Hardy, Carey, Chautin & Balkin, LLP
ATTORNEYS AT LAW

Broadcast Newsletter

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IN THIS ISSUE:

FCC UNVEILS NEW OWNERSHIP REPORT

The FCC has now suspended the old Forms 323 and 323-E ownership reports that were filed in the Consolidated Database System (CDBS), and unveiled a new report that must be filed in the License Management System (LMS). At a webinar on November 28, 2017, the FCC detailed the new form and procedures for completing and getting it filed. There are more than a few interesting wrinkles there, which makes us thankful that the FCC previously announced a three-month extension of the normal December 1st deadline for all broadcast stations to file their 2017 Biennial Ownership Reports. Reports that would have been due by December 1, 2017 are now due no later than March 2, 2018. The now-one-year old suspension of ownership reporting for noncommercial stations was also extended through March 2, 2018. Don't forget that the information to be reported in these filings must be accurate as of October 1, 2017. As we recently learned, even stations that are sold after this date are still required to file the form by the deadline because they owned the station on October 1, 2017.

Now for the wrinkles. Wrinkle No. 1. To add people or entities to the form that are attributable for reporting purposes, you can only do so by entering an FRN. You can't just type in a name. The form then auto-populates with the entity or individual's name. You then enter address information. So, in other words, the software is FRN designed to coincide with the "everyone must have an FRN" requirement to facilitate the FCC's ownership tracking efforts. Wrinkle No. 2. None of the data from previously filed ownership reports in CDBS migrates over to the form in LMS. So that means starting from scratch.

We're just getting started, so there are more wrinkles to be discovered. Sigh. We get that this is the FCC's latest way to collect ownership data efficiently. But the new form and filing system are an uphill climb for broadcasters, and at this point, the hill is pretty steep.

TV Ancillary Reporting Suspended

With days to spare before the December 1, 2017 deadline for all digital television stations to file Form 2100, Schedule G for any ancillary/supplementary uses of their spectrum, the FCC decided to suspend the filing requirement because it is considering changing the requirement as part of a notice of proposed rulemaking that seeks to lessen broadcaster reporting and notice burdens. Of course, because stations could begin filing the report as of October 1, many prudent stations seeking to avoid last minute filing had already submitted the report. The FCC does not issue a gold star for such prudence, but we'll give you one. For all other stations that have not filed the schedule, this is your early Christmas gift from the FCC.

Cross-Service FM Translator Singleton Processing Window

November 29th was the deadline for all mutually exclusive FM translator applications filed earlier this year in Auction 99 to file amendments or settlements. Those that did will be processed accordingly. Those that did not will have to wait for a "highest bidder wins" auction that is yet to be scheduled.

Beginning December 1, 2017, those Auction 99 applications that were not mutually exclusive with others, called singletons, must file a complete FCC Form 349 (also called a "Long Form") with the FCC. These applications are exempt from the FCC's auction procedures. By public notice, the FCC has set a 20-day window, ending December 21, 2017, for singletons to complete this filing. Don't file early, and don't file late. In either case, those applications will be dismissed.

Applicants are probably generally aware if their application is a singleton, but to be sure, check the list. As full 349s are filed, those applications will be afforded cut-off protection against those filed in later days. In some situations, this cut-off protection should prompt applicants to file on the first day of the 20-day window. Check with your consulting engineer.

Once a full Form 349 is filed, the FCC will issue a public notice announcing that the application is accepted for filing. A 15-day period for petitions to deny will follow. Assuming no such petitions are filed, grants of the pending applications will follow, and permits issued will have a 3-year construction period.

A second FM translator filing window for all AM classes of stations (A, B, C & D) is expected in coming months.

Temporary Freeze Lift Window Opens For Non-Repacked Stations

For those full power and Class A stations that are not being repacked, but want to expand their facilities, the FCC's very short, 10-day temporary lift of the filing freeze that has been in place since 2013 is underway. The freeze will be re-imposed at 11:59 p.m. EST on Thursday, December 7, 2017. Expansions by non-repacked stations must protect those post-auction TV applications that were previously filed.

Why this short window, and why now? The biggest reason is the FCC's coming displacement filing window for LPTV stations and TV translators. That window is slated for some time in late March 2018. By allowing non-repacked full power and Class A stations to seek expanded facilities before the LPTV window, the FCC is trying to lessen the likelihood that newly permitted LPTV facilities will be displaced yet again by new full power and Class A filings after the LPTV window.

TV and Cross-Ownership Rules Changed

As forecast, the FCC has voted upon and adopted changes to the broadcast ownership rules. You can read all the details here, but the next four paragraphs will give you the short summary.

The Newspaper/Broadcast Cross-Ownership Rule was eliminated, primarily because it was no longer necessary to promote viewpoint diversity and was actually preventing combinations that would enable both broadcasters and newspapers to better serve the public interest.

The Radio/Television Cross-Ownership Rule was eliminated because it was no longer necessary to promote viewpoint diversity in the modern media marketplace.

The Local Television Ownership Rule was modified to eliminate the Eight-Voices Test and to incorporate a case-by-case review option in the Top-Four Prohibition to better reflect the competitive conditions in local markets.

And finally, the attribution rule for television JSAs was eliminated, with the FCC concluding that they are beneficial agreements that serve the public interest by allowing television broadcasters to better serve their local markets.

The FCC also decided not to change the radio ownership limits, which currently restrict a single entity from owning more than eight radio stations in the largest markets, and adopted a rulemaking to figure out the details of an incubator program where established broadcasters can help ease the path of new entrants to the broadcasting industry.

So what's up next on the broadcast station ownership front? Elimination of the cap on how many Americans a single broadcast television owner can reach through television. You can read the draft notice of proposed rulemaking here. Currently, the FCC will not approve any TV station acquisition if the result would be that the proposed licensee or any attributable individual would collectively own stations that reach more than 39% of the national television audience. The rulemaking will consider changing that, including an examination of the FCC's authority to do so.

Voluntary TV ATSC 3.0 Order Adopted

At its November meeting, the FCC adopted an order in a several-months-old proposed rulemaking authorizing TV stations to voluntarily begin using the "Next Generation" or ATSC 3.0 technology in their licensed television operations.

The order includes many details about how a station would transition to ATSC 3.0, and the associated requirement to continue broadcasting an ATSC 1.0 signal in the station's DMA. A station's ATSC 3.0 and 1.0 signals must be simulcast, and the FCC intends to temporarily license "simulcast" channels as part of a modification to a station's single broadcast license (i.e., a station will hold one license, with authorization to transmit in 3.0 at one site, and 1.0 at another). The simulcast requirement will sunset in five years unless the FCC extends it. Stations' ATSC 1.0 signals will be entitled to mandatory cable and satellite carriage.

FCC Main Studio Elimination Not Yet Effective

Although the FCC voted to eliminate the main studio requirement for all broadcast stations at its October 24, 2017 meeting, we're still waiting for the decision to become effective, which won't happen until 30 days after publication of the decision in the Federal Register.

If that statement wrinkled your brow a little, you're not alone. It seems like a pretty straightforward administrative task to get the adopted order over to the Office of Management and Budget, and then for the OMB to publish it in the Federal Register. But here we are, more than 30 days later, and a search of the Federal Register for the order's publication comes up empty. Maybe November got in the way. We're not sure. But keep your eyes and ears open. Publication is coming.

Remember – just because the main studio requirement is going away doesn't mean that it is unlawful for you to have one. If you have a main studio and want to keep it, that's fine – it's just that the FCC isn't *mandating* that you have one any longer. If you have multiple stations, and are now required to have multiple main studios to be compliant with the rule, you'll be able to consolidate those or eliminate them altogether. And if you had a main studio waiver for a station, the waiver will become moot, since you no longer need to have a main studio in the first place.

Don't forget to maintain a toll-free telephone number in the community of license so that the public can reach you without incurring a long-distance charge. Plus, even without a main studio, you must still use your community of license for determining the issues affecting your community to address in your programming, all as part of your continuing obligation to prepare quarterly issues/programs reports addressing the station's most significant treatment of issues in the station's community of license.

Along with the elimination of the brick and mortar studio requirement (first adopted in 1939), the requirement to be able to originate programming from your main studio will also end when the elimination of the main studio requirement becomes effective. And the FCC's policy of requiring a "meaningful presence" of two full time employees at the station studio during normal business hours will also end when the rule change becomes effective. Of course, station licensees must still be able to maintain full control over personnel, programming and finances, but the antiquated requirement to do so via the physical presence of two full-timers will no longer burden broadcasters.

Following the Rules?

Amid all the deregulation during Chairman Pai's tenure, one other trend is very clear. If there is a rule on the books, it is to be followed and will be enforced. Case in point – a Class A television station in California recently received a Notice of Violation when an FCC Field Agent, responding to a complaint, tuned in and did not see required station identification announcements/displays. In this case, the station was not including a station identification on its digital sub-channels or multicast programming streams during a two-hour monitoring period. Seems rather minor in the big scheme of things, but it is a rule on the books and the FCC is enforcing it.

An NOV is the first step in the enforcement process. A station receiving an NOV has time to respond and the FCC then decides whether to take an enforcement action (be it a fine or admonishment).

So don't get over-exuberant in our new deregulatory times and simply brush aside rule compliance. The FCC can (and will) take action to ensure rules are followed.

Dates To Remember

December 1, 2017

AM & FM Stations in Alabama, Georgia, Colorado, Minnesota, Montana, N. Dakota and S. Dakota: 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. **NCE Stations in Alabama & Georgia Only**: the biennial ownership report that would have been due on this date has been suspended until March 2, 2018

AM & FM Stations in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont: 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. 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**: the biennial ownership report that would have been due on this date has been suspended until March 2, 2018.

TV & Class A Stations in Colorado, Minnesota, Montana, N. Dakota, S. Dakota: if 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**: the biennial ownership report that would have been due on this date has been suspended until March 2, 2018.

TV & Class A Stations in, Alabama, Georgia, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont: if full-time employee threshold is met, complete EEO public file report and post same in online public file and station website. **NCE Stations in Alabama & Georgia**: the biennial ownership report that would have been due on this date has been suspended until March 2, 2018.

All Broadcast Stations: filing window for biennial ownership reports opens; deadline for filing is March 2, 2018.

Auction 99 FM Translator Applicants: filing window opens for singleton applicants to file "long form" 349.

December 7, 2017

Non-Repacked Full Power and Class A Television Stations: last day to file an expansion application during the temporary lift of the filing freeze.

December 21, 2017

Auction 99 FM Translator Applicants: filing window closes for singleton applicants to file “long form” 349.

January 10, 2018

TV, Class A, AM & FM Stations (commercial & noncommercial): complete 4th quarter 2017 issues/program reports and post to your public file.

TV & Class A Stations (commercial only): complete and electronically file via LMS the FCC Form 398 Children’s TV Programming Report for 4th Quarter 2017. **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.

TV & Class A Stations Changing Channels in the Post-Auction Repack: prepare and file via LMS the required transition progress report.

NCE Stations Only: for any third-party fundraising conducted in the 4th Quarter of 2017, complete and place in the public file the required disclosure regarding the fundraising effort.

For more info, contact Joe Chautin or Mark Balkin.

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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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