



Broadcast Newsletter

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CAN STATIONS REMOVE LETTERS FROM THE PUBLIC FROM THEIR PUBLIC FILES YET?

The short answer to the question from the headline above is yes. The FCC adopted an order much earlier this year eliminating the public file requirement for broadcast stations to place letters and emails from the public about station operations in their public files. That order had to be reviewed by the Office of Management and Budget before it could become effective. But as of June 29, 2017, notice in the Federal Register confirms that the order is effective and the requirement is no more. Who says the government doesn't move quickly?

So this means that broadcast stations may now discard those letters/emails from the public that stations had been hanging onto in paper form. For stations that already transitioned to the online public file, these letters were still required to be kept on paper at the main studio "public file" to protect the privacy of individuals. For stations that are still doing paper files because they've not yet transitioned to the online file, these letters/emails are sandwiched somewhere in your public file filing cabinet, probably in a little folder marked "letters/emails from the public" or something like that.

We know this will be somewhat cathartic to have the joy of removing something from the public file forever, so you might want to bring someone along for that trip down the hall to retrieve and transition these documents to the shred pile. Going forward, no letters/emails from the public are required to be placed in a broadcast station's public file.

POST-AUCTION TELEVISION REPACK IMPORTANT DEADLINES NEAR

A critically important post-auction television repack deadline is right around the corner. Specifically, July 12, 2017 is the deadline for all repacked and voluntarily relocating stations to file a construction permit application for their allotted facilities. This application is filed on FCC Form 2100 in the Licensing Management System. Many stations have already filed this form, but several hundred stations still

need to do so. When filed, the FCC has been granting permits very quickly, sometimes by the next calendar day.

For repacked television stations, the Form 2100 is not the only filing that must be made by July 12, 2017. In addition, repacked stations must also complete and file a Form 399 reimbursement expenses estimate so the FCC can allocate funds for station channel change build outs.

Repacked stations entitled to reimbursement will ultimately have to prepare and file Form 1876 to set up a bank account that will receive reimbursement funds. A PDF-fillable form is available to repacked stations when they access their Form 399 in LMS (look for an icon at the top right of the page). The form can be downloaded to your computer to complete, as it will not be electronically filed but instead must be mailed or overnighted to a specific address provided by the FCC.

The Form 1876 process includes tedious details, apparently because money is involved. So there are a few precise steps that are critical. One such step is the requirement that the bank account be in the same name as the FRN holder (or else you need a bank letter explaining the difference). Another is that the licensee/FRN holder taxpayer identification number has to be listed on the Form 1876 and must be identical to the taxpayer identification number associated with the FRN (if not, you're headed to the CORES help desk for a fix). The slightly good news with Form 1876 is that there is no set deadline for it to be filed, the only caveat being that you can't get reimbursed for a repack expense until the form is filed and the bank account verified. But the FCC has recently sent reminders that Form 1876 is a necessary filing, encouraging stations to get them on file. In addition, they've issued a bit of a guide called "FCC Form 1876 – Getting it Right" that includes helpful hints like "please do not use white out anywhere on the Form 1876" and "please provide a bank letter or redacted bank statement that is less than four months old."

Before you grind your teeth beyond repair, let us know if you need help. One friendly suggestion to pass along – open a new checking account at your bank, and use only that account to receive reimbursement dollars and pay reimbursement

expenses. It will simplify internal accounting, and make things much simpler if the FCC decides to audit your reimbursement expenses (yes, they can do that).

NEW NCE FUNDRAISING RULE EFFECTIVE DATE

Remember earlier this year when the FCC adopted an order allowing NCE stations to conduct fundraising for third-party 501(c)(3) non-profits for up to 1% of their airtime per year? Well, we've been waiting for that rule change to go into effect, and most of it will actually become effective July 5, 2017. We know your next question. What exactly does "most of it" mean?

Well, two parts of the rule change had information collection-related requirements, and those have to await the dreaded Office of Management and Budget review. Those parts were (i) the requirement to make on-air announcements during a third-party fundraiser that made clear the fundraiser is for the third party, and not the station, and (ii) the requirement to disclose, on a quarterly basis, a notice/summary of the third-party fundraiser in the station public inspection file. So, for the FCC, the question was whether to delay the entire rule until OMB review was completed on those two information requirements, or allow the general rule to go into effect, with the information requirements to follow later.

We have learned that the FCC chose the latter approach, allowing the general rule to go into effect on July 5. As for those two other parts, that will still take several weeks before they become effective. The FCC is encouraging stations to follow the announcement and public file disclosure requirement voluntarily so that the public is clear as to what is occurring. We agree with the FCC's approach because it seems a given that a station is going to be clearly identifying who benefits from the fundraiser on-air, and because the public file requirement for any fundraiser conducted between July 5 and September 30 this year won't have to be included in the public file until October 10, 2017, and by then, that part of the rule will probably be in effect anyway.

So there, now that we've cleared that up, keep calm and carry on with your new ability to help non-profits in your community.

TIME RUNNING OUT FOR MEDIA REGULATION COMMENTS

July 5, 2017 is the deadline to file comments on the FCC's Modernization of Media Regulation [Initiative](#), which invited a review of all media regulations for the purpose of eliminating or modifying rules that are outdated, unnecessary or unduly burdensome. The only broadcast rules exempt from this proceeding are the multiple ownership, affiliation, and video accessibility rules, which are being addressed elsewhere. This is your chance to change or eliminate a regulation, especially if it no longer makes sense in today's modern age. Don't miss it!

MAIN STUDIO ELIMINATION COMMENTS DUE JULY 3RD

Ever wanted to give your opinion on whether the FCC should still mandate that a station have a main studio with 2 full time employees during normal business hours from which it can originate programming for broadcast? The FCC's [proposed rulemaking](#) released May 18th is seeking comment on whether the main studio rule should be eliminated. Comments can be filed through July 3, 2017 using the FCC's [electronic comment filing system](#).

CROSS-SERVICE FM TRANSLATOR FILING WINDOW JULY 26 – AUGUST 2

The FCC has announced an 8-day auction filing window for Class C and D AM stations to file for new FM translator permits. The filing window will open on July 26, 2017 at 12:01 a.m. EDT, and will close at 6:00 p.m. EDT on August 2, 2017. This filing window has been designated as Auction 99.

To be eligible to participate in this filing window, an AM station licensee must hold a Class C or D AM license, and have not filed an application in either of the 2016 AM station FM translator filing windows. If a Class C or D AM station does not

participate in this window, it may also participate in another short filing window that is likely to be scheduled much later this fall where Class A and B stations will also be eligible to participate. Permits granted in this filing window will have a 3-year construction period, and will forever be linked to the AM station that is listed as the primary station. If an AM station is already using one or more FM translators acquired *outside* of the 2016 filing windows, that station remains eligible to file for an additional translator in this filing window.

The FCC's instructions for participating in this filing window are set forth in this [public notice](#). Two different forms, in two different filing systems, must be submitted in order to qualify and have valid auction participation. First, certain portions of FCC Form 349 have to be completed and the form filed in the FCC's Consolidated Data Base System (CDBS). Applicants are able to begin working in CDBS on the Form 349 applications now so that they are ready for filing when the window arrives. A consulting engineer is highly recommended to provide applicants with channel analysis and technical information. Second, FCC Form 175 must be submitted in the FCC's Integrated Spectrum Auction System (ISAS). This form provides certain information about the bidder and those individuals or entities that have attributable, and therefore disclosable, interests in the AM station licensee. This form can't be accessed in ISAS until the window opens. Both forms have to be filed no later than August 2, 2017 at 6:00 p.m. EDT.

FCC ON ENFORCEMENT TEAR

We've talked a lot about regulatory reform at the FCC lately, but one thing appears very clear in the Ajit Pai-led Commission – if a rule is on the books, it will be enforced. We've seen the FCC aggressively pursuing unlicensed radio operators in recent weeks, issuing numerous notices to pirate radio stations in several cities. In addition, the FCC's field offices have been busy, particularly with AM stations that don't have required fences around towers, aren't staying within authorized power, or who aren't answering the door when FCC personnel show up for a visit. The message appears to be clear – just because we're in

deregulatory mode doesn't mean our existing rules can be ignored. Pay attention to the details out there.

EAS NATIONAL TESTING AND CORES (TOGETHER)

It seems like only yesterday that the FCC finished their last National Test of the Emergency Alert System (but it was last year). A few days ago, in a notice that was easy to miss, the FCC announced that all broadcasters must create an FCC Username within the FCC's Commission Registration System (CORES) in order to access the FCC's 2017 EAS Test Reporting System (ETRS). If a station doesn't have an FCC Username associated with its FRN, then it will be unable to participate in the required national test (hint – it appears there will be a national test later this year, but no date yet).

In the [notice](#), the FCC announces that sometime in July, it will issue a public notice announcing the availability of Form One of the ETRS, and the date by which EAS participants (i.e., all broadcast stations) will be required to have updated their Form One information in ETRS. You guessed it -- to access ETRS, you'll need to get that FCC Username (see above). The notice does give precise instructions on how to get a username, but we caution that it is not simple. Let us know if you require any assistance.

DATES TO REMEMBER

July 3, 2017

Deadline to file initial comments in Main Studio Rule Elimination proceeding.

July 5, 2017

Deadline to file initial comments in Modernization of Media Regulations proceeding.

July 10, 2017

TV, Class A, AM & FM Stations (commercial & noncommercial): complete 2nd quarter 2017 issues/program reports. **TV & Class A** stations post the report to your online public file. **AM & FM Stations** place in your public file (if already moved online, place in online public file).

TV & Class A stations (commercial only): complete and electronically file via LMS the FCC Form 398 Children's TV Programming Report for 2nd Quarter 2017. Your report should be automatically linked by the FCC to your online public file. **Also** compile and post to online public file records relating to station's compliance with children's programming commercial limits for 2nd Quarter 2017.

Class A TV Stations Only: complete and post to your online public file a certification of ongoing Class A eligibility.

July 12, 2017

Deadline for reassigned TV stations to file a construction permit application on Form 2100 for their allotted facilities, and to file FCC Form 399 Estimate of Repack Reimbursement Expenses

July 26, 2017

Cross-service FM translator Auction 99 filing window opens for Class C and D AM stations

August 1, 2017

AM & FM Stations in North Carolina, South Carolina, Illinois & Wisconsin: if five full-time employee threshold is met, complete EEO public file report and post same in public file as well as post on station website.

AM & FM Stations in California: if five full-time employee threshold is met, complete EEO public file report and place same in public file as well as post on station website. **If station has 11 or more full-time employees,** prepare and electronically file mid-term EEO Form 397 and place copy of filed report in your public inspection file. **NCE Stations Only:** your Form 323-E ownership report that would have been due on this date has been suspended until December 1, 2017.

TV & Class A Stations in North Carolina & South Carolina: if five full-time employee threshold is met, complete EEO public file report and post same in public file as well as on station website and prepare and electronically file mid-term EEO Form 397 and place copy of filed report in your public inspection file. **NCE Stations Only:** your Form 323-E ownership report that would have been due on this date has been suspended until December 1, 2017.

TV & Class A Stations in California, Illinois & Wisconsin: if five full-time employee threshold is met, complete EEO public file report and post same in online public file and station website. **NCE Stations in California Only:** your Form 323-E ownership report that

would have been due on this date has been suspended until December 1, 2017.

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Actual resolution of legal issues depends upon many factors, including variations of facts and applicable Federal laws. This publication is not intended to provide legal advice on specific subjects, rather, it seeks to provide insight into legal developments and issues that we feel could be useful to our clients and friends.

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