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Memorandum to Clients

June 2017 No. 17-06

FCC Looks to Modernize Media Regulations

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Last month, the FCC launched a new proceeding with an extremely broad goal of modernizing its media regulations. The very brief (less than three page) Public Notice launching the proceeding, which Chairman Pai previewed in his speech at the NAB Show in Las Vegas, asks for comment on almost any media regulation considered "outdated, unnecessary, or unduly burdensome." The Notice requests comment from broadcasters, cable operators, and satellite television providers, and applies to almost all regulations effecting the media industry. Notably, however, the Notice carves out from comment here media ownership rules, which are subject to quadrennial review under the Communications Act, and video accessibility rules, which the Notice points out were just revised under a complex legislative mandate. Other than these two areas, it seems that any aspect of media regulation is open for review in this proceeding.

In addition to the broadcasters and multichannel video programming distributors (MVPDs) specifically noted in the Notice, other entities with an interest in the media industry may want to monitor this proceeding as well. Among the rule sections the Commission identified as those most applicable to the proceeding were Parts 15 and 17 of the Commission's rules, which govern radio frequency devices and antenna structures (*i.e.*, towers), respectively. Any changes to those rules could clearly have impacts on players well outside the traditional media industries.

Inside this issue . . .

Where this proceeding ends up is a rather open question, as its scope is so potentially broad. It is almost certain to draw significant comment, as almost every regulatee in the media fields probably is eyeing at least a few regulations they would like to see repealed. Comments in the proceeding (MB Docket No. 17-105) are currently due on ***July 5, 2017*** and reply comments on ***August 4, 2017***. We will continue to monitor the proceeding and keep you updated. Please contact us if you are interested in participating.

FCC Imposes $55,000 Fine for Inappropriate Use of EAS Tones

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Continuing its historical hard line on misuse of EAS tones, the FCC announced on May 30 that it had settled an investigation with WTLV, a TEGNA-owned television station in Jacksonville, Florida regarding unauthorized EAS tones appearing in an ad for the Jacksonville Jaguars (the local NFL team). As part of the settlement, TEGNA entered into a Consent Decree in which it agreed to pay a $55,000 fine and to comply with various reporting conditions over the next few years.

The Commission has long taken misuse of EAS tones very seriously, based largely on the theory that if the tones appear when there is in fact no emergency, it may create a "boy who cried wolf" scenario where viewers or listeners will ignore the tones when there is in fact an emergency. In addition, false EAS tones may cause serious problems to the entire EAS system by triggering "downstream" stations in the system to automatically broadcast their own EAS alerts. Depending on the formatting of the alerts, this can result in a very large number of false alerts or can even cause parts of the system to "lock up," rendering stations unable to provide a genuine alert if necessary. As a result, the Commission has made very clear to broadcasters and other programmers that they should under no circumstances use the EAS tones outside of genuine emergencies triggering the EAS system.

To deter violations, fines for misuse of EAS tones have been particularly steep. In 2014 and 2015, for example, the FCC imposed almost $3 million in fines. In 2014, three cable companies were fined almost $2 million for use of the tones in an ad for the movie *Olympus Has Fallen* that ran more than 150 times across multiple networks. In 2015, iHeart Communications had to pay $1 million for use of the tones in a syndicated broadcast. That broadcast only used the tones once in a single airing, but it ran on 70 stations, which triggered EAS systems at some "downstream" stations, causing a "cascade" of false alerts.

In light of these past precedents, TEGNA may feel lucky to have gotten off with a fine of only $55,000, although its violations were almost certainly less egregious than those leading to seven-figure penalties. According to the consent decree between TEGNA and the Commission, the ads at issue here opened with the EAS tones, along with sounds of a storm. A voice-over then went on to say "This is an emergency broadcast transmission. This is not a test." While the broadcast itself was clearly problematic, the Consent Decree reports that it aired only a total of four times, all on a single station, and did not cause any "downstream" issues.

In addition to the fine, the FCC also imposed a number of conditions. These include: (1) designating a senior TEGNA corporate manager as a company-wide Compliance Officer, responsible for developing and implementing a company-wide Compliance Plan to prevent any further violations of the EAS rules; and (2) imposing an 18 month obligation to report EAS violations at any TEGNAstations to the FCC, and to file compliance reports. After the first 18 months, those conditions will continue for an additional 18 months for WLTV itself, but not for the rest of TEGNA's stations. As has frequently been the case with reporting conditions in recent Commission consent decrees, these conditions will also apply to any purchaser who acquires the WLTV license during the covered period.

All broadcasters can take this Consent Decree as a useful reminder that the Commission takes its EAS rules, and in particular the broadcast of false EAS tones, very seriously.

The Commission has an all-electronic payment requirement

FCC Proposes 2017 Regulatory Fees

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Just in time for the unofficial start of summer, the FCC has issued its 2017 Regulatory Fee Notice of Proposed Rulemaking (NPRM), beginning a process that culminates with the payment of regulatory fees sometime between late August and the end of September.

Although there aren't any big fee hikes like we saw last year, the Commission is putting on notice those TV stations that claim the satellite television fee. Satellite television station regulatory fees are much lower than fees for full-power stations; for FY2016, the satellite television fee was roughly just 35% of the lowest fee category for a full-power television station. Satellite station status can only be obtained as a result of Commission action. To ensure that only those stations that have been granted satellite status by the Commission reap the benefits of the reduced satellite television regulatory fee, the FCC has attached to the NPRM a list of eligible satellite television stations and invites comment on the accuracy of the list. The Commission also seeks comment on whether the satellite fee should be increased to 50-75% of the fee that would be due if the satellite station were a full power television station.

Direct broadcast satellite (DBS) licensees are unlikely to be happy with the NPRM. DBS licensees pay two separate fees: a fee calculated according to the physical satellites they operate and another fee calculated according to the number of subscribers (this subscriber-based fee was not instituted until 2014). For the second year in a row, DBS fees calculated on a per subscriber basis may increase significantly. While the NPRM notes that the fees are still far lower than those paid by cable television/IPTV companies, DBS operators now pay 38 cents per subscriber per year.

So, if that's the bad news, what's the good news?

In 2014, the FCC instituted a $500 *de minimis* floor. A licensee received a "get out of Regulatory Fee Payment free" card if its total fees due were less than $500 in a given year. This year, the FCC is considering raising that *de minimis* threshold from $500 to $1,000. (We remind everyone that this exemption applies only to filers of annual regulatory fees, not any application filing fees, *and it is* ***not*** a permanent exemption, meaning a licensee that may have been exempt last year will not automatically be exempt this year, whether or not the floor changes.) For telecommunications carriers (or Interstate Telecommunications Service Providers – ITSPs – in FCC Regulatory Fee parlance), the FCC is also proposing a fee reduction this year. Last year, ITSPs paid 3.71 cents per revenue dollar (as reported on the carrier's Form 499-A). This year, the proposed ITSP has been reduced to 3.02 cents per revenue dollar.

Other proposals include redistribution of FCC full time employees working on Universal Service Fund (USF) issues whose salaries are funded via Wireline Bureau regulatory fees to an "indirect status" reflecting the changing nature of the FCC's oversight of the USF; adopting a flat, per provider fee with tiered regulatory fee methodology for International Bearer Circuits, regardless of their common-carrier/non-common carrier status; and revising the fee ratios for AM and FM

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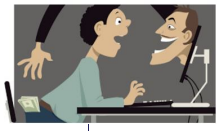

FCC Proposes 2017 Regulatory Fees — *(Continued from page 3)*

broadcasters.

The table below shows the proposed 2017 radio station fees using the proposed ratios:

Proposed FY 2017 RADIO STATION REGULATORY FEES This uses the proposed ratios for FY 2017						
Population Served	**AM Class A**	**AM Class B**	**AM Class C**	**AM Class D**	**FM Classes A, B1 & C3**	**FM Classes B, C, C0, C1 & C2**
<=25,000	$1,050	$750	$650	$715	$1,150	$1,300
25,001 – 75,000	$1,575	$1,125	$975	$1,075	$1,725	$1,950
75,001 – 150,000	$2,375	$1,700	$1,475	$1,600	$2,600	$2,925
150,001 – 500,000	$3,550	$2,525	$2,200	$2,425	$3,875	$4,400
500,001 – 1,200,000	$5,325	$3,800	$3,300	$3,625	$5,825	$6,575
1,200,001 – 3,000,00	$7,975	$5,700	$4,950	$5,425	$8,750	$9,875
3,000,001 – 6,000,00	$11,950	$8,550	$7,400	$8,150	$13,100	$14,800
>6,000,000	$17,950	$12,825	$11,100	$12,225	$19,650	$22,225

When it comes to paying, remember that the Commission has an all-electronic payment requirement: no cash or paper checks are accepted. Also, the maximum payment that can be charged to a credit card remains at $24,999.99, which applies to both single and bundled payments. If you owe more than $24,999.99, you will ***not*** be permitted to split up the payment into multiple payment transactions, nor will you be permitted to pay over several days by using one or more credit cards. The FCC recommends that anyone expecting a fee obligation of $25,000 or more consider using debit cards, Automated Clearing House (ACH) debits from a bank account, or wire transfers.

Comments on all of the proposals set out in the *NPRM* are due by ***June 22, 2017***; reply comments are due by ***July 7, 2017***. You can submit your comments to the FCC in Docket Number 17-134.

Again, the *NPRM* – and the fees described in it – are only proposals. We won't know the final fees until sometime this summer, and we won't know the deadline for paying the fees until sometime later, although fees are generally due in late August or early/mid-September. Check back here for updates.

FCC Proposes to Eliminate Main Studio Rule for Broadcasters

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On May 18, 2017, the Federal Communications Commission proposed to eliminate the rule requiring radio and television broadcasters to maintain a main studio located at or near a station's community of license. The Commission proposed the repeal of the rule on the grounds that the ubiquity of electronic communications eliminated the necessity of a studio's physical presence to ensure adequate communication and cooperation between a broadcaster and the community it represents. While all three Commissioners agreed to adopt the Notice of Proposed Rulemaking (NPRM) proposing the elimination of the main studio rule, Commissioner Clyburn expressed serious reservations about the effects of eliminating the rule on relations between broadcasters and the communities they serve.

The Commission also proposed the elimination of several regulations ancillary to the main studio rule itself, including: (1) the requirement that a main studio have a "meaningful management and staff presence" to fulfill the main studio's function; (2) the requirement that a broadcaster ensure that its main studio has "continuous program transmission capability"; (3) informal application requirements for relocating a main studio; (4) FM station studio location requirements within a station's principal community contours; and (5) permissive changes to a studio's location. The Commission justified the elimination of these regulations on the grounds that they would be rendered meaningless by the absence of the main studio rule. However, the Commission proposed to retain the requirement that broadcasters maintain either a local or toll-free telephone number for their stations in order to ensure that community members continue to have access to their local broadcast stations.

By issuing a NPRM, the Commission has invited public comment on its proposal to eliminate the main studio rule and its associated regulations. The Commission is particularly concerned with the costs faced by broadcasters in compliance with the rules, and whether the purpose and effect of Section 307(b) of the Communications Act – which requires that the FCC distribute broadcast stations and licenses in a manner that is "fair, efficient, and equitable" – could still be fulfilled following the elimination of the rules. Finally, the Commission has requested comment on whether physical access to a station's public inspection file (for stations that continue to maintain parts of their files in physical form) must be ensured through other means – such as placing the file in a local library – following the repeal of the rules.

Comments on the proposed elimination of the main studio rule and its associated regulations are due by ***July 3, 2017***, with Reply Comments due by ***July 17, 2017***.

Please contact ***Dan Kirkpatrick*** at (703) 812-0432 or ***Keenan Adamchak*** at (703) 812-0415 if you would like to submit a comment in the main studio rule elimination proceeding, or have any questions regarding the potential changes to your station's compliance obligations as a result of the proceeding.

FCC Extends Repack Transition Progress Reporting Requirement to Non-Reimbursable Stations

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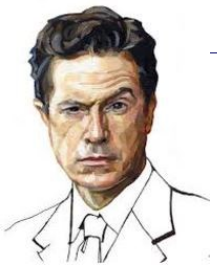
On May 18th, the Commission adopted transition progress reporting requirements for broadcast television stations that will be changing channels during the post-incentive auction transition, but that are ineligible for reimbursement from the TV Broadcast Relocation Fund. The Commission had already decided back in January that TV stations eligible for reimbursement from the Fund would be required to report their progress by detailing the status of their construction and how they have spent reimbursement funds.

We wrote about this initial January decision here. As a refresher, full-power and Class A television stations involuntarily reassigned to a new channel are generally eligible for reimbursement of repack expenses from the TV Broadcast Relocation Fund, while stations that successfully bid to move to a new VHF channel, as well as those electing to request a service rule waiver, are ineligible for such reimbursement. As of last week's Public Notice, Non-Reimbursable Stations will now be required to file the same Transition Progress Reports that the Commission previously adopted for Reimbursable Stations (you can find a copy of the form in Appendix A of the January Public Notice).

The Commission seeks to keep tabs on relocated stations' transitions to their new channels to ensure that the new wireless band is cleared as efficiently as possible. To this end, the Commission noted, the progress of Non-Reimbursable Stations will be no less crucial than the progress of Reimbursable Stations. The Commission also concluded that monitoring the progress of only Reimbursable Stations would paint an incomplete picture of the repack transition. Commenters uniformly supported extending the reporting requirements, and noted that tracking the transitions of all relocated stations will be necessary because Non-Reimbursable Stations will compete with Reimbursable Stations for the same resources needed to transition to new channels.

Both Non-Reimbursable and Reimbursable Stations will file the same form and at the same filing intervals. Specifically, both types of stations must file the Transition Progress Report electronically on a quarterly basis. Stations must file their first Report, which will cover the first full quarter after release of the public notice announcing the completion of the incentive auction, by October 10, 2017. Thereafter, stations must file a Report: 1) 10 weeks prior to their assigned construction deadline; (2) 10 days after completing construction of post-auction facilities; and (3) five days after ceasing broadcasting on their preauction channel.

FHH has a team ready to assist with your post-incentive auction transition. Please contact us for assistance in filing a Transition Progress Report, or with any other questions about post-auction procedures.



FCC v. Colbert – A Controversy Based on Truth or Truthiness?

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During his May 1, 2017 monologue on the Late Show, Stephen Colbert made a number of jokes at President Donald Trump's expense, including lobbing a series of insults at the President. (The full monologue is available here; check around 11:15 for the portion that has gotten folks talking). One of these insults, which included a joking reference to oral sex involving President Trump and Russian President Vladimir Putin, created quite a stir. While such a joke could certainly be expected to draw attention, some of the reaction to it, and in particular the reaction to the FCC's reaction, is probably overblown in light of the governing legal principles involved.

Not surprisingly, Colbert's joke led to at least some complaints being filed with the FCC. This is not in any way uncommon, as perhaps most programming with even a hint of sexual content will draw a complaint from somewhere. (The joke also got a large response on Twitter and in the media generally, including calls for boycotts and Colbert's firing, but our focus here is on the FCC). While most such complaints are ultimately resolved with little or no publicity, it seems inevitable that that was never to be the case here. With a President who has been highly critical of the press, a late-night host who has in turn been highly critical of the President, an FCC Chairman who has been recently appointed by that President, and the polarized political climate of the moment, this was certainly not a spat that could fly under the radar.

During a couple of press interviews shortly after the Colbert monologue, FCC Chairman Ajit Pai was asked about the incident, and confirmed that the Commission had received "a number" of complaints. Chairman Pai went on to say (in a May 4 interview with Philadelphia radio station WPHT), that "[the FCC was] going to take the facts that we find and we are going to apply the law as it's been set out by the Supreme Court and other courts and we'll take the appropriate action," which he indicated would typically involve a fine in the event a violation was found.

The Chairman's response itself created something of a firestorm, leading to a number of articles suggesting that the FCC was "going after" Colbert, presumably with some political motivation. Some commentary characterized the FCC investigation as censorship, and the Writers Guild of America argued that the Chairman's comments indicated a "willful disregard for the First Amendment." As it turns out, this rhetoric was a bit overblown. While the Commission ***could***, of course, have taken action in this proceeding that would cause legitimate controversy, it seems that all the Chairman initially did was to admit that the FCC received complaints, confirm that it would do its job in resolving them, and acknowledge the limits on the Commission's authority.

Under the Commission's rules and precedents, when it receives a complaint regarding allegedly indecent or obscene programming, it is required to look into that complaint. In doing so, and in imposing any type of penalty based on its findings, the Commission is bound to follow, as Chairman Pai acknowledged, "the law as its's been set out by the Supreme Court and other courts." That law in this case is quite clear, and made it extraordinarily unlikely that the Commission would impose any sanction on Colbert.

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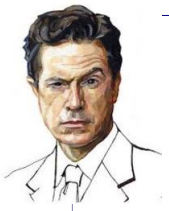

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As the Chairman noted in his public comments, Colbert's monologue aired after 10:00 pm and, as such, would need to be "obscene" to warrant a sanction, rather than simply "indecent." For programming airing between 6:00 am and 10:00 pm, the Commission can impose fines or other sanctions for programming that it finds to be "indecent" or "profane." The standards for indecency and profanity have historically been very difficult for the Commission to define, and almost every time the Commission imposes fines for such programming, they are controversial. Nonetheless, such fines are not terribly uncommon.

The standard for "obscene" programming, however, has been pretty clearly defined by the Supreme Court. The Court has established a three-prong test for "obscene" programming, which must 1) applying contemporary community standards, appeal to an average person's prurient interest, 2) depict or describe sexual content in a "patently offensive" way, and 3) taken as a whole, lack serious literary, artistic, political or scientific value. If content is deemed obscene (whether it is broadcast content or otherwise), it no longer is protected by the First Amendment and can therefore be regulated. As a practical matter, it is extraordinarily difficult to satisfy this test, as can readily be demonstrated by the continuing legality of the pornography industry (or any site you could find within three clicks on the Internet). Indeed, while the FCC in recent years has addressed numerous indecency claims, and imposed often stiff penalties for indecent broadcasts, it has not done so for allegedly obscene programming. In light of the inclusion of Colbert's statement in a clearly political monologue, and the fact that it was almost certainly not intended to appeal to prurient interests (*i.e.*, it was not intended to be arousing), it would have been clearly contrary to precedent for the FCC to find obscenity here.

Because the FCC received complaints regarding Colbert's monologue, it had to at least review them, as well as the underlying programming. On May 24th, the FCC released a statement indicating that it had done just that and that, consistent with precedent, there was no violation of the Commission's Rules. While some may have preferred that Chairman Pai say this explicitly at the outset, such a statement would have opened an entirely separate set of concerns in the form of an FCC Chairman prejudging an ongoing proceeding. Based on the law, and the Commission's subsequent statement, at least as regards the FCC, it seems that all the sound and fury regarding Colbert's joke really will signify nothing.

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FCC Begins Rollback of Net Neutrality Rules

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On May 23, 2017, the Federal Communications Commission released a Notice of Proposed Rulemaking (NPRM) proposing the reversal of the agency's 2015 *Title II Order* which subjected Internet service providers (ISPs) to regulation as telecommunications services pursuant to Title II of the Communications Act of 1934, as amended.

In a 2-1 vote along partisan lines, the Commission proposed rolling back the net neutrality rules based largely on the grounds that the Title II regulatory framework for ISPs has dramatically decreased broadband infrastructure investment. Instead, as stated by Chairman Pai, the repeal of the "utility-style regulation of the Internet" would enable a return to the "Clinton-era light-touch framework that has proven to be successful" in encouraging investment and innovation in the Internet. However, reflecting the highly partisan nature of the decision, Commissioner Clyburn opposed the adoption of the NPRM on the grounds that she had "yet to see a credible analysis that suggests broadband capital expenditures have declined" since 2015, and over concerns regarding the anti-consumer effects of repealing the net neutrality rules.

Proposed Changes

The Commission proposed the following changes to the net neutrality regime in the NPRM:

- *Reclassification of Broadband Internet Access Service Providers*. The Commission proposed to reclassify broadband Internet access service (BIAS) providers as information service providers regulated pursuant to Title I – as opposed to classifying such providers as telecommunications service providers regulated under the more burdensome provisions of Title II. The proposal to reverse the regulatory classification of BIAS providers was based on three factors: (1) the plain meaning of the definitions of "information services," "telecommunications," and "Internet access services" in the Act; (2) pre-2015 FCC precedent reflecting a bipartisan consensus favoring regulation of Internet access services as information services; and (3) studies indicating that Title II regulation of ISPs has "depressed broadband investment and reduced regulatory innovation" due to increased regulatory burdens and uncertainty.
- *Reclassification of Mobile Broadband Internet Access Services*. The FCC proposed to reduce regulatory burdens on wireless Internet services through the reclassification of mobile BIAS as private mobile services – as opposed to being classified as commercial mobile services. Relatedly, the Commission also proposed to reinterpret the meaning of "public switched network" under Section 332(d)(2) of the Act to focus only on the traditional public switched telephone network to prevent mobile BIAS from being considered the "functional equivalent" of commercial mobile services – while otherwise being classified as private mobile services. The Commission stated that reclassification of mobile BIAS would "substantially benefit the wireless marketplace and consumers and have few, if any, policy disadvantages."

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FCC Begins Rollback — *(Continued from page 9)*

- *Elimination of the FCC's Authority over ISP Privacy Practices*. The Commission proposed to "respect the jurisdictional lines drawn by Congress" providing the Federal Trade Commission with authority over ISP privacy practices given the FTC's "decades of experience and expertise in this area." The FCC stated that it was compelled to cede all of its authority over ISP privacy practices to the FTC due to Congress's rejection of the 2016 *Privacy Order* pursuant to the Congressional Review Act.

- *Elimination of the Internet Conduct Standard*. The FCC proposed to eliminate the Internet conduct standard, which allows the Commission to prohibit practices that unreasonably interfere with or disadvantage the ability of consumers to access Internet content. The Commission stated that the standard was too vague to administer successfully, and was based on "theoretical problems" requiring ISPs to "guess at what they are permitted and not permitted to do." In keeping with the NPRM's deregulatory approach, however, the Commission did not propose an alternative approach to monitoring the conduct of ISPs – elsewhere suggesting the regulation of ISPs through either self-governance or an *ex post* enforcement mechanism.

Additionally, the Commission proposed the review of the following elements of net neutrality:

- *ISP Bright-Line Rules*. The FCC requested comment on whether to keep, modify, or eliminate the bright-line rules regarding ISP conduct (*e.*, no blocking, no throttling, no paid prioritization, and transparency rules). In supporting the need for the review of the rules, the Commission contended that there was "virtually no quantifiable evidence of consumer harm" which the rules sought to prevent, and reasoned that the rules were unnecessary in light of the fact that existing antitrust regulations sought to curb the anticompetitive conduct prohibited by the regulations.

- *Ex Ante Enforcement Approach*. Relatedly, the FCC questioned in the NPRM whether the agency's *ex ante* enforcement approach to broadband regulations was necessary. Instead, the Commission requested comment on whether either self-governance by ISPs or an *ex post* enforcement framework would serve as a sufficient enforcement framework for the broadband industry under a Title I regulatory regime.

Lifeline

Although the Commission proposed the elimination of many aspects of net neutrality championed by the Wheeler administration, the agency proposed to maintain Lifeline support for broadband services and facilities. Citing its previous decision in the 2011 *Universal Service Transformation Order*, the Commission reasoned that Section 254 of the Act enabled the agency to continue universal service support for broadband services and facilities following the reclassification of ISPs as information services.

Legal Authority

Finally, the Commission requested comment on the legal basis for the rollback of the net neutrality rules – specifically whether Sections 706 and 230 of the Act provide sufficient authority for such an action. The Commission questioned whether the agency should continue to maintain the post-2010 interpretation of Section 706 (*i.e.*, that the section provides the FCC with an express grant of rulemaking authority in

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FCC Begins Rollback *— (Continued from page 10)*

the area of BIAS), or return to the pre-2010 hortatory understanding of the section – therefore requiring the Commission's legal authority to be based elsewhere in the Act. Likewise, the Commission requested comment on whether Section 230 permitted the FCC to retain any rules adopted in the *Title II Order* by providing the agency with express statutory authority over BIAS.

Cost Benefit Analysis

Seemingly reflecting upon the emotionally-charged atmosphere surrounding the review of the net neutrality rules, Commissioner O'Rielly requested that commenters in the proceeding support their arguments for and against the rollback of the *Title II Order* by providing evidence substantiating their claims. As such, the Commission proposed to conduct a cost-benefit analysis (CBA) regarding the rollback of the net neutrality rules – which is to be presumably based on quantifiable data provided by commenters. In conducting the CBA, the FCC proposed to follow the Office of Management and Budget's standards for "Identifying and Measuring Benefits and Costs." Nevertheless, the Commission questioned whether there were any concrete benefits to preserving the current net neutrality regime.

Comments in the proceeding are due ***July 17, 2017***, and Reply Comments are due ***August 16, 2017***.

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New Translator Filing Window for AM Licensees Open July 26—August 2

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In its continuing efforts to revitalize the AM radio service, the FCC has announced the first filing window in which certain AM station licensees may apply for new FM translator authorizations. That window, which will apply to licensees of Class C and D AM stations, will open on ***July 26, 2017*** and close on ***August 2, 2017***. A second window for other AM stations will open on date to be announced in the future. Both windows will be open only to those AM stations that did not apply to move an FM translator station in the 2016 modification windows authorizing moves of up to 250 miles. As we go to press, the FCC has just released a more detailed Public Notice explaining the specific procedures applicants will need to follow. That public notice also announced a freeze on all FM translator and low power FM modification applications that will be in effect from ***July 19*** through ***August 2***. We will have more details on filing next month, but in the meantime, interested parties should mark their calendars for ***July 26***, and follow www.commlawblog.com for updates.

Upcoming FCC Broadcast Filing Deadlines

Do you know what FCC filing deadlines are coming up in early June through early July? We do. Note our list is not comprehensive, and other proceedings may apply to you. Please do not hesitate to contact FHH if you have any questions.

June 8, 2017 – *ATSC 3.0 Television Broadcast Standard* – Reply Comments due with regard to the Commission's Notice of Proposed Rulemaking proposing to authorize television broadcasters to use the "Next Generation" broadcast television transmission standard developed by the Advanced Television Systems Committee and known as ATSC 3.0.

June 12, 2017 – *Incentive Auction – TV Station Repack - Stations Unable to Construct Post-Auction Facilities Waiver* – Requests for extension of a station's construction permit application filing deadlines are due if a station are unable to construct the facilities specified in the Channel Reassignment Public Notice released April 13, 2017.

July 3, 2017 – *Elimination of Main Studio Rule* – Comments are due in response to the Commission's *Notice of Proposed Rule Making* in MB Docket No. 17-106, which proposed to eliminate the current rule which requires all AM, FM, and television stations to maintain a main studio located in or near its community of license and to keep that studio appropriately staffed.

July 10, 2017 — *Children's Television Programming Reports* - For all commercial television and Class A television stations, the second quarter 2017 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, including those limits related to the on-air display of website addresses, or other evidence to substantiate compliance with those limits, must be uploaded to the online public inspection file.

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

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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.

July 12, 2017 – *Incentive Auction – TV Station Repack* - Applications for construction permit for post-auction facilities, to be filed on Form 2100, are due from all TV or Class A TV stations moved to a new channel.

Incentive Auction – TV Station Repack – Initial cost estimates for repacking expenses on Form 399 are due from each repacked and reimbursement-eligible television or Class A TV station.

July 17, 2017— *Elimination of Main Studio Rule* – Reply Comments are due in response to the Commission's *Notice of Proposed Rule Making* in MB Docket No. 17-106, which proposed to eliminate the current rule which requires all AM, FM, and television stations to maintain a main studio located in or near its community of license and to keep that studio appropriately staffed.

August 1, 2017 – *EEO Public File Reports* - All radio and television stations with five (5) or more full-time employees located in California, Illinois, North Carolina, South Carolina, and Wisconsin 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 California, and all television stations with five or more full-time employees in Illinois and Wisconsin must electronically file a mid-term EEO report on FCC Form 397, with the last two EEO public file reports attached.

Please contact **Anne Goodwin Crump** and **Dan Kirkpatrick** if you have questions about any of these deadlines.

FHH - On the Job, On the Go

Francisco Montero will attend the National Association of Broadcasters Policy Initiative Luncheon in Washington, DC on June 14th.

Dan Kirkpatrick will attend the SNL Kagan TV & Radio Finance Summit on June 15th, where he will be part of a panel on "*TV Station Retrans Revenue Opportunities and Challenges in an Emerging OTT World.*"

Francisco Montero will also be attending the SNL Kagan TV & Radio Finance Summit in New York City on the 15th of June, and then on June 21st & 22nd he will attend and present "*Washington/FCC Update*" at the Florida Association of Broadcasters convention in Ft. Lauderdale.

On June 29th, **Francisco Montero** will speak at the Federal Communications Bar Association Spring Reception in Washington, DC on the topic, "*Fixed Service versus Full-Band, Full-Arc Satellite Coordination.*"

July 17th through the 19th will find **Francisco Montero** in Denver, where he will attend and present "*FCC Regulatory Updates*" at the Latino Public Radio Consortium Summit, and then at the Community Broadcasters (NFCB) convention.