



# Broadcast Newsletter

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## **NAB**

Joe Chautin will be in Las Vegas, Nevada for the National Association of Broadcasters convention from April 22<sup>nd</sup> to 26<sup>th</sup>. If you'd like to set up an appointment to meet with Joe in Las Vegas, please email him at [ichautin@hardycarey.com](mailto:ichautin@hardycarey.com). At the convention, Joe can be reached on cell 504-439-2350. Looking forward to seeing many of you there!

## **LOSS OF BRAD CAREY**

Many of our clients and friends will remember Brad Carey, who, with the firm's founder, Ashton Hardy, helped to establish our law firm and its history of serving broadcasters nationwide. In 2003, Brad suffered a stroke and could no longer practice law. However, he graciously allowed us to continue using his name in the firm's name. He recovered to a level that allowed him to travel and enjoy the best of life. As we have reported to some of you already, Brad passed away in late-January 2017. We fondly remember his gregariousness, his traveling model of a registered tower that frequently accompanied him to conventions, his love for the Kentucky Derby, and his dedication to all things broadcasting as an engineer and attorney. In tough situations, there was no one better to advocate on behalf of a broadcaster.

## **POST-TV AUCTION LANDSCAPE TO BE REVEALED**

Sometime in mid-April 2017, the future of TV broadcasting between channels 2 and 36 will become clear. Or perhaps we should say clearer. That's when the FCC plans to publish its auction closing notice, identifying stations that had successful auctions, what stations will cease broadcasting, and the channels on which remaining stations will be assigned. We heard that collective sigh of relief, and we share in it. But the hard work is ahead, and though the FCC has put a brave face on it, the post-auction repack will be a very bumpy ride.

With a rigidity that has been a hallmark of the FCC's auction process, the FCC's repack plans leave little room for the unforeseen or the complexity and scope of the station changes to come. Indeed, they are so rigid that NAB has objected by filing a [petition for reconsideration](#), calling on the FCC to add flexibility and accept the reality that such transitions take longer than 39 months, citing the recent eight-year TV analog-to-digital transition as a prime example.

We agree with NAB's comments, though we'll give the FCC one thing – Congress mandated the 39-month transition. Nevertheless, an agency skilled enough to put on a first-of-its-kind spectrum auction should possess the ability to interpret Congress' intent in a way that does not jeopardize stations and viewers. And if it cannot, we suggest that a visit to Capitol Hill is in order to get more time. Side note - while there, getting some additional funds allocated for repack expenses might be a good idea.

Enough for our soapbox. For stations that have to change channels in the repack, a critical 90-day period is around the corner. Once the closing auction notice is issued, stations changing channels will have 90 days to file a construction permit for their new channel and file an estimate of the anticipated channel-change costs. And for stations that want to forego getting reimbursed for the channel change in exchange for being allowed flexible use of their spectrum for non-broadcast purposes (other than one free over the air broadcast signal), there will only be 30 days from the issuance of the closing auction notice to make that decision and file a request for that right.

From there, the shuffling begins, with stations transitioning to their new channels in a series of ten phases. Numerous filings, updates, requests and notices will be necessary for a station to make a channel change. All stations – those being repacked or not – should pay very close attention to their specific market and neighboring markets. Stations being repacked (and stations not being repacked that experience certain levels of interference) will be entitled to request channel changes. Needless to say, the closing auction notice setting the post-auction channel assignments in your market will evolve and may

look a lot different by the time the repack is finished.

Ready yet? Have any questions? Let us know. Or watch this FCC [webinar](#). Or check out the associated PowerPoint [presentation](#). But whatever you do, fasten your seat belts, there's turbulence ahead.

## **APRIL 10<sup>TH</sup> FIRST FILING OPPORTUNITY FOR EXPANDED SITING OF AM STATION FM TRANSLATORS**

Although adopted February 23, 2017, the FCC's new siting rule for AM station FM translators won't become [effective](#) until April 10, 2017. On that date, the new rule allowing the 60 dBu contour of an AM station's FM translator can 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.

Filing a modification application for your AM station FM translator before the April 10, 2017 effective date might seem like a good idea, but in this instance, the early-bird-gets-the-worm approach won't work. In response to some early filers, the FCC quickly shut down such applications, issuing a [public notice](#) making clear that modification applications filed before the April 10<sup>th</sup> effective date would be dismissed.

So translator permit holders or licensees that plan to file applications to take advantage of the new siting rule should get everything ready in CDBS, test file the application, and be ready on April 10<sup>th</sup> to hit the file button.

## **ANOTHER PAI REFORM**

New FCC Chairman Pai has implemented more than a few reforms in his first weeks, but there's one discussed in an FCC Blog post by Commissioner O'Rielly that has peeled back the curtain on some inside-the-agency practices from the last administration (and likely those before).

In short, the previous administration apparently closed down certain internal lines of communication on issues that the FCC was considering. So, for example, when a Commissioner in the minority

asked a staffer for information on a matter before the Commission, it was not provided. In Commissioner O’Rielly’s words, “some of the most knowledgeable people in the building seemed to be under direction not to share certain information or answer certain questions. Sometimes I would get a wry smile, other times it was a blank stare, and occasionally there was a more honest response that the information would not be forthcoming. Frustrating indeed.”

Chairman Pai, now in the majority, has fixed that by giving unequivocal direction to the FCC staff that they should be completely up front with all Commissioners, not just the Chairman or those in the majority. Staff is not to withhold information requested by Commissioners or fail to share information that is pertinent to matters before the Commission.

Yes, you read that correctly. Pretty clear, huh? Seems to us that the new Chairman knows from experience that the agency cannot get to its best result on behalf of the public without the full input from and debate with all Commissioners, not just those in the majority. What a concept – openness over closed-mindedness. It is a new day at the FCC, one where a Commissioner’s opinion and view is not stifled or obstructed because of a party label, but instead is welcomed in an atmosphere of openness, the end product of which might just be collaboration.

## **POST-AUCTION CHANNEL SHARING EXPANDED**

The FCC recently adopted an [order](#) expanding the concept of channel sharing among television stations outside of the incentive auction context. Previously, stations participating in the auction could enter into channel sharing agreements so some stations could give up their spectrum in the auction yet continue broadcasting by sharing space on another station. In this new order, the FCC lets stations that were not parties to auction channel share agreements to negotiate and enter into channel share agreements, with some limitations.

For full power or Class A stations whose auction channel share agreement is limited in time (i.e. 5-10 years) or otherwise ends, such stations will be

able to negotiate and enter into new channel share agreements with another station after their current CSA ends. Full power or Class A stations without an auction CSA can host other stations as a “sharer”, but cannot hand in their license to channel share as a “sharee” with another station.

For low power stations now on a channel above 36, or below channel 36 that get bumped in the post-auction repack, the new channel share policy gives them an option to remain in business through a channel share (assuming one can be negotiated) with a full power, Class A, or another LPTV station. While sharing with a full power or Class A station will give the LPTV station an expanded coverage area, the LPTV station will not get any new mandatory carriage rights as a result. The new channel sharing possibility will help some LPTV stations remain on the air if there are no displacement channels available in an area, or if rebuilding on a displacement channel is undesirable or too expensive.

The details and procedures for non-auction CSAs are set forth in the order. If you’re considering such an arrangement, a careful review is warranted.

## **ATSC 3.0 COMMENT DEADLINES SET**

In February, the FCC released a notice of proposed rulemaking asking for comment on its proposal to authorize television broadcasters to use a “next generation” broadcast television transmission standard (ATSC 3.0) on a voluntary basis, so long as they continue to deliver at least a ATSC 1.0 digital signal to viewers. Comments in this proceeding are due by May 9, 2017, with reply comments due no later than June 8, 2017. Commenters can submit comments via the FCC’s [electronic comment filing system](#).

## **DATES TO REMEMBER**

**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 1<sup>st</sup> 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.

**AM Stations with FM Translator Licenses or Permits**  
-- first day to file applications to modify the FM translator authorization such that the 60 dBu contour of the translator is 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.

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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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