



Broadcast Newsletter

IN THIS ISSUE:

NRB AND NAB CONVENTIONS COMING UP	1
CHILDREN’S TELEVISION RULE CHANGES NEAR	1
THIRTY DAYS LEFT FOR 2017 BIENNIAL OWNERSHIP REPORTS.....	2
CHANGE AT THE MEDIA BUREAU.....	2
PAPER CONTRACT FILING BY BROADCASTERS ON THE CHOPPING BLOCK.....	3
ONLINE PUBLIC FILE DEADLINE NEARS FOR RADIO STATIONS	3
CROSS-SERVICE FM TRANSLATOR AUCTION 100 WINDOW ENDS TODAY	3
FCC FIELD OFFICE E-MAIL RESPONSES	3
AUCTION 83 -- WHAT???	3
DATES TO REMEMBER.....	4

CONVENTION TIME!

Later this month, Hardy, Carey, Chautin & Balkin’s Managing Partner, Joe Chautin, will be attending the National Religious Broadcasters convention in Nashville from February 25 – March 1. Joe will also be attending the National Association of Broadcasters Convention in Las Vegas from April 7-11. He is available to meet with clients at either convention. If you do not already have a meeting arranged and would like to set one up, or if you come to the conventions and have a break when you’d like to meet, just email Joe at jchautin@hardycarey.com or call 504-439-2350. See you around the conventions!

CHILDREN’S TELEVISION RULE CHANGES NEAR?

When it comes to broadcast deregulation, the past 12 months have been unprecedented, with numerous rules being pared back or tossed out into the abyss of archaic and nonsensical things. Amongst all this deregulatory fever, we think we’ve detected a bit of a pattern, especially when the FCC decides to make major changes to a rule that might be a bit sticky because of the subject matter or differing views. In those situations, we typically have seen a sitting Commissioner blog about the rule, noting the burdens it imposes or how a changed landscape has rendered it less than effective, even nonsensical. That blog post usually sets the stage for conversation, followed by a proposed notice of rulemaking to change or delete a rule.

One broadcast rule has remained untouched during Chairman Pai’s initial year – the Children’s Television Rule – which requires TV stations to air 3 hours per week, on average, of informational and educational programming for children under a certain age. In fact, that rule, originally adopted in the 1990s, has remained unchanged for over two decades, with only one “review” focused on the types of programs being aired to make absolutely sure the rule was being followed. No one has asked whether the rule is still needed, or needed to the extent the FCC’s rules have required.

A certain recent blog post makes us think this is all about to change. [Commissioner O’Rielly’s blog post](#) of January 26 points to the burdens of the current children’s television rule requirements and questions its continued need. His points are valid. There’s only one wrinkle here – Congress adopted the Children’s Television Act of 1990, so Congress – not the FCC -- would have to kill the requirement that TV stations air children’s programming. But the FCC – only after Congress had first made clear it meant to impose no minimum hour requirement but then changed its mind and pushed for one – implemented the Act with a wide-ranging and detailed rule that addresses the amount of children’s programming, the way it must be aired, the criteria for a program to qualify, and the quarterly report that must be filed to certify compliance.

So, ALL of that could change if the FCC finds it unnecessarily burdensome today, or is able to streamline the requirements in light of the web-based children’s programming available now in the new digital media age.

Children’s video programming? Important. Making TV stations produce or pay for certain amounts of it and file quarterly reports, or risk being fined, when most children’s programming is consumed from other sources? Silly. We share Commissioner O’Rielly’s hope for a major streamlining of TV station contributions to the children’s programming landscape.

THIRTY DAYS LEFT FOR 2017 BIENNIAL OWNERSHIP REPORTS

March 2, 2018 is the deadline for all broadcast stations (except low power FM stations or FM translator-only licensees) to file their 2017 biennial ownership reports. No, the 3-day government shutdown did not add additional time to the original 90 day “window” for getting these reports on file. That’s because the FCC’s website never shut down.

The 2017 biennial ownership reports are the first to be filed in the FCC’s Licensing Management System (LMS), and it has been known to get a little fickle from time to time. By fickle, we mean slowing

down or tossing you out for no apparent reason. So if you plan on filing the form yourself, don’t wait until the last day.

Here’s another interesting wrinkle. For TV stations, and those radio stations that have already transitioned to the online public inspection file, the electronically filed ownership report is – for some unknown reason – not automatically populating in the online public file after it is filed in LMS. For other electronically filed applications or reports, the FCC automatically uploads those to station online public inspection files in about a day or so. We don’t know why the FCC is not auto-populating the 2017 filed ownership reports to station public files, but we have a suspicion that they’re going to wait until the end of the window to do it.

In the meantime, what’s a station supposed to do? The rule requires that the most recent complete ownership report be in the public file. So if a station files a new ownership report, that’s the most recent one, and it belongs in the public file. Are stations supposed to scan a copy of the filed ownership report into the file to avoid the “wrath” of the FCC, or just wait until the FCC auto-populates the report in the file? We don’t have an opinion on which way to go, but believe there are strong arguments that stations are compliant no matter which approach they chose to satisfy the requirement – either scanning/uploading the new one and toggling “out” all prior ownership reports, or waiting until March 2 for the new one to auto-populate, and in the meantime, leaving the most recent prior report toggled “on” in the online file.

What about those radio stations not yet transitioned to the online public file? Simply print and put a copy of your new ownership report in the public file, removing all prior reports at that time.

CHANGE AT THE MEDIA BUREAU

The FCC has announced two personnel changes in recent days. First up was Sarah Whitesell, named by Chairman Pai as Deputy Chief of the Media Bureau. Pai worked with Whitesell at the Justice Department in the late 1990s and during a previous stint at the FCC, which was also in the Media Bureau. Whitesell is expected to work on the

continued modernization of various rules governing the media industry.

In addition, Peter Doyle's 16.5-year stint as head of the Media Bureau's Audio Division came to an end on January 19, 2018 when Chairman Pai named Albert Shuldiner to fill that role. Doyle will temporarily assist Shuldiner as a Senior Advisor. We agree with Chairman Pai's statement acknowledging Doyle's contributions and dedication over the years, and wish him well in his new role.

PAPER CONTRACT FILING BY BROADCASTERS ON THE CHOPPING BLOCK

Since the 1930s (yes, you read that correctly), the FCC's rules have required that broadcast stations file certain contracts with the FCC, with any sensitive information redacted. There was never any way to do that electronically, so someone had to hit the print button, black out what was sensitive, and then snail mail the document to the FCC. What documents? Governing documents like articles of incorporation and bylaws. Affiliation agreements. Time brokerage agreements.

Well, lo and behold, the FCC regulatory underbrush posse is back in action, and just yesterday, adopted a [notice of proposed rulemaking](#) to change the rule, allowing broadcasters to simply maintain a list of the documents in the public file and provide those documents upon request to any member of the public or the FCC. Very simple. Less hassle. Other cleanup of the rule is proposed as well. We hope the proposal is adopted soon.

ONLINE PUBLIC FILE DEADLINE NEARS FOR RADIO STATIONS

By March 1, 2018, all broadcast stations required to have a public file must have transitioned to the FCC's online public file system and cease using a paper file for compliance purposes. If you've been working on your station's online file via the FCC's OPIF portal, don't forget to take it "live" on March 1st – so the public can view it. Until you toggle that "live" button at the top of the page to the "on" position, you've not properly transitioned to the online file.

CROSS-SERVICE FM TRANSLATOR AUCTION 100 WINDOW ENDS TODAY

The last filing window for AM station cross-service FM translator opportunities has a few hours left. The window, dubbed Auction 100 in case there are applicants who must go to auction, opened on January 25, 2018 but will close at 6 p.m. ET today, January 31, 2018. 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, 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 Form 175 is filed in the FCC's Auction System. If both a Form 349 and Form 175 are not filed in the window, the applicant is disqualified from further participation.

FCC FIELD OFFICE E-MAIL RESPONSES

It's never a good thing to receive a "notice of inquiry" or other form of enforcement action from one of the FCC's Field Offices about your station's operations, but in case you do, they've set up an email address to streamline sending your response. Effective January 9, 2018, responses to filed office enforcement actions can be sent to field@fcc.gov.

AUCTION 83? WHAT?

A long, long time ago, the FCC decided to open a filing window for new commercial FM translator authorizations. They did so on February 6, 2003 and after an extension, closed it on March 21, 2003. That means we are coming up on the 15th anniversary of the window. Why are we mentioning this in our January 2018 newsletter?

Well, it's because there are still mutually exclusive applications pending from that window that need to be resolved by a highest-bidder-wins auction. We know it seems unbelievable, but it's really true. There are a total of 43 mutually exclusive applicant groups that will go to auction June 21, 2018.

Why so long before an auction? Well, the short answer is a combination of a bad approach and some bureaucracy. The “bad” approach was that the rules set up for the window allowed applicants to file multiple applications for the same frequency, and after fielding thousands of applications, the FCC had to weed them out after the fact, limiting applicants to a certain number. The bureaucracy part was that the FCC’s auction folks became preoccupied with something called the television auction, and put other auctions, including Auction 83, on the back burner.

Well now that the FCC is holding new auction filing windows for AM station cross-service FM translators, and seeing that there are leftover mutually exclusive applicant groups for those, it needs to conduct Auction 83 first to get the earlier filed applications processed. Then, we’ll see Auction 99 and Auction 100 scheduled. It’s a process.

Could it be that you filed an Auction 83 translator application in 2003 and it was never granted as a singleton or dismissed for some other reason, and is therefore headed for auction on June 21, 2018? Check the [list](#) to make absolutely certain. And if you’re on it, read the proposed rules for Auction 83 in [this public notice](#). Comments are due February 6, 2018.

DATES TO REMEMBER

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/post 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/post 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. **NCE Stations Only:** your Form 323-E ownership report that would have been due on this date 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.

© 2018 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