

## Deadline for EAS Test Reporting System Registration Is August 26

The FCC's Public Safety and Homeland Security Bureau has launched the new Emergency Alert System Test Reporting System ("ETRS") with the release of a Public Notice on June 27. This triggered a 60-day window for all EAS participants to register with the reporting system on the FCC's website. A separate registration is required for each participating station. The deadline to complete the registration is August 26.

The ETRS is an enhanced version of the data collection mechanism that was used to gather reports concerning the nationwide EAS test in 2011. The Federal Emergency Management Agency has announced plans for another nationwide EAS test to be conducted on September 28, 2016.

The Bureau says that the ETRS is designed to increase the reliability and value of the EAS, while minimizing reporting burdens on EAS participants. The ETRS will be able to chart what happened in a particular test, as well as to allow state alert originators and State Emergency Communication Committees to understand ahead of time how an alert will propagate through a state, and thus to identify single points of

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## Ownership Decision Previewed

In an effort to make good on commitments to Congress and the Third Circuit U.S. Court of Appeals to meet his self-imposed June 30 deadline, FCC Chairman Tom Wheeler has circulated a draft report and order to his fellow Commissioners for their review in the 2014 Quadrennial Ownership Review proceeding. Circulation of drafts among the Commissioners is a normal part of the agency's deliberation process prior to the adoption and release of an order or other action. In this case, however, the Chairman took the unusual step of releasing a brief outline of the draft to the public to demonstrate that the FCC is making the promised progress. In a recent decision known as *Prometheus III*, the Court of Appeals remonstrated the Commission for failing to act in a timely manner in this statutorily required review of the agency's broadcast multiple ownership and cross-ownership rules. The Commission is mandated to conduct these reviews every four years. However, the 2010 review has not been completed, and has been consolidated with the 2014 review – which is the subject of the draft report and order that is now being previewed.

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## Foreign Ownership Review Rules Would Include Law Enforcement Certification

The FCC has proposed new procedures for the process of reviewing applications for certain FCC authorizations that involve levels of foreign ownership that exceed the statutory threshold. Section 310 of the Communications Act requires that at least 80% of the voting and equity interests in a broadcast, common carrier or aeronautical radio licensee, which must be an entity organized under United States law, be held by United States citizens. If the licensee is directly or indirectly controlled by another business entity, up to 25% of the voting and equity interests in that parent entity (which also must be organized under United States law) can be held by aliens without further review. Foreign ownership of the parent company above the 25% benchmark requires review and is not permitted if the FCC finds that the public interest would be served by refusing to approve it. The Commission is assisted in this review process by various Executive Branch agencies to consider whether the proposal would implicate national security, law enforcement,

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# Remix Results in New Post-1972 Copyright

The U.S. District Court for the Central District of California, in Los Angeles, has ruled that remixes of musical recordings can create new content eligible for new copyright protection for the remix producer. This decision came in a ruling for summary judgment in favor of the defendant, CBS Radio, Inc., in a suit brought by the holders of copyrights in a variety of popular music recordings produced before February 15, 1972. That was a critically important date in the history of copyright law in the U.S. music industry. Musical scores and lyrics had long been subject to federal copyright, but not musical sound recordings produced, or “fixed,” prior to that date. From that date forward, the producers of sound recordings also enjoyed the benefits of United States federal copyright in their works. Pre-1972 sound recordings remained subject to state copyright law, with variations from state to state.

In this case, CBS was accused of infringing California state copyrights by broadcasting over its radio stations more than 100 sound recordings of popular music originally produced prior to 1972 in which the plaintiffs claimed copyright ownership. The four named plaintiffs included (1) ABS Entertainment, Inc., owner of sound recordings made by Al Green, Willie Mitchell, Ace Cannon and Otis Clay; (2) Barnaby Records, owner of sound recordings made by Andy Williams, Johnny Tillotson, The Everly Brothers, Lenny Welch, Ray Stevens and The Chordettes; (3) Brunswick Record Corporation, owner of sound recordings made by Jackie Wilson, The Chi-Lites, The Lost Generation, The Young-Holy Unlimited and Tyrone Davis; and (4) Malaco, Inc., owner of sound recordings made by King Floyd, Mahalia Jackson and The Cellos.

Recordings made before 1972 were, of course, produced in analog. To make use of these works later as technology changed, CBS reproduced them in digital recordings. That CBS had obtained the copyright owners’ consent to convert these works to digital was undisputed (and the plaintiffs failed to show that the scope of CBS’s licenses for that procedure restricted CBS from creating derivatives). The plaintiffs argued that the mere conversion of recordings from analog to digital could not render them as new works eligible for new copyrights. The pivotal issue in the case then was whether the recordings that resulted from that conversion process were sufficiently different from the originals to constitute derivatives, distinguishable from the originals and eligible for their own new copyrights.

The court and the parties agreed that a publication of the U. S. Copyright Office, Circular No. 56, entitled Copyright Registration for Sound Recordings, provided useful guidance for resolving the issue. Not surprisingly, the parties disagreed on how to interpret it. The court quoted extensively from Circular No. 56:

“A derivative sound recording is one that incorporates some preexisting sounds that were previously registered or published, or sounds that were fixed, before February 15, 1972. The preexisting recorded sounds must have been rearranged, remixed, or otherwise altered in sequence or character, or there

must be some additional new sounds. Further, the new or revised sounds must contain at least a minimum amount of original sound recording authorship. This new authorship is the basis for the copyright claim. . . . Examples of derivative sound recordings that generally can be registered include the following:

- a remix from multitrack sources;
- a remastering that involves multiple kinds of creative authorship, such as adjustments of equalization, sound editing, and channel assignment.

“Mechanical changes or processes applied to a sound recording, such as a change in format, declipping, and noise reduction, generally do not represent enough original authorship to be registered.”

CBS introduced a declaration from William Inglot, a music engineer and producer, who had personally remastered some version of at least 46 of the sound recordings at issue. He stated whenever he remastered a sound recording, he made changes such as “adjust[ing] the bass, treble, midrange, and other frequencies on the equalizer to emphasize and de-emphasize certain instruments and vocal sections.” He said that he made numerous equalization changes and “mastered the loudness profile of each track, to create a balanced, consistent profile across the entire album.”

CBS submitted its versions of the sound recordings to testing by an acoustic engineer specializing in forensic investigation of audio evidence, Durand Begault, and then offered his declaration into the record. He stated:

“Aesthetic decisions made by a mastering engineer are complex and interrelated, and have to do with the overall sound quality of a recording. This includes: (a) the alternation of tone color (timbre) of the recording, (b) spatial imagery of the sounds on a recording (i.e., where the listener believes the sounds are coming from in the stereo field), (c) the relative amplitudes (sound balance) of instruments, vocals and effects, and (d) the overall amplitude level and range of the entire recording (loudness range).”

Begault compared these four factors for differences between the pre-1972 recordings and the CBS versions. He concluded that “CBS did not use any version of the sound recordings that plaintiffs’ claim to own.”

On the basis of this expert opinion, the court granted CBS’s Motion for Summary Judgment, finding that the remastered works were derivatives entitled to new post-1972 copyrights under federal copyright law and not subject to California copyright law.

This decision is *ABS Entertainment, Inc. v. CBS Corporation, et al.*, 2016 U.S. Dist. LEXIS 71470. ABS Entertainment has appealed this ruling to the U.S. Ninth Circuit Court of Appeals, where the case remains pending.

This case is distinguished from the lawsuits instigated in a number of states by Flo & Eddie, Inc. alleging infringement of the copyrights in sound recordings produced before February 15, 1972 where versions of the original works that did not qualify as derivatives were broadcast and/or copied.

# Ownership Decision Previewed continued from page 1

The Telecommunications Act of 1996 directs the FCC to periodically “determine whether any such [multiple ownership] rules are necessary in the public interest as the result of competition,” and to “repeal or modify any regulation it determines to be no longer in the public interest.” The draft report and order appears to conclude that most of these regulations are still needed. The announcement of the circulation of the draft order included the statement that “Our analysis indicates that the ownership restrictions remain necessary in the public interest, though the realities of the media marketplace require some targeted modifications of a number of the rules.” These “targeted modifications” are described in general broad terms:

- The order would retain the existing local television ownership limitation to a maximum of not more than two stations with overlapping contours in the same market, with not more than one of them being among the top four rated stations in the market, and assuming that at least eight independently owned television voices would remain in the market after the merger. The new rule would include minor technical changes to address the transition to digital broadcasting. A new provision in this rule would prevent stations from swapping network affiliations to evade the ban on owning two stations among the top four.

- The order would retain the existing local radio ownership restrictions, limiting the number of stations that can be under common control in a market on a sliding scale from eight stations in the largest markets down to five stations in the smallest markets, with a cap set at 50% of the stations in the market (except for AM/FM combinations). The order would make minor clarifications of this rule such as a new Puerto Rico market definition, and grandfathering rules applicable to changes of the community of license.

- The order would retain the existing radio/television cross-ownership restrictions with only a technical modification concerning digital television.

- The order would retain the existing ban on the cross-ownership of newspapers and broadcast stations, but provide an exception for failed or failing entities.

- The order would reinstate the revenue-based “eligible entity” standard for preferences to promote small businesses and new entrants in broadcasting. The criteria of the Small Business Administration would be used to establish qualifications for this status. In the broadcast industry, the

SBA currently defines a small business as one with less than \$38.5 million in annual revenue. The Commission previously used a revenue-based standard to define eligible entities, which it intended to foster greater diversity in broadcast ownership. In its 2011 *Prometheus II* ruling, the Court of Appeals struck down the revenue-based standard as arbitrary and capricious. It remanded the matter to the FCC with instructions to develop a more rational mechanism for promoting diversity. It is unclear from the brief information released by the Commission what record evidence it is relying upon to justify the reinstatement of the revenue-based eligible entity as a mechanism for promoting diversity. The agency did state that the report and order will find that the FCC does not have a basis for instituting race-based or gender-based preferences that would withstand “strict scrutiny” under Constitutional review.

- The order would reinstate the attribution rule for television joint sales agreements (“JSAs”) that the Court of Appeals vacated in *Prometheus III*. Under the JSA rule that the court vacated, where a station had an agreement to conduct sales for another station and those sales amounted to 15% or more of the second station’s weekly advertising, the second station was attributable to the owner of the first station for purposes of calculating the first station owner’s compliance with the multiple ownership restrictions. The court struck down this attribution rule not on its merits, but because it found that the FCC had added a layer of regulation without first conducting its required review to determine if a regulatory relaxation would be in order. Without further explanation, the FCC’s announcement merely states that the report and order would “Readopt the TV JSA attribution rule consistent with the court’s guidance in *Prometheus III*.”

- The report and order would create a new obligation for commercial television stations to place in their public inspection files copies of “shared services agreements.” These would be defined as agreements in which (1) a station provides another station (not under common ownership) with any station-related services, including administrative, technical, sales, and/or programming support; or (2) stations not under common ownership collaborate to provide such station-related services. Shared services agreements would not be attributable, “at this time.”

It is anticipated that this deliberation among the Commissioners will culminate in the adoption and release of a report and order before the end of 2016.

**DEADLINE FOR TELEVISION STATIONS  
TO FILE CLAIMS FOR COPYRIGHT  
ROYALTIES WITH COPYRIGHT ROYALTY  
BOARD FOR SATELLITE AND DISTANT  
CABLE CARRIAGE  
JULY 29, 2016**



# DEADLINES TO WATCH



## License Renewal, FCC Reports & Public Inspection Files

- July 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.
- July 11, 2016 Deadline to file quarterly Children's Television Programming Reports for all commercial full power and Class A television stations.
- August 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 **California, Illinois, North Carolina, South Carolina** and **Wisconsin**.
- August 1, 2016 Deadline to file Biennial Ownership Report for all noncommercial radio stations in **Illinois** and **Wisconsin**, and noncommercial television stations in **California, North Carolina** and **South Carolina**. (The FCC has amended its rules so as to reschedule this filing date for December 1, 2017, pending review by the Office of Management and Budget. As of this writing, that review has not been completed. Until OMB approves the new forms, the prior rule and schedule will remain in effect.)
- August 1, 2016 Deadline for all broadcast licensees and permittees of stations in **California, Illinois, North Carolina, South Carolina** and **Wisconsin** to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s).
- August 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 **Illinois** and **Wisconsin**; and all television stations in employment units with five or more full-time employees in **North Carolina** and **South Carolina**.

## Deadlines for Comments In FCC and Other Proceedings

Docket	Comments	Reply Comments
(All proceedings are before the FCC unless otherwise noted.)		
Docket 15-94; Public Notice EAS Operating Handbook	July 20	N/A
Docket 16-161; NPRM Revisions to public inspection file requirements	July 22	Aug. 22
Docket 11-43; NPRM Video description		July 26
Docket 16-212; Public Notice Petition to increase foreign ownership stake in Frontier Media, LLC from 20% to 100%	August 5	August 22
Docket 16-191; Public Notice Inquiry re noise floor	August 11	N/A
Docket 16-155; NPRM Foreign ownership	FR+30	FR+45

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

## Cut-Off Dates for FM Booster Applications

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

Community	Parent Station	Channel	MHz	Filing Deadline
Carson City, NV	KWFP	221	92.1	Aug. 1

## Rulemakings to Amend FM Table of Allotments

The FCC is considering an amendment proposed to the FM Table of Allotments to add the following channel. The deadlines for filing comments and reply comments are shown. The petitioner, the Cheyenne River Sioux Tribe, requests a Tribal Priority for the proposed allotment.

Community	Channel	MHz	Comments	Reply Comments
Eagle Butte, SD	228C1	93.5	Aug. 8	Aug. 23

## FILING WINDOW FOR "250-MILE" FM TRANSLATOR MODIFICATIONS TO BECOME AM FILL-IN TRANSLATORS

Class C and Class D AM Stations	Now - July 28, 2016
All AM Stations	July 29 - Oct. 31, 2016



# DEADLINES TO WATCH



## 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
Kansas	State Primary	Aug. 2	June 18 - Aug. 2
Michigan	State Primary	Aug. 2	June 18 - Aug. 2
Missouri	State Primary	Aug. 2	June 18 - Aug. 2
Washington	State Primary	Aug. 2	June 18 - Aug. 2
Tennessee	State Primary	Aug. 4	June 20 - Aug. 4
Virgin Islands	Territorial Primary	Aug. 6	June 22 - Aug. 6
Connecticut	State Primary	Aug. 9	June 25 - Aug. 9
Minnesota	State Primary	Aug. 9	June 25 - Aug. 9
Vermont	State Primary	Aug. 9	June 25 - Aug. 9
Wisconsin	State Primary	Aug. 9	June 25 - Aug. 9
Hawaii	State Primary	Aug. 13	June 29 - Aug. 13
Wyoming	State Primary	Aug. 16	July 2 - Aug. 16
Guam	Territorial Primary	Aug. 27	July 13 - Aug. 27
Arizona	State Primary	Aug. 30	July 16 - Aug. 30
Florida	State Primary	Aug. 30	July 16 - Aug. 30
Massachusetts	State Primary	Sep. 8	July 25 - Sep. 8
Delaware	State Primary	Sep. 13	July 30 - Sep. 13
New Hampshire	State Primary	Sep. 13	July 30 - Sep. 13
Rhode Island	State Primary	Sep. 13	July 30 - Sep. 13
United States	General Election	Nov. 8	Sep. 9 - Nov. 8

## 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
73.1201, 74.783, 74.1283	July 18
Emergency Alert System	July 18
Public television station digital transition grant program*	July 18
Equipment performance measurements, Section 73.1590	July 18

\*Program of the Department of Agriculture, Rural Utilities Service

## FAA Adopts Rules For Drones

The Federal Aviation Administration has adopted new rules to govern the operation and certification of drones, or small unmanned aircraft systems ("UASs"), for non-hobby and non-recreational purposes. A UAS consists of an unmanned aircraft weighing less than 55 pounds and the equipment needed for the safe and efficient operation of that aircraft. UASs have been incorporated into daily use to solve practical problems in a wide range of industries, including news gathering and film making. The rapid growth of the number of drones in operation and the multiplicity of tasks for which they are used has pushed the FAA to develop these rules to ensure the safety of the nation's airspace.

Highlights of these new rules include the following:

- Operations permitted only during daylight and civil twilight (30 minutes before sunrise and 30 minutes after sunset);
- The aircraft must remain within visual line of sight of the pilot (or of the visual observer);
- Pilot must hold a remote pilot airman certificate with small UAS rating or be under the supervision of a person who does;
- The aircraft cannot operate over any person not directly participating in the operation, not under a covered structure or not inside a covered stationary vehicle;
- Operation from a moving vehicle is not permitted unless in unpopulated area;
- Maximum ground speed permitted is 100 mph;
- Maximum altitude permitted is 400 feet; and
- No reckless or careless operation is permitted.

The complete statement of these rules is found in Part 107 of the FAA's regulations in Title 14 of the Code of Federal Regulations.

**ALL EAS PARTICIPANTS MUST REGISTER WITH EAS TEST REPORTING SYSTEM BY AUGUST 26, 2016**

**RADIO STATIONS IN TOP-50 MARKETS WITH 5 OR MORE FULL TIME EMPLOYEES SHOULD HAVE BEGUN USING ONLINE PUBLIC FILE AS OF JUNE 24, 2016 FOR NEW DOCUMENTS DEADLINE TO UPLOAD PRIOR EXISTING DOCUMENTS IS DECEMBER 24, 2016**

# Foreign Ownership Review Would Include Law Enforcement Certification

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foreign policy, or international trade issues. While the FCC seeks the input of these agencies, it retains the ultimate authority to grant or deny all applications.

In a *Notice of Proposed Rulemaking* in Docket 15-236 issued last October, the FCC proposed to adopt for entities that have ownership interests in broadcast licensees streamlined review procedures similar to those that were already in place for common carrier licensees. In May of this year, the Commission received a request from the National Telecommunications and Information Administration (“NTIA”) on behalf of the entire Executive Branch to improve and streamline the review process for all types of applications to benefit both applicants and the government agencies involved. The Commission has responded to that request with a *Notice of Proposed Rulemaking* in a new rulemaking proceeding in Docket 16-155. The proceeding initiated last year in Docket 15-236 remains pending.

Currently, when an application triggers foreign ownership review, Executive Branch agencies send the applicant questions about the identity of its owners with a 5% or greater stake, directors and officers, the applicant’s business plan, and details about the service to be provided. If the Executive Branch agency deems it necessary, the applicant may be asked to negotiate and sign a mitigation agreement. This might be a letter of assurance (“LOA”) or a national security agreement (“NSA”). The Executive Branch agencies then may advise the FCC that (1) they have no objection to the application; (2) they will not object to the application if the applicant signs and complies with an LOA or NSA; or (3) they recommend that the application be denied. Executive Branch agencies have never yet recommended the denial of an application. Under the present system, the Executive Branch agencies have no deadline by which to complete their review or submit their recommendation to the FCC.

To streamline the Executive Branch agency’s review process, NTIA requested that the FCC collect various categories of information in applications (or petitions for foreign ownership rulings) from applicants with reportable foreign ownership levels. The reviewing Executive Branch agency could then bypass the initial step of having to request this data from the applicant. In response to this request, the Commission proposes to require such applicants to include the following kinds of information in their original applications:

- Corporate structure and shareholder information;
- Relationships with foreign entities;
- Financial condition and circumstances;
- Compliance with applicable laws and regulations; and
- Business and operational information.

Specific items within each category may vary according to the type of application, i.e., common carrier, broadcast, etc. The Commission proposes that it would review responses to these

items in the course of its review of the application for acceptability for filing. However, substantive review of this information would be handled by the Executive Branch agencies.

The Commission acknowledges that some of the requested information may be confidential commercial data or trade secrets. It asks whether the existing mechanisms for requesting special treatment of confidential information are sufficient to protect these submissions. An applicant may request confidential treatment of material in its filings. The Commission will treat this material confidentially until it acts on the request. If the request is granted, this information will generally be exempt from disclosure under the Freedom of Information Act.

NTIA also requested that FCC applicants be required to commit to assisting law enforcement Executive Branch agencies. Accordingly, the Commission proposes to require every applicant seeking international Section 214 authorizations (or transfers thereof), submarine cable landing licenses, satellite earth station authorizations, and Section 310(b) foreign ownership rulings, as a part of its application, to certify that it will do the following:

- Comply with the applicable provisions of the Communications Assistance for Law Enforcement Act (“CALEA”);
- Make communications to, from, or within the United States, as well as records thereof available in a form and location that permits them to be subject to lawful request or valid legal process under United States law, for services covered under the requested Commission license or authorization; and
- Agree to designate a point of contact located in the United States who is a United States citizen or lawful permanent resident for the execution of lawful requests and/or legal process.

The Commission notes that broadcasters do not have existing obligations under CALEA, and asks whether the certification for broadcast applicants should be different.

To ensure faster reviews of applications, the Commission proposes to impose a processing deadline on the Executive Branch agencies for the first time. Those Executive Branch agencies would be required to return their recommendations to the FCC within 90 days of the public notice that the application had been accepted for filing. Executive Branch agencies could request one 90-day extension of time, but with the requirement to submit monthly status reports. If no recommendation is received by the FCC within the allotted time, the Commission would assume there is no objection to the application.

Comments in this proceeding will be due 30 days after publication of notice of the proceeding in the Federal Register. The deadline for reply comments will be 45 days after publication.

# Station Swap and TBA Lead to Multiple Ownership Violation

A proposed transaction involving three FM stations and a translator in the Syracuse, New York, market has been scuttled by the FCC's Media Bureau because it created a scenario in which one of the parties temporarily held attributable interests in more radio stations in the market than is permitted under the Commission's multiple ownership rules. The Bureau proposed to impose a \$20,000 penalty on the offending party, and it dismissed all four assignment applications as defective, without prejudice to refileing.

Under the terms an Exchange Agreement, FoxFur Communications, LLC and WOLF Radio, Inc. (entities under common control, collectively identified as "FoxFur") agreed to exchange WCIO(FM), Oswego, New York, WCIS-FM, Deruyter, New York, and W252AC, Fairmount, New York, to Family Life Ministries, Inc. in return for Family's WNDR-FM, Baldwinsville, New York. The Exchange Agreement was signed on March 28, 2016. Concurrently, the parties executed cross Time Brokerage Agreements ("TBAs") under which FoxFur would broker 100% of the time on WNDR-FM, and Family would broker 100% of the time on WCIO and WCIS-FM. The TBAs became effective that same day, March 28.

The maximum number of stations in which a party may hold an attributable interest in the Syracuse market is seven – no more than four of which can be in the same service. Prior to entering into these agreements, FoxFur held attributable interests in seven stations in the Syracuse market (four FM and three AM). Upon undertaking to broker WNDR-FM on March 28, FoxFur acquired an attributable interest in that station as well, pushing its total to eight stations in the market. Under Section 73.3555 of the Commission's rules, where two radio stations are in the same market and a party with an attributable interest in one of them undertakes to broker more than 15% of the other station's weekly time, that party is treated as having an attributable interest in the brokered station.

While applications were soon filed on April 8 for FCC consent to assign two of FoxFur's stations to Family, thereby proposing to reduce the number of stations attributable to FoxFur, those interests attributed to FoxFur could not be eliminated until the FCC approved the assignments and the parties closed on the transactions.

During the interim between March 28 and the consummation of the proposed assignments, FoxFur would be over the limit.

In the TBA for WNDR-FM, FoxFur represented that entering into the agreement would not create a violation of the FCC's multiple ownership rules. However, almost simultaneously, FoxFur acknowledged that its situation was not rule-compliant and asked the FCC for a temporary waiver of those rules in the WNDR-FM assignment application filed on April 8. FoxFur argued that a waiver would be justified due to its short duration. It said the transaction would bring new voices to the market with Family's programming on two stations. It also asserted that the high level of competition in the Syracuse market would not be adversely affected by the waiver.

The Bureau did not address the merits of FoxFur's waiver request. Rather, the agency expressed serious disapproval of the fact that FoxFur knowingly plunged into brokering its eighth station in the market without waiting for Commission action on its waiver request. In its order, the Bureau stated, "[W]e cannot countenance FoxFur's unorthodox approach to waivers." The Bureau stressed that "before a waiver may take effect, even on a temporary basis, the Commission must have the discretion to evaluate the propriety of the waiver request, determine whether it is in the public interest, and accordingly, grant or deny it."

The Bureau found the assignment applications to be defective because they created the scenario in which FoxFur held attributable interests in eight stations in the market, contrary to the rules. Accordingly, the applications were dismissed. In its *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture*, the Bureau proposed a forfeiture of \$20,000 against FoxFur. The Bureau found that FoxFur had deliberately and knowingly entered into an arrangement that violated the FCC's rules on March 28 and was still participating in that illicit arrangement as of the release of the Bureau's order in mid-June.

FoxFur has 30 days in which to seek reconsideration or review of the *Notice*.

# Spectrum Noise Floor to be Studied

The FCC's Office of Engineering and Technology has announced a public inquiry by the Technical Advisory Council into the problem of spectrum noise. The Council is investigating changes and trends in the radio spectrum noise floor to determine if there is an increasing noise problem, and if so, the scope and quantitative evidence of such a problem. The Council seeks input from the public about the changes in the spectrum noise floor over the past 20 years.

Noise in this context is unwanted radio frequency energy from man-made sources. The Council suspects that the noise floor in the radio spectrum is rising due to the increase in the number of devices that emit radio energy. Sources include incidental radiators, unintentional radiators, and unlicensed and licensed intentional radiators. However, there is little

available quantitative data to support this presumption. The Council seeks ways to add to available data in this field.

The Council requests answers to the following general questions, each of which has associated subcategories of questions:

- Is there a noise problem?
- Where (spatially and spectrally) and when does the problem exist?
- Is there quantitative evidence of the overall increase in the total integrated noise floor?
- How should a noise study be conducted?

Parties responding to these queries need to file their comments in Docket 16-191 by August 11. There is no request for reply comments in this proceeding.

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## EAS Test Reporting System *continued from page 1*

failure, poor transmission paths and coverage gaps before they cause problems. The system is scalable, capable of producing reports covering the entire country, or for smaller areas down to the level of the county.

The documentation used in ETRS will consist of three forms. Form 1 solicits information about the identity and nature of the participant. The registration process that must be completed by August 26 consists of completing and submitting Form 1. Forms 2 and 3 will be used by participants to report on the quality of the alert process after the test. The Bureau provided the following instructions for accessing the system to register.

- Visit the ETRS page on the FCC's website (<https://www.fcc.gov/general/eas-test-reporting-system>) and click on the ETRS Registration Page link.
- Upon completing the ETRS Registration Page, filers will be sent their account credentials via email along with a link to the ETRS log-in page.
- Upon clicking on the emailed link and logging into ETRS, filers will view the ETRS home page, which will provide instructions on how to access Form 1.

The Bureau cautioned filers to be careful to enter the participant's (i.e., the station licensee's) precise correct legal name.

In the same Public Notice, the Bureau also announced the development of a new version of the EAS Operating Handbook. The Bureau describes the Handbook as an informational document that aids EAS participant personnel in handling EAS messages by outlining operational procedures needed to accomplish the requirements of Part 11 of the FCC's rules. The Commission gave the Communications Security, Reliability, and Interoperability Council ("CSRIC") the task of recommending textual and visual modifications to the Handbook to make it more suitable for all types of EAS participants, especially those with fewer resources. The CSRIC is a federal advisory committee charged with providing recommendations to the FCC to ensure the optimal security and reliability of communications systems. The CSRIC has now adopted an EAS Operating Handbook Report which embodies its recommendations for revisions to the Handbook. The Bureau seeks public comment on the CSRIC's recommendations. The Report and the CSRIC's proposed Handbook can be viewed [https://transition.fcc.gov/bureaus/pshs/advisory/csrc5/WG3\\_Report\\_Operating-Handbook\\_062216.pdf](https://transition.fcc.gov/bureaus/pshs/advisory/csrc5/WG3_Report_Operating-Handbook_062216.pdf) online at [https://transition.fcc.gov/bureaus/pshs/advisory/csrc5/WG3\\_Report\\_Operating-Handbook\\_062216.pdf](https://transition.fcc.gov/bureaus/pshs/advisory/csrc5/WG3_Report_Operating-Handbook_062216.pdf). Comments will be due 15 days after publication of notice of this proceeding in the Federal Register. Reply comments are not requested in this proceeding.

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