

Supreme Court: Aereo Infringes Copyright

The Supreme Court has ruled by a 6 to 3 vote that Aereo's system of relaying broadcast television programming via the Internet to paying subscribers requires the consent of the broadcasters and/or others who hold the copyrights in that programming. Writing for the Court majority that included Justices Roberts, Kennedy, Ginsburg, Sotomayor and Kagan, Justice Breyer said that Aereo's setup was indistinguishable from that of cable television – a phenomenon that Congress deliberately intended to cover in the Copyright Act of 1976.

This case began when broadcasters sued Aereo, Inc. in U.S. District Court in New York City for copyright infringement after Aereo began retransmitting their programming to subscribers via the Internet. Aereo's system involved the capture of a broadcast signal on a small antenna uniquely assigned to a specific subscriber and recording that content on a hard drive in a folder also uniquely assigned to the subscriber. The subscriber could then access the programming and have it streamed to an Internet-connected device almost simultaneously, or save it for later viewing. Broadcasters

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Regulatory Fees Proposed for FY 2014

The FCC has published its proposed regulatory fees for fiscal year 2014. The chart on page 7 shows the proposed fee for most authorizations of interest to broadcasters for this year and, for purposes of comparison, the corresponding fee for fiscal year 2013.

The biggest changes from last year occur for full power television stations due to combining the formerly separate categories of VHF and UHF. In the analog world, VHF channels were more desirable for television than UHF, and the fees for VHF were substantially larger. In the digital mode, UHF is no longer inferior. Therefore, as the Commission proposed to do last year, the regulatory fees for VHF and UHF have been unified. The result is that fees for VHF stations were substantially reduced while UHF stations experience increases.

In addition to setting out the fees for FY 2014, the FCC continued the process of regulatory fee reform that it initiated last year. In theory, regulatory fees are supposed to reflect the amount of work required on the part of Commission staff to regulate each kind of entity within the agency's jurisdiction.

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FCC Offers Refinements for EAS

The FCC has proposed to fine tune some of the procedures governing the Emergency Alert System, or EAS. These proposals stem from the Commission's experience and observations during the first nationwide EAS test which was conducted on November 9, 2011. In a *Notice of Proposed Rulemaking* in Docket 04-296, the Commission proposes to (1) establish a national location code for EAS alerts issued by the President; (2) create a national EAS test code for future nationwide tests; (3) require EAS participants to submit test result data electronically; and (4) require EAS participants to meet minimum standards to ensure that EAS alerts are accessible to everyone, including those with disabilities.

Section 11.31(c) of the Commission's rules provides that all EAS alerts include a geographic local code to indicate the affected area of the emergency. There is a code for each state and territory, but there is none for the entire United States as a whole. Gearing up for the 2011 nationwide test, the agency declined to mandate a national location code out of a worry that to

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Over time, the workloads have shifted among the Commission's bureaus. Last year, the Commission began the process of shifting the burden for regulatory fees to more nearly correlate to the staff time needed in each Bureau. As a part of that process, the Commission now proposes, for the purpose of fee calculations, to reallocate part of the staff time of the Consumer and Governmental Affairs Bureau and the Enforcement Bureau to other Bureaus, including the Media Bureau. This may have the effect of adding upward pressure in the future on fees for media regulatees.

Expansion band (1610-1700 kHz) AM stations are currently exempt from fees. The Commission proposes to eliminate that exemption next year.

The agency asks for comment on whether the staff time allocations (and therefore fees) for satellite earth stations should be increased.

On the other hand, the FCC also seeks comment on eliminating fees in the future for such categories as Satellite TV, Satellite TV Construction Permit, Broadcast Auxiliaries, LPTV and Class A television; FM Translator/Booster stations.

Broadcasters' regulatory fees are for the 12-month period ending September 30, 2014. The due date for paying fees will be announced later.

Collecting regulatory fees is mandated by the Communications Act. The FCC therefore does not have the discretion to not collect the fees. Public comment is invited on the methodology for calculating fees and on the proposed reforms. Comments are due for the *Notice of Proposed Rulemaking* in Docket 14-92, and the *Second Further Notice of Proposed Rulemaking* in Docket 13-140 by July 7. The deadline for reply comments is July 14.

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do so would entail significant reprogramming of EAS equipment. The location code for Washington, D.C. was used for the test. However, this proved to be problematic because the EAS equipment at some locations rejected the alert as not local and terminated the test midway through the transmission.

To avoid such confusion in the future, both for nationwide tests and for actual emergencies, the Commission proposes to adopt "000000" as the nationwide location code. EAS equipment may need to be upgraded or replaced to accommodate this change. Such upgrades, in conjunction with the rules that require EAS equipment to recognize all header codes, should prevent equipment from programmatically ignoring location header codes. This would allow the use of other specific location codes and enable the President to address one or more regions rather than the entire country in the event that such geographic targeting was desirable.

To initiate the nationwide test in 2011, an Emergency Action Notification ("EAN") was transmitted to EAS participants. The EAN is the live code that would be used in a real emergency. Despite extensive efforts to prepare for the event as a test, some confusion did occur as to whether it was merely a test or a real emergency. To avoid that problem in future tests, the agency proposes to adopt an alternate code for initiating nationwide tests – the National Periodic Test ("NPT") code. It appears however that an NPT that fully emulates an EAN in length and quality could be expensive to integrate into the existing system. The Commission acknowledges that the NPT can be tailored in different ways, with different costs and benefits. Would the benefits of full emulation outweigh the costs? The FCC seeks public comment on the manner in which NPT should be deployed.

After the 2011 nationwide test, EAS participants were required to submit reports about their experience. They had

the option to file their reports electronically, or manually on paper. For future tests, the Commission proposes to mandate that such reports be filed electronically. The agency also proposes to upgrade the filing system to allow more flexibility for filers to review and edit their reports and to retrieve them after filing.

Reports from the first nationwide test indicated that in some cases, individuals with disabilities had difficulty accessing all of the information needed to comprehend correctly the EAS event. The FCC seeks to remedy that problem by implementing minimum standards for communication to the disabled, especially in connection with a text crawl across the television screen during the event. The agency requests comment on the technical aspects of such a rule, including the crawl speed, completeness and placement. The Commission suggests that its closed captioning rules provide a good model for these criteria. The agency proposes to require that the text crawl be displayed continuously throughout the EAS activation. The Commission is concerned that the contents of audio of the EAS announcement is matched in the text of the crawl on the screen. It asks whether more explicit rules are needed to achieve this goal.

Most of these proposals, if adopted, would require some degree of upgrade or replacement of existing EAS equipment. The Commission proposes to require that all such changes be implemented within six months of the effective date of whatever rules are adopted.

Public comment on all of these proposals is solicited. The period for comments will expire 30 days after publication of notice of this proceeding in the Federal Register. Reply comments can be filed within the 15-day period following the comment deadline.

LPTV Displacement Applications Frozen

On June 11, the FCC's Media Bureau announced a freeze on the filing of displacement applications for low power television, TV translator and Class A television stations and applications for digital replacement translator stations – effective as of that date. Applications previously on file will be processed. The Bureau said this action was necessary to help facilitate preparations for the incentive auction. Displacement applications for these services can only become necessary when a full power digital station modifies its facilities to affect an LPTV station. Full power and Class

A modification applications have been frozen since April 5, 2013. The Bureau believes therefore that there are now few opportunities for LPTV displacements and that this freeze will have minimal effect on this group of stations.

The FCC will continue to accept and process minor change applications and applications for digital flash cuts and digital companion channels by existing LPTV, TV translator and Class A stations.

Among these stations, only Class A facilities will be pro-
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claimed that Aereo's transmissions constituted public performances subject to copyright restrictions. Aereo responded that its service was essentially identical to the cloud-based DVD services that the Second Circuit Court of Appeals held did not infringe copyright in *Cartoon Network LP, LLLP v. CSC Holdings, Inc.* (commonly called the *Comcast* decision).

The broadcasters requested a preliminary injunction against Aereo's continued operations during the proceeding. An element required for a preliminary injunction is a showing that the movant would eventually prevail on the merits of the case. The District Court denied the request for an injunction, finding that Aereo was not infringing the broadcasters' copyrights, and therefore the broadcasters were unlikely to succeed on the merits of the case. On the broadcasters' appeal to the Second Circuit, that court affirmed the District Court. This appeal to the Supreme Court ensued.

In the early days of cable television, the question arose as to whether a cable system's retransmission of a television station's signal constituted a public performance subject to the consent of the owner of the rights in the television programming. The courts decided that such retransmissions did not infringe upon copyright. In the Copyright Act of 1976, Congress explicitly reversed this principle. The legislation clarified that to "perform" an audiovisual work means "to show its images in any sequence or to make the sounds accompanying it audible." The new law also included the "Transmit Clause" which provided that a public performance occurs when "members of the public capable of receiving the performance . . . receive it in the same place or in separate places and at the same time or at different times."

The statute was deliberately designed to describe the services of a cable television system. Notwithstanding superficial similarities to cable TV, Aereo argued that its service was not a public performance. It said that it merely supplied equipment that emulated the operation of a home antenna and video recorder. The Court acknowledged that there are technical differences between the delivery mechanism of a cable TV system and Aereo's service. Aside from the obvious hardware differences, a cable system can offer all of its carried signals at any given time, whereas Aereo's service provides only one program stream at a time.

However, the Court determined that "In terms of the Act's purposes, these differences do not distinguish Aereo's system from cable systems, which do perform 'publicly.'" The Court said that these technological differences should not matter. They only concern behind-the-scenes delivery methods. "They do not render Aereo's commercial objective any different from that of cable companies. Nor do they significantly alter the viewing experience of Aereo's subscribers." The Court concluded that these differences do not place Aereo's activities beyond the scope of the Copyright Act.

The Court dismissed the concerns expressed by many that its decision could have a negative impact on other technologies. It said that the history of cable television that led to enactment of the Transmit Clause does not offer any indications about whether different kinds of providers in different contexts also "perform." The Court specifically excluded from its consideration whether the public performance right is infringed when the user of a service pays primarily for something other than the transmission of a copyrighted work, such as the remote storage of content.

Justice Scalia wrote the dissenting opinion for himself and Justices Thomas and Alito. He argued that the "looks-like-cable-TV" test for determining whether a new technology is offering a public performance subject to copyright is indefensible "guilt by resemblance." He asserted that the volition of the performer must be an element of a public performance. Aereo does nothing more than operate an automated, user-controlled system, and has no control over the content. Unlike video-on-demand services, Aereo does not curate the content or provide a prearranged assortment of movies or programs. According to the dissent, Aereo does not "perform" because it does not choose the content.

The case was remanded to the Court of Appeals for further proceedings. While this decision was technically only about the broadcasters' request for a preliminary injunction, the finding that Aereo's service does in fact infringe the broadcasters' copyrights goes to the heart of the dispute. According to press accounts, Aereo suspended its operations in all markets on June 28.

The decision is entitled *American Broadcasting Cos, Inc., et al. v. Aereo, Inc.*, No. 13-461.



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

July 1 & 16, 2014	Television stations in Arizona, Idaho, Nevada, New Mexico, Utah and Wyoming broadcast post-filing announcements regarding license renewal applications.
July 1 & 16, 2014	Television stations in California broadcast pre-filing announcements regarding license renewal applications.
July 10, 2014	Place Issues/Programs List for previous quarter in public inspection file for all full service radio and television stations and Class A TV stations.
July 10, 2014	Deadline to file quarterly Children's Television Programming Reports for all commercial television stations.
August 1, 2014	Deadline to file license renewal applications for television stations in California .
August 1, 2014	Deadline to file Biennial Ownership Report for all noncommercial radio stations in Illinois and Wisconsin and television stations in California .
August 1, 2014	Deadline to place EEO Public File Report in public inspection file and on station's Internet website for all nonexempt radio and television stations in California, Illinois, North Carolina, South Carolina and Wisconsin .
August 1, 2014	Deadline for all broadcast licensees and permittees of stations in California, Illinois, North Carolina, South Carolina and Wisconsin to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s). Stations for which this is the license renewal application due date will submit this information as a part of the renewal application.
Aug. 1 & 16, 2014	Television stations in Arizona, California, Idaho, Nevada, New Mexico, Utah and Wyoming broadcast post-filing announcements regarding license renewal applications.
Aug. 1 & 16, 2014	Television stations in Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon and Washington broadcast pre-filing announcements regarding license renewal applications.

**MUST CARRY/
RETRANSMISSION CONSENT
ELECTIONS FOR 2015-2017 DUE
OCTOBER 1, 2014**

Deadlines for Comments In FCC and Other Proceedings

Docket	Comments	Reply Comments
(All proceedings are before the FCC unless otherwise noted.)		
Dockets 12-268, 13-26; Public Notice Request for comments re pairwise method for post-auction repacking	July 2	July 22
Docket 14-92; NPRM FY 2014 Regulatory Fees	July 7	July 14
RM-11720; Public Notice Request for comments re Petition for Rulemaking re good-faith bargaining for retransmission consent		July 7
Docket 05-231; FNPRM Closed captioning	July 9	Aug. 8
Docket 09-19; Public Notice Request for comments re audio filtering for Travelers' Information Stations		July 14
Docket 14-28; NPRM Open Internet	July 15	Sept. 10
Docket 10-71; FNPRM Network non-duplication and syndicated exclusivity rules		July 24
Docket 14-50; FNPRM 2014 Quadrennial Regulatory Review	Aug. 6	Sept. 8
Docket 04-296; NPRM Review of Emergency Alert System	FR+30	FR+45
FR+N means that the filing is due N days after publication of notice of the proceeding in the Federal Register.		

Paperwork Reduction Act Proceedings

The FCC is required under the Paperwork Reduction Act to periodically collect public information on the paperwork burdens imposed by its record-keeping requirements in connection with certain rules, policies, applications and forms. Public comment has been invited about this aspect of the following matters by the filing deadlines indicated.

Topic	Comment Deadline
Noncommercial broadcast construction permit application, Form 340	July 11
Guidelines for evaluating effects of RF radiation, Sections 1.1307, 1.1311	July 16
Candidate rates, Section 73.1942	July 28
National Programmatic Agreement regarding Section 106 of the Historic Preservation Act, Form 620	Aug. 4
User interfaces for digital apparatus and navigation devices, Sections 79.107, 79.108, 79.110	Aug. 11



DEADLINES TO WATCH



Lowest Unit Charge Schedule for 2014 Political Campaign Season

During the 45-day period prior to a primary election or party caucus and the 60-day period prior to the general election, commercial broadcast stations are prohibited from charging any legally qualified candidate for elective office (who does not waive his or her rights) more than the station's Lowest Unit Charge for advertising that promotes the candidate's campaign for office and includes a "use" by the candidate. Lowest-unit-charge periods are imminent in the following states.

State	Election Event	Date	LUC Period
Alaska	State Primary	Aug. 19	July 5 - Aug. 19
Arizona	State Primary	Aug. 26	July 12 - Aug. 26
Connecticut	State Primary	Aug. 12	June 28 - Aug. 12
Delaware	State Primary	Sept. 9	July 26 - Sept. 9
Florida	State Primary	Aug. 26	July 12 - Aug. 26
Guam	Territory Primary	Aug. 30	July 16 - Aug. 30
Hawaii	State Primary	Aug. 9	June 25 - Aug. 9
Kansas	State Primary	Aug. 5	June 21 - Aug. 5
Massachusetts	State Primary	Sept. 16	Aug. 2 - Sept. 16
Michigan	State Primary	Aug. 5	June 21 - Aug. 5
Minnesota	State Primary	Aug. 12	June 28 - Aug. 12
Missouri	State Primary	Aug. 5	June 21 - Aug. 5
New Hampshire	State Primary	Sept. 9	July 26 - Sept. 9
Rhode Island	State Primary	Sept. 9	July 26 - Sept. 9
Tennessee	State Primary	Aug. 7	June 23 - Aug. 7
Vermont	State Primary	Aug. 26	July 12 - Aug. 26
Washington	State Primary	Aug. 5	June 21 - Aug. 5
Wisconsin	State Primary	Aug. 12	June 28 - Aug. 12
Wyoming	State Primary	Aug. 19	July 5 - Aug. 19

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

The FCC has accepted for filing the AM and FM applications identified below proposing to change each station's community of license. These applications may also include proposals to modify technical facilities. The deadline for filing comments about any of the applications in the list below is **July 28, 2014**. Informal objections may be filed anytime prior to grant of the application.

Present Community	Proposed Community	Station	Channel	Frequency
Teec Nos Pos, AZ	Shiprock, NM	KNDN-FM	243	96.5
Mena, AR	De Queen, AR	KENA-FM	271	102.1
Burns, CO	Milner, CO	KIDN-FM	249	95.9
Islamorada, FL	Duck Key, FL	WAZQ	207	89.3
Homerville, GA	Axson, GA	WVHY	246	97.1
Indian Springs, NV	Hildale, UT	KURR	276	103.1
Paradise, NV	Enterprise, NV	NEW(AM)	n/a	1590
Conroe, TX	Baytown, TX	WJOZ(AM)	n/a	880
Menard, TX	Mertzon, TX	NEW	287	105.3

Cut-Off Dates for Low Power Television Applications

The FCC has accepted for filing the following digital low power television applications. The deadline for filing petitions to deny any of these applications is **July 24, 2014**. Informal objections may be filed anytime prior to grant.

Community	Channel	Applicant
Bethel, AK	17	Bethel Broadcasting, Inc.
Yuma, AZ	40	Hispanic Family Christian Network, Inc.
Indio, CA	18	Hispanic Family Christian Network, Inc.
Los Angeles, CA	2	Hispanic Family Christian Network, Inc.
Modesto, CA	20	Unimas Sacramento, LLC
Ontario, CA	30	Obidia Porras
Paso Robles, CA	26	NPG of California, LLC
Collbran, CO	22	Mesa County
Collbran, CO	24	Mesa County
Collbran, CO	26	Mesa County
Gateway, CO	2	Mesa County
Mesa, CO	10	Mesa County
Mesa, CO	13	Mesa County
Big Coppitt Key, FL	5	Richard & Lisa Goetz
Augusta, GA	24	DTV America 1, LLC
Augusta, GA	26	DTV America 1, LLC
Tifton, GA	30	First Baptist Church of Tifton, Inc.
Lewiston, ID	18	Mountain Licenses, LP
Alexandria, MN	47	Selective TV, Inc.
Denton, MT	10	Denton TV Association
Denton, MT	12	Denton TV Association
Clermont, NH	47	Sound Communications, LLC
Albuquerque, NM	15	Ramar Communications, Inc.
Santa Fe, NM	16	Ramar Communications, Inc.
Utica, NY	28	Kevin O'Kane
Bat Cave, NC	28	WLOS Licensee, LLC
Bryson City, NC	30	WLOS Licensee, LLC
Greensburg, PA	46	Abacus Television
Pittsburgh, PA	39	Abacus Television
Eagle Pass, TX	14	Hispanic Family Christian Network, Inc.
Del Rio, TX	16	Hispanic Family Christian Network, Inc.
Laredo, TX	5	Hispanic Family Christian Network, Inc.
Odessa, TX	48	Hispanic Family Christian Network, Inc.
Peoa and Oakley, UT	40	Summit County
St. George, UT	27	Southwest Media, LLC
Coulee City, WA	10	Town of Coulee City
Coulee City, WA	11	Town of Coulee City
Coulee City, WA	12	Town of Coulee City

**DEADLINE FOR ALL TV STATIONS
OUTSIDE OF TOP-50 MARKETS
AND STATIONS IN TOP-50 MARKETS
NOT AFFILIATED WITH TOP FOUR
NETWORKS TO BEGIN UPLOADING
POLITICAL FILES TO
FCC'S ONLINE PUBLIC FILE WEBSITE
JULY 1, 2014**

New Repacking Data Released

The FCC’s Incentive Auction Task Force has released updated constraint file data and staff analysis concerning plans to preserve population coverage figures for television stations in the repacking of the television band that will follow the incentive auction. This data and information are based on preliminary assumptions and are illustrative only. Actual scenarios will depend, of course, on the configuration of stations that actually remain on the air after the auction.

The Commission is statutorily required to make “all reasonable efforts to preserve, as of [February 22, 2012], the coverage area and population served of each broadcast television station licensee . . .” In its recent incentive auction *Report and Order*, the Commission adopted an interpretation of this requirement to the effect that an individual channel reassignment, considered alone, would be permitted to reduce a station’s specific population served by no more than 0.5%.

Commenters in the rulemaking proceeding had cautioned that there should be a ceiling for the maximum interference a station could receive from all possible sources. They asserted that an individual station in a crowded market could receive significant new interference when the permitted pairwise interference from multiple stations is added up—probably more than 0.5%.

Commission staff conducted feasibility studies using software improvements that allow research using actual channels rather than the proxy channels that were the basis for the results in the *Report and Order*. The staff performed 100 simulations using several variations of the process to create simulated sets of stations to be repacked. The product of each of these simulations was a set of stations that remain on the air in the UHF band, together with respective channel assignments, called a channel plan. None of the 100 channel plans involves new pairwise interference of greater than 0.5%. Across all of these simulations, the results show that,

on average, approximately one percent of stations are predicted to receive new aggregate interference after channel reassignment above the suggested one percent cap. The average new aggregate interference level was less than 0.2%. No station received aggregate interference above 2%.

The results of this new simulation are available for public review and comment on the LEARN website at www.fcc.gov/learn. The Commission requested comments by July 2 and reply comments by July 22, in Dockets 12-268 and 13-26. The Task Force’s analysis pertains only to constraints applied to prevent new interference and does not consider alternatives that stations may propose such as alternate channels or modified facilities. The agency invites interested parties to conduct their own simulations with these updated constraint files using the *TVStudy* software.

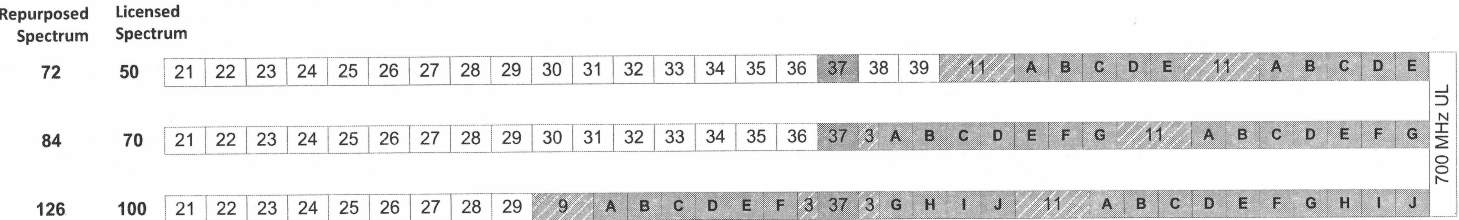
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Another recent release from the Incentive Auction Task Force is a prospective post-auction band plan for the 600 MHz band (presently television channels 21-51). The chart below shows different plans calculated on the basis of different levels of spectrum to be repurposed from broadcasting to wireless. The actual amount of spectrum to be transformed will not be known until the auction has been completed.

This flexible plan features separated pairs of 5-MHz channels to be licensed to wireless operators. In the most conservative prediction, there are five such pairs. The plan at the other end of the scale with maximum reallocation features 10 such pairs. Guard bands of 11 MHz will fill the duplex gap. In every case, channel 37 will remain allocated to radio astronomy with 3-MHz guard bands on either side, as needed. Unlicensed low power use of the guard bands and channel 37 will be permitted.



600 MHz Band Plan at Different Recovery Levels



Proposed FCC Regulatory Fees for Fiscal Year 2014

(See story on page 1)

Type of Authorization	Proposed FY2014	Actual FY2013
VHF Television		
Markets 1-10	\$ 44,875	\$ 86,075
Markets 11-25	42,300	78,975
Markets 26-50	27,100	42,775
Markets 51-100	15,675	22,475
Remaining Markets	4,775	6,250
Construction Permit	4,775	6,250
UHF Television		
Markets 1-10	44,875	38,000
Markets 11-25	42,300	35,050
Markets 26-50	27,100	23,550
Markets 51-100	15,675	13,700
Remaining Markets	4,775	3,675
Construction Permit	4,775	3,675
Satellite Television Station (all markets)	1,550	1,525
Satellite Television Station CP (all markets)	1,325	960
Low Power TV, TV/FM Translators and Boosters	410	410
Broadcast Auxiliary	10	10
Satellite Earth Station	245	275
AM Radio Construction Permit	590	590
FM Radio Construction Permit	750	750

PROPOSED FY2014 FEES FOR RADIO

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM A, B1, C3	FM B,C,C0,C1,C2
0-25,000	\$ 775	645	590	670	750	925
25,001-75,000	1,550	1,300	900	1,000	1,500	1,625
75,001-150,000	2,325	1,625	1,200	1,675	2,050	3,000
150,001-500,000	3,475	2,750	1,800	2,025	3,175	3,925
500,001-1,200,000	5,025	4,225	3,000	3,375	5,050	5,775
1,200,001-3,000,000	7,750	6,500	4,500	5,400	8,250	9,250
3,000,001+	9,300	7,800	5,700	6,750	10,500	12,025

ACTUAL FY2013 FEES FOR RADIO

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM A, B1, C3	FM B,C,C0,C1,C2
0-25,000	\$ 775	645	590	670	750	925
25,001-75,000	1,550	1,300	900	1,000	1,500	1,625
75,001-150,000	2,325	1,625	1,200	1,675	2,050	3,000
150,001-500,000	3,475	2,750	1,800	2,025	3,175	3,925
500,001-1,200,000	5,025	4,225	3,000	3,375	5,050	5,775
1,200,001-3,000,000	7,750	6,500	4,500	5,400	8,250	9,250
3,000,001+	9,300	7,800	5,700	6,750	10,500	12,025

LPTV Displacement Applications Frozen

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tected in the post-auction repacking process. Stations that are displaced in the repacking will be permitted to file displace-

ment applications in a special filing window to be opened following the auction.

Pandora Requests a Declaratory Ruling On Foreign Ownership

Pandora Radio, LLC, a subsidiary of the Internet music streamer Pandora Media, Inc., has filed a Petition for a Declaratory Ruling asking the FCC to find that “allowing widely dispersed, indirect, and non-controlling foreign investment in Pandora’s controlling parent company, Pandora Media, Inc., above the 25% threshold” set out in the Communications Act would not be inconsistent with the public interest. The issue arises in the context of Pandora’s effort to acquire FM radio station KXMZ, Box Elder, South Dakota. ASCAP has opposed that acquisition, arguing, among other things, that Pandora Radio has failed to disclose the level of alien ownership in its publicly-traded parent, Pandora Media.

Section 310 of the Act explicitly limits foreign ownership in a licensee corporation to 20%. Foreign ownership in a company that is the parent of a licensee company is limited to 25%, unless the FCC finds that a larger share would not be inconsistent with the public interest. The 25% threshold was widely believed to be the ceiling for the level of foreign ownership that the Commission would allow. However, in November, 2013, the agency released a *Declaratory Ruling* in which it said that it would entertain proposals on a case-by-case basis that included foreign ownership contingents larger than 25% with proper documentation in a Petition for a Declaratory Ruling. Pandora is the first petitioner to take advantage of the new arrangements.

In the course of the proceeding, the Commission’s Media Bureau directed Pandora to its 40-year-old guide for producing ownership data for a publicly-traded company: *Suggestions for Meeting Citizenship Requirements of Corporate Applicants*. Pandora responded that the premise underlying *Suggestions* is no longer valid – i.e., that a public corporation can actually identify the beneficial owners of its stock. According to Pandora, privacy regulations of the Securities Exchange Commission prevent it from being able to identify the owners of at least half of its shares. FCC policies have in the past focused on surveying statistically valid random samples of shareholders of public companies to estimate the overall percentage of U.S. ownership. Pandora says that it is unable to include the unknown shareholders in such a survey. A survey with such large gaps would be suspect. The Media Bureau further directed Pandora to count as aliens all shareholders who could not be identified. This formula would result in a foreign ownership figure far in excess of the 25% threshold.

Pandora hired two well-known consulting firms to

investigate to the extent possible the citizenship of the shareholders who could be identified. Examining available evidence and then extrapolating the results of that examination to cover the shares outside of their reach, each of these consulting agencies estimated that over 80% of Pandora’s stock is held by U.S. citizens. Pandora argued that this data, when combined with the facts that the company was founded and is organized and operating in the United States, that it was founded by U.S. entrepreneurs, that it has primarily U.S. officers and directors, demonstrate that KXMZ would not experience undue alien influence or control if acquired by Pandora. The Petition addresses not so much the 25% threshold as the methodology for determining compliance by a large public company.

While the data offered from the consultants’ reports and the logical constructs of Pandora’s argument might satisfy the Commission’s concerns about the proposal before it, Pandora went further to request a ruling from the FCC that would be prospective. Pandora asked the Commission to adopt a declaratory ruling that would allow it in the future to be up to 100% beneficially owned by foreign investors without the need for additional Commission approval, but that would require Pandora to obtain prior Commission approval for the aggregate voting authority of foreign investors to exceed 49.99%, or for a the level of U.S. citizens on its board of directors to fall below 50%.

In the alternative, Pandora requested a ruling that it said would be consistent with the Commission’s policy with respect to common carrier wireless licensees. Under such a ruling, Pandora Media would in the future be permitted to be 100% owned and controlled by foreign investors, provided that (1) no foreign investor that is not named in the Petition as amended increases its equity or voting interest to 5% (or 10% for certain institutions) without prior Commission approval, except that (2) any foreign investor named in the Petition may increase its equity and/or voting interest in Pandora to 49.99% without additional Commission approval. If the Commission approves this approach, Pandora committed to amending the Petition to disclose a list of all of the shareholders that it has been able to identify.

Pandora began its Petition with a request to clarify how it could satisfy the need to demonstrate its U.S. ownership as a publicly traded company. It ended its Petition with a request that will no doubt test the outside limits of the FCC’s tolerance for foreign ownership of broadcast licenses.

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