

## EAS Misuse Leads to \$504K Fine

The FCC has issued a *Notice of Apparent Liability for Forfeiture* (FCC 23-4) proposing to fine FOX Corporation, and several of its subsidiary companies, collectively, \$504,000 for the improper broadcast of Emergency Alert System (“EAS”) tones. EAS tones may be broadcast only during an actual emergency, during an authorized EAS test, or within a qualified public service announcement about the EAS. This violation of Section 11.45(a) of the Commission’s rules occurred during a pre-game segment before FOX’s National Football League programming on November 28, 2021.

The Commission says that it learned about this incident from multiple sources. The FCC’s Enforcement Bureau followed up on these reports by sending Fox a letter of inquiry on January 4, 2022. The ensuing investigation revealed that the broadcast included an approximately three-second excerpt of the EAS Attention Signal which commonly precedes legitimate emergency alerts. The signal consists of two simultaneous tones of 853 Hz and 960 Hz. The excerpt had been downloaded from a YouTube video and was included as part of a comedic routine prompting an upcoming game. This content was broadcast on 18 of FOX’s owned-and-operated stations, and was transmitted to 190 network affiliates across

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## Comments Sought on Closed Captioning Settings

The FCC’s Media Bureau issued a Public Notice (DA 23-66) soliciting a new round of public comments in Docket 12-108 concerning the display settings for closed captioning.

In 2015, the Commission proposed rules that would require manufacturers of covered equipment and multichannel video programming distributors to make closed captioning display settings readily accessible to individuals who are deaf or hard-of-hearing. In January 2022, the Media Bureau invited public comment to refresh the record on the original proposals. In response to the Media Bureau’s request for input, a coalition of consumer groups proposed that the

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## Adjusted Filing Fees Effective March 2

The Communications Act requires the Commission to adjust the schedule of its application fees every even-numbered year to reflect changes in the Consumer Price Index (“CPI”). In compliance with that statutory requirement, the Commission recalculated its fees in 2022 to reflect a net increase in the CPI of 11.6%. The Commission adopted an *Order* (FCC 22-94) in December. The *Order* was published in the Federal Register on January 31, triggering an effective date for the new fees 30 days later – on March 2.

The new fee schedule applies to commercial broadcast applications. Applications filed by noncommercial stations are exempt from filing fees. Applicants and licensees that are government entities are exempt from filing fees for both commercial and noncommercial stations.

A table showing the new fees and comparing them to the old fees is found on page 7.

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# Updated Tower Construction Guidance Issued

The FCC's Wireless Telecommunications Bureau has issued a *Public Notice* (DA 23-63) concerning the potential impact on tower construction projects of the designation of the northern long-eared bat as an endangered species. The U.S. Fish and Wildlife Service ("FWS") has reclassified this bat species as endangered in a ruling that became effective on January 30, 2023. For tower construction projects located in this bat species' range, this development may have an impact on the required environmental review of the tower project.

The northern long-eared bat was previously listed as threatened under the Endangered Species Act in April 2015. In January 2016, the FWS released a final rule and programmatic biological opinion establishing a process for streamlined consultation with the FWS to determine the extent of the potential effects of a project on the species and/or its critical habitat, and to determine whether further consultation is required. Later in 2016, the Wireless Telecommunications Bureau issued guidance for using the FWS's streamlined framework. The Bureau indicated that

if the FWS streamlined framework applied to the proposed construction, the tower owner was not required to submit any additional documentation to the FCC.

With the reclassification of the species, the FWS's streamlined framework is null and void. Accordingly, an applicant with a tower construction project that is proposed or that is in pre-construction status must reinitiate consultation with the FWS. The FWS has announced that it is developing other streamlining tools to assist applicants with consultations, including an interim consultation framework, including a "rangewide northern long-eared bat determination key" to help ensure that projects previously in compliance are not delayed. The FWS indicates that this new formal consultation framework will facilitate the transition to typical consultation procedures for federally endangered animals until spring of 2024.

The Bureau directs applicants to consult with the FWS resources to determine how to proceed with the consultation process.

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## Raleigh Waiver Condition Allows Flexibility

The Audio Division of the FCC's Media Bureau has granted a minor modification application for a noncommercial FM station with language that would appear to allow unlimited interference to a second-adjacent channel station. This Letter Decision in *Call Communications Group, Inc.* (DA 23-112) grants a request from WMFL, Florida City, Florida, for a waiver of Section 73.509(a) of the Commission's Rules.

This rule prohibits certain levels of interference between noncommercial FM stations on adjacent channels. The WMFL application proposed an increase in operating power, a relocation of the station's transmitter site, and a change in the community of license from Florida City to Palmetto City, Florida. WDNA, Miami, Florida, filed an informal objection to WMFL's application, arguing that the application would cause prohibited interference to WDNA.

In 1996, WDNA had applied for a construction permit to upgrade its effective radiated power from 1 kW to 7.4 kW. WDNA requested a waiver to allow it to receive – but not cause – prohibited interference from WMFL in a relatively small portion of its coverage area. This type of waiver is often called a *Raleigh* waiver. The name is derived from a leading decision that granted such a waiver for a station in the Raleigh, North Carolina market in 1991 (*Educational Information Corporation*, 6 FCC Rcd 2207 (1991)). The Media Bureau granted WDNA's waiver request and the application. When the modification was completed and the Commission issued a license for the modified facilities, it imposed a condition that is standard in cases involving *Raleigh* waivers. Special Operating Condition #2 stated that "[f]urther modifications of [WMFL] will not be construed as a per se modification of WDNA's license."

The upgraded WMFL facilities would change the geographic area where it causes interference to WDNA, and reduce the land area of the existing overlap with the WDNA signal but would increase the population in the overlap area. WDNA opposed the application on the grounds that it would cause, rather than receive, interference with respect to WDNA, and therefore did not qualify for a *Raleigh* waiver. WDNA asserted that the Special Operating Condition #2 on the WMFL license is not "complete carte blanche to make any change it wants no matter how extreme."

The Audio Division responded that WMFL is merely seeking to exercise the flexibility to modify the station that was built into the prior grant of the *Raleigh* waiver to WDNA. No new rule waiver is necessary. The Letter Decision went on to state that "[a]ny Raleigh waiver – including the WDNA waiver – is granted with the acknowledgement that future modifications proposed by the affected licensees will not be construed as a per se modification of the waiver recipient's license." The rationale for this special operating condition is "the concern for the ability of the stations causing interference to make any future changes to their facilities." The Audio Division stated that neither a *Raleigh* waiver nor "Special Operating Condition #2 limits the size, location, or population covered of such future modified caused overlap areas." The Audio Division concluded that "the express terms of the WDNA waiver allow future modifications to the existing overlap area caused by WMFL and received by WDNA," and it granted WMFL's application.

In another *Letter Decision*, *University of Rhode Island* (DA 23-82), the Audio Division granted waiver requests by WNPB, Portsmouth, Rhode Island, to both receive

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# FCC Reports to Congress on PIRATE Act Implementation

The Preventing Illegal Radio Through Enforcement Act (“PIRATE Act”) was enacted in 2020 to enhance the FCC’s ability to combat unauthorized broadcasting in the AM and FM radio bands, otherwise known as “pirate radio.” Among its most significant provisions, the PIRATE Act:

- Increased the maximum monetary penalties for pirate radio operators, to \$100,000 for a single act of violation, up to a total of \$2 million;
- Granted to the FCC of additional enforcement authority over property owners and managers that permit pirate radio stations to operate from their property;
- Required that the FCC conduct annual enforcement sweeps of pirate radio in five markets, with additional follow-up within six months of the sweeps;
- Required the FCC to build a database of pirate stations.

The legislation also required the FCC to submit annual reports to Congress on implementation of the Act and associated enforcement activities from the previous year. The FCC recently submitted its report to Congress for 2022 and released a copy of it to the public. In the Report, the Commission explains that the first half of 2022 was challenging for its enforcement efforts, as were the prior two years for which reports to Congress were required – 2020 and 2021. The causes for these difficulties were said to be the lack of funding to implement the PIRATE Act and the COVID-19 pandemic. The pandemic limited the Commission’s ability to conduct in-person investigations that are necessary for pirate radio enforcement. With the loosening of pandemic restrictions, the Commission says that it has been able increase its investigative activities.

The funding problem was mitigated in 2022 when \$5 million was appropriated to the FCC in the Consolidated Appropriations Act for the purpose of implementing the PIRATE Act. Upon receipt of this funding, the Commission explains that it developed an implementation plan that included:

- Hiring additional staff, especially field agents in or near offices where concentrated enforcement activity, i.e., sweeps, will occur;
- Purchasing additional vehicles and equipment for the additional field agents;
- Developing a public-facing database of pirate radio stations; and
- Initiating the mandated enforcement sweeps.

The Commission explained the current status of each element of its enhanced anti-pirate enforcement program:

- As of the date of the Report (January 24), the Commission had posted job openings for five field agents and one field counsel, all of whom will be devoted to pirate radio enforcement. Additional hires are planned for the future.
- The Commission is developing additional customized mobile direction-finding investigative vehicles for the field agents to operate. Purchase of six such vehicles has been delayed until a purchasing window is opened by the General Services Administration. Until the new vehicles can be acquired, the Commission will temporarily retain older vehicles that had been scheduled to be excessed. The purchase and development of investigative tools to be integrated into the direction-finding equipment has begun.
- The public-facing database of pirate stations was activated on January 23, 2023.
- The Commission has reviewed pirate radio complaints to identify the current top five markets with the most pirate radio operations. These markets became the targets of sweeps. A plan for the required sweeps was initiated in the fourth quarter of 2022.
- In 2022, the FCC’s Enforcement Bureau issued 21 notices to property owners informing them of apparent pirate radio operations from their property and warning them of the potential consequences if such activity does not cease.

With the submission of this Report to Congress, the Commission believes it has satisfied its obligation under the PIRATE Act to inform Congress of its activities in this area.

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## Media Bureau Dismisses Petition for Reconsideration of Canceled License

The FCC’s Media Bureau has dismissed Gerald Parks’ Petition for Reconsideration of the cancellation of his license for WEKC(AM), Williamsburg, Kentucky. This ruling took the form of a Letter Ruling in *Gerald Parks* (DA 23-107).

Parks filed an application to renew the station’s license during the previous renewal cycle on April 10, 2012. The Media Bureau withheld action on that application because the Enforcement Bureau was investigating the station’s compliance with the Public File Rule, and because Parks was delinquent in paying regulatory fees, resulting in a “red light” status with the Office of the Managing Director.

In April 2017, Media Bureau staff contacted Parks to inform him that the Enforcement Bureau had completed its investigation and that he should amend his application in which he had certified compliance with the Public File Rule, which had been determined to be inaccurate. Parks also still needed to resolve the red light problem by paying the late regulatory fees. Parks did not address either issue.

In the following renewal cycle, license renewal applications for Kentucky radio stations in were due on April 1, 2020. The FCC’s *Renewal Procedures Public Notice*

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# DEADLINES TO WATCH



## License Renewal, FCC Reports & Public Inspection Files

**DUE TO TECHNICAL MALFUNCTIONING OF THE FCC'S WEBSITE  
ALL JANUARY AND FEBRUARY DEADLINES TO UPLOAD DOCUMENTS TO  
ONLINE PUBLIC INSPECTION FILES ARE EXTENDED TO FEBRUARY 28**

February 28	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.		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 28	Deadline for noncommercial stations to place quarterly report regarding third-party fundraising in Public Inspection File.	February / March	Television stations in <b>New Jersey</b> and <b>New York</b> begin broadcasting post-filing announcements within five business days of acceptance for filing of license renewal application and continuing for four weeks.
February 28	Deadline for Class A TV stations to place certification of continuing eligibility for Class A status in Public Inspection File.	April 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 <b>Delaware, Indiana, Kentucky, Pennsylvania, Tennessee, and Texas</b> .
February 28	Deadline to file Children's Television Programming Reports for all commercial full service and Class A television for 2022.	April 3	Deadline to file license renewal applications for television stations in <b>Delaware</b> and <b>Pennsylvania</b> .
February 28	Deadline for all commercial full service and Class A television stations to place verification of compliance with the commercial limitations in children's programming for 2022 in Public Inspection File.	April 3	Deadline for all broadcast licensees and permittees of stations in <b>Delaware, Indiana, Kentucky, Pennsylvania, Tennessee, and Texas</b> 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 28	Deadline to file license renewal applications for television stations in <b>New Jersey</b> and <b>New York</b> .	April	Television stations in <b>Delaware</b> and <b>Pennsylvania</b> begin broadcasting post-filing announcements within five business days of acceptance for filing of license renewal application and continuing for four weeks.
February 28	Deadline to place EEO Public File Report in Public Inspection File and on station's website for all nonexempt radio and television stations in <b>Arkansas, Kansas, Louisiana, Mississippi, Nebraska, Oklahoma, New Jersey, and New York</b> .		
February 28	Deadline for all broadcast licensees and permittees of stations in <b>Arkansas, Kansas, Louisiana, Mississippi, Nebraska, Oklahoma, New Jersey, and New York</b> to file annual report		

**DEADLINE TO FILE  
EAS TEST REPORTING SYSTEM  
FORM ONE  
FEBRUARY 28, 2023**





# 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
Handling confidential information	Mar. 27
Broadcast auction form exhibits	Mar. 31
CORES update/ change form, Form 161	Apr. 7
Broadcast Station Annual Employment Report, Form 395-B	Apr. 10

## Deadlines for Comments in FCC and Other Proceedings

DOCKET	COMMENTS	REPLY COMMENTS
(All proceedings are before the FCC unless otherwise noted.)		
Copyright Royalty Board Docket 21-CRB-0002-PBR (2023-2027); NPRM Music copyright royalty rates for noncommercial broadcasting for 2023-2027	Feb. 27	None
Docket 22-459; Public Notice (DA 22-1364) 2022 Quadrennial Review of Media Ownership Rules	Mar. 3	Mar. 20
Docket 12-108; Public Notice (DA 23-66) Closed caption display settings	Mar. 3	Mar. 20
Federal Trade Commission Docket No. RIN 3084-AB74 Rule to ban noncompete agreements	Mar. 20	None
Docket 22-227; NPRM (FCC 22-73) Updating television rules	Apr. 10	Apr. 25

## 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
Roanoke, VA	WBRA-TV	*3	*13		Mar. 6
Coos Bay, OR	KCBY-TV	11	34	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.*

*An asterisk (\*) indicates that the channel is reserved for noncommercial broadcasting.*

## EAS Misuse Leads to \$504K Fine continued from page 1

the nation. The audio portion of the program was also distributed on FOX Sports Radio, reaching listeners on iHeartRadio stations and FOXSportsRadio.com. It was also transmitted on satellite radio via FOX Sports.

FOX has acknowledged all of these facts. FOX disclosed that the programming segment in question was provided and distributed by its subsidiary, Fox Broadcasting Company, LLC. Certain members of FOX's production staff had reviewed the programming prior to its transmission, but did not comment or suggest changes.

The FCC decision emphasizes that there are important public interest reasons to protect the integrity of the EAS. The Commission prohibits the broadcast or simulation of the EAS tones to preserve their unique purpose and effectiveness. Unauthorized use of the EAS tones for commercial or entertainment purposes can lead to "alert fatigue" where the public becomes desensitized to alerts, and questions or ignores legitimate alerts about actual dangerous conditions. Furthermore, the nature of the operative elements of the EAS means that an isolated misuse at one location can trigger false activations at other facilities, spreading false information and potentially locking out legitimate activations. Consequently, the Commission strictly enforces the EAS rules.

Section 1.80(b) of the Commission's Rules provides for a base forfeiture of \$8,000 for EAS and false distress rule violations. In this case, the Commission assessed a base forfeiture of \$144,000, which is \$8,000 for each of FOX's 18 owned-and-operated stations. The Commission has the discretion to adjust the base amount as the facts of the case may warrant. Section 503 of the Communications Act lists factors to be considered in determining the amount of a forfeiture, such as the circumstances, extent, and gravity of the violation. In this case, the Commission took into account the following specific factors: (1) the number of individual transmissions; (2) the duration of the violation; (3) the audience reach of the transmissions; and (4) the extent of the

public safety impact. The Commission found that an upward adjustment of the base forfeiture amount was warranted. The audience reach of the unauthorized EAS tones was significant. FOX owned-and-operated stations are located in each of the five largest markets in the United States, and in 15 of the top 20. Further, the creation and transmission of the pre-game program containing the tones was for self-promotion of FOX's upcoming football game coverage. The Commission stated that as a self-proclaimed leader in live sports broadcasts, and a longstanding licensee, FOX was well aware of the importance and implementation of the EAS rules. The Commission concluded that, "in view of the gravity of the violation and the violator's degree of culpability, this self-promotion for the purposes of additional economic gain at the expense of the integrity of the EAS constitutes egregious misconduct warranting an additional upward adjustment."

The Commission also found FOX responsible for transmitting the offending content to its television network affiliates as well as to FOX Sports Radio and FOX Sports on XM. These separate actions that led to separate transmissions of the simulated EAS tones were also separate rule violations. However, a forfeiture against FOX in its capacity as a programming network is not proposed because the statute of limitations period has expired. Notwithstanding this, the Commission states that the network's actions are still violations and warrant the upward adjustment of the fines being proposed.

No countervailing justification could be found to adjust the forfeiture downward. The FCC observed that FOX "clearly has the ability to pay, and there is nothing in the record that would indicate that the penalty is otherwise excessive." Given the totality of the circumstances, the proposed forfeiture was adjusted upward to \$504,000.

FOX has 30 days from the release of the *Notice* to pay the fine or to seek its reduction or cancellation.

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## Comments Sought on Closed Captioning Settings continued from page 1

FCC should require closed captioning display settings to be proximate, discoverable, previewable, and consistent and persistent. The Consumer Technology Association expressed concern about the proposed factors and asserted that another period for public comment was necessary. The Media Bureau agreed that more public comment would be useful.

Commenters are asked to focus on the specific issue of whether, if the Commission adopts rules governing the accessibility of closed captioning display settings, it should

consider the four factors proposed by consumer groups in 2022 – proximity, discoverability, previewability, and consistency and persistence, and whether those four factors should have the same meanings that the consumer groups proposed. Commenters are also invited to suggest other factors that the Commission should consider in this rulemaking proceeding.

Comments are due by March 3; reply comments are due March 20.

# Schedule of New FCC Filing Fees as of March 2, 2023

<u>APPLICATION TYPE</u>	<u>NEW FEE</u>	<u>PRIOR FEE</u>
<b>Full Power and Class A Television</b>		
New or major change construction permit		
Without auction	\$ 4,755	\$ 4,260
With auction	5,395	4,835
Minor change construction permit (full power only)	1,490	1,335
New license	425	380
License renewal	370	330
Assignment/ transfer of control (long form)	1,390	1,245
Assignment/ transfer of control (short form)	450	405
Special temporary authority	300	270
Rulemaking petition (full power only)	3,790	3,395
<b>LPTV and TV Translator</b>		
New or major change construction permit	865	775
New license	240	215
License renewal	160	145
Special temporary authority	300	270
Assignment/ transfer of control (all forms)	375	335
Call sign	190	170
<b>AM Radio</b>		
New or major change construction permit		
Without auction	4,440	3,980
With auction	5,085	4,555
Minor change construction permit	720	1,625
New license	425	645
License renewal	365	325
Directional antenna	1,405	1,260
Assignment/ transfer of control (long form)	1,120	1,005
Assignment/ transfer of control (short form)	475	425
Special temporary authority	325	290
<b>FM Radio</b>		
New or major change construction permit		
Without auction	3,675	3,295
With auction	4,290	3,870
Minor change construction permit	1,410	1,265
New license	260	235
License renewal	365	325
Directional antenna	705	630
Assignment/ transfer of control (long form)	1,120	1,005
Assignment/ transfer of control (short form)	475	425
Special temporary authority	325	210
Rulemaking petition	3,550	3,180
<b>FM translator, FM booster</b>		
New or major change construction permit		
Without auction	785	705
With auction	1,430	1,280
Minor modification construction permit	235	210
New license	200	180
License renewal	195	175
Special temporary authority	200	170
Assignment/ transfer of control (all forms)	325	290
<b>TV, Class A TV, AM and FM</b>		
Call sign	190	170
Ownership report	95	85
<b>Permit to Deliver Programs to a Foreign Broadcast Station</b>		
New license	400	360
License modification	205	185
License renewal	175	155
Special temporary authority	175	155
Transfer of control	290	260
<b>Receive-Only Earth Station</b>		
Initial application or registration (single site)	195	175
Initial application or registration (multiple sites, per system)	520	465
(There are other fees for earth station applications not included here.)		
<b>Petition for Declaratory Ruling re Foreign Ownership</b>	2,775	2,485

# Media Bureau Dismisses Petition for Reconsideration of Canceled License

*continued from page 3*

explicitly instructed licensees with renewal applications pending from the previous renewal cycle to file another application for the current cycle. Parks did not file an application. On August 6, 2020, the Media Bureau issued a *Public Notice* stating that the license had been cancelled. Parks did not seek reconsideration of that action. The Media Bureau also dismissed the 2012 renewal application in the CDBS database, but did not issue a separate public notice. After Parks' counsel contacted Bureau staff on March 16, 2022, the 2012 renewal application was reinstated and granted.

Parks filed the Petition for Reconsideration on April 20, 2022, arguing that the Bureau had erred in reinstating and granting the 2012 renewal application without also simultaneously rescinding the cancellation of the license. He claimed that the Communications Act mandates that his license continues in effect as long as the 2012 renewal application remains subject to FCC and judicial review. He asserts that the reinstatement of the 2012 renewal application

required the Media Bureau to reinstate the license, which in turn allows him the opportunity to file the second renewal application.

The Media Bureau rejected Parks' arguments. The cancellation of the license became final in September 2020 when Parks failed to seek reconsideration or request Commission review within the time allowed after the cancellation notice. He did not file the Petition for Reconsideration until March 2022. Generally, the time for seeking reconsideration or review of a Commission action begins to run when the Commission gives public notice of that action. Because there was no public notice of the dismissal of the renewal application, Parks claimed that his Petition for Reconsideration must be deemed timely. However, the Media Bureau said that if there was error in failing to issue a public notice, it was harmless because the dismissal, reinstatement and grant of the renewal application had no practical effect. The cancellation of the license had become final and there was no extant license to renew.

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## Raleigh Waiver Condition Allows Flexibility

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interference from (a *Raleigh* waiver) and cause interference to WRIU, Kingston, Rhode Island.

In this case, WRIU had relocated its transmitter site in 1981. At that time, it requested a waiver to receive interference from WNPB in the style of a *Raleigh* waiver although it was not called a *Raleigh* waiver at that time. The processing for this type of waiver was not standardized until 1991 when the decision for the station at Raleigh was issued. This included the custom of imposing Special Operating Condition #2 on the license that results from granting the waiver. WRIU consequently does not have

Special Operating Condition #2 on its license, and therefore may not have had notice or expectation of the principle expressed in the Special Operating Condition #2. Rather than automatically imposing this condition on WRIU, the Audio Division will allow WRIU the opportunity to respond to an Order to Show Cause why the WNPB application should not be granted. WRIU has 30 days in which file its response.

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