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AN UPDATE ON COMMUNICATIONS LAW & ISSUES
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Rules Adopted for Modifying Satellite TV Markets

The FCC has taken steps to implement provisions of the Satellite Television Extension and Localism Act Rauthorization Act of 2014 ("STELAR") by establishing new procedures for modifying satellite television markets in a *Report and Order* in Docket 15-71. Initially, the Commission relies on the Nielsen ratings service for geographic definitions of the 210 television markets in the country. However, it may be necessary or desirable to modify the Nielsen markets from time to time. The Commission has had rules for such procedures for cable television markets. These new satellite procedures parallel those already in use to modify cable markets for television stations, but at the same time address conditions unique to the satellite context. The Commission expanded Section 76.59 of its regulations – where the cable market modification rules are found—so as to add provisions for satellite markets.

These market definitions govern carriage rights and responsibilities as between the local television station and the cable or satellite system. While there is no blanket must-carry

continued on page 3

Incomplete License Applications, Temporary Facilities Nixed

The FCC has issued a *Memorandum Opinion and Order* affirming Media Bureau decisions finding that five FM construction permits in Texas and New Mexico expired and were forfeited because the permittees failed to timely submit complete and forthright license applications. Specifically, the permittees failed to comply with special operating conditions in the permits related to directional antenna installations and radiofrequency exposure measurements. They also failed to establish main studios.

These permits were formerly known under the call signs KNOS, Albany, Texas; KANM, Skyline-Ganipa, New Mexico; KKUL-FM, Trinity, Texas; all held by Tanglo, LLC; and KAHA, Olney, Texas; and KXME, Wellington, Texas, held by South Texas FM Investments, LLC.

Principals of the two companies are related family members.

continued on page 7

Contest Rules Go Online

The FCC has amended its rules governing contests conducted by the licensees of broadcast stations. According to the *Report and Order* in Docket 14-226, broadcasters will now have the option to satisfy their obligations to disclose contest rules by posting written information on a publicly accessible Internet website rather than by broadcasting them on the air. This proceeding resulted from a Petition for Rulemaking filed by station group owner Entercom Communications in January, 2012.

The Commission said that this change is consistent with the contemporary practices of most Americans in using the Internet to search for and obtain information. Prior to this rule change, stations were required to disclose all of the material terms of contest rules on the air beginning when the audience was first informed about how to participate in the contest and continuing periodically thereafter until the contest ended. The on-air option is still available for stations that decide to use it instead of the Internet.

The Commission's contest rule is found in Section

continued on page 2

IN THIS ISSUE

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NAB Seeks Waiver of Autodialer Rule

The FCC has released a Public Notice requesting comment on petitions by several parties, including the National Association of Broadcasters ("NAB"), requesting retroactive waivers of Section 64.1200(a)(2) of the Commission's rules concerning "robocalls." The rule requires a party using an automated telephone dialing system or an artificial or prerecorded voice for telemarketing to obtain prior express written consent from the recipient.

In 2012, the Commission strengthened its rules implementing the Telephone Consumer Protection Act governing telemarketing. Under those rules, "prior express written consent" was defined as including a clear and conspicuous disclosure that the person signing the agreement authorized the other party to deliver telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice and that the person is not required to provide such consent as a condition of purchasing any property, goods, or services. The Commission recently granted requests for temporary retroactive waivers of the rules adopted in 2012, especially pertaining to telemarketing calls (including text messages) sent to wireless mobile phone numbers. In the waiver order, the Commission concluded that there was evidence of confusion on the part of the petitioners about whether the consumer consents they had obtained prior to the adoption of the rule amendments were sufficient to comply with the rules going forward concerning mobile phones. In view of that confusion, the Commission determined it would be reasonable to recognize a limited period of time within which the petitioners could obtain the express written consent required by the recently effective rule. Consequently, the agency granted

continued on page 8

Contest Rules Go Online

continued from page 1

73.1216 of its regulations. It states in part:

> A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term.
>
> . . . .
>
> Material terms include those factors which define the operation of the contest and which affect participation therein. Although the material terms may vary widely depending on the exact nature of the contest, they will generally include: how to enter or participate; eligibility restrictions; entry deadline dates; whether prizes can be won; when prizes can be won; the extent, nature and value of prizes; basis for valuation of prizes; time and means of selection of winners; and/or tie-breaking procedures.

To be relieved of the obligation to disclose material terms of a contest on the air, a broadcaster must post those terms in writing on a website that is available to the public 24/7, free and without a registration requirement. The station can use its own website, or if does not have one, it can use any other site meeting the standards for public accessibility.

To direct the audience to the location where the contest rules are available, the station must periodically announce on the air the address of the website where they have been posted. Although the Commission had originally proposed that stations should announce the complete website address as it would appear in a browser (such as "http-colon-backslash, etc"), it concluded that this might be ineffective and disruptive because most such addresses are too long to grasp in a quick aural announcement. Instead, stations can identify the website through simple instructions or natural language (such as "kwyz.com") so that the typical consumer can easily find the website. The station must establish a link or a tab on the home page of the site that leads directly to the page where the rules can be found. The online disclosure must remain in place for 30 days after the conclusion of the contest, i.e., after the winner(s) has been announced and informed. During that post-contest period, the material should be labeled to clarify that the contest has concluded and to state the date on which the winner was named.

The rule will continue to prohibit false, misleading or deceptive contest descriptions, and to require that broadcasters conduct their contests substantially as announced. In the unlikely event that the terms of the contest are changed while the event is in progress, the rules posted on the website must, of course, be updated. Further, the station must announce on the air that the rules have changed and direct the audience to the website where those changes can be reviewed. The Commission emphasized that a broadcaster cannot change the terms of a contest in a way that unfairly or deceptively alters the operation of the contest or the nature or value of the prize, or materially disadvantages existing contestants. Such changes will be deemed to render prior descriptions false or misleading, and therefore in violation of the rule.

The FCC's contest rule does not apply to licensee-conducted contests that are not broadcast or advertised to the general public or to a substantial segment of the public; to contests in which the general public is not requested or permitted to participate; to the commercial advertisement of contests conducted by non-licensees; or to contests conducted by a non-broadcast division of the licensee, or by a non-broadcast company related to the licensee.

Rules Adopted for Modifying Satellite TV Markets *continued from page 1*

rule for satellites, there is the "carry one, carry all" rule. If a satellite carrier chooses to carry one station in a market, all of the other stations in that market have must-carry rights against the satellite carrier.

An issue especially addressed by STELAR is that of the so-called "orphan" counties. These are counties in televison markets that straddle state lines and create circumstances where communities may not have local in-market carriage of television signals originating in their own state. Congress and the Commission are concerned that communities in these counties may suffer from a deficit of coverage of issues and events of particular importance to their state. Accordingly, an important criteria in satellite market modifications is the question of whether there is an in-state station in the existing market for the community that is the subject of the modification.

For purposes of satellite carriage, a "satellite community" is a county. It is a county that is added to or deleted from a market. Commercial television stations, satellite carriers and county governments all have standing to propose or oppose modifications. These rules do not pertain to non-commercial stations.

In the course of a satellite market modification, the FCC is mandated by STELAR to afford particular attention to the value of localism by taking into account the following factors:

(1) whether the station, or other stations located in the same area – (a) have been historically carried on the cable system or systems within such community (note however that cable market modifications will not automatically apply in the satellite context, nor will prior cable market decisions be afforded a presumption); and (b) have been historically carried on the satellite carrier or carriers serving such community.

(2) whether the station provides coverage or other local service to such community.

(3) whether modifying the local market of the television station would promote consumers' access to television station broadcast signals that originate in their state of residence.

(4) whether any other television station that is eligible to be carried by a satellite carrier in such community under these STELAR provisions provides news coverage of issues of concern to such community, or provides carriage or coverage of sporting or other events of interest to the community.

(5) evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such distributors in such community.

The new factor in this list that differs from considerations for cable market modifications is the third item concerning in-state signals. While this factor is a significant issue underlying these new rules, the Commission said that it will not make modification decisions exclusively on the basis of this factor. Rather, this element will serve as an enhancement, the specific weight of which will depend on the evidence presented by the petitioner.

A proponent of a satellite market modification must file a petition for Special Relief under Section 76.7 of the Commission's rules. The evidentiary requirements for such a petition are similar to, but not precisely the same as those in a cable market modification proceeding. A petitioner seeking the in-state enhancement factor must claim it and demonstrate it in the petition. In fact, all petitions seeking a satellite market modification must include a statement as to whether or not the relevant station and community are in the same state.

Otherwise, evidence required for a satellite market modification petition is similar to that required for a cable market modification petition, including:

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, satellite carrier local receive facility locations, terrain features that would affect station reception, mileage between the community and the TV station transmitter site, transportation routes and any other evidence contributing the scope of the market.

(2) Noise-limited service contour maps (for full power stations) or protected contour maps (for Class A and low power stations) delineating the station's technical service area and showing the location of the satellite carrier's local receive facilities and communities in relation to the station's service area.

(3) Available data on shopping and labor patterns in the local market.

(4) Television station programming information derived from station logs or the local edition of the television guide.

(5) Cable system or satellite carrier channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(6) Published audience data for the station showing its average all day audience for both MVPD and non-MVPD households.

STELAR provided that even where a satellite market modification was found to be warranted, the satellite carrier would be not be required to carry the relevant station into the relevant community (i.e., the relevant county), if it was not technically and economically feasible to do so. The Commission concluded that it is per se not technically and economically feasible for a satellite carrier to provide a signal to a new community that is outside of the spot beam on which that station is currently carried. The satellite carrier has the burden to demonstrate infeasibility. It can show that spot beam coverage is infeasible by furnishing a detailed technical certification under the penalty of perjury, describing the satellite facilities that it has in operation at that time. Documentation supporting such a certification must be available if the Commission requests it. If a carrier

continued on page 6

DEADLINES TO WATCH

License Renewal, FCC Reports & Public Inspection Files

Oct. 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**.

Oct. 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**.

Oct. 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**.

Oct. 1, 2015 — Deadline for all broadcast licensees and permittees of stations in **Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, Mariana Islands, Missouri, Oregon, Puerto Rico, Virgin Islands** and **Washington** 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.

Oct. 10, 2015 — Place Issues/Programs List for previous quarter in public inspection file for all full service radio and television stations and Class A TV stations.

Oct. 13, 2015 — Deadline to file quarterly Children's Television Programming Reports for all commercial television stations.

Dec. 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 **Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota** and **Vermont**.

Dec. 1, 2015 — Deadline to file Biennial Ownership Report for all noncommercial radio stations in **Alabama, Connecticut, Georgia, Maine, Massachusetts, New Hampshire Rhode Island** and **Vermont**, and noncommercial television stations in **Colorado, Minnesota, Montana, North Dakota** and **South Dakota**.

Dec. 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 **Alabama** and **Georgia**.

Dec. 2, 2015 — Deadline for all commercial radio and television stations to file Biennial Ownership Report with data accurate of as October 1.

Deadlines for Comments In FCC and Other Proceedings

Docket	Comments	Reply Comments
(All proceedings are before the FCC unless otherwise noted.)		
Docket 15-146; NPRM White space devices in vacant UHF channels		Oct. 30
Department of Justice Antitrust Division Review of ASCAP and BMI consent decrees	Nov. 20	N/A
Docket 02-278; Public Notice Request for retroactive and and prospective waiver of certain telemarketing rules for NAB members	Oct. 26	Nov. 9
Docket 15-216; NPRM Good faith negotiations for retransmission consent agreements	Dec. 1	Dec. 31
Docket 15-121; FNPRM Regulatory fees	FR+30	FR+60

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

DEADLINES TO WATCH

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 October 9, 2015. Informal objections may be filed anytime prior to grant of the application.

Present Community	Proposed Community	Station	Channel	Frequency
Brantley, AL	Goshen, AL	WAOQ	262	100.3
North Shore, CA	Bermuda Dunes, CA	KVGH	286	105.1
Redlands, CA	Grand Terrace, CA	KCAL(AM)	N/A	1410
San Andreas, CA	Linden, CA	KARQ	207	89.3
Sandpoint, ID	Dear Park, WA	KPND	237	95.3
Clinton, MS	Kearney Park, MS	WHJT	228	93.5
Cloudcroft, NM	Capitan, NM	KNMB	244	96.7
Lawrenceburg, TN	Pulaski, TN	WKSR-FM	294	106.7
Leakey, TX	Concan, TX	KHJQ	226	93.1
Wheeler, TX	Carter, OK	KOGC	202	88.3
Hoquiam, WA	Raymond, WA	KBSG	211	90.1
Grafton, WV	Loch Lynn Hts, MD	WDKL	240	95.9

Cut-Off Dates for FM Booster Applications

The FCC has accepted for filing the applications for new FM booster stations as described below. The deadline for filing a petition to deny each of these applications is indicated. Informal objections may be filed any time prior to grant of the application.

Community	Parent Station	Channel	MHz	Filing Deadline
Watsonville, CA	KLOK	258	99.5	Oct. 14
Pinellas Park, FL	WSUN	246	97.1	Oct. 14
Boston, MA	WXRV	223	92.5	Oct. 14
Dover, MA	WXRV	223	92.5	Oct. 14
Framingham, MA	WXRV	223	92.5	Oct. 14
Newton, MA	WXRV	223	92.5	Oct. 14
Chadron, NE	KVKR	208	88.7	Oct. 14
Bryson City, NC	WNCC	281	104.1	Oct. 14
Bradford, PA	WBYB	280	103.9	Oct. 14
Bradford, PA	WXMT	292	106.3	Oct. 14
Orvil, TX	KLIT	227	93.3	Oct. 22

Biennial Ownership Reports For All Commercial Stations Due December 2, 2015

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
Topic Comment Deadline Public file and EEO recordkeeping for satellite radio	Oct. 19
Antenna Structure Registration, Form 854	Oct. 26
Emergency Alert System	Nov. 2

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

Community	Station	Channel	Applicant
Evansville, IN	New	49	EICB-TV East, LLC
Des Moines, IA	WBXF-CA	28	L4 Media Group, LLC
Olive Hill, TN	W30DF-D	33	Rural Life Foundation, Inc.
Plainview, TX	K44GL	31	Ramar Communications, Inc.

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 October 15, 2015, and replies by November 4, 2015, in Docket 06-181 about these requests.

Programmer	Location	Case Identifier
Tunuva Media/program-length commercials	Los Angeles, CA	CGB-CC-1351
WACT-TV/various programs	Norcross, GA	CGB-CC-1360
Life Issues Institute/"Facing Life Head-on"	Cincinnati, OH	CGB-CC-1363
Singing Crusade for Christ/Lloyd Morgan Revivals	East Flat Rock, NC	CGB-CC-1364

Cut-Off Dates for Noncommercial FM Applications

The FCC has accepted for filing the application for new noncommercial FM station as identified below. Petitions to deny must be filed by the deadline shown. Informal objections may be filed anytime prior to grant of the application.

Community	Channel	MHz	Applicant	Deadline
Tok, AK	207	89.5	Athabascan Fiddlers Association	Oct. 22

Wireless Mics Set for TV Transition

Wireless microphones are currently permitted to operate on both a licensed and an unlicensed basis on frequencies throughout the broadcast television band. The imminent restructuring of spectrum presently allocated to television in the incentive auction will have an impact the use of these devices. There will be less open spectrum on TV frequencies available for them to use. The FCC has amended its rules to address these issues in the *Report and Order* in Docket 14-166. Greater and more efficient use of wireless mics will be permitted on VHF television channels. More co-channel operations will be allowed without the need for coordination. Eligibility for use of the duplex gap (the band separating the uplinks and downlinks in the post-auction wireless band plan for the 600 MHz band) will be expanded to include all entities now eligible to hold licenses in the Low Power Auxiliary Service ("LPAS") for operations in television spectrum. Other spectrum bands not devoted to television are being opened to wireless microphone uses, as well, to meet the demand.

Wireless microphones are used in a great variety of settings, including the production of broadcast and other video programming, film studios, theaters and music venues, conventions, houses of worship, and other public performance situations. In addition to wireless microphones, the LPAS includes devices used for cue and control communications and synchronization of TV camera signals. LPAS licensees include broadcasters; television, film and cable producers; operators of large venues and professional sound companies.

Under the current rules, wireless microphones and other LPAS devices are permitted on all TV channels 2 through 51 (except for 37) on a secondary, non-exclusive basis. Where possible, the FCC currently designates the two channels nearest channel 37 for wireless mics and prohibits other white space devices on those channels. LPAS devices are intended to transmit over distances of approximately 100 meters. LPAS power levels on VHF channels are limited to 50 mW, and to 250 mW on UHF channels. Unlicensed mics are limited to a maximum power of 50 mW throughout the television band. Licensed and unlicensed mics may operate co-channel with broadcast television, but they must be at least four kilometers beyond the TV station's protected contour. LPAS users can operate closer to co-channel broadcast stations if they coordinate with the broadcaster.

The Commission adopted an alternate calculation for the maximum power on VHF channels, changing from 50 mW limit in terms of conducted power to 50 mW in terms of EIRP. The agency said this would improve efficiency without the need for larger antennas.

Under the new rules, licensed wireless mics will be permitted nearer to co-channel broadcast operations on any TV channel where the television signal falls below a threshold of -84 dBm over the entire TV channel, provided certain conditions are met. These operations will be restricted to indoor locations at a fixed position with a constant signal threshold and that is not being used for over-the-air television viewing. The licensed operator must use equipment and employ a person with professional qualifications capable of determining the threshold broadcast signal at the location.

In another rule change to promote more efficient use of spectrum, the Commission adopted a more stringent standard for emission masks for wireless microphones. This will limit adjacent channel interference. Specifically, emissions must comply with the masks specified by the European Telecommunications Standards Institute in Section 8.3 of its publication for wireless microphones. The standard can be retrieved at www.etsi.org.

In the incentive auction proceeding, the Commission decided that broadcasters and cable programmers using licensed wireless mics could operate in a portion of the duplex gap where they would be protected from unlicensed users. In its search for increased LPAS capacity, in this proceeding, the agency has determined to allow all other LPAS users to operate on frequencies in the duplex gap as well.

After the conclusion of the incentive auction, there will be a 39-month transition period during which television stations on frequencies in repurposed spectrum will – for the most part – go silent or move to lower channels. In some cases, the new wireless services may also begin operations in the newly configured 600-MHz band during this period. Wireless microphones operating on these frequencies will be permitted to continue to operate as long as they do not cause interference to the new wireless users. However, all wireless microphone operations in this band must cease at the end of the transition period.

Rules Adopted for Modifying Satellite TV Markets *continued from page 3*

can feasibly provide spot beam service to only a portion of the requested county, it must provide that partial service. The Commission acknowledges that there are additional other conditions that might render service to a relevant community as technically and financially infeasible – such as the need to reconfigure all of the customer receive antennas in a community.

The FCC recognizes that the proponent of a modification seeking to add a community to a satellite market may wish to know in advance whether the satellite carrier can demonstrate infeasibility. If the proposal turns out to be infeasible, the petitioner would save the resources otherwise devoted to a losing proposition. In such a case, the petitioner can initiate a pre-filing coordination process with the satellite carrier. Upon receipt of the petitioner's request, the satellite carrier must raise whatever valid objection it has to the modification by supplying a spot beam infeasibility certification, or other evidence as the case may require. The proponent then can evaluate whether to proceed with the petition process.

Incomplete License Applications, Temporary Facilities Nixed

continued from page 1

The explanation for these failures in the initial applications was that time was "too short" to complete the necessary tasks before expiration of the permits. The license applications were filed at the very end of the life of each permit in early April, 2010, with commitments to comply with the special conditions promptly and requests for waivers of the main studio rule.

The Media Bureau returned each of these license applications as defective and unacceptable and the main studio rule waiver requests were denied. The applicants filed Petitions for Reconsideration with an amendment to each application, purporting to furnish the required technical details and changing the response to the question on the application form about construction of the main studio, certifying that they had constructed rule-compliant main studios prior to expiration of the permits. The Bureau reinstated the applications for further review.

However, after conducting that further review, the Bureau found that the amendments were insufficient to show that the stations had been constructed in accordance with the permits. In particular, they did not include adequate RF information. The license applications remained incomplete despite the filing of three more inadequate amendments. In early January, 2011, the Bureau set a deadline of January 30, 2011 for providing the required information. On February 3, the applicants' counsel requested an extension of time until the last week of February. The Bureau did not act on that request and, in any event, no amendments were filed. On February 24, the Bureau dismissed the applications for failure to prosecute and ruled that the permits had expired by operation of law in April, 2010. In March, 2011, the applicants filed Petitions for Reconsideration of the dismissals, and offered amendments purporting to cure the deficiencies in the applications. The Bureau denied the Petitions and declined to consider the amendments because the applicants had failed to submit the often-requested information during the eleven months between the filing of the license applications and their ultimate dismissals.

...permittees... may not rely on temporarily constructed facilities

In December, 2012, the applicants filed Applications for Review of the Bureau's rejection of their reconsideration requests. This present order is the Commission's response to those Applications for Review. In upholding the Bureau's ruling, the Commission explained that all broadcast permittees must, by the construction deadline specified in the construction permit, (1) build the station in accordance with all of the terms and conditions in the permit, and (2) file a license application demonstrating proper construction. The Commission said that permittees cannot file defective applications as mere placeholders. The parties in this case neither completed construction, satisfied all of the conditions of the permit, nor established a basis for additional construction time. The Commission remonstrated that the applicants' attempted use of the corrective amendment process to extend their construction deadlines is inappropriate and inconsistent with the agency's goals of prompt initiation of service and spectrum efficiency. The Commission directed the Bureau to reject any such attempts by other applicants in the future and to consistently enforce the rule on construction permit deadlines.

The Commission went on to describe and comment about other aspects of the conduct of these applicants (although they were not the basis for the agency's decision in this case). Enforcement Bureau staff investigated the status of construction of these stations in October, 2010 and May, 2011. At a time when the applicants were not being responsive to Media Bureau requests for operational measurements and photos, Enforcement Bureau staff photographs of the antenna sites specified in the permits showed vacant fields with no evidence of transmission or studio facilities. Field agents monitored the stations' authorized frequencies and found no transmissions. A local business owner told the field agents that in August 2010, he had seen two men erect a small temporary tower at a location that the agents determined was near the authorized transmitter site for KKUL-FM. The men told him that they were setting up a temporary station to operate on 98.1 MHz (the authorized frequency for KKUL-FM). He listened to the station on that frequency for about three hours until the men dismantled the equipment and left the scene. At no time had the KKUL-FM permittee sought authorization for a temporary facility.

The Commission took this opportunity to caution all permittees that they may not rely on temporarily constructed facilities to satisfy construction requirements and that permits associated with temporarily constructed facilities are subject to automatic forfeiture. The agency further cautioned that false certification of construction, or failure to update license applications to report the removal of temporary facilities will be grounds for enforcement action.

DOJ Studies ASCAP, BMI Licenses in Partially Owned Works

The Antirust Division of the U.S. Department of Justice is continuing its review of the long-standing Consent Decrees under which the major Performing Rights Organizations (""PROs") in the United States – ASCAP and BMI – have been operating for many decades. These organizations collect copyright royalties from radio stations and other public performers of music on behalf of copyright owners. The DOJ is studying whether the Consent Decrees remain viable, useful or even necessary in connection with monitoring and preventing antitrust violations.

In comments submitted in response to prior solicitations for public input, it came to light that the general practice for both ASCAP and BMI is to license all of the works in their repertoires, including those in which they may hold only a partial ownership. Indeed, under the Consent Decrees, both organizations are obligated to license their entire repertoires to any music user. Notwithstanding this, it appears that the historical practice of both organizations has been to charge and accept payments for fractional interests, and to forward the collected royalties to their members for such fractional interests. These practices have led some to question whether the organizations' licenses have in fact conveyed the right to perform partially owned works.

In view of this potential confusion, the Antitrust Division has asked for public comment on the following:

• Have the licenses that ASCAP and BMI have historically sold to users provided the right to perform all of the works in each organization's respective repertoire, whether wholly or partially owned?

• If the blanket licenses have not provided users with the right to perform all of the works in the repertoire, what have they provided?

• Have there been occasions on which a user who entered into a license agreement with one PRO became subject to an infringement complaint from a third party for works included in the license?

• Assuming the Consent Decrees currently require the PROs to offer full-work licenses, should the Decrees be modified to permit or require them to offer licenses that require users to obtain consent from all joint owners of a work?

• If the PROs were to offer licenses that do not entitle users to perform partially owned works, how would the public interest be served by modifying the Consent Decrees to permit the PROs to accept partial rights from music publishers under which the PROs can license partial rights to users?

• What, if any, rationale is there for the PROs to engage in joint price setting if their licensees do not provide immediate access to all of the works in their repertoires?

Comments must be submitted by November 20, and may be filed electronically at www.justice.gov/atr/ASCAP-BMI-comments-2015.

NAB Seeks Waiver of Autodialer Rule *continued from page 2*

the petitioners and their members a retroactive waiver from the original effective date of the rule, October 16, 2013, to the release date of the waiver order, and then a waiver from the release date through a period of 89 days, during which the affected parties were allowed to rely on the "old" prior written express consents already provided by their consumers before October 16, 2013.

In its petition, NAB seeks to be included in the "class of entities eligible for the retroactive and prospective waivers pertaining to the prior express consent requirement" in the Commission's waiver order. In requesting to be included in the class of petitioners who were previously granted waiver relief, NAB states that the FCC recognized in its waiver order that certain language requiring that an additional prior express written disclosure was required for certain mobile telemarketing messages (including automated text messages to mobile numbers) caused confusion for petitioners. NAB asks the Commission to declare that all parties to the proceeding are entitled to retrospective and prospective waivers like those granted in the waiver order. In the alternative, NAB requests that the Commission waive the rule retroactively and temporarily prospectively for the NAB and its members as the agency did for other parties in the waiver order.

The Commission has invited public comment on the petition. Comments should be submitted by October 26. Reply comments will be due by November 9.