

EAS Monitoring Updated

The FCC's Public Safety and Homeland Security Bureau has released a *Public Notice* (DA 23-482) to announce updated guidance for Emergency Alert System ("EAS") state plans and for monitoring assignments for EAS participants, including broadcasters. State plans for administering the EAS are drawn up and adopted by State Emergency Communications Committees ("SECCs"). SECCs are volunteer, non-governmental organizations that typically include members representing EAS participants, such as broadcasters and cable companies, and may also include state and local government officials. SECCs are required to develop and amend as necessary state EAS Plans which are then to be reviewed by the FCC at least once each year. The SECC EAS Plan designates the sources that each EAS participant is to monitor for the reception and retransmission of emergency alerts.

Previously, SECCs could file EAS Plans in the Commission's Alert Reporting System ("ARS") database for review and approval only once a year. When the Bureau approved a Plan, the SECC could make and save changes in ARS. However, such changes could not be submitted to the Bureau for approval until 30 days prior to the due date for

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DTS Facility Earns Market Modification for Parent Station

The FCC's Media Bureau has granted a petition submitted by the licensee of WZME(TV), Bridgeport, Connecticut, to modify its market to include communities located in the New York Designated Market Area ("DMA") and served by Comcast, Spectrum, and Altice cable systems. This modification gives WZME must-carry status on those cable systems. The Bureau explained its decision in a *Memorandum Opinion and Order* (DA 23-444) in Dockets 23-56, 23-57, and 23-58.

The Communications Act and the FCC's Rules give full-service commercial television stations the right to assert mandatory carriage rights on cable systems located within the station's market. A station's default market for

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Emergency Information Access Waiver Extended

In response to a petition from the National Association of Broadcasters ("NAB"), the FCC has extended for an additional 18 months the waiver of compliance with the requirement in Section 79.2(b)(2)(ii) of the Commission's Rules for video program providers to transmit an aural representation of visual, non-textual emergency information. The FCC's Media Bureau has released a *Memorandum Opinion and Order* (DA 23-308) in Docket 12-107, announcing the extension of the waiver with conditions.

The rule requires video programming providers to ensure that visual emergency information during non-news programming is made accessible to individuals who are blind or visually impaired by way of a secondary audio stream. If visual, but non-textual emergency information, such as maps or graphic displays, is shown during non-news programming, the aural description of this information is to accurately and effectively convey the critical details regarding the emergency and how to respond to it.

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OPIF Lapses Occur During Channel Sharing

The FCC's Media Bureau has proposed to fine Entravision Holdings, LLC, \$18,000 for failing to properly maintain the Online Public Inspection File for its station, WJAL(TV), Silver Spring, Maryland. The Bureau's action was announced in a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (DA 23-501).

In its 2021 license renewal application for WJAL, Entravision disclosed that some of the station's issues and programs lists and Children's Television Programming Reports had not been timely uploaded during the expiring license term. Commission staff reviewed the station's Public Inspection File and found that 10 issues and programs lists had been uploaded more than one year late; three issues and programs lists were uploaded between one month and one year late; and an additional issues and programs list was uploaded more than one month late. Three quarterly Children's Television Programming Reports were filed more than one year late.

The licensee explained that most of these late filings occurred during the period when the FCC and many stations were involved in the reverse incentive auction and post-auction procedures. The spectrum usage rights for WJAL were relinquished in the incentive auction and Entravision entered into a channel sharing agreement with WUSA(TV),

Washington, D.C. Entravision told the FCC that during implementation of the channel sharing agreement, there was confusion about operational responsibilities and the public file uploads were inadvertently overlooked. Entravision stated that it has taken actions to ensure that such failures will not occur in the future.

The FCC's *Forfeiture Policy Statement* and Section 1.80 of its Rules establish a base fine of \$10,000 for violations of the Public Inspection File Rule. The Media Bureau has the discretion to adjust that figure as the facts of the case warrant. The Bureau found that an upward adjustment to \$18,000 was justified in this case because of the multiple incidents of late filing. Within 30 days of release of this action by the Bureau, Entravision may petition for cancellation or reduction of the proposed fine.

This action came about in the course of the Media Bureau's review of the WJAL license renewal application. The Bureau determined that the public file violations did not constitute a "serious violation" that would warrant designating the application for a hearing. Consequently, upon resolution of the forfeiture proceeding, the Bureau said it would grant the license renewal application if no other issues arise that would preclude such a grant.

Translator Cancelled for Lack of AM Primary Station

The Audio Division of the FCC's Media Bureau has cancelled the authorization for FM translator station W237FK, Opp, Alabama, for failing to become co-owned with the AM station with which it was proposed to be paired in the original FM translator auction construction permit application. This action was released in the form of a *Letter Decision* (DA 23-339) by the Audio Division Chief.

In 2017, the FCC opened a filing window in Auction 99 for the licensees of certain AM radio stations to file applications for new FM translator stations that would rebroadcast the AM station's signal. This filing window was an element of the FCC's effort to revitalize AM broadcasting. The primary AM station and the translator were to be commonly owned in perpetuity.

Brantley Broadcast Associates, LLC, filed a contingent application in the filing window for a new FM translator and identified WAMI(AM), Opp, Alabama, as the prospective primary station for the translator. Section 73.3517 of the FCC's Rules permits an applicant to apply for a facility contingent upon some condition coming about – often the grant of another related application. In this case, grant of the translator application was contingent upon Brantley's acquisition of WAMI, which it did not then own. On the same day, the licensee of WAMI, Christopher Johnson, filed an application for FCC consent to assign WAMI to Brantley. The grant of this application and the consummation of the transaction would fulfill the contingency on Brantley's application for the translator.

In January 2018, the Media Bureau granted the translator construction permit application, subject to the following condition:

Grant of this authorization is conditioned on the common ownership, in perpetuity, of this facility and the specified AM station. Any violation of this condition shall result in the rescission of the grant of this authorization and the dismissal, with prejudice of the associated application and, if applicable, cancellation of the associated construction permit.

Two months later, the Bureau granted the WAMI assignment application. This grant required that consummation of the assignment be completed within 90 days, and a letter was to be promptly sent to the Commission by either party to confirm that the transaction had been consummated.

Just as the translator construction permit was about to expire, Brantley filed a license application to cover the permit on July 9, 2021. The Bureau granted the license application, and again conditioned the authorization on the common ownership, in perpetuity, of the translator and the specified AM station (i.e., WAMI).

The transaction to assign WAMI to Brantley was never consummated. Instead, on November 30, 2022, Brantley and Johnson filed an application to assign the translator to Johnson. Marble City Media, LLC, a radio station group owner in Alabama, opposed this assignment application in

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FCC Filings Conflicting with State Records Cause Dismissal

By a *Letter Decision* (DA 23-483) from the Chief of the Audio Division, the FCC's Media Bureau dismissed an application for a new noncommercial FM station when it was discovered that the list of the applicant's corporate officers and directors in the application omitted the name of an officer listed in records on file with the Secretary of State of the corporation's home state. The omitted officer was a person of interest in a prior FCC investigation.

Key West Radio ("KWR") was originally named by the Media Bureau as the tentative selectee in NCE MX Group 55. The four mutually exclusive applications in this group proposed new stations at various locations in the Florida Keys. They were filed during the 2021 noncommercial FM filing window. One of the competing applicants, Frequency Zero, Inc. ("FZI"), filed a Petition to Deny KWR's application, alleging that KWR had failed to identify all of the real parties to its application, especially when omitting an individual with unresolved potential qualification problems from an investigation the FCC conducted in 2019.

The KWR application identified three directors of the corporation: Bertrand and Dianne Stebbins, and their son, Fred Stebbins. FZI reported that Fred's brother, John, was listed as an officer of KWR in articles of incorporation filed in 2021 with the State of Florida and in a 2022 corporate restatement. FZI also pointed out that the primary email address and telephone contact number for KWR were associated with companies run by another brother of Fred, Peter. FZI alleged that John and Peter were undisclosed real principals of KWR, and that KWR had misrepresented the identities of the parties to the application in an effort to avoid the disclosure of disqualifying information.

It came to light that John and Peter had been principals of an entity known as 305 Community Radio ("305"). The FCC had investigated 305 in 2019 in connection with the operation of a low power FM station at two unauthorized locations in Miami while representing to the FCC that the station was broadcasting from two authorized sites where it had never been constructed. 305 attempted to resolve and terminate that investigation by surrendering the license and claiming the matter to be moot. However, the Media Bureau issued a letter (the "Miami Letter") stating the matters raised in the investigation were not moot because they could be relevant in determining qualifications in future applications filed by John and/or Peter. The Bureau ordered that any application involving John or Peter filed within the next five years should include a copy of the FCC's Letter of Inquiry (the "Miami LOI") in the investigation and a copy of the Miami Letter. This

would alert the Commission and any interested parties to potential issues relevant to the applicant's qualifications. Thus it appeared that KWR had a motive to conceal the involvement of John and Peter in the NCE application.

KWR responded that it had no connection to 305 and it was not subject to the requirement to disclose the FCC correspondence involving the investigation of 305. It acknowledged the familial relationships to John and Peter but argued that that by itself did not create attribution. KWR did admit that Peter provided "unpaid consulting services" to the company. Further, it admitted that John had been named in the corporate filings with the state but claimed that was a mistake caused by "hasty" filing.

The Media Bureau declined to credit KWR's explanations. It was undisputed that at the time the KWR application was filed, John was officially listed in the records of the State of Florida as a vice president of the corporation. After these problems came to light, Dianne was substituted as the vice president. The Bureau said that this substitution was immaterial to determining attributable interests in the application when it was filed. The Bureau explained that it will not allow an applicant to simply disavow its duly adopted corporate articles and bylaws, claiming extra-legal considerations, to avoid adverse legal consequences. It said that to hold otherwise would establish a dangerous precedent.

The KWR application was filed less than five years after the investigation of 305. Because John was in fact an officer of KWR when the application was filed, the Bureau concluded KWR was subject to the requirement to disclose the Miami Letter and the Miami LOI in the application. Because the KWR application lacked those documents, it was deemed to be incurably defective and was dismissed.

The Bureau observed that the matters raised in this proceeding dovetailed with the disclosure requirements for 305 in the Miami Letter and are potentially relevant to determining the qualifications of KWR and its principals in any future applications they may file. Consequently, the Bureau imposed a new broader and longer disclosure requirement on 305, KWR, each of the Stebbins family members involved in either 305 or KWR, and any entity in which any of them may hold an interest. Any application submitted by any such applicant must include three documents: (1) the new *Letter Decision*, (2) the Miami Letter, and (3) the Miami LOI. This requirement will apply for 10 years from the date of the *Letter Decision*.



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

June 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 Arizona, the District of Columbia, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, and West Virginia.	July 10	Deadline for noncommercial stations to place quarterly report regarding third-party fundraising in Public Inspection File.
June 1	Deadline for all broadcast licensees and permittees of stations in Arizona, the District of Columbia, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, and West Virginia 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).	July 10	Deadline for Class A TV stations to place certification of continuing eligibility for Class A status in Public Inspection File.
June 1	Mid-Term EEO review begins for certain radio stations in the District of Columbia, Maryland, Virginia, and West Virginia.	August 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 California, Illinois, North Carolina, South Carolina, and Wisconsin.
July 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.	August 1	Deadline for all broadcast licensees and permittees of stations in California, Illinois, North Carolina, South Carolina, and Wisconsin 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).
		August 1	Mid-Term EEO review begins for certain radio stations in North Carolina and South Carolina.

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
DTV Ancillary /Supplementary Services Report, Form 2100, Schedule G	June 26
Licensing auxiliary stations, Sections 74.432, 74.832	July 3
Low Power FM rules, Part 73, Subpart G; Form 2100, Schedule 318	July 3
Rebroadcasts, Sections 73.1207, 74.784, 74.1284	July 3
Visual modulation monitoring, Section 73.691	July 5
Earth stations and space stations, Forms 312, 312-EZ, 312-R	July 5
License modification application, Section 73.3544	July 10
Section 106 Preservation Act review process, Forms 620, 621	July 10
Remittance Advice Form 159	July 10
Determining operating power, Section 73.51	July 14
Settlement agreements, Section 73.3525	July 17
Auxiliary station application, Form 601	July 24
FM translator and booster construction permit application, Form 2100, Schedule 349	July 31
AM directional field strength measurements, Section 73.61	Aug. 7
Low power auxiliary stations, Section 74.802	Aug. 11
Chief operators, Section 73.1870	Aug. 11



DEADLINES TO WATCH



Deadlines for Comments in FCC and Other Proceedings

DOCKET

COMMENTS REPLY COMMENTS

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

Docket 23-159: NPRM (FCC 23-34)
2023 Regulatory Fees

June 29

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

PRESENT COMMUNITY	PROPOSED COMMUNITY	STATION	CHANNEL	FREQUENCY
Decatur, AL	Mooreville, AL	WWTM(AM)	N/A	1400
Oxford, AL	Ohatchee, AL	WVOK-FM	250	97.9
Apopka, FL	Fairview Shores, FL	WNDO(AM)	N/A	1520
Daytona Beach, FL	Port Orange, FL	WORD(AM)	N/A	1340
Hattiesburg, MS	Marrero, LA	WFFX	279	103.7
Cimarron, NM	Maxwell, NM	KCNM	217	91.3
Batavia, NY	Kendall, NY	WGCC-FM	214	90.7
Lamesa, TX	Tarzan, TX	KVLM	284	104.7
Richmond, VA	Ashland, VA	WVNZ(AM)	N/A	1320
Wheatland, WY	Laramie, WY	KLLM	244	96.7

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the Plan’s annual review. Under the new procedures, SECCs may submit their amendments to previously approved EAS Plans and request Bureau approval at any time. Bureau staff will review these amendments as they are filed.

The Bureau says that this enhanced automated system will allow SECCs to update their EAS Plans for new monitoring assignments that may occur at irregular intervals and to keep their Plans current. Although the traditional waiver procedure will continue to be available, the Bureau believes that this change should make it largely unnecessary for SECCs to request waivers to obtain approval for changes outside of the period for the annual review. EAS participants are encouraged to reach out to their SECC to request new monitoring sources for alerts when they can no longer reliably receive the sources listed in their state EAS Plan. SECC’s are permitted to update the sources listed in their EAS Plan accordingly by amending their EAS Plan, and EAS participants are permitted to immediately begin relying on the new sources listed in the Plan without waiting for FCC approval of the amendment. The ARS can be accessed through the FCC’s webpage for the EAS Test

Reporting System: <https://www.fcc.gov/general/eas-test-reporting-system>. A compilation of SECC chairpersons and state plans can be viewed at <https://www.fcc.gov/SECC-Resources#Approved>.

To expedite the approval of state EAS Plans and amendments, the Bureau recommends that SECCs configure their monitoring assignments to assign as many EAS participants as possible to directly monitor, with no intermediate links, one or more sources of the National Emergency Message (“EAN”) directly from the Federal Emergency Management Agency (“FEMA”). Participants in the National Public Warning System (“NPWS”) (previously known as the Primary Entry Point (“PEP”) system) deliver the EAN alert from FEMA to EAS participants. Entities that provide the NPWS distribution services are designated by FEMA, including 77 broadcast radio stations and three satellite networks. Collectively, these providers cover 90 percent of the United States’ population. The Bureau says that the broad geographic availability of these sources should make it possible for most EAS participants to monitor signals from one or more of them directly.

Emergency Information Access Waiver Extended continued from page 1

When this rule was adopted in 2013, the deadline for compliance was set for May 26, 2015. Automated text-to-speech mechanisms then in existence could not be used to aurally describe graphics because they did not contain text files that could be converted to speech. This technical problem persisted, and the Media Bureau previously granted temporary waivers of the rule, the last of which expired on May 26, 2023.

In its petition, NAB stated that, despite efforts to coordinate with entities potentially capable of developing a technical solution for compliance during the waiver period, a workable solution with existing technology has not yet been identified. NAB requested a two-year extension of the waiver to explore new potential technical solutions. NAB observed that critical details of an emergency provided in a visual, non-textual graphic are usually duplicative of the information provided in accompanying textual crawls, which are already aurally described.

Although they had supported previous waiver requests, this one was opposed by the American Council of the Blind and the American Foundation for the Blind. These groups criticized the television industry for a “lack of proactive efforts being taken to procure or develop a solution to this known and longstanding issue.” They proposed that, on an interim basis, the FCC require stations to manually produce the aural content needed to describe the graphic material. NAB countered that it had engaged with stakeholders and technical experts inside and outside the broadcast industry in an effort to find a viable solution, and that none has thus far been developed or identified. NAB also asserted that requiring manually prepared audio would be excessively expensive, especially for smaller stations.

The Media Bureau concluded that the record demonstrated that a viable technical solution for automated descriptions of emergency information presented in graphic form does not currently exist, and therefore that an extension of the waiver was justified. The Bureau noted that broadcasters are already obligated to provide an accurate

aural description of non-textual emergency information shown during non-newscast programming. The Commission has previously stated that broadcasters do not need to take further steps to comply if the critical information conveyed in graphic images is duplicated in emergency information provided in a crawl and transmitted aurally on a secondary audio stream.

Nonetheless, the Bureau declined to grant the waiver for the full two-year period that NAB had requested. Instead, the waiver will extend for only 18 months, until November 26, 2024. Further, to better assist the Commission in monitoring the continued need for a waiver and the broadcast industry’s efforts and progress in developing a technical solution, the Bureau required NAB to submit quarterly status reports. These reports are to include, at a minimum, the following elements:

(1) Information about the extent to which broadcasters need to invoke the waiver, such as a survey of the incidence of the presence of critical graphic material which is not described in an accompanying crawl and transmitted aurally on a secondary audio channel.

(2) Description of NAB’s outreach to the disability community and its efforts in consultation with the disability community to develop standards and best practices for broadcasters.

(3) Description of NAB’s efforts, in consultation with technical experts, inside and outside broadcasting, to develop technical solutions.

(4) Description of training and best practices for broadcasters to offer effective communication of critical emergency information conveyed in graphic images, and tangible efforts by NAB to conduct or encourage such training.

(5) If the television industry, in consultation with the disability community, determines that there is a preferred alternative to an automated technical solution, an explanation of such alternative.

Translator Cancelled for Lack of AM Primary Station continued from page 1

a Petition to Deny which the Bureau recharacterized as an Informal Objection. The Bureau’s *Letter Decision* was issued in response to Marble City’s objection.

Marble City argued that Brantley had failed to comply with the specific terms of the translator authorization requiring the common ownership of W237FK and WAMI. Marble City contended that the failure by Brantley and Johnson to consummate the WAMI assignment constituted a violation of a condition on the translator construction permit.

Marble City argued that this failure required rescission of the grant of the W237FK construction permit. Consequently, Brantley had no station to assign to Johnson.

The Media Bureau agreed with Marble City. It cancelled the W237FK authorization and dismissed with prejudice all of the pending applications related to the station. Failure to comply with the requirements of the Commission’s AM revitalization program proved fatal for the translator.

DTS Facility Earns Market Modification for Parent Station continued from page 1

this purpose is the DMA in which it is located as defined by Nielsen Media Research.

The Communications Act also provides for the FCC to entertain proposals to change a station's local market by including additional communities or excluding communities from the market. In evaluating requests to modify a station's market, the law requires the Commission to give special attention to the value of localism by taking into account such factors as the following:

- (1) whether the station, or other stations located in the same area, have been historically carried on the cable system(s) in such community;
- (2) whether the station provides coverage or other local service to such community;
- (3) whether modifying the station's market would promote consumers' access to television broadcast signals that originate in their state;
- (4) whether any other station that is eligible for must-carry status in such community provides coverage of news, issues of concern, sporting events, or other events of interest to the community; and
- (5) evidence of viewing patterns in cable and noncable households within the areas served by the cable system(s) in such community.

In the petition, WZME described itself as a full power television station licensed to Bridgeport, Connecticut, that has been serving the New York DMA since 1987. Market modification decisions in 1996 and 1997 resulted in the exclusion of a substantial number of communities in the New York DMA from its market. In those rulings, the Media Bureau had found that WZME offered no evidence of historical carriage, significant local programming, Grade B coverage, or actual viewership. In some cases, there was a significant distance between the station's community of license and the community at issue.

Since 2017, WZME has broadcast on a shared channel with WEDW(TV), Stamford, Connecticut, from a tower located in Shelton, Connecticut. On February 12, 2023, WZME also began transmitting from a Distributed Transmission System ("DTS") facility at the Empire State Building. WZME asserted that the DTS facility now enables the station to reach most of the New York and New Jersey communities served by Comcast, Spectrum, and Altice cable systems. This improvement in coverage formed the basis for the petition to return those communities to WZME's market. The Bureau evaluated this request in light of the statutory criteria.

The first of these criteria is historical coverage in the community. Other multichannel video programming distributors, such as Verizon FIOS, that serve the requested

communities also carry WZME. The Bureau views this as weighing in support of the petition. Another element is whether the cable systems have carried not only the station in question, but also its nearby competitors. WZME states that other stations broadcasting from the Empire State Building are being carried by the cable systems in question. Thus it is at a competitive disadvantage without comparable carriage. The Bureau determined that these facts also weigh in favor of the petition.

With the installation of the DTS facility at the Empire State Building, WMZE can now claim support under the second criterion – providing local service. Its noise-limited contour now covers the communities that were previously deleted from its market.

The third statutory criterion concerns whether the modification will improve consumers' access to a station in their state. WZME is licensed to a community in Connecticut. It is seeking to add communities to its market that are located in New York and New Jersey. This criterion was therefore found to be irrelevant in this case, with neutral value in the decision.

The fourth criterion is an evaluation of whether other stations with must-carry status in the communities in question provide coverage of local news, sports, and/or other matters of interest in the community. In general, this factor enhances a station's market modification request if other stations do not sufficiently serve the communities in question. However, the fact that other stations do provide local coverage of matters of interest to the community rarely counts against a petition. WZME concedes that other stations do provide such coverage. This factor was therefore also given neutral value in the Bureau's decision.

The fifth criterion pertains to viewing patterns. WZME admits that its viewership is minimal throughout the New York DMA. Commission precedent requires a "significant" level of viewership in the specific communities in question to give this factor a positive weight. In cases such as this one where the petitioner is attempting to retrieve communities for its market that it had lost in prior modification rulings, the Commission has previously given this factor limited weight against a petition. In this case, the Bureau determined this factor weighs only slightly against grant of the petition.

The Media Bureau concluded that the evidence provided by WZME heavily supported granting the petition under the first two statutory criteria, and that these factors outweigh the slightly negative influence of the fifth criterion. The improved service provided by the DTS facility was a significant factor in the decision to grant the petition to modify WZME's market.

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