



Broadcast Newsletter

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HERE'S TO YOUR 2018!

Our firm has enjoyed helping you through 2017, a “year of change” at the FCC that has brought deregulation and opportunity to so many broadcasters. We hope that 2018 will be even better for you and your personal and business families. May your broadcast days be fun-filled, your audiences appreciative, and your coffers filled with goodness and prosperity.

NEW OWNERSHIP REPORT UPDATE

Last month, we were on the verge of the new ownership reports becoming available in the License Management System, and the opening of a filing “window” that closes on March 2, 2018 for all broadcast stations (except low power FM stations or FM translator-only licensees) to file biennial ownership reports. We’re now about 30 days into the “window” and thought we’d provide a little commentary.

The new form and system are “smart,” meaning that the software is written around the rule and its requirements. Filing a report for a Class A television station? The system won’t charge you a fee (that’s right, Class A stations are not charged a filing fee for ownership reports; same for LPTV stations). Filing a report for an attributable party that is not a licensee? The form doesn’t ask for contract documents (because such entities don’t have to submit contract information). You get the idea. The smart nature of the form works both ways – it makes filing an accurate report easier, but it is also stubborn when it wants something that is required, like an FRN. No FRN for a reportable individual? Then you can’t complete and file the form.

Our main gripe? All data has to be manually entered for all information in the form, down to addresses and phone numbers – none of it migrated over from the old form in CDBS. That’s labor intensive for every report, but especially for stations with complicated ownership structures. We’ll see how well this all goes, but our little inner voice thinks the FCC might have to extend the March 2, 2018 deadline a wee bit to help everyone get a report on file.

ONLINE PUBLIC FILE DEADLINE NEARS FOR RADIO STATIONS

Has your radio station not yet transitioned its public file to the FCC's online portal? First, we can tell you that's ok. But second, you need to get moving. March 1, 2018 is your deadline – not just for establishing a public file and putting stuff in in going forward, but also for uploading all of the items that currently belong and are in your paper public file. And third, you can start anytime, even while sitting on your couch in your new holiday slippers. The FCC's system lets stations begin the process by gradually uploading documents before clicking the button to go "live" with the file.

Many stations that still have paper public files have several file drawers packed full of documents from past years, and those files contain a slew of documents that should have long ago been discarded. So figure out what can be tossed before you start scanning documents from that bulky file cabinet that don't need to be in your online public file. Under the existing public file rule, you only have to have documents in your public file from your current license period. And in certain cases, the retention period is even shorter than that. So, if you have documents in there from the 1970s, escort them to your shred pile. The FCC's online public file system has a helpful description of the documents required and retention periods at the top of each folder page.

One final note and recommendation. Train two people on your staff to be in charge of the online public file. If one is sick, the other can post. When one posts to the file, the other double checks. Why be so retentive about this? Because the online public file has a built-in truth serum that places the date and time on every upload to the file. That means stations won't be able to hide from that document that was placed in the file late. It's the equivalent of admitting your fault to the FCC at the time you upload the late document.

At license renewal time, the renewal application doesn't shy away from those dark, deep recesses of your public file. The form is direct, and asks the licensee to certify that it has timely placed *all* required items in the public file for the *entire* 8-year

license term. So this time around, completely with a brand spanking new online public file, stations will have to answer that question consistent with the visible and verifiable dates/times on your public file uploads. And if any are late, the prospect of a monetary fine for every such infraction has just entered your budgeting process. So get some insurance against fines by assigning two people to the online file and making absolutely certain that nothing is late.

CROSS-SERVICE FM TRANSLATOR RUSH CONTINUES

This month, the FCC has been accepting for filing numerous singleton applications that were originally filed in its latest Auction 99 cross-service FM translator window. With a 15-day petition to deny period on these applications, that means we could see the first grants from the window very soon, perhaps the first week of January 2018. That means many AM stations will soon be holding construction permits in their hands, poised to build out and launch – for the first time -- an FM service retransmitting their AM signal. It's been a boon for many AM stations, accomplishing just what the FCC meant by the term "AM Revitalization."

But wait, there's more. The last of the cross-service FM translator opportunities for AM stations is now set in stone. It's called Auction 100, and any Class A, B, C or D AM station that has not previously participated in any of the cross-service FM translator filing windows can file an application seeking an FM translator permit.

As the Auction 100 [notice](#) states, the filing window will open on January 25, 2018 and close at 6 p.m. EST on January 31, 2018. Applicants must file the technical portion of Form 349 and, because this is technically an auction proceeding, must also file FCC Form 175. The Form 349 is filed in the FCC's CDBS system and can be loaded up and prepared in advance of the filing window. But the Form 175 cannot be accessed until the 1st day of the filing window, and must be filed in the FCC's Auction System. If both a Form 349 and Form 175 are not filed by an applicant, the application will be dead on arrival.

If your station is in that final number qualified to participate, prepare now, and double check everything before filing. The FCC's dismissals from earlier windows make clear that they are unforgiving when it comes to errors.

FCC MAIN STUDIO ELIMINATION EFFECTIVE JANUARY 8, 2018

The waiting has finally ended. The FCC's action eliminating the main studio rule was finally published in the Federal Register, which started the 30-day clock on the rule becoming effective. As a result, on January 8, 2018, broadcast stations will no longer be told by the government that they must maintain a broadcast studio and man it with two full-time employees as a condition of holding a broadcast license. Just to let that sink in a little, that rule dates back to 1939. Nearly 80 years (ok, 78 to be exact).

Earlier this month, in an email exchange with an FCC staffer during which we were trying to glean when publication would occur, we learned that the staff was having some difficulty coming around to the elimination of the main studio rule. So deep was their melancholy that they were contemplating having a "memorial service" of sorts on January 8th. With great empathy (ahem), we offered to give a eulogy, and the response was that we would have to take a number. Not to be outdone or relegated to the rear of the eulogy line, we offered a written poem as a proposed eulogy and were told that it moved us to the very top of the eulogy list. And so, we thought it appropriate to share our Ode to a Dying Rule. It was written from the FCC staff's perspective, so we hope they will read it out loud as the first eulogy on January 8th.

Ode To A Dying Rule

*Here's to that school
Of the main studio rule
Those lawyers, owners and FCC staff
Who used maps and calculators to do the math*

*To pinpoint the location of the studio
Where two full timers hung out, so
People could come by, or not;
Programs could originate, or be brought.*

*Farewell main studio rule
Our comfort, our cool
Remember not how we waived you
Twas something we had to do*

*Carry on, old friend
We'll see you around the bend
In that sacred place for the best
Where regulations go to rest.*

Don't forget to maintain a toll-free telephone number (not necessarily a 1-800 number, but one that does not charge the caller) 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. One final note – if you eliminate your studio before you've transitioned the station public file to the online FCC portal, you must still make your paper public file available at a business or establishment open during normal business hours in our community of license.

HOW NOT TO USE YOUR FM TRANSLATOR

Most broadcasters holding FM translator authorizations know that they must retransmit the broadcast of their primary station, and cannot originate their own programming except in very narrow and brief circumstances (i.e., emergencies and 30 seconds per hour to seek or acknowledge financial support). But recently, the FCC fined a translator licensee for airing different programming than the main station during, for example, sporting events. On the primary station, the play-by-play of a football game could be heard, but on the primary station's FM translator, classical music was heard. The FCC dropped the yellow flag on that play, assessing a \$4,000 fine.

There's another important origination exception in the rules. For daytime AM stations that now have an FM translator station, does broadcasting programming on the translator while the AM station

is off the air permissible? That's another exception to the rule, and the answer is yes. The FM translator may originate programming during those hours that the AM station is off the air, with the only caveat being that the AM station must have operated within the last 24 hours.

MVPD CARRIAGE ELECTIONS GOING ELECTRONIC?

That is a correct headline. TV stations that have to make carriage elections every three years with their cable companies or satellite carriers should keep reading. The memory of having to prepare a paper letter for each MVPD and sending them via mail (some certified, others not) and keeping everything straight should be pretty fresh in your mind, as you just finished doing so for the 3-year carriage election cycle starting January 1, 2018 and ending December 31, 2020.

Well, the FCC has actually launched a common-sense rulemaking proceeding exploring the possibility of changing the paper-and-post-office approach to an electronic one. Do you agree? Then read the rulemaking [here](#) (paragraphs 25-27) and chime in with your thoughts or endorsement.

Speaking of the elections you just made, it's worth your time to check every MVPD provider you send carriage elections to, and confirm that they are carrying you come January 1st. If not, there is a special procedure for enforcing your rights, and it has notice and time restrictions.

DATES TO REMEMBER

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.

January 25, 2018

Auction 100 Cross-Service FM Translator Filing Window Opens

January 31, 2018

Auction 100 Cross-Service FM Translator Filing Window Closes at 6 p.m. EST.

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

February 1, 2018

AM & FM Stations in New Jersey and New York: if five (5) full-time station employment unit employee threshold is met, complete EEO public file report and post in public file and 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.

AM & FM Stations in Arkansas, Louisiana, Mississippi, Kansas, Nebraska and Oklahoma: If five (5) full-time station employment unit employee threshold is met, complete EEO public file report and place in public file and 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 in online public file and 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 but must be filed by March 2, 2018.

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 in online public file and on station website. **If station employment unit has 5 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.

March 1, 2018

Deadline for all radio stations to transition to the FCC's online public file.

March 2, 2018

Deadline for all broadcast stations (except LPFM and FM translator only licensees) to file their 2017 biennial ownership report, using the new forms in LMS, with an effective date of October 1, 2017.

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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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