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Memorandum to Clients

November 2017 No. 17-11

FCC Eliminates Broadcast Main Studio Rules, Related Staffing, and Program Origination Requirements; Controversial Order Passes Three-Two Along Party Lines

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On Oct. 24, 2017, the FCC issued a Report and Order eliminating the Commission's rule requiring each AM, FM, and television broadcast station to maintain a main studio located in or near its community of license (i.e. the Main Studio Rule). In the same Order, the FCC eliminated existing requirements that are associated with the Main Studio Rule.

Specifically, the FCC eliminated the requirement that the main studio have full-time management and staff present during normal business hours and that the studio have program origination capability. This action may dramatically reduce the cost of operations for many broadcasters, particularly those in small and rural markets. However, the FCC did not get rid of all of the requirements related to the Main Studio Rule. It retained the requirement that broadcasters maintain a local or toll free telephone number for calls from members of the community. Stations also must maintain any documents required to be in the public file that is not part of their *online* public file at a publicly accessible location within the station's community of license.

The FCC's action to eliminate the Main Studio Rule was based on the finding that the cost of this rule and its related requirements outweigh the benefits, in light of current technology and market conditions. This is part of Chairman Pai's broader move to "modernize" the FCC as he outlined in a speech to the NAB back in September.

Inside this issue . . .

The Order suggests that the cost savings from elimination of the Main Studio Rule should result in more resources being devoted to programming, but many smaller broadcasters may need the savings just to stay in business. In any case, broadcasters will welcome the regulatory relief.

So, let's dive into what this all really means.

1. Elimination of Main Studio Rule

The Main Studio Rule (Section 73.1125(a)) currently requires each AM, FM, and television broadcast station to maintain a main studio that is located either: "(1) [w]ithin the station's community of license; (2) [a]t any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's community of license; or (3) [w]ithin twenty-five miles from the reference coordinates of the center of its community of license." According to the Commission, however, the costs associated with the Main Studio Rule

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often dissuades broadcasters in small and rural communities from launching or continuing to operate a station.

The Order argues that eliminating the Main Studio Rule, and related requirements, will put broadcasters on a more equal footing with competing Internet and satellite radio services.

It also asserts that the Main Studio Rule is no longer necessary because technological advances have rendered this portion of the rule somewhat obsolete. Specifically, the viewing and listening audience can (and do) keep in contact with their local stations primarily through email, websites, and social media. In this sense, the Order suggests that the FCC's prior actions mandating the posting of public file materials online was a direct precursor to this change. According to the Order, "[b]ecause … technological innovations have eliminated the need for a local main studio, the costs of complying with the main studio rule substantially outweigh any benefits."

In addition to allowing broadcasters to eliminate their main studio, the Order notes that stations "that are co-owned or jointly operated may find it to be more efficient for them to co-locate their studios." This may significantly reduce expenses for broadcasters that still wish to keep some physical presence in their community of license.

While the Commission is eliminating the the Main Station Rule, the Order acknowledges that Section 307(b) of the Communications Act still requires the efficient distribution of broadcast stations. It notes that broadcast stations will still be licensed to a specific community of license, and still be obligated to place a certain signal contour over that community. Stations will still be subject to quarterly issues/programs list requirements.

2. Main Studio Staffing Requirements Eliminated

In connection with the Main Studio Rule, the FCC separately had adopted associated requirements regarding staffing for the studio. Specifically, the Commission has held that a main studio must have a "meaningful management and staff presence" to fulfill the main studio's function. This, at a minimum, required that presence "on a full-time basis during normal business hours" and was interpreted to be at least two employees present on a full-time basis: one management-level employee and one staff member. The Order noted that this often constitutes a significant burden on small and rural stations; thus all staffing requirements have been eliminated.

While some commenters raised concerns that this could lead to unfortunate loss of jobs for station staff, the Order counters that "preventing stations from going dark and enabling broadcasters to launch stations that they otherwise may not launch may promote employment." In any case, this is now purely a business decision for broadcasters.

The Order does caution, however, that "the deletion of the main studio rule does not in any way limit or reduce broadcast licensees' obligation and responsibility to retain and maintain control over essential station matters, such as personnel, programming, and finances." The Order goes on to note that the Commission expects that "broadcast licensees will continue to be able to demonstrate such control notwithstanding the elimination of the Main Studio Rule and the staffing requirements associated with the Main Studio Rule."

3. Programming Origination Capability Requirement Eliminated

While the Commission (in 1987) repealed a rule requiring each broadcast station to originate more than 50 percent of its non-network programs from its main studio or other points within its community of license, it retained at that time a requirement that stations have program origination "capability" (production and transmission facilities) at their main studio. Yesterday's Order eliminates this requirement. It noted that "[t]echnology makes it easier than ever before to originate locally relevant programming from locations outside of the station's community of license" and that there "is no evidence in the record that the current program origination capability requirement has enhanced local programming or otherwise served the public interest."

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Broadcast Main Studio *—(Continued from page 2)*

4. Continuing Requirement for Local or Toll-Free Telephone Number

While the Commission axed numerous requirements in this Order, it did retain Section 73.1125(e) of the rules. This subsection requires "[e]ach AM, FM, TV and Class A TV broadcast station [to] maintain a local telephone number in its community of license or a toll-free number." The Order retains the requirement to post this telephone number in the station's online public file, but the FCC declined to require stations to publicize the number in additional ways. The Order notes that implicit in the requirement to *maintain* a local number is the requirement that calls to that number be *answered* during normal business hours. The Order includes the helpful suggestion that stations use voicemail as a method to allow listeners to leave messages outside of normal business hours.

5. Transitional Access to Local Public Inspection Files

As the Order noted, there soon will be only limited instances in which any portion of a station's public inspection file will be permitted to be maintained at the station's main studio rather than online. Essentially, TV station public files are already online, and by March 1, 2018 all radio station public files will be online. The only potential exception will be preexisting portions of the political file that the station may retain locally until the expiration of the two-year retention period for such materials.

However, in the interim, the Order requires every broadcast station applicant, permittee, or licensee to maintain any portion of its public file that is not part of the online public file at an accessible place within its community of license. This includes: a station office or studio (if it is located within the community of license), a local library, or another station's office or studio. The file must be available for public inspection at any time during regular business hours, as is currently the case with regard to access to a public file maintained at a station's main studio. Of course, as the Order notes, "any station that wishes to avoid this requirement has the option to instead fully transition to the Commission's online public file system."

It comes as no surprise that the Order was controversial and the two Democratic Party commissioners dissented. Commissioner Clyburn stated that, "[t]oday is a solemn one, in the history of television and radio broadcasting. By eliminating the main studio rule in its entirety for all broadcast stations — regardless of size or location – the FCC signals that it no longer believes those awarded a license to use the public airwaves should have a local presence in their community." She also suggested, along with fellow Commissioner Rosenworcel, that the Commission could have reduced the burden on broadcasters through use of a waiver procedure, based on consideration of market size and economic hardship. Of course, drafting and filing waivers itself can be a significant burden on small broadcasters.

Similarly, Commissioner Rosenworcel acknowledged that "many stations face real economic challenges," but expressed regret that the Order "strip[s] our rules of the very localism that makes broadcasting unique."

The elimination of the Main Studio Rule, and the related staffing and program origination capacity requirements, go into effect 30 days after the Order is published in the *Federal Register*. On the other hand, the requirement to maintain any portion of its public file that is not part of the online public file at an accessible place within its community of license will have to be approved by the Office of Management and Budget prior to publication in the *Federal Register*. Keep an eye on Commlawblog for an alert when these actions occur. Or call us to discuss more of the details.

Initial Reimbursement Allocations Announced for Repack Expenses

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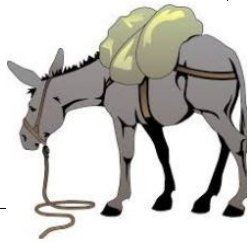
On Oct. 16, 2017, the Incentive Auction Task Force and the FCC's Media Bureau jointly announced the initial allocation from the TV Broadcaster Relocation Fund (Relocation Fund) for the reimbursement of eligible full power and Class A television stations as well as multichannel video programming distributors (MVPDs) (Eligible Entities) impacted by the Incentive Auction. The initial allocation of the Relocation Fund makes available $1 billion for reimbursement of Eligible Entities' expenses related to the construction of their post-auction facilities.

As a result of the initial allocation, commercial stations, and MVPDs may now access approximately 52 percent (62 percent for non-commercial stations) of their estimated and verified costs of construction of their post-auction facilities. Eligible Entities may view their individual allocations through the CORES Incentive Auction Financial Module. Eligible Entities will also receive an email from the Media Bureau detailing the results of the review of their initial reimbursement estimates made via submission of the Form 2100, Schedule 399 (Reimbursement Form) – including a description and explanation of any adjustments made. Eligible Entities should check their spam folders for this email which will be sent from email address FCCFundRepackAdministrator@fcc.gov, will have a PDF attached, and include the subject line "Cost Estimate Verification."

Eligible Entities may obtain their initial reimbursement payment by submitting a revised Reimbursement Form through the FCC's Licensing and Management System (LMS) including documentation and invoices of actual expenses. Submitted invoices do not have to be paid invoices. Reimbursement payments will be made to Eligible Entities by drawing down actual expenses incurred to date against their total individual allocations. Accordingly, the initial $1 billion allocation does not reflect the total estimated reimbursement for Eligible Entities' actual costs – which is estimated to be approximately $2.139 billion. Rather, the initial allocation enables Eligible Entities to meet near-term expenditures necessary for stations and MVPDs to begin the post-auction transition process.

Subsequent reimbursement allocations will be announced when Eligible Entities collectively appear to have exhausted their initial reimbursement allocations. Accordingly, Eligible Entities seeking full reimbursement of their post-auction construction costs should timely submit invoices for reimbursement, and promptly file revisions to costs estimates, to ensure that the subsequent allocations are made on a timely basis.

Clients with questions regarding or seeking assistance with obtaining their initial reimbursement payments should contact Dan Kirkpatrick (kirkpatrick@fhhlaw.com) or Davina Sashkin (sashkin@fhhlaw.com).



EAS Report to SECCs Due Nov. 6

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The FCC scored a legal victory in court last month when the D.C. Circuit Court of Appeals upheld its requirement that EAS participants report to their State Emergency Communications Committee (SECC) their progress on developing multilingual EAS alerts (an SECC is a committee assigned to implement EAS in a specific state). EAS participants must submit the required information to their SECC by **Nov. 6.**

Our dedicated readers may recall that about a year and a half ago the FCC rejected a petition that proposed requiring broadcasters to provide EAS alerts in languages in addition to English. That petition, filed by a group of public interest organizations, took issue with the fact that non-English speaking persons are being left in the dark on emergency information transmitted via the EAS.

As we reported, the FCC was ultimately unwilling to meet the petitioners' requests (and took about a decade to decline to meet those requests). The petition requested the FCC promulgate five amendments to its Part 11 Rules to implement substantive requirements for the dissemination of multilingual EAS alerts, but the FCC instead opted for EAS participants to merely report their progress in creating multilingual EAS alerts, essentially so that the FCC can study the issue.

Specifically, the FCC directed EAS participants to report to their applicable SECC the following:

- A description of any actions taken by the EAS Participant to make EAS alert content available in languages other than English to its non-English speaking audience(s);
- A description of any future actions planned by the EAS Participant to provide EAS alert content in languages other than English to its non-English speaking audience(s), along with an explanation for the EAS Participant's decision to plan or not plan such actions; and
- Any other relevant information that the EAS Participant may wish to provide, such as information on languages other than English spoken within the states they serve, although provision of such information is purely voluntary.

Less than pleased with this outcome, the original petitioners brought suit against the FCC, alleging that the relief sought in their petition was mandated by the Communications Act and that the FCC's rejection of that relief was arbitrary and capricious. Just last month, the D.C. Circuit Court of Appeals sided with the Commission, upholding the SECC reporting requirements.

With the fact of the FCC's reporting requirement settles in court, the deadline for submitting the above information is **Nov. 6**. Importantly, EAS participants are to submit their responses directly to their applicable SECC (a list of SECCs and their contact details may be found here), not to the FCC, by **Nov. 6**. If a material change in one or more of these responses occurs, the broadcaster must submit to their SECC and the FCC's Public Safety and Homeland Security Bureau letters describing such changes within 60 days. Please contact us if you would like assistance in submitting the required information.

Continue to stay up to date on all upcoming deadlines and FCC news by keeping an eye on CommLawBlog.

The FCC Rethinks Citizens Broadband at the Eleventh Hour

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The FCC is having second thoughts about the auctioned "middle layer" of the planned Citizens Broadband Radio Service at 3550-3700 MHz.

You may remember how this is all supposed to work, with three categories of users. The "Incumbent Access" (IA) users, already in place in the band, will have interference protection from all the others. Least protected are the General Access (GA) users, who will contend in real time with other GA users for whatever GA spectrum is available. In between are the Priority Access (PA) users, who will bid at auction for the privilege of on-demand access (except in IA protection zones).

A "Spectrum Access System" (SAS) will assign frequencies to each user on the fly, implementing the various priorities. The SAS is still under development.

In the meantime, the FCC is taking another look at the PA auctions.

From the start, the wireless phone companies wanted PA licenses to be auctioned like their 3G and 4G spectrum: big license areas with long license terms, and a "renewal expectancy" that assures renewal if the licensee provides a certain level of service.

The rules, finalized in 2015 by the FCC, took a different tack. Users will bid for channels in each of more than 74,000 census tracts, combining these if needed to operate over larger areas. Licenses will have three-year terms with no renewal expectancy, although they can re-bid for their expiring licenses. The aim, said the FCC, is to promote innovative, low power uses. The FCC may also have had in mind that the large-area, long-term blocks the wireless phone companies wanted would be so expensive that only the wireless phone companies could afford them.

CTIA, the wireless phone company association, filed a petition for reconsideration that asked for longer license terms and a renewal expectancy. The FCC turned it down.

Less than a year later, one of the wireless phone companies and CTIA filed new Petitions for Rulemaking that largely restated their original request: big license areas, longer license terms, and a renewal expectancy. The FCC soon followed up with a Notice of Proposed Rulemaking (NPRM) that asks whether to now give the wireless phone companies what they wanted all along.

For the FCC to have issued this NPRM is strikingly unusual. In substance, the rulemaking requests are really just further petitions for reconsideration, long overdue. The FCC accepts reconsideration petitions only for thirty days after a rule is published. It strictly enforces the

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deadline. After that, the FCC ordinarily considers changing a recently adopted rule only to accommodate a change in circumstances, such as a technological development or a shift in users' needs. The policy promotes regulatory stability. Industry participants can plan intelligently and make investments, knowing the rules will not change early in the game.

The NPRM here is a rare exception to that policy. It does not point to any changed circumstances. To be sure, it does make good arguments in favor of the wireless companies' proposals – primarily, that they will promote investment. But these are the same arguments the FCC considered and rejected in the 2015 rules, and again in the reconsideration decision. Nothing has changed.

Well, no. One thing did change. The country had an election. It voted for an administration whose regulatory philosophy differs sharply from that of the last administration. That is all it takes for Congress or the White House to change policy, but by law, an agency must provide adequate justification for any new policy. Still, so far as we can tell from the NPRM, the only change that prompts the proposed shift in these rules is the handoff to new FCC leadership.

The wireless companies argue that a rule change now, before the first auction is announced, would not strand anyone's investment. And the rules they propose have worked well in other bands.

Is this a case where regulatory stability is just the kind of "foolish consistency" that Emerson called a "hobgoblin of little minds, adored by little statesmen"? Or do we really need a stable regulatory environment that persists across changing administrations, even if that environment may have good alternatives? And the answers to these important questions go far beyond the issues in the Citizens Broadband Radio Service.

The FCC Seeks Comment on 911 Access in Enterprise Communications Systems

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Last month, the FCC released a Notice of Inquiry (NOI) seeking comment on a variety of issues related to 911 capabilities and Enterprise Communications Systems (ECS). While you may not be familiar with the term "Enterprise Communications Systems," you are certainly familiar with the concept. As the FCC's NOI explains, ECS are telecommunications systems that support multiple users at individual telephone stations across a single enterprise, such as an office building, a campus, a hotel, etc. If you're like me, you use an ECS every day by picking up your office phone or by ordering room service from your hotel room, or maybe you find a colleague's use of your office's ECS absolutely unbearable.

These ECS have been widely deployed for several years, although they have evolved from circuit-switched time-division multiplexing technology to Internet Protocol (IP)-based platforms, utilizing VoIP technology for internal communications and outbound calls—including calls to 911.

Regardless of technology, consumers expect to have access to usual 911 capabilities in their ECS in case of an emergency: they expect to dial 911 and immediately get routed to the appropriate Public Safety Answering Point, which in turn will retain information about the caller's location and callback phone number to ensure prompt dispatch.

However, according to the FCC, 911 capabilities on ECS appear to lag behind those of traditional wireline, wireless, and VoIP systems. Now the FCC wants to know how serious the ECS/911 issue really is and what steps should be taken going forward.

Historically, the FCC has chosen to take a backseat in the provision of 911 by ECS, deciding back in 2003 that the issue was best left to state and local authorities. October's NOI revisits the issue, noting that 24 states had enacted, or had pending, legislation implementing E911 standards for ECS. These state statutes vary in their substance, but direct 911 access and location accuracy requirements are common themes.

Now, the FCC is surveying the ECS landscape again, seeking comment on a number of broader issues, including the reasons the 911 capabilities of ECS have appeared to lag behind other systems, consumers' expectations in accessing 911 from ECS, and potential solutions to these issues. Many of the questions posed by the FCC are directed toward ECS operators and vendors. To name a few examples, the Commission seeks input on the current accepted industry standards for ECS E911 delivery, the typical commercial arrangements for the provision of ECS and their impact on 911 capabilities, and the impact of the IP-based NG911 transition on ECS. (There are numerous other issues up for comment in the NOI – too many to list here. Those who are interested, and especially those who might want to provide feedback, can view the full NOI here.)

While comments in this proceeding will provide the FCC with greater insight, the Commission is not at this point committing to regulatory action as a solution. Plus, the NOI contemplates whether updated industry standards and service/implementation best-practices could be potential solutions.

The deadline for submitting comments is **Nov. 15, 2017**, with reply comments due **Dec. 15, 2017**. Comments should be submitted under Docket No. 17-239.

Do You Know Where Your Domain Names Are?

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At CommLawBlog, we follow domain name issues closely. Unlike lightning, we find two recurring problems striking regularly. These problematic issues are: the failure to renew domain names and a continuing tendency to register valuable domain names in someone else's name. While both may seem innocuous, they can cause major problems down the line. Let's took a look at the reasons why.

1. Failing to Renew Domain Names

Failure to renew a domain name can cause your website to go down. The need to renew your domain names seems obvious and simple enough, but numerous companies and individuals have gotten famous for forgetting and letting domain names lapse, including Microsoft, Jeb Bush, the Dallas Cowboys, and, recently, Sorenson Communications. Last year, Sorenson Communications let a domain name lapse. It was SORENSON.COM which it used for providing access to its Video Relay Service (which Sorenson operated under the brand name "SVRS"). The domain name expired, the website was inaccessible, and Sorenson's customers could not receive or place video relay service, 911, and other calls during the outage. Sorenson's SVRS customers lost their telecommunications relay services, which left individuals with hearing and speech disabilities without the ability to communicate using a phone to call. Although Sorenson notified the FCC the morning the outage began, the domain name was not renewed – nor the website available — for another two days. Although the SVRS services were restored, the FCC was not amused by what it called at "preventable, internal operational failure."

In the FCC's September Order, Sorenson agreed to "reimburse the TRS Fund the sum of $2,700,000, and pay a settlement to the United States Treasury in the amount of $252,000."

But it could have been worse. Sorenson was able to renew its expired domain name and reestablish its SVRS services quickly. Unfortunately for many domain name registrants, expired domain names are picked up by third parties using "domain drop catch" services which are designed to grab newly-expired domain names. It can be expensive and time-consuming to regain your domain name once a third party has pounced on it.

Accordingly, set your domain names to Auto Renewal. Whether you have registered your domain names for one year or ten years, you will probably forget when they expire (and inevitably the email reminder will be sent to your spam file). Auto-renewal service is found under various names for different domain name registrars, but it operates in the same manner and allows you to post a credit card on file and automatically renew your company's domain name(s) in case someone on staff forgets, avoiding unintended expiration. Even if you don't actually want to renew the domain name, the cost of renewing the

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name – even to "park" it for the short term – pales in comparison to the expense of getting it back.

2. Leaving Your Domain Names in Vendors' Names

A second problem that we are seeing is a tale as old as the commercial Internet: companies still are allowing the actual registration (and ownership) of valuable domain names, including those corresponding to company names, acronyms, and call letters, their web designers and marketing firms. This arrangement works well as long as the business relationships are strong, but the moment there is strife, your company may find its website taken down, or worse, pointing to negative and derogatory material.

With e-commerce online, communication online, and now FCC Broadcast licensee public inspection files online, it is critical to keep continuous control over your domain names and website material.

Accordingly, ensure by contract that all domain names are registered to your company's name in the first place or transferred to your company's name immediately after the website goes live. Thank your web designer or marketing firm for a great job, but insist that you have complete control of your domain names. For that ownership to take place, your company should be listed as the "Registrant" of the domain name and an appropriate individual or individuals in your company listed as the "administrative contact" and "technical contact" of the domain name. This information will then be listed in the globally-available WHOIS Database made available by your domain name registrar, and will help ensure that all decisions regarding the domain names, including renewal and transfer, are in your direct control.

* * *

Fletcher, Heald & Hildreth knows domain names. Our attorneys have helped write the rules for the global domain name system as part of the Internet Corporation for Assigned Names and Numbers and have successfully prosecuted and defended cybersquatting actions when there is a dispute over ownership of a particular domain name. We also audit client websites for compliance with online advertising and privacy regulations, including the Children's Online Privacy Protection Act. If you have any questions, please contact your attorney here at FHH or Kathy Kleiman, FHH Internet Counsel.

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Autonomous Vehicles, 2.0: A Conversation with George Soodoo

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The Trump Administration recently took some major steps toward providing a regulatory framework that encourages the safe development, testing, and deployment of autonomous vehicles. Several weeks ago, Secretary of Transportation Elaine Chao released Automated Driving Systems 2.0 from the National Highway Traffic Safety Administration (NHTSA), a document aimed at supporting automotive industry innovators in the safe introduction of new autonomous technologies. This document includes a Voluntary Guidance for stakeholders as they consider and design best practices for testing and deploying autonomous vehicles.

For help understanding the Voluntary Guidance, we've turned to our friend, George Soodoo, who runs a regulatory consulting practice that focuses on vehicle crash avoidance technologies. George is a mechanical engineer and MBA who spent 30 years at NHTSA, ultimately as chief of its Vehicle Dynamics Division.

Here's our interview with George:

Q: As an initial question, what is an NHTSA "guidance" and what kind of controlling effect does it have on industry, if any?

SOODOO: An NHTSA guidance is a non-regulatory approach to addressing a motor vehicle safety need and which provides a framework that vehicle manufacturers and equipment suppliers may use to design their products. A guidance is entirely voluntary. It does not establish a Federal Motor Vehicle Safety Standard (FMVSS) and, therefore, has no compliance requirement or enforcement mechanism.

A guidance has an indirect controlling effect on industry because the elements of the guidance may be used to develop a proposal for a notice of proposed rulemaking. Therefore, manufacturers that adhere to the guidance could be in a better position than their competitors to offer compliant systems to their customers at an earlier date.

Q: What are the major elements of Automated Driving Systems 2.0?

SOODOO: The Automated Driving Systems (ADS) 2.0 is composed of two sections and focuses on vehicles that incorporate high levels of automation, specifically Levels 3, 4, and 5 – Conditional, High, and Full Automation, respectively.

Section 1, *Voluntary Guidance for Automated Driving Systems*, contains 12 safety design elements considered the most important design aspects for the development, testing, and deployment of autonomous vehicles. These 12 elements include: system safety, human machine interface, vehicle cybersecurity, validation methods, and consumer education and training, among others. For example, the guidance suggests that manufacturers may use a combination of vehicle simulation, test track, and on-road testing to demonstrate the expected performance of an ADS. These tests should demonstrate the performance of the ADS during normal operation, during

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crash avoidance maneuvers, and during system malfunction or in driving conditions outside of the system's capabilities.

Section 2, *Technical Assistance to States, Best Practices for Legislatures Regarding Automated Driving Systems*, clarifies the federal and state roles in regulating autonomous vehicles. NHTSA remains responsible for regulating the safety-related design and performance aspects of motor vehicles and motor vehicle equipment. However, states continue to be responsible for regulating the human driver and vehicle operations. Section 2 also lays out the framework states can use as their legislatures write laws on the use and operation of autonomous vehicles, to ensure a consistent national framework.

Q: How helpful do you view the Automated Driving Systems 2.0 guidance in terms of speeding up the development of autonomous vehicles?

SOODOO: I consider the ADS 2.0 to be very helpful for vehicles that incorporate Automation Levels 3 through 5. It allows manufacturers to devote more time to testing, validation, and deployment of autonomous vehicles instead of compliance and enforcement issues. ADS 2.0 shifts the focus from a regulatory approach and places more emphasis on seeking non-regulatory solutions. It also gives manufacturers the leeway to develop creative solutions, which may be difficult to do under a more rigid regulatory framework.

In the near term, it also benefits NHTSA by giving the agency the opportunity to work cooperatively with industry to achieve the safety goals for autonomous vehicles. Such cooperation is difficult to do when rulemaking proceedings begin. Generally, at this stage in the development of a new technology, it is challenging for NHTSA to quantify the potential safety benefits associated with deploying the technology. This task becomes easier as the technology becomes commercially available and vehicles are placed in service throughout the country. NHTSA will then be able to assess the on-road performance of these systems and fully understand how they impact vehicle crashes.

Ultimately, I believe that there will be a need for rulemaking to establish some minimum performance requirements for ADS with compliance tests and enforcement mechanisms in place, as is the case for safety systems on conventional vehicles.

Q: NHTSA's mission is to save lives, prevent injuries, and reduce the economic costs associated with motor vehicle crashes. Can you explain how the agency's rulemaking process works to develop and publish vehicle safety regulations that help accomplish the agency's mission?

SOODOO: NHTSA initiates rulemaking action to address a specific safety problem by one of several means: Congressional mandate; petition for rulemaking from industry or the public; or the agency's own initiative. Internally, NHTSA begins the process by quantifying a motor vehicle safety problem in terms of fatalities, injuries, and property damage caused by crashes. This is done by analyzing police-reported fatal and non-fatal crashes in the agency's crash databases. NHTSA then conducts research using systems designed to correct the safety problem, which focuses on evaluating the performance of the system and determining the most appropriate per

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formance metrics and pass/fail criteria that would achieve the desired safety benefits. The agency also develops a benefits-cost analysis to determine whether the safety benefits achieved by the new requirement outweigh the cost to consumers of equipping new vehicles with the safety system.

This internal work is synthesized into an NPRM, which is published to give the public an opportunity to comment.

Q: What areas do you believe would pose significant challenges for NHTSA as it tries to be responsive to the rapid technological changes needed to open the U.S. market to Level 5 fully autonomous vehicles?

SOODOO: NHTSA faces several significant challenges to being responsive to industry, such as:

1) The length of its rulemaking process. The rulemaking process for significant amendments to a motor vehicle safety standard is time-consuming, and also tends to be adversarial and contentious. On average, it takes about five years to complete rulemaking on an issue of medium complexity. For significant rules on autonomous vehicles, the agency will have to seek ways to speed-up the rulemaking process so that the technology on which the amendments are based would not be eclipsed by another emerging technology by the time the rulemaking is completed. The other challenge here is to identify and keep the focus on the desired performance level for safety so that the mandated safety requirements are based on performance standards versus equipment standards.

2) Temporary exemptions. Current regulations allow each manufacturer to apply for a temporary exemption from compliance with one or more Federal Motor Vehicle Safety Standards, which are limited to 2,500 vehicles annually and for a period not exceeding three years. The challenge for NHTSA would be to find a balance between allowing temporary exemptions for autonomous vehicle systems to help speed up their development and deployment and ensuring that the American public is protected from unreasonable risks associated with the emerging technologies on fully autonomous vehicles. Congress is considering autonomous vehicle legislation that would give NHTSA the authority to increase the number of exempted vehicles per manufacturer to 100,000 per year, thus possibly creating a bigger challenge for the agency in managing those temporary exemptions.

3) Consumer education. Educating the public about the use of autonomous vehicles will be a continuing challenge for NHTSA as manufacturers offer the public autonomous vehicles that would require a different type of consumer engagement. Given the different approaches being used by manufacturers as they prepare to deploy autonomous vehicles, getting the right amount of information to consumers, and helping them to understand the technology without overwhelming them, will be a significant task for the agency and the industry.

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Autonomous Vehicles *— (Continued from page 13)*

Q: What are some examples of vehicle safety systems that would need new or revised safety standards?

SOODOO: One example is the current federal braking standards, which require a human driver to apply the brake pedal, accelerator, and steering controls to conduct the braking test. Amendments would focus on developing compliance tests that can be conducted without a human driver and without foot or hand controls.

Another example is the current federal standard for controls and displays, which specifies performance requirements for the location, identification, color, and illumination of motor vehicle controls, telltales, and indicators. These requirements were developed for use by a human driver at the controls of a vehicle but become irrelevant for a fully autonomous vehicle.

New safety standards would likely be needed for automatic emergency braking (AEB) systems and also for the performance of cameras and radars, which provide the control for autonomous vehicles.

Editor's note: This interview was conducted via email and edited for brevity. Laura can be reached at stefani@fhhlaw.com and George Soodoo can be reached at gSOODOO@yahoo.com.

About George Soodoo:
George Soodoo is a Private Consultant with expertise in motor vehicle crash avoidance technologies and the Federal regulatory process. He worked at the National Highway Traffic Safety Administration for 30 years and was the Chief of the Vehicle Dynamics Division. Mr. Soodoo has successfully managed many challenging rulemaking projects on light-vehicle and heavy-vehicle crash avoidance systems, including tires, tire pressure monitoring systems, antilock braking systems, vehicle stability control systems, and advanced emergency braking technologies, among others. He was the U.S. Delegate to the United Nations Economic Commission for Europe (UNECE) Working Party on Brakes and Running Gear (GRRF) in Geneva, Switzerland, and helped develop the global technical regulation (GTR) on motorcycle brake systems, which was adopted as a U.S. Federal motor vehicle safety standard in 2012. Mr. Soodoo was also on the DOT Team that developed the Report to Congress on increasing the Federal size and weight limits for heavy trucks.

Mr. Soodoo started his career at Ford Motor Company in Dearborn, Michigan as a Design and Development Engineer. He has a B.S. in Mechanical Engineering and an M.B.A. in Economics and Finance.

Now Available: Online Public Inspection Files Webinar

FHH Law
703-812-0400

With the March 1, 2018 Online Public Inspection File deadline for mid-sized and smaller market (and non-commercial) radio stations approaching, Fletcher, Heald, & Hildreth's Frank Montero and Steve Lovelady recently presented a webinar to help industry professionals navigate through the online filing process.

In collaboration with Colorado Broadcasters Association, Montero and Lovelady spoke on a variety of issues related to the Online Public Inspection File (OPIF) from what needs to be uploaded to the consequences of not complying with the OPIF deadline.

But for those of you that missed out… **have no fear!!!** You can now view a rerun of our webinar (lucky you!).

You can access the video and corresponding slides via **this link on our CommLaw Blog YouTube page.**

If you'd like a copy of the presentation to keep in your library (online or otherwise), you can access the PDF versions of the slides **here**. You can download them to your computer or print them off.

Some of the highlights of the webinar include:

- The history of the public file generally, and what the "new" OPIF is
- The mechanics of starting an OPIF
- The contents of what is required in an OPIF
- Consequences of non-compliance

And more, including a Q&A session

If you have any specific questions about issues discussed in the webinar, or questions that we were not able to address during the webinar's airing, feel free to contact Frank Montero at montero@fhhlaw.com or Steve Lovelady at lovelady@fhhlaw.com.

Now Available: FHH CPB Compliance Webinar with Bob Winteringham

FHH Law
703-812-0400

Compliance has never been more important for public broadcasters. CPB regularly issues forfeitures 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.

To help navigate the compliance waters, Fletcher, Heald and Hildreth's Bob Winteringham presented a free CPB Compliance webinar on Oct. 25, 2017. And now, you can now view the webinar **here**, on our Youtube page!

You can also download and print the presentation in PDF form **here**!

The webinar covers:

- Common Office of Inspector General ("OIG") audit findings
- Basic steps public broadcasting stations should take to meet CPB's minimum compliance requirements

And questions that stations frequently ask about CPB-related compliance matters.

If you have any specific questions about issues discussed in the webinar or questions that were not able to be addressed during the webinar's airing, you can contact Bob Winteringham at winteringham@fhhlaw.com.

Deadlines!

Upcoming FCC Broadcast Filing Deadlines

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

November 13, 2017 –

EAS National Test - Participants' ETRS Form Three Due - All EAS participants must submit Form Three, which reports the results of the national EAS test held on September 27 by this date. If a station successfully received and passed on the test, it must report from which source it first received the test, when it passed on the alert, and other details of what was received. If the station did not receive the test properly, it will be asked to explain what it knows of why not.

December 1, 2017 -

DTV Ancillary Services Statements - All DTV licensees and permittees must file a report in the LMS filing system stating whether they have offered any ancillary or supplementary services together with its broadcast service during the previous fiscal year. ***Please note that the group required to file includes Class A TV, LPTV, and TV translator stations that are offering digital broadcasts***. If a station has offered such services, and has charged a fee for them, then it must separately submit a payment equal to five percent of the gross revenues received and an FCC Remittance Advice (Form 159) to the Commission. The report specifically asks for a list of any ancillary services, whether a fee was charged, and the gross amount of revenue derived from those services. Ancillary services do not include broadcasts on multicast channels of free, over-the-air programming for reception by the public.

EEO Public File Reports - All radio and television stations with five (5) or more full-time employees located in Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota, and Vermont 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.

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Deadlines!

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EEO Mid-Term Reports – All radio stations with eleven or more full-time employees in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, or Vermont, and all television stations with five or more full-time employees in Colorado, Minnesota, Montana, North Dakota, or South Dakota must electronically file a mid-term EEO report on FCC Form 397, with the last two EEO public file reports attached.

January 10, 2018 –

Children's Television Programming Reports - For all commercial television and Class A television stations, the fourth 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.

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 document

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Deadlines!

(Continued from page 18)

tation 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.

March 1, 2018 –

Radio Station Online Public Files – All radio stations in all markets must have uploaded their entire public inspection files, with the exception of the political file, to the location provided for such public files on the FCC's website. The records which must be uploaded by March 1, 2018, include, but are not limited to, any and all issues/programs lists and EEO public file reports for the current license term (since the last license renewal grant), as well as either a current list of or copies of organizational documents and contracts required to be filed with the Commission.

March 2, 2018 –

Biennial Ownership Reports - All licensees and entities holding an attributable interest in a licensee of one or more AM, FM, TV, Class A television, and/or LPTV stations must file a biennial ownership report reflecting information as of October 1, 2017. Please recall that not only corporations and limited liability companies, but also sole proprietorships and partnerships composed entirely of natural persons (as opposed to a legal person, such as a corporation) are included in the licensees that must file reports. For the first time, noncommercial and commercial entities are required to file by the same date. Additionally, all persons holding an attributable interest in a commercial licensee must have acquired either an FCC Registration Number (FRN) or Restricted Use FRN.

FHH - On the Job, On the Go

On Nov. 2, **Frank Montero** attended the **70th annual New Jersey Broadcasters Association Anniversary Gala** in Atlantic City, New Jersey. On Nov. 15, he will be attending the **Radio Ink Forecast Conference** at the Harvard Club in New York City.

Scott Johnson Nov. 2-3 will be participating as a Board Member of the Board of Visitors of the **University of Alabama College of Communications and Information Sciences** and separately meeting with the **Alabama Public Television** executive team as to pending issues with regard to its television station system. A meeting with **Marble City Media** as to its multiple pending station matters and **Samford University** is also worked into the schedule.

Dan Kirkpatrick and **Karyn Ablin** Nov. 2-4 will be attending and speaking at College Broadcasters Inc.'s **2017 National Student Electronic Media Convention** in San Antonio, Tx. Dan Kirkpatrick will be presenting sessions on "*FCC Regulation of Indecency, Obscenity and Profanity: From Pacifica to Colbert*" and "*What's Happening in Washington? A Regulatory and Legislative Outlook*," and participating in an "*Ask the FCC Lawyers*" panel.

Frank Jazzo Nov. 9-10 will be attending the annual convention of the **Alaska Broadcasters Association** in Anchorage. He will be speaking at the legal and regulatory update session on November 10.

Kathy Kleiman Nov. 18 will be speaking at **TedXBeaconStreet** in Boston, Mass. She will be speaking on the ENIAC Programmers, the six women who programmed ENIAC, the world's first modern computer, regarding their pioneering work and roles.