

## FCC Looks to Eliminate EEO Mid-Term Reports

The FCC has released an advance draft copy of a Report and Order that would amend Section 73.2080 of its rules to eliminate the requirement for broadcast stations to file EEO Mid-Term Reports (Form 397). If adopted, the order would implement proposals that the Commission made in its *Notice of Proposed Rulemaking* in Docket 18-23 early in 2018.

Presently, radio stations with 11 or more full-time staff members and television stations with a full-time staff of five or more are required to submit a Form 397 four months prior to the fourth anniversary of the expiration of the station's last license term — which would ordinarily be the halfway point

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## License Posting Rules Abolished

The FCC has amended its rules to eliminate the requirements for broadcast stations to post copies of their licenses at certain locations. This action was taken in a *Report and Order* (FCC 18-174) in Docket 18-121 as a part of the Commission's comprehensive effort to modernize its rules.

The earliest regulations requiring broadcasters to post their licenses in conspicuous places were adopted in 1930 by the FCC's predecessor, the Federal Radio Commission. The FCC's most recent rules required broadcasters to post a copy of the license at the station's control point. The agency has now determined that these requirements are obsolete and redundant because licenses are readily available to the public on the FCC's website. Licenses for stations required to have public inspection files will be available online in those public files. Stations that do not have public inspection files will now keep a copy of the license in the files with the station's records.

An unrelated change caused by these amendments affects the rule for chief operators, Section 73.1870. Until now, the written designation of a chief operator was to be posted with the license at the station's control point. Under the new rule, the document designating the station's chief operator is to be maintained in the station's files.

These amendments to the rules will become effective as of the date of publication of a summary in the Federal Register.

## Noncom Application Processing Up for Review

Proposed changes for the FCC's rules governing the comparative standards and procedures for licensing noncommercial broadcast stations are disclosed and explained in an advance draft copy of a Notice of Proposed Rulemaking in Docket 19-3.

In recent years, the Commission has resolved over 850 groups of mutually exclusive new and major change noncommercial FM ("NCE") and low power FM ("LPMF") applications — involving nearly 3,000 applications. The comparative procedures employed to select the winning applicants in these cases were "paper hearings." The Commission evaluated applications on the basis of fair distribution criteria intended to select the proposal for a new station at the community with the greatest need for new service, and comparative points awarded for characteristics of the applicant deemed to be desirable. On the basis of this experience, the agency says that it is now positioned to re-evaluate its noncommercial comparative procedures in this proceeding. While thousands of applications were

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# NBC/Telemundo Agrees to Settle Kidvid Probe, Pays \$495K

The FCC and NBC/Telemundo have agreed to settle an ongoing investigation concerning violations of the Commission's rules about the broadcast and reporting of children's television programming at 28 television stations licensed to NBC/Telemundo subsidiaries. They have entered into a Consent Decree under which NBC/Telemundo will pay a settlement payment of \$495,000 and implement a three-year Compliance Program. In return, the Commission agreed to terminate the investigation and to grant pending license renewal applications for 23 of the stations. The Commission has adopted the Decree in an *Order* (FCC 18-188).

The investigation grew out of the Media Bureau's review of the license renewal applications for the stations filed during the 2012–2015 renewal cycle, which remain pending. The Commission has established processing guidelines under which Media Bureau staff are to evaluate a station's compliance with the Children's Television Act during the license renewal process. If a station falls short of the guidelines, its renewal application is referred to the full Commission for review. The Bureau staff determined that the NBC/Telemundo stations' children's programming practices fell short and referred these cases up to the Commission.

The guidelines call for a station to broadcast at least three hours of core programming (generally, regularly scheduled weekly programming specifically designed to serve the educational and informational needs of children, aired between 7:00 a.m. and 10:00 p.m.) per week, averaged over six months. Stations must file quarterly reports to document their compliance with the rules and guidelines.

The Bureau's examination revealed that certain of NBC/Telemundo's stations failed to meet the processing guidelines because children's programming had been preempted for coverage of sporting events. Stations can reschedule preempted children's programming and still have it counted for compliance with the guidelines. However, that rescheduling

failed to happen at certain of the NBC/Telemundo stations.

Upon review, the Bureau's staff also found that the quarterly Children's Television Programming Reports for certain stations either omitted or incorrectly reported substantive information. NBC/Telemundo subsequently provided updated and corrected information for these Reports. However, there were four stations that had failed to file timely Reports.

To help prevent these deficiencies from arising again in the future, NBC/Telemundo is subject to a Compliance Plan specified in the Consent Decree. NBC/Telemundo is to appoint a Compliance Officer to oversee compliance with the children's television programming rules by all of the company's stations — including any that may be acquired during the three-year life of the Compliance Plan. The Compliance Officer's duties are to include:

(a) Responding to employee and viewer inquiries concerning compliance with the children's programming rules;

(b) Reviewing all Children's Television Programming Reports prior to filing;

(c) Possessing requisite knowledge of the law and the rules;

(d) Reviewing preemption requests, maintaining communications with the NBC Network, and overseeing proper rescheduling procedures;

(e) Conducting any other duties deemed useful to help ensure compliance by all NBC/Telemundo stations.

The Compliance Plan also calls for annual training of all personnel at all stations whose duties relate to compliance with the children's programming rules.

The Commission directed the Media Bureau, upon receipt of the settlement payment and in the absence of any other restrictions, to grant the pending license renewal applications.

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## More Alert Codes Are Coming

In December 2017, the FCC amended its rules governing the Emergency Alert System ("EAS") to include a new "Blue Alert," to be indicated by the three-letter event code, "BLU." A Blue Alert can be initiated at the request of a law enforcement agency to signal to the public the presence or movement of a potentially dangerous suspect in connection with an incident in which a law enforcement officer has been killed, injured, or is missing in the line of duty.

Broadcast EAS participants were given one year from publication of notice of this action in the Federal Register to implement their capability to monitor and transmit Blue Alerts. That notice was published on January 18, 2018. Therefore, broadcasters' EAS receivers must be BLU-capable as of January 18, 2019. Equipment vendors have been releasing software updates during this implementation period. While stations are required to upgrade their equipment for this rule

change, actual transmission of Blue Alerts is voluntary.

On the heels of implementation of the Blue Alert comes the Ashanti Alert. Late last year, Congress passed the Ashanti Alert Act of 2018, and the President subsequently signed it into law. The Ashanti Alert is intended to help locate missing persons between the ages of 18 and 65, just as Amber Alerts are directed at locating juveniles and Silver Alerts are for seniors. Similar to the structure enacted for Blue Alerts, the Department of Justice is to name a national coordinator whose task will be to work with government authorities, including the FCC, and broadcasters to determine workable protocols within the existing EAS. Ashanti Alerts will be voluntary for broadcasters.

The law is named for Ashanti Billie, who disappeared from her job in Norfolk, Virginia, and was found dead several days later in North Carolina.

# Tort of Outrage Recognized in TV Series

A federal judge in the U.S. District Court for the Northern District of Alabama has denied a motion to dismiss filed by television producers accused in a lawsuit of committing the tort of outrage in their programming. The plaintiff is Elizabeth Holloway, the mother of Natalee Holloway, an American teenager who disappeared on a high school trip to Aruba in 2005. The defendants, Oxygen Media, LLC, and Brian Graden Media, LLC, produced and syndicated a six-part television program series about Natalee's highly-publicized disappearance which they billed as a "true crime documentary" series. Ms. Holloway alleges that the series was not a "true-crime documentary" or a legitimate "investigation." Instead, she contends that it was scripted and outrageous fiction produced and published at the expense of her severe emotional distress. In a preliminary procedural motion, the defendants asked the court to dismiss the case for failure to state a claim on which relief can be granted.

In denying the defendants' motion, the judge explained the parameters under Alabama law for the rarely alleged tort of outrage. The judge conceded that it is unusual for even the most deeply wounding conduct to give rise to civil liability for outrage. Suffering offense from insulting conduct is an unfortunate fact of life, and the law hesitates to impose money damages for causing emotional distress in the minds of others. However, in very limited circumstances, the law recognizes extremely egregious conduct that no person should be expected to endure without some sort of civil justice. The judge concluded that this case might present such outrageous conduct.

The series was entitled, "The Disappearance of Natalee Holloway," and aired in August and September of 2017. The producers marketed the program as an "unscripted" "real-time investigation" following "a new lead that could deliver justice for Natalee once and for all," including "the specifics of what happened to her and the remains of her body."

The plaintiff alleges that the "real-time" events were actually scripted, and that main characters in the series, even those depicted as unaware that they were being recorded, were paid participants. The series followed Dave Holloway, Natalee's father and Elizabeth's ex-husband, and his private investigator, T. J. Ward, as they investigated one John Ludwick, the suspect who claimed to have exhumed and desecrated Natalee's remains in Aruba, and who asserted that he knew where Natalee was buried.

Ludwick was depicted taking his roommate, Gabriel Madrigal, to identify the grave site in Aruba where Ludwick claimed to have dug up Natalee's remains. But they could not find the grave. In a second attempt, Ludwick was again unable to pinpoint the site for Mr. Holloway and Ward. Further, Ludwick told the investigators that he had burned Natalee's skull at a cave on his aunt's property in Aruba. However, he was also unable to locate the cave. At this point, the defendant producers said that they cut their ties with Ludwick "because they believed the lead to have been false and unfounded."

The series then depicts a third visit to Aruba, recorded on Madrigal's smart phone and purportedly without the defendants' knowledge. On the smart phone video, Madrigal and Ludwick stated that they "returned to Aruba for a third time to bring Natalee home," and that they knew the location of Natalee's remains because Ludwick had kept them as a "trophy." Immediately upon their arrival at Ludwick's aunt's home, Ludwick uncovered a plastic bag containing bone fragments. These fragments were supposedly part of Natalee's remains.

Thereafter, Mr. Holloway and Ward traveled to Aruba again to collect the bone fragments. Although Aruban authorities told the men that these bones were not human, defendants delivered them to a forensic expert for testing. In the course of that testing, Ms. Holloway was asked to provide a DNA sample to use in the testing. She was told that the DNA test would either match the bone fragments to Natalee or fully exclude that the bones belonged to Natalee. Ms. Holloway did not learn until later the origin of the bones and how they had been produced.

In the series, defendants conveyed that some or all of the bone fragments were human, that the bone fragments belonged to a Caucasian of European descent and that Ms. Holloway's DNA could definitively determine that the bone fragments belonged to Natalee. The last episode of the series depicts a meeting of Mr. Holloway, Ward and the forensic expert, discussing the bones. The program ends inconclusively in suspense: the test results might show a match, be inconclusive, or indicate a full exclusion. The episode and the series end without divulging the results.

Outside of the programming, it came to light that the bone fragments were from the skull of a wild boar. Ludwick admitted that he had planted them.

The judge explained that the tort of outrage is an extremely limited cause of action for the recovery of damages for severe emotional distress. The plaintiff must show that the defendant's conduct (1) was intentional or reckless, (2) was extreme and outrageous, and (3) caused emotional distress so severe that no reasonable person could be expected to endure it. The judge ruled that the allegations of the defendants' insensitive fictionalized depiction of circumstances and events following the tragic loss of a child and their careless and fraudulent references and actions with respect to the supposed remains of that child qualified to meet the criteria for inflicting outrageous emotional distress on the parent of that child.

The judge concluded that the plaintiff had pleaded with sufficient factual basis to support a claim for damages resulting from the tort of outrage and to defeat the motion to dismiss. However, for the purposes of ruling on this preliminary motion, the judge must accept the plaintiff's allegations as true. The parties now will proceed to trial for a comprehensive presentation and evaluation of the evidence. The ruling is entitled *Holloway v. Oxygen Media, LLC, and Brian Graden Media, LLC*, 2019 U.S. Dist. LEXIS 2439.



# DEADLINES TO WATCH



## Government Shutdown Affects Deadlines

As of this writing, various agencies of the United States federal government, including the Federal Communications Commission, are closed due to the lapse in funding. Some portions of the FCC’s Internet website remain operational, including the Consolidated Data Base System (CDBS), the Licensing Management System (LMS), the Electronic Comment Filing System (ECFS), the Electronic Document Management System (EDOCS) and the Universal Licensing System (ULS). Other sections are not functioning, including the Online Public Inspection Files and the Fee Filer system.

The due dates displayed below are the dates that would have pertained had the FCC not suspended operations. If the Commission remains closed until or after the deadline for a filing to be submitted to the FCC, that deadline (except for spectrum auction filings) will be extended until the second business day of normal operations when the FCC reopens. To the extent that the due date for a filing to which replies or responsive pleadings are allowed is extended, the due date for replies or responsive pleadings will be extended by the same number of days. For the purpose of calculating the due date for replies and responsive pleadings, filings submitted from January 2, 2019, until normal operations resume will be considered as filed on the second day of normal operations.

During this suspension, FCC staff will continue to perform work related to spectrum auction activities authorized by Section 309(j) of the Communications Act, including the post-incentive auction broadcast transition. All spectrum auction filing deadlines will continue to apply without extension.

### License Renewal, FCC Reports & Public Inspection Files

- January 10, 2019 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.
- January 10, 2019 Deadline to file quarterly Children’s Television Programming Reports for all commercial full power and Class A television stations.
- January 10, 2019 Deadline to file quarterly Transition Progress Reports for television stations subject to modifications in the repack.
- January 10, 2019 Deadline for noncommercial stations to file quarterly report re third-party fundraising.
- February 1, 2019 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 **Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York and Oklahoma.**
- February 1, 2019 Deadline to file EEO Broadcast Mid-term Report for all television stations in employment units with five or more full-time employees in **New Jersey and New York.**
- February 1, 2019 Deadline for all broadcast licensees and permittees of stations in **Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York and Oklahoma** 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
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(All proceedings are before the FCC unless otherwise noted.)

Docket 17-317; Public Notice Modernization of carriage election notice	Jan. 7	Jan. 17
Docket 17-105; FNPRM Deregulation of cable television framework for setting rates	Jan. 10	Feb. 11
Docket 13-249; 2nd FNPRM Protection of Class A AM stations	Jan. 22	Feb. 19
Docket 06-160; 2nd NPRM Processing applications in the Direct Broadcast Satellite Service	FR+45	FR+75
Docket 18-314; NPRM Streamlining rules governing satellite services	FR+45	FR+75
Docket 18-349; NPRM 2018 Quadrennial Review of broadcast ownership rules	FR+60	FR+90

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



# DEADLINES TO WATCH



## 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
Applications for FM translator and booster license, Form 350	Jan. 14
Applications to make changes, Sections 73.3538, 73.1690, 74.751	Jan. 14
DTV interference agreements	Jan. 14
Open video systems, Form 1275	Jan. 14
Class A television service	Jan. 22
Carriage of television signals, Part 76	Jan. 22
Application for consent to assignment or transfer of control of FM or TV translator or low power television station, Form 345	Jan. 28
Special Temporary Authorization (STA) Requests; notifications; and informal filings, Sections 1.5, 73.1615, 73.1635, 73.1740 and 73.3598; CDBS informal forms; Low Power Television, TV Translator and Class A Television Digital Transition Notifications; Section 73.3700(b)(5); post auction licensing; service rule waivers, Section 73.3700(f); Form 337	Jan. 28
Low Power FM construction permit application, Form 318	Jan. 28
TV Broadcasters Relocation Reimbursement Form; Form 2100, Schedule 399, Section 73.3700(e)	Jan. 28
Licensee-conducted contests, Section 73.1216	Jan. 28
Reimbursement from TV Broadcaster Relocation Fund, Form 1876	Feb. 25

## 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 **January 14, 2019**. Informal objections may be filed anytime prior to grant of the application.

PRESENT COMMUNITY	PROPOSED COMMUNITY	STATION	CHANNEL	FREQUENCY
Fairhope, AL	Africa Town, AL	WERM(AM)	n/a	1220
Marathon, FL	Cudjoe Key, FL	WAVK	249	97.7
Colstrip, MT	Hardin, MT	KPNC	203	88.5
Livingston, MT	Churchill, MT	KXLB	264	100.7
Indian Springs, NV	Sunrise Manor, NV	KRGT	257	99.3
Bradford, RI	North Stonington, CT	WWRX	299	107.7

## Cut-Off Date for FM Booster Application

The FCC has accepted for filing the application for a new FM booster station as described below. The deadline for filing petitions to deny this application is indicated. Informal objections may be filed any time prior to grant of the application.

COMMUNITY	PARENT STATION	CHANNEL	MHZ	FILING DEADLINE
Victorville, CA	KRXV	251	98.1	Jan. 14
Grayling, MI	WQON	277	100.3	Jan. 14

# Noncom Application Processing Up for Review continued from page 1

successfully processed, the Commission observes that certain rules confused or frustrated applicants, drew criticism, and/or delayed or curtailed the initiation of new service. Some rules appeared counterproductive or imposed undue burdens on applicants, while others appeared to omit necessary guidance. Certain inconsistencies between the rules and the forms were identified. Therefore, the Commission believes that it is now necessary to consider changes to the rules that would clarify, simplify and otherwise improve the comparative selection process for future filing windows.

Some of the characteristics that earn comparative points for an NCE applicant must be supported by commitments in the applicant's governing documents to maintain those characteristics into the future. These requirements were problematic for applicants in the NCE filing windows, and they generated much confusion and litigation among competing applicants. There was uncertainty as to what documents would qualify as "governing" and how the commitment should be expressed. Some applicants, such as state universities, had little direct control over the process for amending their charters. The Commission would propose to eliminate the requirements that governing documents contain commitments to localism and ownership diversity.

An NCE applicant can earn three points in the comparative evaluation if it has been local to the proposed community of license for at least two years prior to filing the application and commits to remaining local. Section 73.7003(b)(1) of the rules stipulates that the commitment to remain local must be incorporated into the applicant's governing documents. The Commission now proposes to eliminate the requirement that the governing documents include this commitment. The basic requirement to be local as a condition to earn the three comparative points would remain intact. Only the mandate to include a commitment to localism in the applicant's governing documents would be abolished. To ensure that a winning applicant which had been awarded localism points would indeed remain local, an applicant claiming points for localism would be required to commit in the original construction permit application form to remain local until at least four years after the station has gone on the air. The Commission would also amend the holding rule in Section 73.7005 to include a provision explicitly requiring a winning applicant that receives points for localism to remain local for the four-year holding period.

Under the comparative selection point system, two points are awarded for local diversity of ownership. To qualify, the principal community contour of the applicant's proposed station must not overlap with that of any other station in the same service in which the applicant holds an attributable interest. The applicant's governing documents must contain a commitment to maintain this diversity into the future. The Commission would propose to retain diversity as a requirement to earn the two points, but would eliminate the need for the commitment in the governing documents. As with the localism qualification, the Commission would

propose to require applicants claiming the two points for diversity to commit in the construction permit application to maintain that diversity into the future. The holding period rule would also be amended to require a prevailing applicant that was awarded points for diversity to maintain that diversity for a period of at least four years after the station begins broadcasting.

An aspect of evaluating an applicant's claim to points for diversity of ownership involves commitments to divest the applicant's existing attributable ownership interests in other stations. The general rule has been that to be eligible for diversity points, an applicant must divest itself of any relevant ownership interest that would preclude the diversity claim by the close of the filing window. There were three exceptions to this policy for radio applicants for which the Commission would accept a contingent divestiture pledge: (1) non-fill-in translator stations, (2) Class D stations, and (3) LPFM stations. In each case, the applicant is required to divest its interest in the other station before the new station goes on the air. Now the Commission would propose to expand the availability of the contingent divestiture pledge to cover interests in any station that would affect the integrity of the diversity claim. The pledge would have to be made by the close of the filing window.

Under the present rules, mutually exclusive applicants that are tied for the highest number of comparative points and that survive the tie-breaker process are subject to mandatory time-sharing. Applicants are given 90 days in which to enter into their voluntary time-sharing agreement. Failure to arrive at an agreement within the 90-day period is to be followed by a hearing on how to allocate time between or among the remaining parties. Although there have been a number of tied applicant groups subject to time-sharing, a hearing has never been designated. Instead, indefinite amounts of time have been consumed waiting for the parties to work out an agreement. The Commission would now propose, that if a voluntary time-share agreement is not reached in 90 days, it will resolve such cases by dismissing all but the three applicants that have been local for the longest periods of time. The Commission then would divide the broadcast day into three equal parts and allow the three remaining applicants to select a preferred day part. The applicants would select their preferred day parts in descending order of their longevity for being local.

Under Section 73.7005, an NCE permittee or licensee that has been on the air for less than four years and which obtained its authorization through the comparative point system may only assign its authorization to another entity that would qualify for an equal or greater number of points. As noted above, the Commission would propose to add to this section the requirement that the original permittee/licensee should maintain the same qualifications for which it earned points until the station has been on the air for four years.

A significant change that would be proposed for the LPFM selection process involves discussions between or among

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## Noncom Application Processing Up for Review continued from page 6

applicants about agreements to aggregate comparative points. Current rules allow mutually exclusive LPFM applicants to enter into voluntary time-sharing agreements. The combined group is then eligible to be awarded the sum of the total aggregated points that each individual applicant would have earned. The Commission would now clarify that applicants and prospective applicants may enter into discussions about time-sharing with the goal of aggregating their points at any time in the process. The Commission would honor such agreements if they are conditioned upon each party becoming a tentative selectee.

While the construction permit for all other broadcast services is three years in length, the LPFM construction permit lasts only 18 months. The Commission would now propose to change the length of the LPFM construction permit to three years as well.

The Commission would propose to modify its procedures for tolling NCE and LPFM construction permits. A construction permit may be tolled, i.e., suspended, if construction of the station is delayed due to causes beyond the permittee's control, such as a physical catastrophe, litigation or administrative and judicial review. The burden is on the permittee to request tolling and to report on the status of the condition that gave rise to the tolling every six months. The Commission would propose to automatically toll permits under administrative review within the FCC and upon judicial review of an FCC action, and to eliminate the need for the semi-annual reports in cases involving NCE and LPFM stations.

This article is based on an advance draft of the Notice of Proposed Rulemaking. It is subject to review and editing until it has been adopted and released by the Commission.

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## FCC Looks to Eliminate EEO Mid-Term Reports continued from page 1

in the current term.

In the draft Report and Order, the Commission found that eliminating Form 397 will advance its goal of reducing unnecessary regulatory burdens without undermining its statutorily-required mid-term reviews of broadcaster compliance with the EEO rules. Section 334 of the Communications Act directs the FCC to conduct a mid-term review of television (but not radio) stations' employment practices and to instruct them on how to improve their recruitment practices when necessary. However, the statute does not mandate the use of Form 397 or prohibit the elimination of such a form. The Commission says that it will continue to conduct mid-term reviews of broadcasters' EEO practices. However, the Form 397 is no longer needed for that process because nearly all the information in Form 397 is also available in stations' public inspection files.

The Form 397 consists of three elements: (1) a certification that the station has the requisite number of full-time employees to be subject to the mid-term review; (2) identification of a person responsible for EEO matters at the station; and (3) copies of the station's two most recent annual EEO public file reports. The last two of these elements are now available to the public in the station's online public inspection file. The station must identify its EEO-responsible person in the Form 396 which is filed at the end of each license term with the license renewal application. A station's EEO public file reports are to be maintained in the public file for the duration of the license term.

The only information currently on the Form 397 which is not otherwise available in the station's public file is information about the size of a radio station's full-time staff

needed to determine whether the station is subject to the mid-term review. While all stations with five or more full-time employees must file the annual EEO public file report, only those radio stations with 11 or more full-time employees must undergo the mid-term review. To address this issue, the Commission says that it will implement a new provision in the online public file mechanism where a radio station will disclose the size of its staff.

The Form 397 would be eliminated after the conclusion of the current mid-term review cycle which will end April 1, 2019. Television stations with due dates for their Mid-Term Report on February 1 and April 1 must still file them.

In addition to the elimination of the Form 397, in the *Notice of Proposed Rulemaking*, the Commission also solicited comment on the agency's track record for EEO enforcement, and how the agency could improve EEO enforcement and compliance. A group of 33 organizations responded to this query with concerns that the FCC has not adequately addressed the matter of word-of-mouth recruiting "conducted by a homogeneous, non-diverse staff" or "cronyism" within the broadcast industry. The Commission finds that these comments generally seek far-reaching substantive changes in the agency's EEO rules, whereas it intended this proceeding to focus on improvements in EEO enforcement and compliance. Therefore, the Commission chose to not address these comments.

This article reports on a draft Report and Order which has not yet been acted upon by the FCC. Further coverage of this proceeding will follow after the Commission takes action on this item.

# Comment Requested on Carriage Election Modernization

In a Public Notice (DA 18-1250) released by its Media Bureau, the FCC has requested comment on a proposal to modernize the process by which commercial television stations provide notice to cable television system operators about their must-carry/retransmission consent elections. The proposal was put forward jointly by the National Association of Broadcasters (“NAB”) and NCTA – The Internet & Television Association in ex parte communications with Media Bureau staff during discussion about the modernization of required communications with multichannel video programming distributors (i.e., cable and satellite operators) in the pending rulemaking proceeding in Docket 17-317.

The Commission’s rules currently require each broadcast television station eligible for must-carry to provide notice every three years, by certified mail, to each cable system and satellite carrier serving its market as to whether it is electing to demand mandatory carriage, or to withhold carriage pending negotiation of a retransmission consent agreement.

Under the joint proposal by NAB and NCTA, a commercial television station would be required to send notice of its must-carry or retransmission consent election to a cable television system operator only if the station changed its election status from the previous election. In those cases, the broadcaster would send its notice to an email

address listed in the cable operator’s online public file or, for cable operators that do not have an online public file, in the Commission’s Cable Operations and Licensing Systems database. The broadcaster would copy this email message to an FCC email address established for this purpose. The cable system operator would be expected to respond with an email confirmation that the notice had been received. Broadcasters would continue keep copies of their elections in their public inspection files.

NAB and NCTA assert that the proposed amendments to the Commission’s rules would alleviate burdens on both television stations and cable systems.

Neither the joint proposal as summarized in a letter to the Media Bureau from NAB and NCTA, nor the Commission’s Public Notice, includes any mention of noncommercial television stations or satellite carriers in the context of the proposed rule change.

The Bureau set the deadlines for responding to the Public Notice with comments and reply comments in Docket 17-317 for January 7 and January 17, respectively. These deadlines have been suspended due to the federal government shutdown. Comments will be due on the second business day that the FCC is back to normal operations. Reply comments will be due 10 days later.

## TELEVISION REPACK

### STATIONS ASSIGNED TO PHASE 2

TESTING PERIOD BEGINS: **DECEMBER 1, 2018**

COMPLETION DEADLINE: **APRIL 12, 2019**

### STATIONS ASSIGNED TO PHASE 3

TESTING PERIOD BEGINS: **APRIL 13, 2019**

COMPLETION DEADLINE: **JUNE 21, 2019**

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