

Nationwide EAS Test Set for September 20

The FCC’s Public Safety and Homeland Security Bureau has announced that the Federal Emergency Management Agency (“FEMA”), in coordination with the FCC, will conduct the next nationwide test of the Emergency Alert System (“EAS”) on September 20, 2018. The back-up date will be October 3.

FEMA will initiate the event with the transmission of a test message over the Wireless Emergency Alert system to wireless devices throughout the United States and territories at 2:18 p.m. Eastern Time. Directly after that at 2:20 p.m., FEMA will conduct a live test of the EAS that all EAS Participants, including broadcast stations, will be required to broadcast. The message will be disseminated via the Integrated Public Alert and Warning System. The Bureau says that the test message will be transmitted in English and Spanish, and will include both audio and text material that can be used in a video crawl.

All EAS Participants must register for the test on the FCC’s EAS Test Reporting System (“ETRS”), which can be accessed at <https://www.fcc.gov/general/eas-test-reporting-system>. The Commission requires each EAS Participant to submit three forms to help the agency collect and assess test

continued on page 8

Procedures Proposed for Reimbursing LPTV and FM Repack Expenses

The FCC has proposed rules and procedures for reimbursing the licensees of low power television and television translator stations (collectively, “LPTV”) and FM stations who incur costs as a result of the disruption to broadcast facilities caused by the television spectrum incentive auction. The details are laid out in a *Notice of Proposed Rulemaking and Order* in Docket 18-214.

Congress made funds available for LPTV and FM reimbursements earlier this year in the Reimbursement Expansion Act (“REA”) when it added \$1 billion in new funding to the \$1.75 billion previously allotted to the Television Broadcaster Relocation Fund for full power and Class A television stations, and multichannel video programming distributors (“MVPDs”). To obtain access to the additional

continued on page 6

FCC Creates Radio Incubator Program

In what it describes as an “incubator” program, the FCC has adopted a framework intended to “support the entry of new and diverse voices into the broadcast industry” in a *Report and Order* in Docket 17-289. The Commission expects to foster successful incubation relationships that will enable the acquisition of a radio station by a new entrant, or the preservation and enhancement of an existing small broadcaster. Under the program, established and experienced broadcasters will undertake to help – or to incubate – new entrants or small struggling station owners to become successful independent owners and operators of radio stations. In return for that help, the established broadcaster will be eligible for favorable treatment on a request for a waiver of the radio station multiple ownership limit in the same market or in a comparable market. The program is presently available only for radio stations.

The structure of the incubation relationship will be set out in the form of a contract between the parties, requiring FCC approval. If the project involves building a new station or acquiring an existing station, the incubation proposal and

continued on page 7

IN THIS ISSUE

FCC Filing Fees To Rise September 4	2
TPO Overage of 2.5 Watts Draws \$12K Fine.....	3
FCC To Publish Report on State of Marketplace for Audio Programming.....	3
Deadlines to Watch	4-5

For more information about or help with any of the items reported in **Antenna™** please contact:

pillsbury

1200 Seventeenth St. NW
Washington, D.C. 20036

Tel: 202.663.8167

Fax: 202.663.8007

E-mail: scott.flick@pillsburylaw.com

FCC Filing Fees To Rise September 4

The FCC has announced increases in the fees charged for applications and other filings, to become effective September 4, 2018. The Commission is required by the Communications Act to review its schedule of filing fees every two years, and if necessary, to adjust them to reflect changes in the Consumer Price Index. The Commission states that the Consumer Price Index for all Urban Consumers increased by 3.7% from October 2015 to October 2017. Accordingly, the FCC is generally increasing its filing fees at similar rates. The agency was not

required to propose these adjustments and publish them for public comment in advance of adopting them because the Commission is mandated by statute to make these changes.

The following chart shows the current charge and the new figure for most of the filing fees of interest to broadcasters. These fees are listed in Section 1.1104 of the Commission's rules. They pertain to filings for commercial stations only. Applications for noncommercial stations and applications filed by government entities are fee-exempt.

APPLICATION TYPE	CURRENT FEE	NEW FEE
Full power and Class A Television		
New and major change construction permit	\$4,785	\$4,960
Minor change construction permit	1,070	1,110
New license	325	335
Rulemaking petition	2,955	3,065
AM Radio		
New and major change construction permit	4,255	4,415
Minor change construction permit	1,070	1,110
New license	700	725
Directional antenna	805	835
Remote control	70	70
FM Radio		
New and major change construction permit	3,830	3,975
Minor change construction permit	1,070	1,110
New license	220	225
Directional antenna	670	695
Rulemaking petition	2,955	3,065
TV, Class A TV, AM and FM		
License renewal	190	200
Assignment/transfer of control (long form)	1,070	1,110
Assignment/transfer of control (short form)	155	160
Call sign	105	110
Special temporary authority	190	200
Ownership report	70	70
FM translator, FM booster, LPTV, TV translator, TV booster		
New and major change construction permit	805	835
New license	165	170
License renewal	70	70
Special temporary authority	190	200
Assignment/transfer of control (all forms)	155	160

TPO Overage of 2.5 Watts Draws \$12K Fine

The Region Three Regional Director of the FCC's Enforcement Bureau has issued a *Forfeiture Order* against Ondas de Vida, Inc. ("OdV"), the licensee of FM translator station K256BS, Palmdale, California, fining OdV \$12,000 for operating the station with power higher than authorized in its license.

The FCC's Los Angeles Field Office issued a *Notice of Violation* on April 11, 2016, advising OdV that the station was over powered, in violation of the Commission's rules and the parameters of its license. OdV responded that when its regular transmitter had been sent out for repairs, it had borrowed and temporarily used a higher-power transmitter. The repaired transmitter was returned in March and OdV reported that since then, with the help of the FCC inspector, "we are operating in full compliance with the FCC license."

However, during a follow-up visit on May 10, 2016, the FCC field agent determined that the station continued to operate with a transmitter power output ("TPO") of 7.5 watts, whereas the license authorized a TPO of 5.0 watts. The agent calculated that operating with the TPO at 7.5 watts would produce an effective radiated power ("ERP") of 33.7 watts. The station was licensed for a maximum ERP of 10 watts. The agent visited the station again on February 21 and 22, 2017, and found that it continued to broadcast with excessive ERP. This resulted in the issuance of a *Notice of Apparent Liability for Forfeiture* ("NAL"), proposing a \$12,000 fine.

OdV objected to the NAL, arguing that after the field agent's May 10, 2016, measurements, the Commission

should have informed OdV of its findings and allowed OdV to take corrective measures before proceeding to issue an NAL. OdV said it had believed in good faith that operating with the TPO at 7.5 watts was necessary to achieve the authorized ERP of 10 watts because the station's antenna was not functioning properly. OdV asserted that "the FCC agent had an obligation to notify it in the event he believed the operation was non-compliant to allow [OdV] to investigate and correct the situation."

The Bureau rejected these arguments. It said that the FCC has no obligation to inform a party of rule violations that the agency has discovered before commencing a forfeiture proceeding. The Commission is not required to issue even one notice of violation, much less the second notice that OdV apparently thought that it deserved. Furthermore, it is the licensee's obligation to know how to operate its facility within the parameters of its authorization. The Bureau noted that the seemingly small TPO overage of only 2.5 watts actually resulted in an operation with power at 150% of the licensed limit. The Commission's rules would permit a TPO of up to 105% of the authorized power.

The baseline amount listed in Section 1.80 of the Commission's rules for a fine for exceeding power limits is \$4,000. The agency has the discretion to adjust this amount in specific cases, taking into account, among other things, the nature, circumstances, extent and gravity of the violation. Assessing the circumstances of this case, the Bureau had proposed in the NAL to triple the baseline amount, and it affirmed that decision in the *Forfeiture Order*.

FCC To Publish Report on State of Marketplace for Audio Programming

The FCC's Media Bureau is soliciting public comment to provide information and data that will, in part, become the basis for a report to Congress on the state of the marketplace for audio programming. Legislation enacted this year amended the Communications Act to require the FCC to produce a *Communications Marketplace Report* during the last quarter of every even-numbered year. The Commission is to assess the state of competition in the communications marketplace, including competition to deliver audio programming among terrestrial broadcast stations, satellite radio, and providers of content via the Internet to mobile devices.

The Bureau requests comment on the criteria or metrics that could be used to evaluate the state of competition in the audio programming marketplace, as well as comment and information on industry data, competitive dynamics, and trending factors. The Bureau seeks data for 2016 and 2017, and notable trends and developments that have occurred in 2018. Commenters can request confidential treatment for their submissions. Suggested topics for comment include:

- identification and ownership of key participants in the audio marketplace, and the business models and competitive strategies employed by those participants;
- trends in service offerings, pricing and consumer behavior;
- the extent of competition among audio marketplace participants – both intramodal and intermodal;
- ratings, subscribership, and revenue information, for the marketplace as a whole and for individual participants;
- capital investment, innovation and the deployment of advanced technology;
- requirements for entry into the marketplace;
- recent entries into and exits from the marketplace.

The Bureau also invites comment on whether laws, regulations and/or regulatory practices pose a barrier to or otherwise affect competitive entry into the marketplace, or competitive expansion by existing participants.

Comments will be due in Docket 18-227 within 30 days after notice of this proceeding is published in the Federal Register. The deadline for reply comments will be 45 days after that publication.



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

- August 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 **California, Illinois, North Carolina, South Carolina and Wisconsin.**
- August 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 **California.**
- August 1, 2018 Deadline for all broadcast licensees and permittees of stations in **California, Illinois, North Carolina, South Carolina and Wisconsin** 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).
- 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.**
- 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.**
- 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).

Deadlines for Comments in FCC and Other Proceedings

DOCKET	COMMENTS	REPLY COMMENTS
--------	----------	----------------

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

- | | | |
|--|--------------------------------|--------------------------|
| Docket 18-230; Public Notice
Transfer of Control of 56 full power, Class A, and translator television stations from Raycom Media, Inc. to Gray Television, Inc. | Aug. 27
(Petitions to deny) | Sep. 11
(Oppositions) |
| Docket 18-119; NPRM
FM translator interference | | Sep. 5 |
| Docket 18-184; NOI
FM Class C4 | | Sep. 10 |
| Docket 15-94; FNPRM
Emergency Alert System | Sep 10 | Oct. 9 |
| Docket 18-202; NPRM
Children's Television Programming Rules | Sep. 24 | Oct. 23 |
| U.S. Copyright Office
Docket 2005-6; NPRM
Copyright royalty reporting practices of cable systems | Oct. 4 | Oct. 25 |
| 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 | FR+60 | FR+90 |
| Docket 18-214; NPRM
Repack reimbursement for LPTV and FM stations | FR+30 | FR+60 |
| Docket 18-227; Public Notice
Status of competition in marketplace for audio programming | FR+30 | FR+45 |

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

DEADLINE FOR APPLICATIONS TO REGISTER OR LICENSE EXISTING SATELLITE EARTH STATIONS IN 3.7-4.2 GHZ BAND OCTOBER 17, 2018



DEADLINES TO WATCH



Cut-Off Date for AM and FM Applications to Change Community of License

The FCC has accepted for filing the AM and FM applications identified below proposing to change each station's community of license. These applications may also include proposals to modify technical facilities. The deadline for filing comments about any of the applications in the list below is **September 28, 2018**. Informal objections may be filed anytime prior to grant of the application.

PRESENT COMMUNITY	PROPOSED COMMUNITY	STATION	CHANNEL/FREQUENCY
Bagdad, AZ	Cienega Springs, AZ	New	296 101.7
Booneville, AR	Waldron, AR	KQBK	284 104.7
Waldron, AR	Mansfield, AR	KHGG-FM	278 103.5
Norfolk, CT	Canaan, CT	WSGG	207 89.3
Valparaiso, IN	Hobart, IN	WAKE(AM)	N/A 1500
Boston, MA	Quincy, MA	WMEX(AM)	N/A 1510
Mertzon, TX	Christoval, TX	KOTY	240 95.9

Lowest Unit Charge Schedule for 2018 Political Campaign Season

During the 45-day period prior to a primary election or party caucus and the 60-day period prior to the general election, commercial broadcast stations are prohibited from charging any legally qualified candidate for elective office (who does not waive his or her rights) more than the station's Lowest Unit Charge ("LUC") for advertising that promotes the candidate's campaign for office. Lowest-unit-charge periods are imminent in the following states.

STATE	ELECTION EVENT	DATE	LUC PERIOD
Alaska	State Primary	Aug. 21	July 7 – Aug. 21
Arizona	State Primary	Aug. 28	July 14 – Aug. 28
Delaware	State Primary	Sept. 6	July 23 – Sept. 6
Florida	State Primary	Aug. 28	July 14 – Aug. 28
Guam	Territory Primary	Aug. 25	July 11 – Aug. 25
Massachusetts	State Primary	Sept. 4	July 21 – Sept. 4
New Hampshire	State Primary	Sept. 11	July 28 – Sept. 11
Rhode Island	State Primary	Sept. 12	July 29 – Sept. 12
Wyoming	State Primary	Aug. 21	July 7 – Aug. 21
United States	General Election	Nov. 6	Sept. 7 – Nov. 6

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
State EAS Plans	Aug. 17
Broadcast EEO policy, Section 73.2080	Aug. 27
Antenna structure registration application, Form 854	Sep. 4
Closed captioning of video programming delivered via the Internet	Sep. 4
Application for FCC consent to pro forma broadcast station assignment or transfer of control, Form 316	Sep. 10
Application for FM translator and booster station, Form 349	Sep. 21

NATIONWIDE EAS TEST

TEST DATE: SEPTEMBER 20, 2018

FORM ONE DUE: AUGUST 27, 2018

FORM TWO DUE: SEPTEMBER 20, 2018

FORM THREE DUE: NOVEMBER 5, 2018

TELEVISION REPACK FOR STATIONS ASSIGNED TO PHASE 1

TESTING PERIOD BEGINS: SEPTEMBER 14, 2018

COMPLETION DEADLINE: NOVEMBER 30, 2018

Procedures Proposed for Reimbursing LPTV and FM Repack Expenses

continued from page 1

funding, the FCC must certify to the Secretary of the Treasury that the funds available prior to enactment of the REA are likely to be insufficient to reimburse the reasonably incurred costs of full power and Class A TV stations and MVPDs. The Commission has previously determined that the original allocation of \$1.75 billion would be inadequate.

The REA appropriates \$600 million for fiscal year 2018 and \$400 million for fiscal year 2019. Of the \$600 million authorized for fiscal year 2018, not more than \$350 million is to be used for reimbursements to full power and Class A television stations; not more than \$150 million for LPTV stations; not more than \$50 million for FM stations; and \$50 million for consumer education related to the reorganization of television spectrum. The REA is silent about how to use the \$400 million earmarked for fiscal year 2019. The Commission seeks comment on whether this funding could be or should be divided among the various categories of stations as was the 2018 money, or whether it must simply supplement the funds already appropriated for full power and Class A television stations and MVPDs.

In the spring of this year, the Commission conducted a Special Displacement Window in which LPTV stations that were displaced by the incentive auction and the television repack could file applications for modifications to overcome the displacement. To be eligible for reimbursement under the REA, an LPTV station must have filed an application in the Special Displacement Window. LPTV stations in the so-called Phase 0 who were required to vacate their channels early due to early broadband build-out and filed their displacement applications before the Window will also qualify. A station must have a granted application to receive reimbursement. The Commission will not waste funds on costs incurred for an application that does not result in a construction permit. However, that granted application need not necessarily be the one filed in the Window. If the Window application was not granted because it was mutually exclusive with another application or because the station was displaced again, the grant of a successor application could qualify for reimbursement.

The FCC released the post-auction television channel assignment plan on April 13, 2017, specifying the modifications that would be required for full power and Class A stations. In so doing, it also indicated by implication which LPTV stations would be displaced. The REA provides that only LPTV stations that were licensed and transmitting for at least nine of the 12 months prior to April 13, 2017, are eligible for reimbursement. The Commission proposes to define “transmitting” for this purpose to equate to the minimum operating requirement for commercial full power stations – which is at least two hours on each day of the week and a minimum of 28 hours per calendar week. To meet the REA minimum requirement, the LPTV station would have been operating with at least this minimal schedule during nine of the 12 months just before April 13, 2017.

Full power and Class A stations are generally eligible to receive reimbursement that is reasonable to provide facilities “comparable” to those that were in place prior to the auction. The Commission does not believe that this “comparable”

standard should be applied to LPTV stations. LPTV stations may need to relocate to a different coverage area, and therefore need more power and/or height to reach their original service areas. This may require the purchase of equipment that is not “comparable” to the original equipment. The Commission proposes to reimburse only the “reasonably incurred” costs for LPTV. This might not include the cost of upgraded equipment to reach the station’s original service area. Stations will be encouraged to reuse existing equipment and take other measures to mitigate costs.

The Commission proposes to cover both “hard” expenses (such as equipment) and “soft” expenses (such as legal and engineering services) for LPTV stations. However, if necessary due to the shortage of funds, the Commission suggests that it would prioritize hard expenses over soft expenses.

The REA prohibits reimbursement of a station’s lost revenues. The FCC proposes that it would not therefore reimburse a station for lost income from the sale of advertising or air time while the station is dark for renovations.

Reimbursement for costs incurred to resolve mutually exclusive applications is also prohibited by the REA. The Commission tentatively concludes that it cannot therefore fund the cost of settlements between mutually exclusive applicants or the costs incurred in the auction that will be held to finally resolve conflicts that remain unsettled.

The Commission invites comment on the question of whether stations that receive or have received reimbursement from other sources (including funding that occurred before the REA was enacted) should be eligible for reimbursement of those same expenses from the funds authorized by the REA.

As noted above, the REA also authorizes reimbursement to FM stations that experience disruptions to their operations because they are collocated with or located nearby one or more television stations whose facilities are modified in the repack. The REA expressly covers both full power FM stations and FM translators. The FCC asks whether low power FM stations should also be eligible for reimbursement. The agency has tentatively concluded that to be eligible for reimbursement, an FM station must have been licensed and transmitting from facilities impacted by the auction and/or the repack on April 13, 2017.

Disruptions to FM stations caused by the television repack will not require any channel changes. All such disruptions will result from physical changes to television facilities that operate with or near the FM station. The Commission proposes to divide affected FM stations into three categories: (1) stations forced to relocate their antenna sites permanently; (2) stations forced to temporarily dismantle equipment or make other changes not requiring FCC approval; and (3) stations forced to temporarily reduce power or cease transmission on their primary facility to accommodate antenna or tower modifications.

The Commission proposes that eligible costs for Category (1) and Category (2) stations are similar to the eligible costs for full power and Class A television stations, and therefore

continued on page 8

FCC Creates Radio Incubator Program continued from page 1

contract will be filed as an exhibit with the Form 301, 314 or 315 application. If the incubation plan does not involve such an application, the proposal is to be submitted to the Commission with a petition for declaratory ruling and filed in the docket for this proceeding, Docket 17-289. The Commission envisions that the typical incubation period would last three years, with the possibility of a three-year extension if needed.

To qualify for incubation under this program, an entity must be both a new entrant in broadcasting and a small business. To meet the new-entrant criterion, the entity must not have an attributable interest in more than three full-service AM or FM stations (including unbuilt construction permits) aside from the station that is the subject of the incubation, and it must not have an attributable interest in any television station. To qualify as a small business, the entity must have annual revenues of not more than \$38.5 million. The incubated entity must demonstrate that it met these criteria continuously during a three-year period prior to the submission of the incubation application to the FCC.

The incubated entity will be required to certify in its application that it would be unable to acquire a station, or to continue to operate successfully its existing station proposed for incubation, absent the proposed incubation relationship and the funding, support and/or training to be provided by the incubating party. The applicant to be incubated must also disclose the attributable broadcast interests, if any, held by the family members of the applicant's owner(s).

The Commission states that key factors involved in the evaluation of incubator proposals will be whether: (1) the potential incubated entity could obtain the necessary financing and support from another source absent the incubator program; (2) the proposal provides for a relationship that addresses the incubated entity's needs for support (including financial, technical, managerial, etc.) to become capable of owning and operating a station independently after the relationship has ended; and (3) the incubated entity retains *de jure* and *de facto* control over the station.

The parties will have a high degree of flexibility to structure an incubation plan that takes into account the needs of the incubated entity, the realities of the marketplace and the needs of the community in which the station operates. Elements of support might include, among other things, training in management, sales, programming or engineering. The incubating party might provide financing by way of a loan or an equity investment, or assist in obtaining bank financing. The Commission would look with favor on a request for a temporary waiver of the multiple ownership rules if necessary to accommodate the incubating entity's attributable interest in the station. The incubating entity could also provide support to the incubated entity by way of a joint sales agreement or a shared services agreement for not more than the first two years of the incubation period. By the third year, the incubated station staff will need to step into more independent roles in operating the station. The Commission expects the incubation project to be an opportunity for new entrants and inexperienced broadcasters to obtain valuable hands-on experience while in a tutored environment.

Although the Commission encourages the parties to work closely together to make the incubated station successful, the agency emphasizes that the incubated entity must always remain in complete control of all aspects of the station, including decision-making about programming, personnel, and finances. The incubated entity must hold more than 50 percent of the voting control of the licensee. If the licensee is not a publicly traded company, the incubated entity must also hold at least 15 percent or 30 percent of the equity in the licensee, depending on whether someone else owns or controls more than 25 percent. If the incubating entity takes an equity position in the licensee, the parties' agreement must give the incubated entity an option, but not an obligation, to purchase at fair market value the other party's equity interest at the conclusion of the incubation period. None of the officers, directors, managing partners, or managing members of the incubated entity may hold an attributable interest in or be an employee of the incubating entity. The incubated station may not be the subject of a local marketing agreement, time brokerage agreement, or similar arrangement, with the incubating entity or anyone else.

At the end of the incubation period, the incubated entity will have the option to retain its controlling interest in the station without purchasing the incubating entity's interest; to purchase the incubating entity's interest, if any; or to sell its interest in the incubated station and use the proceeds to purchase a different full-service AM or FM station. In this event, the incubating entity is expected to assist in identifying target stations and obtaining financing, if necessary, for the purchase.

Upon the successful completion of the incubation period, the incubating entity will be rewarded with a rebuttable presumption that the public interest would be served by granting it a waiver of the radio multiple ownership cap (including the AM/FM subcap) so that it could acquire one additional station in the market where the incubation occurred or in a comparable market. To receive the reward waiver, the incubating entity must certify (1) that it complied in good faith with its incubation agreement, as approved by the Media Bureau, and the requirements of the incubator program, and (2) that the incubated entity holds a controlling interest in the incubated station or a newly acquired full-service AM or FM station, or if the incubated station was a struggling station, that the incubation relationship has resolved the station's financial and/or operational difficulties.

A "comparable" market is one that would fall within the same market size tier under the local radio multiple ownership rule, and in which the number of independent owners of full-service commercial and noncommercial stations is not fewer than the number of such owners that existed in the incubation market at the time that the incubation proposal was first submitted to the FCC. Nonetheless, a reward waiver cannot be used where it would result in the incubating entity holding attributable interests in more than 50 percent of the full-service commercial and noncommercial stations in the market (unless such a combination would comprise not more than one AM and one FM station). The incubating entity will have three years

continued on page 8

Nationwide EAS Test Set for September 20 continued from page 1

results. Form One is to be submitted via ETRS by August 27. Form Two, the “day of test” report, must be filed by 11:59 p.m. Eastern Time on September 20. Post-test information will be filed on Form Three by November 5.

The Bureau encourages EAS Participants to take steps, in coordination with the State Emergency Communication Committees, to prepare for the test. Such measures might include:

- ensuring that a copy of the EAS Operating Handbook is located at normal duty positions, and/or EAS equipment locations, and is otherwise immediately available to operators;
- reviewing the EAS Operating Handbook for the actions to be taken by operators upon receipt of the test alert;
- ensuring that EAS equipment can receive and process the national periodic test code, the “six zeroes” national location code, and otherwise operate in compliance with the Commission’s rules;
- upgrading EAS equipment software and firmware to the most recent version;
- reviewing the 2017 ETRS Form One filing to identify and make necessary updates to the information previously provided; and
- ensuring that EAS equipment clocks are synchronized to the official time provided by the National Institute of Standards and Technology.

FCC Creates Radio Incubator Program continued from page 7

in which to request the reward waiver. An incubating entity will be limited to not more than one incubator relationship at a time in any given market, and it will be limited to only one waiver in any market. A reward waiver will be assignable to the purchaser of the intact station cluster with which it was associated when issued.

This *Report and Order* was adopted by a 3-1 vote. The three Republican Commissioners, voting in the majority, each released a separate Statement warmly supporting the incubator program and predicting that it would succeed in providing a path for entry into the broadcast industry for minorities and women. On the other hand, the panel’s lone Democrat, Commissioner Jessica Rosenworcel, voted against adoption of this *Report and Order*. In her separate Statement, she called this effort “the most modest of proposals.” She decried the policy of encouraging more media concentration, and said of this incubator program that “Its scope is too narrow, its consequences too small, and its impact on markets too muddled.”

Procedures Proposed for Reimbursing LPTV and FM Repack Expenses continued from page 6

proposes to reimburse them in the same manner. If sufficient funds are available, the agency proposes to reimburse up to 100% of the reasonable costs incurred by Category (1) and (2) stations.

Stations in Category (3) may pose different circumstances. The Commission proposes an interpretation of the REA that would not require it to reimburse FM stations for “reasonable disruptions” in service similar to those incurred for ordinary construction or maintenance requirements. The cost of auxiliary facilities for interim operations to overcome more serious disruptions may be reimbursed – but only if the station does not already have auxiliary facilities capable of covering at least 80 percent of the full facility coverage area or population. The Commission proposes to prioritize eligibility for reimbursement for interim facilities according to the length of time that the primary authorized signal is disrupted per the following scale:

- Stations off air for less than 24 hours, or off air only during hours from 10:00 p.m. to 6:00 a.m., or less than five non-peak hours per day: no reimbursement.
- Stations off air for 24 hours to 10 days: up to 50 percent of eligible costs.
- Stations off air for 11 days to 30 days: up to 75 percent of eligible costs.
- Stations off air for more than 30 days: up to 100 percent of eligible costs.

If funds are available, the Media Bureau would have discretion to increase these levels of reimbursement.

As with LPTV, the Commission says that it will not reimburse stations for lost revenues. FM stations are also encouraged to mitigate their expenses and reuse existing equipment when possible.

The Commission proposes to adopt a reimbursement process of LPTV and FM stations similar to that in effect for full power and Class A television stations. Stations would be required to file eligibility certifications, estimates of expenses, and reports to document and claim expenses for reimbursement.

The FCC solicits comments on these and related proposals in Docket 18-214. Comments are to be filed within 30 days of publication of notice of this proceeding in the Federal Register. The deadline for reply comments will be 60 days after that publication.

The Pillsbury Law ANTENNA™ is an information service about current events in communications law published by Atlantic Star Media, Inc. This publication is produced only to report on current events and factual matters in the field of communications law. Publication and dissemination of this material is not intended to constitute the practice of law or the rendering of legal advice. No attorney-client relationship shall be deemed to exist between the provider and the reader or between the publisher and the reader as a result of the publication, dissemination, distribution or other use of this material. The publisher makes its best effort to ensure that the information reported is accurate, but no warranty, express or implied, is given as to the accuracy or completeness of any information or statement published herein. Copyright 2018 by Atlantic Star Media, Inc. All rights reserved.