

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Commission Launches Modernization of	)	MB Docket No. 17-105
Media Regulation Initiative	)	
	)	

**REPLY COMMENTS OF WILEY REIN LLP**

Wiley Rein LLP hereby submits reply comments in response to the Commission’s Public Notice initiating a review of its rules applicable to media entities.<sup>1</sup> For more than 30 years, Wiley Rein has assisted broadcast licensees and other media businesses, financial institutions, and other investors in structuring transactions and investments in FCC-regulated companies. The opening comments filed here convincingly demonstrate that there are a number Commission regulations applicable to media companies that are overdue for elimination or revision, including, in particular, many rules related to filing and reporting obligations.<sup>2</sup> As Commissioner O’Rielly aptly observed at the inception of this proceeding, “[t]he Commission should not be in the business of generating

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<sup>1</sup> See *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, FCC 17-58, MB Docket No. 17-105 (rel. May 18, 2017) (the “*Public Notice*”).

<sup>2</sup> See, e.g., Comments of CBS Corporation, The Walt Disney Company, 21<sup>st</sup> Century Fox, Inc., and Univision Communications Inc., MB Docket No. 17-105 at 3, 6 (July 5, 2017) (“Content Company Comments”); Comments of National Association of Broadcasters, MB Docket No. 17-105 at 10-13, 15-18 (July 5, 2017) (“NAB Comments”); Comments of America’s Public Television Stations, Corporation for Public Broadcasting, MB Docket No. 17-105 at 12-14 (July 5, 2017) (“Public Broadcasting Comments”); Comments of Alpha Media LLC, Emmis Communications Corp., iHeartMedia, Inc., Liberman Broadcasting, Inc., New York Public Radio, and Urban One, Inc., MB Docket No. 17-105 at 5-6 (July 5, 2017) (“Joint Radio Comments”). Content Company Comments at 6; NAB Comments at 10-13.

busywork or collecting reams of data no one ever looks at.”<sup>3</sup> And in other contexts, the Commission is properly undertaking efforts to “examin[e] how it can reduce burdens on industry by eliminating unnecessary or onerous data filing requirements.”<sup>4</sup> Doing so is “just good housekeeping,” and rightly recognizes that “every dollar we make providers—whether big or small—spend filing data that [the Commission does not] need is a dollar they can’t devote” to serving the public interest.<sup>5</sup>

Among the most burdensome filing and reporting requirement is the FCC Form 175, which the FCC generally requires to be submitted in connection with applications for facilities that are potentially subject to auction.<sup>6</sup> As discussed below, there are situations in which the Commission’s practice is to require the Form 175’s submission when no auction may actually occur. Moreover, there are a number of aspects of this form and the related filing interface that unnecessarily require the expenditure of time and resources that could be put to better use. Accordingly, Wiley Rein urges the Commission to require submission of the Form 175 only *after* it has been determined that an auction is necessary, and to make various modifications to the form and filing interface to lessen the burdens of completion.

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<sup>3</sup> *Public Notice*, Statement of Commissioner Michael O’Rielly.

<sup>4</sup> See, e.g., *FCC Proposes Improvements to Broadband & Voice Services Data Collection*, News Release, WC Docket No. 11-10 (Aug. 3, 2017).

<sup>5</sup> *Statement of Chairman Ajit Pai, Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10 (Aug. 3, 2017).

<sup>6</sup> See, e.g., *Filing Instructions for Cross-Service FM Translator Auction Filing Window for AM Broadcasters to Be Open July 26-August 2, 2017*, Public Notice, DA 17-55, (June 6, 2017) (“Auction 99 Filing Instructions PN”).

**I. THE COMMISSION SHOULD REQUIRE SUBMISSION OF FCC FORM 175 ONLY AFTER IT DETERMINES THAT A FACILITY WILL BE SUBJECT TO AUCTION.**

The recently closed cross-service FM translator filing window provides a cogent example of a situation in which the filing of the Form 175 was required when no auction might occur. In this context, the FCC required all applicants for new facilities to complete and submit two separate forms: (1) selected sections of the FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator of FM Booster Station, and (2) the FCC Form 175, Application to Participate in an Auction.<sup>7</sup> As explained in the *Auction 99 Filing Instructions PN*, the FCC Form 175 is supposed to be “filed by parties seeking to participate in an *auction*,” and is “used by Commission staff to determine whether the applicant is legally, technically, and financially qualified to participate in Commission *auctions* for licenses or permits.”<sup>8</sup>

With respect to the cross-service translator filing window, however, it is not clear that any auctions will be necessary. Under applicable procedures, the FCC will first evaluate the submitted FCC Form 349 applications to determine whether any of them are mutually exclusive, and will then afford applicants an opportunity to resolve their mutual exclusivity through technical changes or settlement proposals.<sup>9</sup> Only after the technical/settlement period has ended will any remaining mutually exclusive groups be subject to auction.<sup>10</sup> In the end, some applications will not be mutually exclusive, and some applicants for mutually exclusive facilities will resolve their

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<sup>7</sup> *See id.*

<sup>8</sup> *Id.* ¶ 11 n.12 (emphases added).

<sup>9</sup> *FCC Announces Opening of First Auction Filing Window for AM Broadcasters Seeking New FM Translators*, Public Notice, FCC 17-67 (June 1, 2017). There will also be a second window for additional AM stations to apply for new FM translators. *Id.*

<sup>10</sup> *Id.*

technical differences. As a result, numerous parties will be able to apply for new FM translators without participating in an auction, and their preparation and filing of the cumbersome and time-consuming Form 175 will have been a classic example of a requirement to complete paperwork for paperwork's sake.

There is no technical or policy justification for requiring the submission of a form used to gather information needed to assess a party's qualifications to participate in an auction until it is determined that there will actually be a need for them to so participate. To the extent that the FCC believes it is necessary to assess, at the outset of a filing window, whether a party is legally, technically, and financially qualified to hold the license for the facility being applied for, it can require completion of the legal sections of the relevant application, which here would have been the FCC Form 349.<sup>11</sup> Accordingly, the Commission should modify its policies to mandate submission of a Form 175 only after it determines that an auction will be conducted.

## **II. THE COMMISSION SHOULD MODIFY THE FORM 175 AND ASSOCIATED FILING INTERFACE TO REDUCE THE BURDENS ASSOCIATED WITH COMPLETING THE FORM.**

Even in situations where the requirement to file a Form 175 can be justified, the actual paperwork burdens associated with completing the form cannot. The Form 175 and its associated filing interface are designed in a manner that is unnecessarily confusing and counter-intuitive, and require the manual entry of duplicative information (sometimes hundreds of times over). As an initial matter, there is no printable version of the form available (nor any ability to print a blank

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<sup>11</sup> In the cross-service translator window, the Commission did not require completion of the "Legal" section of the FCC Form 349, which asks questions about character issues, adverse findings, alien ownership and control, and would permit the agency to evaluate an applicant's qualification to hold a license for a translator. *Auction 99 Filing Instructions PN*, Attachment A, ¶ 4; see FCC Form 349, Section II, Questions 6, 7, 8, and 12. Doing so would have enabled the FCC to ensure that only applicants qualified to hold translator licenses could have their proposals considered, without imposing the burdens of completing the FCC Form 175.

form from within the filing interface), which makes it difficult to determine what data is needed until after the form is launched and in progress. This is particularly problematic when dealing with multi-layer organizational structures with outside disclosable investors, given the need to gather data from third parties that are not affiliated with the applicant. In addition, there is no valid reason whatsoever to wait to make the Form 175 interface available until the filing window for an auction has opened. Instead, the Commission should enable parties to begin preparing their Form 175 submissions at a much earlier date, such as when the agency announces the date on which an auction filing window will open.<sup>12</sup>

With respect to broadcast and other media companies, the FCC should also harmonize the Form 175 disclosure requirements with those applicable to the underlying facility for which a party is applying. Currently, all Form 175 submissions must contain the information required by Sections 1.2105 and 1.2112 of the Commission's rules.<sup>13</sup> Those rules require, among myriad other things, the provision of various information regarding disclosable interest holders, which generally include entities holding 10% or more of the *equity* of the applicant. In the case of broadcast and media companies, however, the general standard for attribution is a 5% *voting stock* (not equity) interest, and insulation in accordance with FCC-specified criteria can render even a large equity interest non-attributable.<sup>14</sup> Given these inconsistent standards, broadcasters required to file Form 175 often find themselves in the position of having to obtain and disclose information about

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<sup>12</sup> In the cross-service translator window, this would have afforded applicants approximately two additional months to prepare and submit their Form 175s, as the FCC announced on June 1 that the window would occur from July 26, 2017 until August 2, 2017. Instead, parties had to file both their Form 349s and their Form 175s within the limited window.

<sup>13</sup> See 47 C.F.R. §§ 1.2110, 1.2112.

<sup>14</sup> See *id.* § 73.3555.

investors that they have no other reason to disclose.<sup>15</sup> Moreover, there is no purpose served by collecting even information about attributable (let alone disclosable) interest holders in situations—such as the cross-service FM translator window—where the facilities themselves are not subject to any multiple or cross-ownership rules. To eliminate the need for submission of information that serves no regulatory purpose, the FCC should modify the Form 175 so that an applicant need only submit information concerning parties that hold interests that are relevant to compliance with the rules that apply to the type of license subject to auction.

The FCC should also streamline the process for completion of the form by adding more robust copying functions. For example, if, as is often the case, multiple disclosable interest holders have the same percentage interests in the same FCC-regulated businesses, the filing interface currently requires a party to open each record and manually insert the percentage interest held. For an applicant with 50 disclosable interest holders and 20 FCC-regulated businesses, this requires 1,000 separate key strokes. Similarly, it is not currently possible to copy data across multiple licensees with the same basic corporate structure. Enabling such copying would significantly reduce the burdens of completing the Form 175.

In addition, the Commission should make other changes to the Form 175 and filing interface to lessen the likelihood that applicants inadvertently make mistakes that could result in

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<sup>15</sup> The Commission sought to avoid the burdens associated with such disparate standards in the foreign ownership context, and should do so here as well. *See Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act, as amended*, Report and Order, 31 FCC Rcd 11272, ¶ 19 (2016) (stating that “[i]nstead of relying on the 10 percent threshold applicable to common carriers, however, we proposed that broadcast licensees be required to disclose their U.S. and foreign ownership interests based on the attribution rules and policies set out in Section 73.3555 applicable to broadcast licensees,” because otherwise “broadcasters would be required to maintain a separate and distinct understanding of their ownership solely for the purpose of filing petitions” for declaratory ruling under the foreign ownership rules).

the need to re-enter data already entered or, worse yet, reverse the submission of a form. For example, in the course of editing an FCC regulated business entry, it is very easy to mistakenly remove information for a particular FCC regulated business throughout the entire form. In addition, if a form is accessed after it has been submitted, any change (no matter how minor) will cause the form's status to return to "un-submitted." In both cases, adding conspicuous pop-up windows alerting applicants that their changes may have unintended consequences would go a long way to preventing accidental errors.

Finally, the Commission should take steps to avoid confusion with regard to printed versions of the Form 175 and the communications that it sends to applicants confirming submission. Currently, a printed Form 175 that has been properly submitted still bears the legend "DRAFT COPY-Not for submission" on the top left hand corner, which creates confusion. In addition, the confirming emails sent to individuals listed as contacts on the Form 175 do not include the applicant name, which is particularly problematic where a given person may be listed as the contact on multiple forms because more than one licensee is involved. These idiosyncrasies engender misunderstandings and cause needless concern among applicants, and should be remedied.

Finally, as Chairman Pai said yesterday in his statement marking the close of the FM translator window, the windows were designed to help "AM broadcasters continue to play a part in our competitive media landscape as the FCC continues to address the unique technical challenges involving AM radio."<sup>16</sup> An application process that is unduly and unnecessarily cumbersome and cost-prohibitive serves only to undermine AM revitalization as a policy objective.

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<sup>16</sup> *Chairman Pai Statement on the Close of the FM Translator Filing Window for AM Radio Stations*, News Release (Aug. 2, 2017).

### **III. CONCLUSION.**

For the foregoing reasons, the Commission should require the filing of a Form 175 only if it determines that an auction will be conducted, and should modify the Form 175 and associated filing interface to reduce the burdens associated with its completion.

Respectfully submitted,

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