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AN UPDATE ON COMMUNICATIONS LAW & ISSUES
JANUARY 2016

Filing Windows Announced For FM Translators to Become AM Fill-ins

Following up on the FCC's AM Revitalization Order released in October, the Media Bureau has released a Public Notice to announce filing windows for applications to modify FM translator stations so as to qualify to be "fill-in" translators for AM stations. An AM station can be rebroadcast on an FM translator only if the translator qualifies as a fill-in. To qualify, the 60 dbu contour of the translator must fall completely within the 2 mV/m daytime contour of the AM station, and must not extend more than 25 miles from the AM antenna site.

In these filing windows, the licensees and permittees of AM radio stations will have the opportunity to acquire FM translator stations (including construction permits) and relocate them up to 250 miles (from the old translator antenna site to the new translator antenna site). To be eligible for this procedure, the translator must be authorized to operate on a non-reserved band channel, i.e. above 92 MHz on the FM band. As an element of the move, the translator can be modified to operate on any other non-reserved band frequency. Such applications will be processed as minor-modification applications despite proposing

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New Rates Set for Webcasting Royalties

The Copyright Royalty Board has concluded its so-called "Web-IV" proceeding to establish the royalty rates to be paid for transmission of copyrighted sound recordings on the Internet by eligible nonsubscription services and new subscription services for the five-year period 2016-2020. These are the rates applicable to most (but not all) radio stations that stream their over-the-air programming on the Internet. These fees are collected by the SoundExchange.

The Board set specific rates for 2016 and announced that it would adjust them each subsequent year during the five-year rate period to reflect changes occurring in the cost of living. The adjustments are to be published in the Federal Register at least 25 days before the beginning of each new year.

For 2016, commercial webcasters must pay $0.0022 per performance for subscription services and $0.0017 per performance for nonsubscription services. There is a minimum annual fee of $500 per channel or station. Noncommercial webcasters will

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LPTV Digital Deadline Reset; Channel Sharing Allowed

The deadline for Low Power Television stations and television translator stations to complete the transition from analog to digital has been reset for the date one year after the conclusion of the 39-month post-incentive auction repacking transition. That is the period for full power and Class A stations to complete construction of their post-auction facilities that will have been repacked, where necessary, onto new channels and/or at new antenna sites. The 39-month transition period will begin when the FCC releases a Public Notice announcing the new full power and Class A channel assignments at the completion of the reverse and forward auctions.

That analog-to-digital deadline will also be the expiration date for all remaining construction permits for new unbuilt digital LPTV stations. The FCC has announced these new deadlines in the *Third Report and Order* in Docket 03-185.

The previous date for completing these digital LPTV facilities had been set for September 1, 2015, but that deadline was suspended when it became clear that

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High Tower Lights Must Flash

The Federal Aviation Administration has adopted new lighting requirements for certain towers to change steady-burning lights to lights that flash on and off. The agency promulgated these new rules recently in Advisory Circular for Obstruction Marking and Lighting 70/7460-IL, which cancels and replaces Advisory Circular 70/7460-IK. This action by the FAA has the effect of amending the requirements for antenna structures subject to the FCC's Antenna Structure Registration system. Going forward, all new or altered antenna structures must comply with the new FAA requirements in order to obtain FCC registration.

The FAA-sanctioned Lighting Styles A, E and F for antenna structures no longer employ L-810 steady-burning side lights for communications towers that are taller than 350 feet above ground level. Effective immediately, all new communications towers taller than 350 feet that use lighting must use only flashing obstruction lights.

The new Advisory also affects towers between 151 feet and 350 feet above ground level that use Lighting Styles A and E. These towers will now also have to use flashing L-810 side lights rather than steady-burning L-810 side lights. This requirement will become effective on September 15, 2016. At that time, all new communications towers taller than 150 feet with lighting must use only flashing obstruction lights.

The FCC's Wireless Telecommunications Bureau has issued a Public Notice encouraging owners of existing registered antenna structures to eliminate the use of L-810 steady-burning lights as soon as possible. The Bureau suggests that in many cases, this change can be made without climbing the tower simply by extinguishing the steady-burning lights. However, prior to changing the lighting on an existing antenna structure, the tower owner must request a new No Hazard Determination from the FAA under the new Advisory Circular. After obtaining that, the tower owner must file a Form 854 with the FCC to amend its antenna structure registration to reflect the new lighting.

The FAA instigated this change in an effort to reduce the harmful effects that antenna structures have on migratory birds. Research suggests that birds are attracted to non-flashing red lights much more than to flashing lights. Millions of migratory birds suffer fatal collisions with towers in the United States each year – most of them among species protected by the Migratory Bird Treaty Act of 1918 and the Endangered Species Act of 1973. It is estimated that the elimination of non-flashing lights may reduce migratory bird collisions by as much as 70 percent.

Digital TV Translator Replacement Service Created

The FCC has created a new digital-to-digital replacement translator service ("DTDRT") that will enable eligible full power television stations to recover digital service area losses resulting from the reverse auction and repacking process. Reassignment to a different channel may preclude the ability to precisely replicate a station's pre-auction coverage area. This action was part of the Commission's *Third Report and Order* in Docket 03-185. The DTDRT service will be similar to the analog-to-digital replacement translator service ("DRT") that the Commission established in 2009 for similar reasons during the digital television transition.

Eligibility to apply for DTDRT stations will be limited to full power stations that are reassigned in the repacking process. An applicant will have to show that it lost a portion of its pre-auction digital service area directly because of its reassignment, and that the proposed DTDRT facility would be used solely to fill in such loss areas (subject to an allowance for a de minimis expansion of the pre-auction service area). The "pre-auction digital service area" is defined as the geographic area within the full power station's noise-limited contour. Eligible stations may file DTDRT applications during the period beginning with the opening of the post-auction LPTV and TV translator displacement filing window and ending one year after the conclusion of the 39-month post-auction repacking transition.

DTDRT applications and DRT displacement applications will have co-equal processing priority. These two types of applications will have priority over all other LPTV and TV translator applications, including all new, minor change and displacement applications. All DTDRT and DRT displacement applications filed during the post-auction LPTV displacement window will be considered filed on the last day of the window, will have priority over all other displacement applications filed during the window by LPTV and TV translator stations, and will be considered co-equal if mutually exclusive. After the close of the LPTV displacement filing window, applications for new DTDRT stations will be accepted on a first-come-first-served basis. They will have priority over all prior-filed LPTV and TV translator new, minor change and displacement applications. They will have co-equal priority with displacement applications for existing DRT stations filed on the same day.

Construction permits for DTDRT stations will last for three years. DTDRT stations will be secondary in that they cannot cause interference to, and must accept interference from full power television stations, certain land mobile radio stations, and other primary services. These stations will be permanently associated with the full power station's main license. They may not be separately assigned or transferred. They will be renewed, transferred or assigned along with the main license. Otherwise, DTDRT stations will be generally subject to the same technical and operating rules that govern other TV translators.

Unauthorized Transfer of Control Results from TBA

The FCC's Media Bureau has adopted a Consent Decree in which the parties to a Time Brokerage Agreement (a "TBA") covering KRDO-FM, Security, Colorado, acknowledged that they had committed an unauthorized transfer of control of the station, in violation of Section 310 of the Communications Act and Section 73.3540 of the Commission's rules.

The Bureau's concerns were triggered by an application filed in April, 2015, for Commission consent to assign the station from Optima Communications, Inc. to Pikes Peak Television, Inc. Pikes Peak had been operating the station since 1992 under the TBA, a copy of which was filed with the assignment application. The TBA provided for an entity affiliated with Pikes Peak to make direct payments to creditors and vendors for certain station obligations and expenses, including debt owed to a third party, rent for the station's antenna site and the station's telephone bill.

TBAs are not prohibited by any FCC rule or policy provided that the parties comply with the ownership rules and the licensee maintains ultimate control over the station. The Commission requires the licensee to hold ultimate responsibility for essential station matters such as programming, personnel and finances. The Bureau determined that Optima was no longer maintaining such control over its finances and therefore had improperly ceded control of the station.

Optima and Pikes Peak agreed to collectively pay a civil penalty of $8,000. The Media Bureau agreed to terminate the proceeding and, upon payment of the fine, to grant the assignment application. Unlike many other consent decrees, this one contained no requirement for a compliance plan or periodic reporting to the Commission.

Filing Windows Announced for FM Translator Modifications

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geographic relocations and channel modifications that would otherwise be considered "major changes."

There will be two filing windows: January 29 through July 28, for translators that would rebroadcast Class C and D AM stations; and July 29 through October 31 for translators that would rebroadcast any AM station. The filing windows are open to AM licensees and permittees to acquire and/or move translators, and to translator licensees and permittees that have a written agreement to rebroadcast an AM signal as the primary station.

Applications will be processed on a first-come-first-served basis. An application will be protected as of its filing date against subsequently filed translator applications. Mutually exclusive situations resulting from applications filed on the same day must be resolved by way of technical amendments or settlements. An amendment could propose any other available non-reserved band frequency.

AM stations that already have a fill-in translator can participate in these filing windows to acquire another one. However, an AM station can be identified as the primary station in only one translator application filed in the course of these windows. The Commission will accept amendments to correct deficiencies or resolve conflicts. However, if an application is finally dismissed, the associated AM station cannot be listed as the primary station in any subsequent translator application filed in these windows.

An FM translator station that is modified as a result of an application filed in these windows must rebroadcast the originally specified primary AM station for at least four years, not counting any silent periods for the AM station.

The FCC has developed tools to assist in locating eligible translator stations and to identify rule-compliant available channels. These Internet-based search tools are available on the FCC's website at www.fcc.gov/media/radio/am-revitalization. The Commission cautions that these tools are intended to provide only preliminary assistance. Applicants are encouraged to enlist the help of a broadcast consulting engineer or other qualified technical person.

New Rates Set for Webcasting Royalties

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pay $500 per year for each channel or station, plus $0.0017 per performance for all digital audio transmissions in excess of 159,140 ATH per month per channel or station. (ATH stands for "Aggregate Tuning Hours." One ATH is the transmission of programming on one channel to one listener for an hour or any fraction of an hour.) Public radio stations, such as those affiliated with National Public Radio, are subject to a different rate-making proceeding and are not affected by this decision.

Webcasters must also pay a royalty for making ephemeral recordings of copyrighted works in the course of operating their transmission services. Five percent of the total fee paid under the formulas described above is allocated to the license for ephemeral recordings made in connection with noninteractive services.

Missing from this ruling is any reduced rate or concession for so-called small webcasters. The decision is also silent about issues that were addressed in agreements reached under the Webcaster Settlement Act, many of which are expiring.

The Board's ruling would not affect the rates or terms of voluntary agreements that webcasters may have with copyright owners.

DEADLINES TO WATCH

License Renewal, FCC Reports & Public Inspection Files

Jan. 10, 2016 — Deadline to place Issues/Programs List for previous quarter in public inspection file for all full service radio and television stations and Class A TV stations.

Jan. 11, 2016 — Deadline to file quarterly Children's Television Programming Reports for all commercial television stations.

Feb. 1, 2016 — 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 **Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York** and **Oklahoma**.

Feb. 1, 2016 — Deadline to file Biennial Ownership Report for all noncommercial radio stations in **Arkansas, Louisiana, Mississippi, New Jersey** and **New York**, and noncommercial television stations in **Kansas, Nebraska** and **Oklahoma**.

Feb. 1, 2016 — Deadline for all broadcast licensees and permittees of stations in **Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York** and **Oklahoma** 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).

Feb. 1, 2016 — Deadline to file EEO Broadcast Mid-term Report for all radio stations in employment units with more than 10 full-time employees in **Arkansas, Louisiana** and **Mississippi**.

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
Ventura, CA	KJAI	208	89.5	Jan. 14
Bishop, TX	KMZZ	295	106.9	Jan. 14

Deadlines for Comments In FCC and Other Proceedings

Docket	Comments	Reply Comments
(All proceedings are before the FCC unless otherwise noted.)		
Docket 15-216; NPRM Good faith negotiations for retransmission consent agreements		Jan. 14
Docket 15-236; NPRM Foreign ownership of broadcast licensees		Jan. 20
Docket 13-249; FNPRM and NOI Revitalization of AM radio	FR+60	FR+90
Docket 03-185; 4th NPRM Digital LPTV and TV translator stations	FR+21	FR+31

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

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 February 8, 2016. Informal objections may be filed anytime prior to grant of the application.

Present Community	Proposed Community	Station	Channel	Frequency
Santa Maria, CA	Montecito, CA	KXFM	256	99.1
Akron, CO	Eckley, CO	New	279	103.7
Boynton Beach, FL	Miami, FL	WLVJ(AM)	N/A	1040
Kendall, FL	Boynton Beach, FL	WURN(AM)	N/A	1020
Miami, FL	Kendall, FL	WMYM(AM)	N/A	990
McCall, ID	Silver City, ID	New	280	103.9
Beverly, MA	Methuen, MA	WMVX(AM)	N/A	1570
Silver Springs, NV	Fallon, NV	New	273	102.5
Moro, OR	White Salmon, WA	New	283	104.5
Longview, TX	Atlanta, TX	New	300	107.9
Midway, TX	Groveton, TX	New	251	98.1
Baggs, WY	Yampa, CO	New	277	103.3

SCHEDULE FOR AUCTION 1001 REVERSE TELEVISION SPECTRUM INCENTIVE AUCTION

DEADLINE TO FILE APPLICATIONS	JAN. 12, 2016, 6:00 PM ET
BIDDING TUTORIAL AVAILABLE ONLINE	FEB. 29, 2016
INITIAL COMMITMENT DEADLINE	MAR. 29, 2016, 6:00 PM ET

DEADLINES TO WATCH

Paperwork Reduction Act Proceedings

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

Topic	Comment Deadline
Requests for Special Temporary Authorizations	Jan. 11
Application for full service television license, Form 2100, Schedule B	Jan. 11
Application for Class A TV construction permit, Form 2100, Schedule E	Jan. 11
Application for Class A TV license, Form 2100, Schedule F	Jan. 11
TV relocation fund reimbursement, Form, Form 2100, Schedule 399	Jan. 11
Broadcast licensee-conducted contests, Section 73.1216	Jan. 11
Incentive auction implementation, Section 73.3700	Jan. 12
Must carry and retransmission consent, Sections 76.56, 76.57, 76.61, 76.64	Jan. 12
LPTV authorization application, Form 2100, Schedule C	Jan. 15
Application for commercial broadcast construction permit, Form 301; Form 2100, Schedule A	Jan. 19
Market definitions for cable television must carry. Section 76.59	Jan. 29
Impact of digital audio broadcasting on terrestrial radio, Form 335	Feb. 5
Commercial broadcast ownership report, Form 323	Feb. 9
Broadcast main studio location, Section 73.1125	Feb. 9
Broadcast call sign reservation and authorization system	Feb. 9
Cable carriage issues for television stations, Sections 76.1601, 76.1607, 76.1608, 76.1617	Feb. 29

CAPTIONING OF "STRAIGHT LIFT" VIDEO CLIPS DELIVERED VIA IP REQUIRED AS OF JANUARY 1, 2016

This rule requires captioning of the Internet transmission of any clip containing a single excerpt of a captioned broadcast TV program. Montages containing multiple clips of captioned broadcast content must be captioned for IP transmission by January 1, 2017.

Lowest Unit Charge Schedule for 2016 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 ("LUC") for advertising that promotes the candidate's campaign for office. Lowest-unit-charge periods are imminent in the following states. Some of these dates are tentative and may be subject to change.

State	Election Event	Date	LUC Period
Iowa	Presidential Caucuses	Feb. 1	Dec. 18 - Feb. 1
N. Hampshire	Presidential Primary	Feb. 9	Dec. 26 - Feb. 9
S. Carolina	Republican Pres. Primary	Feb. 20	Jan. 6 - Feb. 20
Nevada	Democratic Pres. Caucus	Feb. 20	Jan. 6 - Feb. 20
Nevada	Republican Pres. Caucus	Feb. 23	Jan. 9 - Feb. 23
S. Carolina	Democratic Pres. Primary	Feb. 27	Jan. 13 - Feb. 27
Alabama	Pres. & State Primary	Mar. 1	Jan. 16 - Mar. 1
Alaska	Republican Pres. Caucus	Mar. 1	Jan. 16 - Mar. 1
Arkansas	Pres. & State Primary	Mar. 1	Jan. 16 - Mar. 1
Colorado	Democratic Pres. Caucus	Mar. 1	Jan. 16 - Mar. 1
Georgia	Presidential Primary	Mar. 1	Jan. 16 - Mar. 1
Massachusetts	Presidential Primary	Mar. 1	Jan. 16 - Mar. 1
Minnesota	Presidential Caucuses	Mar. 1	Jan. 16 - Mar. 1
Oklahoma	Presidential Primary	Mar. 1	Jan. 16 - Mar. 1
Tennessee	Presidential Primary	Mar. 1	Jan. 16 - Mar. 1
Texas	Pres. & State Primary	Mar. 1	Jan. 16 - Mar. 1
Vermont	Presidential Primary	Mar. 1	Jan. 16 - Mar. 1
Virginia	Presidential Primary	Mar. 1	Jan. 16 - Mar. 1
Kansas	Presidential Caucuses	Mar. 5	Jan. 20 - Mar. 5
Kentucky	Republican Pres. Caucus	Mar. 5	Jan. 20 - Mar. 5
Louisiana	Presidential Primary	Mar. 5	Jan. 20 - Mar. 5
Maine	Republican Pres. Caucus	Mar. 5	Jan. 20 - Mar. 5
Nebraska	Democratic Pres. Caucus	Mar. 5	Jan. 20 - Mar. 5
Maine	Democratic Pres. Caucus	Mar. 6	Jan. 21 - Mar. 6
Puerto Rico	Republican Pres. Primary	Mar. 6	Jan. 21 - Mar. 6
Hawaii	Republican Pres. Caucus	Mar. 8	Jan. 22 - Mar. 8
Idaho	Republican Pres. Primary	Mar. 8	Jan. 22 - Mar. 8
Michigan	Presidential Primary	Mar. 8	Jan. 22 - Mar. 8
Mississippi	Presidential Primary	Mar. 8	Jan. 22 - Mar. 8
Florida	Presidential Primary	Mar. 15	Jan. 29 - Mar. 15
Illinois	Pres. & State Primary	Mar. 15	Jan. 29 - Mar. 15
Missouri	Presidential Primary	Mar. 15	Jan. 29 - Mar. 15
N. Carolina	Pres. & State Primary	Mar. 15	Jan. 29 - Mar. 15
Ohio	Pres. & State Primary	Mar. 15	Jan. 29 - Mar. 15
Arizona	Presidential Primary	Mar. 22	Feb. 5 - Mar. 22
Idaho	Democratic Pres. Caucus	Mar. 22	Feb. 5 - Mar. 22
Utah	Presidential Caucuses	Mar. 22	Feb. 5 - Mar. 22
Alaska	Democratic Pres. Caucus	Mar. 26	Feb. 10 - Mar. 2
Hawaii	Democratic Pres. Caucus	Mar. 26	Feb. 10 - Mar. 26
Washington	Democratic Pres. Caucus	Mar. 26	Feb. 10 - Mar. 26
North Dakota	Democratic Pres. Caucus	April 1 - 3	Feb. 16 - April 3
Wisconsin	Presidential Primary	April 5	Feb. 20 - April 5
Wyoming	Democratic Pres. Caucus	April 9	Feb. 24 - April 9
New York	Presidential Primary	April 19	Mar. 5 - April 19
Connecticut	Presidential Primary	April 26	Mar. 12 - April 26
Delaware	Presidential Primary	April 26	Mar. 12 - April 26
Maryland	Pres. & State Primary	April 26	Mar. 12 - April 26
Pennsylvania	Pres. & State Primary	April 26	Mar. 12 - April 26
Rhode Island	Presidential Primary	April 26	Mar. 12 - April 26
Indiana	Pres. & State Primary	May 3	Mar. 19 - May 3
Nebraska	Pres. & State Primary	May 10	Mar. 26 - May 10
West Virginia	Pres. & State Primary	May 10	Mar. 26 - May 10

Court Rejects FilmOn X's Bid for Statutory License

In another chapter of the ongoing quest by Internet video redistributors for copyright legitimacy, the United States District Court in Washington, D.C. has ruled that FilmOn X's service of offering its paid customers the Internet retransmission of broadcast television programming does not qualify for the compulsory statutory license delineated in Section 111 of the Copyright Act. That provision of the statute gives cable television systems an automatic compulsory copyright license for the secondary transmission of local broadcast signals. An entity claiming to be eligible to take advantage of this license would have to look and act like a cable television service, and that is the point on which this case turned.

FilmOn X's technical facilities are similar to those established by its competitor, Aereo, Inc. Television signals are captured by a miniature antenna and stored on a hard drive for almost simultaneous or later retransmission to a subscriber upon the subscriber's demand. Although broadcasters asserted that this conduct violated the Transmit Clause of the Copyright Act and constituted copyright infringement, the U.S. Second Circuit Court of Appeals in New York ruled otherwise. It said this system was analogous to the use of consumer DVRs for private performances of programming as sanctioned by the court in the *Cablevision* decision. On the basis of this decision, FilmOn X operated under the assumption that its business was free of copyright obligations and expressly disclaimed being a cable system.

Subsequently, the Supreme Court ruled that the technology employed by Aereo and FilmOn X did implicate the Transmit Clause and that such Internet transmissions are public performances that would infringe copyright. While the Court drew an analogy between Internet retransmission services and cable television, it did not conduct an exhaustive comparison of the two, and in any event, the analogy was not fundamental to its ruling.

Following the Supreme Court's decision, FilmOn X changed its approach and began to operate as if it were a cable system. It took steps to limit its offerings to those that would be local to the subscriber, and it began submitting reports and royalty payments to the Copyright Office, as is required for entities making use of the compulsory license. While the Copyright Office disagreed with FilmOn X's claim to qualify for the compulsory license, it accepted the company's submissions on a provisional basis.

Broadcasters had launched this suit in Washington against FilmOn X prior to the Supreme Court's Aereo decision and before FilmOn X's attempted metamorphosis into a cable system. In September, 2013, the Washington court issued a preliminary injunction against FilmOn X's streaming of the plaintiffs' programming without their consent. After the 2014 Supreme Court ruling, FilmOn X amended its answer and claimed to be entitled to rely on the compulsory license created for cable systems. Both sides moved for summary judgment and the court has now granted the motion of the plaintiff broadcasters.

To decide this case, the judge very carefully parsed the definitions of terms in Section 111 that create the compulsory license. The license is available for the "secondary transmissions to the public by a cable system of a performance or display of a work embodied in a primary transmission made by a broadcast station licensed by the Federal Communications Commission . . ." The statute defines "cable system" 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 . . . and makes secondary transmissions of such signals or programs by wires, cables, microwave, or other communications channels to subscribing members of the public who pay for such service.

The court found that FilmOn X is not this type of "facility."

The court found that FilmOn X is not this type of "facility." With references to numerous judicial decisions touching on the Internet and computers, the judge reasoned that FilmOn X is able to send transmissions to its subscribers over the Internet only by way of thousands of separate operators of computers and computer networks who have independently decided to use common data transfer protocols to exchange communications and information with other computers. The subscriber's device receives the transmission not from a "facility," but through interconnected computers in cyberspace. The Internet is not a physical facility located in any state. It is not even a physical or tangible entity. The Internet exists in cyberspace and has no geographical location. There is no centralized storage location, control point or communications channel. Section 111 requires that a physical "facility" must receive the broadcast signals and make the secondary transmissions to paying customers. A system that fails to encompass the distribution medium and does not retransmit the signals directly to the subscriber does not qualify as a "cable system."

The court rejected the defendant's suggestion that the expression "or other communications channels" following the listing of "wires, cables, microwaves" in the text of the law could be interpreted to include expansive concepts such as the Internet. The judge cited the principle of statutory interpretation that when a list of specific items is concluded with a general term, the general term is confined to covering subjects comparable to the specific items in the list. The concept of the Internet is not comparable to the idea of wires, cables or microwaves. Furthermore, when the question arose about the

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LPTV Digital Deadline Reset

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the incentive spectrum auction would not be completed by then. (This deadline for LPTV stations should not be confused with the deadline for constructing new Class A Television station digital facilities, which remained September 1, 2015.) The Commission recognized that it would be unrealistic to burden LPTV licensees and permittees with the obligation to build out facilities that might very quickly be displaced, and then to rebuild them on different channels and/or at different sites. The new deadline will be more than four years after the full power and Class A post-auction assignment plan is announced. At that point, stations that still have not completed construction of their digital facilities will be able to request one additional six-month extension of the permit with a showing that the delay was due to circumstances beyond their control or unforeseeable, or due to financial hardship.

The FCC also adopted rules for channel sharing among digital LPTV and translator stations similar to those previously established for full power and Class A stations. This channel sharing procedure for LPTVs is outside of the incentive auction, and by adopting it, the Commission does not intend to imply that LPTV stations may participate in the auction. The Commission offers this flexibility merely to help overcome the channel shortages that may exist for LPTVs in the post-auction television ecosystem. LPTV stations will be particularly disadvantaged because they are secondary to the full power and Class A stations. Channel sharing will be voluntary. The Commission declines to take any role in matching stations.

A station moving to a shared antenna site must include the channel-sharing agreement ("CSA") with its construction permit application. In selecting a partner station and a location for the combined antenna site, stations will be subject to the existing rules for relocating LPTV and translator facilities. A station relocating because of a digital displacement and moving into a CSA may not move more than 30 miles from the reference coordinates for its community of license. In all other cases, a station relocating to participate in a CSA (1) must maintain an overlap between the protected contours of its existing and proposed facilities, and (2) may not propose a new antenna site farther than 30 miles from its existing authorized antenna site.

Each station in a CSA will be required to retain spectrum rights sufficient to ensure at least enough capacity to operate one standard definition program stream at all times. Beyond that, the Commission will not prescribe how the six-megahertz channel should be divided. Each station will be licensed separately, will have its own call sign and will be separately subject to all of the agency's rules.

The CSA must contain provisions outlining each licensee's rights and responsibilities in the following areas: (1) unrestricted access for both parties to the shared transmission facilities; (2) allocation of bandwidth; (3) operation, maintenance, repair and modification of facilities, including each party's financial obligations; (4) each party's right to assign its station and interest in the CSA to a third party; (5) termination of a party's license. If a sharing station's license terminates, its spectrum usage rights (but not its license) may revert to the remaining sharing station if the parties agree to that. The remaining licensee may apply to have its license modified to be the sole operator on the entire channel, or it may seek out a new channel sharing partner.

In an accompanying *Fourth Notice of Proposed Rulemaking*, the FCC seeks comment on the feasibility of channel sharing between primary and secondary stations. It has tentatively concluded to allow primary-secondary sharing, and proposes a regime similar to that adopted above for secondary-secondary CSAs. However, this proposal gives rise to novel issues that require examination.

The Commission invites public input on whether it would be appropriate for a secondary station to be permitted to obtain de facto interference protection by virtue of sharing the channel with a primary station that has such protection. Could the benefits of primary-secondary channel sharing be obtained alternatively by a commercial agreement to carry the secondary station's programming on a multicast channel of the primary station? The agency also says that it has tentatively concluded that each kind of station in a CSA should retain the same cable and satellite carriage rights that it had as a stand-alone station.

Comments on these issues are solicited. They will be due 21 days after publication of notice of this proceeding in the Federal Register. Replies will be due ten days later.

Court Rejects FilmOn X's Bid

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need for a statutory license for satellite television operators, rather than relying on an expansive interpretation of Section 111, Congress wrote a completely different and new law to create the license for the satellite context. The judge concluded that Congress did not consider the Internet in 1976 when Section 111 was enacted and has not amended the definition of "cable system" since then to encompass anything resembling a distribution medium with a global footprint.

Having concluded that FilmOn X is not entitled to rely on the statutory license, the court ruled that FilmOn X is liable for infringing upon the public performance of the plaintiffs' programming. The decision is Fox TV Stations, Inc., et al. v. FilmOn X LLC, et al., 2015 U.S. Dist. LEXIS 161304.

The story is not complete yet however. In 2015, a U.S. District Court in Los Angeles ruled that FilmOn X can indeed rely on the statutory compulsory license. That case, involving most of the same parties that litigated in Washington, is now pending on appeal before the Ninth Circuit Court of Appeals in San Francisco.

JSAs Revived by Congress

Legislation passed by Congress and signed by the President has had the effect of nullifying (at least for ten years) a rule adopted by the FCC in 2014 that severely restricted the use of joint sales agreements ("JSAs") between television stations in the same market. Under the rule, when a television station brokers advertising sales for another television station in the same market, and on a weekly basis, sells at least 15% of the advertising time on the brokered station, the licensee of the broker station is deemed to have an attributable interest in the brokered station. For purposes of the restrictions on multiple station ownership, such an attributable interest is legally equivalent to an ownership interest.

Common ownership of two full power television stations in the same market is generally limited to situations where at least one of the stations is not among the top four rated stations in the market, and where there are at least eight other independently owned full power television stations in the market. Denoting JSAs as tantamount to common ownership thus greatly reduces the scenarios where JSAs could be implemented. The parties to JSAs in existence at the time the rule became effective were given two years – until June, 2016 – in which to unwind them or otherwise bring them into compliance with the multiple ownership rules.

The legislation states that beginning on the date of enactment and continuing through September 30, 2025, the restrictive rule on JSAs adopted by the Commission in that 2014 rulemaking proceeding shall not apply to any JSA that was in effect on March 31, 2014.

This provision of particular interest to broadcasters was attached as a inconspicuous rider, along with many other nongermane provisions, to the all-important and enormous bill (887 pages) to keep the federal government funded and operating – H.R. 2029, the Consolidated Appropriations Act, 2016.

Station Admonished for Half Second Transmission

KFOR-TV, Oklahoma City, has been issued a Letter of Admonishment by the FCC's Media Bureau for a brief violation of the Commission's rule about website addresses in children's programming.

The Children's Television Act of 1990 and the Commission's rules adopted to implement it limit the amount of commercial matter that may appear in programming directed at children. The maximum permitted is 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays.

To further protect children from excessive commercial messages, Section 73.670(b) of the Commission's rules permits the display of Internet website addresses during programming not counted as commercial time only if it meets a four-prong test: (1) the website offers a substantial amount of program-related or other noncommercial content; (2) the website is not primarily intended for commercial purposes; (3) the website's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and (4) the page to which viewers are directed by the website address is not used for commercial purposes, e.g., it contains no links labeled "store" or links to another page with commercial material.

License renewal applications include the requirement to certify that the station has complied with these rules on commercial limits in children's programming. Under an obligation to maintain the accuracy of that certification, KFOR-TV amended its pending license renewal application in October, 2015, to report an incident that it discovered had occurred in October, 2013. The URL address for the website, www.lazytown.com had been displayed during an episode of the children's program, "LazyTown." It appeared on the screen for about one-half of a second during the closing credits for the program. The station characterized it as "inadvertently included" and "fleeting." This display occurred in a block of educational and informational children's programming provided by Sprout, a supplier of children's programming to NBC network affiliates. NBC was said to be working with Sprout to ensure that similar incidents do not occur again.

Media Bureau staff researched the website and found that it failed the fourth element of the four-prong test. At the top of the website's homepage there was commercial material in the form of a link labeled "shop."

The Bureau noted that the offending commercial material was probably inserted in the program by the network or the program supplier – and not by the station. However, the station is entirely responsible for everything that it broadcasts and it is not relieved of that responsibility just because the programming that violated the rule originated from an outside source. Although the station voluntarily reported the violation and was taking precautionary measures to prevent reoccurrence, the Commission considered the violation to be significant. The Bureau said that while it would not rule out more severe enforcement actions for a similar violation in the future, it determined that an admonition was the appropriate sanction for the station under the facts and circumstances of the case.