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Antenna™

An update on broadcasting law & issues from Donald E. Martin

Regulatory Fees For FY 2026 Due September 24

In a *Report and Order* (FCC 26-94) in Docket 26-59, the FCC has adopted the regulatory fee schedule for the fiscal year ending September 30, 2026. This sets the stage for the annual payment window later this month. The Commission is required under the Communications Act to levy these fees on the entities that it regulates. The agency is looking to collect $416.112 million to offset its FY 2026 salaries and expenses appropriation. The deadline for paying these fees is 11:59 p.m. Eastern Time on September 24.

For broadcasters, the *Order* establishes a larger aggregate assessment but few methodological surprises. The Commission allocated $54.263 million of its FY 2026 revenue requirement to broadcasters, up from $51.286 million for FY 2025---an increase of about 5.8 percent. Broadcasters remain a subcategory within the Media Bureau's overall $122.681 million allocation.

Television fees remain population-based. Full-power television regulatory fees will continue to be calculated according to the population within each station's projected noise-limited service contour. To determine the population in each station's service area, the FCC will use TVStudy, Licensing

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Court Rejects FCC Expansion of Lowest Unit Charge Eligibility

The U.S. Court of Appeals for the Fourth Circuit has set aside a Public Notice (DA 26-300) issued by the FCC's Media Bureau that would have required broadcasters to offer lowest unit charge ("LUC") rates to political parties making coordinated expenditures and to certain joint fundraising committees. The court held that Section 315(b) of the Communications Act reserves LUC benefits for legally qualified candidates and does not extend those benefits to political parties or joint fundraising committees that include non-candidate participants. The ruling came just days before the Media Bureau's interpretation was scheduled to take effect for the 2026 general-election LUC period. The decision is *Brown v. FCC*, 2026 U.S.App. LEXIS 25814.

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FM Auction Filing Window Is September 14-30

The FCC's Office of Economics and Analytics and its Media Bureau have released a Public Notice (DA 26-798) establishing the procedures, filing requirements, and key deadlines for FM Auction 114. The Commission will offer for sale 132 construction permits for new commercial FM stations. A complete list of the permits being offered, along with the upfront payment and bidding credits associated with each of them, can be found following this link to the FCC's website: https://docs.fcc.gov/public/attachments/DA-26-798A2.pdf.

The filing window for short-form applications on Form 175 will begin at noon Eastern Time on September 14 and close at 6 p.m. Eastern Time on September 30. Bidding is scheduled to begin February 2, 2027.

The Form 175 is to be submitted through the FCC's new Auction Application System. This will be the first broadcast auction to use this system. Applicants must identify on Form 175 every permit for which they may wish to bid. After the filing deadline has passed, an applicant generally may not add permits to its application. If two

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National Television Ownership Cap Repealed

A deeply divided FCC has repealed the rule that generally prohibited a television station group from reaching more than 39 percent of U.S. television households. In place of that numerical limit, the FCC will review proposed transactions individually under its public-interest standard. The Commission adopted the change in a 2-1 vote. Chairman Brendan Carr and Commissioner Olivia Trusty approved the *Report and Order* in Docket 17-318, while Commissioner Anna Gomez opposed it.

Under the new approach, exceeding 39 percent will no longer create an automatic regulatory barrier or require a waiver of the ownership rule. Instead, the FCC will determine whether each proposed transaction serves the public interest. The Commission said that review will permit it to consider localism, viewpoint diversity, and competition to the extent those concerns are implicated by a particular transaction.

Repeal of the cap does not mean that transactions exceeding 39 percent will automatically be approved. The FCC emphasized that it may reject a transaction that fails to satisfy the public-interest standard, while approving a transaction that would have exceeded the former cap but produces sufficient public-interest benefits.

The Commission justified the change principally by pointing to the transformation of the video marketplace. According to the FCC, streaming services now reach more than 80 percent of U.S. adults and, unlike television station groups, can achieve unrestricted national reach. That scale, the agency said, gives digital platforms competitive advantages in attracting investment and advertising revenue. The Commission believes that removing the numerical cap will allow television broadcasters to compete more effectively with those platforms.

The FCC also cited changes in the relationship between television networks and their affiliates. The agency said the former cap had failed to correct a growing imbalance reflected in network control over online video carriage, program-preemption rights, and revenue-sharing requirements.

A potentially important issue is the FCC's legal authority to repeal the cap. Congress directed the Commission in 2004 to establish the 39 percent limit, but the Commission majority maintains that Congress did not eliminate the agency's underlying authority under the Communications Act to modify or repeal national television ownership restrictions. The Commission noted that agency chairs from both political parties previously had taken the position that the FCC retained that authority.

The Commission's lone Democrat, Anna Gomez, issued a sharply worded and lengthy eight-page dissent. She characterized the Commission's action as both "unlawful on its face" and harmful to the FCC's traditional objectives of localism, viewpoint diversity, and competition. She maintained that Congress deliberately fixed the limit at 39 percent in 2004 after the FCC attempted to increase it to 45 percent. "Simply put," she wrote, "the 39 percent national audience reach limitation was established by a statute and only Congress has the authority to raise or eliminate it."

The dispute centers on the Consolidated Appropriations Act of 2004. That legislation directed the FCC to establish a 39 percent national audience-reach limit, excluded the limit from the Commission's periodic review of its media-ownership rules, and prohibited the FCC from using its statutory forbearance authority to decline to enforce it. The legislation also provided that an owner exceeding the limit through the acquisition of an additional commercial television station would have no more than two years to return to compliance.

According to Gomez, these provisions demonstrate that Congress did more than direct the FCC to adopt an agency rule. In her view, Congress established a binding statutory limit and intentionally removed the Commission's authority to modify or waive it. Gomez rejected the Commission's conclusion that the 2004 legislation merely instructed the agency to revise its rules temporarily. She argued that the cap's removal from the FCC's quadrennial ownership review, the prohibition against forbearance, and the continuing divestiture requirement must be considered together.

Beyond the legal question, Gomez argued that eliminating the cap could accelerate consolidation and weaken locally produced journalism, emergency communications, and viewpoint diversity. The dissent acknowledged that local broadcasters face substantial economic pressures. Advertising markets have tightened, while large digital platforms increasingly compete for audiences, advertising revenue, and valuable sports rights. Gomez nevertheless disputed the premise that allowing still-larger national station groups is an appropriate answer. "Eliminating the cap does not free local broadcasters from that strain," she wrote. "It just changes who is doing the squeezing."

Gomez further criticized the Commission for declining to consider whether greater national consolidation could increase retransmission-consent fees charged to cable and satellite television providers—and ultimately passed on to subscribers. She pointed to broadcasters' statements that broadcast consolidation can generate substantial "economic synergies," including increased retransmission revenue. Gomez observed that the FCC has repeatedly declined to address such concerns during transaction proceedings on the ground that they are more appropriate for a rulemaking. She asserted that nonetheless the Commission hypocritically declined to consider this issue in this rulemaking proceeding.

This article is based upon informal Commission releases about this proceeding. As of this writing, the formal text of the *Report and Order* has not been published.

Media Bureau Offers More Guidance for NCE Translator Applicants

The FCC's Media Bureau has issued a Public Notice (DA 26-902) to provide additional guidance for applicants seeking to participate in the noncommercial FM ("NCE") translator filing window planned for November. The window will open on Wednesday, November 4, at 12:01 a.m. Eastern Time, and close at 6:00 p.m. Eastern Time on Tuesday, November 17, 2026. FCC Form 2100, Schedule 349, is now available for data entry in the Commission's online Licensing and Management System ("LMS").

Under the eligibility rule for this window, an applicant generally must be the licensee or permittee of the existing NCE FM, NCE AM, or LPFM station that the proposed translator will rebroadcast. The new guidance provides clarification about that requirement in special situations.

A proposed assignee or transferee of an eligible primary station may file applications for translators in the window if the assignment or transfer application for the primary station is pending on file with the FCC when the translator application is submitted. The proposed assignee or transferee must also request a temporary waiver of the eligibility rule, Section 74.1233(b)(5)(i) of the Commission's rules.

An NCE FM or LPFM licensee or permittee operating under a time-sharing arrangement may apply. Any resulting translator, however, may operate only during the time slot authorized for the primary station. One or all of the time-share participants may seek translator facilities, but each must file its own separate application; they may not file jointly. Participants may agree to time-share a proposed translator if each submits a separate application.

The previously announced national application limits remain in place: generally 10 applications per applicant entity, with lower caps for LPFM applicant entities subject to the FCC's LPFM ownership rules—four for qualifying Tribal LPFM entities and two for other covered LPFM entities.

If mutually exclusive applications proceed to comparative review, the NCE point system provides up to seven points under four criteria: established local applicant, diversity of ownership, statewide network, and technical parameters. This Public Notice elaborates on the first two categories.

An applicant seeking the three points available to an established local applicant must have been local and established in the community to be served continuously for at least two years before filing. For a nongovernmental applicant, local status ordinarily requires a physical headquarters or campus, or at least 75 percent of the governing board's members residing, within 25 miles of the community's reference coordinates. Supporting documentation must accompany the application.

Because translators ordinarily have no rule requiring a minimum signal over their specified community of license, the Bureau has now added an important clarification for point-system purposes: to claim established-local-applicant points, the proposed translator's 60 dBu contour must cover at least some portion of the proposed community of license. If it does not, the applicant cannot claim the three localism points. The 60 dBu requirement applies only to applicants seeking those points; it is not a general community-coverage requirement for all translator applications.

Two comparative points are available for diversity-of-ownership if the proposed translator's 60 dBu contour does not overlap either the principal community contour of an existing full-service AM, FM, or LPFM station, or the 60 dBu contour of an existing non-fill-in FM translator, in which the applicant or any party to the application has an attributable interest. The Bureau clarified that the relevant principal community contour for commercial FM, NCE FM, and LPFM stations is the 3.16 mV/m (70 dBu) contour. This corrects the Bureau's June procedures notice, which had stated that the 1 mV/m (60 dBu) contour applied to NCE FM stations for this purpose. The principal community contour for AM stations is the 5 mV/m daytime contour. Applicants claiming diversity points must submit either a contour map demonstrating no prohibited overlap or a statement that they hold no attributable interests in nearby radio stations.

The form for these applications, Form 2100, Schedule 349, is available to advance preparation on LMS now.

FM Filing Freeze in Force During Auction 114 Filing Window September 14-30

The FCC's Media Bureau announced in a Public Notice (DA 26-799) that it will impose a freeze on the filing of any applications for minor changes to commercial or noncommercial FM stations during the upcoming filing window for Auction 114. The window will open on September 14 and close on September 30. The purpose of this freeze is to stabilize the FM database during the filing window. Applications filed during that period will be dismissed.

Minor change applications can be filed until the freeze begins on a first-come, first-served basis. However, such applications must protect all 132 of the vacant allotments to be offered in the auction. A complete list of those allotments is found here:
https://docs.fcc.gov/public/attachments/DA-26-798A2.pdf.

DEADLINES TO WATCH

License Renewal, FCC Reports & Public Inspection Files

October 1	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, Miriana Islands, Missouri, Oregon, Puerto Rico, Virgin Islands,** and **Washington.**
October 1	Deadline for all broadcast licensees and permittees of stations in **Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, Miriana 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).
October 1	Mid-Term EEO review begins for certain television stations in **Alaska, American Samoa, Guam, Hawaii, Miriana Islands, Oregon,** and **Washington.**
October 10	Deadline to 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 10	Deadline for noncommercial stations to place quarterly report re third-party fundraising in Public Inspection File.
October 10	Deadline for Class A Television stations to place quarterly documentation about Class A eligibility in Public Inspection File.

Deadlines for Comments in FCC and Other Proceedings

(All proceedings are before the FCC unless otherwise noted.)

DOCKET	COMMENTS	REPLY COMMENTS
Docket 25-224; FNPRM (FCC 26-38) EAS cybersecurity	Past	Sept. 29
Docket 26-240; Public Notice (DA 26-933) Transfer-of-control application and Request for Declaratory Ruling re foreign ownership of Spanish Broadcasting System, Inc.	Petitions to Deny Oct. 2	Oppositions Oct. 19
Docket 25-306; FNPRM (FCC 26-47) Satellite earth station licensing	FR+30	FR+60

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

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

The FCC has accepted for filing the applications identified below proposing to change the community of license for each station. 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 20, 2026.** Informal objections may be filed any time prior to grant of the application.

PRESENT COMMUNITY	PROPOSED COMMUNITY	STATION	CHANNEL	FREQUENCY
Hemet, CA	Loma Linda, CA	KWQQ(AM)	n/a	1320
Newton, NJ	Boonton, NJ	WTOC(AM)	n/a	1360

Proposed Amendments to the TV Table of Allotments

The FCC is considering an amendment to the TV Table of Allotments as described below. The deadlines for submitting comments and reply comments are shown.

COMMUNITY	STATION	PRESENT CHANNEL	PROPOSED CHANNEL	COMMENTS	REPLY COMMENTS
Whitehall, MI	KENV-TV	20	10	Sept. 9	Sept. 24
St. George, UT	KMYU	21	9	Sept. 10	Sept. 25

DEADLINES TO WATCH

Paperwork Reduction Act Proceedings

The FCC is required by the Paperwork Reduction Act to periodically collect public information on the paperwork burdens imposed by its record-keeping requirements in connection with 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
Advertising rates for political candidates, Section 73.1942	Sept. 10
3.7 GHz incumbent earth station lump sum payment elections	Sept. 21
Access to emergency information, Section 79.2	Sept. 25
Audio description, Sections 79.105, 79.106	Sept. 25
Application for certain nonbroadcast radio services, Form 601	Sept. 25
Application for broadcast license renewal, Form 2100, Schedule 303-S	Oct. 5
Upper C-Band clearinghouse and relocation coordinator, Sections 27.1413(c)(10), 27.1414(c)(4)(j)	Oct. 13
STA requests; informal filings, Sections 73.1615, 73,1635, 73.1740, 73.3598	Oct. 19
Discontinuance of operation, Section 73.1750	Oct. 19
Request for extension of time to operate without certain monitors or EAS encoder/decoder, Section 73.3549	Oct. 19
Request for call sign, Section 73.3550	Oct. 19
CALM Act implementation, Sections 73.682(e)	Oct. 30
Television station contours and service area, Section 73.619	Oct. 30
Television antenna systems, Section 73.625	Oct. 30
Petitions to deny long-form applications, Section 73.5006	Oct. 30
Class A TV transmission standards, Section 73.6024	Oct. 30
Class A TV antenna systems, Section 73.6025	Oct. 30
Disturbance of AM antenna patterns, Sections 1.30002, 1.30003, 1.30004, 73.875, 73.1657, 73.1690	Oct. 30
Broadcasting emergency information, Section 73.1250	Nov. 2
Transmission system operation, Section 73.1350	Nov. 2
Broadcast operating power and mode tolerance, Section 73.1560	Nov. 2
Program tests, Section 73.1620	Nov. 2
Application to assign or transfer control of a broadcast station, Form 2100, Schedule 316	Nov. 2
Application to modify station license, Section 73.3544	Nov. 2
AM measurement data	Nov. 2

**DEADLINE TO IMPLEMENT
EAS CYBERSECURITY SAFEGUARDS**
SEPTEMBER 29, 2026

REGULATORY FEES FOR FISCAL YEAR 2026
**DUE BY 11:59 ET,
SEPTEMBER 24, 2026**

**FILING WINDOW FOR APPLICATIONS
FOR NEW NCE FM TRANSLATORS**
**12:01 AM ET, NOVEMBER 4, 2026
THROUGH
6:00 PM ET, NOVEMBER 17, 2026**

**FILING FREEZE FOR MINOR MODIFICATION
APPLICATIONS FOR LPFM, FM TRANSLATOR,
AND FM BOOSTER STATIONS**
**12:59 PM ET, OCTOBER 2, 2026
THROUGH
6:00 PM ET, NOVEMBER 17, 2026**

DEADLINES TO WATCH

Lowest Unit Charge Schedule For 2026 Political Campaign Season

During the 60-day period prior to the general election, commercial broadcast stations are prohibited from charging any legally qualified candidate for federal elective office (who does not waive his or her rights) more than the station's Lowest Unit Charge ("LUC") for advertising that promotes the candidate's campaign for office. LUC restrictions for the general election on November 3 are in effect from September 4 to November 3.

Schedule For FM Auction 114

Short-Form Application (FCC Form 175) Filing Window	September 14, 12:00 p.m., ET to September 30, 6:00 pm, ET
Upfront Payments Due (via wire transfer)	December 3, 6:00 p.m. ET
Bidding Tutorial Available (via Internet)	No later than January 6, 2027
Mock Auction	January 29, 2027
Auction Bidding Begins	February 2, 2027

DEADLINE FOR MUST-CARRY/ RETRANSMISSION-CONSENT ELECTIONS FOR FULL POWER AND QUALIFIED LOW POWER TV STATIONS

OCTOBER 1, 2026

Deadline To Implement Cybersecurity Safeguards Is September 29

The FCC has adopted mandatory cybersecurity safeguards for the Emergency Alert System ("EAS") which become effective September 29. The new rules extend beyond the familiar EAS encoder/decoder. They also reach studio-transmitter-link equipment and other remotely managed equipment that routes, processes, or inserts content into a station's programming stream. The Commission said the new baseline rules respond to continuing attacks in which intruders exploited inadequately secured broadcast equipment to inject unauthorized audio, EAS tones, offensive material, or other content. These measures were adopted in a *Report and Order and Further Notice of Proposed Rulemaking* (FCC 26-38), in Dockets 25-224, 22-329, 15-91, and 15-94.

A new Section 11.35(d) in the Commission's rules requires every broadcast EAS participant, including small stations and LPFM stations, to employ three controls for covered equipment. These include:

- **Credentials.** Before covered equipment is used to broadcast to the public, the participant must change any default password. A password must contain at least 15 characters, contain no dictionary words, and not be reused for the participant's other accounts, equipment, applications, or services. A password must also be changed when the participant has reason to believe it has been compromised. The rule permits an alternative authentication method—such as an out-of-band device, one-time password, or cryptographic authentication—if it is reasonably sufficient to mitigate unauthorized access.
- **Patches and updates.** Participants must promptly install security patches and security-related software and firmware updates issued by equipment manufacturers. A station may test an update first, but testing must begin promptly and be completed within a period consistent with industry best practices.
- **Firewalls or segmentation.** Participants must use a network firewall or a comparable network-segmentation practice that limits remote-management access to authorized devices and users. Acceptable segmentation can include a dedicated virtual local area, a demilitarized zone, or a physically isolated management network. Depending on the station's architecture, compliance may involve deploying a hardware or software firewall, reconfiguring a router to block inbound public-internet access, or otherwise isolating EAS-related devices from general-purpose business networks.

Regulatory Fees For FY 2026 Due September 24 *continued from page 1*

and Management System data, and 2020 Census data. For FY 2026, the Commission adopted a rate of $0.007090 for each person served. Each station's population count and resulting fee are listed on the FCC's website here: https://www.fcc.gov/document/fy-2026-full-power-tv-listings-call-sign.

A table at the end of this article shows the FY 2026 regulatory fees for most other types of authorizations of interest to broadcasters. These fees are also available at https://www.fcc.gov/document/fy-2026-media-bureau-regulatory-fees.

The Commission also retained its special treatment for full-power television stations that use satellite stations to serve terrain-limited areas in Puerto Rico. The combined population used to calculate the fee for a full-power station and its associated satellite facility is capped at 3.1 million, producing a maximum combined fee of $21,979. For certain VHF stations that increased power to improve reception, the FCC will continue to calculate population using the station's lower VHF power level.

The National Association of Broadcasters ("NAB") asked the FCC to cap the annual fee for transmit/receive and transmit-only satellite earth-station licenses at $2,500, arguing that broadcast stations operating earth stations pay those fees on top of their broadcast-license assessments. NAB proposed shifting the balance to non-geostationary satellite operators.

The FCC declined to adopt such a plan. It said a cap based on policy considerations, rather than the relative staff resources devoted to regulating each fee category, would impermissibly shift costs among fee payors. The Commission noted that earth-station fees increased because its overall appropriation rose by roughly 6.6 percent, the Space Bureau's share of direct staff resources increased, and the number of fee-paying earth stations declined. Possible changes flowing from the FCC's separate space-licensing modernization proceeding may be considered in the FY 2027 fee proceeding or later years.

The Commission also rejected requests from NAB and state broadcaster associations to increase the de minimis threshold from $1,000 to $1,200. A regulatee is exempt when the sum of all of its annual regulatory fee liabilities is $1,000 or less for the fiscal year. The exemption must be evaluated anew each year and does not apply to fees paid through multi-year filings. The FCC concluded that its average cost of collecting a delinquent fee remains below $1,000. It also emphasized that increasing the threshold would shift the resulting shortfall to other fee payors and that the statute does not permit the threshold to be used as general financial relief. A party facing hardship may instead seek a waiver, reduction, deferral, or installment-payment arrangement under the Commission's established procedures.

For Media Services, fees are due for AM and FM, full-power VHF and UHF television, and satellite television construction permits granted on or before October 1, 2025. Fees also are due for broadcast facility licenses granted on or before that date. If a station held both an initial construction permit and a license by October 1, 2025, it pays only the fee for the licensed facility. Governmental entities, nonprofit entities, and noncommercial radio and television stations remain statutorily exempt from regulatory fee obligations.

Timely payments must be made through the Commission Registration System ("CORES") by 11:59 p.m. Eastern Time on September 24. The Fee Filer system used in previous years has been discontinued. Late payment will incur a 25 percent penalty. The penalty for ultimately failing to pay regulatory fees is license revocation.

FCC REGULATORY FEES PROPOSED FOR FISCAL YEAR 2026

TYPE OF AUTHORIZATION	REG FEE
Full Power TV (per person in service area)	$ 0.007090
Full Power TV Construction Permit	5,300
Class A TV, LPTV, TV/FM Translator & Booster	255
AM Radio Construction Permit	585
FM Radio Construction Permit	1,025
Satellite Earth Station	2,970

FY 2026 REGULATORY FEES FOR RADIO

POPULATION SERVED	AM CLASS A	AM CLASS B	AM CLASS C	AM CLASS D	FM A, B1, C3	FM B, C, C0, C1, C2
0-10,000	$ 560	$ 405	$ 350	$ 385	$ 615	$ 700
21,001-25,000	935	675	585	645	1,025	1,170
25,001-75,000	1,405	1,015	880	970	1,540	1,755
75,001-150,000	2,105	1,520	1,315	1,450	2,305	2,635
150,001-500,000	3,160	2,280	1,975	2,180	3,465	3,955
500,001-1,200,000	4,730	3,415	2,960	3,265	5,185	5,920
1,200,001-3,000,000	7,105	5,130	4,445	4,900	7,790	8,890
3,000,001-6,000,000	10,650	7,690	6,665	7,345	11,675	13,325
6,000,000+	15,980	11,535	10,000	11,025	17,515	19,995

Court Rejects FCC Expansion of Lowest Unit Charge Eligibility *continued from page 1*

The Media Bureau's Public Notice

Section 315(b) generally prohibits a broadcast station from charging a legally qualified candidate for public office more than the station's LUC for advertising for the same class and amount of time during the 45 days before a primary or runoff election and the 60 days before a general or special election. In a March 30 Public Notice, the Media Bureau stated that LUC eligibility also applied to:

- Authorized committees, including committees engaging in joint fundraising with legally qualified federal candidates; and
- Advertisements qualifying as coordinated expenditures by political parties and legally qualified federal candidates.

The Media Bureau characterized the notice as a reminder and a restatement of existing guidance. Four Democratic Congressional candidates—Sherrod Brown (Ohio, Senate), Jon Ossoff (Georgia Senate), Roy Cooper (North Carolina, Senate), and Kristen McDonald Rivet (Michigan, House of Representatives)—challenged that interpretation. They first filed an Application for Review, asking the full Commission to vacate the Public Notice. With the Commission's failure to respond promptly and the imminence of the political campaign season for the general election, they petitioned the Court of Appeals without waiting for further FCC action. They argued that extending candidate rates to party committees and joint fundraising committees would permit those organizations to purchase more advertising against them and would dilute the statutory benefit Congress gave directly to candidates.

TVB's Reconsideration Request

At about the same time that the Congressional candidates sought review by the Court of Appeals, the Television Bureau of Advertising, Inc. ("TVB") filed a Petition for Reconsideration of the Media Bureau's Public Notice at the FCC. In an *Order on Reconsideration* (DA 26-851), the Media Bureau rejected TVB's Petition. The Media Bureau said the petition was procedurally improper because the Public Notice was not a release subject to reconsideration. In any event, the Media Bureau also found that TVB's substantive complaints were either untimely, and/or should have been directed to Congress or the Federal Election Commission.

The *Order on Reconsideration* emphasized that the Communications Act incorporates the definition of "authorized committee" found in the Federal Election Campaign Act. Under that law, the Media Bureau asserted that the term is not necessarily limited to a candidate's principal campaign committee. The Media Bureau said joint fundraising committees may qualify as authorized committees and therefore are entitled to receive the LUC when purchasing airtime for use by a participating candidate. The Media Bureau told TVB that if it believes the governing definition should be narrower, it should take up that issue with Congress or the Federal Election Commission—not through a petition asking the FCC to reconsider its Public Notice.

The Media Bureau similarly rejected TVB's challenge to LUC treatment for candidate-party coordinated advertisements. It said the March Public Notice simply restated previous Media Bureau guidance under which advertising qualifying as a coordinated expenditure by a political party and a legally qualified federal candidate is eligible for candidate rates. The Media Bureau opined that broadcasters have followed this practice for more than a decade, citing the National Association of Broadcasters' political broadcasting guidance as evidence that the industry has recognized the eligibility of qualifying party-coordinated advertising.

Court Reads "Candidate" to Mean "Candidate"

The Media Bureau's *Order on Reconsideration* soon became moot with the appellate court's ruling. The court found the statutory language to be unambiguous. Section 315(b)(1)(A) of the Communication Act applies to the use of a broadcast station "by any person who is a legally qualified candidate" in connection with that candidate's campaign. "For purposes of entitlement to the LUC," the court wrote, "the term 'candidate' means 'candidate.'" The court emphasized that the FCC itself previously stated that only candidates and their authorized campaign committees qualify for LUC treatment. Independent entities are not entitled to candidate rates merely because their advertisements support a candidate or include the candidate's appearance.

According to the court, a candidate's authorization of an advertisement is not enough to make the advertisement a "use" by the candidate. Authorization indicates approval of something done by another person, while "use" requires active employment by the candidate or action taken on the candidate's behalf.

Party-Coordinated Advertising

The court held that an advertisement purchased through a party's coordinated-expenditure authority remains a "use" by the political party, not by the candidate.

The court also rejected the argument that an advertisement becomes eligible for LUC treatment because the candidate appears in it and provides the "stand by your ad" certification required by Section 315(b)(2). That provision, the court explained, can cause an otherwise eligible candidate to lose LUC protection for failing to provide the required certification, but it does not independently extend LUC eligibility to a party or another purchaser.

The decision therefore distinguishes between the candidate's share and the party's share of a coordinated advertising expenditure. The candidate's own expenditure may qualify as a candidate use, but the political party's expenditure does not become eligible merely because it was coordinated with the candidate.

Joint Fundraising Committees

The court reached the same result for joint fundraising committees that include political parties or other non-candidate committees. Joint fundraising committees

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Court Rejects FCC Expansion of Lowest Unit Charge Eligibility *continued from page 8*

generally collect contributions, pay fundraising expenses, and distribute the net proceeds among participating committees. Although federal campaign-finance law permits such a committee to be designated as a candidate's authorized committee "solely for the purpose of joint fundraising," the court held that this limited designation does not convert the committee's other activities—including its purchase of advertising—into candidate activity.

Because the expenses of a joint fundraising committee are allocated among its participants, an advertisement purchased with funds attributable to a political party or other non-candidate participant cannot be treated entirely as a "use" by the candidate. The court accordingly held that joint fundraising committees with non-candidate members are not independently entitled to LUC rates.

Court Finds Jurisdiction Despite FCC Inaction

The court also rejected the FCC's argument that the case was premature because the candidates had filed an application asking the full Commission to review the Media Bureau's action and the Commission had not yet ruled. The court concluded that the Public Notice was a final order issued under delegated authority. It also found that the Commission had constructively denied the application for review by failing to act on the time-sensitive request while the September 4 beginning of the general-election LUC period approached.

In addition, the court characterized the Public Notice as a substantive rule rather than merely interpretive guidance. In the court's view, it changed existing law and imposed binding obligations on broadcasters backed by the possibility of fines, forfeitures, and rebates.

The immediate result is that the Media Bureau's March 30 Public Notice has been set aside and will not govern the 2026 general-election LUC period unless the decision is stayed or overturned. Because the FCC or the intervening party committees could seek rehearing, rehearing en banc, or further review—and could request a stay—stations should watch for additional developments. For now, however, the controlling court order eliminates the Media Bureau's attempted expansion of LUC eligibility.

FM Auction Filing Window Is September 14-30 *continued from page 1*

or more applicants select the same allotment, the permit will be subject to competitive bidding. When this mutual exclusivity has been established, a qualified applicant must submit a bid to obtain the permit even if it ultimately is the only qualified bidder for that allotment.

Applicants must deposit an "Upfront Payment" with the FCC by December 3. This payment can only be made by wire transfer. An applicant need not deposit funds to cover upfront payments for all of the permits it has listed on the Form 175. An applicant's upfront payment determines its initial bidding eligibility. The payment must be sufficient to cover the total bidding units associated with all permits on which the bidder may want to bid—or hold provisionally winning bids—during the same round. Eligibility cannot be increased after the upfront-payment deadline. An applicant will earn one bidding unit for each dollar it deposits in upfront payments. An applicant may bid on different permits from round to round as long as they were listed in the applicant's Form 175.

The FCC will conduct a mock auction on January 29, 2027. The Commission encourages all qualified bidders and their authorized representatives to participate before live bidding begins on February 2.

New-Entrant Bidding Credits

Eligible applicants may claim a new-entrant bidding credit that reduces the amount of a winning bid:

- A 35 percent credit is available when neither the applicant nor any attributable interest holder has an attributable interest in another mass-media facility.
- A 25 percent credit is available when the applicant and its attributable interest holders have interests in no more than three mass-media facilities.

No credit is available if a commonly owned mass-media facility serves the same area as the permit being acquired or if the applicant has attributable interests in more than three mass-media facilities. Applicants must claim the credit on Form 175 and provide the required certifications. Eligibility will be verified after the auction through the winning bidder's long-form application.

Communications Restrictions Begin at Filing Deadline

Auction applicants will be subject to the FCC's prohibited-communications rule beginning at the September 30 short-form filing deadline and continuing until the deadline for winning bidders to make their down payments. During that period, applicants generally may not communicate with one another concerning bids, bidding strategies, or permit selections unless they are parties to a properly disclosed agreement permitted under the FCC's rules. Joint bidding agreements are generally prohibited. Broadcasters controlled by the same person or group also may not use multiple affiliated entities to participate separately in the auction. Applicants must disclose on Form 175 relevant agreements and arrangements concerning the permits, bidding strategies or post-auction market structure. Suspected prohibited communications must be reported promptly to the FCC. Applicants found to violate this prohibition will be disqualified.

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Simultaneous Multiple-Round Bidding

Auction 114 will employ a simultaneous multiple-round format in which bidding remains open on all permits until bidding stops on every permit. To retain its full eligibility, a bidder must be active—by submitting bids or holding provisionally winning bids—on 100 percent of its current bidding eligibility during each round. Each bidder will receive three activity-rule waivers. If a bidder falls below the required activity level, the bidding system ordinarily will apply a waiver automatically if one remains. Otherwise, the bidder's eligibility will be permanently reduced.

For each permit, the FCC will offer as many as nine acceptable bid amounts. The minimum acceptable bid ordinarily will be approximately 10 percent above the current provisionally winning bid, with additional bid choices calculated in 5 percent increments. The FCC retains authority to adjust the increments, number of bid choices, and round schedule.

Bids may be removed before the round in which they were submitted closes. However, after the round closes, bids cannot be withdrawn—even if entered by mistake.

Noncommercial Applicants

An applicant that qualifies to be the licensee of a noncommercial educational ("NCE") station may elect on Form 175 to operate a station on a noncommercial basis. No upfront payment would be required. If the application is mutually exclusive with one or more other NCE applications, the winning applicant will be selected pursuant to the Commission's NCE comparative selection criteria. In such a proceeding, NCE applicants will not bid against each other.

However, if an NCE application becomes mutually exclusive with a commercial application, the NCE application will be dismissed as unacceptable, and the applicant will not be allowed to participate further for that permit. The NCE election cannot be reversed after the September 30 filing deadline.

On the other hand, a nonprofit entity that does not designate NCE status on its Form 175 can participate in the auction on the same basis as commercial applicants. It would deposit upfront payment(s) and place bids.

Post-Auction Obligations

Unless the FCC announces different deadlines, a winning bidder must make a down payment sufficient to bring its total funds on deposit (including upfront payments) to 20 percent of its net winning bid within 10 business days after release of the auction-closing notice. The remaining balance will be due 10 business days after the down-payment deadline.

Winning bidders must file a separate long-form application—FCC Form 2100, Schedule 301-FM—for each permit won, usually within 30 days after the close of bidding and notification of the winners. In the long-form application, the applicant identifies its proposed transmitter site and technical parameters for the station. The long-form application must be accompanied by the standard filing fee of $4,545.00 for a commercial FM construction permit application. The filing fee is due even though the applicant has paid the purchase price established by the bidding.

A bidder that defaults or is disqualified may be responsible for the difference between its winning bid and the amount received when the permit is next sold, plus an additional payment equal to 20 percent of the applicable bid. Default also can jeopardize the bidder's eligibility to participate in future auctions and, in serious cases, its existing FCC authorizations.

The FCC encourages parties considering participation in the auction to begin technical, financial, and legal due diligence well before the filing window. The agency emphasizes that applicants bear full responsibility for evaluating transmitter-site availability, construction feasibility, environmental requirements, market conditions, and any pending proceedings that could affect a permit's value.