pillsbury *Antenna*™ APRIL 2014
AN UPDATE ON COMMUNICATIONS LAW & ISSUES

Top Rated Stations Barred From Joint Retransmission Consent Negotiations

Under new rules adopted by the FCC, the top four rated television stations in each market will be prohibited from jointly negotiating their retransmission consent agreements with multichannel video programming distributors ("MVPDs"). The Commission adopted these rules and initiated consideration of other proposals regarding TV program carriage in a *Report and Order and Further Notice of Proposed Rulemaking* in Docket 10-71. This decision developed from a Petition for Rulemaking filed with the FCC by a group of MVPDs in March, 2010.

Section 325(b)(3)(C)(ii) of the Communications Act requires television stations and MVPDs to negotiate carriage agreements in good faith. The new rules that the Commission has adopted are intended to be part of the framework used to evaluate whether parties negotiating retransmission consent agreements are doing so in good faith. The purpose is to prevent collusive antitrust behavior that would place undue pressure on the MVPDs, putting multiple program channels at risk for the MVPD and causing greater disruption to the public if

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Comments Requested On Multilingual EAS

The FCC's Public Safety and Homeland Security Bureau has issued a Public Notice requesting comment to refresh the record concerning a Petition for Immediate Interim Relief filed in Docket 04-296 in 2005 by the Independent Spanish Broadcasters Association, the Office of Communications of the United Church of Christ, Inc. and the Minority Media and Telecommunications Council. The Petition was filed shortly after Hurricane Katrina had devastated New Orleans. The Petitioners requested changes in the Emergency Alert System ("EAS") rules to ensure that non-English speaking segments of the population will have access to readily understandable EAS alerts and other emergency information. The Commission has twice previously requested comment on this Petition. However, since then, EAS technology was changed substantially. In view of those changes, the petitioners have updated and elaborated on their proposals in *ex parte* contacts with Commission personnel.

Specific proposals in the Petition included:

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Stations in TV Joint Sales Agreements Now Attributable

A divided FCC has voted to adopt rules that would recognize a television station involved in a Joint Sales Agreement ("JSAs") as an ownership interest attributable to the licensee of the station acting as the sales agent under the agreement. The vote was along straight party lines, the Chairman and the two other Democrats on the Commission voting to adopt the rule. This regulation will limit the number of situations where JSAs can operate because the station owner performing the sales function for both stations will be attributed with ownership in both stations in the calculations to determine compliance with the Commission's multiple ownership rules. These rules restrict the number of stations that one party can own in a given market, and in the nation as a whole.

This action comes as the opening act in the Commission's 2014 Media Ownership Quadrennial Review – a Congressionally mandated exercise to review the agency's ownership rules periodically. The

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Irregular Schedules Attract FCC's Ire

Two radio stations have recently been cited and fined by the FCC for failing to maintain the minimum on-air schedules required by Section 73.1740 of the agency's rules. That rule prescribes that all commercial radio stations should be on the air at least two-thirds of the total time they are authorized to broadcast between 6 a.m and 6 p.m., and two-thirds of the time they are authorized to operate between 6 p.m. and 12 midnight, everyday except Sunday. If a station fails to maintain these minimum on-air requirements for longer than 30 days, the licensee must request a Special Temporary Authorization ("STA") to remain silent.

In its 2011 application for license renewal, the licensee of WTRI(AM), Brunswick, Maryland, disclosed that the station had been silent from January 28, 2005 to March 22, 2005, and from February 11, 2009 to March 25, 2009. The renewal application form asks applicants to certify compliance with the minimum operating requirements or to report periods of noncompliance that lasted more than 30 days. Media Bureau staff was induced to look into this more deeply when a petition to deny the renewal application was filed. The petitioner alleged that the station had been off the air much more than reported.

Reviewing its records from submissions that the licensee had made during the license term, the Bureau found that the station had filed a request for an STA to remain silent on March 16, 2009, indicating that it had gone silent February 11, 2009, and notified the Commission on April 20, 2009 that it had resumed broadcasting on April 15, 2009. On March 6, 2012, the station told the Commission it had been silent since July 15, 2011. A resumption of operations notice was filed on July 9, 2012 informing the Commission that the station was back on the air as of June 30, 2012.

The Bureau decided that the prolonged unauthorized silent period was a significant rule violation. The station went silent on July 15, 2011. A request for a silent STA should have been filed by mid-August. Instead, the station was silent about its silence until the following 6th of March – an overrun of almost seven months.

The Commission's *Forfeiture Policy Statement* lists the base amount of the fine for unauthorized discontinuance of service at $5,000. Seeing no need to adjust that figure, the Bureau has issued the licensee of *Notice of Apparent Liability for Forfeiture* in the amount of $5,000. The station has 30 days to object. Nonetheless the Bureau said that this rule violation was not serious enough to warrant denial of license renewal. The license renewal application will be granted upon resolution of the forfeiture proceeding.

The other recent enforcement action concerning Section 73.1740 involved not prolonged silence, but shortened broadcast days. The licensee of KPSO-FM, Falfurrias, Texas, admitted in its 2013 license renewal application that it had been taking the station off the air every day at 7 p.m. The licensee asserted that it did not realize this was a rule violation until it was preparing its response to the question in the renewal form about compliance with Section 73.1740. The rule requires stations that can operate at night to broadcast at least four hours between 6 p.m. and 12 midnight. KPSO-FM only offered one hour of on-air programming during that time period everyday from January 16, 2009 until December 24, 2012, and it never requested an authorization to curtail its daily schedule.

Of course, Media Bureau staff found ignorance of the rule to be absolutely no excuse. As with WTRI, it proposed a $5,000 fine for KPSO-FM with an indication that the license renewal application would be granted upon resolution of the forfeiture proceeding. The station has 30 days in this case also to contest the forfeiture.

Sharing Arrangements to Draw Extra Scrutiny

The FCC's Media Bureau has issued a Public Notice to offer guidance to parties in television station transactions that include proposals for sharing arrangements and contingent interests. Bureau staff has noted an increase in the number applications including such proposals. Inadequate explanations or documentation may lead to processing delays that both the parties and the Commission would like to avoid.

The Bureau takes a close interest in transactions where a broadcaster has entered into a sharing arrangement with another same-market station in which it also has a contingent financial interest, such as an option to purchase or acting as the guarantor of the other station's financing. These conditions may deprive the second station of the economic incentive to control programming and call into question who is in ultimate control of the station.

The Bureau announced that it will closely scrutinize any application that proposes that two or more stations in the same market will:

• Enter into an arrangement to share facilities, employees, and/or services or to jointly acquire programming or sell advertising, including a Joint Sales Agreement, or Local Marketing Agreement, or any other agreement or arrangement that would have the same practical operational or financial effect as any of these agreements, and

• Enter into an option, right of first refusal, put/call arrangement, or other similar contingent interest or a loan guarantee.

The Bureau will evaluate how any such arrangements operate and the incentives they create, and not how they are styled by the applicants. In each situation the applicants must provide sufficient information and documentation to fully describe the proposed transaction, including any side agreements, and establish that it is an arm's-length transaction that would not impair the existing licensee's control over station operations and programming, result in attribution of the relationship, or be otherwise contrary to the public interest.

Comments Requested on Multilingual EAS *continued from page 1*

• Primary Entry Point stations should air all Presidential level messages in both English and Spanish.

• A "Local Primary Spanish" ("LP-S") station should be designated where appropriate, and state and local EAS plans would designate an LP-S station where an LP-1 station has been designated.

• A "Local Primary Multilingual" ("LP-M") station should be designated in local areas where a substantial part of the population is primarily fluent in a language other than English or Spanish.

• At least one broadcast station in every market would monitor and rebroadcast emergency information carried by local LP-S and LP-M stations.

• When a local LP-S or LP-M station loses its transmission capability in an emergency, other stations remaining on the air should broadcast emergency information in the affected languages until the LP-S or LP-M station returns to the air.

The Bureau requests updated comment on these proposals now that EAS has transitioned to CAP. What is the feasibility of these proposals in the CAP environment with EAS integrated into FEMA's Integrated Public Alert and Warning System?

More recently, the Petitioners have indicated that they have confidence in wireless services to provide the initial notice of an emergency. However, delivery of information to non-English speakers *during and after* the emergency continues to be a problem. The Petitioners suggest that the FCC should require broadcasters to work with state and local emergency response agencies to develop plans for broadcasters to support each other during an emergency. An element of this proposal includes what they called the "designated hitter" plan. Under this plan, a station would be designated to air emergency information for the non-English speaking community if and when a station serving that community in its own language is forced to go off the air due to the emergency conditions.

The Bureau invites public comment on this proposal and seeks responses to a number of questions. Would such a plan be pertinent only in markets with stations that broadcast in other languages besides English? Should it pertain to any market where there is a significant non-English speaking community regardless of whether there is a station serving that community in its language? Are there any such plans already in effect somewhere?

The Bureau also seeks current information on the general state of multilingual practices in EAS. To what extent are EAS alerts aired in languages other than English now? How and where are such practices conducted? What are the practical, logistical and technical issues involved?

The deadline for submitting these comments in Docket 04-296 is April 28. The Commission asks for reply comments by May 12.

Top Rated Stations Barred *continued from page 1*

an agreement is not reached or extended.

Under the new rules, the top four rated stations in a market not under common ownership are prohibited from "joint negotiations" with MVPDs about retransmission consent. Whether stations are under common ownership is determined by application of the Commission's attribution rules. To be subject to this restriction, the stations have to be licensed to the same Designated Market Area and serve the same geographic market.

Activities that will be considered elements of joint negotiations, and therefore prohibited, include the following:

• Delegation of authority to negotiate or approve a retransmission consent agreement by one station or its representative to another station or its representative.

• Delegation of authority to negotiate or approve a retransmission consent agreement by two or more stations to a common third party.

• Any informal, formal, tacit or other agreement and/or conduct that signals or is designed to facilitate collusion regarding retransmission terms or agreements between or among stations subject to the restrictions (but not including disclosures otherwise required by law or authorized under a Commission or judicial protective order).

Immediately upon the effective date of this order, stations subject to the restrictions are barred from engaging in joint negotiations regardless of whether they are subject to existing agreements, formal or informal, written or oral, that obligate them to negotiate retransmission consent jointly. The rule will not invalidate negotiations that have already been completed or current retransmission consent agreements that are in effect.

In the *Further Notice of Proposed Rulemaking* in this release, the Commission reopens its dialog about whether to eliminate or modify the network non-duplication rule and the syndicated exclusivity rule. These proposals were already offered for comment several months ago – but the FCC does not feel that it received enough response to provide a good record. These rules give a local television station the right to demand that programming for which it owns the exclusive exhibition rights in its zone of protection be barred from distribution via MVPD in that zone. Some argue that these rules are obsolete in an era when programming is available to the consumer from so many sources, including sources that cannot practically be blocked.

Comments are due 30 days after publication of notice of this proceeding in the Federal Register. Reply comments will be due 60 days after publication.

DEADLINES TO WATCH

License Renewal, FCC Reports & Public Inspection Files

April 1, 2014 — Deadline to file license renewal applications for radio stations in **Delaware** and **Pennsylvania** and television stations in **Texas.**

April 1, 2014 — Deadline to file Biennial Ownership Report for all noncommercial radio stations in **Delaware** and **Pennsylvania,** and for noncommercial television stations in **Texas.**

April 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 **Delaware, Indiana, Kentucky, Pennsylvania, Tennessee,** and **Texas.**

April 1, 2014 — Deadline for all broadcast licensees and permittees of stations in **Delaware, Indiana, Kentucky, Pennsylvania, Tennessee** and **Texas** 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.

April 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.

April 10, 2014 — Deadline to file quarterly Children's Television Programming Reports for all commercial television stations.

April 1 & 16, 2014 — Radio stations in **Delaware, New Jersey, New York** and **Pennsylvania,** and television stations in **Kansas, Nebraska, Oklahoma** and **Texas** broadcast post-filing announcements regarding license renewal applications.

April 1 & 16, 2014 — Television stations in **Arizona, Idaho, Nevada, New Mexico, Utah** and **Wyoming** broadcast pre-filing announcements regarding license renewal applications.

May 1 & 16, 2014 — Radio stations in **Delaware** and **Pennsylvania,** and television stations in **Texas** broadcast post-filing announcements regarding license renewal applications.

May 1 & 16, 2014 — Television stations in **Arizona, Idaho, Nevada, New Mexico, Utah** and **Wyoming** broadcast pre-filing announcements regarding license renewal applications.

June 2, 2014 — Deadline to file license renewal applications for televisions in **Arizona, Idaho, Nevada, New Mexico, Utah** and **Wyoming**.

Deadlines for Comments In FCC Proceedings

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

Docket	Comments	Reply Comments
Docket 14-16; NOI Status of competition in the market for delivery of video programming		April 21
Docket 12-268; Public Notice Catalog of potential expenses and estimated costs re repacking television spectrum	April 21	May 6
Docket 04-296; Public Notice Request for comments to refresh record re proposal to require multilingual EAS facilities	April 28	May 12
Docket 05-231; FNPRM Closed captioning	June 25	July 25

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 **April 14, 2014**. Informal objections may be filed anytime prior to grant.

Community	Channel	Station	Applicant
Los Angeles, CA	45	KEDD-LD	Venture Technologies Group
Newberry Springs, CA	21	New	County of San Bernardino, Area 40
Palm Springs, CA	39	New	Miriam Media, Inc.
Marquette, MI	14	New	WLUC Licensee, LLC
Helena, MT	7	New	Northwest Investment Corporation
Cleveland, OH	16	New	Media-Com Television, Inc.

CLOSED AM AUCTION 84

UPFRONT PAYMENTS DUE APRIL 7, 2014

BIDDING BEGINS MAY 6, 2014

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
Alabama	State Primary	June 3	Apr. 19 - June 3
Arkansas	State Primary	May 20	Apr. 5 - May 20
California	State Primary	June 3	Apr. 19 - June 3
Colorado	State Primary	June 24	May 10 - June 24
Georgia	State Primary	May 20	Apr. 5 - May 20
Idaho	State Primary	May 20	Apr. 5 - May 20
Indiana	State Primary	May 6	Mar. 22 - May 6
Iowa	State Primary	June 3	Apr. 19 - June 3
Kentucky	State Primary	May 20	Apr. 5 - May 20
Maine	State Primary	June 10	Apr. 26 - June 10
Maryland	State Primary	June 24	May 10 - June 24
Mississippi	State Primary	June 3	Apr. 19 - June 3
Montana	State Primary	June 3	Apr. 19 - June 3
Nebraska	State Primary	May 13	Mar. 29 - May 13
New Jersey	State Primary	June 3	Apr. 19 - June 3
New Mexico	State Primary	June 3	Apr. 19 - June 3
New York	State Primary (Federal candidates only)	June 24	May 10 - June 24
North Carolina	State Primary	May 6	Mar. 22 - May 6
Ohio	State Primary	May 6	Mar. 22 - May 6
Oklahoma	State Primary	June 24	May 10 - June 24
Oregon	State Primary	May 20	Apr. 5 - May 20
Pennsylvania	State Primary	May 20	Apr. 5 - May 20
South Carolina	State Primary	June 10	Apr. 26 - June 10
South Dakota	State Primary	June 3	Apr. 19 - June 3
Utah	State Primary	June 24	May 10 - June 24
Virginia	State Primary	June 10	Apr. 26 - June 10
West Virginia	State Primary	May 13	Mar. 29 - May 13

Rulemakings to Amend FM Table of Allotments

The FCC is considering the following additions and deletions (indicated with a "D") to the FM Table of Allotments. The deadlines for filing comments and reply comments are shown.

Community	Channel	MHz	Comments	Reply Comments
Haynesville, LA	286A	105.1	April 21	May 6
Haynesville, LA	288A(D)	105.5	April 21	May 6

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
National Programmatic Agreement, Form 620	April 9
Carriage of television station signals by cable systems, Sections 76.56, 76.1708, 76.1614, 76.1620	April 11
Auction licensing disclosures, Sections 1.2110, 1.2111, 1.2112	April 11
Satellite Home Viewer Improvement Act: local broadcast signal carriage and retransmission consent issues,	May 13
Educational and informational TV programming for children, Sections 73.671, 73.673	May 13
Applications to assign or transfer control of experimental authorizations, Forms 702 and 703	May 13
AM auction Section 307(b) submissions	May 16
Presunrise and postsunset service AM authorization, Section 73.99	May 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 **April 14, 2014.** Informal objections may be filed anytime prior to grant of the application.

Present Community	Proposed Community	Station	Channel	Frequency
Monroeville, AL	Brantley, AL	WEZZ	n/a	920
Ledyard, CT	Bradford, RI	WSKP	299	107.7
Shelbyville, IL	Assumption, IL	WINU	n/a	870
Haynesville, LA	Heflin, LA	KIMW	288	105.5
Orangeburg, SC	Swansea, SC	WHXT	280	103.9
Ft. Worth, TX	Benbrook, TX	KFLC	n/a	1270
Robert Lee, TX	Rotan, TX	New	289	105.7
Arlington, VA	Capitol Heights, MD	WZHF	n/a	1390
Westport, WA	Hoquiam, WA	KCFL	208	89.5

The deadline for comments about any of the applications listed below is **May 27, 2014**.

Present Community	Proposed Community	Station	Channel	Frequency
Cambria, CA	San Miquel, CA	New	293	106.5
Coral Springs, FL	Delray Beach, FL	WBUR	n/a	1120
Milledgeville, GA	Buckhead, GA	WLRR	264	100.7
Sidney, IA	Malvern, IA	KIMI	299	107.7
Reno, NV	Sparks, NV	KCKQ	n/a	1180
Healdton, OK	Dickson, OK	KAZC	207	89.3
Sister Bay, WI	Ephraim, WI	WSBW	286	105.1
Canaan, VT	Milan, NH	New	231	94.1

FCC Application Fees Rise

Application filing fees paid with submissions to the FCC will soon be raised according a recently released *Order.* The Commission is required by statute to review the fee schedule every two years and to adjust the fees to reflect changes in the Consumer Price Index. The Index increased by 8% over the period from October, 2009 to October, 2013. The Commission included four years of data in calculating the new fees because this data was not captured in the prior fee calculations. Accordingly, the fees have been increased by approximately 8%. The chart on page 7 shows the current fees and the corresponding new fees for most applications and other filings of interest to broadcasters. The new schedule will become effective 30 days after the *Order* is published in the Federal Register. As of this writing, that publication has not yet occurred.

Media Bureau Seeks More Comment on Repacking Costs

The FCC's Media Bureau has solicited a new round of comments on the categories of reimbursable expenses that broadcasters may incur in the facilities modifications that may be needed to accommodate the incentive spectrum auction. Congress has earmarked $1.75 billion from the proceeds of the auction for the TV Broadcaster Relocation Fund. In Docket 12-268, the FCC has set about the process of determining how that Fund will be used.

The Commission engaged the firm of Widelity, Inc. to assist it in understanding the process and costs that will be associated with the post-incentive auction transition. Widelity conducted research by interviewing a wide range of stakeholders in the television industry to identify categories of expenses that stations will likely face, and ranges of estimated prices for those expenses. Widelity has produced a report entitled, "Response to the Federal Communications Commission for the Broadcaster Transition Study Solicitation" and a "Catalog of Potential Expenses and Estimated Costs." These documents are available for review and downloading from the Commission's website in Docket 12-268.

The Media Bureau seeks public comment on these documents. Comments should be submitted in Docket 12-268 by April 21. May 6 is the deadline for reply comments.

TV Joint Sales Agreements Now Attributable

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text of the *Further Notice of Proposed Rulemaking and Report and Order* has not been released as of this writing. In a press release announcing the action, the Commission said that the new rules will help "ensure competition, localism, and diversity in local broadcast markets by preventing a practice that previously resulted in consolidation in excess of what is permitted under the Commission's rules."

Several days ahead of the anticipated vote on this item, Republican Commissioner Ajit Pai produced a press release of his own that included results of his staff's research on the connection between JSAs and stations owned by women and African Americans. Relying on what he called "publicly available sources," Pai said that 43% of female-owned full power commercial television stations are parties to JSAs, and that 75% of African American owned full power commercial stations are involved in JSAs. He urged the Commission to delay the vote and take the time to conduct research on the impact that the proposed rule change could have diversity in broadcast ownership. That plea was rejected.

Stations in existing JSAs will have two years to come into compliance with the applicable ownership limits. Waiver requests will be considered on a case-by-case basis, but the Commission says the waiver proponent must show that strict compliance with the rule is inconsistent with the public interest.

The Commission also launched a review of television shared service agreements in the *Further Notice*. These agreements between same-market stations provide for the sharing of resources such as employees, administrative services and hard assets.

The *Further Notice* is also said to recommend reinstatement of the Commission's policy for revenue-based "eligible entities." This program fosters the new entry into broadcasting by small businesses.

More details about these proposals will be available when the full text of the *Further Notice* is released.

Revised Schedule of FCC FIling Fees

To become effective 30 days after Federal Register publication.

TYPE OF FILING	FORM	NEW FEE	CURRENT FEE
COMMERCIAL TV			
New & Major Change			
Construction Permit	301, 301-CA	$ 4,695	$ 4,350
New License	302-DTV, 302-CA	315	295
COMMERCIAL AM			
New & Major Change			
Construction Permit	301	4,180	3,870
New License	302-AM	690	635
Directional Antenna	302-AM	790	730
Remote Control	301	65	60
COMMERCIAL FM			
New & Major Change			
Construction Permit	301	3,760	3,485
New License	302-FM	215	200
COMMERCIAL AM, FM, TV			
Minor Change			
Construction Permit	301, 301-CA	1,050	970
Main Studio Request Correspondence		1,050	970
License Renewal	303-S	190	175
Assignment Long Form	314	1,050	970
Transfer of Control Long Form	315	1,050	970
Assignment/Transfer of Control			
Short Form	316	150	140
Call Sign Request	380	105	95
Special Temporary Authority Correspondence		190	175
Petition for Rulemaking	301, 302-TV, 302-FM	2,900	2,685
Ownership Report	323	65	60
COMMERCIAL FM & TV TRANSLATORS, LOW POWER TV, COMMERCIAL FM & TV BOOSTER STATIONS			
New & Major Change			
Construction Permit	346, 349	790	730
New License	347, 350	160	150
License Renewal	303-S	65	60
Special Temporary Authority Correspondence		190	175
Assignment/Transfer of Control	345, 314, 315, 316	150	140
INTERNATIONAL BROADCAST STATION			
New or Facilities Change			
Construction Permit	309	3,160	2,925
New License	310	715	665
License Renewal	311	180	165
Assignment/Transfer of Control	314, 315, 316	115	105
Frequency Coordination Correspondence		65	60
Special Temporary Authorization Correspondence		190	175
PERMIT TO DELIVER PROGRAMS TO FOREIGN BROADCAST STATION			
Commercial AM, FM, TV	308	105	95
Operating Agency Correspondence		1,130	1,050
FIXED SATELLITE EARTH STATION			
Initial Application (Transmit and Receive)	312	2,825	2,615
Initial Application (Receive only)	312	430	395
Amendment to Pending Application	312	195	180
Modification Application	312	195	180
Construction Permit Extension	312	195	180
License Renewal	405	105	180
Special Temporary Authorization Correspondence		195	180
Assignment/Transfer of Control First Station	312	560	515
Assignment/Transfer of Control			
Each Additional Station in same transaction	312	190	175

Contest Errors Trip Group Owner and LMA Station

The FCC's Enforcement Bureau has proposed to fine the group owner of four FM stations in southern Indiana and northern Kentucky for missteps in the management of a contest that was conducted entirely online. The group owner is the LMA operator of a nearby fifth station that was also involved in the contest. The Bureau proposes to fine the licensee of that station as well.

The Commission received a complaint to the effect that the licensee invited listeners to participate in a golf contest entitled "Par 3 Shoot Out," but did not conduct the contest substantially as announced or advertised. The complainant alleged that at least one participant and "weekly winner" in the contest did not receive the promised prize of a Victoria National Golf Club hat, nor was the contestant's name placed in a drawing to win a Lexus or other prizes as promised.

Responding to a Letter of Inquiry from the Bureau, the licensee explained that it had conducted the contest in question entirely on the Internet. Nothing was broadcast except for promotional announcements. This contest was operated by the company's interactive sales department rather the promotions department – which would have been the normal course of events.

The contest had two phases. The first phase was intended to consist of an 18-week online golf competition, scheduled to begin on June 26, 2008 and end on October 30, 2008. A Victoria National Golf Club hat was to be awarded to the player with the best score each week. Each weekly winner, plus a weekly write-in contestant, would be eligible to participate in the second phase of the contest scheduled for November, 2008. All of the weekly winners were to participate in an actual golf competition in which each would have one shot at a par three hole. The finalist who hit the ball closest to the pin would receive a $350 gift certificate from a golf store. Anyone who actually hit a hole-in-one would be receive a Lexus automobile.

The licensee denied that the hats were not awarded. However, it admitted that the second phase was postponed, initially due to inclement weather. The employee in charge of the contest was subsequently terminated, and the licensee said that it then simply forgot about the contest until it received the Commission's Letter of Inquiry. The licensee then resumed and completed the contest. However, prior to doing so, it changed the eligibility requirements to exclude from the contestants anyone who was a professional golfer or a club pro. The licensee said this was done to make the contest fairer for the other contestants. In fact, there were no pros to exclude. The second phase was completed in January, 2010. Because of the delay, extra prizes were awarded to each finalist.

Section 73.1216 of the FCC's rules requires broadcast stations to conduct station-sponsored contests substantially as announced or advertised. Material terms must be fully and accurately disclosed, including eligibility restrictions, means of selection of winners and the extent, nature and value of prizes.

The licensee attempted to defend itself against the charge of violating the rule by arguing that the contest was not conducted on the air of the stations and that the rule only pertains to on-air contests. The Bureau rebutted this by referring to prior decisions where the Commission had decided that a licensee-conducted contest that is promoted on the air is subject to the rule even though not conducted on the air.

The Bureau found multiple violations in the manner in which the contest was executed. In the middle of the contest, the eligibility rules were changed. It mattered not that this did not actually disqualify anyone. Secondly, the contest was suspended for over a year without notice or explanation to the contestants. The licensee originally advertised that the second-phase shoot out would occur in November, 2008. It did not actually happen until January, 2010 – and then, only after the licensee received the Bureau's Letter of Inquiry. Finally, the over-the-air announcements promoting the contest were not sufficiently thorough in describing the material terms. The on-air promotions only mentioned that contestants could qualify to win a Lexus. There was no mention of the hats or the golf store gift certificate. Furthermore, the on-air announcements failed to describe the procedures by which prizes would be awarded – most significantly that a contestant would have to hit a hole-in-one to win a Lexus. If a station chooses to promote a contest on the air, the on-air promotion must include all material terms.

The base amount of the forfeiture for violating Section 73.1216 set by the Commission's *Forfeiture Policy Statement* is $4,000. The Bureau adjusted that figure upward to $8,000 in this case because four stations were involved in the promotion of the contest, as was the fifth station operated by the licensee under an local marketing agreement.

The licensee of that station asserted that it had nothing to do with the contest and should not be held liable for it. In fact, the record showed that the contest had been promoted on that station's website as well. Of course, the most significant legal aspect of this wrinkle in the case is that the licensee of a station is always responsible to the FCC for whatever happens on its air – even if the station is managed and programmed by someone else. The Bureau dinged the LMA licensee for $4,000 as well.

Each licensee received a *Notice of Proposed Liability for Forfeiture* and has a 30-day period to lodge an objection to the proposed fine.