

\$2.3 Million Fine Proposed for Pirate

The FCC has cited brothers Cesar and Luis Ayora for long-time operation of a pirate radio station and proposed to fine them \$2,316,034 – the maximum amount permitted under the governing statute. In a *Notice of Apparent Liability for Forfeiture* (FCC 23-17), the Commission narrated a long history of investigating their Queens, New York, unauthorized station that operated on 91.9 and 105.5 MHz, and identified itself on the air as “Radio Impacto 2.”

Radio Impacto 2 openly promoted itself with a website which explained that the brothers Ayora had founded “the first Ecuadorian FM radio station in New York City” in 2008. The website continued, “[t]he station never sleeps, because a team of communications professionals are working for you 24 hours a day.”

The FCC first became aware of Radio Impacto 2 in 2013. In response to complaints, the Commission’s Enforcement Bureau issued three Notices of Unauthorized Operation to Luis Ayora. Although each Notice stated that the station’s operation was illegal and that continued operation of it could result in further enforcement action, the station continued to broadcast. On May 29, 2014, again in response to complaints, Enforcement Bureau agents hand-delivered another Notice to

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ATSC A/322 Sunset Postponed

The FCC has temporarily stayed the provision in Section 73.682(f) of its Rules that set March 6, 2023, as the sunset for the requirement that television stations maintain at least one free over the air primary video stream that complies with the ATSC A/322 standard.

In 2017, the Commission authorized television broadcasters to use the ATSC 3.0 transmission standard (also called Next Gen TV) on a voluntary basis. However, stations choosing to operate in the ATSC 3.0 mode have been required to comply with the ATSC A/322 standard. The A/322 standard determines certain technical aspects of the 3.0 signal to ensure that it is compatible with equipment used by consumers and multichannel video programming

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Expansion Proposed for Audio Description

The FCC has adopted a *Further Notice of Proposed Rulemaking* (FCC 23-20) in Docket 11-43, proposing to expand to all 210 Designated Market Areas (“DMAs”) the obligation for certain television stations to offer audio description with their programming. This requirement currently applies to affiliates of the four major commercial networks (ABC, CBS, FOX, and NBC) in the top 90 DMAs. Network affiliated stations in DMAs ranked 91 through 100 will become subject to this rule on January 1, 2024. Covered stations must provide at least 50 hours of audio-described programming per calendar quarter during prime time or on children’s programming, and an additional 37.5 hours per quarter at any time between 6 a.m. and 11:59 p.m. Under the proposal, the audio description requirement would be expanded to cover network affiliates in increments of the 10 next largest markets on January 1 of each year, beginning in 2025, and continuing through 2035.

In adopting requirements for audio description, the FCC is implementing elements of the Twenty-First Century Communications and Video Accessibility Act of 2010. Audio description is intended to make video programming more

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

pillsbury

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

Tel: 202.663.8167

Fax: 202.663.8007

E-mail: scott.flick@pillsburylaw.com

License at Risk for Failure To Pay Regulatory Fees

The FCC's Media Bureau and its Managing Director have issued an *Order To Pay or To Show Cause* (DA 23-218) to Bravo Broadcasting Company, Inc., the licensee of KIRT(AM), Mission, Texas. The *Order* requires Bravo to pay delinquent FCC regulatory fees or to explain why the regulatory fees are inapplicable or should otherwise be waived or deferred.

The FCC is required by Section 9 of the Communications Act to impose and collect regulatory fees annually from the entities that it regulates for the purpose of funding the Commission's operational costs. The amount of the fees proposed for each type of regulated entity is usually announced in the early summer of each year, and typically set in late August or early September, with payment due in September. Fees not paid by the announced due date incur a late charge of 25% and administrative costs, and accrue interest.

According to the *Order*, Bravo currently has unpaid regulatory fee debt associated with KIRT as shown for the following fiscal years: 2012, \$895.94; 2015, \$1,772.42; 2016, \$5,046.91; 2017, \$6,059.15; 2018, \$4,112.90; 2019, \$4,424.28; 2020, \$4,536.37; 2021, \$4,542.26; 2022, \$4,775.00. Additional charges will continue to accrue until these debts are paid.

As is the FCC's custom, when Bravo failed to pay these fees on a timely basis, the debts were transferred to the United States Treasury for collection. At the Commission's request, Bravo's regulatory fee debts have been returned to the FCC for collection.

Bravo has 60 days in which to pay these fees, or to show cause why the fees are not applicable to it or should be waived or deferred. The *Order* states that failure to pay the fees or show cause why they should not be collected by the deadline may result in the revocation of the license for KIRT. The station's license renewal application filed in July 2021 remains pending. Although license revocation typically involves a hearing, Section 1.1164 of the Commission's Rules provides that in cases involving delinquent regulatory fee debt, a hearing will not be designated until the licensee presents a substantial and material question of fact. Such a hearing will be based upon written evidence only. The licensee will bear the burden of introducing evidence and the burden of proof. Furthermore, unless the licensee substantially prevails in the hearing, the Commission may assess the licensee for the costs of the hearing.

ETRS Latecomers Encouraged To File

All participants in the Emergency Alert System ("EAS"), including broadcasters, were required to prepare and submit Form One into the EAS Test Reporting System ("ETRS") by February 28, 2023. The FCC's Public Safety and Homeland Security Bureau has issued a Public Notice (DA 23-181) to encourage EAS participants who did not meet that deadline to file Form One as soon as possible. The Bureau reminds all EAS participants (including silent stations) that they are obligated to file Form One.

Form One solicits data about the participant's EAS equipment and capabilities, in preparation for a nationwide

test of the system. Section 11.61(a) of the FCC's Rules requires participants to update and renew their Form One annually. The date for this year's nationwide test has not been announced. At the time of the test and shortly afterward, participants will file Form Two and Form Three to report how their facilities performed during the event.

Filers can access ETRS by visiting the ETRS page on the FCC's website at <https://www.fcc.gov/general/eas-test-reporting-system>. Queries and requests for assistance from FCC staff can be directed to ETRS@fcc.gov.

Expansion Proposed for Audio Description continued from page 1

accessible to individuals who are blind or visually impaired. Audio narrated descriptions of a television program's key elements are inserted into natural pauses in the program's dialogue.

The Commission solicits comments about the costs and benefits of implementing audio description in the smallest markets. Data is requested as to the amount of audio-described programming that is already available in markets 101-210. The Commission suggests that costs will be minimized because covered stations are already required to have the equipment and infrastructure needed to deliver a secondary audio stream for purposes of distributing emergency information. Furthermore, network affiliates in all markets are already required to pass through the audio description they receive in a network feed if they have the technical capability to do so,

and doing so would not conflict with other audio description operations.

The Commission seeks comment on alternate implementation plans, such as reducing the total number of markets eventually to be covered by the rule, or expanding coverage in annual increments of less than 10 markets. Market rank is determined by the Nielsen audience measurement company's ratings as of January 1, 2023. The Commission asks what impact that possible changes in Nielsen's rankings over time would have on the list of markets newly subject to the audio-description rule.

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

FCC Wins Judgment Against Former Licensee and Station Manager for Unauthorized Broadcasting

The FCC has obtained a summary judgment against Vearl Pennington, the former licensee of a low power television station at Morehead, Kentucky, and Michael Williamson, the station's former manager, in the amount of \$144,344 for an unpaid fine that was levied against them for operating the station without an authorization after the license had expired. The United States Attorney sued Pennington and Williamson on behalf of the Commission in the United States District Court for the Eastern District of Kentucky.

According to the court's recounting of the history of this case, the station's license last expired on August 1, 1998. Pennington apparently did not file an application to renew the license. In April of 2004, the FCC notified Pennington that it had not received a license renewal application. The Commission gave Pennington 30 days in which to demonstrate that he had applied for a license. If he failed to do so, the FCC said it would update its database to reflect the cancellation of the license.

Rather than responding directly to the FCC's notice, Pennington initiated the procedure for filing a license renewal application in May 2004. He submitted the application in the FCC's Consolidated Database System ("CDBS"), and CDBS identified the filing as "READY." To complete the filing process, a \$50 filing fee should have been paid to the FCC. Upon payment of the fee, the status of the application would change from "READY" to "FILED." The Commission would not review or act on the application until the fee was paid.

Pennington did not remit any fee that the FCC considered to be the filing fee. Rather, he claimed that in August 2004, he paid the FCC \$1,155, which he said he believed was the filing fee for the renewal application. The court later concluded that there may have been a relationship between this remittance and the station's FCC regulatory fees. The amount paid is exactly three times the station's annual regulatory fee of \$385. In any event, CDBS continued to show the status of the filing as "READY" for another 18 years.

The FCC discovered some 12 years later that the station was still on the air. On August 16, 2016, two FCC agents visited the station and encountered Williamson, who identified himself as the station's studio manager and operations manager. The agents asked Williamson for a license. He could not produce one. He claimed that Pennington had renewed the license but lost the records. The agents issued Williamson a Notice of Unlicensed Operation, demanding that the station cease operating immediately. Williamson responded that the station had renewed its license but had never received confirmation of the renewal from the Commission. The station continued to broadcast and a second Notice of Unlicensed Operation was sent on August 22, 2016. An agent observed that the station was still operating on September 7.

The FCC issued a *Notice of Apparent Liability for Forfeiture*

in the amount of \$144,344 to both Pennington and Williamson. The amount of the forfeiture was calculated on the basis of \$10,000 per day of the continuing violation for 22 days (the period of time from August 16 to September 7, 2016), reduced to the then statutory maximum of \$75,000, then adjusted upward for inflation. Pennington and Williamson continued to assert that the license had been renewed. They also asserted that the fine was excessive for a small, nonprofit station, serving a small rural area. The Commission rejected the defendants' requests to cancel the fine and issued a *Forfeiture Order* against them, holding them jointly and severally liable. They failed to pay the fine and the FCC referred the matter to the local U.S. Attorney to initiate a collection action in U.S. District Court.

Under these circumstances, the court conducts a trial de novo in which the government as plaintiff, acting on behalf of the FCC, must prove its case with a complete factual record. Upon the presentation of evidence by both sides, the government moved for summary judgment. Summary judgment is appropriate if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The defendants were unable to show that the station was licensed, continuing to blame the FCC for failed recordkeeping. They admitted that Pennington's last attempt to renew the license had occurred in 2004. They seemed to imply that the 2004 effort at renewal had served to authorize continued operations. However, the record also showed they were aware in 2007 or 2008 that the station was not licensed. They continued to broadcast despite explicit notices from the FCC that the station should cease operating.

The court found that Pennington was liable for the forfeiture as the station's licensee. Williamson attempted to distance himself from station operations, claiming that he should not be liable as he was only a volunteer station staff member. The court rejected this argument, citing prior FCC holdings that "liability for [an] unlicensed operation may be assigned to any individual taking part in the unlicensed station, regardless of who else may be responsible for the operations." The court affirmed the FCC's ruling that both men are jointly and severally liable for the fine.

The government's motion for summary judgment was granted. The court observed that:

The nature, circumstances, and extent of the violations are egregious. Though a low-power station, obduracy in the face of clear rules and legitimate Agency action is a matter of gravity, institutional and otherwise. Further, each Defendant here is culpable, and each has adopted positions and made statements that are flatly wrong at best and highly misleading at worst.

The decision is *United States of America v. Vearl Pennington and Michael Williamson*, 2023 U.S. Dist. LEXIS 44356.



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

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 Delaware, Indiana, Kentucky, Pennsylvania, Tennessee, and Texas.	April	Television stations in Delaware and Pennsylvania begin broadcasting post-filing announcements within five business days of acceptance for filing of license renewal application and continuing for four weeks.
April 3	Deadline to file license renewal applications for television stations in Delaware and Pennsylvania.	April 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.
April 3	Deadline for all broadcast licensees and permittees of stations in Delaware, Indiana, Kentucky, Pennsylvania, Tennessee, and Texas 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).	April 10	Deadline for noncommercial stations to place quarterly report regarding third-party fundraising in Public Inspection File.
		April 10	Deadline for Class A TV stations to place certification of continuing eligibility for Class A status in Public Inspection File.

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 **April 24, 2023**. Informal objections may be filed any time prior to grant of the application.

PRESENT COMMUNITY	PROPOSED COMMUNITY	STATION	CHANNEL	FREQUENCY
La Crosse, FL	Gainesville, FL	WHGV	258	99.5
Silver Springs Shore, FL	Ocala, FL	WCYZ	259	99.7
Highland Park, IL	Niles, IL	WPNA-FM	276	103.1
Sweetwater, OK	Merritt, OK	KVWD	219	91.7
Big Spring, TX	Sweetwater, TX	KRGK	205	88.9
Mullin, TX	Lake Brownwood, TX	KKBW	278	103.5
Wheatland, WY	West Laramie, WY	KLLM	244	96.7

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 CHANNEL	PROPOSED CHANNEL	COMMENTS	REPLY COMMENTS
Wharton, TX		277C2	Apr. 6	Apr. 21
Fort Mohave, AZ	280A	280C2	May 1	May 16
Peach Springs, AZ	280A	278A	May 1	May 16
Tecopa, CA	288A	256A	May 5	May 22



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
Broadcast auction form exhibits	Mar. 31
CORES update/ change form, Form 161	Apr. 7
Broadcast Station Annual Employment Report, Form 395-B	Apr. 10
Cable carriage of noncommercial TV stations, Section 76.56	Apr. 24
Cable carriage channel positioning, Section 76.57	Apr. 24
Cable carriage disputes, Section 76.61(a)	Apr. 24
Retransmission consent, Section 76.64	Apr. 24
Freedom of information/privacy act requests	Apr. 24
DTV ancillary/supplemental services report, Form 2100, Schedule G	May 12
Transition progress report, Form 2100, Schedule 387	May 12

Deadlines for Comments in FCC and Other Proceedings

DOCKET	COMMENTS	REPLY COMMENTS
(All proceedings are before the FCC unless otherwise noted.)		
Docket 22-227; NPRM (FCC 22-73) Updating television rules	Apr. 10	Apr. 25
National Telecommunications & Information Administration Docket 230308-0068; Request for Comments (88 FR 16244) National spectrum strategy	Apr. 17	None
Docket 11-43; FNPRM (FCC 23-20) Video description	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.

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
Coos Bay, OR	KCBY-TV	11	34	Apr. 5	Apr. 20
Kalispell, MT	KCFW-TV	9	17	Apr. 13	Apr. 28
Elko, NV	KENV-TV	10	20	Apr. 17	May 1

**DEADLINE TO FILE SEMI-ANNUAL
DISCLOSURE STATEMENT FOR
FOREIGN MEDIA OUTLETS**

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Luis Ayora, who admitted that he owned and operated the station. The agents warned Ayora that he must discontinue operations immediately or be subject to possible significant forfeitures. Despite these warnings, the agents again detected transmissions from Radio Impacto 2 on January 13, 2015. As a result, the Enforcement Bureau issued a *Notice of Apparent Liability for Forfeiture* for \$20,000 against Luis Ayora on April 14, 2015. The Bureau received no response to the NAL and the fine was never paid.

Enforcement Bureau agents detected the station's on-air signal again seven times between July 21, 2015, and October 17, 2016. On November 17, 2016, the U.S. Marshals service executed a warrant issued by the U.S. District Court and seized the equipment being used to operate Radio Impacto 2. That did not appear to deter the Ayora brothers. Bureau agents detected the station's signal again 11 times from March 23, 2017, to January 11, 2020, transmitting from multiple locations. Bureau agents continued to observe the station operating on several dates during 2022.

The agents also discovered that Radio Impacto 2 promoted four ongoing weekly programs on its website: (1) "Rockola.com" was co-hosted by Luis Angel Ayora and broadcast every Friday; (2) "Análisis Sin Censura" aired every Saturday; (3) "Sentimientos" hosted by César Ayora was broadcast every Sunday; and (4) "Impacto Deportivo" also aired every Sunday. Thus, according to the illegal station's own promotional material, pirate broadcasting occurred on at least 77 additional

occasions between the agents' observations on March 26 and September 24, 2022. Altogether, the Bureau calculated that Radio Impacto 2 operated on 184 days between March 26 and September 24, 2022.

In 2020, the Preventing Illegal Radio Abuse Through Enforcement Act (the "PIRATE Act") was enacted and became codified as Section 511 of the Communications Act. Among other things, this legislation authorized a substantial increase in the forfeitures that could be imposed on illegal broadcasters. The maximum fine for pirate broadcasting was set at \$100,000 per day, not to exceed a total of \$2,000,000. To account for inflation, the Commission has adjusted these numbers upward to \$115,802 per day, and totaling not more than \$2,316,034.

Although the Commission has the discretion to impose lesser fines, it could not justify doing so in this case considering the long history of the Ayora brothers' willful and deliberate violations of the law. Given the severity of the violations noted in this proceeding, the Commission proposed the maximum penalty of \$115,802 for each of the 184 days of pirate broadcasting observed in 2022, for a total penalty of \$21,307,568. However, the FCC is constrained by Section 511 of the Communications Act to limit the forfeiture to the maximum allowable figure of \$2,316,034. The Commission proposes to impose this fine jointly and severally on the Ayora brothers.

The Ayoras have 30 days in which to pay the forfeiture, or to petition for it to be reduced or canceled.

Vacant FM Channels Reinstated to Table of Allotments

The FCC's Media Bureau has issued an *Order* (DA 23-111) to reinstate 17 vacant FM channels in the FM Table of Allotments. These are allotments on which authorizations have been previously issued, but which have been cancelled. These allotments will now be available for applications for new stations in one or more future FM auction filing windows. The table below lists these allotments.

COMMUNITY	CHANNEL
Ajo, Arizona	275A
Fredonia, Arizona	266C1
Peach Springs, Arizona	280A
Lake Village, Arkansas	278C3
Kettleman City, California	299A
Tecopa, California	288A
Wasco, California	224A
Bear Lake, Michigan	264C3
Grand Portage, Minnesota	251A
Greenwood, Mississippi	230C3
Bunker, Missouri	292C3
Clovis, New Mexico	272C3
Owyhee, Nevada	247C1
Junction, Texas	228C2, 290A
Sonora, Texas	272C3
Barton, Vermont	262A

ATSC A/322 Sunset Postponed continued from page 1

distributors.

The mandate to comply with the A/322 standard was scheduled to expire on March 6. However, last June, the FCC released a *Third Notice of Proposed Rulemaking* (FCC 22-47) in Docket 16-142 to review the current state of implementation and usage of ATSC 3.0. In an *Order* (FCC 23-11) adopted on the March 6 sunset date, the Commission reported that “virtually all” commenters responding to this issue in the *Third Notice* favored “at least a temporary extension of the

requirement to comply with A/322.” The Commission said that it was unclear whether any consumer receivers could display ATSC 3.0 signals that are noncompliant with A/322. Hence, the viewing public might lose television service during any period of noncompliance by broadcasters.

To avoid this potential loss of service, the Commission stayed the sunset of the A/322 rule pending resolution of the issues raised in the *Third Notice*.

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