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Memorandum to Clients

January 2017 No. 17-01

Streamlined Foreign Media Ownership Procedures (Mostly) Effective in January

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A September FCC Order modifying a number of Commission Rules regarding filing and review of foreign ownership in broadcast licensees has now been published in the Federal Register, setting the effective date of at least some of these changes. Many of those rule changes will now go into effect January 30, although some changes regarding "information collections" (*i.e.* filings with the Commission) still require further OMB approval.

The rule changes adopted in the Order were designed to accomplish two main purposes: 1) to allow broadcast licensees to take advantage of streamlined waiver procedures long enjoyed by common carrier licensees requesting approval for foreign ownership in excess of the statutory limits; and 2) reforming the methods a licensee (whether broadcast, common carrier, or aeronautical) may use to determine its foreign ownership for purposes of certifying compliance with the limits.

The newly-effective Commission rules should make the process of determining compliance less burdensome for US-organized, publicly-traded, companies in the ownership chain of a Commission licensee.

The Commission has long waived, on a case-by-case basis, the statutory limits on foreign ownership in common carrier licensees, allowing such entities to exceed the 20% direct and 25% indirect statutory benchmarks. Such waivers have been based on a number of criteria, including the nationality of the proposed foreign owners, continued management of day-to-day operations by U.S. citizens, demonstrated need for foreign investment, and others. Prior to the last few years, however, waivers were not available to broadcast licensees, which were for all intents and purposes strictly bound by the statutory limits.

Since around 2013, the Commission has gradually begun to loosen those restrictions for broadcasters as well, first by "clarifying" in 2013 that it would conduct case-by-case review of proposals by broadcast licensees for approval of increased indirect foreign ownership (for somewhat arcane administrative law reasons, direct foreign ownership of a broadcast licensee is not be subject to such waiver). In 2015, the Commission approved a request by traditionally Internet-based music service Pandora to purchase a terrestrial radio station in North Dakota. Pandora had requested (and ultimately received) a waiver of the 25% indirect foreign ownership limit because, while it believed it complied with that limit, it could not prove compliance due to the difficulty of determining the citizenship of all of its stockholders.

At the same time as the Commission was relaxing (a bit) the indirect foreign ownership limit for broadcasters, it was also formalizing and streamlining the procedures for common carrier licensees to request waiver, codifying the showings that would be required to obtain approval of increased foreign ownership. The Commission's newly adopted rules now apply those procedures, with a few broadcast-specific modification, to broadcast ownership as well. As noted above, for broadcasters, only the 25% indirect ownership limit can be waived,

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Broadcaster Urges FCC to Okay Permanent AM Synchronous Boosters

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As part of the FCC's initiative to revitalize AM stations, Puerto Rico station owner Wilfredo Blanco-Pi petitioned the FCC to allow AM stations to employ synchronous boosters, not just on a temporary basis, but permanently. Now, the FCC is seeking comment on the proposal to amend Part 73 of its rules. Comments must be submitted via the Commission's online filing system by **December 29**.

Blanco-Pi, who's also an electrical engineer, operates stations in Puerto Rico. "No one would listen to an AM radio" in a noisy city just with 5 mv/m, according to Blanco-Pi. "Even with 25 mv/m (let's say perhaps an acceptable noise-free signal) noisy power lines, computers, microwave ovens, fluorescent lamps, thunderstorms, etc. could make a listener switch to FM radio." Overall, "it's extremely difficult to tune to AM stations inside a building without noise," he told the FCC.

"Although the idea [of AM Revitalization] sounds good as in the Titanic, there are no sufficient 'lifesavers' for everybody until the FCC decides to migrate to entire AM band to FM," he wrote. To overcome some of the noise issues, Blanco-Pi and his son have been experimenting with AM synchronous boosters that have been operating continuously in Puerto Rico since 1988. These stations operate under experimental licenses, so these stations have higher regulatory burdens than regular stations in terms of annual reporting and license renewals.

> *"If broadcasters wish to test whether synchronous transmission systems can help improve signal quality within their coverage area, I believe that the Commission should facilitate such experiments as we search for ways to revitalize the AM band," wrote FCC Commissioner Ajit Pai, who helped push AM revitalization initiatives at the Commission.*

Two AMs were 680 kHz and three AMs were synchronized on 1260 kHz: WAPA, WA2XPA, WISO, WI2XSO and WI3XSO. He applied in 2011 for a fourth station to operate on 1260 kHz. The Audio Division denied the application, asserting that increasing the number of overlapping signals to evaluate system performance was unnecessary. The full Commission upheld this determination by the staff earlier this year.

At the time the agency said: based on Blanco-Pi's long experience in operating his other experimental AM booster stations, "nothing new or groundbreaking concerning the operation of AM synchronous stations will be gleaned by permitting [him] to add a fourth AM synchronous transmitter to the existing WISO synchronous network." It felt he wanted to extend his coverage using the third synchronous booster and "expansion of existing program service…does not justify licensing" an experimental station.

FCC Commissioner Ajit Pai, who helped push AM revitalization initiatives at the Commission, agreed with the majority in denying the additional booster. Yet the senior GOP commissioner, now viewed by experts as likely being named interim chairman by the incoming administration, said this particular order shouldn't deter AM broadcasters who want to perform "legitimate experiments with AM synchronous boosters from coming to the Commission. If broadcasters wish to test whether synchronous transmission systems can help improve signal quality within their coverage area, I believe that the Commission should facilitate such experiments as we search for ways to revitalize the AM band."

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Employers (and some Employees) Thankful as Federal Court Stays New Overtime Laws

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For the past few months, business owners have been frantically preparing for a major change in the Department of Labor (DOL) regulations implementing the Fair Labor Standards Act (FLSA) which would greatly increase the number of employees eligible to receive overtime pay for work in excess of 40 hour per week. These changes were due to become effective Thursday, December 1. However, business owners are now giving thanks to a Judge Amos Mazzant of the United States District Court for the Eastern District of Texas, who has issued a permanent injunction staying the effectiveness of the changes.

To emphasize: these changes did not go into effect on December 1; employers do not need to reclassify employees in response to the changes. What remains to be seen is whether these rules are implemented at all, given the upcoming presidential transition and the clear opposition of House and Senate Republicans to the changes.

I discussed these changes in two different posts earlier this year, both pre-and and post-approval. The latter, in particular, explained the effect the new rules would have on companies, especially with regard to journalists, who rarely adhere to a conventional 40 hour workweek.

The new rules, published in the Federal Register on May 23, 2016 with an effective date of December 1, contained several changes. But the biggest was clearly the new minimum threshold for the "salary level" portion of the test to determine whether an employee is exempt or non-exempt for purposes of receive overtime pay. Under the new rules, the minimum salary necessary to exempt someone from overtime pay would increase from $23,660 per year ($455 per week) to $47,476 per year ($913 per week). Anyone making under that amount would automatically be eligible for overtime pay for every hour worked beyond 40 in a single week. The change was estimated to move 4.1 million employees from "exempt" to "non-exempt", while another 100,000 or so were likely to receive a salary increase, according to the Department of Labor. This salary threshold would be readjusted every three years going forward, to equate to the 40th percentile of salaried workers around the country.

> *What remains to be seen is whether these Fair Labor Standards Act changes are implemented at all, given the upcoming presidential transition and the clear opposition of House and Senate Republicans to the changes.*

Opposition was swift and widespread. Two bills were introduced in Congress:

- HR 6094, the Regulatory Relief for Small Businesses, Schools, and Nonprofits Act, would delay implementation for 6 months (until June 1, 2017). It passed the House of Representatives by vote of 246-177 on September 28 (Mainly a party line vote but with 5 Democrats voting in favor). There is a companion bill in the Senate (S 3462).

- S. 3464, the Overtime Reform and Review Act, would phase-in the DOL's new salary threshold in four stages over five years, with an increase to $36,000 on December 1, a "pause year" in 2017 and further salary increases each year thereafter until reaching the new rule's new threshold of $47,476 on December 1, 2020.

More important for our purposes, two lawsuits were filed, both in the United States District Court for the Eastern District of Texas. They are:

- *State of Nevada et al v. United States Department of Labor et al* (filed by 21 state attorney generals).
- *Plano Chamber of Commerce et al v. Perez et al* (filed by 50 business groups including U.S. Chamber of Commerce, several State Chambers of Commerce, the National Association of Manufacturers, the National Retail Federation, National Automobile Dealers Association, and the National Federation of Independent Business).

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Large Market Radio Stations Must Have Complete Online Public File by Christmas Eve

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Many radio owners have a Commission-imposed deadline looming before Christmas. Most radio stations located in large markets, which have been defined by the Commission in this instance to be the Nielsen Top-50 radio markets, will need to make sure that they have their complete (but for a few exceptions) online public files uploaded by **December 24, 2016**.

Each full-power commercial and non-commercial radio, television and Class A television broadcast applicant, permittee and licensee is required to maintain a local public inspection file containing materials which must be made available to members of the public. In an effort toward modernization and to provide better public access, the Commission has gradually been transitioning broadcast stations (as well as some cable television operators) to a requirement that their public files be maintained online, in a Commission-hosted database. This requirement applied first to television and Class A television stations, and is now being rolled out to radio.

Stations must upload public file documents which pre-date June 24, 2016, and that process must be completed by ***December 24.***

Top-50 Market Radio Stations: As you may recall, beginning on June 24, 2016, full-power radio stations in the Nielsen Top-50 radio markets with 5 or more full-time employees in their employment unit (as that term is defined in the FCC's EEO rules) were required to begin uploading virtually all public file documents to a Commission-hosted database on a going-forward basis. The exception to that rule was that stations were allowed to continue maintaining correspondence from the public in a paper file.

Now the second half of the requirement is about to kick in, as most stations must upload public file documents which *pre-date* June 24, 2016, and that process must be completed by December 24. Exceptions to this requirement are the political file, which needs to be uploaded on a going-forward basis only, and, again correspondence from the public.

Thankfully, the Commission will lend a bit of a helping hand by automatically uploading applications and reports that are electronically filed with the Commission, such as routine modification and renewal applications and ownership reports. Therefore, these documents do not need to be separately uploaded by stations. AM stations should keep in mind, however, that certain of their applications, particularly license applications, are still filed with the FCC on paper rather than electronically, and they will therefore need to be uploaded manually. In addition, many other documents and material (quarterly issues & program lists, annual EEO public file reports, and certain contracts or lists of contracts, for example) are not electronically filed and must be manually uploaded. Luckily for some licensees, The Commission granted a last-minute exception to certain stations who have pending license renewal applications. To alleviate the burden of such stations needing to upload 10 years or more of issues and programs lists and EEO reports, licensees will now be required to upload issues and programs lists and EEO reports only for the current license term, provided that 1) the pending renewal application was not opposed, 2) the reason the renewal remains pending is not due to any issues related to the issues and program lists or EEO reports, and 3) the required documents remain available in the station's hard copy public file.

Stations required to complete their files by the December 24 deadline must also provide a link to the online public inspection file from the home page of the station's own website, assuming the station has a website. Additionally, a station must provide contact information on its own website for a station representative that can assist any person with disabilities with issues related to the content of the public files.

No NCE radio stations have to comply with any of the online public file rules until **March 1, 2018** – irrespective of their market.

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Copyright Royalty Judges Reinstate Reporting Relief for Most Noncommercial Broadcasters

Noncommercial Broadcasters Receive Welcome Reporting News

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You may recall that in August 2016, we reported that the Copyright Royalty Judges had proposed to modify the rules governing how noncommercial broadcasters are supposed to report the sound recordings that they stream to SoundExchange. That proposal was published at the urging of the National Association of Broadcasters ("NAB") and the National Religious Broadcasters Noncommercial Music License Committee ("NRBNMLC"), who had pointed out that a recent change to the reporting rules had introduced an apparently unintended anomaly. Under the amended rules, ***noncommercial*** broadcasters paying no more than the minimum $500 annual fee in royalties appeared to be subject to more burdensome reporting rules than those that applied to ***commercial*** broadcasters paying no more than that amount. (We won't rehash the reporting requirements or the history of how this anomaly was introduced into the requirements but will instead refer inquiring minds to our prior discussion here.)

Commercial and noncommercial alike – may report sound recordings for two weeks per calendar quarter and the number of overall aggregate tuning hours in a particular reporting period, without having to link audience levels with specific sound recordings.

In what will come as music to the ears of those noncommercial broadcasters, the Judges have now made the proposed change official. ***Both*** types of broadcasters – so long as they owe no more in royalties than the $500 annual minimum fee – are excused from two reporting requirements that generally apply to other types of webcasters:

(1) reporting all of the sound recordings that they stream; and

(2) reporting the number of persons listening to each sound recording.

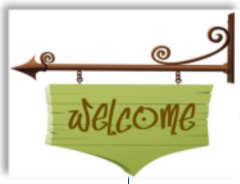
Instead, these broadcasters – commercial and noncommercial alike – may report sound recordings for two weeks per calendar quarter and the number of overall aggregate tuning hours in a particular reporting period, without having to link audience levels with specific sound recordings.

Our prediction that there would not be "any fierce or widespread opposition to the Judges' proposed amendment" proved accurate. The Judges received only three sets of comments in response to their notice published in the Federal Register proposing to amend the reporting rules to correct the reporting anomaly. Joint comments filed by NAB and the NRBNMLC supported their proposed change. Comments filed by the Intercollegiate Broadcasting System did not object to the change. And the Judges chose to ignore a third comment filed by an individual named Adam Stein, finding that he had "offered no support for his allegations, which appeared to be based upon a fundamental misunderstanding of compulsory licenses." Notably, SoundExchange – the chief proponent of more comprehensive reporting requirements – did not weigh in at all on the Judges' proposal.

As we noted previously, it's hard to argue that noncommercial broadcasters should be treated more harshly under the reporting rules than commercial broadcasters. We are glad to see that the Judges have amended their rules in a way that more accurately reflects this commonsense principle.

**Side note: We continue to watch for developments in another rulemaking proceeding proposing to overhaul the reporting rules much more comprehensively, which remains open.

[*Editor's Note: Karyn Ablin proposed the now-adopted change to the Judges on behalf of NAB and the National Religious Broadcasters Noncommercial Music License Committee.*]



Wilkommen, Bienvenu, Welcome!

Fletcher, Heald & Hildreth is pleased to announce that ***Mark C. DeSantis*** has joined us as an associate attorney. Mark came to FHH in November 2016 after completing a fellowship with the Global Antitrust Institute where he performed research related to the intersection of international antitrust and intellectual property law.

He got his introduction to communications law and copyrights from an internship with the Office of the General Counsel for Public Broadcasting Service. He went on to intern at the Federal Communications Commission's Wireless Telecommunications Bureau, and later clerked for FCC Commissioner Ajit Pai.

Mark loves to cook and was an all-state drummer in high school. He's been a diehard Buffalo Bills fan since age 8.

He got his Bachelor of Arts at Indiana University in Bloomington and attended George Mason University School of Law, where he graduated with a Communications Law Concentration. While there, he was Articles Editor on the *George Mason Law Review* and a member of the university Trial Advocacy Association.

Mark also speaks Spanish, and is a member of the Virginia bar, as well as the Federal Communications Bar Association.

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AM Synchronous Boosters—*(Continued from page 2)*

Now as part of the AM Revitalization effort, Blanco-Pi is again urging the Commission to grant his petition for a fourth synchronous transmitter operating on 1260 kHz, and to open to all AM station licensees the opportunity for permanent synchronous transmitter operation.

In general, AM synchronous boosters "permit the best possible use of a single frequency" to allow an AM to improve or expand its coverage while maintaining protection to co-channels and adjacent channels both day and night. Listeners can keep listening in the areas where the boosters overlap with "practically no annoying or destructive interference," states Blanco-Pi.

> *"Although the idea [of AM Revitalization] sounds good as in the Titanic, there are no sufficient 'lifesavers' for everybody until the FCC decides to migrate to entire AM band to FM," Puerto Rico station owner Wilfredo Blanco-Pi wrote to the FCC.*

He described the installation as "easy, cost-effective and dependable." AM stations should be able to install boosters not only to fill-in coverage areas inside the 2.0 mv/m contour, but also to expand their signal contour just as AM directional antennas do, he believes.

(***Overtime Laws*** *— continued from page 3)*

These were quickly consolidated into a single lawsuit (for the record, the case is going forward as *State of Nevada et al v. United States Department of Labor et al*) and the court began consideration of an Emergency Motion for Preliminary Injunction filed by the plaintiffs in an effort to stay implementation of the rules. On November 22, Judge Mazzant granted that Motion for Preliminary Injunction, holding that:

- The plaintiffs are likely to ultimately win this case on the merits because imposing these new rules on state and local government agencies is likely to violate the 10th Amendment to the United States Constitution (which many people refer to as the amendment protecting "state's rights"). This is due, in part, to the fact that the higher salary threshold creates an "evaluation 'based on salary alone'" rather than really looking at what is an executive, administrative or professional employee. It is also because the automatic updating mechanism involves periodic adjustments to rules without a notice and comment period.

- This is likely to result in irreparable harm to the state plaintiffs. This harm goes beyond a simple financial injury. For many states, the increase – which will range into the millions of dollars – will be impossible given state budgetary constraints.

- The "balance of hardships" favors granting a preliminary injunction. While the states identified various hardships that rise to the level of "irreparable harm" if the rules are implemented on December 1 while the federal government could not articulate a true hardship that would result from a stay.

- The public interest favors a stay because the potential for disruption of state budgets, resulting in possible layoffs and disruption of government functions outweighs the benefits that might accrue to 4.2 million workers around the country.

Judge Mazzant, noted that "[d]ue to the approaching effective date of the Final Rule, the Court's ability to render a meaningful decision on the merits is in jeopardy. A preliminary injunction preserves the status quo while the Court determines the Department's authority to make the Final Rules as well as the Final Rules' validity." While the DOL argued that the injunction should apply narrowly, only in those states demonstrating evidence of irreparable harm, Judge Mazzant is applying the injunction nationwide.

While many of our readers will certainly welcome this injunction, we caution against dropping all preparations for an eventual change. This is a preliminary injunction, meaning the rules are simply stayed pending the entire trial. Yes, that trial may take several months but the end result could be that these very rules go into effect in 2017 or 2018. (To the extent you have already changes employees' statuses in response to the rules, it might be hard to do an immediate reversal – you should absolutely consult with an experienced employment attorney — and now is a good time to remind you that we are not employment attorneys).

We can't ignore that a big change has occurred since these changes were announced – indeed, since these lawsuits were filed. These changes were a priority for President Obama; there is every indication that his successor opposes the changes and that the new rules were already being targeted for repeal. The fact that the House had passed HR 6094 was largely irrelevant given that the 246-177 tally amounted to only 58% in favor, short of the 2/3 needed to override a likely Presidential veto. The change in Administration increases the prospects for HR 6094 and, in fact, introduction and passage of legislation to fully repeal the changes, which could certainly happen before the court case is finished.

Of course, nothing is certain. It would be foolish to assume this means the rules will be scrapped altogether. My advice for those who were dreading these new rules (and remember: this shouldn't be considered legal advice): hope for the best but continue to prepare for the worst.

*(**Online Public File** — continued from page 4)*

Radio Stations Outside the Top-50 Markets and Non-Commercial and Small Stations: Stations in smaller markets or with fewer than five full-time employees should not get too complacent, as their turn will be next.

Beginning March 1, 2018, the online radio requirements will apply to full-power radio stations located outside the top-50 markets and small stations in all markets. Unlike the first group of stations, there will not be a phase-in period, but rather almost all public file documents, including documents from earlier in the license term and going-forward documents, will be required to be posted online by March 1, 2018. Exceptions are that the political file needs be uploaded on a going-forward basis only, and political file documents from prior to March 1, 2018, may be retained in a paper file for the remainder of their retention period. Additionally, letters from the public need not be uploaded but must be retained in paper format.

Stations are not required to wait until 2018 to make the switch to the online public file. Instead, they may make the switch at any point between now and March 1, 2018, but they must make sure that all relevant documents are uploaded by that deadline.

Stations are not required to wait until 2018 to make the switch to the online public file. Instead, they may make the switch at any point between now and March 1, 2018, but they must make sure that all relevant documents are uploaded by that deadline.

As with the larger stations, the Commission will help out in the process by automatically adding to the online public file all applications and reports that are electronically filed with the Commission. Again, however, anything prepared at the station and not filed as a part of an electronic FCC form, which would include quarterly issues/programs lists, EEO public file reports, certain AM applications, etc., must be uploaded by the station, although stations in this group with long-pending renewal applications would also be subject to the limited exception detailed above.

Stations must also ensure that the proper link to the online public file and the name of a contact person to help those with disabilities are included on their own websites by March 1, 2018.

Non-commercial Educational Stations and Political File Material: As a reminder, we note that under Section 399(b) of the Communications, Act, NCE stations are prohibited from selling spots to political candidates (whether local, state or federal candidates). Also, NCE stations are not required to provide free time to any candidates, and are not required to provide reasonable access for candidates for federal offices. Accordingly, NCE stations may well not have a political file.

Final Word of Caution as to Public File Compliance: The Public File requirements are continuing in nature. Each licensee is asked to certify, in its license renewal application (FCC Form 303-S), that it has complied fully with the rules relative to the regular maintenance of the file. That certification requires that the applicant certify not only that it has placed the required materials in the file, but also that it has placed those materials there ***at the appropriate time***. Failure to provide such a certification (or, even worse, providing an incorrect certification) may result in a hefty fine or even designation of a station's license for hearing. Further, with the introduction of the online public file for some stations, the FCC staff can easily review those stations' public inspection files (including the upload date of various documents) for compliance and the correctness of a certification.

In fact, during the last renewal cycle, staff members did so review TV stations' online public files. As a result, any tardiness in including documents in the online public file should be listed and explained in the next license renewal application in order to avoid adding a penalty for failure to report on top of whatever penalty might be assessed for the public file problem.

Likewise, if a report was filed in another of the Commission's electronic systems, but some glitch resulted in its not being automatically included in the public file, the Commission faulted the licensee (not itself) for that failure. This brings us to another caution – while stations may generally rely upon the Commission to move electronically filed documents into the online public file, it is incumbent on the licensee to make sure they actually land there. If not, the station must upload the document in question itself.

If you have any questions as you implement the transition to the online public file, please contact your attorney here at FHH.

Media Bureau Seeks Comment On Broadcast EEO Petition

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Two broadcasting companies petitioned the FCC to revise its Equal Employment Opportunity (EEO) rules to allow broadcasters to rely on Internet recruitment sources when filling job openings. The Commission's current EEO rules, which date back to 2002, require broadcasters employing five or more full-time employees, and MVPDs employing six or more full-time employees, to maintain an EEO recruitment program, which includes outreach requirements for filling job vacancies (we have previously warned clients about the strictness of these requirements here, here, and here).

The 2002 rules cited the daily newspaper as the presumptive method of outreach, but broadcasters have frequently reported that on-air and Internet announcements are now by far the most effective recruitment methods. Nonetheless, the FCC has repeatedly held that posting openings only to internet sites does not satisfy the rules, and has imposed fines and reporting conditions based at least in part on failure to meet this requirement.

Despite the disparity between the EEO rules and licensees' preferred recruiting practices, compliance with EEO rules has historically been important for broadcasters and MVPDs, as the FCC conducts random audits of EEO programs each year, as well as reviewing EEO compliance in the context of license renewals. While it may not signal a change in the Commission's own perspective on the rules, the Media Bureau has at least sought comment on the broadcasters' petition. Interested parties may file comments to MB Docket 16-410 by January 30, 2017.

GMR Strikes Back

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We previously informed you about the Radio Music License Committee's (RMLC) antitrust lawsuit filed against the "fourth" performing rights organization ("PRO"), Global Music Rights ("GMR") for engaging in anticompetitive conduct designed to drive up music licensing prices. Now, GMR has filed an antitrust lawsuit of its own in a different federal court against the RMLC.

Attempting to turn the tables, GMR claims that "RMLC stations represent more than 90% of the country's terrestrial radio revenue" and that "the RMLC flexed their collective muscle to attempt to force GMR to submit to a mandatory licensing scheme and artificially depressed license fees."

The RMLC, for its part, wasted no time issuing a press release calling the move a "baseless, bullying lawsuit" and "an obvious ploy designed to pressure the RMLC in response to the antitrust suit the RMLC filed against GMR in federal court in Philadelphia," in November. It said that GMR's claims were "frivolous and offensive" and "a ridiculously inefficient proposal" apparently "to force all PROs to negotiate separately with more than 10,000 radio stations."

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Deadlines!

December 27, 2016

Promoting Diverse and Independent Programming – Comments are due regarding the Commission's Notice of Proposed Rule Making with regard to proposed steps to promote the distribution of independent and diverse video programming to consumers. The comment deadline initially announced was December 24, 2016, but the Commission apparently realized that this date was not only Christmas Eve, but a Saturday, and silently made the correction before the notice appeared in the Daily Digest.

January 10, 2017

Children's Television Programming Reports — For all commercial television and Class A television stations, the fourth quarter 2016 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 as was the case the last few quarters, use of the Licensing and Management System for the children's reports is mandatory, and this system requires the use of the licensee FRN to log in; therefore, you should have that information 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 records sufficient to substantiate a 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 past quarter must be placed in the station's public inspection file. Radio stations in the top 50 markets and in an employment unit with five or more employees will have to place these reports in the new online public inspection file, while all other radio stations may continue to place hard copies in the paper file for the time being. Television and Class A television stations will continue upload them to the online 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 maintain 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.

(Continued on page 11)

Deadlines!

(Continued from page 10)

January 23, 2017

Promoting Diverse and Independent Programming – Reply Comments are due regarding the Commission's Notice of Proposed Rule Making with regard to proposed steps to promote the distribution of independent and diverse video programming to consumers.

January 30, 2017

Equal Employment Opportunities ("EEO") Recruitment Practices – Comments are due with regard to a petition by two broadcasters which requests that the FCC modify its EEO policies applicable to broadcasters to allow broadcasters to rely on Internet recruitment sources, coupled with their on-air advertising, when conducting outreach for new job openings.

February 1, 2017

EEO Public File Reports — All radio and television stations with five (5) or more full-time employees located in Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York, and Oklahoma must place EEO Public File Reports in their public inspection files. TV stations must upload the reports to the online public file. Radio stations in the top 50 markets and in an employment unit with five or more employees will have to place these reports in the new online public inspection file; all other radio stations may continue to place hard copies in the paper public file for the time being. 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 radio stations with eleven or more full-time employees in Kansas, Nebraska, or Oklahoma, and all television stations with five or more full-time employees in Arkansas, Louisiana, or Mississippi must electronically file a mid-term EEO report on FCC Form 397, with the last two EEO public file reports attached.

February 14, 2017

Equal Employment Opportunities ("EEO") Recruitment Practices – Reply Comments are due with regard to a petition by two broadcasters which requests that the FCC modify its EEO policies applicable to broadcasters to allow broadcasters to rely on Internet recruitment sources, coupled with their on-air advertising, when conducting outreach for new job openings.

FHH - On the Job, On the Go

On December 1, **Frank Montero** attended the annual FCC Chairman's Dinner hosted by the Federal Communications Bar Association. On December 20 he joined the New Jersey Broadcasters at their board meeting in Point Pleasant, N.J.

The January 4th issue of *Radio World Magazine* will run a profile of **Frank M**. On January 24th he will moderate a panel discussion entitled *Financing the Broadcast Deal: Safety and Soundness* at the NAB & NABEF Capital Assets Conference in Washington, D.C.

***Kathy Kleiman** speaks with Governor Asa Hutchinson at the Girls of Promise® Coding Summit of the Women's Foundation of Arkansas on December 9th.*

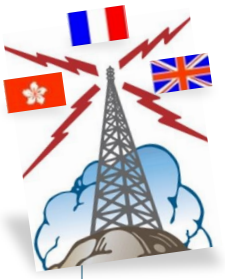
Kathy Kleiman again wins the prize for traveling the farthest for **FHH**; coming off a recent trip to India, she was in Little Rock, Arkansas on December 8 and 9. There, she joined Governor Asa Hutchinson (*see photo*) to speak with a group of female students about the importance of exploring careers in computer science and Science, Technology, Engineering and Math (STEM). Her speech was followed by an announcement by Anthony Owens, Coordinator of Computer Science at the Arkansas Department of Education, that Kathy's three documentaries about women programming pioneers — *The Computers, The Coders* and the *Future Makers* — will be made available to all Arkansas schools.

The documentary screenings are the newest part of the Governor Hutchinson's Computer Science Initiative – a campaign promise (now a statewide reality) to offer computer science courses in every high school. Kathy also met with the Arkansas State Board of Education to discuss the documentaries, and the leadership of Arkansas in providing K-12 computer science preparation and programs.

***Kathy Kleiman** and Johnny Key, Commissioner of the Arkansas State Board of Education, after the award of the Arkansas Traveler Award on December 8th before the Arkansas State Board of Education.*

Kathy was awarded the *Arkansas Traveler Award* from the Governor's office. She's with Johnny Key, Commissioner of the Arkansas State Board of Education, in the photo. Frank Jazzo is also a recipient of this award.

Kevin Goldberg will speak at the Association of Alternative Newsmedia Conference in Portland from January 19-21. He is taking part in two sessions, one on digital copyright issues and the other a "Legal Hotline Live" open Q&A session.



Foreign Media Ownership—*(Continued from page 1)*

not the 20% direct ownership limit. As "information collections," it is also worth noting that these changes will not formally become effective until OMB has also signed off.

A second problem that the Commission has increasingly dealt with (as demonstrated in the Pandora case referenced above) is that it is often very difficult for a licensee to determine the citizenship (or even identity) of enough of its shareholders to confirm that its foreign ownership levels comply with the statutory limits. This problem is particularly acute for publicly-traded companies with widely-held stock, which is often held in the name of third parties, such as banks and brokers.

The newly-effective Commission rules should make the process of determining compliance less burdensome for US-organized, publicly-traded, companies in the ownership chain of a Commission licensee. Such entities may now rely on information as to shareholder citizenship that is "known or should be known" to them in certifying compliance with the foreign ownership caps. Under the new "known or should be known" standard, companies will be expected to review citizenship and ownership information through SEC filings and other widely-available sources, such as news reports. Companies will also be expected to review other sources of information available to the company itself, as well as information submitted by third-party commercial entities that compile and distribute such information on publicly traded companies. While companies need not affirmatively report the results of such investigations to the Commission (although they must underlie any certification of compliance included in an application) the Commission expects that licensees will continually monitor their foreign ownership levels. If such monitoring uncovers any excessive foreign ownership, the Commission has also now adopted remedial procedures providing licensees with a period of time to fix the problem or request waiver of the rules.

Under the new "known or should be known" standard, companies will be expected to review citizenship and ownership information through SEC filings and other widely-available sources, such as news reports.

The above is only a broad overview of the changes that will soon be going into effect regarding foreign ownership compliance. If you have questions about the new rules, or their application to specific issues or situations, we are here to help.

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MLK, Jr. Day and Inauguration Reminders

Fletcher, Heald & Hildreth, P.L.C.
will be officially closed on
January 16th and January 20th, 2017