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FCC Adopts Rules for Distributing Repack Funds to LPTV, FM, and Translator Stations

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As we reported in August 2018, the Federal Communications Commission at that time released a Notice of Proposed Rulemaking (NPRM) laying out how it would parcel out reimbursement funds for Low Power TV (LPTV), TV Translator, and FM stations impacted by the post-incentive auction repacking of full-power television stations. The Commission has now adopted an Order with the final rules governing such reimbursements. While the rules are largely as proposed in the NPRM, there are a few crucial differences. This post provides an updated report on how reimbursements will be issued.

Back in March 2018, Congress passed the Reimbursement Expansion Act (REA), which allocated additional funds to be used to reimburse broadcasters involuntarily affected by the post-incentive auction repacking of television stations. In addition to providing additional money for full-power and Class A stations, the REA for the first time expanded the universe of stations eligible to receive reimbursements to include: LPTV stations, TV translator stations, and FM radio stations.

In the REA, Congress allocated a total of 1 billion additional dollars, with $600 million for the fiscal year 2018 and an additional $400 million in 2019. While the majority of these funds are reserved for full-power and Class A stations subject to involuntary repacking, the REA did authorize the Commission to award, in the fiscal year 2018, up to $150 million to LPTV and TV translators, and up to $50 million for FM stations – along with $50 million for the Commission's own consumer education efforts. For the fiscal year 2019, the REA did not provide any specific allocations of the $400 million total. In the Order, the Commission determines that it has the authority to include LPTV, TV Translator, and FM stations as recipients of those funds, but also determines that it will prioritize payments to full power and Class A TV stations and MVPDs before reimbursing LPTV, TV translator, or FM stations from 2019 funds. In other words: if the available funds are not sufficient to reimburse all eligible stations, LPTV, TV translator, and FM stations may receive less than 100% of their otherwise eligible costs.

As was proposed in the NPRM, the Order adopts rules governing which stations are eligible for reimbursement, and what kinds of expenses can be reimbursed, as well as the procedures eligible stations must use to apply for and receive funds. Because the rules on eligibility for LPTV/TV translators differ from those for FM stations, we will be addressing those two classes of stations separately in this article where applicable, starting with the rules applicable to FM and FM Translator stations.

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I. FM, FM Translator, and LPFM Reimbursement

In adopting rules to govern the reimbursement to FM radio stations, the Commission takes as a baseline the direction in the REA to reimburse those costs that are "reasonably incurred" by the station as necessary to "reasonably minimize disruption" of service to the station's listeners. The inclusion of this "reasonably minimize disruption" language for FM stations results in somewhat different eligibility rules than those applied to television stations, with the Commission concluding that some disruption to FM operations is "reasonable," and costs related to those disruptions will not be eligible for reimbursement.

The rules adopted in the Order will provide reimbursement to full power FM stations, FM translators, and

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LPFM stations. Eligibility will be limited to stations that were licensed and operating as of April 13, 2017, with facilities that are impacted by a repacked television station or a TV station that is relinquishing its spectrum rights as a result of the auction. Reimbursement will be provided only for costs associated with a facility that is co-located with, adjacent to, or in close proximity to a repacked (or relinquishing) television station. As with the LPTV/TV Translator reimbursement program (but differing from the full-power television program), FM stations may – on a case-by-case basis – request and receive reimbursements related to relocating or modifying studio-transmitter links or other broadcast auxiliary facilities. As with LPTV/TV translator stations, the Order also confirms that FM stations impacted by television station maximizations should be eligible for reimbursement under the program. For purposes of allocating reimbursement funds, as proposed in the NPRM, the Order divides eligible FM stations into three categories:

> *Category 1*: Stations that are being permanently relocated as a result of a television station that is being repacked or relinquishing its spectrum. For example, an FM station that was co-located with a television station relinquishing its license and disassembling a shared tower could be a Category 1 station.
>
> *Category 2*: Stations that are required to temporarily dismantle their facility or make changes that do not require prior FCC approval. Examples of Category 2 stations would be those that needed to temporarily remove their antenna from a tower, or were required to replace a transmitter.
>
> *Category 3*: Stations that are required to temporarily suspend operations or reduce power to allow workers to safely complete work on a repacked full-power or Class A television station. This is predicted to be by far the largest category of impacted FM stations, with the time each station will be off-air or at reduced power to vary greatly among stations.

For Category 1 and 2 stations, the FCC will, as proposed in the NPRM, reimburse licensees for up to 100 % of their eligible costs (as detailed below), provided sufficient funds are available. However, for Category 3 stations the Commission in the Order abandons the 4-tier graduated priority system it had proposed in the NPRM. Instead, the Commission will now reimburse all stations that are forced to suspend or modify operations or reduce power for more than a *de minimis* amount of time in the same manner.

Under the rules adopted in the Order, service disruptions lasting less than 24 hours, or occurring only between midnight and five a.m., will be considered *de minimis* and ineligible for reimbursement. For all other stations in Categories 1, 2, and 3, up to 100 percent of eligible expenses will be reimbursed. In the event that there are insufficient funds to fully reimburse all eligible expenses, all stations' reimbursements will be decreased proportionately.

The Commission clarifies in the Order that Category 3 stations will include those forced to go off-air entirely at their licensed location or to reduce power to the point that they cannot reach 80 percent of their licensed service area or population. If a station is not able to reach both 80 percent of the authorized service area and 80 percent of its normal population coverage, then such station would be eligible for reimbursement for the costs of constructing new or upgraded temporary or auxiliary facilities. However, the Commission will not base reimbursement eligibility on the extent of coverage provided by those interim facilities, reasoning that licensees will be sufficiently incentivized to maximize coverage even absent such a requirement.

As an alternative to constructing new auxiliary facilities, a station that operates FM translators could receive reimbursement for the operation of those facilities from new sites constructed pursuant to special temporary authority (STA). For any interim facilities, the Commission finds that licensees who must enter into leases for such facilities will only be reimbursed for lease expenses during the time they are subject to a service disruption, even if the term of any such interim lease is longer than that period. This period of

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disruption will be measured from the first day of disruption to the last, even if the site is only used intermittently during that time.

Any station eligible for reimbursement in Categories 1 and 2 will be reimbursed only for costs incurred in constructing facilities that "replicate as closely as feasible" the station's signal contours as licensed before the service disruption. All licensees requesting reimbursement will be expected to re-use existing equipment to the extent possible, and they will need to provide justification for any replaced or upgraded equipment. Finally, the Commission, as it believes is required by the REA, will not reimburse any licensees for lost revenues during any time off-air or operating with reduced facilities. As is the case with LPTV and TV translator licensees, FM licensees will be expected to seek funding from such other sources, where available, prior to requesting reimbursement from the Commission and will be required to certify in any reimbursement requests that the licensee has not received, and does not expect to receive, reimbursement from any other source. Licensees will be allowed to seek reimbursement for costs that exceed the amounts paid by third-party sources.

II. LPTV and TV Translator Reimbursements

Eligible Stations: The Order limits the universe of LPTV and TV translator stations eligible to receive reimbursements to those that receive a construction permit resulting from an application during the Special Displacement Window that closed June 1, 2018. Because their applications were treated as if they had been filed during the window, those stations who were subject to displacement before that window opened and filed early displacement applications (with appropriate waivers) will also be eligible. Eligibility will be limited not just to those stations that filed during the window, but to those whose displacement applications have been granted – although this will include stations whose initial displacement applications were dismissed, but who are later able to re-file for displacement relief and obtain a grant, as long as they had originally been eligible to file in the initial Special Displacement Window. LPTV and TV translator stations, built or unbuilt, that did not file in the now-closed window because they were not eligible for any reason or simply failed to file will not be eligible for any reimbursement, even if they are involuntarily displaced and are ultimately authorized to move to new channels.

Eligible stations also must have been operating pursuant to a license (or a pending covering license application) for at least nine of the 12 months prior to April 13, 2017. For purposes of this determination, the Commission will consider a station to have been "operating" as long as it was broadcasting at least two hours per day and 28 hours per week; a standard it incorporates from the minimum operating schedule requirements applicable to full-power television stations. Although recognizing that the LPTV rules themselves do not include minimum operating hours requirements, the Commission in the Order determines that the language of the REA requires the imposition of some minimum operating hours requirement for reimbursement eligibility and subjects LPTV and TV translator stations seeking funds to an on-air requirement that they may never have contemplated would affect them.

The Order also clarifies that analog-to-digital replacement translators, assuming they meet other eligibility criteria, will be able to apply for reimbursements. Digital-to-digital replacement translators will not be eligible, as no such translators were authorized in time to satisfy the "licensed and operating" requirements for reimbursement. The Commission also takes pains to note that Class A stations, which are already eligible for reimbursement under the existing program, will not be able to apply for funds allocated to LPTV and TV translator stations.

Finally, the Commission, as it believes is required by the REA, will not reimburse any licensees for lost revenues during any time off-air or operating with reduced facilities.

Eligible Costs: Under the REA, the Commission was authorized to reimburse costs "reasonably incurred" as a result of the repack. In the Order, the Commission determines that it will reimburse costs incurred as a result of the involuntary displacement of LPTV and translator stations by full power and Class A station's initial post-auction applications and any "maximization" applications.

For displaced LPTV and translator stations, the FCC will reimburse eligible stations' costs actually incurred in building out approved displacement facilities. Both hard (*e.g.*, equipment) and soft (*e.g.*, legal and engineering fees) costs would be reimbursable, with no priority given to hard costs over soft (a change from the proposal in the NPRM, which would have prioritized hard costs). No reimbursements will be provided to cover lost revenues, a restriction also applied to full power and Class A station reimbursements, nor may stations seek reimbursement for the cost of time

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spent by their own personnel. While the Order also confirms that the Commission will in general not reimburse licensees for that portion of their costs attributable to upgraded equipment capability, it does note that in some cases (*i.e.* stations replacing very old equipment), it may be impossible for licensees to find equipment that does not include some level of upgrade. In such cases, the Order notes that reimbursement may be provided on a case-by-case basis. (In other cases, stations are still allowed to purchase upgraded equipment, but they may seek reimbursement for only the lesser costs they would have incurred had they purchased the same kind of equipment they previously operated). Also like full power and Class A stations, LPTV and TV translator stations will be encouraged to reuse existing equipment wherever possible and will need to justify any new equipment purchases.

Unlike full power and Class A stations, LPTV and translator stations will not generally be able to receive reimbursement for interim facilities, based on the Commission's conclusions that such facilities would largely not be necessary for LPTV and translator stations. While the Commission stands by this conclusion, it acknowledges in the Order that there may be isolated cases of LPTV stations requiring interim facilities (such as stations forced to abandon their licensed channel by 600 MHz auction winners but cannot immediately move to their approved new channel available until full power and Class A stations in or near their market implement their own transition to new channels), and agrees to consider such requests on a case-by-case basis. Similarly, the Order provides that requests for reimbursement of expenses related to new or modified STL or microwave facilities will be considered on a case-by-case basis.

As proposed in the NPRM, only costs incurred after January 1, 2017, would be reimbursable. Costs incurred in resolving mutually exclusive applications (whether by settlement or auction) will not be reimbursable, although costs to build out amended proposals approved pursuant to a settlement would be.

Stations seeking more than the amounts in the FCC's catalog will be required to demonstrate why they cannot reasonably remain within the catalog limits.

Finally, recognizing that some LPTV and translator stations have received, or will receive, funds from T-Mobile and other wireless licensees causing displacements, or through other sources such as state grants, the Commission concludes that stations may only seek reimbursement for costs that are not reimbursed from other sources. Prior to seeking reimbursement from the Commission, licensees will be required to seek funding from such other sources and will be required to certify in any reimbursement requests that the licensee has not received, and does not expect to receive, reimbursement from any other source. Licensees will be allowed to seek reimbursement for costs that exceed the amounts paid by third-party sources.

III. Reimbursement Procedures

As proposed in the NPRM, the Commission also adopts multi-step reimbursement procedures for LPTV, TV translator, FM, FM Translator, and LPFM stations similar to those applied to full power and Class A television stations. These procedures require that all stations believing they are or will be, eligible to receive funds first file an Eligibility Certification using the FCC's online LMS system. These Eligibility Certifications will document that the applicable station is, in fact, eligible for reimbursement. Eligible stations will be required to prove that they were on-air during the required time frames by documenting their programming aired, providing power bills, or other means. FM stations will also need to identify the full power or Class A television station(s) that would force it off-air, and provide some documentation (*e.g.*, a letter from the applicable full-power station) to support its certifications.

Licensees seeking reimbursement will next be required to file an initial Reimbursement Form identifying their existing broadcasting equipment, along with the types and estimated amounts of costs they expect to incur and for which they will seek reimbursement. The Commission has also adopted a new catalog of approved cost amounts to apply to LPTV and TV translator stations, as was done for full power and Class A stations, and intends to incorporate that catalog into the revised Reimbursement Form. Because many licensees will have incurred significant actual costs by the time the FCC adopts and releases these reimbursement forms, the Order confirms that licensees may submit actual costs where applicable instead of estimated costs. Stations seeking more than the amounts in the FCC's catalog will be required to demonstrate why they cannot reasonably remain within the catalog limits.

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Once all Eligibility Certifications and initial Reimbursement Forms have been submitted and reviewed by the Media Bureau, the Commission plans to issue an initial allocation to each eligible station. As was the case with full-power television reimbursements, this allocation will be based on a to-be-determined percentage of anticipated and approved costs. In the event, the total amount of reimbursement funds is not sufficient to fulfill all requests, the Commission delegates to the Media Bureau the task of determining what costs should be prioritized, although it directs that hard costs not be prioritized over soft costs generally.

Once allocations are made, licensees will be entitled to draw down funds by submitting documentation of actual incurred costs. As with full power and Class A stations, this will be done by updating online a licensee's previously filed Reimbursement Request form. Prior to receiving any reimbursements, eligible licensees will also need to file confidential information about their destination bank account for payments, using the FCC Form 1876 and the CORES Incentive Auction Financial Module.

Once a licensee's final payment is made, which is supposed to occur by November 13, 2020, but may be extended until no later than July 3, 2023, the licensee will be required to retain relevant documentation for a period of ten years. To attempt to prevent fraud, waste, and abuse, the Commission also, as it has done with television licensees, reserves the right to audit licensees who have requested and received reimbursement funds.

IV. Effective Dates

The Order is due to become effective on April 25, 2019. However, the filing process will not begin until the Commission has finalized, and received Office of Management and Budget approval for, the Eligibility Certifications and Reimbursement Forms. Those submissions will then need to be reviewed, along with required financial information, before licensees can receive reimbursements. Nonetheless, any licensee expecting to claim reimbursement money should begin confirming their eligibility and in the meantime should retain documentation of any expenses it incurs.

LPTV-Translator Displacement and Companion Channel Freeze Lifted

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The Federal Communications Commission has announced in a public notice on March 19, 2019, that it will lift the 9-year old freeze on applications for displacement relief and digital companion channels by Low Power Television (LPTV) and TV Translator stations. Applications will be accepted starting **April 18, 2019**.

The new filing opportunity is only for applications by displaced stations. Applications for channel changes by stations that are not displaced will not be accepted; nor will applications filed by new stations for construction permits be accepted.

The lifting of the freeze is permanent, unlike a limited-time application "window." This filing opportunity will remain open indefinitely. Processing of applications will be on a first-come, first-serve basis, in contrast to a window, where all applications filed during the window are treated as having been filed on the final day of the window. Since priority will be given based on the date of filing, stations that hoped to obtain a channel change but could not get one during the Special Displacement Window that closed on June 1, 2018, should file by 11:59 p.m. Eastern time on April 18, 2019, and not one minute later.

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As we have previously reported in CommLawBlog, the freeze started in 2010 and was further tightened in 2017. Its purpose was to make sure that LPTV applications did not cause changes in the database while full power and Class A TV stations were being repacked into Channels 2-36, and LPTV stations displaced by the repack were looking for new channels). Now that the assignment of all full power and Class A stations to new channels has been completed, and displaced

LPTV stations that were given priority because they were operating on April 13, 2017, have had an opportunity to file for new channels, the FCC is opening the door for all other displaced stations to file.

The freeze on minor changes by existing stations (*i.e.*, power, height, and site changes involving a move of not more than 30 miles but no channel change) was lifted effective July 3, 2018. However, the freeze on channel changes, apart from those eligible during the Special Displacement and Settlement Windows, was not lifted and will remain in effect until April 18, 2019.

To file for a new channel starting on April 18, an LPTV station must be displaced. This means it must cause or receive a prohibited level of interference from a full power or Class A station that is authorized on Channels 2-36 or be authorized on Channels 38-51 regardless of interference. Also eligible to file will be the relatively few remaining analog-only LPTV stations, which will be permitted to file for new digital companion channels, although only if they do not hold a valid construction permit to flash cut to digital on their analog channel.

The requirement to have been on the air by April 13, 2017, which was a restriction on eligibility for the Special Displacement Window, will no longer apply once the freeze is lifted on April 18. Therefore, displaced stations that first received a license after April 13, 2017, and stations authorized by construction permits that have never been built, are both eligible to apply.

Stations that filed for new channels during the Special Displacement Window, but did not receive grants because their applications were mutually exclusive with applications by others, were given an opportunity to resolve conflicts by moving to new channels in a "Settlement Window" that closed on January 10, 2019. Applicants that did not amend to propose a different channel and did not otherwise settle with competing applicants by January 10 may abandon their Special Displacement Window applications and file new displacement applications starting April 18. However, they will have to protect all applications filed during the Special Displacement Window and amendments filed during Settlement Window; and they will lose any priority enjoyed by their earlier applications.

The FCC recently announced procedures for displaced LPTV stations to seek reimbursement from a government fund for their channel change expenses. (Watch for a CommLawBlog post soon.) Only stations that file during the Special Displacement Window and ultimately receive a grant will be eligible to apply for reimbursement. Stations that filed but did not receive a grant because of mutual exclusivity – and that choose to file new applications starting April 18 – will not lose their reimbursement eligibility. Stations that were not eligible to file during the Special Displacement window will not be eligible for expense reimbursement. If you filed during the Special Displacement window and your application was dismissed on the ground that it was ineligible, you may wish to consult with an attorney as to your option.

We will be ready to assist clients with application filings on April 18. But we offer the usual warning: there will likely be many stations seeking to file on that date, so let us know well ahead of time if you will want our assistance.

Continued Controversy About Overtime Rules: No, not the NFL; the FLSA

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[*Editor's Note: To re-state an obvious but important point that the author, Kevin, has previously made, neither he nor we are "employment" lawyers. But readers and others have expressed enough interest in the coming changes to the Federal minimum wage and overtime rules that he thought it a good idea to take a look at what's in store. The following overview is intended to provide useful background information; it should not be taken as a comprehensive explanation or exhaustive history of the subject, and certainly not "legal advice". If you have questions about the coming changes, be sure to contact an employment lawyer.*]

Almost three years ago, I wrote about some proposed changes to the "overtime rules" under the Fair Labor Standards Act (FLSA) which, if enacted, would move approximately 4.1 million workers from "exempt" to "nonexempt" status, entitling them to overtime pay for work performed in excess of 40 hours per week. The proposed changes, which were approved and given an effective date of December 1, 2016, were eventually stayed by the United States District Court for the Eastern District of Texas before being repealed entirely in the early days of the current Administration.

Employers, especially those in many sectors of the media industry, breathed a sigh of relief, as the planning for the transition of a significant portion of their workforce from exempt to non-exempt would have required a massive investment of time and expense – even before you factored in the likely salary increases required to maintain the exempt status of some workers and the extra overtime that would have been paid to others.

This relief is short-lived, as the Department of Labor published a 219 page NPRM once again proposing to increase the minimum salary threshold for an exempt employee, albeit in a slightly less drastic way. The NPRM was published in the Federal Register on March 22, meaning comments are due on May 21.

Because I have written extensively about this issue in the past, it is not necessary to explain in full how the overtime rules work again. Instead, I'll just provide a short overview (taken verbatim from one of my earlier posts), give a little additional history on the earlier proceedings, and explain these proposed changes and how they compare to the 2016 proposal. You can refer back to my earlier posts for more details.

The Basics of Overtime Pay Under the FLSA

The FLSA applies to any company that (a) has more than $500,000 in annual revenues and (b) is engaged in interstate commerce. In reality, a very significant number of companies in the United States are covered by the FLSA because (a) something called the "individual coverage" test can apply to any employee engaged in interstate commerce in a given week and (b) the definition of "engaged in interstate commerce" is very broad.

So, for our purposes, let's assume that, if you're reading this, your company is subject to the FLSA. That means the employees at your company (and I'll be writing from the point of view of an employer rather than an employee because most of our clients fall into the former category) are eligible for overtime pay at not less than 1.5 times the employee's pay rate for every hour worked in excess of 40 hours in a week, unless they are considered "exempt."

For an employee to be considered "exempt" from the FLSA's overtime rules – and therefore not eligible to overtime pay – he or she must meet all of the following three tests:

- ***The Duties Test***: he or she is primarily performing executive, administrative, or professional duties as provided in the DOL's regulations (this is actually the most complicated portion of the exempt vs. non-exempt classification);
- ***The Salary Basis Test***: he or she must be paid a predetermined and fixed salary not subject to reduction because of variations in the quality or quantity of work performed; and
- ***The Salary Level Test***: he or she must be paid more than a specified salary threshold.

Both the 2016 and the current (2019) proposal only purport to change certain aspects of the ***Salary Level Test***, which has had the same minimum threshold since 2004.

The main changes approved in 2016 were:

- An increase in the minimum threshold salary from $455 per week/$23,660 per year to $913 per week/$47,476 per year (after an initial proposal to increase to $970 per week/$50,440 per year – which was the equivalent of the 40th percentile of weekly earnings of full time salaried

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workers in lowest wage Census region);

- An increase in the minimum threshold salary for a special category of employee known as the "highly compensated employee" from $100,000 per year to $134,000 per year (which was the equivalent of the 90th percentile of all salaries);
- Certain changes to policies regarding the treatment of nondiscretionary bonuses, incentive payments, and commissions; and
- Automatic readjustments every three years of the minimum salary thresholds identified above to match the equivalent of the 40th percentile of weekly earnings of full-time salaried workers in lowest wage Census region for all workers and the 90th percentile of all salaries for highly compensated employees.

Again, these were supposed to go into effect on December 1, 2016 but Judge Amos Mazzant of the United States District Court for the Eastern District of Texas granted a motion for preliminary injunction filed by the State of Nevada on be

half of itself and twenty other states (that case was consolidated with a separate lawsuit filed by the Plano (TX) Chamber of Commerce and over fifty other business organizations). That lawsuit was effectively mooted after Obama left office and the new Administration repealed the rule change.

The Department of Labor has proposed its own set of changes which are remarkably similar to those proposed by its predecessor:

- An increase in the minimum threshold salary from $455 per week/$23,660 per year to ***$679 per week/$35,308*** per year (after an initial proposal to increase to $970 per week/$50,440 per year;
- An increase in the minimum threshold salary for a special category of employee known as the "highly compensated employee" from $100,000 per year to ***$147,414*** per year;
- The same proposed changes to policies regarding the treatment of nondiscretionary bonuses, incentive payments and commissions; and
- The minimum threshold salaries for all employees and highly compensated employees will be revisited every 4 (not 3) years – but these adjustments will not be automatic; instead, a notice and comment process will be utilized.

(Note that these new minimum threshold salaries will not apply in Puerto Rico, the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands; the salary level of $455 per week/$23,660 per year will continue to apply in those jurisdictions.)

Because this is a rulemaking proceeding, the Department of Labor will accept comments on this proposal for 60 days after publication in the Federal Register. Publication in the Federal Register has not occurred but we will let you know when that happens.

In terms of timing, however, most prognosticators believe these changes will be enacted as proposed and that they will become effective in January 2020. Though the minimum salary thresholds will be lower than the 2016 proposal, the impact will still be widespread: it is estimated that this will result in the conversion of approximately 1.3 million employees from exempt to non-exempt (approximately 200,000 of which are highly compensated employees).
So even if you are not planning to file comments, it may behoove you to start planning for this transition now. If you're not inclined to read all 219 pages of the NPRM, the Department of Labor has created a resource page surrounding these changes which includes a Fact Sheet and a series of Frequently Asked Questions.

And, my first two posts offered some ideas as to the issues you'll need to consider, the most important of which at this point is to simply start the preparation process in some way shape or form, whether that simply involves creating a list of employees who may move from exempt to non-exempt to see if you need to make changes or something more – like consulting with an employment attorney to strategically plan for the future.

Upcoming FCC Broadcast Deadlines for April-June

April 1, 2019:
License Renewal Pre-Filing Announcements - Radio stations located in the District of Columbia, Maryland, Virginia, and West Virginia must begin their pre-filing announcements with regard to their applications for renewal of license. These announcements must be continued on April 16, May 1, and May 16.

Equal Employment Opportunity (EEO) Public File Reports – All radio and television station employment units with five (5) or more full-time employees located in Delaware, Indiana, Kentucky, Pennsylvania, Tennessee, and Texas must place EEO Public File Reports in their public inspection files. All stations must also upload the reports to the online public file. For all stations with websites, the report must be posted there as well. Per announced FCC policy, the reporting period may end ten days before the report is due, and the reporting period for the next year will begin on the following day.
EEO Mid-Term Reports – All television stations with five or more full-time employees and located in Delaware or Pennsylvania must electronically file a mid-term EEO report on FCC Form 397, with the last two EEO public file reports attached.

April 10, 2019:
Repack Transition Progress Report – All full-power and Class A television stations repacked as a result of the incentive auction, other than those in Phase 1 or Phase 2 that have completed the repacking process, including filing reports of completion, must file a report in the Licensing and Management System (LMS) to detail their progress toward completion of the transition.

Children's Television Programming Reports – For all commercial television and Class A television stations, the first quarter 2019 children's television programming reports must be filed electronically with the Commission. These reports then should be automatically included in the online public inspection file, but we would recommend checking, as the FCC bases its initial judgments of filing compliance on the contents and dates shown in the online public file. Please note that the required use of the LMS for the children's reports means that you should have the licensee FCC registration number and password at hand before you start the process.

Commercial Compliance Certifications – For all commercial television and Class A television stations, a certification of compliance with the limits on commercials during programming for children ages 12 and under, or other evidence to substantiate compliance with those limits, must be uploaded to the online public inspection file.

Website Compliance Information – Television and Class A television station licensees must upload and retain in their online public inspection files record sufficient to substantiate at license renewal time certification of compliance with the restrictions on display of website addresses during programming directed to children ages 12 and under.

Issues/Programs Lists – For all commercial and noncommercial radio, television, and Class A television stations, a listing of each station's most significant treatment of community issues during the last quarter must be placed in the station's online public inspection file. The list should include a brief narrative describing the issues covered and the programs which provided the coverage, with information concerning the time, date, duration, and title of each program.

Class A Television Continuing Eligibility Documentation – The Commission requires that all Class A Television maintains in their online public inspection files documentation sufficient to demonstrate that the station is continuing to meet the eligibility requirements of broadcasting at least 18 hours per day and broadcasting an average of at least three hours per week of locally produced programming. While the Commission has given no guidance as to what this documentation must include or when it must be added to the public file, we believe that a quarterly certification which states that the station continues to broadcast at least 18 hours per day, that it broadcasts on average at least three hours per week of locally produced programming, and lists the titles of such locally produced programs should be sufficient.

April 29, 2019:
Quadrennial Review of Broadcast Ownership Rules – Comments are due with regard to the *Notice of Proposed Rulemaking* (MB Docket 18-349, FCC-18-179A1) which initiated the required 2018 Quadrennial Review of broadcast ownership rules.

May 29, 2019:
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FHH - On the Job, On the Go

On March 21, **Jeff Mitchell** was a featured speaker at the Global Partnership for Telehealth annual meeting in Cordele, GA Jeff's presentation addressed federal rural broadband funding opportunities for health care providers as well as enforcement and compliance in the FCC universal service programs for health care

From April 5 – 6, **Frank Montero** will attend the George Washington University Law Alumni Board of Directors and Business Law Advisory Board Meeting in Washington, DC.

On April 6, **Peter Tannenwald** will attend a meeting of the Board of Directors of Brown Broadcasting Service, Inc., operator of WBRU.COM at Brown University in Providence, RI. Peter is an *Emeritus* Board Member and FCC legal counsel. Last year, he was inducted last year into the WBRU Hall of Fame.

From April 6 – 11, **Karyn Ablin**, **Davina Sashkin**, **Mark Lipp**, **Dan Kirkpatrick**, **Kathleen Victory**, **Scott Johnson**, **Kevin M. Goldberg,** and **Frank Montero** will attend the NAB Show in Las Vegas, NV.

On April 7, **Davina Sashkin** and **Frank Montero** will attend the ABA's Forum on Representing your Local Broadcaster in Las Vegas, NV. Davina is on the planning committee for the event.

On April 7, **Davina Sashkin** will speak on a panel for the LPTV Spectrum Rights Coalition in Las Vegas, NV.

On April 7, **Frank Montero** will attend the Radio and Internet News (RAIN) meeting in Las Vegas, NV.

On April 18, **Mitchell Lazarus** will speak at the TCB Council in Baltimore, MD.

From May 10 – 12, **Kathleen Victory** and **Peter Tannenwald** will attend and speak at the National Translator Association Conference in Reno, NV.

On April 24, **Frank Montero**, **Dan Kirkpatrick**, and **Steve Lovelad**y will host a webinar on the Online Public File in Arlington, VA.

On May 8, **Matt McCormick** and **Peter Tannenwald** will attend a quarterly meeting of the Community Advisory Board of NPR flagship radio station WAMU in Washington, DC. They are *ex officio* members of the Council.

On May 17, **Kevin Goldberg** will speak at the Public Media Business Association on Better Decisions in Branding: Prioritizing and Protecting Your Trademarks in Orlando, FL.

On May 21, **Kevin Goldberg** will speak – twice! – at the Media Finance Focus Conference in New Orleans, LA. He will be discussing Anti-SLAPP laws on the "Focus Stage" during lunch and will be doing his Better Decisions in Branding: Prioritizing and Protecting Your Trademarks" presentation in the afternoon.