



# Broadcast Newsletter

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## **RAPID ROLLBACK OF BROADCASTER REGULATIONS UNDERWAY**

Chairman Pai has been very busy on many fronts, but perhaps none more than the broadcaster front. He has now either initiated or completed rule changes on a number of issues affecting broadcasters, and at the National Association of Broadcasters convention, announced in a speech that he is launching a top-to-bottom review of broadcast regulations. So we expect even more change, relaxation or elimination of rules in coming months. In Chairman Pai's words, he wants the FCC to "get out of the way" of industry where regulations don't make sense anymore. It has been so long since broadcasters had any regulatory relief that the events of the past several weeks, quite frankly, have our heads nearly exploding.

Here are a few highlights, so far, under Chairman Pai, not in any particular order:

- the FCC's 13-year old policy of requiring a newspaper advertisement to ensure wide dissemination of a job vacancy by stations with five or more full time employees is [now dead](#). Online-only recruiting is now permissible;
- altering a more than 30-year old prohibition on third-party fundraising for NCE radio and TV stations, the FCC has now [ruled](#) that such stations may interrupt regular programming to fundraise on behalf of third party 501(c)(3) recognized non-profit entities, up to 1% of their annual airtime (certain public file disclosures required);
- in the TV ownership arena, the FCC has [reinstated](#) a 50% discount for UHF TV stations when calculating population count against the 39% national ownership cap;
- board members of noncommercial radio stations have been [exempted](#) from any requirement to provide date of birth and SSN information for

purposes of ownership reporting and diversity tracking.

- the age-old requirement to retain comments from the public in the broadcast station public inspection file has been eliminated (effective date coming soon); and,
- numerous transparency initiatives, including the practice of releasing drafts of orders at least 30 days before an agency vote on major decisions.

Announced, but not yet underway

- notice of proposed rulemaking to eliminate the pre-World War II main studio rule for all broadcast stations, which would apparently mean the concurrent death of a policy that has long required “meaningful presence” at the studio during normal business hours, defined as two full time employees (see article in this newsletter);
- filing window for new FM translator applications for AM stations that did not participate in the 2016 filing windows, anticipated late summer 2017 (see article in this newsletter);
- elimination of the TV/Newspaper cross-ownership rule (an archaic yesteryear regulation which, in our opinion, has contributed to the demise of newspapers nationwide).
- Probably on the horizon, with petitions for rule changes pending.
- modification of the interference rules for FM translators (no procedural move by the FCC yet in response to petitions filed, and no comments from Commissioners via blog or otherwise) (see article in this newsletter); and,
- modification of the TV ownership 39% national cap

There are other antiquated or senseless regulations that burden broadcasters unnecessarily. You probably know a few. Well, when Chairman Pai launches his top-to-bottom review, make sure you

file comments pointing out other rules that no longer provide a meaningful public interest “dividend.” The FCC is in full de-regulatory mode. Amen to that.

## **POST-AUCTION REPACK STARTS; IMPORTANT DEADLINES SET**

On April 11, 2017, the FCC released its long awaited [closing notice](#), formally ending the reverse and forward auction of TV spectrum, and re-designating TV broadcasting to a new home between channels 2 and 36 will become clear. Only 175 TV stations received auction funds for turning in their spectrum, or agreement to move to the VHF band. Another 950 or so stations will have to change channels between now and July 20, 2013, a 39-month sprint that promises to present challenges. The remaining TV stations don’t have to take any action.

On the immediate horizon for TV auction winners is a May 11, 2017 deadline to submit a hard-copy Form 1875 to set up bank account information to receive auction funds. Those winners who must transition to VHF must also file a construction permit application no later than July 12, 2017 for their new VHF channel.

For repacked TV stations, May 15, 2017 is the deadline for requesting a waiver to use their spectrum for flexible (non-broadcast) uses, in exchange for any reimbursement of relocation costs. Then, June 12, 2017 is the deadline to ask the FCC for more time to file construction permit applications for their reassigned channels (only for stations unable to construct their allotted facilities). Finally, July 12, 2017 is the deadline for construction permit applications for reassigned channels, and for filing an initial estimate of relocation costs. These stations also have to file Form 1876 with the FCC in advance of receiving any relocation funds.

There will be other filing windows later this year for special situations, followed by a filing window for displaced LPTV stations.

The FCC has leaned forward by [appointing](#) regional coordinators for repacked stations, with emails

offering assistance in broadcaster and counsel inboxes in the days following the closing notice. Help will be needed.

Beginning in October, reassigned stations will be required to file quarterly updates of their progress with the FCC (yes, another quarterly form, due by the 10<sup>th</sup> day after the end of a calendar quarter). So the first report will be due no later than October 10, 2017.

If you're a little overwhelmed, we understand. There is no actual medical diagnosis for those feelings, though we are comfortable with "post-auction anxiety". We're not doctors (ok, not the medical type at least), but the easiest antidote is getting informed and taking action now to avoid any deadline issues.

## **FM TRANSLATOR FILING WINDOWS PROJECTED FOR LATE SUMMER**

If your AM station sat on the sidelines during 2016's two filing windows that allowed stations to acquire and relocate existing translator authorizations up to 250 miles, your turn to get a new FM translator for use with your AM station is right around the corner. In a speech at the NAB Convention, FCC Chairman Ajit Pai promised as much, and if you haven't been paying attention, he delivers on his promises.

So long as your AM station did not file to acquire or relocate a translator in the 2016 windows, you are eligible to file in the 2017 windows, when announced. Even if your AM station already has an FM translator acquired through means other than the 2016 windows, your station remains eligible to file for a new translator permit in the 2017 window. What if you tried to get one in the 2016 windows, filed at the FCC to modify/relocate such a translator, but ultimately weren't successful because the deal fell through? Sorry, you won't be able to participate in the 2017 windows.

The 2017 filing windows will likely be short (perhaps 30 days) and will start with a window for Class C and D AM stations, followed by another short filing window for Class A and B AM stations. Now is a good time to do a little advance planning if you plan to participate. You'll want to ensure that

you have reasonable assurance for your tower site before filing an application. And it's a good idea to use a good engineer to propose realistic facilities designed to cover your station's more densely populated areas. Remember, the FCC's new siting rule for AM station FM translators became [effective](#) April 10, 2017, and the new rule allows the 60 dBu contour of an AM station's FM translator to 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.

There will be several pre-window steps that must be taken because of the format of these windows. Because mutually exclusive applications that are not resolved would have to go to a highest-bidder-wins auction, participants will most likely have to file FCC Form 175 to qualify, specifying basic technical parameters. More details will be released in coming weeks.

## **THE CONUNDRUM OF FM TRANSLATOR INTERFERENCE**

As the use of FM translators has boomed in the past several years, instances of predicted and actual interference were bound to increase. And increase they have, with numerous full power stations filing for relief with the FCC and FM translator licensees and permittees scrambling to eliminate interference under the FCC's rules and prior precedent.

As secondary FM signals, translators may not interfere with existing full power FM stations. And for years now, the FCC has followed an established procedure for addressing such interference complaints, requiring certain forms of proof before ordering a translator to shut down. It takes time and effort, regardless of whether you are the translator or the full power station. Recently, with a few pitched interference battles raging -- some with the backdrop of an AM station trying to survive under revitalization policies -- the FCC staff has been trying to encourage parties to resolve their complaints without an FCC decision being issued.

So it was inevitable that a cry for modification of the FM translator interference rule/standard would surface. In fact, it may now be an outcry. A few petitions for rulemaking, [one](#) by broadcaster Aztec,

and another [one](#) by the NAB, have been filed, proposing that the complaint process be streamlined (even with a shot clock), and that standards used for determining interference be tightened. We especially like one suggestion by NAB that a translator causing interference be allowed to move to any available channel, as opposed to the current minor modification limitation of 3 channels away, up or down the dial.

At the heart of these proposals is the question of whether it remains legitimate for a full power station to receive “protection” from an FM translator in areas that are outside the FM station’s protected interference contour. Under today’s rules, a complaint is entertained if actual interference is received by *any* regular listener of the FM station, even if that listener is far outside of the full power FM station’s protected contour.

The FCC has not commented or reacted to these filings in any way. They have a few options. One would be to accept comments on whether the petitions have enough merit to warrant the opening of a rulemaking proceeding. Another would be to launch the proposed rulemaking and take comments on the rule change. We don’t see a declaratory ruling or anything in the works here. But with major broadcasters now using translators as much as smaller broadcasters, we believe some change is likely and hope for a brokered, equitable and fair outcome.

## **WHAT? NO MAIN STUDIO RULE?**

The word used by Chairman Pai at the NAB convention to discuss his intentions for the existing clunky and expensive main studio rule was “eliminate.” Whether that will occur remains to be seen, but at the May 2017 FCC meeting, the Commission is set to apparently initiate a notice of some kind considering changes to, and perhaps elimination of the main studio rule.

Some form of the rule requiring broadcasters to maintain a main studio in or near their community of license has existed since before World War II. So the rule is beyond vintage and has achieved “ancient” status. Sure, it has been relaxed a few times, allowing stations more flexibility. But it is a

dinosaur in the internet age. And even though the rule allows for waivers for both commercial and noncommercial stations, only noncom waivers are ever granted. Despite the plain language of the rule that commercial stations can request such waivers, the FCC staff fully rejects any such request. We know. We’ve tried, more than once. You’d think we would have expressed a heresy or sacrilege given the cold and unmoving responses received.

So, the idea that this rule might die makes our eyes bulge and simultaneously look in different directions. Frankly, any significant relaxation of it would be welcome.

The part that most excites us is that elimination of the main studio rule would seemingly take along with it the requirement that stations maintain two full-time employees at the station during normal business hours to achieve a “meaningful presence.” That’s not in the rule itself, but was born out of an FCC decision to fine a station, and has been enforced like a rule for nearly two decades. It is costly and silly today to require a main studio or meaningful presence, when stations can be reached by phone, email, social media, or direct message, and respond as necessary. And the public file will be online for all stations by March 2018, so the now vacuous concept of having someone available to show the public a document in the public file won’t be a justification for the main studio anymore.

We’re as curious as you are to see where this goes. Updates to follow.

## **EEO OUTREACH MOVES ONLINE**

It may sound like a small thing for stations with five or more full-time employees, but the FCC’s [recent declaratory ruling](#) that forever killed the necessity of having to place a newspaper ad to ensure wide dissemination of a job vacancy was both welcome and remarkable.

For nearly 13 years, since the old hiring quotas were replaced with a broad outreach EEO policy, the FCC has had a policy requiring stations with five or more full-time employees to use the



newspaper in order to ensure dissemination of job vacancy information. Online sources were nice, but not enough – even in the internet age when everyone looks for a job online. That's now changed, and beginning with any vacancy from April 22, 2017 going forward, online sources alone are sufficient to disseminate job vacancy information, so long as they will ensure wide dissemination.

We like that instead of issuing a notice of proposed rulemaking, which would have taken some months to complete, the FCC took action immediately by way of a declaratory ruling, concluding that the newspaper ad guidance was a policy, not a rule, and therefore subject to immediate change without a rulemaking proceeding. Take a look at footnote 43 for that discussion.

Little changes make a difference. Practical, expedited solutions are wise. If there was a little heart symbol nearby, we would “favorite” this decision by the FCC.

## ATSC 3.0 COMMENT DEADLINES

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 an ATSC 1.0 digital signal to viewers. Comments are due in this proceeding 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

### May 11, 2017

Deadline for TV Auction winners to submit completed hard copy Form 1875 form to the FCC.

### May 15, 2017

Deadline for reassigned TV stations to file a request for waiver of the FCC's rules to allow flexible use of licensed spectrum in lieu of relocation cost reimbursement.

### June 1, 2017:

**AM & FM Stations in the District of Columbia, Maryland, Michigan, Ohio, Virginia & West Virginia:** 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 Arizona, Idaho, Nevada, New Mexico, Utah & Wyoming:** 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 Michigan & Ohio:** 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 the District of Columbia, Maryland, Virginia, West Virginia, Arizona, Idaho, Nevada, New Mexico, Utah and Wyoming:** if five (5) full-time station employment unit employee threshold is met, complete EEO public file report and post same in online public file.

### June 12, 2017

Deadline for reassigned TV stations to file for authority to delay construction permit application beyond July 12, 2017 deadline because they are unable to construct their allotted facilities.

### July 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).

## July 10, 2017 (cont'd)

**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.

## July 12, 2017

Deadline for reassigned TV stations to file a construction permit application on Form 2100 for their allotted facilities.

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