



Broadcast Newsletter

IN THIS ISSUE:

CHAIRMAN PAI BEGINS FCC REFORM	1
OWNERSHIP REPORT RUFNRN RESET	2
PUBLIC FILE ITEM ELIMINATED.....	2
EEO AUDITS ANNOUNCED	2
TV POST-AUCTION PROCEDURES WORKSHOP SCHEDULED.....	3
FCC ADOPTS SITING RULE CHANGE FOR AM STATION FM TRANSLATORS.....	3
CHAIRMAN PAI REVOKES MIDNIGHT REGULATIONS FROM LAST ADMINISTRATION	3
FCC ADOPTS ATSC 3.0 NEXT-GEN TV STANDARD RULEMAKING	4
FCC ISSUES WARNING ABOUT AUDIO DEVICES USED BY BROADCASTERS.....	4
DATES TO REMEMBER.....	4

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!

CHAIRMAN PAI BEGINS FCC REFORM

New FCC Chairman Ajit Pai has wasted no time changing things at the FCC, instituting several process reforms.

On process reforms, the new Chairman has instituted a pilot program to increase the transparency of Commission rulemaking proceedings and draft orders being submitted for a Commissioner vote. The program involves the release of the full text of documents that are being circulated to other Commissioners for a vote at an upcoming meeting. In the past, those drafts have been circulated internally but not made available until after the final vote. With the new pilot program, Chairman Pai hopes to increase the public's understanding of the FCC's decision making process and end up with final rules that better serve the public interest.

A later tweak to this process reform added a provision that the Chairman's office will not discuss the content of items to be considered at an open meeting publicly before those items are shared with the other Commissioners. Two additional tweaks included the adoption by Chairman Pai of a suggestion from Commissioner Clyburn that a one-page summary of an item released prior to the open meeting be included with the proposed text of an order, and one from Commissioner O'Rielly requiring that any substantive edits to an item be proposed by a Commissioner, not a staff member. At its February 23rd Open Meeting, the editing issue was already being addressed in language both by presenting Bureaus and the Chairman, as items were proposed and or adopted subject to "non-substantive edits or changes" by the applicable Bureau.

Commissioner O’Rielly has separately proposed a change to the way that the Commission delegates powers to the various FCC Bureaus, noting that in 2016 alone, he voted on 167 items but that more than nine times that number of items were decided on delegated authority by the Bureaus. He believes that Commissioners should have a greater say even when a Bureau acts on delegated authority in order to prevent abuses and unnecessary delays. He has asked for delegated authority changes to (i) give Commissioners at least 48 hours advance notice that is to be decided by Bureau staff under delegated authority to allow sufficient time for a determination as to whether an item should be acted upon by the Commissioners instead, (ii) any two Commissioners could call for an item to be voted upon by the full Commission, (iii) such a vote occur within seven calendar days, (iv) and if a requesting Commissioner did not vote by the deadline, the lack of a vote would be deemed an approval of the item, avoiding delays and eliminating the need for stakeholders to appeal a Bureau level item to the full Commission.

While Commissioner O’Rielly’s proposal has not been adopted, it may well be in coming weeks. We expect additional reforms as Chairman Pai seeks to make the Commission’s processes more open to the public and aligned with the public interest.

AN OWNERSHIP REPORT RUFNR RESET

Last month, we reported that in the final days of Chairman Tom Wheeler’s stint at the FCC, the Media Bureau decided to act upon a petition for reconsideration of a requirement that all individuals included in ownership reporting – even for non-commercial station non-profit board members – obtain a restricted use FCC registration number (RUFNR) so the FCC could track ownership trends. The Media Bureau, under then Chairman Wheeler’s administration, denied the petition, leaving the requirement in place.

Then Commissioners Ajit Pai and Michael O’Rielly objected loudly, expressing doubt as to the need for the RUFNR for non-commercial station board members, citing it as burdensome. True to his word, new Chairman Pai apparently had a chat with the new chief of the Media Bureau, and the Bureau

issued a February 2, 2017 Order rescinding the Bureau’s earlier decision. In doing so, it concluded that the petitions for reconsideration “are more appropriately handled at the Commission level.” The petitions were returned to pending status.

Although the issue has not yet been placed on any agenda or an order otherwise circulated, we expect that it will be soon. The RUFNR issue needs a resolution quickly to avoid delays as ownership reporting transitions to a new form and online system later this year.

PUBLIC FILE ITEM ELIMINATED

At its January meeting, the Commissioners voted to delete “comments from the public” from the list of items that commercial broadcasters must place in the public inspection file. For commercial TV stations, this action also eliminated the need for stations to keep a separate paper public file at the station in addition to the online public file due to privacy concerns.

The rule change must go through the Office of Management and Budget first before it becomes effective. So don’t go and clean out your public file yet. We still have a few weeks before the effective date, and the FCC will announce the date in a public notice. We’ll be sure to cover that in future newsletters.

EEO AUDITS ANNOUNCED

On February 8, 2017, the FCC mailed Equal Employment Opportunity (EEO) audit letters to several hundred radio and television stations as part of an ongoing requirement that the Media Bureau randomly audit roughly 5% of broadcast stations each year. The notice and lists of stations audited can be found [here](#).

One interesting statement in the notice that we don’t recall seeing previously is a reminder that stations with a website that have five or more full-time employees must place their most recent EEO public file report on their website, and that this will be examined as part of the audit. In other words, an FCC staffer will be accessing your station’s website to find the most recent report, and if it is not

there, the EEO rule has been violated and the station is subject to sanctions. The FCC's reminder goes on to state that if a station does not have its own website, but the licensee's corporate website contains a link to a site pertaining to the station, then the station's most recent EEO public file report must be linked to either the station's linked site or the corporate website. In other words, there is no dodging the website posting requirement by using a corporate website with station links.

Stations have until March 28, 2017 to respond to the audit. If additional time is needed, we've found the FCC's EEO staff to be very accommodating, granting short-term extensions via email.

TV POST-AUCTION PROCEDURES WORKSHOP SCHEDULED

With the Incentive Auction scheduled to officially end on March 31, 2017 (with the end of the Forward Auction Assignments Phase), the FCC is expected to issue its Auction Closing and Channel Reassignment Notice in April 2017, officially starting the 90-day period for repacked stations to file for new channel construction permits and remit reimbursement expense estimates.

The FCC will hold a workshop on Monday, March 13, 2017 (time to be announced) to review procedures related to the post-auction broadcast transition. Additional details on how stations can tune in to the workshop will be posted on the FCC's website in coming days.

FCC ADOPTS SITING RULE CHANGE FOR AM STATION FM TRANSLATORS

At its open meeting on February 23, 2017, the FCC Commissioners voted to relax a rule governing where FM translators being used for AM stations can be located. Previously, to 60 dBu contour of such translators had to be contained within the lesser of the AM station's 2 millivolts per meter (mV/m) daytime contour or a 25-mile radius centered at the AM station's transmitter site.

Under the new relaxed standard, the 60 dBu contour of an FM translator being used to retransmit an AM station's signal can now be located within the greater of either (a) the 2 mV/m

daytime contour of the AM station, or (b) a 25-mile radius centered at the AM station's transmitter site. A previous proposal setting an overriding 40-mile limit on the distance from the AM station's transmitter site was not adopted.

The relaxed siting rule substantially increases the flexibility of AM stations to locate FM translators in order to best serve their core audience, especially in situations where directional AM patterns are involved or where ground conductivity is uneven. According to the FCC, over 2000 AM stations are now using an FM translator. With a filing window on the near horizon for *new* FM translator permits for use with AM stations that didn't participate in the 2016 windows, even more AM stations will have an opportunity to get FM translators.

CHAIRMAN PAI REVOKES MIDNIGHT REGULATIONS FROM LAST ADMINISTRATION

On February 3, 2017, Chairman Pai revoked a number of controversial regulations, orders and reports released by the FCC's Bureaus and Offices in the waning days of the last Administration, noting that in some cases Commissioners were given no advance notice of the regulations. In others, two of the four then sitting Commissioners objected to the item, and in all cases, the new orders or reports were issued contrary to Congressional oversight committee directives.

We covered one of these items – the Media Bureau's RUFNRN action – in an article above. That item will eventually come before the entire Commission. A similar Media Bureau action was rescinded related to complaints against stations for apparent compliance failures of public inspection file requirements for certain advertisements on issues of public importance. In early January, 2017, the Bureau had issued an order providing further guidance on the requirements and sanctioning some stations. In rescinding that earlier order, the Bureau stated that the matters "are more appropriately addressed at the Commission level."

Finally, the Media Bureau also immediately rescinded published 2014 guidance related to the Bureau's processing of broadcast television

applications proposing sharing arrangements, which had attributed such arrangements under the FCC's ownership rules.

FCC ADOPTS ATSC 3.0 NEXT-GEN TV STANDARD RULEMAKING

The FCC has adopted a notice of proposed rulemaking seeking comment on whether the FCC should authorize television stations, on a voluntary basis, to use ATSC 3.0, the next generation TV transmission standard. The new standard will allow ultra-high definition video, immersive audio and content personalization, and will apparently have improved reception on mobile devices and television receivers without outdoor antennas. The action comes almost a year after a petition seeking authority for use of ATSC 3.0 was filed. The previous administration had not moved forward with considering the petition.

At the time we went to press with this newsletter, the FCC's order had not yet been issued. Check the FCC's website for comment deadlines. Comments can be filed electronically using the FCC's [electronic comment filing system](#).

FCC ISSUES WARNING ABOUT AUDIO DEVICES USED BY BROADCASTERS

The FCC's Enforcement Bureau has issued an alert about unauthorized persons recently illegally gaining access to studio-to-transmitter (STL), remote broadcast, and similar audio connections. Citing specifically to equipment manufactured by Barix, and instances where offensive and indecent material were transmitted, the warning noted that the illegal access may have resulted from the failure to set a password for devices with no default password, or to reset default passwords on the Barix devices. The Bureau urged licensees to take all available precautions to prevent future unauthorized transmissions.

DATES TO REMEMBER

March 13, 2017

TV & Class A Stations Changing Channels Post-Auction: FCC work shop on post-auction procedures; time and web access details forthcoming.

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.

April 10, 2017

TV, Class A, AM & FM Stations (commercial & noncommercial): complete 1st 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 1st 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.

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

© 2016 Hardy, Carey, Chautin & Balkin, LLP

For more info, contact Joe Chautin or Mark Balkin.

Phone 985.629.0777

Fax 985.629.0778

www.hardycarey.com

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.

 Hardy, Carey, Chautin & Balkin, LLP
ATTORNEYS AT LAW
1080 West Causeway Approach
Mandeville, Louisiana 70471-3036