the Communications Act of 1934, as amended.

What Happens if I Cannot Make a Certification? The FCC will require a demonstration if a licensee cannot make an appropriate safe-harbor showing or the regulatory compliance showing. Any client who is unable to make the appropriate showing should contact our office as soon as possible so that we can work with you to develop the necessary information. In this regard, the FCC's staff has informally indicated that special showings should be the exception to the rule and that most license renewal applications should be covered by safe-harbor certifications.

Keep Your Licenses Up-to-Date. It will be important to advise us of any license modifications, so that you can make accurate certifications at the time of license renewal.

BloostonLaw Contacts: [John Prendergast](#) and [Richard Rubino](#)

FCC Releases Summary of Upcoming Spectrum Auctions for FY2021

On September 28, the FCC provided an estimate regarding upcoming systems of competitive bidding for FY2021. Specifically, the FCC estimates that the systems of competitive bidding listed below may be initiated during the 12-month period following September 30, 2020:

- *Auction 107.* Auction 107 will offer 5,684 new flexible-use overlay licenses for spectrum in the 3.7–3.98 GHz band throughout the contiguous United States, subject to clearing requirements. This auction will offer over 280 megahertz of spectrum licensed on an unpaired basis in three blocks, each divided into 20-megahertz sub-blocks by partial economic area. The deadline for filing applications to participate in the auction was September 22, 2020, and bidding is scheduled to begin on December 8, 2020.

- **2.5 GHz Band.** In 2019, the Commission transformed the rules governing spectrum from 2496 to 2690 MHz, which is comprised of the Educational Broadband Service, the Broadband Radio Service, and a number of small guard band channels. As we reported in a previous edition of the BloostonLaw Telecom Update, the Commission held a Tribal priority window to enable Tribal nations an opportunity to obtain new 2.5 GHz licenses to provide service on rural Tribal lands. This window closed on September 2, 2020 and will be followed by a system of competitive bidding to assign geographic overlay licenses for the remaining unused portions of the band for commercial use.
- **3.45-3.55 GHz Band.** As this edition of the BloostonLaw Telecom Update went to press, the Commission considered at its Open Meeting a *Further Notice of Proposed Rulemaking* seeking comment on applying its competitive bidding rules to mutually exclusive applications for new licenses for spectrum between 3.45 and 3.55 GHz.
- **T-Band.** Pursuant to a statutory mandate, the Commission is considering further action to offer new flexible use licenses in select cities in 470-512 MHz, also known as the T-Band. New licenses in the T-Band may be assigned by competitive bidding. As we recently reported, Congress has voted to undo the T-Band auction, but Senate approval is needed.
- **FM Broadcast Construction Permits.** On March 25, 2020, the Commission postponed indefinitely an auction of 130 FM broadcast service construction permits (Auction 106), in which bidding was scheduled to begin on April 28, 2020. Due to the postponement, previously filed applications to participate in the auction were dismissed and previously submitted upfront payments were refunded to the applicants.

More detailed information concerning each of these matters will be provided through subsequent *Orders* and *Public Notices*.

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FCC Opens Window for C-Band Satellite Operators to Account for Earth Station Lump Sum Elections

On September 29, the FCC issued a *Public Notice* opening a limited window for eligible Fixed Satellite Service (FSS) space station operators in the 3.7-4.2 GHz band (C-band) to amend their final Transition Plans, which were filed August 14, 2020, to reflect earth stations that elected to receive a lump sum payment and to account for any other approved updates to the incumbent earth station list. Such updated Transition Plans must be filed in GN Docket Nos. 18-122 and 20-173 no later than **October 28, 2020**.

In the *3.7 GHz Report and Order*, the Commission adopted rules to make 280 megahertz of mid-band spectrum available for flexible use (plus a 20-megahertz guard band) throughout the contiguous United States by transitioning existing services out of the lower portion of the band and into the upper 200 megahertz of the C-band. The *3.7 GHz Report and Order* established that new 3.7 GHz Service licensees would reimburse the reasonable relocation costs of eligible FSS space station operators, incumbent FSS earth station operators, and incumbent Fixed Service licensees to transition out of the band. Incumbent FSS earth station operators were permitted to opt out of the formal relocation process and, in lieu of reimbursement, elect to receive a lump sum payment based on an amount to be announced by the Bureau.

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Law and Regulation

House of Representatives Passes Legislation to Repeal T-Band Spectrum Auction

After almost two years of languishing in the House of Representatives, the House passed the Don't Break Up the T-Band Act of 2020 (H.R. 451) by a vote of 410-5. This legislation, introduced by Rep. Eliot Engle (D-NY), would eliminate the upcoming auction of the T-Band (470-512 MHz), which is currently used by both public safety and industrial land-mobile licensees in order to meet critical internal communications needs. In addition to a repeal of the T-Band auction mandate, the proposed legislation has been amended to include language that would prevent state and local governments from diverting 911 fees collected on land-line telephone bills and wireless bills for other purposes that are not related to the provision of 911 services. This is especially significant during tough economic times – such as that caused by the COVID-19 pandemic – since many state and local governments had been known to use these funds to cover short-falls during such times.

This vote is significant due to its whole-hearted support on both sides of the aisle. The legislation has now been passed on to the Senate and referred to the Committee on Commerce, Science and Transportation for action. While the Senate has not provided a timeline to consider this legislation, we are hopeful that there will be sufficient support for this legislation to pass before this session of Congress adjourns. In this regard, there is significant support for a repeal of the T-Band auction requirement – first established in the Middle-Class Tax Relief and Job Creation Act of 2012 – at the FCC, the Government Accounting Office (GAO) and among public safety and industrial business users.

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RSM US LLP to Serve as Relocation Coordinator for 3.7-4.2 GHz Transition

On September 25, the FCC issued an *Order* announcing that that RSM US LLP (RSM) satisfies the selection criteria established by the Commission in the *3.7 GHz Report and Order* and will serve as the Relocation Coordinator for the 3.7-4.2 GHz transition process. The *3.7 GHz Report and Order* allowed a search committee of eligible Fixed Satellite Service (FSS) space station operators to select a Relocation Coordinator that will be responsible for managing the overall transition and coordinating relocation actions among eligible FSS space station operators, incumbent FSS earth station operation, and new 3.7 GHz Service flexible-use licensees.

The *3.7 GHz Report and Order* required that the Relocation Coordinator “must be able to demonstrate that it has the requisite expertise to perform the duties required, which will include: (1) coordinating the schedule for clearing the band; (2) performing engineering analysis, as necessary, to determine necessary earth station migration actions; (3) assigning obligations, as necessary, for earth station migrations and filtering; (4) coordinating with overlay licensees throughout the transition process; (5) assessing the completion of the transition in each PEA and determining overlay licensees’ ability to commence operations; and (6) mediating scheduling disputes.”

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FCC Terminates Proceedings as Dormant

On September 28, the FCC issued an *Order* terminating a number of proceedings as dormant. A full list of the closed dockets can be found [here](#).

As we reported in a previous edition of the BloostonLaw Telecom Update, the FCC's rules require the FCC to periodically review all open dockets and, in consultation with the responsible Bureaus or Offices, to identify those dockets that appear to be candidates for termination. The FCC initiated the instant proceeding on July 6.

Candidates for termination generally include dockets in which no further action is required or contemplated as well as those in which no pleadings or other documents have been filed for several years, but not those in which petitions addressing the merits are pending, absent the parties' consent. The termination of a dormant proceeding also includes dismissal as moot of any pending petition, motion, or other request for relief that is procedural in nature or otherwise does not address the merits of the proceeding.

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FCC Extends COVID-19 Telehealth Program Purchase and Implementation Deadline

On September 28, the FCC issued a *Public Notice* extending the deadline for COVID-19 Telehealth Program (COVID-19 Program) funding recipients to purchase eligible devices and implement eligible services. The deadline is now **December 31, 2020**.

On April 2, 2020, the Commission established the COVID-19 Program to administer the \$200 million in congressionally appropriated funding. The Commission issued funding awards for 539 applications from April 16, 2020 until July 8, 2020, when the appropriated \$200 million budget was exhausted. COVID-19 Program funding recipients were originally given a September 30, 2020 deadline (purchase/implementation deadline) to purchase eligible devices and implement eligible services.

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Industry

AT&T Elects Additional Year of CAF Phase II Support

On September 28, AT&T Services, Inc., on behalf of its price cap carrier affiliates, filed a letter with the FCC electing to receive a seventh year of model-based support in all 18 states where it is participating in the Connect America Fund Phase II program.

As we reported in a previous edition of the BloostonLaw Telecom Update, the Commission previously determined that it would offer incumbent price cap carriers the option of electing an additional, seventh year of support if they did not receive support through the subsequent competitive bidding process. In exchange for receiving a seventh year of support, carriers would "be required to continue providing broadband with performance characteristics that remain reasonably comparable to the performance characteristics of terrestrial fixed broadband service in urban America."

The states and amounts which AT&T is authorized to receive are:

Alabama	\$23,161,780	Louisiana	\$27,907,591	Arkansas	\$21,350,835
Michigan	\$29,750,677	California	\$60,240,434	Mississippi	\$49,772,592
Florida	\$8,485,813	N. Carolina	\$3,498,889	Georgia	\$25,345,199
Ohio	\$14,802,500	Illinois	\$8,932,507	S. Carolina	\$9,689,453
Indiana	\$17,576,788	Tennessee	\$26,137,862	Kansas	\$18,942,367
Texas	\$42,078,424	Kentucky	\$30,962,548	Wisconsin	\$9,070,392

Deadlines

SEPTEMBER 30: FCC FORM 396-C, MVPD EEO PROGRAM REPORTING FORM. Each year on September 30, multi-channel video program distributors (“MVPDs”) must file with the FCC an FCC Form 396-C, Multi-Channel Video Programming Distributor EEO Program Annual Report, for employment units with six or more full-time employees. Users must access the FCC’s electronic filing system via the Internet in order to submit the form; it will not be accepted if filed on paper unless accompanied by an appropriate request for waiver of the electronic filing requirement. Certain MVPDs also will be required to complete portions of the Supplemental

Investigation Sheet (“SIS”) located at the end of the Form. These MVPDs are specifically identified in a Public Notice each year by the FCC.

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OCTOBER 15: 911 RELIABILITY CERTIFICATION. Covered 911 Service Providers, which are defined as entities that “[p]rovide[] 911, E911, or NG911 capabilities such as call routing, automatic location information (ALI), automatic number identification (ANI), or the functional equivalent of those capabilities, directly to a public safety answering point (PSAP), statewide default answering point, or appropriate local emergency authority,” or that “[o]perate[] one or more central offices that directly serve a PSAP,” are required certify that they have taken reasonable measures to provide reliable 911 service with respect to three substantive requirements: (i) 911 circuit diversity; (ii) central office backup power; and (iii) diverse network monitoring by October 15. Certifications must be made through the FCC’s portal.

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NOVEMBER 1: FCC FORM 499-Q, TELECOMMUNICATIONS REPORTING WORKSHEET. All telecommunications common carriers that expect to contribute more than \$10,000 to federal Universal Service Fund (USF) support mechanisms must file this quarterly form. The FCC has modified this form in light of its decision to establish interim measures for USF contribution assessments. The form contains revenue

information from the prior quarter plus projections for the next quarter. Form 499-Q relates only to USF contributions. It does not relate to the cost recovery mechanisms for the Telecommunications Relay Service (TRS) Fund, the North American Numbering Plan Administration (NANPA), and the shared costs of local number portability (LNP), which are covered in the annual Form 499-A that is due April 1.

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If you would like to receive an e-mail version of the newsletter, contact Althea Pierce at 828-5521 or abp@bloostonlaw.com.

This newsletter is not intended to provide legal advice. Those interested in more information should contact the firm.

Calendar At-a-Glance

September

Sep. 30 – FCC Form 396-C (MVPD EEO Program Annual Report).

October

Oct. 15 – 911 Reliability Certification.

Oct. 15 – Petitions to Deny 2.5 GHz Tribal Spectrum License Applications are due.

Oct. 16 – Second E-Rate Application Window closes.

Oct. 19 – Comments are due on Priority Services NPRM.

Oct. 26 – Oppositions to Petitions to Deny 2.5 GHz Tribal Spectrum License Applications are due.

Oct. 29 – Comments on Rural Call Completion Report and Request for Comment are due.

November

Nov. 1 – FCC Form 499-Q (Quarterly Telecommunications Reporting Worksheet) is due.

Nov. 2 – Replies to Oppositions to Petitions to Deny 2.5 GHz Tribal Spectrum License Applications are due.

Nov. 17 – Reply comments are due on Priority Services NPRM.

Nov. 30 – Lifeline Income Documentation, De-Enrollment/Reverification Requirement waivers expire.