



Broadcast Newsletter

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CONVENTION TIME

Joe Chautin will be in sunny Orlando, Florida for the **National Religious Broadcasters** convention, arriving Sunday February 26 and available for meetings through Wednesday, March 2nd. If you'd like to set up an appointment to meet with Joe, please email him at jchautin@hardycarey.com. At the convention, Joe can be reached by cell 504-439-2350. Looking forward to seeing many of you there!

NEW FCC AND CHAIRMAN PAI MOVING FORWARD

In only a few weeks, much has changed at the FCC. Most notably, Ajit Pai, a sitting FCC Commissioner, has been named Chairman by President Trump. Broadcasters have a rare advocate in Chairman Pai, whose efforts to revitalize AM radio and lessen broadcast regulatory burdens have been laudable in his last 3 years as a sitting Commissioner. He frequently railed against FCC internal procedures that left the two Republican Commissioners on the sidelines without meaningful input on major FCC actions. From all indications, he will be an inclusive Chairman, one who openly solicits input even from those that do not agree with his position.

From his [speech](#) to the FCC staff as new Chairman, it is evident that he loves the agency and all of its people, all the way down to the parking attendants. His last ten years at the commission have been spent getting to know the agency and its people, and that should pay dividends as he works to make the best telecommunications policies for America. He has wasted no time using that knowledge, having already [named eight new interim Bureau and Office chiefs](#). The Acting Chief of the Media Bureau will be Michelle Carey. She's been deputy chief of the Media Bureau for six years, and that experience will be invaluable.

While broadcasters won't suddenly get a free pass from regulatory oversight, it is clear that where a regulation is meaningless (we would say stupid), those will be targeted

for extinction. Chairman Pai presides over his first meeting of the Commission today, January 31st, and as this [agenda](#) makes clear, deregulation is on the horizon.

RECRUITING EXCLUSIVELY ONLINE FOR FULL-TIME VACANCIES

Speaking of Chairman Pai and deregulation for broadcasters, there might just be a chance later this year for a common sense change under the FCC's EEO rules. For stations that meet the minimum full-time staff threshold under the EEO rules, wide dissemination is a requirement when recruiting for a full-time job vacancy. And the FCC's presumptive method for achieving wide dissemination of a job opening is a newspaper ad. Yes, you read that correctly.

So if your station wants to be able to recruit exclusively online (like the rest of the modern world) for full-time vacancies under the FCC's EEO rules, you should most certainly stay tuned to a pending [petition for rulemaking](#) recently filed at the FCC seeking relief from this antiquated EEO policy.

Comments on the proposal were due January 30th. But don't worry, you can still file reply comments through February 14th and provide your thoughts on the matter. It's easy. Follow the instructions [here](#). Don't procrastinate -- the deregulation bells are ringing.

TV AUCTION SUCCESS

Yes. On January 18, 2017, the FCC's Auction Dashboard boldly declared that forward auction bidders had committed to paying enough to trigger the final stage auction rule. There's much to celebrate with that development, since we now know for certain that the incentive auction will officially end in the current stage four. Eighty-four Mhz of spectrum were cleared, which means that post-auction, after transitions are complete, TV stations will only exist on channels 2-36.

The forward auction is not yet over, but the FCC is already gearing up for the post-auction repack of stations to their new home territory. Full power and Class A stations should be looking for a confidential

letter from the FCC by about mid-February. The letter will advise stations of their post-auction channels so that they can begin planning for any channel change. There will be much to do, and as the FCC's two recent post-auction [plan](#) and [scheduling procedure](#) notices addressing post auction issues make clear, there will only be 39 months for the entire transition, and tight deadlines will apply during that time period.

Huddle your team, as there will be a little something for everyone as the post-auction transition gets started. The sounding gun will be the FCC's Auction Closing and Reassignment Notice, expected to be issued in coming weeks.

SOUNDXCHANGE DEADLINE IS TODAY FOR STATIONS STREAMING MUSIC

All stations streaming music on the internet must file their annual statement of use and make minimum payments of \$500 per channel to SoundExchange no later than today, January 31, 2017. So if that slipped your mind (or your employee that was going to do it has been out sick), make sure you check that off of your list today.

VOLUNTARY GMR INTERIM LICENSE AGREEMENT DEADLINE IS JANUARY 31, 2017

Another reminder. New performance rights organization Global Music Rights (GMR), embroiled in copyright litigation demanding royalty payments for artists it represents, has offered an interim license agreement to commercial stations that wish to avoid liability. But you must have entered into that agreement by today January 31, 2017. It's only good through September 30, 2017, and the rate GMR decides to charge might be too much or too little. GMR claims to represent certain country, pop and rap artists, some of whom are named on their [website list](#) of artists.

A RUFERN REVISIT

The final days of Chairman Tom Wheeler's stint at the FCC were busy, and one of the items that he decided to act upon was a petition for

reconsideration of a requirement adopted early last year related to ownership reporting. The requirement? That all individuals included in ownership reporting – even for non-commercial station non-profit board members – were required to obtain a restricted use FCC registration number (RUFNR) so the FCC could track ownership trends. The RUFNR was a “compromise,” as it only requires name, address, date of birth and the last four digits of the social security number – less information than a standard FRN so that privacy is protected.

Several stations and organizations asked the FCC to reconsider that requirement, concerned that it would discourage individuals from serving on non-profit boards and otherwise be a hassle. Their request for relief languished for nearly a year. But in the first days of 2017, then Chairman Wheeler decided to act on it, and left the requirement in place in a tautly worded reconsideration order.

That set off the fireworks, as then Commissioner (now Chairman) Pai, together with Commissioner Michael O’Rielly, fired off a tersely worded [joint statement](#) decrying the issuance of the decision (ok go back and click on that last hyperlink; this statement is worth reading). It is certainly unusual for such decisions to be issued when the White House is in transition. And it is equally unusual for sitting commissioners to explicitly encourage petitioners to file an application for review, the last avenue for agency relief before the matter would have to be challenged in court. Needless to say, Pai and O’Rielly had a much different RUFNR view when it came to noncommercial stations.

In the days after the fireworks, a [bill](#) filed in the U.S. House of Representatives proposed to eliminate the RUFNR requirement for noncommercial stations. Commissioner Michael O’Rielly issued a [statement](#) welcoming the legislation, which was introduced by Rep. Marsha Blackburn, Chairman of the House Communications and Technology Subcommittee.

One way or another, it would appear that the RUFNR’s days are numbered, but NCE stations need to follow this issue (remember that making laws is like making sausage, and what you start with isn’t always what you end up with). If the

legislation dies for some reason, the FCC under Chairman Pai will have a new opportunity to kill the requirement (incidentally, we encourage these efforts because we believe it is silly to consider non-profit board members to be “owners” of a station for analyzing ownership trends).

All stations will be filing biennial ownership reports later this year, so the RUFNR issue needs a resolution by the summer to avoid chaos as ownership reporting transitions to a new form and online system.

BROADCAST STATION COUNT

As of the last day of every calendar year (or thereabouts), the FCC publishes a list of broadcast station totals. It is something that Congress requires them to do, and it’s just a list of the current totals, by type. No comparison to prior years is provided, so this [one page news release](#) is mostly a yawn. Well, we did some back of the napkin math, made a few comparisons to last year’s list, and thought we’d share what we found.

Radio first. Not surprisingly, there were 15 fewer AM stations at the end of 2016 than the year before. Still, there are 4,669 AM stations licensed in the U.S. and its territories. Another 45 commercial FM stations came on the air in 2016 (6746 total), as did six additional noncommercial FM stations (4101 total). And 747 new FM translators were licensed in 2016 (7253 total), many likely for use with AM stations. Finally, there are another 245 low power FM stations on the air now (total 1,678).

Now, TV. There are seven more Class A UHF TV stations (total 393) in 2016 than last year and six more Class A VHF TV stations (total 24). Another 312 UHF and VHF TV translators were licensed in 2016. Two more full power UHF commercial TV stations (total 1033) came on the air in 2016, but five fewer full power VHF commercial TV stations remained (total 351). For full power educational TV stations, the number of UHF educational stations remained static (289), with one less VHF educational TV station (total 105).

As a side note, of the combined 1,778 total full power TV stations and 417 total Class A TV stations, it is estimated that nearly 1200 of those stations will have to change channels in the post-auction repack.

FREEZE ON LPTV AND TV TRANSLATOR DIGITAL COMPANION CHANNELS ANNOUNCED.

The day after the final stage rule was met in the TV incentive auction, the FCC announced a freeze on the filing of digital companion channel applications by existing LPTV and TV translator stations. Digital companion channel applications specify a channel for digital operations other than the existing LPTV and TV translator station channel (as opposed to flash-cut channels, which propose “flash-cutting” to digital on the same channel that was licensed for analog).

LPTV and TV translator stations are not protected during the FCC’s repack of TV channels into channels 2-36. But once full power and eligible Class A stations have obtained any required post-auction repack channels, the FCC plans to open a special filing window for LPTV and TV translator stations that will be displaced in the repack to ask for displacement channels. Because the number of channels available to displaced stations will be limited, the FCC’s Media Bureau decided to freeze digital companion channel applications for now since such permits might be displaced anyway and to avoid a rush of applications once the repack plan is published.

LPTV and TV translator stations still operating in analog do not have to transition to digital until 12 months after the 39-month repack plan is completed.

DATES TO REMEMBER

January 31, 2017

All stations streaming a signal on the internet must file their statement of use and make a minimum payment of \$500 per channel to SoundExchange.

All commercial stations that wish to avoid claims of copyright infringement from Global Music Rights

organization need to obtain an interim license from GMR by this date or cease playing music by any GMR represented artists.

February 1, 2017

AM & FM Stations in Kansas, Nebraska and Oklahoma: if five (5) full-time station employment unit employee threshold is met, complete EEO public file report and post same in public file as well as post on station website. **If station employment unit has 11 or more full-time employees,** also prepare and electronically file mid-term EEO Form 397 and place copy of filed report in 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.

AM & FM Stations in Arkansas, Louisiana, Mississippi, New Jersey and New York: If five (5) full-time station employment unit employee threshold is met, complete EEO public file report and place same in public file as well as post on station website.

TV & Class A Stations in Arkansas, Louisiana, Mississippi, New Jersey and New York, if five (5) full-time station employment unit employee threshold is met, complete EEO public file report and post same in online public file as well as on station website **and** prepare and electronically file mid-term EEO Form 397 via the License Management System (LMS). **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 Kansas, Nebraska, and Oklahoma: if five (5) full-time station employment unit employee threshold is met, complete EEO public file report and post same in online public file and station website.

February 14, 2017:

Deadline to file reply comments in proceeding requesting a rulemaking to EEO wide dissemination policy.

April 1, 2017:

AM & FM Stations in Indiana, Kentucky, Tennessee, Delaware & Pennsylvania: if full-time employee threshold is met, complete EEO public file report and place same in public file as well as post on station website.

AM & FM Stations in Texas: if full-time employee threshold is met, complete EEO public file report and

post 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 Indiana, Kentucky & Tennessee: if five (5) full-time station employment unit employee threshold is met, complete EEO public file report and post same in online public file as well as post on station website and prepare and electronically file mid-term EEO Form 397 via the License Management System (LMS). **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 Delaware & Pennsylvania: if five (5) full-time station employment unit employee threshold is met, complete EEO public file report and post same in online public 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 Texas: if full-time employee threshold is met, complete EEO public file report and post same in online public file as well as post on station website.

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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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