

C-Band Earth Station Registrations Due October 17

Owners of unregistered fixed-satellite service (“FSS”) downlink earth stations that operate in the 3.7-4.2 GHz band (commonly called the conventional C-Band) have until October 17 to complete registration of their stations with the FCC. On April 19, the FCC’s International Bureau announced an immediate freeze on the filing of applications to register new or modified FSS earth stations in the C-Band. A temporary exception to this freeze was made for the registration of existing stations that were constructed and operational as of April 19, 2018. The original 90-day filing window for applications taking advantage of this exception was extended for an additional 90 days, until October 17, 2018.

Until now, receive-only downlink earth stations have been permitted to operate in the C-Band without registration. However, in an *Order and Notice of Proposed Rulemaking* in Docket 18-122 (FCC 18-91), the Commission is considering the possible allocation of new wireless broadband services to the C-Band. The exact band plan is yet to be developed. The

continued on page 6

Media Bureau Issues Repack Reminder

The post-Incentive Auction television repack is underway. Stations assigned to Phase 1 are currently in the midst of their testing period. These stations must cease operating on the pre-auction channel by November 30. Each Phase 1 station must also be on the air on its post-auction channel by that date unless it has made appropriate arrangements otherwise (discussed below).

The FCC’s Incentive Auction Taskforce and Media Bureau have issued a Public Notice to remind repacked television stations and offer clarification about the post-auction transition process and requirements. Each repacked station has been assigned to one of 10 transition phases during which it can begin testing and operation on its post-auction channel (subject to any required coordination) and must cease operating on its pre-

continued on page 3

Court Affirms Webcasting Rates

The U.S. Court of Appeals for the D.C. Circuit has upheld the most recent decision of the Copyright Royalty Board (“CRB”) in setting the rates for statutory licenses for Internet streaming of copyrighted sound recordings. The CRB is a panel of three Copyright Royalty Judges appointed by the Librarian of Congress that administers certain statutory copyright licenses. The CRB had set the rates and terms for these statutory licenses for the five-year period 2016-2020. SoundExchange had appealed the CRB’s ruling, arguing that the fees should be higher and should be calculated differently. The court rejected SoundExchange’s appeal. The result is that these fees will remain constant for the remainder of the current license term, ending December 31, 2020.

Congress established a statutory copyright license for webcasters in the Copyright Act. The statutory license enables webcasters to pay a standard royalty rate for the recordings they transmit rather than negotiating license agreements directly with copyright holders. SoundExchange

continued on page 6

IN THIS ISSUE

FM Translator Long-Forms	2
Silence is not Experimental.....	2
Deadlines to Watch	4-5
Temporary Zoning Not Fatal	7
Unauthorized Power Reduction	8

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Deadline for FM Translator Long-Form Applications Is November 5

The FCC's Media Bureau has released Public Notices (DA 18-985 and DA 18-986) to announce filing windows that end on November 5 for FM translator long-form applications in connection with singleton short-form Tech Box applications that were filed in Auction 83 and Auction 100. In each case, the complete Form 349 construction permit application must be filed electronically by the November 5 deadline. There are three such singleton short-form applications surviving from Auction 83 for which the original Tech Box proposals were filed in 2003. The Auction 100 short-form filing window last January was limited to proposals for AM fill-in translators. There are presently 124 singleton short-form applications resulting from that auction filing window for which long-form applications are now due.

Applicants can propose minor change modifications in the long-form application. However, no new conflict with any other application or authorization will be permitted. The FCC filing fee for translator long-form applications is \$835.

The Bureau states that after the filing deadline, any Tech Box proposal lacking a valid long-form application will be dismissed.

Media Bureau staff will review the submitted long-form applications for acceptability. Applications that are accepted for filing will be listed in public notices released online. A petition to deny an application must be filed within 15 days of the release of the public notice listing the application.

Silent AM Station Not Eligible for Experimental Authorization

The FCC's Media Bureau has denied a request for an experimental authorization to take an AM station silent while continuing to operate the associated FM translator, using it to broadcast what would normally be the AM station's program stream. Casa Pinon, LLC, the licensee of KVSL(AM), Show Low, Arizona, proposed to maintain the AM station's program service on FM translator station K263CA while the AM station is silent. The licensee stated that during the "test" period, KVSL would generally be silent with possible temporary on-air interludes. KVSL would return to the air full-time before 12 months had passed to avoid license expiration pursuant to Section 312(g) of the Communications Act. The proposal did not disclose any technical reason for KVSL's silence.

Casa Pinon requested experimental authority under Section 5.203 of the Commission's rules. The stated purpose of the experiment would be to determine if it would make any difference to the station's audience or sponsors if the program service were no longer available on the AM station. Casa Pinon said that it submitted its proposal in anticipation of the "future possibility that the FCC may allow AM stations to turn off their AM's and use only their associated FM translator . . ."

In an unpublished letter decision, the Bureau's Audio Division rejected the proposal for two reasons. First, it noted that applicants for experimental broadcast stations are

required to propose operations for the purpose of conducting research and experimentation for the development and advancement of new broadcast technology, equipment, systems, or services which are more extensive than those which currently exist or which require other modes of transmission that can be implemented only with an experimental permit. The Audio Division said that Casa Pinon's request failed to explain how its proposal would advance the development of new technology, equipment, systems or services. The Division also observed that the application lacked any explanation as to why the information that Casa Pinon seeks to elicit about listeners and sponsors could not be collected while KVSL is on the air.

Second, the Division found the proposal "to be facially inconsistent with our FM translator rules" and "completely at odds with the intended goals of the Commission's ongoing AM Revitalization proceeding." The Commission's objective in the Revitalization proceeding is to develop rule changes and other procedures to enable AM stations to improve their service, rather than to facilitate their demise. Furthermore, the Audio Division explained that the premise apparently underlying Casa Pinon's proposal is mistaken. The Commission has not contemplated allowing AM licensees to surrender their AM licenses and use only their FM translators.

Media Bureau Issues Repack Reminder continued from page 1

auction channel. A station may not begin testing or operation on the post-auction channel until 12:01 a.m. local time on the testing period start date. Stations can use the testing period to conduct tests to ensure proper functionality of equipment and to commence permanent operation on the new channel. Stations are not permitted to transmit signals on the pre-auction channel and the post-auction channel simultaneously. An application for a license to cover is to be filed within 10 days following commencement of program test authority.

Information on repacked stations' post-auction channel assignments, phase assignments, and linked-station sets (i.e., groups of stations in which the modification of one or more stations is dependent upon the modification of one or more other stations), including changes made during the transition, is available online at the following website: https://data.fcc.gov/download/incentive-auctions/Current_Transition_Files/.

The following chart shows the testing period start date and the completion date for each phase:

<u>PHASE</u>	<u>TESTING PERIOD START DATE</u>	<u>PHASE COMPLETION DATE</u>
1	September 14, 2018	November 30, 2018
2	December 1, 2018	April 12, 2019
3	April 13, 2019	June 21, 2019
4	June 22, 2019	August 2, 2019
5	August 3, 2019	September 6, 2019
6	September 7, 2019	October 18, 2019
7	October 19, 2019	January 17, 2020
8	January 18, 2020	March 13, 2020
9	March 14, 2020	May 1, 2020
10	May 2, 2020	July 3, 2020

Stations that are part of a linked-station set must coordinate their testing and commencement of operations on their post-auction channel with all other stations to which they are directly linked. Failure to closely coordinate may result in substantial interference. An increase of pairwise interference in excess of two percent, unless expressly authorized by the Commission or agreed upon among the affected stations, is a violation of the Commission's rules.

Repacked stations are expected to cease operation on their pre-auction channel by the earliest of the following: (1) the filing of an application for a license to cover; (2) the commencement of operation on the station's post-auction channel pursuant to a grant of a Special Temporary Authority ("STA") to operate at variance from its authorized post-auction parameters; (3) the date that the station has informed viewers that it will be ceasing pre-auction operations or commencing post-auction operations; or (4) 11:59 p.m. local time on the assigned phase completion date.

A station that cannot complete construction of its post-auction facilities by the phase completion date may request one extension of its construction permit for up to 180 days. Requests for additional time to construct after the first extension will be subject to the regular criteria for tolling a construction permit. In addition to an extension of the construction permit, stations that encounter significant problems in meeting their construction deadlines may seek an engineering STA, a silent STA, and/or a waiver and modification of the assigned phase. All such requests for variances from the regular schedule must be supported with documentation as to why the original schedule cannot be maintained. In any event, absent express authorization from the Commission, a station may not continue to broadcast on its pre-auction channel after its assigned phase completion date.

The Commission requires each repacked station to file regular reports on the status of its transition. Quarterly reports are due on January 10, April 10, July 10, and October 10. Other reports are to be filed 10 weeks before the assigned phase completion date, 10 days after completion of the construction of the post-auction facilities, and five days after ceasing to broadcast on the pre-auction channel.

Each transitioning station must air 60 seconds per day of on-air consumer education PSAs or crawls for 30 days prior to the station's termination of operations on its pre-auction channel. Each crawl must run during programming for no less than 60 consecutive seconds across the bottom or top of the viewing area. PSAs must have a duration of at least 15 seconds. Each message, whether a crawl or a PSA, must include the date that the station will terminate operations on its pre-auction channel; inform viewers of the need to rescan if the station has received a new post-auction channel assignment; and explain how viewers may obtain more information by telephone or online. In addition, for stations with new post-auction channel assignments, the PSA must instruct viewers regarding how to continue watching the station. The PSA must be closed-captioned. These messages must be in the same language as a majority of the programming carried on the station.

Stations must also notify their multichannel video program distributors at least 90 days ahead of the date broadcasting will begin on the post-auction channel.

Finally, the Commission solicits repacked stations to voluntarily notify the agency as soon as they know the specific date on which they intend to stop broadcasting on the pre-auction channel and begin operations on the post-auction channel. This notice can be submitted by email to IAtransition@fcc.gov. The Commission requests this information for the purpose of sharing it with members of the public who make inquiries to Commission staff. This notice is not mandatory.



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

<p>October 1, 2018 Deadline to place EEO Public File Report in public inspection file and on station's Internet website for all nonexempt radio and television stations in Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, Mariana Islands, Missouri, Oregon, Puerto Rico, Virgin Islands and Washington.</p> <p>October 1, 2018 Deadline to file EEO Broadcast Mid-term Report for all television stations in employment units with five or more full-time employees in Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon and Washington.</p> <p>October 1, 2018 Deadline for all broadcast licensees and permittees of stations in Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, Mariana Islands, Missouri, Oregon, Puerto Rico, Virgin Islands and Washington to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s).</p> <p>October 10, 2018 Deadline to place Issues/Programs List for previous quarter in public inspection file for all full service radio and television stations and Class A TV stations.</p> <p>October 10, 2018 Deadline to file quarterly Children's Television Programming Reports for all commercial full power and Class A television stations.</p>	<p>October 10, 2018 Deadline to file quarterly Transition Progress Reports for television stations subject to modifications in the repack.</p> <p>October 10, 2018 Deadline for noncommercial stations to file quarterly report re third-party fundraising.</p> <p>December 1, 2018 Deadline to place EEO Public File Report in public inspection file and on station's Internet website for all nonexempt radio and television stations in Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, North Dakota, South Dakota, New Hampshire, Rhode Island and Vermont.</p> <p>December 3, 2018 Deadline to file EEO Broadcast Mid-term Report for all television stations in employment units with five or more full-time employees in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Washington.</p> <p>December 3, 2018 Deadline for all broadcast licensees and permittees of stations in Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, North Dakota, South Dakota, New Hampshire, Rhode Island and Vermont to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s).</p>
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Paperwork Reduction Act Proceedings

The FCC is required under the Paperwork Reduction Act to periodically collect public information on the paperwork burdens imposed by its record-keeping requirements in connection with certain rules, policies, applications and forms. Public comment has been invited about this aspect of the following matters by the filing deadlines indicated.

TOPIC	COMMENT DEADLINE
Application for antenna structure registration, Form 854	Oct. 15
Equipment test, Section 73.1610	Oct. 22
Satellite local broadcast signal carriage and retransmission consent, Section 76.66	Nov. 19
Broadcast call sign reservation and authorization, Form 380	Nov. 19
Satellite earth stations, Forms 312, 312-EZ, 312-R	Nov. 19
Emergency alert system, Part 11	Dec. 3
Non-duplication and syndicated exclusivity, Sections 76.94, 76.95, 76.105, 76.106, 76.107, 76.1609	Dec. 3
Definition of television markets for cable must-carry, Section 76.59	Dec. 3
Notice of digital audio broadcasting, Form 335	Dec. 3
Cable carriage of television broadcast signals, Sections 76.56, 76.57, 76.61, 76.64	Dec. 3
LPTV digital transmissions, Sections 74.787, 74.790, 74.794, 74.796, 74.798	Dec. 3
Media Bureau Incentive Auction implementation, Section 73.3700	Dec. 3
Interference to radio astronomy, Section 73.1030	Dec. 3



DEADLINES TO WATCH



Deadlines for Comments in FCC and Other Proceedings

DOCKET COMMENTS REPLY COMMENTS

(All proceedings are before the FCC unless otherwise noted.)

Docket 18-202; NPRM Children's television programming rules		Oct. 23
U.S. Copyright Office Docket 2005-6; NPRM Copyright royalty reporting practices of cable systems		Oct. 25
Docket 18-214; NPRM Repack reimbursement for LPTV and FM stations		Oct. 26
Docket 18-31; Public Notice Review of rules more than 10 years old for possible elimination	Oct. 29	N/A
Docket 18-122; NPRM Flexible use of 3.7-4.2 GHz band	Oct. 29	Nov. 27
Docket 18-272; Public Notice Termination of dormant proceedings	FR+30	FR+45

FR+N means the filing deadline is N days after publication of notice of the proceeding in the Federal Register.

FOREIGN MEDIA
DISCLOSURE STATEMENTS
DUE

OCTOBER 12, 2018

TELEVISION REPACK

STATIONS ASSIGNED TO PHASE 1

TESTING PERIOD BEGAN: **SEPTEMBER 14, 2018**
COMPLETION DEADLINE: **NOVEMBER 30, 2018**

STATIONS ASSIGNED TO PHASE 2

TESTING PERIOD BEGINS: **DECEMBER 1, 2018**
COMPLETION DEADLINE: **APRIL 12, 2019**

DEADLINE TO FILE LONG-FORM
CONSTRUCTION PERMIT APPLICATIONS FOR
SINGLETON APPLICANTS IN
AUCTION 83 AND AUCTION 100

NOVEMBER 5, 2018

LOWEST UNIT CHARGE PERIOD
FOR 2018 GENERAL ELECTION

SEPTEMBER 7 – NOVEMBER 6, 2018

NATIONWIDE EAS TEST

FORM THREE DUE: **NOVEMBER 19, 2018**

Media Bureau To Host Incubator Webinar

The FCC's Media Bureau has announced plans to offer a webinar about the Commission's recently created radio broadcast incubator program. This online event will be held on October 30, 2018, at 1:00 p.m. Eastern Time. Participants must register in advance to receive a password and link to enter the meeting. Registration is available on the FCC's website at www.fcc.gov.

The Commission's incubator program is intended to support new and small entrants in the radio broadcasting industry by pairing potential new entrants or struggling

small broadcast entities with larger more experienced broadcasters. This free webinar is for both those who would like to be incubated and potential incubators. The agenda will include discussion about applicable eligibility standards, the application process, and guidelines for successful completion of the program.

The Bureau states that after the event, a recording of the webinar will be available for streaming from the Commission's website.

C-Band Earth Station Registrations Due October 17 continued from page 1

band may be divided into new smaller bands, each allocated to a different service. A possible alternative is comprehensive channel-sharing. The complete removal of the FSS from this band is also an option under consideration. In any event, the Commission says that it will protect registered earth stations.

The Commission wants and needs to know how many earth stations are operating in the C-Band so that it can make informed decisions about the future use of these frequencies. The agency said that it had records for approximately 4,700 registered downlinks. However, commenters have suggested that there are thousands of unregistered downlink earth stations in the band as well. Given the prospects for new services and many new users coming into this band, earth stations that remain unregistered may well suffer substantial interference and lose viability.

The Commission has adopted several measures to encourage station owners to register. The agency has waived the requirement that registration applications include a study demonstrating coordination with the few remaining terrestrial fixed service stations that still operate in this band. Operators with multiple receive-only antennas at a single address or geographic location may apply to register all of them with one application and pay only one filing fee of \$435. Owners with multiple earth stations at multiple sites anywhere in the United States can register all of them with one group application. The filing fee for the group application is \$10,620.

The rulemaking proceeding in Docket 18-122 about the future of the C-Band is still open for comments, which are due by October 29. The deadline for filing reply comments is November 27.

Court Affirms Webcasting Rates continued from page 1

collects these royalties on behalf of the copyright holders. The license of most interest to radio broadcasters in this case concerned noninteractive webcasting. A radio station's transmission of its over-the-air program stream on the Internet is called a noninteractive webcasting service. The programmer selects all of the music to be performed for the audience. The listener does not select the music to be transmitted and does not interact with the service.

Every five years, the CRB sets the standard rates that noninteractive webcasters must pay for the license to transmit sound recordings over the Internet. The rates at issue in this case were adopted by the CRB in early 2016 for the five-year period 2016 through 2020. During a hearing that lasted six weeks, the CRB reviewed evidence presented by 15 parties, including over 12,000 pages of documents and oral testimony from 47 witnesses. This was dubbed the CRB's *Web IV* proceeding, so called because it set rates for the fourth five-year term since this rate-setting procedure was adopted. The CRB set the statutory royalty rate for advertising-based noninteractive webcasters at \$0.0017 per song performance for 2016, to be adjusted in later years for inflation. This represented a reduction from the rate of \$0.0025 per performance that was in effect for the previous five-year license term.

The statute directs the CRB to establish rates and terms for the license that "most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller," taking into account economic, competitive and programming information presented by the parties. To implement this directive, the CRB has developed a process based on benchmarks. Interested parties are invited to submit relevant information, including information about voluntary license agreements negotiated for comparable services. The CRB uses this data to determine benchmark rates, largely derived from the voluntary agreements. The benchmarks then are used to establish a "zone of reasonableness." The

license rate is set within that zone.

The CRB's development of the benchmarks used in this proceeding was informed by two recent voluntary license agreements for advertising-based noninteractive services negotiated by Pandora Media and iHeartMedia. SoundExchange objected to the use of these agreements as benchmarks. Instead, it proposed reliance on agreements negotiated between interactive (rather than noninteractive) webcasters and copyright holders. SoundExchange argued that the Pandora and iHeart agreements were invalid as benchmarks because parties in the actual marketplace can simply fall back on the statutory rate if they fail to reach an agreement, thus creating a "shadow" of the statutory license. However, the CRB concluded that there was no shadow effect on the Pandora and iHeart agreements because they produced rates that were below the applicable statutory rates. The CRB reasoned therefore that these voluntary rates could not have been affected by the shadow of the statutory license.

SoundExchange also contended that in evaluating the Pandora and iHeart agreements to develop benchmarks, the CRB should have taken into account other elements of compensation, such as free advertising slots and minimum shares of certain revenues. However, the court said that the CRB had indeed examined those terms, but rejected them for lack of record evidence about how to value them.

The court observed that under precedent, it should give deference to the decision of an agency with technical expertise in the subject matter under review unless the decision is arbitrary or capricious. It found that the CRB's decisions in this case were rational and well-reasoned, and that SoundExchange had failed to present any persuasive countervailing arguments.

The decision is *SoundExchange, Inc. v. Copyright Royalty Board and Librarian of Congress*, 2018 U.S.App. LEXIS 26419.

Temporary Zoning Not Fatal

The FCC's Media Bureau has denied an Informal Objection against an FM station's license application asserting that the station was only constructed temporarily because the applicant had built the tower to support its antenna on the basis of a Temporary Use Permit approved by the local land use authority. The Commission's rules and prior decisions mandate that an applicant for a broadcast license to cover a construction permit may not rely on temporarily constructed facilities to satisfy construction requirements. The Bureau ruled that the facilities constructed for KAZV(FM), Aguila, Arizona, were not temporary and it granted the license application in a Letter Decision (DA 18-712).

In October 2015, Matinee Media Corporation filed an application to modify the construction permit for the unbuilt facilities of KAZV, proposing a 365-foot guyed tower at a site between Aquila and Wickenburg, Arizona. Processing of this application was delayed due to issues relating to leasing, environmental compliance, FAA compliance and local zoning. In July 2017, Matinee applied for a Special Use Permit from Maricopa County to build the tower. By October, the County had not acted on this application. Mindful of the imminent expiration of the FCC construction permit on December 26, 2017, Matinee applied to the County in October for a Temporary Use Permit which it hoped could be processed more quickly. On December 6, Maricopa County issued a Temporary Use Permit that was valid for nine months while the County continued to process the application for the Special Use Permit. The Temporary Use Permit allowed for a 199-foot guyed tower. Matinee amended the FCC construction permit application to specify a 150-foot tower so as to come within the parameters of the Temporary Use Permit. The Bureau approved this amendment on December 18. Matinee expedited construction activities and filed the license application on the last day of the life of the construction permit – December 26, 2017.

Taking the position that the KAZV construction permit had expired on December 26 without a valid application for a license to cover and that the channel was therefore vacant, Entravision Holdings, LLC, filed an application on December 27 for modifications to its station, KVVA-FM, Apache Junction, Arizona, that was mutually exclusive with Matinee's license application for KAZV. Entravision also filed an Informal Objection against the KAZV license application. Entravision's principal allegation was that the station as constructed by Matinee was only a last-minute temporary facility that did not merit the Bureau's validation.

Entravision contended that the Temporary Use Permit under which Matinee had received zoning approval for the KAZV tower was evidence that the station's facilities must be considered as temporary. If the Temporary Use Permit expired in nine months without the issuance of a Special Use Permit by Maricopa County, the station would have to be

dismantled. Entravision cited the Commission's decision in *Tango Radio, LLC*, to support its argument.

In *Tango* and subsequent similar cases, the Bureau explained that the Commission had targeted a recurring abuse of the agency's processes by permittees facing the imminent expiration of a construction permit. Permittees were found to have erected makeshift facilities for the sole purpose of applying for a license to cover the permit and then to have immediately dismantled the station upon grant of the license application. In some of these cases, the antenna was mounted on a temporary support such as a crane. To qualify as valid, the station facilities must endure beyond the de minimis period necessary for filing a license application.

The Bureau ruled that Matinee's construction pursuant to a short-term local zoning permit did not implicate the Commission's prohibition on temporary construction. Although the Temporary Use Permit granted zoning permission for only nine months (with a possible extension), both the County and Matinee anticipated that the Special Use Permit would be granted within the nine-month window so that no interruption in service would occur. The Bureau concluded that a local zoning or other permit need not be "permanent" or of indefinite duration to satisfy the Commission's licensing requirements.

Matinee had disclosed that it intended to apply for a permit for an increase in the tower height in the future if circumstances allow. Entravision argued that this illustrated the temporary nature of the existing shorter facilities. However, the Bureau responded that a licensee's stated intention to upgrade its facilities in the future does not show that its facilities are inadequate or impermissibly temporary. To the contrary, the Bureau said that such plans for improvements at Matinee's licensed site tend to prove, rather than disprove, its long-term commitment to serve its community of license.

Entravision also claimed that Matinee violated the terms of the Temporary Use Permit when it constructed a 150-foot tower rather than the 199-foot tower allowed under the Permit. Entravision equated this to an applicant's failure to obtain a landowner's permission to construct a tower, which is usually a fatal defect in an application. The Bureau refused to address this issue, relying on the Commission's long-standing policy of leaving the enforcement of local zoning and permitting matters to the appropriate local government authorities with the expertise and jurisdiction to deal with them.

The Media Bureau granted Matinee's application and dismissed Entravision's application to modify KVVA-FM because it failed to protect KAZV. Entravision has filed a Petition for Reconsideration of this Letter Decision, which remains pending.

Unauthorized Power Reduction Leads to \$18K Fine

The FCC's Media Bureau has fined Roy Henderson \$18,000 for an assortment of rule violations stemming from the unauthorized operation of his station, WBNZ(FM), Frankfort, Michigan, at a power level substantially below the station's authorized effective radiated power for approximately 17 months. The Bureau has finalized this penalty in a *Forfeiture Order* (DA 18-776) in which it adopted without modification the sanctions proposed previously in a *Notice of Apparent Liability for Forfeiture* (DA 18-562) ("NAL").

WBNZ went silent on January 21, 2015. Henderson explained in his request for a Special Temporary Authority ("STA") to remain silent, filed on February 6, 2015, that the station had experienced flooding due to a broken water main. In the March letter granting the STA, the Bureau instructed Henderson that the station must return to the air by January 21, 2016, or suffer expiration of the license pursuant to Section 312(g) of the Communications Act, which mandates license expiration when a station has been silent for 12 consecutive months. Having heard nothing further about this situation, the Bureau sent Henderson an operational status inquiry on May 26, 2016. After multiple rounds of correspondence, Henderson demonstrated to the Bureau's satisfaction that the station had resumed broadcasting on February 19, 2015, and that the absence of notice to the FCC about this resumption was merely a clerical oversight.

However, in the course of the investigation about the station's silent period, it came to light that on April 29, 2015, a power surge caused by a lightning strike had damaged the WBNZ transmitter. The station thereupon had to use a smaller transmitter. As a result, the maximum ERP that the station could achieve was only 1,400 watts. WBNZ is licensed for 50,000 watts. This disclosure came in a declaration by a contract engineer, submitted to the Commission on September 12, 2016, as part of Henderson's effort to demonstrate that the station had indeed resumed broadcasting.

On that same day, September 12, 2016, Henderson filed a request for an STA to operate WBNZ with reduced power. In the request, he stated that "due to transmitter and power issues, WBNZ is currently operating at the reduced power of 1.4 kW. Licensee requests . . . to operate at this reduced power

level for the next 180 days." The Bureau granted this STA on February 26, 2018.

Upon review, the Bureau concluded that Henderson violated several Commission rules during the course of this episode. Sections 73.1350(a) and 73.1745(a) require a licensee to operate the station within the terms of its authorization. By operating at reduced power without a special authorization, Henderson had failed to comply with these rules. When necessary, an STA may be requested as set out in Section 73.1635. However, the Bureau found that Henderson's request, coming nearly 17 months after the transmitter disability arose, was not timely and therefore not in accord with the rule. Finally, the Bureau cited Section 1.17 which states that no person may submit in a written statement to the Commission "material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading" In his September 2016 request for the STA, Henderson failed to disclose that the station had been operating with reduced power since April 2015. The Bureau judged this to be a material misleading omission.

To calculate the amount of the proposed forfeiture, the Bureau relied on the guidelines in the Commission's *Forfeiture Policy Statement* and Section 1.80 of the agency's rules. The base amount specified for operating without an authorization is \$10,000. Although WBNZ had a license, it was not operating within the parameters of that or any authorization for nearly 17 months. The base amount for a fine for failing to file a required form is \$3,000. Henderson should have filed the request for an STA to operate with reduced power promptly after the transmitter was damaged. The guidelines do not list a base forfeiture amount for omitting material factual information in a written document. For that offense, the Bureau simply proposed a fine of \$5,000. Although the Commission's policy allows for discretionary adjustments to the base amount of a forfeiture, the Bureau proposed the base amounts for these fines without adjustments, totaling \$18,000. Having received no response to the NAL, the Bureau adopted a *Forfeiture Order*, fining Henderson the full \$18,000.

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