Government Shutdown: Week 3

By: David Oxenford

We would normally provide you with some of the regulatory developments of significance to broadcasters from the past week, with links to where you can go to find more information as to how these actions may affect your operations. But, as the government shutdown has drastically limited activity at the FCC, and as Congress did not produce significant news this week while focused on the shutdown and other activity, we thought that we should provide some reminders on specific regulatory activity that is curtailed by the shutdown and about some of the issues that may arise once it is resolved.

The federal government shutdown entered its third week without any indication from Congress that it would end soon. As we discussed on our Broadcast Law Blog here, before the shutdown began, the FCC released a Public Notice stating that it would "suspend most operations" during the shutdown, and explaining how dates and deadlines would shift due to the shutdown. Some specific deadlines affected by the shutdown, and issues that have been raised about the transition back to normal operations once the shutdown ends, are set out below:

- Most broadcast filing deadlines occurring during the shutdown (including EEO Public File Reports that were due October 1 and Quarterly Issues/Programs Lists due October 10) are now due the next business day after the FCC resumes normal operations.
- Comment deadlines in FCC rulemaking proceedings (including the October 10 reply comment deadline for the FCC's Notice of Proposed Rulemaking reexamining the Emergency Alert System) are also due the next business day after the FCC resumes normal operations.
- Responses to targeted enforcement actions are still to be submitted on time, but the extent of what is meant by a "targeted" enforcement action is unclear. October 17 was the deadline for the 300 radio and TV stations identified in the FCC Enforcement Bureau's 2025 EEO audit notice (see our note here) to upload their responses to their Online Public Inspection Files (OPIFs). But stations subject to the audit cannot currently upload their responses as the OPIF system is unavailable during the shutdown. The Enforcement Bureau has not issued any formal clarification as to whether these audits are considered "targeted" and, if so, how stations are supposed to file their responses with the OPIF being down, though responses to the new DEI questions, as we noted here, can now be submitted by email rather than uploaded to the OPIF to protect confidential information.
- Similarly, the FCC has not explained if and how dates in the FCC's major change filing window and associated filing freezes on Class A, LPTV, and TV translator stations will be rescheduled after the FCC reopens (as discussed here, these include the filing freeze on minor change applications and LPTV and TV translator displacement applications which was supposed to begin on October 15, and the major change filing window which is supposed to begin on October 22 – assuming the shutdown hasn't ended by then).

There is also no announcement as to whether delays in the major change window will affect the opening of the window for seeking new LPTV and TV translator stations that is now scheduled to open in January – the first opportunity to file for new LPTV and TV translator stations in over 15 years.

- Comment deadlines in several FCC rulemaking proceedings that began just before the shutdown have not been set as the notices of proposed rulemaking have not been published in the Federal Register, as the Federal Register is also affected by the shutdown. The delays affect proceedings including the rulemaking to address the local radio and TV ownership rules where the FCC seeks to determine if it should relax those rules (see our article here – comments are to be filed 30 days after the Notice of Proposed Rulemaking is published in the Federal Register).
- The FCC appears ready to have its regular monthly open meeting on October 28 which, as we noted here, is supposed to address issues of importance to broadcasters, including the ATSC 3.0 transition and earth station licensing issues. Details of how that meeting will be held physically when the government is supposed to be shutdown have not yet been released. While Commissioners have been taking meetings despite the shutdown on the issues to be considered at the meeting, it is unclear if all staff involved in these issues are also available for meetings. Notices of Proposed Rulemaking adopted at the October 28 meeting will also likely have delayed comment periods should the shutdown extend that long.
- Routine applications for the assignment or transfer of broadcast stations cannot be filed during the shutdown, so the 30-day public comment period on "long-form" sales (ones that affect actual control of stations rather than simply being changes in the form in which that control is held) cannot begin to run on any of these deals. There have been several prominent deals announced but not filed due to the shutdown, and there are likely many others that have been reached but not announced publicly. It is also unclear how the shutdown will affect comments on applications already on file, as those applications have not been available for review by the public during the shutdown because of the unavailability of the FCC's online application files.
- When the FCC's systems are not available, broadcasters are supposed to maintain their political file in an alternative format so that it can be viewed by interested parties. The political file is the only portion of the public file where such alternatives must be maintained. So, while broadcasters should be maintaining their political files, the public must make special arrangements to see those documents. These documents are all supposed to be uploaded to the online public file on the day after the day that the FCC reopens – though, if the shutdown persists, that upload may end up being after much of the voting in hotly contested political races in early November in Virginia, New Jersey, and New York City, and on a redistricting ballot issue in California.
- Many questions are being raised as to whether the filing deadline on the day after the day the FCC reopens for all documents due during the shutdown is realistic given that,

whenever there is a heavy volume of documents that are due to be uploaded to FCC document processing systems, the FCC's systems tend to run slow or crash. Already there are many deadlines that have passed where documents were not able to be uploaded, and the longer the shutdown runs, the greater the accumulation of documents that will be due immediately after the reopening. Will the FCC's systems be able to handle the extraordinary volume of filings that will be due on that day after the day that the FCC reopens?

These and other issues will need to be addressed by the FCC following the end of the shutdown. Broadcasters should consult with their legal counsel on how to approach these issues and others that we may not have mentioned. In addition, they should be on alert for any guidance that may come from the FCC.

This summary of regulatory news for broadcasters comes from the attorneys at Wilkinson Barker Knauer, LLP in Washington, DC (https://www.wbklaw.com/).