

Memorandum to Clients

October 2017

No. 17-10



FCC’s Fall Agenda Packed with Proposed ‘Modernization’

Main Studio and Paper Rules on the Chopping Block, AM Revitalization on the Way

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It’s shaping up to be a busy few months for FCC Chairman Ajit Pai. And did you know [September was Modernization Month](#)? Well, at least according to Chairman Pai it was.

This fall, the Chairman announced a set of new initiatives to curtail, or modify, many existing rules. [Speaking at a luncheon at the annual National Broadcasters Radio Show](#) in September, Pai said the decision is part of the FCC’s recent mission to, as he said, “modernize our rules to match the realities of today’s marketplace.” Thus, each month starting in September, Chairman Pai is presenting to his fellow FCC Commissioners at least one Notice of Proposed Rulemaking, which addresses concerns that he has assessed are part of those ‘outdated or unnecessary media **regulations** that should be eliminated or modified.’

This means that it’s about to get a lot busier at the FCC, as set forth [in the tentative agenda](#) for the Commission’s October meeting (not to mention the hefty agenda that was present during September’s meeting).

One such cumbersome rule the Chairman is proposing is to repeal is the elimination of the main studio rule which requires that each AM, FM, and television broadcast station needs to maintain a studio that is located in or near its community license. However, as Pai argued in September, “... the reality is that local access to a physical station is simply no longer necessary to satisfy those public interest goals. The FCC has announced that it will vote on this measure during the upcoming Oct. 24 meeting in response to an [FCC Report and Order on the matter](#).



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Chairman Pai has also championed the need for the FCC to move towards the digital age by literally getting rid of physical copies of its rules. The FCC guidelines require broadcasters and cable operators to maintain physical paper copies of the FCC rules. With FCC rules available online, the Chairman has proposed eliminating “this outdated requirement.” Broadcasters’ public inspection files are either currently available or will soon be available online.” (Since we converted our [Memo to Clients](#) publication from paper to digital a few years back, we can only ask “what took you so long”.)

This fall, the Commission will also vote on an Order to update the signal quality and signal leakage regulations for cable, and vote on an AM revitalization Order, to relax or eliminate certain rules pertaining to AM broadcasters employing and maintaining directional antenna arrays.

With all of this and more on the FCC’s plate, keep an eye on CommLaw blog for more analysis on what you need to know.



Busy Times Lie Ahead in Telecom as Pai Lays Out Modernization Plans

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Chairman Ajit Pai announced this month that he is planning to make some major overhauls at the FCC. Nine months into his term, Pai is specifically preparing to “modernize [the FCC’s] rules to match the realities of today’s marketplace.” Pai’s statements at NAB focused on broadcasting, while his statements via a blog post go into more detail on what’s ahead outside of the broadcast industry. Plus, the September public meeting foreshadowed busy times ahead at the FCC for the foreseeable future.

At this year’s National Broadcast Association’s Radio Show, Pai announced he would present to his fellow FCC Commissioners at least one Notice of Proposed Rulemaking (NPRM) every month, starting this month.

These monthly NPRMs are intended to address concerns that Chairman Pai has assessed are part of those “outdated or unnecessary media regulations that should be eliminated or modified.”

So what does this all mean for non-broadcasting entities? Quite a lot actually. First, Chairman Pai aims to address the outdated rules governing the satellite industry, where technology has outpaced the FCC’s rules. The Chairman argues that current regulations covering non-geostationary-satellite orbit (NGSO) and fixed-satellite services (FSS) systems reflect designs and rules from the early 2000s.

To meet the industry where it is, the Commission adopted an NPRM that focuses on updating and streamlining several of the rules governing NGSO and FSS which Pai hopes will have the indirect effect of expanding satellite-based broadband access in rural areas.

Second, improving 911 calling in centralized communications systems such as schools, hospitals, and offices was also addressed. Chairman Pai circulated a Notice of Inquiry to seek information on the lagging 911 capabilities which still require users to dial nine in order to place a call outside of a specified building. The Commission is set to vote on this measure during its October meeting.

Third, the Commission will look into providing relief for small and rural wireless service providers that are required by FCC rules to report the availability of wireless handsets are compatible with hearing aid devices. Pai believes that requiring providers, no matter how big or small, to make the current HAC reporting requirements is too burdensome. To address this, Chairman Pai put out an NPRM that seeks comment on whether we can eliminate or streamline the requirement for small carriers while continuing to preserve the benefits of collecting this information from industry.”

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Busy Times Lie Ahead – (Continued from page 2)

Fourth, the Commission will outline how it intends to revisit rules for certain toll free numbers. The FCC issued a public notice to seek comment on whether or not it should use a public auction to distribute the currently available, unassigned toll free numbers. The proposal would set aside certain toll free numbers for public health and safety used by government and nonprofits.

Finally, the 20th Mobile Wireless Competition Report was released this month, the subject of dissent by the two Democrats on the Commission. The report reviewed facts, trends, and other factors that analyzed whether there is comprehensive competition in the marketplace for mobile wireless services. The report looked at data from 2016 from all mobile wireless services which included voice, messaging, and broadband. According to the report, competition continues to play an essential role in the mobile wireless marketplace. It also found that more and more wireless companies are expanding their unlimited data plans, wireless speeds are increasing, network coverage is expanding, and prices for consumers are falling. All of this is to say, the lazy days of summer are definitely over. Chairman Pai and the rest of the FCC are gearing up for a big fall.





Incentive Auction Second Priority Filing Window Opens: What to Know

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On Sept. 20, the FCC announced the second filing window for all full power and Class A television stations receiving new channel assignment as part of the post-incentive auction repack. The filing window will open Oct. 3 and close at 11:59 p.m. EDT on Nov. 2. During this “second priority” filing window, all eligible stations may file applications requesting authority to operate on a new channel or with expanded facilities.

Stations eligible to file during the second priority filing window include all Class A and full power stations that were assigned new channels by the Commission during the repack, including those who were involuntarily assigned new channels, and those who elected to move from a UHF to VHF channel (or from high VHF to low VHF) as part of the auction. If an eligible station’s initial post-auction construction permit application remains pending, it can submit its second priority filing window application as an amendment. If the station’s initial construction permit application has already been granted, the station will need to apply for a modification of that permit.

Second priority window applications may request expanded facilities, provided that the requested facilities would qualify as a minor change under the Commission’s rules. Applicants may also request authority to operate on a different channel, although any application requesting a channel change will be treated as a major change, and will be subject to local public notice procedures and to the filing of petitions to deny.

Applicants in the second priority window also must ensure that their applications protect any facilities applied for in the initial 90-day window for post-auction applications or the first priority filing window (closed Sept. 15), regardless of whether those applications have been granted or remain pending. For Class A stations, the FCC reminds applicants that those stations, “must also demonstrate that the proposal would not cause interference to a low power television or television translator facility previously authorized or proposed.” If for any reason a second priority filing window application is incomplete, the FCC will allow the applicant an opportunity to submit amendment via LMS in order to address the issues.

As with other filing windows, the Commission also offers a reminder that filing early will not provide a station with greater protection. All applications filed during the window will be treated as filed on the last day of the window for determining any conflicts. If any applications filed during the second priority window are mutually exclusive, the Commission will offer the applicants 90 days in which to resolve that conflict amongst themselves.

Finally, the Commission reminds potential applicants that any additional costs incurred in applying for or constructing expanded or alternate channel facilities requested for in the second priority window (or after) will not be eligible for reimbursement.

Got questions? Feel free to reach out so that we can best help you navigate the hurdles.



Online Public File to Bring New Scrutiny to Issues/Programs Lists

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Believe it or not, the date by which all radio stations must have their complete public files online is now less than six months away. Television stations have been dealing with this reality for several years now, as have large stations in large markets for the past couple of years. Now, every radio station, both commercial and noncommercial, must have its complete public file posted on the Commission's website **by March 1, 2018**. This posting must include all previously prepared documents still required to be in the public file, with the sole exception of the political file, which may be uploaded on a going-forward basis only.

The obvious big change here is that online posting will make each station's public inspection file available to anyone, anywhere, at any time. Now, anyone with a little time on their hands can scrutinize both the content of documents in the file and the timeliness of their filing. Television stations have already experienced the more thorough review the FCC staff can do at license renewal time, and the same approach is likely to be applied to both radio and TV stations in the next renewal cycle.

Thus, a station's quarterly issues/programs lists have taken on a new importance, as they can no longer hide, safely unread, in a paper public file. While the political portion of the public file often attracts attention, particularly among competing candidates, issues/programs lists are less noticed and may even be overlooked at times. Still, those quarterly reports are a required element of the public file, and the FCC staff continues to view them as quite important to demonstrating a record of public service. In fact, the Commission has emphasized that issues/programs lists are **the** primary means by which a station may establish a sufficient record of serving the public interest to support grant of a license renewal.

Of course, these requirements are nothing new. Stations should have been routinely preparing quarterly reports, placing them in the appropriate public file, and retaining there all reports required since the grant of the station's last license renewal. Still, we have found that some broadcasters could use a little refresher on at least some aspects of the rule related to issues/programs lists. Accordingly, the following is designed to be a primer to cover all the basics you need to know.

Beginning with basic timing, all broadcast stations must place issues/programs lists in their local public inspection file four times a year. The lists must be filed by Jan. 10, April 10, July 10, and Oct. 10, and must cover the issue-oriented programming broadcast by a station during the preceding quarter. Thus, the pertinent three-month periods are:

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Online Public File – (Continued from page 5)

January through March, April through June, July through September and October through December.

Keep in mind that the quarterly list is not merely illustrative, but must include details about programs which have provided a station's most significant treatment of issues a licensee believes to be of community concern (more on what applies here later). While licensees are not required to maintain comprehensive (*i.e.*, all inclusive) quarterly lists, programs included in the list will be considered a station's best and most significant issue-responsive programming. Conversely, excluded programs will simply be unknown. It, therefore, makes sense to include as many programs as possible in order to minimize vulnerability to programming challenges.

Let's walk you through how this process all works. To begin, as a general rule, a station should start by identifying the most significant issues facing its community during the three months covered by the report. While there is no specific number of issues which must be included in each list, the Commission has indicated that significant programming responsive to five to ten community issues will usually be sufficient. In choosing what issues to include, remember that each station is licensed to serve a specific community. Accordingly, it is important that issues include those directly relevant to the community of license.

Issues of significance to other communities within a station's service area also should be included. The more local the issues, the better, and the issues chosen need not have significance outside the community of license or the station's service area. On the other hand, some more widespread issues may arouse local concern as well, and regional or national issues may be included when appropriate. Some issues are almost universally applicable. The key question is whether or not the particular issue is one which has aroused the interest of local residents. For example, a debate about whether a new elementary school should be built is an issue that might be of intense interest to a particular community, while the high cost of college education is an issue likely to be of concern almost everywhere.

As you decide what programming to list in the quarterly report, please remember that the FCC attaches special weight to locally produced programs which are broadcast at times when they could reasonably be expected to be heard by a significant number of listeners. Accordingly, the lists should feature any such programs broadcast by the station. Do not limit yourself to only local programming, however. Programs produced for regional or national audiences may also include significant coverage of matters that are important to your community.

The timing of the broadcasts also is a consideration. It is, of course, tempting to schedule programming not likely to be a fan favorite during "graveyard" hours, when there is not

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Online Public File – (Continued from page 6)

much audience to lose. The problem with that approach is that there are few people who will receive the benefit of the programming. The trick is to find a happy medium for the broadcast schedule, along with programming that will retain at least some audience members.

Please also keep in mind that while PSA's may address a particular issue or provide valuable information, they are generally not enough by themselves. After all, it is difficult to provide much significant treatment of any subject in 30 seconds or less. Likewise, the Commission has noted in the past that brief news blurbs do not really address any issue, although longer and more analytical news pieces may do so. As noted above, the purpose of the quarterly reports is to provide a list of programs which provided significant treatment of community issues, and the content of the report should reflect that purpose.

No matter what programs you choose to list, certain information about each of them must be reported. A description of a particular program must include the title, date and time of broadcast, duration, and a summary of the program's content, as well as an indication of the issue addressed. Some details of the program should be included, such as identification of the host and any guests appearing on the program, whether the show was, *e.g.*, a call-in program featuring a public official, a station editorial, or a series of PSAs.

In order to facilitate the preparation of the issues/programs lists, a station should keep a running record of all the issue-responsive programs it broadcasts. Also, even though structured, formal ascertainment is a thing of the past, some kind of systematic procedures should be in place to ensure that a station remains in touch with its community. For example, station management personnel may contact community leaders on a regular basis, with some contacts accomplished every month, and maintain records that document those contacts.

On-air interviews of community leaders would be one method of keeping in touch, as would participation in community events, lunches with leaders of civic organizations, and the like. Records of such efforts should not be placed in the public inspection file, but should be retained in the station's private files.

Upon request, Fletcher, Heald & Hildreth can provide you an illustrative example of a proper format for the issues/programs lists, and answer any questions you may have as to this important requirement. Don't hesitate to reach out to us.

Lastly, the next quarterly issues/programs list for your station(s) is for the Quarter ending **Sept. 30, 2017**, and must be placed in your public inspection file by **Oct. 10, 2017**.





Tech Advisors to Assist FCC in Faster Approvals for New Devices

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The FCC's Technological Advisory Council (TAC) has initiated a Technical Inquiry into reforming the FCC's technical regulations. Comprised of very smart industry engineers, academics, and other technological leaders who provide technical advice to the FCC, the TAC aims to provide useful guidance to the FCC on its technical rules and the status of emerging technologies. The issue it aims to address in the Technical Inquiry is the FCC's constant struggle with the question of how to provide fast regulatory approvals of new technologies, while still meeting its statutory obligation to protect the public interest, including the well-being of consumers and the efficient use of spectrum.

The Technical Inquiry is focused on obtaining feedback about technical rules that are obsolete or in need of updates or consolidation, and necessary changes to better reflect the current needs of the industry. It seeks general comment on how the FCC's regulatory process "can be made more efficient and timely," and poses specific questions on whether a mediation-type process could be created to more quickly address conflicts between parties. It also raises questions about how the FCC can better handle a growing issue of how to deal with the frequent changes in technical specifications made by private standards setting bodies. Many FCC technical rules specify compliance with particular industry standards, which often are updated soon after the FCC has adopted a rule specifying that standard, leaving the FCC rule "outdated" in that it requires compliance with an outdated standard.

The TAC is a federal advisory committee, which means that its work is only advisory in nature and the FCC does not need to accept its recommendations. But in this instance, the FCC, especially in recent years, has worked very closely with the TAC; both to set its agenda of issues to study, based on the areas where the FCC requires industry input, and to implement many of the TAC's ideas and suggestions.

We here at CommLawBlog are hopeful that this latest initiative will generate good ideas that truly will speed up regulatory approvals of new technologies.

Comments are due Oct. 31, 2017 in Docket No. 17-215.





FCC Media Bureau Postpones Filing Deadline for Biennial Ownership Reports

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The FCC on Sept. 1 postponed the due date for the submission of 2017 biennial broadcast ownership reports to the FCC until March 2, 2018. Biennial ownership reports are required to be filed every two years by all commercial and (starting this year) noncommercial AM, FM, TV, Class A, and LPTV stations and entities holding attributable ownership interests in those stations. This year’s reports had initially been due to be filed by Dec. 1, 2017, which is now the date on which the filing window for those reports will open, instead of closing. The reports now due on March 2, 2018 include FCC Forms 323 and 323-E, which will now need to be filed in the Licensing and Management System (LMS). Despite the delay in the filing window, these biennial ownership reports must still describe stations’ ownership as it existed on Oct. 1, 2017.

The start of the filing window was postponed, according to the FCC, “... to provide sufficient time to properly implement the electronic versions of the revised Forms 323 and 323-E in the Licensing and Management System (LMS)” and to work around upcoming holidays. The extended window the FCC says will “ensure that filers have sufficient time to complete and submit their reports.”

While that remains to be seen, at the least, the delay may give many filers reason to give thanks this Thanksgiving, as they now will not need to spend that holiday weekend preparing ownership reports.





Online Public Inspection Files: A Refresher Webinar

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While 2017 isn't even close to being over yet, we're already looking ahead at next year's deadlines. TV stations and a large first batch of commercial radio stations have already had to move their public inspection files online. But starting on **March 1st of 2018**, noncommercial radio stations, as well as the remaining commercial that were exempt from last year's deadline will now have to go online with their public files. To help stations successfully navigate the process, we'll be hosting a **FREE webinar**.

Presented in partnership with the Colorado Broadcasters Association, our own Steve Lovelady and Frank Montero will be hosting a **FREE one hour webinar on Oct. 12 at 12 p.m. EDT** entitled "Online Public Inspection Files: A Refresher Webinar."

The webinar will address these questions and many more:

- When does my station's public file have to go online?
- Does this apply to noncommercial stations?
- How do I move my public file on line and what goes into the public file?
- How will this impact my FCC license renewal that's due in the next few years?
- What will happen if I blow this off and go to fishing instead?
- And for those special few (you know who you are.....), what exactly is a public file?

All of this, and more, will be covered in this webinar where attendees will be able to ask questions of Professors Lovelady and Montero. For those unable to join us, we will be recording the webinar which will be made available on our website shortly after.

Whether you're new to the online public file game or a battle-hardened veteran, this webinar will help you with the tools to stay ahead of the curve.

Free registration for the webinar is available [here](#).

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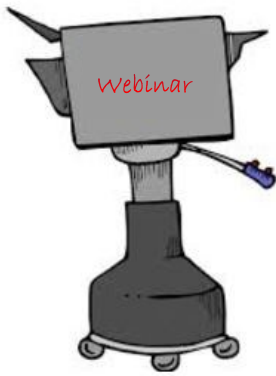
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CPB Compliance: Basic Preparedness and Recent OIG Audit Activity Webinar

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Compliance has never been more important for public broadcasters. CPB regularly issues forfeitures of up to \$15,000 to public broadcasting stations when the Office of Inspector General (“OIG”) finds non-compliance with the provisions of the Communications Act, the terms of the CSG General Provisions, or errant NFFS reporting. Compliance, though, is more than just checking boxes and filling out forms.

Compliance also encompasses building systems and processes within your organization to ensure you are consistently fulfilling CPB’s requirements and documenting your actions. To help you navigate CPB Compliance, **we’re offering a FREE webinar.**

The webinar will cover common Office of Inspector General (“OIG”) audit findings and basic steps public broadcasting stations should take to meet CPB’s minimum compliance requirements. The presentation will also include questions that stations frequently ask about CPB-related compliance matters.

Bringing his years of experience in CPB compliance to the table, Robert Winteringham of Fletcher, Heald, and Hildreth will host this **FREE one-hour webinar on Wednesday, Oct. 25 at 2:00 p.m. EDT**

Register online: <https://register.gotowebinar.com/register/1098374018651427586>



Deadlines!



Upcoming FCC Broadcast Filing Deadlines

Do you know what FCC filing deadlines are coming up in September and the coming months? We do. Note our list is not comprehensive, and other proceedings may apply to you.

October 10, 2017 –

Children’s Television Programming Reports – For all commercial television and Class A television stations, the third 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 has been the case for some time now, the required use of the Licensing and Management System for the children’s reports means that the licensee FRN and password are necessary to log in; therefore, you should have that information at hand before you start the process.

October 10, 2017 –

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.

October 10, 2017 –

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.

October 10, 2017 –

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

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Deadlines!



(Continued from page 12)

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.

October 10, 2017 –

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.

October 10, 2017 –

Repack Transition Progress Reports – All full power and Class A stations modifying their facilities as part of the incentive auction repack must file their first quarterly progress report in LMS on FCC Form 2100 – Schedule 387. The report must provide details on the station's construction status and transition progress during the preceding quarter.

Please contact **Anne Crump** or **Dan Kirkpatrick** if you have questions or want any assistance in ensuring compliance; we are happy to help.





FHH - On the Job, On the Go

Matt McCormick, Frank Montero, and Robert Winteringham attended the Public Radio Super Regional Meeting on Sept. 26-28th in St. Paul, Minn.

Don Evans, Keenan Adamchak, and Laura Stefani will be attending the 5G Summit in downtown Washington, D.C. on Oct. 11. FHH is also a sponsor of the event. The 5G Summit is where, “the worlds of telecom, satellite and policy will converge to delve into the opportunities of the upcoming 5G rollout. A no holds barred approach involving industry and regulatory power players will result in a progressive and compelling conversation about the standards, strategies and evolving applications of 5G.”

Laura Stefani recently moderated a panel at an FCBA seminar entitled, “*FCC Equipment Approvals for a New Era.*” She also attended the Satellite Innovation Symposium in Silicon Valley.

Kathleen Victory and Matt McCormick will be attending the Calvary Chapel Radio Conference in Case Grande, Ariz., Oct. 23-24th.

Cheng Liu and Tony Lee will be attending the annual Competitive Carriers Association conference in Fort Worth, Tx. in Oct. 25-27th.

FHH is sponsoring an upcoming FCBA fall reception on Oct. 17, which is a meet and greet for the new FCC Commissioners, *Brendan Carr* and *Jessica Rosenworcel*.

