pillsbury Antenna™ December 2022
AN UPDATE ON COMMUNICATIONS LAW & ISSUES

Petitioners Seek Higher Power for Digital FM

The National Association of Broadcasters ("NAB") and Xperi, Inc. (parent company of iBiquity Digital Corporation, the developer of the in-band/on-band ("IBOC") system for digital audio broadcasting) have jointly filed a Petition for Rulemaking with the FCC in which they ask the Federal Communications Commission ("FCC" or "Commission") to initiate a rulemaking proceeding to amend its regulations governing FM digital audio broadcasting. They ask the Commission to update the formula for calculating permissible power levels for digital FM transmissions. The FCC's Media Bureau has released a *Public Notice* (DA 22-1226) soliciting public comment on the proposal in Docket 22-405.

Under the current rules, an FM station may operate with a digital effective radiated power ("ERP") of -14 dBc. Stations meeting certain guidelines may operate at a higher power up to -10 dBc. In some cases, a station may have to demonstrate that its higher power digital operation will not cause interference to other stations. That analysis must rely on a formula developed in 2009: Allowable IBOC power = [2.27 x (60 - (IBOC station F(50,10) dBu)) - 33.6].

The petitioners claim that this formula is too conservative, and unnecessarily prevents stations from being able to exploit IBOC to the maximum extent. The coverage area of the digital

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Post-Closing LMA Is Not a Reversionary Interest

The FCC's Media Bureau has released a *Letter Decision* (DA 22-1216) affirming Commission precedent that a local marketing agreement ("LMA") implemented or envisioned in the context of the sale or transfer of control of a broadcast station does not violate the Reversionary Interest Rule, as long as it is not a condition of the transaction.

The *Letter Decision* is the Bureau's ruling in response to a Petition to Deny (later reclassified as an Informal Objection) challenging a group of assignment applications seeking approval for the sale of some 18 radio stations in various markets from Univision Radio Stations Group, Inc., Tichenor License Corporation, and Univision Radio San Francisco, Inc. to Latino Media Network ("LMN"). The petitioner was

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Station Group Owner Settles Personality Endorsement Complaints

Radio station group owner iHeartMedia, Inc. has agreed to a proposed consent order with the Federal Trade Commission to resolve the FTC's investigations and enforcement actions concerning certain practices involving deceptive commercial endorsements by on-air personalities at some of its radio stations. The FTC claims that these advertisements violated the consumer protection provisions of the Federal Trade Commission Act. iHeart has also reached similar settlements with seven states that had sued the company for these same practices on iHeart stations in their respective jurisdictions.

This matter concerns the broadcast of advertisements that iHeart recorded and broadcast to promote the Google Pixel 4 smartphone. The FTC alleged in its complaint that iHeart broadcast first-person endorsements for the Pixel 4 by on-air personalities at its local radio stations in several markets with scripts provided by Google. In these spots, the personalities

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Court Vacates State Tax Assessment on Broadcast Rights

The Supreme Court of Ohio reversed a decision of the Ohio Tax Commissioner taxing the gross receipts realized from the sale of the broadcast rights for television programming. The content of the programming in question in this case was derived from the automobile races conducted by NASCAR Holdings, Inc. at various locations in the United States and Canada.

The State of Ohio imposes a commercial-activity tax ("CAT") on taxable gross receipts for the privilege of doing business in Ohio. The tax applies to businesses with a "substantial nexus" to Ohio. One way to have such a nexus is to have at least $500,000 in annual gross receipts from business activities situated in Ohio.

NASCAR sold the broadcast rights to carry a certain number of its races for a period of eight years to Fox Broadcasting Company. Fox paid $1.664 billion for the rights to broadcast these programs throughout the United States, its territories, Canada, Mexico, and the Caribbean. Fox had complete editorial control over these programs. Fox then entered into third-party agreements for disseminating the television rights to local markets throughout the licensed territory, including with television outlets in markets in Ohio.

In 2011, the Ohio Tax Commissioner conducted an audit of NASCAR's financials and determined that NASCAR had improperly failed to pay CAT for the years 2005 through 2010, and owed the state over a half-million dollars in back taxes and penalties.

As the court explained, NASCAR races are held at over 100 racetracks in 39 states and Canada, and are broadcast in over 150 countries. During the audit period, none of the races in NASCAR's premier Sprint Cup Series were held in Ohio. It did hold seven smaller events in Ohio. NASCAR kept no permanent offices in Ohio, owned no property in Ohio, and employed no permanent workers in Ohio. Nonetheless, the Tax Commissioner decided that some of NASCAR's overall gross receipts should be apportioned to business activity situated in Ohio, and therefore subject to CAT. To reach this conclusion with respect to receipts from the sale of broadcast rights, the Commissioner consulted the Nielsen television audience ratings database and learned that 4.31254 percent of all cable-TV households in the United States are located in Ohio. The Commissioner then multiplied that percentage by the total gross receipts from NASCAR's U.S. television rights

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Estate Consents to Fine for Overdue Postmortem Assignment Application

In an *Order* (DA 22-940), the FCC's Media Bureau has adopted a *Consent Decree* in which the Estate of Albert Benavides and his daughter, Christina, have agreed to pay a $7,000 penalty and implement a compliance plan in recognition of a number of rule violations, including an unauthorized transfer of control followed by a prolonged period of time before an assignment application was submitted to the FCC.

Albert Benavides was the licensee of KAMZ(FM), Tahoka, Texas, until his death on January 31, 2012. He died without a will. Subsequently, the operation of the station was taken over by Christina, as the general manager, and the decedent's brother, Rick Benavides, as the station manager. Some nine years later, in April 2021, Ms. Benavides filed an application with the FCC to renew the station's license on behalf of the Estate of Albert Benavides. On the same day, an application was filed for consent to the involuntary assignment of the station to the Estate. This triggered questions from the Media Bureau about who controlled the station and under what auspices. There was no will or court order to appoint an executor of the estate. Responding to this inquiry, Ms. Benavides provided an "Affidavit of Heirship," a sworn statement that narrates the facts of the decedent's death intestate and identifies his next of kin. She also submitted a letter from a Texas attorney explaining that under Texas law an affidavit of this type was considered sufficient to authorize the named heir to manage the estate, i.e., to be the executor. This satisfied the Media Bureau as to Ms. Benavides' authority to file the application for assigning the station to the estate, and the application was granted.

Before the application to assign the station to the Estate was granted, Ms. Benavides filed an application to assign the station from the Estate to herself personally. This second assignment application and the renewal application remain pending. The license renewal application included the additional disclosures that since Albert Benavides' death, the station had not been in compliance with the FCC's Rules for maintaining an online Public Inspection File and submitting biennial ownership reports. The explanation for these failures was that the daughter and brother were not familiar with the FCC's "expectations."

To conclude the investigation without further expense to the parties, the Bureau, the Estate, and Christina Benavides have negotiated the *Consent Decree*, the terms of which include an admission of liability by the Estate and Christina, the payment of a civil penalty of $7,000, and implementation of a three-year compliance plan. The compliance plan is to include a compliance manual, staff training, and periodic reporting to the FCC. The plan is to be focused on compliance with the Commission's Rules pertaining to transfers of control, the online Public Inspection File, and ownership reports.

Media Bureau Clarifies Inconsistent Applications Rule

The FCC's Media Bureau has released a *Letter Decision* (DA 22-1314) in which it rejected an Informal Objection against an application for a new noncommercial FM station and clarified the applicability of Section 73.3518 of the Commission's Rules – the Inconsistent Applications Rule.

In the November 2021 noncommercial FM filing window, MyBridge Radio filed applications for construction permits for new stations – one at Norfolk, Nebraska, and one at Schuyler, Nebraska. These applications were mutually exclusive in that they proposed overlapping interfering contours. A month after the filing window, MyBridge amended the Norfolk application to remove the contour overlap.

Triangle Access Broadcasting, Inc. filed an Informal Objection to request the dismissal of MyBridge's Schuyler application. Triangle argued that, as originally filed, both applications could not be granted due to the proposed contour overlap prohibited by Section 73.509 of the Commission's Rules. Triangle then cited Section 73.3518 and argued that the later-filed application for Schuyler should be dismissed.

Section 73.3518 reads as follows:

> While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by or on behalf or for the benefit of the same applicant, successor or assignee.

The Media Bureau explained that this rule was not pertinent for applications filed in a noncommercial filing window. The Commission adopted this rule during an era when all mutually exclusive applications were resolved in comparative hearings. Comparative hearings were resource-intensive procedures that burdened both the FCC and applicants. The Commission was concerned that the congestion of inconsistent applications by the same applicant where one or more cannot be granted would waste the agency's resources, unfairly prejudice other applicants, and delay the development of new service to the public. The Bureau said that the primary purpose of the rule was to expedite application processing procedures by avoiding "the disruption of having two inconsistent applications contemporaneously being studied by the staff."

The Bureau cited a prior Commission decision which held that the Inconsistent Applications Rule was not applicable in the context of competitive bidding in an auction because the auction rules render Section 73.3518 irrelevant. The Bureau said that the same is true for the procedures for processing mutually exclusive new noncommercial FM applications. The Bureau referred to "multiple safeguards" now in place to protect Commission time and resources, and enable efficient processing of noncommercial applications. These include a discrete filing window, limits on the number of applications an applicant can file, provisions for the efficient resolution of mutually exclusivity through settlements and technical amendments, and a detailed system for selecting a tentative selectee when a resolution is not achieved through settlement. The Bureau also noted that when noncommercial FM applications are grouped as mutually exclusive, it does not process and review each application for acceptability and grantability. Rather, only the one application identified in the comparative analysis as the tentative selectee is processed.

The Bureau concluded that the Inconsistent Applications Rule conflicts with these unique elements of the noncommercial FM comparative review process and therefore should not be applied in this context.

In the event that the Inconsistent Applications Rule is applicable to mutually exclusive noncommercial applications, the Bureau found that there would be good cause to waive it in this instance. As a practical matter in this case, the Bureau said that its staff did not expend time and resources in processing either of MyBridge's applications until the Norfolk application was amended and became a singleton. Furthermore, prospective noncommercial applicants were never advised in the preparations for the noncommercial filing window that the Inconsistent Applications Rule would be enforced.

Triangle's Informal Objection was denied, and the Bureau granted both of MyBridge's applications.

DASDEC EAS Devices Vulnerable

The FCC's Public Safety and Homeland Security Bureau ("PSHSB") shared with the public an advisory from the Cybersecurity and Infrastructure Security Agency ("CISA") to warn about security vulnerabilities in DASDEC EAS encoder/decoder devices sold by Digital Alert Systems (formerly Monroe Electronics). CISA reports that earlier versions of the DASDEC software prior to Version 4.1 contain a cross-site scripting ("XSS") vulnerability that allows remote attackers to run code on the devices. CISA warns that all DASDEC software contains an XSS vulnerability via the host header that can be used by remote attackers after log-in.

PSHSB advises all EAS participants that use DASDEC devices to immediately take the following steps recommended by CISA to protect their systems from cyberattack:

- Patch their DASDEC equipment to the latest version of the software.
- Minimize network exposure for all control system devices and/or systems, and ensure that they are not accessible from the Internet.
- Locate control system networks and remote devices behind firewalls and isolate them from business networks.
- When remote access is required, use secure methods, such as virtual private networks ("VPNs"), but recognize that VPNs may have vulnerabilities and should be updated to the most current version available.

The Bureau reminded EAS participants that they are responsible for ensuring that EAS equipment is installed so that the monitoring and transmitting functions are available at all times when the station is operating. The failure to receive or transmit EAS messages during national tests or actual emergencies due to equipment failure may result in enforcement action against the EAS participant.

DEADLINES TO WATCH

License Renewal, FCC Reports & Public Inspection Files

December 1 — Deadline to file license renewal applications for television stations in **Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island,** and **Vermont**.

December 1 — Deadline to place EEO Public File Report in Public Inspection File and on station's website for all nonexempt radio and television stations in A**labama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota,** and **Vermont**.

December 1 — Deadline for all broadcast licensees and permittees of stations in **Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota,** and **Vermont** to file annual report on any 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).

December 1 — Deadline for television stations that provided ancillary or supplementary services during the 12-month period ending September 30, 2022, to file an annual Ancillary/Supplementary Services Report.

December — Television stations in **Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island,** and **Vermont** begin broadcasting post-filing announcements within five business days of acceptance for filing of license renewal application and continuing for four weeks.

January 10 — Deadline to place quarterly Issues and Programs List in Public Inspection File for all full service radio and television stations and Class A TV stations.

January 10 — Deadline for noncommercial stations to place quarterly report regarding third-party fundraising in Public Inspection File.

January 10 — Deadline for Class A TV stations to place certification of continuing eligibility for Class A status in Public Inspection File.

January 30 — Deadline for Children's Television Programming Reports for all commercial full service and Class A televisions for 2022.

January 30 — Deadline for all commercial full service and Class A television stations to place in their Public Inspection File records "sufficient to verify compliance" with the FCC's commercial limitations in children's programming broadcast during calendar year 2022.

February 1 — Deadline to file license renewal applications for television stations in **New Jersey** and **New York.**

February 1 — Deadline to place EEO Public File Report in Public Inspection File and on station's website for all nonexempt radio and television stations in **Arkansas, Kansas, Louisiana, Mississippi, Nebraska, Oklahoma, New Jersey,** and **New York.**

February 1 — Deadline for all broadcast licensees and permittees of stations in **Arkansas, Kansas, Louisiana, Mississippi, Nebraska, Oklahoma, New Jersey,** and **New York** to file annual report on any 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).

February — Television stations in **New Jersey** and **New York** begin broadcasting post-filing announcements within five business days of acceptance for filing of license renewal application and continuing for four weeks.

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

The FCC has accepted for filing the applications identified below proposing to change the community of license for each station. 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 27, 2023**. Informal objections may be filed any time prior to grant of the application.

PRESENT COMMUNITY	PROPOSED COMMUNITY	STATION	CHANNEL	FREQUENCY
Vidalia, GA	Twin City, GA	WKIH	212	90.3
Gooding, ID	Filer, ID	KRXR(AM)	N/A	1480
Terrytown, NE	Lexington, NE	KOLT(AM)	N/A	690
Lawrenceburg, TN	Loretto, TN	WWLX(AM)	N/A	590
Premont, TX	Ben Bolt, TX	KABV	264	100.7
Menard, TX	Wall, TX	KTCY	287	105.3
Richland Springs, TX	Adamsville, TX	KQXZ	285	104.9
Santa Ana, TX	Menard, TX	KSZX	288	105.5
Tahoka, TX	Ropesville, TX	KAMZ	278	103.5

DEADLINES TO WATCH

Paperwork Reduction Act Proceedings

The FCC is required by 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
Station log, Section 73.1820	Jan. 4
Network nonduplication and syndicated exclusivity, Sections 76.94, 76.95, 76.105, 76.106, 76.107, 76.109	Jan. 4
PSIP standards, Section 73.682(d)	Jan. 4
Significantly viewed television signals, Section 76.54	Jan. 9
Class A Television license application, Form 2100, Schedule F	Jan. 9
Rebroadcasts, Sections 73.1207, 74.784, 74.1284	Jan. 9
Satellite delivery of network signals to unserved households, Section 73.686	Jan. 17
DTV license application form, Form 2100, Schedule B	Jan. 27
Television application forms, Form 2100, Schedules C, D, E, F	Feb. 10

Deadlines for Comments in FCC and Other Proceedings

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

DOCKET	COMMENTS	REPLY COMMENTS
Docket 22-329; NPRM (FCC 22-82) EAS security improvements	Dec. 23	Jan. 23
Docket 20-299; 2nd NPRM (FCC 22-77) Foreign sponsorship identification	Jan. 9	Jan. 24
Docket 22-405; Public Notice (DA 22-1226) Digital FM power	Jan. 12	Feb. 13
Docket 22-227; NPRM (FCC 22-73) Updating television rules	FR+60	FR+75

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

Proposed Amendments to the FM Table of Allotments

The FCC is considering requests to amend the FM Table of Allotments by modifying channels for the communities identified below. The deadlines for submitting comments and reply comments are shown.

COMMUNITY	PRESENT CHANNELS	PROPOSED CHANNELS	COMMENTS	REPLY COMMENTS
Dennison, OH	---	272A		Dec. 23
South Padre Island, TX	237A	288A	Jan. 3	Jan. 18
Ralston, WY	---	233C	Jan. 23	Feb. 7

Proposed Amendments to the Television Table of Allotments

The FCC is considering petitions to amend the digital television Table of Allotments by changing the channels allotted to the communities identified below. The deadlines for submitting comments and reply comments are shown.

COMMUNITY	STATION	PRESENT CHANNEL	PROPOSED CHANNEL	COMMENTS	REPLY COMMENTS
Norwell, MA	WWDP	10	36		Dec. 30
Yuma, AZ	New	11	27	Jan. 13	Jan. 30
Lufkin, TX	KTRE	9	24	FR+30	FR+45
Odessa, TX	KOSA-TV	7	31	FR+30	FR+45

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

Petitioners Seek Higher Power for Digital FM continued from page 1

signal as presently authorized usually cannot replicate the analog coverage area. The petitioners note that when this formula was adopted in 2010, the Media Bureau suggested it might be too conservative. However, at the time, the radio industry was unfamiliar with IBOC and was concerned about protecting existing analog service. Consequently, the FCC deferred to analog service. The petitioners now argue that the industry has had a decade of experience with the IBOC technology, has a better understanding of it, and is comfortable with updating the approach to calculating power levels.

The petitioners propose to modify the formula as follows: Allowable IBOC total power = 44 - [IBOC station F(50,10) dBu at the desired station 60 dBu F(50,50) contour]. The petitioners present extensive data from field tests to demonstrate that stations in various environments transmitting with power values calculated using this formula caused no perceivable interference to first-adjacent-channel stations. The petitioners say that this would allow most stations to operate with -10 dBc total power.

An FM station can transmit a digital sideband on both sides of the main channel. Under the current rules, the two sidebands must be symmetrical, i.e., equal in ERP. In 2019, NAB, Xperi, and National Public Radio filed a Petition for Rulemaking proposing that the two sidebands need not be equal, and that asymmetric sidebands should be permitted. They explained that this would give stations more flexibility to operate with at least one sideband with significant power in cases where the other one might be restricted or precluded by the presence of nearby station on the first-adjacent channel. Although the FCC invited public comment on the Petition, it never took any further action at that time. NAB and Xperi now request that the FCC include consideration of that earlier proposal in this proceeding.

The petitioners assert that these proposals to relax restrictions on FM digital power levels would encourage many more FM stations to undertake digital broadcasting, and the net result of more and better FM service would be in the public interest.

Comments can be filed in this proceeding until January 12, 2023. The deadline for reply comments is February 13, 2023.

Court Vacates State Tax Assessment on Broadcast Rights continued from page 2

sales. The product of that multiplication was determined to be the amount that should be apportioned to Ohio, and therefore resulted from business activities situated in Ohio and was subject to CAT. NASCAR objected to this formula and appealed this ruling. After a period of administrative and judicial appellate litigation, the case arrived at Ohio's Supreme Court and this decision ensued.

The decision turns on whether the receipts from the contract to sell the program rights to Fox can be the basis for business activity situated in Ohio. The court analyzed NASCAR's rights contract with Fox in light of the CAT statute. The court quoted the statute:

> Gross receipts from the sale, exchange, disposition, or other grant of the right to use
> . . . intellectual property shall be sitused to [that is, situated in] this state to the extent that the receipts are based on the amount of use of the property in this state. If the receipts are not based on the amount of use of the property, but rather on the right to use the property, . . . then the receipts from the sale . . . of the right to use such property shall be sitused to this state to the extent that receipts are based on the right to use the property in this state.

NASCAR's agreement with Fox provided for fixed payments for the right to use NASCAR's intellectual property. The payments were contingent not on the amount of use, but rather, solely on the right to use the property throughout a large territory. The court found this to be the key provision of the contract. The contract did not tie payment to the right to use the intellectual property in Ohio, or the amount of use that occurred in Ohio. Ohio was not even mentioned. There was nothing in the contract to show any causal connection between any of the receipts and the right to use the programming specifically in Ohio.

The court concluded that there were no traceable receipts that were based on a right to use NASCAR programming in Ohio. Therefore, the sale of the rights to use the programming over a broad geographic area without specific mention of Ohio did not create receipts that could be said to have resulted from business activity in Ohio. The court reversed the Tax Commissioner's ruling and found that NASCAR was not liable for CAT on receipts from the sale of its broadcast rights.

The decision is *NASCAR Holdings, Inc. v. McLain*, 2022 Ohio LEXIS 2346.

DEADLINE TO COMPLY WITH AUDIO DESCRIPTION RULES FOR TELEVISION STATIONS IN MARKETS 81-90

JANUARY 1, 2023

Mandate for Audio Description Expands to Markets 81-90

Section 79.3 of the FCC's Rules requires certain television stations and multichannel video programming distributors to provide audio description for a portion of the video programming they present to viewers. This technology inserts audio narrated descriptions of a video program's key visual elements into natural pauses in the dialogue for the benefit of visually-impaired members of the audience.

Commercial stations affiliated with the ABC, CBS, Fox, and NBC networks in the top 80 markets must include audio description in at least 50 hours of video programming in prime time or during children's programming during each calendar quarter, and 37.5 additional hours of audio described video programming between 6:00 am and 11:59 pm during the quarter.

When this rule was adopted in 2019, it pertained only to stations in the top 60 markets. However, the rule envisioned gradually expanding the mandate to all of the top 100 markets by January 1, 2024. Ten additional markets are added to the list each New Year's Day until all 100 markets are included. As of January 1, 2023, this requirement will be expanded to cover affiliates of the top four networks in markets 81-90. These are the following markets:

Madison
Waco-Temple-Bryan
Harlingen-Weslaco-Brownsville-McAllen
Paducah-Cape Girardeau-Harrisburg
Colorado Springs-Pueblo
Shreveport
Syracuse
Champaign/Springfield-Decatur
Savannah
Cedar Rapids-Waterloo-Iowa City-Dubuque.

Post-Closing LMA Is Not a Reversionary Interest *continued from page 1*

Pedro Roig, who described himself as a listener to the Miami market stations involved in these transactions.

Roig observed that the asset purchase agreement for this transaction stated that the parties will execute at closing one or more LMAs. An LMA is an agreement under which one party agrees to undertake responsibilities for various elements of operating a station licensed to another party. To comply with the FCC's requirements for such agreements, the licensee must continue to exercise ultimate control over the station. Roig also noted that the purchase agreement requires the parties to negotiate one or more local programming agreements, pursuant to which the sellers would provide programming and content to LMN to broadcast on the stations after LMN acquires the stations. Roig argued that implementation of these provisions in the purchase agreement would violate the rule against reversionary interests. A reversionary interest would give the seller of a station a right to recover some degree of ownership interest in the station after the sale.

That prohibition is found in Section 73.1150(a) of the FCC's Rules, and reads as follows:

> In transferring a broadcast station, the licensee may retain no right of reversion of the license, no right to reassignment of the license in the future, and may not reserve the right to use the facilities of the station for any period whatsoever.

The Media Bureau observed that long-standing Commission precedent holds that LMAs are generally permissible, as long as they are consistent with the multiple ownership rules (under certain conditions, the station may be attributable to the party managing or operating it as if that party were the licensee), and the licensee maintains ultimate control of the station. The Bureau noted that if a sale transaction were conditioned upon an LMA, or an LMA were the consideration for a station sale, it would indeed violate the reversionary interest rule.

The original purchase agreement for the transaction in this case did include a provision that expressly required as a condition of the sale that LMN enter into an LMA with the seller. The parties amended the assignment applications to include a joint certification that the seller had waived the closing condition that required LMN to enter into an LMA.

Upon review of this amendment to the applications, the Media Bureau concluded that the LMA did not violate the reversionary rule. It therefore denied the Objection and granted the applications.

Station Group Owner Settles Personality Endorsement Complaints

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voicing the scripts represented that they owned or regularly used the Pixel 4. Among other things, they promoted the Pixel 4's capability to take high-quality pictures at night in low light environments and said they had taken nighttime photos with the Pixel 4. The FTC alleged that the representations in these advertisements were false and misleading because the personalities making these endorsements did not own or regularly use the Pixel 4. Google was not even able to provide the Pixel 4 to the endorsers when the campaign began. Altogether, on various iHeart stations, nearly 29,000 such advertisements were broadcast during this ad campaign for the Pixel 4 in 2019 and 2020. Google spent $2.6 million with iHeart for this campaign.

If and when the settlement is adopted by the FTC, iHeart has agreed to be subject to the following requirements:

- iHeart would be prohibited from airing endorsements in which the endorser misrepresents his or her experience with any consumer product or service.
- iHeart would be required to cooperate in any FTC investigation or case related to the conduct that is the subject of the complaint.
- For 10 years, iHeart would be required to deliver a copy of the order to (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives having managerial responsibilities for conduct related to the subject matter of the order; and (3) any business entity resulting from any change in structure of the company.
- For 10 years, iHeart would be required annually to submit a report detailing its current business structure, its business activities, and whether and how it is in compliance with the order.
- For 10 years, iHeart would be required to maintain extensive records that must be made available to FTC investigators regarding the items listed below. Each such record or document would need to be retained for five years from the date it was created.

  (a) accounting records to show revenues from all goods or services sold, the costs incurred in generating those revenues, and the resulting net profit or loss;

  (b) personnel records showing, for each person providing services in relation to any aspect of the order, that person's name, address, telephone number, job title or position, dates of services, and reason for termination (if applicable);

  (c) records of all consumer or other complaints concerning the subject matter of the order;

  (d) all records necessary to demonstrate full compliance with the order;

  (e) copies of and records about all materials used to train personnel regarding iHeart's policies with respect to endorsements, and records indicating which individuals received such training;

  (f) for any endorsement that is subject to the order and that is provided by iHeart or any of its officers, employees, representatives, agents, or contractors, the company would be required to retain (1) records indicating the endorser's name and contact information; (2) records indicating the amount and value of everything the endorser was paid or received in connection with the endorsement; (3) records indicating whether the endorser was provided the product or service; and (4) a copy of the endorsement.
- iHeart would be required to submit to compliance monitoring as follows:

  (a) within 10 days of receipt of written request from the FTC, the company would be required to submit additional compliance reports or other requested information;

  (b) the company would permit representatives of the FTC to interview anyone affiliated with the company; and

  (d) the FTC would be able to use any lawful means, including investigators posing as consumers, suppliers, or other types of individuals, without the necessity of identification, to gather data.

The proposed consent order will be published in the Federal Register, triggering the beginning of a 30-day period for public comments. Upon the expiration of that period, the full FTC will consider whether to adopt the order. Except for provisions that state otherwise, the order would be in force for 20 years from the date of adoption.

According to the FTC, Google made similar contemporaneous buys with 11 other radio groups amounting to $2 million worth of advertising. There is no indication what enforcement action, if any, the FTC is pursuing against those group owners.

Google has agreed to a separate similar consent order with the FTC and with the states. The agreements with the states also include penalties totaling $9.4 million for both companies combined.

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