

## Proposal Would Allow More Reliance on Internet Recruitment

The FCC's Media Bureau has issued a Public Notice inviting comment on a proposal to allow employment recruitment on the Internet and over the air to suffice for compliance with the recruitment element of a broadcaster's EEO obligations. This proposed change in the Commission's policies was presented in a Petition for Rulemaking submitted to the agency by two companies under common control, Sun Valley Radio, Inc. and Canyon Media Corporation. They are the licensees of radio stations in Utah and Idaho.

Section 73.2080(c)(1)(i) of the Commission's rules states that "A station employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy." Specific recruitment sources are not identified. No minimum number of sources is mentioned as necessary to achieve wide dissemination. However, employers have been subjected to FCC enforcement actions for relying substantially or exclusively on job vacancy announcements posted on the station's Internet website as a recruitment tool.

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## Record-Keeping Obligations for Political File Clarified

The FCC's Media Bureau has clarified the requirements for broadcast stations to create and maintain in their political files records concerning requests received to broadcast political programming and the disposition of those requests. This clarification came in the context of a cluster of rulings responding to complaints filed by the Campaign Legal Center and the Sunlight Foundation, and in one other case, a complaint filed by the Campaign Legal Center and the Benton Foundation, against a dozen television stations for failing to include in their political files all of the records required by law. In most of those cases, the Bureau admonished the stations for rule violations, without further enforcement action. In a few of the cases, the Bureau decided to take no action against the stations. However, the Bureau gave notice to all broadcasters subject to these requirements that going forward it will take more serious enforcement action against stations that fail to meet their record-keeping obligations as now clarified.

Before addressing the substantive questions raised in the complaints, the Bureau responded to objections raised by two

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## Broadcasters and GMR Reach Interim Licensing Agreement

The Radio Music License Committee ("RMLC") (representing most commercial radio stations in the country) and Global Music Rights ("GMR"), the newest performing rights organization ("PRO"), announced on December 24 that they have reached an agreement for RMLC member radio stations to obtain interim licenses for the on-air broadcast and Internet streaming performance of GMR's repertory. The license term is from January 1, 2017, through September 30, 2017. Each station owner must decide whether it wishes to take advantage of this license. The deadline to execute these agreements and to begin making monthly payments to GMR is January 31. While stations are reviewing and considering these license agreements, GMR agreed not to initiate copyright infringement lawsuits against stations in January. These short-term licenses are designed as a temporary escape valve to reduce confrontation at the station level while the organizations try to resolve their differences by either litigation or negotiations.

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stations to the effect that the complainants lacked standing to file complaints. They asserted that the online public file requirements were intended to be a convenience for members of the public within the station's viewing area. Therefore, because the advertisements in question were not intended to be viewed by the complainants, the complainants could not claim to be harmed by whatever the stations did or did not place in its political file.

The Bureau ruled that the complainants did in fact have standing to file their complaints. There are situations where a petitioner must meet certain standing requirements, such as in filing a petition to deny an application. However, the Bureau said it could find nothing in the Communications Act, the Commission's rules or Commission precedent that requires a complainant to demonstrate he or she is a resident of the station's viewing area in order to file a complaint for violation of the political file rules. Furthermore, the Bureau cited an earlier Commission determination that a station's public file (of which the political file is an element) not only serves the public in the station's community of license, but is also a "tool for the larger media policy community," including "public advocacy groups, journalists, and researchers," who "act in part as surrogates for the viewing public in evaluating and reporting on broadcast stations."

The complainants and the stations held different interpretations of the statutory requirements for political file record-keeping. Section 315(e)(1) of the Communications Act requires broadcasters to maintain political files that contain records as follows:

"A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that —

(A) is made by or on behalf of a legally qualified candidate for public office; or

(B) communicates a message relating to any political matter of national importance, including —

(i) a legally qualified candidate;

(ii) any election to Federal office; or

(iii) a national legislative issue of public importance."

Section 315(e)(2) prescribes the compiling of the following information for the file:

"(A) whether the request to purchase broadcast time is accepted or rejected by the licensee;

(B) the rate charged for the broadcast time;

(C) the date and time on which the communication is aired;

(D) the class of time that is purchased;

(E) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

(F) in the case of a request made by, or on behalf of a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee;

(G) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for each person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person."

The Bureau resolved the differences of interpretation with three broad clarifications. The first of these was that when a request for political time triggers the disclosure obligations under Section 315(e)(1)(B), **the station must disclose the names of all candidates (and the offices for which they are running), all elections, and all national legislative issues of public importance to which the communication refers.** Because the categories of information are joined together by the word, "or," stations read the language of Sections 315(e)(1)(B) and 315(e)(2)(E) to mean that they had the discretion to select which of the three categories of information they wished to document in the political file. The Bureau reads these provisions to mean that the records in the file must cover all categories of information that pertain to the content of the specific advertisement. However, a request for time that involved a candidate and an election without reference to an issue would not trigger record-keeping for an issue because no issue was included in the spot. This conclusion is bolstered by the inclusion in (e)(2)(E) of the words, "as applicable."

Section 315(e)(2)(G) requires the station to place in the political file a list of the political advertiser's "chief executive officers or members of the executive committee or of the board of directors." Several stations failed to identify all of the persons mandated by the statute, and at one least station took the position that it only needed to disclose whatever information was supplied by the sponsor. The Bureau refuted this by pointing to the word, "list," in 315(e)(2)(G) and asserting that it usually signifies a grouping of names greater than one. It ruled that **stations must disclose all of the chief executive officers or members of the executive committee or board of directors of the sponsor.** If the sponsor provides what the station reasonably perceives to be an incomplete list, the station has the onus to request a complete list. The Bureau assured stations that they not required to conduct independent research to identify all of the relevant officials of the sponsor. A simple request to the sponsor for complete information is all that is required for the station to meet its obligation.

The third category of information about a political advertisement that must be disclosed concerns "national legislative issues[s] of public importance." Again, the complainants and the stations differed in their interpretations of this provision. **The Commission clarified that it will consider context in determining whether an advertisement communicates a message relating to a political matter of national importance.** The concept of an issue of national legislative importance is broad enough to include not only matters under current legislative debate, but also issues currently being deliberated by the public that may be the subject of future or past governmental action. In spots that mention a federal candidate and the candidate's position on any topic

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# Noncom Biennial Ownership Filings Suspended

The FCC's Media Bureau has temporarily suspended until December 1, 2017, the requirement for noncommercial radio and television stations to file biennial ownership reports. Until now, these reports became due on a rolling regional schedule pegged to the biennial anniversaries of each station's filing deadline for its license renewal application. The Commission has revised the filing schedule for these reports to coincide with the schedule for submitting commercial broadcast ownership reports. All biennial ownership reports for both commercial and noncommercial stations will now be due to be filed by December 1 in odd-numbered years, with data accurate precisely as of October 1. The next such reports will be due by December 1, 2017, including for stations that may have just recently filed reports in 2016.

Other ownership reports, such as those to be filed after the grant of a new construction permit or a new license, or after consummation of an assignment or transfer of control, will continue to be due within the regular periods of time prescribed by the Commission's rules.

The Commission is migrating its online forms from the Consolidated Database System ("CDBS") to the new Licensing and Management System ("LMS") platform. As CDBS is being phased out and replaced by LMS, the form presently used for these ownership reports, Schedule 323-E, will be replaced by Form 2100, Schedule 323-E. The new form will feature an important modification of the report process requiring every entity and person with an attributable interest in the station to be identified with an FCC Registration Number, or FRN. This includes all of the licensee's officers and members of its governing board. Commercial stations have been subject to this requirement since 2009. This regimen was extended to noncommercial stations early in 2016. To obtain an FRN in the Commission's registration system, an individual must disclose personal identifying information, including all or a portion of his or her Social Security number.

In the same order that imposed this requirement on noncommercial stations, the Commission attempted to address the concerns about the security of personal data. It created a mechanism called the Restricted Use FRN ("RUFNR"). To register for an RUFNR, a person must enter his or her complete name, residential address, date of birth, and the last four digits of the Social Security number. The Commission said that this device would avoid the hazards of disclosing the full Social Security number while at the same time providing enough personal data about the registrant to ensure that the RUFNR is associated with a unique individual. Registrants have the option to register for either a standard FRN (using the complete Social Security number) or an RUFNR – but not both. Individuals who already have a standard FRN will continue to use it. The RUFNR may be used only on broadcast ownership reports. It is available only to individuals and not to interest holders that are entities such as government agencies or corporations.

In response to the initial resistance from commercial broadcasters to disclose personal Social Security numbers, the FCC offered an alternate procedure as a partial solution – the Special Use FRN ("SUFNR"). If, after making a good-faith but un-

successful effort to obtain an attributable interest holder's cooperation in registering for an FRN, a licensee was permitted to rely on a feature incorporated into the Ownership Report form at the point where the interest holder's FRN would normally be inserted. Upon clicking the SUFNR icon, the system will generate a number that can be used in place of the regular FRN for the purposes of the ownership report. The licensee filing the ownership report was thereupon deemed to have fulfilled its obligation to disclose its interest holder.

The RUFNR is intended to replace the SUFNR as a mechanism that the Commission believes will be both safe for users and productive for its database purposes. Nonetheless, the SUFNR will continue to be available for what the Commission hopes will be the very limited number of situations where an interest holder refuses to register for either a standard FRN or an RUFNR. In the event that an SUFNR appears in an ownership report, the Commission says that it may take enforcement action against the filer of the report and/or the recalcitrant interest holder. However, the filer will be exempt from enforcement action if it can demonstrate that it employed reasonable good-faith efforts to obtain an FRN or RUFNR from or on behalf of the interest holder. These efforts should include instructing the individual interest holder about his or her obligations and about potential FCC enforcement action. An SUFNR may be used in the ownership report only if the interest holder continues to refuse to provide the means for obtaining an FRN or RUFNR after the filer has taken those steps. In certifying the accuracy of the ownership report, the filer will affirm that all information in the report is true to the best of its knowledge and belief. The Commission encompasses within this certification the obligation to verify that each FRN or RUFNR listed in the report as associated with an individual is correct. This includes confirming that no SUFNR has been listed in the absence of reasonable and good-faith efforts to obtain an FRN or RUFNR from the interest holder and advising the interest holder of the possibility of FCC enforcement action for failure to register.

Many noncommercial broadcasters petitioned the Commission to reconsider the personal FRN requirement insofar as it pertained to them. In addition to the previously raised concerns about the security of sensitive personal data, they argued that the governance of nonprofit and government entities is fundamentally different from that of commercial companies in that their officers and directors are not "owners" of stations, but rather merely caretakers of them. Therefore such individuals are not relevant to the Commission's effort to establish an accurate database of the qualities of broadcast ownership nationwide. They also predicted that volunteer board members of nonprofit entities would stoutly resist disclosing their personal information, even to the point of resigning from the board.

Acting on delegated authority, the Media Bureau has released an *Order on Reconsideration* affirming the Commission's original order and completely rejecting all of the noncommercial parties' objections to the FRN requirement for their officers and governing board members. The Bureau found that the petitioners merely restated arguments that the noncommercial parties had offered in the rulemaking process and that they failed



# DEADLINES TO WATCH



## License Renewal, FCC Reports & Public Inspection Files

- January 10, 2017 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.
- January 10, 2017 Deadline to file quarterly Children's Television Programming Reports for all commercial full power and Class A television stations.
- February 1, 2017 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.**
- February 1, 2017 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).
- February 1, 2017 Deadline to file EEO Broadcast Mid-term Report for all radio stations in employment units with more than 10 full-time employees in **Kansas, Nebraska and Oklahoma**; and all television stations in employment units with five or more full-time employees in **Arkansas, Louisiana and Mississippi.**

## Cut-Off Date 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 **January 30, 2017**. Informal objections may be filed anytime prior to grant.

Community	Station	Channel	Applicant
Tallahassee, FL	W29EQ-D	29	EICB-TV-East, LLC
Boise, ID	K14QO-D	14	EICB-TV East, LLC
Boise, ID	K23NB-D	23	EICB-TV East, LLC
Duluth, MN	K14QM-D	14	EICB-TV East, LLC
Zuni Pueblo, NM	New	43	University of New Mexico
Big Spring, TX	K14QN-D	14	EICB-TV East, LLC
Big Spring, TX	K35MF-D	35	EICB-TV East, LLC
San Antonio, TX	KISA-LD	25	Mako Communications, LLC

## Deadlines for Comments In FCC and Other Proceedings

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

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|---|---------|---------|
| RM-11779; Petition for Rulemaking AM synchronous boosters   |         | Jan. 13 |
| Docket 16-418; Public Notice Request for Declaratory Ruling by Matrix Capital Management Master Fund, L.P. to permit increase in foreign ownership stake in Pandora Media, Inc. | Jan. 23 | Feb. 7  |
| Docket 16-306; Public Notice Repack transition report form and filing requirements  | Jan. 25 | Feb. 6  |
| Docket 16-41; NPRM Fostering diversity of video programming   | Jan. 26 | Feb. 22 |
| Docket 16-410; Public Notice Petition for Rulemaking to allow greater reliance on Internet sources for EEO recruitment requirements   | Jan. 30 | Feb. 14 |
| U.S. Copyright Office Docket 2015-7; NOI Safe harbor provisions of the DMCA   | Feb. 6  | N/A     |
| Docket 16-251; Public Notice Revision or elimination of certain regulations   | FR+90   | N/A     |

FR+N means that 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 applications for new FM booster stations as described below. The deadline for filing petitions to deny these applications is indicated. Informal objections may be filed anytime prior to grant of the application.

Community	Parent Station	Channel	MHz	Filing Deadline
Pahala, HI	KAHU	217	91.3	Jan. 17
Pahala, HI	KANO	206	89.1	Jan. 17
Park City, UT	KKLV	298	107.5	Jan. 17



# 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 **February 21, 2017**. Informal objections may be filed anytime prior to grant of the application.

Present Community	Proposed Community	Station	Channel	Frequency
Norfolk, CT	Canaan, CT	WSGG	207	89.3
Cartersville, GA	East Point, GA	WYXC	N/A	1260
Lowell, MA	Lawrence, MA	WLLH	N/A	1400
Beulah, MI	Traverse City, MI	WOUF	257	99.3
Traverse City, MI	Beulah, MI	WLDR-FM	270	101.9
St. George, SC	Walterboro, SC	WWOS	N/A	810
Walterboro, SC	Burton, SC	WALI	229	93.7
Weatherford, TX	Mineral Wells, TX	KYQX	207	89.3

## 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
Video description of video programming, Section 79.3	Jan. 13
Significantly viewed signals, Section 76.54	Jan. 13
Alternative Broadcast Inspection Program	Jan. 30
Rebroadcasts, Sections 73.1207, 74.784, 74.1284	Feb. 7
CORES registration, Form 160	Feb. 13
Wireless interference to television stations in 600 MHz band	Feb. 13
Foreign ownership proposals	Feb. 27
Presunrise and postsunset authorization for AM stations, Section 73.99	Feb. 28
Satellite delivery of network programming to underserved households, Section 73.686	Feb. 28

# TV Repack Progress Report Form Released

The FCC's Incentive Auction Task Force and its Media Bureau have released the form to be used by television stations for submitting their Transition Progress Reports to the Commission during the post-auction repacking process. Stations that are eligible to receive reimbursement of their relocation expenses from the TV Broadcast Relocation Fund will be required to file these reports electronically on Form 2100 Schedule 387. Eligible stations will include all full power and Class A television stations that are protected during the repacking process and involuntarily assigned to a new channel and/or forced away from their current antenna sites. Upon the conclusion of the Incentive Auction, the Commission will release a public notice with the new channel reassignment plan. That plan will assign a feasible channel for every station that chose not to participate in the auction, that was not needed or that dropped out of the auction during the bidding. The release of the plan will trigger the beginning of a 39-month transition period during which stations will need to complete their modifications.

The Transition Progress Reports will be due quarterly, beginning with the first full calendar quarter after the release of the plan. The filing deadline will be the 10th day after the close of the quarter. In addition to the quarterly reports, each station must file a Transition Progress Report (1) 10 weeks before the end of its assigned construction period, (2) 10 days after completion of all work related to construction of the post-auction facilities, and (3) five days after it ceases broadcasting on the pre-auction channel.

The Transition Progress Report will require stations to certify that certain construction milestones have been completed or are not needed. Stations will have to report on the status of certain tasks, such as taking delivery of equipment or obtaining permits from local government agencies. Other questions will ask broadcasters to identify potential problems that they believe may make it difficult for them to meet their construction deadlines. The Commission believes that the information gathered from these Reports will be useful for any parties who need or want to monitor the transition, including other broadcasters, tower companies, equipment vendors, engineering consultants and the general public.

There are stations that will need to modify their facilities that will not be eligible for reimbursement. These include stations with a winning reverse auction bid to move to a different spectrum band, certain unprotected Class A stations, and otherwise reimbursement-eligible stations that may obtain a waiver to make flexible use of their reassigned spectrum for nonbroadcast services.

The Commission has tentatively concluded that in order to evaluate the progress of the repacking transition in a comprehensive manner, it will need progress reports from these stations ineligible for reimbursement as well. The agency proposes to require all such stations to file quarterly Transition Progress Reports on the same schedule as outlined above for the stations that do qualify for reimbursement. The Commission seeks public comment on this proposal. Comments are due by January 25. Reply comments must be filed by February 6.

# Proposal Would Allow More Reliance on Internet Recruitment

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The current EEO rules governing broadcasters were adopted by the FCC in 2002. In addition to the general requirement for broadcasters to eschew discrimination, the Commission established an affirmative action regime for broadcast employers, a core element of which was to be the deployment of a broad recruitment net. The petitioners described this as an effort to get away from the limitations of word-of-mouth dissemination and “to expand the industry’s hiring pool . . .” The Commission considered the prospect at that time for the Internet to “widely disseminate” job announcements, but decided against heavy reliance on it because only approximately one half of all U.S. households had an Internet connection. Instead, the Commission concluded that daily newspapers were the best recruitment tools then available.

The petitioners posit that the outlook of 2002 is obsolete today. They cite Commission data to the effect that the number of Internet connections in the United States now exceeds the number of people. There are more than 290 million residential Internet connections. Nearly 70% of all Americans own a smartphone. Referring to a Pew Research Center study, the petitioners explain that the Internet is a “near universal resource” for job hunters. Among Americans looking for work during the past two years, 90% have used online

resources in their job searches, and 84% applied for jobs online. Citing a Glassdoor survey, the petitioners assert that 86% of individuals in the first decade of their careers are likely to use social media to find employment. The petitioners observed that even the FCC requires applicants to apply for jobs online through the agency’s website. While the Internet has become ubiquitous, the newspaper trade has shrunk. According to the petitioners, between 2007 and 2010, 175 newspapers went out of business in the United States. Many more have reduced publication to three or fewer days per week. The reach of classified print ads is declining sharply.

The petitioners conclude that today “American Internet connectivity and use is far different than it was in 2002, and the rules should reflect this shift.” “[C]orrecting the mismatch between the rules and modern recruitment practices will serve the public interest . . . By allowing broadcasters to direct their efforts to widely disseminate job openings, including in some cases by using Internet-only sources along with their on-air recruitment efforts, the Commission will enable broadcasters to increase the efficiency of their recruitment efforts and meet job seekers where they are.”

The deadline for filing comments in Docket 16-410 about the Petition for Rulemaking is January 30. Reply comments can be filed until February 14.

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## Uploading of Certain Public File Documents from Prior License Terms Waived

The FCC’s Media Bureau has granted a request from Cox Radio, Inc. to waive the requirement to upload to its online public file issues/programs lists and EEO reports from prior license terms for two Cox radio stations with renewal applications still pending from prior terms. In the same order, the Bureau waived the requirement for all other similarly situated radio stations.

The Commission’s rules require stations to maintain quarterly issues/programs lists and annual EEO reports in their public files until the station’s next license renewal application has been granted. Cox Radio’s stations in question, WALR-FM, Palmetto, Georgia, and WSRV, Gainesville, Georgia, have license renewal applications pending from prior license terms because the FCC is examining its newspaper/broadcast cross-ownership rule, which could affect the ownership of these stations. Thus, these license renewals are delayed for reasons beyond the licensee’s control. Under the recently effective rules, larger commercial stations in the top 50 markets were required to upload to the online public file most of their existing public file materials for the current term by December 24, 2016.

Cox asserted that the expense in staff time needed to scan the thousands of relevant documents and to upload them to the online public file would be unduly burden-

some. Cox said that its renewal applications had been timely filed, that no member of the public had opposed the applications and that nothing in these documents had a bearing on the reason for the deferred action on the applications. The Bureau agreed that Cox had shown good cause for the waiver and granted it with the condition that the documents remain available to the public at the main studio for each station.

The Bureau went on to expand the waiver to cover all similarly situated stations. To be similarly situated, a station’s prior renewal application must have been: (1) unopposed by any member of the public, and (2) deferred due to reasons unrelated to (a) the station’s obligation to air programming responsive to the needs and interests of its community or the recordkeeping related thereto, or (b) the station’s obligation to comply with the FCC’s EEO requirements or the recordkeeping related thereto. The documents not uploaded must be available to the public at the station’s main studio. The Bureau stressed that this waiver does cover documents required to be in the public file pertaining to the current license term. They must be uploaded.

The Bureau had previously granted a similar waiver for similarly situated television stations.

# Broadcasters and GMR Reach Interim Licensing Agreement

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The fee for each station's license will be determined during the consultations between GMR and the station. The fees may be subject to adjustment, in either direction, depending on the outcome of the pending litigation between RMLC and GMR — and therefore, they are termed as "interim."

GMR is seeking to establish itself as an arbiter of music performance rights, providing a bridge between copyright owners and copyright users, competing with and disrupting the customary business of ASCAP, BMI and SESAC. Unlike ASCAP and BMI, which are subject to the restrictions of 1940s-era consent decrees, GMR can take a more freewheeling approach to licensing and pricing.

Over the course of three years, GMR has been able to attract away from the other PROs what it describes as an "elite roster" of more than 70 popular music songwriters and composers. Its strategy has been to develop an important repertory that radio stations cannot live without. However, with fees roughly 30% higher than those of the traditional PROs, GMR has had few takers among radio stations. GMR announced that in January it would begin suing stations for copyright infringement, asserting that stations could be vulnerable to penalties of up to \$150,000 for each broadcast of a song for which they did not have the rights.

Thereupon, RMLC sued GMR in U.S. District Court in Philadelphia, calling GMR "an unlawful monopolist that is deploying a calculated scheme to extort the U.S. commercial radio industry." RMLC is asking the court for a preliminary injunction to reduce the fees that GMR is charging. RMLC also wants the court to order GMR to offer a blanket license for its entire repertory at a "reasonable rate" that is "proportional" to the rates

charged by ASCAP and BMI. RMLC says that GMR has demanded licensing fees from broadcasters for 2017 that would total \$42 million. That amounts to about 15% of the copyright fees paid by the entire radio industry, while GMR's repertory is said to represent only 5% to 7% of the music that is broadcast on radio.

GMR has launched its own antitrust lawsuit against RMLC in U.S. District Court in Los Angeles. It alleged that RMLC is "an illegal cartel" whose activities result in "artificially low" royalties paid by broadcasters for the right to transmit music. It asked the court to prohibit RMLC from negotiating for the radio industry. GMR also seeks monetary damages.

Both lawsuits remain pending. Defendants' motions to dismiss in each case are due to be filed in mid-January.

A copy of the interim license agreement is available on the RMLC website: [www.radiomlc.org](http://www.radiomlc.org). A searchable listing of GMR's repertory can be found on GMR's website at <http://globalmusicrights.com/>. A review of the repertory is complicated by the fact that in some cases, GMR controls only a fractional interest in the work.

It appears that stations have three options for dealing with the present situation: (1) sign the interim license agreement; (2) stay on the sidelines, await the results of the litigation, and decline to sign the interim license agreement, risking possible lawsuit by GMR; or (3) avoid paying the royalty and avoid the risk of legal action by avoiding use of the GMR repertory. This option is problematic because the GMR repertory is in flux and because music may be included in syndicated programming or other material from third-party sources outside of the radio station which may make it impossible to screen in advance.

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## Record-Keeping Obligations Clarified *continued from page 2*

of national concern, that topic must be included in the disclosure. Both federal and local candidates for elective office are subject to the disclosure requirement. If the advertisement for a candidate, whether for a federal or state office, references a state or local issue of no broader impact on the national level, the issue need not be disclosed because it is not of "national importance."

Not every advertisement that references a "national leg-

islative issue of public importance" will, when considered in context, be deemed a message relating to national importance that would require disclosure. The Bureau offered the example of an ad for a powered wheelchair that may be an expense covered by Medicare. Although Medicare is a topic of national importance, in this context it is not being discussed, per se. Rather, it is mentioned to help sell a commercial product. Therefore this spot and its contents need not be disclosed in the public file.

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## Noncom Biennial Ownership Filings Suspended *continued from page 3*

to show that the Commission had committed any error in adopting the personal FRN requirement. The Commission's rules provide for the Bureau with subject-matter jurisdiction to respond on behalf of the full Commission to petitions for reconsideration of Commission actions in cases where the petitioner does not raise new issues.

The release of the Bureau's *Order on Reconsideration* was promptly followed by the release of a joint statement from the two Republican commissioners, Ajit Pai and Michael O'Rielly, stridently critical of the Bureau's action. They characterized the Commission's original order as imposing "unnecessary requirements on noncommercial . . . stations." In the months since that

order was adopted, the composition of the Commission has changed. The two Commissioners said that the original "ruling no longer enjoys the support of the majority of Commissioners..." According to them, the Bureau had drafted, adopted and released the *Order on Reconsideration* without informing the Commissioners. They said this would be the wrong way to function at any time, but most certainly it was wrong during a presidential transition. They were especially irritated that they had to learn about it from the press. Commissioners Pai and O'Rielly invited the noncommercial parties to file an application for review so that the newly constituted Commission could have the opportunity to revisit this matter.

# Nationwide EAS Test Deemed Successful

The FCC's Public Safety and Homeland Security Bureau has released its initial assessment of the Nationwide EAS Test that was conducted on September 28 and has judged it to be a success. Initial test data indicate that the vast majority of EAS participants successfully received and retransmitted the National Periodic Test. The Bureau says that lessons learned from the nationwide test conducted in 2011 and use of the EAS Test Reporting System ("ETRS") appear to have led to significant improvements in test performance.

The Bureau noted the following measures of success:

- Over 21,000 EAS participants in all 50 states and the U.S. territories participated in the test, amounting to a 26% increase over participation in the 2011 test.
- 94% of the participants successfully received the test alert. In 2011, only 82% received the alert.
- 85% of the participants successfully retransmitted the alert.
- 69% of the participants reported no complications in receiving or retransmitting the alert.
- Many participants reported receiving the alert featuring high quality audio from the common alerting protocol-based alert that FEMA distributed via the Integrated Public Alert and Warning System, or IPAWS.
- For the first time, 74 participants retransmitted the IPAWS-generated Spanish language version of the alert.

Along with the successes, the test revealed several areas where the Bureau believes that further improvements could be made:

- Some participants experienced poor quality audio and

were unable to deliver the Spanish language alert because they received the test from an over-the-air broadcast source before their equipment checked for the IPAWS feed. Requiring participants to check for the IPAWS feed sooner would ensure that the most timely and content-rich version of the alert is broadcast.

- Some members of the public with disabilities reported difficulty receiving or understanding alert text or audio. EAS tests could be made more accessible by applying the accessibility rules to tests that already apply to live alerts.
- Some participants had difficulty finding their state EAS plans. Some plans specified monitoring obligations that participants could not implement. The Commission should facilitate the centralization and standardization of state plan information.
- Some participants did not receive the alert because they did not properly configure or maintain their equipment. The Bureau, in coordination with the State Emergency Communications Committees and the state broadcast associations, will provide guidance to participants who experienced technical difficulties.
- The test was conducted in an environment that posed a low-level threat for cyberattacks. Participants could integrate basic cyber security guidelines into the EAS equipment readiness rules so that they could self-assess and self-correct vulnerabilities in their facilities so as to harden the system against cybersecurity threats that are generally present during both test and actual alerts.

Although the announced deadline for filing reports of test results was in November, the Bureau stated that it is continuing to receive reports submitted through the ETRS.

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## Petitioner Proposes Synchronous Boosters for AM Stations

The FCC has received a Petition for Rulemaking from Wifredo Blanco-Pi urging the Commission to adopt rules to permanently authorize the use of synchronous boosters to improve service from AM radio stations. The parent station and the boosters would all operate on the same frequency. Blanco-Pi describes himself as an electrical engineer and the owner of several AM stations in Puerto Rico. He originally submitted this proposal in comments filed in the AM Revitalization rulemaking proceeding. Nothing came of it there, so he decided to file it again in a stand-alone petition.

The petitioner states that AM radio stations would greatly benefit from the operation of booster stations on the same frequency not only as fill-in stations inside the parent's 2 mV/m contour, but also to expand the parent station's coverage area. He analogizes this to the increase in the coverage of an AM station that can presently be accomplished with directional antennas. He would not limit the number of boosters or the size of the coverage area to be associated with a given parent station

– except as would be necessary to protect co- and adjacent-channel stations. The petitioner asserts that this mode of operation “would be the best possible use of the AM band.” Synchronous boosters would be an efficient and economical alternative to complex and costly directional antenna arrays, reducing power used, land occupied and tower construction.

Blanco-Pi has fielded an experimental synchronous operation on his stations and reports that it worked very well. Listeners traveling from one station's coverage area to the next could enjoy a continuous seamless program stream without having to search for a new frequency. In the area where the signals overlap, he says they can be synchronized with use of a satellite reference signal and a digital audio delay.

The Commission has solicited public comment about this Petition. The deadline for filing comments has already passed. Reply comments may be filed until January 13. The docket file number is RM-11779.

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