

## Court: FilmOn X Entitled to Compulsory License

Judge George Wu in the U.S. District Court for the Central District of California (in Los Angeles) has ruled that FilmOn X qualifies for the compulsory license provided under Section 111 of the Copyright Act. The compulsory license would enable FilmOn X to distribute programming legally from broadcast television stations to subscribers of its Internet video service. The compulsory license was written into the 1976 Copyright Act with cable television in mind, to give cable operators an efficient and convenient means for obtaining public performance rights for broadcast television content while also ensuring compensation for the copyright holders.

FilmOn X and similar services such as Aereo and ivi have attempted to retransmit broadcast television programming to subscribers with the justification that their Internet streaming transmissions were not public performances, and therefore not infringements of the copyrights of the television stations and other program owners. This position was invalidated by the Supreme Court in its 2014 decision in *American Broadcasting Companies v. Aereo, Inc.* where the high court ruled that such retransmission schemes are public performances and therefore subject to copyright liability.

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## Proposal Would Connect TV License Renewal and Signal Availability

Cable television system operator Mediacom Communications Corporation has filed a Petition for Rulemaking with the FCC asking the agency to adopt a rule that would tie factors related to retransmission consent and the availability of a television station's over-the-air signal to license renewal. The Commission has placed the Petition on public notice as RM-11752 and set the deadline for comments on August 14, and for reply comments, on August 31.

Mediacom states that "many broadcast stations do not transmit a viewable signal to significant portions of their local markets . . ." It alleges that during recent decades, broadcasters have done "exceedingly little" to expand the free over-the-air availability of television broadcast signals in their local markets. Mediacom faults the broadcast industry for failing to invest more heavily in advanced distribution technology, such as

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## FCC Reorganizes Field Offices

The FCC has adopted a plan for restructuring the Enforcement Bureau's Field Offices. Of the Bureau's 24 current Field Offices, 11 are to be closed, including those in Anchorage, Buffalo, Detroit, Houston, Kansas City, Norfolk, Philadelphia, San Diego, San Juan, Seattle and Tampa. The Field Offices in Atlanta, Columbia (Maryland), and San Francisco will be relocated to FCC-owned properties in the same metropolitan areas. The other ten offices will remain in place in New York, Miami, Dallas, Chicago, Boston, Denver, Honolulu, New Orleans, Portland (Oregon) and Los Angeles. In addition, the Bureau will contract with local personnel to maintain a field presence in Alaska and Puerto Rico. Field agents will also be dispatched periodically to Kansas City.

The Commission explains that these changes are necessitated by budgetary constraints. The agency says this "reorganization will better align the Field's mission with the priorities of the Commission, increase efficiency in terms of both employee performance and management oversight, and

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# Court: FilmOn X Entitled to Compulsory License continued from page 1

Broadcasters initiated this case against FilmOn X (and related companies) in federal court in California in 2012. They sought to shut down FilmOn X on the grounds that its transmissions of broadcasters' programming were unauthorized public performances that incurred copyright liability. Defending against that position, FilmOn X claimed that it was not like a cable system and therefore expressly disclaimed the argument that it was entitled to the compulsory license. Therefore, the issue concerning the compulsory license was not before the court at that time.

The court granted the broadcasters' motion for a preliminary injunction against FilmOn X, and FilmOn X appealed that ruling to the Ninth Circuit Court of Appeals. That appeal was pending when the Supreme Court issued its *Aereo* decision. The parties thereupon agreed to dismiss the appeal without prejudice. They have returned to the District Court of Central California, where the original injunction is still in effect.

FilmOn X has now reformulated its position to claim that it is legally analogous to a cable television system and therefore entitled to transmit television programming under the auspices of the compulsory license. The parties filed cross motions for summary judgment on the issue of compulsory license eligibility. While considering legislative history, other court decisions, and pronouncements and proceedings of the Copyright Office and the FCC, the court found that this question essentially turns on a literal reading of the language in the Copyright Act. According to that law, the compulsory license was created for entities that could be described as

[A] facility, located in any State, territory, trust territory, or possession of the United States, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, microwave, or other com-

munications channels to subscribing members of the public who pay for such service.

Judge Wu acknowledged that the drafters of the 1976 Copyright Act could not have envisioned the technological changes that have occurred since it was enacted – especially regarding the capabilities of the Internet to deliver content anywhere. He expressed his concerns that such innovation might have policy implications for the compulsory license. But he also noted that the court's job is to determine what is the law, not to make policy. In the end, he found that with respect to the retransmission of signals from broadcast television stations, there is no legal distinction between cable television and Internet streaming. His decision was buttressed by language from the Supreme Court's *Aereo* decision: "But this difference [between cable and Internet technology] means nothing to the subscriber. It means nothing to the broadcaster. We do not see how this single difference, invisible to subscriber and broadcaster alike, could transform a system that is for all practical purposes a traditional cable system . . ." Consequently, the court concluded that FilmOn X is entitled to retransmit television programming under the compulsory license.

However, upon rendering his decision, Judge Wu declared that the original injunction from 2012 against FilmOn X would remain in effect pending an appeal to the Ninth Circuit under expedited procedures. He said these unusual measures were justified because (1) the legal issues are close and of significant commercial importance to the parties and to others; (2) he disagreed with the decision of the Second Circuit in New York in an analogous decision (*WPIX v. ivi, Inc.*, in which the Second Circuit said that an Internet streaming service does not qualify for the compulsory license); and (3) the resolution of the issues presented on summary judgment is likely to determine the entire case. The judge stayed his own ruling pending the appeal.

The decision is entitled *Fox Television Stations, et al. v. AereoKiller, et al.*, 2015 U.S. Dist. LEXIS 97305 (C.D. Cal., 2015).

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## Vacant Channel Rulemaking Suspended

In June of this year, the FCC adopted a *Notice of Proposed Rulemaking* in Docket 15-146 to consider the preservation of vacant television channels for shared use by white space devices and wireless microphones. Deadlines for filing comments and reply comments were set for August. In response to a Motion for Extension filed by the National Association of Broadcasters, the Commission's Media Bureau has suspended the comment filing period for this proceeding until further notice.

The NAB observed that the Commission is considering whether to allow broadcast television stations to be

assigned during the post-incentive auction repacking process to channels within the "duplex gap" in the 600-MHz Band Plan. That could have an impact on the use of the duplex gap by white space devices and wireless microphones. The NAB suggested that a better record could be developed in this proceeding if the comments were submitted after the Commission announces its decision on incentive auction procedures. The Bureau agreed and said that it would reschedule the filing deadlines for this proceeding after the adoption of an order establishing the incentive auction procedures.

# TV Licensee Pays \$90K in Kidvid Settlement

Beach TV Properties and Beach TV of South Carolina (together, "Beach TV") have entered into a Consent Decree with the FCC that terminates investigations concerning whether the companies' two full power and six Class A television stations in Florida, South Carolina and Louisiana violated the Commission's children's television programming rules. The Decree provides that Beach TV will bring its stations into full compliance with the rules immediately, and make a voluntary contribution to the U.S. Treasury of \$90,000.

The FCC's rules implementing the Children's Television Act require full power and Class A television stations to provide sufficient programming specifically designed to serve the educational and informational needs of children ("CORE" programming). The primary mechanism to review compliance with this requirement is a license renewal application processing guideline of three hours per week of such programming. The Media Bureau staff approves the portion of the renewal application where children's programming is reported if the renewal applicant shows that the station has aired at least three hours per week on average over six months. The staff can also approve an application that varies from that formula if there is a demonstration of a commitment to educating and informing children on an equivalent level. Renewal applications that do not meet the processing guideline are referred from the Bureau up to the Commission for further review.

The Commission has established seven criteria for evaluating whether a program qualifies as CORE programming. One of these is that the program is part of a regularly scheduled weekly episodic series. In establishing this element of the regulation in a 1996 order, the Commission said that "programs that air regularly can reinforce lessons from episode to episode" and "can develop a theme which enhances the impact of the educational and informational message." The agency intends that regularly scheduled weekly programming must be comprised of different episodes of the same series, not repeats of a single-episode special.

In its reports for the third quarter of 2011, Beach TV listed what the Commission called single-episode promotional specials as CORE programming. This group included the titles, "Sharks and Wildlife," "Wild about Whale Sharks," "Florida State Parks," and "Lagoons,

Bayous and Storms." Beach TV counted these single-episode items repeatedly for purposes of calculating the amount of CORE programming on its stations during that quarter. Responding to an inquiry about these programs from the Media Bureau, Beach TV said that they complied in all respects with the criteria for CORE programming, including the requirement that they constituted regularly scheduled weekly programming. The Bureau staff disagreed and concluded that it could not approve Beach TV's applications under the processing guidelines and referred them up to the Commission.

The Commission undertook to pursue the investigation initiated by the Media Bureau but Beach TV relented and opted to negotiate a settlement in the form of a Consent Decree. The Decree halts the proceeding with no admission by Beach TV and no finding by the Commission of a rule violation. Beach TV must implement a compliance plan to be overseen by a Compliance Officer designated by Beach TV. The Compliance Officer will review all children's programming to ensure compliance with the rules before that programming can be labeled "E/I" or claimed in the stations' quarterly reports. The plan also includes a component for the prompt training of existing and new relevant personnel concerning the requirements of the children's programming rules. One year after the Decree's effective date, and thereafter upon request, Beach TV is required to submit to the FCC a report on the implementation of the compliance plan and on any children's programming complaint received during the interval since the plan was adopted.

The Compliance Plan will remain in effect until December 1, 2020 for all existing Beach TV stations and all subsequently acquired stations that are subject to the children's television programming rules.

Finally, Beach TV agreed to make a voluntary contribution to the U.S. Treasury of \$90,000, to be paid in quarterly installments of \$7,500 each.

It is noteworthy that the full FCC is the party to this Consent Decree rather than the Media Bureau or the Enforcement Bureau. The Enforcement Bureau has recently tended to favor admissions of violation rather than non-admissions, and monetary forfeitures rather than voluntary contributions.

*...regularly scheduled  
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# DEADLINES TO WATCH



## License Renewal, FCC Reports & Public Inspection Files

- August 1, 2015 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 3, 2015 Deadline to file Biennial Ownership Report for all noncommercial radio stations in **California, North Carolina, and South Carolina** and noncommercial television stations in **Illinois and Wisconsin.**
- August 3, 2015 Deadline to file EEO Broadcast Mid-term Report for all radio stations in employment units with more than 10 full-time employees in **North Carolina and South Carolina.**
- August 3, 2015 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.
- October 1, 2015 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 **Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, Mariana Islands, Missouri, Oregon, Puerto Rico, Virgin Islands and Washington.**
- October 1, 2015 Deadline to file Biennial Ownership Report for all noncommercial radio stations in **Alaska, American Samoa, Florida, Guam, Hawaii, Mariana Islands, Oregon, Puerto Rico, Virgin Islands and Washington,** and noncommercial television stations in **Iowa and Missouri.**
- October 1, 2015 Deadline to file EEO Broadcast Mid-term Report for all radio stations in employment units with more than 10 full-time employees in **Florida, Puerto Rico and Virgin Islands.**

## Deadlines for Comments In FCC and Other Proceedings

Docket	Comments	Reply Comments
(All proceedings are before the FCC unless otherwise noted.)		
Docket 12-107; 2nd FNPRM Changes to audio crawl rule	Aug. 10	Sep. 8
Dockets 12-268, 15-137; NPRM Television channel sharing	Aug. 13	Aug. 28
RM-11752; Petition for Rulemaking Fostering free access to TV over-the-air reception	Aug. 14	Aug. 31
Docket 15-158; Public Notice Competition in the market for delivery of video programming	Aug. 21	Sep. 21
Copyright Office Docket 2015-01; Notice of Inquiry Enforcement and monetization of copyright in visual works		Aug. 24
RM-11753; Petition for Rulemaking Improvements for Low Power FM	Aug. 31	Sep. 14
Docket 15-94; NPRM EAS event codes for extreme weather	N+30	N+45
Docket 15-146; NPRM Whitespace devices in vacant UHF channels	Suspended	Suspended

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

## Requests for Exemption from Closed Captioning Rules

The following video programmers have requested exemption from the FCC's closed captioning rules. Interested parties may file comments and/or oppositions by August 17, 2015, and replies by August 31, 2015, in Docket 06-181 about these requests.

Programmer	Location	Case Identifier
CharlesPerry Ministries, Inc./ "Restoring Lives"	Plano, TX	CGB-CC-1344
ProvidenceTransformation Church Interational/"Good News for Today"	Lynchburg, VA	CGB-CC-1354
Greater Community Temple/COGIC/ Memphis, TN "Touched by the Truth Ministries"		CGB-CC-1357
Alfaro & Associates, LLC/ "El Show de Analeh"	Windsor, CT	CGB-CC-1358
BrushyCreek Baptist Church	Easley, SC	CGB-CC-1359



# DEADLINES TO WATCH



## 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 **August 21, 2015**. Informal objections may be filed anytime prior to grant.

Community	Station	Channel	Applicant
Healy,AK	K06LA	12	Chena Broadcasting, LLC
Lealman,FL	W43CE	16	MAKO Communications, LLC
Detroit,MI	W47DL-D	19	Regal Media, Inc.
Duluth,MN	New	29	Sarah W. Stopford
Duluth,MN	New	30	Sarah W. Stopford
Duluth,MN	New	32	Sarah W. Stopford
Superior,MT	New	6	Superior TV Translator District
Pahrump,NV	K44AA	20	Southern Nevada Communications
Sussex,NJ	W36AZ	35	New Jersey Public Broadcasting Authority
Ruidoso,NM	New	31	KOAT Hearst Television, Inc.
Marion,NC	W10AP	15	WLOS Licensee, LLC
Wilkes-Barre,PA	W07BV	8	Catholic Broadcasting of Scranton
Chattanooga,TN	WOOT-LP	38	Digital Network-Southeast, LLC
Nashville,TN	WIIW-LP	50	U.S. Television, LLC
Austin,TX	KVAT-LD	35	MAKO Communications, LLC
Laredo,TX	KNEX-LP	13	Eagle Creek Broadcasting of Laredo
Laramie,WY	K14LK	17	Gray Television Licensee, LLC

## Rulemakings to Amend FM Table of Allotments

The FCC is considering amendments to the FM Table of Allotments to add and/or delete (indicated with a "D") the following channels. The deadlines for filing comments and reply comments are shown.

Community	Channel	MHz	Comments	Reply Comments
Grant, OK	286A	105.1	Aug. 31	Sep. 15
Pilot Point, TX	285C0(D)	104.9	Aug. 31	Sep. 15
Pilot Point, TX	285C1	104.9	Aug. 31	Sep. 15

## Channel Sharing Webinar Set for August 13, 3 to 4 pm ET

The repacking of the television stations remaining in operation after the incentive spectrum auction may result in pairs of stations sharing a six-megahertz channel. The FCC has adopted rules to govern channel-sharing arrangements. The Commission's Incentive Auction Task Force and the Media Bureau will host a webinar about the channel-sharing bid option on August 13, 2015, 3:00 to 4:00 pm Eastern Time. Topics covered will include requirements for channel-sharing agreements, the bidding process for stations interested in bidding for this option, and the post-auction licensing process.

Online entry to the webinar will be available at [fccevents.webex.com/fccevents/onstage/g.php?MTID=e4052e7079427e42aca0196ef2b365d34](http://fccevents.webex.com/fccevents/onstage/g.php?MTID=e4052e7079427e42aca0196ef2b365d34). After entering your name and email address, enter the meeting with the password "fcc123".

## 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 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 public inspection files, Sections 73.3526, 73.3527	Aug. 7
Equal Employment Opportunity, Section 73.2080	Aug. 10
Program Tests, Section 73.1620	Aug. 14
Assignment and transfer of control application, Form 314, 315; Section 73.3580	Aug. 14
Emergency Alert System, Part 11	Aug. 21
Whitespace devices in vacant UHF channels	Aug. 31
Political broadcasting requirements for Satellite Radio	Sep. 8
Television channel sharing	Sep. 14
International broadcast station license renewal application, Form 422-IB	Sep. 21
EAS Electronic Test Reporting System	Sep. 22

## Cut-Off Date 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 **August 10, 2015**. Informal objections may be filed anytime prior to grant of the application.

Present Community	Proposed Community	Station	Channel	Frequency
Barstow,CA	Kramer Junctin, CA	New	267	101.3
Hollister,CA	Chualar, CA	KXSM	226	93.1
Limon,CO	Deer Trail, CO	KIIQ	229	93.7
Homer,LA	Simsboro, LA	KWZM	272	102.3
Jackson,WY	Etna, WY	KJNT(AM)	N/A	1480

## Tribal Threshold Qualifications Filing Window

The FCC has opened a filing window for applications by tribes or tribal entities for a new FM station on the Tribal Allotment for Channel 258C2 (99.5 MHz) at Rough Rock, Arizona. Applicants must be tribes or tribal entities and must demonstrate their qualifications in the application. The filing deadline is **August 10, 2015**.

# Extreme Weather Event Codes Proposed for EAS

The FCC has released a *Notice of Proposed Rulemaking* in Docket 15-94 to propose adding three new event codes to Emergency Alert System (“EAS”) procedures to cover extreme weather events. This proposal comes in response to a request from the National Weather Service (“NWS”).

The EAS Protocol uses fixed codes to identify various aspects of the alert as it is transmitted to broadcast stations and other outlets. Among these is a three-letter event code to describe the nature of the alert. The NWS suggested the adoption of “EWW” for Extreme Wind Warning, “SSA” for Storm Surge Watch, and “SSW” for Storm Surge Warning, and the Commission proposes to add these to the list of codes found in Section 11.31 of its rules.

The EWW code would be used to provide the public with advance notice of the onset of extreme surface winds equal to or greater than 115 miles per hour associated with the land-fall of a category 3 or greater hurricane. There are existing codes associated with hurricanes (such as HUW for Hurricane Warning, HUA for Hurricane Watch, and HLS for Hurricane Statement), but none of these is specifically

designed to warn about extreme surface winds. The only other existing event code that might be related to wind is TOR, for Tornado Warning. The use of TOR in connection with hurricane winds has proved to be confusing to the public. Furthermore, safety procedures to be followed in connection with the two kinds of storms are significantly different from each other.

There are no existing event codes related to storm surges. The NWS advises that more loss of life and property occurs during the storm surges associated with hurricanes than caused by extreme winds.

The Commission seeks public comment on whether adopting these event codes would enable the public to deal more effectively with such emergencies. What would be the costs associated with adding these event codes? Are there other changes to the event codes in the EAS Protocol that the Commission should consider at this time?

Comments will be due 30 days after publication of notice of this proceeding in the Federal Register. Reply comments will be due 45 days after publication.

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## FCC Preparing 17th Report on Video Competition

In the 1992 Cable Act, Congress directed the FCC to establish regulations for the purpose of increasing competition and diversity in multichannel programming distribution, increasing the availability of satellite delivered programming, and spurring the development of communications technologies. To measure progress toward these goals, the Commission was directed to submit annual reports to Congress on the status of competition in the market for the delivery of video programming. The FCC is undertaking to prepare the seventeenth annual report in compliance with this statutory requirement. As has been its custom, the Commission has solicited public input to assist it in compiling the information that will go into this year’s report.

The agency has developed an analytic framework for these reports that is structured to present data on three categories of entities: multichannel video programming distributors (“MVPDs”), broadcast television stations, and online video distributors (“OVDs”). Some of the major elements of the Commission’s inquiry regarding broadcast television are described below.

The Commission seeks information on the impact of both horizontal concentration and vertical integration on competition. Existing regulations limit the number of stations one owner can hold in a market and nationally. The territorial exclusivity rule limits the area in which a station can obtain exclusive rights to programming. What effect do these regulations have on competition? The agency asks for data,

information and comment on the impact of the incentive spectrum auction on competition.

The agency invites submissions about television station business models and competitive strategies. What is the mix of HD and SD programming? When and how do stations participate in Joint Sales Agreements, Local Marketing Agreements, or Shared Service Agreements? To what extent and how are multicast streams and/or mobile TV capabilities being used? Is the offering of local news used as a competitive strategy? To what extent is network television programming now available on outlets other than the affiliated broadcast station? Does this phenomena lead stations to view those outlets as competitors? If so, what competitive strategies do stations develop? What is the interaction and substitution between over-the-air services and MPVDs and/or OVDs?

The Commission solicits data, information and comment on broadcast station operating and financial statistics that will assist its understanding of video competition. What share of a station’s revenues is derived from advertising, network compensation, retransmission consent fees, ancillary services and/or subscription fees? Are retransmission consent fees shared with networks or with partners in joint operation arrangements?

The deadline for comments in Docket 15-158 is August 21. Reply comments can be filed until September 21.

# Another Petition Offered to Improve LPFM

The Low Power FM Advocacy Group and <http://LPFM.Audio> have jointly filed a Petition for Rulemaking with the FCC, requesting various revisions to the Commission's LPFM rules. Some of the proposals are mostly cosmetic, such as dropping the "-LP" suffix from LPFM call signs. Others are more substantive, the most striking of which would be to allow LPFM stations to broadcast commercial advertising.

The Advocacy Group identifies itself as "LPFM's only exclusive advocacy group." It says that over 50 LPFM licensees contributed to the Petition by providing case studies. <http://LPFM.Audio> bills itself as "LPFM's largest and most influential audio distribution hub." Over 100 of its LPFM licensee members also contributed to the Petition.

At 80 pages of text, plus 140+ pages of attachments, the Petition is a compendium of the obstacles besetting LPFM and proposals for regulatory solutions. The Petition is largely premised on a belief that the Commission should not have created LPFM as a noncommercial service. Passages are cited from the original rulemaking proceeding where the Commission suggested that LPFM stations could be commercial and invited public comment on that issue. The petitioners allege that this proposal was stifled by commercial radio and established NCE radio to preclude competition. Several times the Petition alludes to its assessment that approximately 600 authorized LPFM stations have gone silent permanently, mostly for financial reasons. The petitioners assert that noncommercial underwriting – even the enhanced kind – cannot generate the revenues needed to support even a modest LPFM station. They believe that commercial advertising revenue is the key to fostering the special public service brand of radio that LPFM was intended to be. Consistent with this change, the petitioners would allow small

for-profit entities with annual revenues of less than \$1 million to become LPFM licensees.

The petitioners observe that there is a disincentive to invest in LPFM facilities when they can be obliterated by the modification of a nearby full power station. They propose to make LPFM a primary rather than secondary service. That would protect LPFM stations from interference from other stations.

The petitioners propose to allow LPFM duopolies to help reduce the number of stations that fail for lack of resources. The multiple ownership and cross-ownership limits on LPFM would be raised to two LPFM stations and up to four translator stations.

Again in the spirit of helping resource-scarce stations, the petitioners would allow an LPFM station to enter into a time brokerage agreement or management agreement with other stations, including full power stations. Such arrangements would be limited to 42 hours of air time per week.

One of the petitioners' most unusual proposals concerned forfeitures imposed on LPFM stations for rule violations. They claimed that the fines often imposed on stations can be enough to overwhelm an LPFM's budget. To address this problem, the petitioners propose that LPFM stations pay only 5% of the amount of the fine that would be levied against a full power station for the same infraction.

The petitioners assert that these and the other ideas offered in the Petition for Rulemaking "will instantly revitalize LPFM." The FCC has requested public comment on these proposals – to be filed by August 31. Replies should be submitted by September 14. The Petition has been designated as RM-11753.

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## FCC Reorganizes Field Offices continued from page 1

enable updating the employee skillset and equipment deployed in the Field." The Commission intends to undertake a program to upgrade staff and equipment so as to be able to address the issues likely to arise with new and expanded uses of spectrum. This program will include the increased use of remotely operated monitoring equipment and portable devices for assessing interference in heavily used spectrum bands. All Field Office agents will have electrical engineering backgrounds.

Upon completion of the steps needed to implement the reorganization, the Commission will first apply net savings to the upgrade program before applying them to agency's general fund. The net savings will not be used to increase the number of full-time non-field-related employees in the Enforcement Bureau's headquarters office in Washington.

# Proposal Would Connect TV License Renewal and Signal Availability

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the digital distributed transmission systems (“DTS”) that the FCC has authorized. Mediacom suggests that this may be because broadcasters have no incentive to increase their free over-the-air viewership. Retransmission consent fees from multichannel video programming distributors (“MVPDs”) provide significant income to broadcast stations. Mediacom asserts that a broadcaster’s leverage over MVPDs during retransmission consent negotiations is correlated to the number of viewers in the market who are dependent on the MVPD for reception of the station. Mediacom believes that this has fostered a reduced commitment by broadcasters to free over-the-air service, leaving the public to suffer price increases for pay TV and service disruptions that result from retransmission consent impasses.

To address this problem, Mediacom proposes that the Commission amend its rules to condition license renewal for a television station on the licensee’s certification that it will not terminate an MVPD’s carriage of the station’s signal upon the expiration of a retransmission consent agreement if the station is not accessible via over-the-air reception or Internet streaming to at least 90% of the homes in the local market served by the MVPD. To minimize the risk that the proposal would encourage retransmission consent impasses created by the MVPD, it would not apply in situations where the MVPD has terminated active negotiations with the broadcaster.

An underlying theme to the Petition is the long-standing national public policy to foster free over-the-air broadcast services for the entire population of the United States.

Mediacom argues that creating incentives for television stations to increase the accessibility of their signals would have a number of public interest benefits that are elements of that broad policy.

1. It would encourage the faster development of DTS.
2. It would ensure access to local news, public affairs and sports programming for members of the public who do not or cannot subscribe to a pay-TV service.
3. It would benefit MVPD subscribers by allowing lower subscription fees.
4. It would serve to move the retransmission consent process back to the original Congressional intent – which was to encourage service to more people, not to limit or disrupt it, such as happens during black-outs.
5. It would encourage station owners to reinvest some of their retransmission receipts in improved local facilities for better over-the-air reception.

Mediacom relies on various sections of the Communications Act and cites court decisions to support its claim that the FCC has the authority to adopt the rule it proposes. Mediacom says that its proposal would restore to retransmission consent negotiations “the balance in negotiating power that Congress expected would minimize the risk that viewers would lose access to local broadcast service. As such it is a proper exercise of the ‘broad discretion’ over retransmission consent that Congress has granted the Commission.”

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