

‘Blue Alert’ EAS Event Code Proposed

The FCC has proposed to adopt a new Emergency Alert System (“EAS”) event code for the transmission of so-called “Blue Alerts” over the EAS. The Commission states this event code would facilitate the apprehension of suspects who pose an imminent and credible threat to law enforcement personnel and the search efforts to locate missing police officers. Adoption of this amendment to the agency’s rules would help implement the Rafael Ramos and Wenjian Liu National Blue Alert Act of 2015. It also would respond to the request for such an event code from the Office of Community Oriented Policing Services (“COPS”) of the U.S. Department of Justice. COPS suggests that there is a lack of urgency associated with existing event codes, which does not promote immediate action on the part of EAS participants or the public.

The Commission proposes to amend Section 11.31(e) of its rules to add a new “BLU” event code to the list of codes already within the EAS Protocol. Consistent with guidelines published by COPS, the FCC proposes that the Blue Alert would disseminate information related to (1) the serious injury or death of a law enforcement officer in the line of duty, (2) an officer who is missing in connection with official duties, or (3) an imminent and credible threat that an individual intends to cause serious injury to or to kill a law enforcement officer. Such alerts would be limited to the areas where the suspect is most likely to be captured and would be suspended when the suspect is apprehended.

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Mandatory Station Divestiture Follows Chronic Silence

The FCC’s Media Bureau and the station group owner in common control of Cochise Broadcasting, LLC, Cochise Media Licenses, LLC, and Cochise Community Radio Corporation (collectively, “Cochise”) have entered into *Consent Decrees* to resolve issues concerning the numerous periods of prolonged silence by many of the group’s 22 FM radio stations scattered across the mountain West. The principal sanctions agreed upon in the *Decrees* include the mandatory divestiture of 10 stations and short-term license renewals for the others.

The manner in which Cochise operated (or failed to operate) its stations became a central issue in the Media Bureau’s evaluation of the license renewal applications that were filed for most of these stations in 2013. Section 309(k)(1) of the

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Video Description Requirement Would Be Expanded

Video description obligations for large-market commercial television stations would be expanded under the terms of a draft Report and Order in Docket 11-43 that the FCC has scheduled for a vote at its July open meeting. Video description is a service that delivers an aural stream of spoken descriptions of key visual elements in television programming that enables blind and visually impaired individuals to experience the program content.

Under current rules, commercial television stations affiliated with ABC, CBS, Fox or NBC in the 60 largest television markets are required to include video description in at least 50 hours of programming during each calendar quarter. This video-described programming must be either children’s programming or broadcast during prime time.

The new rule would raise the minimum requirement for the same stations to 87.5 hours per quarter. Stations would enjoy greater flexibility in scheduling those additional hours. The programming constituting the 37.5 additional hours could be broadcast anytime from 6:00 a.m. to

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Station Penalized for Simulating EAS Tones

The FCC's Enforcement Bureau and the licensee of television station WTLV, Jacksonville, Florida, have agreed to resolve an investigation into the station's broadcast of simulated Emergency Alert System ("EAS") tones by way of a settlement. Under the terms of a *Consent Decree*, the licensee will pay a civil penalty of \$55,000 and implement a comprehensive company-wide compliance and personnel training program about the EAS.

The Commission received a complaint on August 9, 2016 alleging that WTLV had "aired a commercial multiple times that improperly used the EAS data burst and tone." The Bureau asked the station to respond to these allegations. It came to light that the station had received a promotional spot from the local National Football League team, the Jacksonville Jaguars. Station staff inserted the advertisement into the station's master control system, allowing it to air four times over three days, August 6, 7 and 8.

The promotional announcement opens with the EAS tones accompanied by the sounds of howling winds and thunder claps. Between the EAS tones and the storm sound effects there is a voiceover. The voice says, "This is an emergency broadcast transmission. This is not a test. This is an emergency broadcast transmission. This is not a test. Please remain calm. Seek shelter." The spot closes with EAS tones playing in the background. Taking note of the storm sound effects that accompanied the EAS tones, the Bureau observed the unfortunate context for the broadcast of this spot during hurricane season in a coastal city on the southeastern seaboard where hurricanes often occur.

The station admits that this announcement was broadcast. Management told the Bureau that the station's routine operating policies and practices prohibit the improper transmission of EAS tones. Nevertheless, this spot was broadcast, apparently because station staff failed to screen it first. According to the station

analysis of the spot, the EAS tones embedded in it were simulated and did not trigger any EAS equipment.

Group owner TEGNA is the corporate parent of the licensee of WTLV, Multimedia Holding Company. To avoid the cost and trouble of further litigation, the Bureau and TEGNA agreed to terminate the proceeding with a consent decree. The Bureau agreed that in the absence of new material evidence, it would not use the facts developed in this investigation (1) in any new proceeding concerning the subject matter of this proceeding, or (2) to institute a new proceeding or take any action on its own motion against TEGNA with respect to TEGNA's basic qualifications, including character qualifications, to hold FCC licenses. In return, TEGNA agreed to admit liability, to pay a civil penalty of \$55,000, and to implement a compliance plan to ensure future compliance with the EAS rules by its stations.

Among other things, the compliance plan must include (1) adoption of operating procedures and a checklist for covered employees to follow with respect to EAS; (2) producing a written compliance manual to be distributed to all covered employees; (3) implementation of a training program to instruct covered employees about the EAS rules and the company's EAS operating procedures; (4) prompt reporting to the FCC of any incidents of non-compliance; and (5) the filing of compliance reports with the FCC after 120 days, 18 months, 27 months and 36 months. "Covered employees" means all company employees who materially perform, supervise, oversee or manage duties that relate to compliance with the EAS rules. For the first 18 months of the compliance plan period, it applies to all of TEGNA's 43 stations. During the second half of the three-year compliance period, the plan will only pertain to TEGNA subsidiary Multimedia Holding Company and its eight television stations.

Requirement to Caption Internet Video Clips Now Fully Effective

The expansion of the FCC's rules requiring the closed captioning of video programming distributed via Internet Protocol ("IP") has become fully effective as of July 1, 2017. The Commission adopted these rules in Docket 11-154 to implement the Twenty-First Century Communications and Video Accessibility Act of 2010.

When the Commission first adopted a captioning requirement for IP video in 2012, the rule was applied only to full-length video programming, and not to clips. However, upon reconsideration in 2014 of its earlier interpretation of the statute, the Commission determined that Congress intended the IP closed captioning mandate to extend to all covered video programming, including clips. The captioning requirement for IP video now covers all programming of whatever length when the video programming distributor or provider (including television stations) posts on its website or application a clip that it published or exhibited previously on television with captions.

This rule became effective on January 1, 2016 for "straight lift" clips – i.e., clips that contain a single excerpt

of a captioned television program with the same video and audio that was presented on television. Captioning for "montages," clips containing multiple straight lift clips, was mandated as of January 1, 2017. Clips in these categories that were in the programmer's online library before the respective deadlines are exempt.

As of July 1, 2017, captioning is also required for clips of programming previously shown live and near-live with captions. Clips of live programming must be captioned online within 12 hours of the original broadcast or distribution. The grace period for clips of near-live programming is eight hours.

The quality of the captioning in the clip must be at least as good as that of the captioning in the full-length program from which the clip was lifted. The requirement to pass through captioning that was included in programming from an outside source will be applied to clips as well. As with full length programming, the evaluation of the required captioning quality includes aspects such as completeness, placement, accuracy and timing.

Relief Offered to 'Phase 0' LPTVs

The FCC's Incentive Auction Task Force and its Media Bureau have released a Public Notice to provide direction to low power television and television translator stations (collectively referred to here as "LPTVs") that will experience early displacement by new wireless operations on television channels 38-51. The spectrum in those channels has been repurposed to wireless services and auctioned to wireless service providers. Full power and Class A television stations on those channels that intend to continue broadcasting have been assigned to new channels in the range from channels 2 to 36. Those stations are to file construction permit applications by July 12 to move to their newly assigned channels. After two filing windows for reassigned full power and Class A stations to apply for minor adjustments to their facilities, the Commission expects to open a special displacement filing window in early 2018 for LPTV stations on the reassigned channels to submit applications to move to open channels that remain in the lower band.

The Commission has scheduled the reassigned full power and Class A stations to one of 10 "phases" in which to complete their modifications and go on the air on their new channels. These phases, numbered 1 through 10, span a three-year transition period. Wireless operators building new facilities on this reallocated spectrum are not to begin their operations in a given market until the end of the television construction phase for that market when, in theory, all broadcast stations will have ceased operating on those channels.

Having secondary status, LPTV stations are subject to being displaced not only by the new wireless services, but also by full power and Class A stations that move to new facilities. LPTV stations will have to settle for whatever channels remain available after all of the other stations are reassigned. There is an additional wrinkle to this plan, however, that adversely affects some LPTV stations even more. The Commission is allowing wireless operators to begin their operations almost immediately in areas where

there are no displaced full power or Class A stations that they are required to protect from interference. LPTV stations in these areas on channels 38-51 are subject to possible immediate displacement without falling into one of the scheduled phases. Such stations are in what some have tagged as "Phase 0." Wireless operators must give these stations 120 days advance notice of their intended start-up date, by when the LPTV station must cease broadcasting on its pre-auction channel. Some LPTV stations have already received such notices with termination deadlines in the autumn – well before the special LPTV displacement filing window expected for early 2018.

This Public Notice is intended to address this problem for these LPTV stations. There is a general freeze in effect for LPTV displacement applications. However, stations affected by the Phase 0 problem may file a displacement application with a request for a waiver of the freeze and a request for a Special Temporary Authority ("STA") to operate temporarily on the requested channel. Of course, the requested channel must be in the range of channels 2-36 and the proposal must protect all existing authorizations and applications. Ultimately, the application will be treated as filed on the last day of the LPTV displacement filing window, and will be subject to processing in that context. Therefore, stations with STAs may not necessarily receive permanent authorizations on the temporary channel.

To be eligible for the waiver, an LPTV station must be operating on a channel in the 38-51 range and receive a 120-day termination notice from the wireless operator with a termination deadline prior to the opening of the special LPTV displacement filing window.

In the alternative, a displaced LPTV station may file an application to share a channel with another station. If the host station is not being displaced, the application is not subject to the freeze and may be filed at any time without a waiver. If two displaced stations seek to share a new channel, each of them must follow the waiver process outlined above.

Cable Copyright Royalty Claims Due by July 31

Commercial television stations whose signals were carried by cable and satellite systems as "distant signals" anytime during 2016 may be entitled to receive copyright royalty payments for that carriage. Copyright law gives multichannel video programming distributors a compulsory license to carry distant signals in exchange for royalties. These royalties are

collected by the Copyright Royalty Board ("CRB") and have amounted to over \$200 million for 2016.

To receive its share of these royalties, a station must file a claim with the CRB by July 31. The claim can be filed online at www.crb.gov. However, registration approved by CRB staff is necessary before the claim can be submitted.



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

- July 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.
- July 10, 2017 Deadline to file quarterly Children's Television Programming Reports for all commercial full power and Class A television stations.
- August 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 **California, Illinois, North Carolina, South Carolina** and **Wisconsin**.
- August 1, 2017 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, 2017 Deadline to file EEO Broadcast Mid-term Report for all radio stations in employment units with more than 10 full-time employees in **California**; and all television stations in employment units with five or more full-time employees in **Illinois** and **Wisconsin**.

**FILING FREEZE ON APPLICATIONS TO MODIFY FM TRANSLATORS AND LPFM STATIONS, AND APPLICATIONS FOR NEW AND MODIFIED FM BOOSTERS
JULY 19 – AUGUST 2, 2017**

**MUST CARRY / RETRANSMISSION CONSENT ELECTIONS FOR 2018-2020 DUE
OCTOBER 1, 2017**

Deadlines for Comments In FCC and Other Proceedings

Docket	Comments	Reply Comments
(All proceedings are before the FCC unless otherwise noted.)		
Docket 17-106; NPRM Elimination of Main Studio Rule		July 17
Docket 17-108; NPRM Net neutrality	July 17	August 16
Docket 17-172; Public Notice Methodology for siting satellite earth stations	July 21	August 7
Docket 15-94; NPRM EAS Blue Alerts	July 31	August 29
Docket 17-95; NPRM Earth stations in motion	July 31	August 30
Docket 17-105; Public Notice Modernization of media regulation		August 4

**DEADLINE FOR COMMERCIAL TELEVISION STATIONS TO FILE CABLE COPYRIGHT ROYALTY CLAIMS WITH COPYRIGHT ROYALTY BOARD
JULY 31, 2017**

**DEADLINE FOR TV STATIONS REASSIGNED TO NEW FACILITIES IN POST-AUCTION REPACK TO FILE CONSTRUCTION PERMIT APPLICATION AND ESTIMATE OF REIMBURSEMENT-ELIGIBLE RELOCATION COSTS
JULY 12, 2017**



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
Environmental effects of radio frequency exposure, Sections 1.1307, 1.1311	Jul 17
Emergency antennas, Section 73.1680	Jul 18
LPTV construction permit application, Form 2100, Schedule C	Jul 20
LPTV license application, Form 2100, Schedule D	Jul 20
Commercial broadcast station construction permit application, Form 2100, Schedule A	Jul 20
Television station license application, Form 2100, Schedule B	Jul 20
Class A television station license application, Form 2100, Schedule E	Jul 20
Class A television station construction permit application, Form 2100, Schedule F	Jul 20
Channel sharing agreements, Section 74.800	Jul 20
Broadcast license renewal application, Form 303-S	Jul 21
National Historic Preservation Act, Forms 620, 621	Jul 24
Agreements for removing application conflicts. Section 73.3525	Jul 31
DTV Ancillary/Supplemental Services Report, Form 317	Jul 31
TV Transition Progress Report, Form 2100, Schedule 387	Aug 1
Wireless station license application form, Form 601	Aug 4
Participation in FCC auctions, Sections 1.21001, 1.21002	Aug 21
LPFM license application, Form 319	Aug 21
Satellite earth station application, Form 312	Aug 28

**FILING WINDOW FOR NEW
FILL-IN FM TRANSLATOR APPLICATIONS
FOR CLASS C AND D AM STATIONS
JULY 26 – AUGUST 2, 2017**

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 **August 22, 2017**. Informal objections may be filed anytime prior to grant of the application.

Present Community	Proposed Community	Station	Channel	Frequency
Santa Maria, CA	Port Hueneme, CA	KXFM	256	99.1
Union Park, FL	Orlando, FL	WPOZ	202	88.3
Pocatello, ID	Hailey, ID	KPTO(AM)	N/A	1440
Milan, NM	Moriarty, NM	KRKE(AM)	N/A	1080
Clemson, SC	Cowpens, SC	WAHT(AM)	N/A	1560
Byrne, TX	San Angelo, TX	KLRW	203	88.5
Longview, TX	Hallsville, TX	New	300	107.9
Oakley, UT	Diamondville, WY	KDWY	287	105.3

Correspondence From the Public No Longer Required in Public File

In January of this year, the FCC adopted a *Report and Order* in Docket 16-161 eliminating the requirement that commercial broadcast stations retain in their public inspection files copies of letters and emails from the public. However, this rule amendment could not become effective until the Office of Management and Budget ("OMB") approved the Commission's submission of materials associated with changes to the rule as required by the Paperwork Reduction Act. OMB's approval was published in the Federal Register on June 29. The rule change became effective as of that date, and from that date forward, correspondence from the public need not be kept in stations' public files.

In connection with this rule change, the Commission also determined that commercial television licensees would no longer be required to file a summary of correspondence received regarding violent programming with their license renewal applications. The current version of the license renewal application, Form 303-S, directs commercial television renewal applicants to include this documentation with their applications. The Commission has drafted a new version of the Form 303-S, deleting this requirement, which is awaiting OMB approval.

FM Translator Filing Window Is July 26 - August 2

From July 26 until 6:00 p.m., Eastern Time, on August 2, the FCC will conduct a filing window for applications for new cross-service FM translator stations proposed to operate as fill-in translators for Class C and Class D AM stations. This filing window will be limited to the licensees and permittees of Class C and Class D AM stations that did not participate in either of the special translator modification windows conducted in 2016. Applicants will be restricted to one translator application per AM station. This will be an auction filing window, identified as Auction 99.

To stabilize the database so that filing window applicants have a quiet environment for preparing applications, the Commission will freeze the filing of applications for modifications to FM translators and low power FM stations, and applications for new or modified FM boosters, from July 19 through August 2.

After the filing window closes, mutually exclusive applicants will have an opportunity to resolve their conflicts via settlements or technical amendments. Later, the Commission will open a second filing window for any AM station of any class that did not participate in the first window or the 2016 windows. This window will also be followed by a period for resolving conflicts by way of settlements or technical amendments. Applications from both windows that remain mutually exclusive after the second settlement period will be subject to competitive bidding in Auction 99.

Applicants must electronically file a Form 175 short form application and a partially completed Form 349, including the Tech Box, in which the proposal's technical

parameters are set out. The new more flexible siting rules for AM fill-in translators will be in effect. The translator's 60 dbu contour may now extend to the greater of the AM station's daytime 2 mV/m contour or a 25-mile radius from the AM antenna site.

The Commission's rules prohibit an entity from filing more than one Form 175 in an auction filing window. An owner of multiple AM stations can file only one Form 175 for the company, but may file a separate Form 349 application for each eligible AM station. Usually, entities under common control are prohibited from filing more than one Form 175 in an auction so as to prevent parties with overlapping ownership interests from becoming competing bidders. Given the unique circumstances of this auction, the Commission has waived this rule in this case. AM stations under common control would be motivated to plan their translator applications so as not to be mutually exclusive. There is therefore little risk that they would have to bid against each other in an auction.

Only one translator application may be associated with each eligible AM station. If the application is granted, the resulting translator will be limited to rebroadcasting only the AM station that was designated in its construction permit application.

Applicants are reminded that during the auction process they will be subject to the FCC's anti-collusion rules. Except during permitted settlement windows, applicants will be prohibited from communicating with each other about their bids or bidding strategies until after the down payment deadline.

'Blue Alert' EAS Event Code Proposed *continued from page 1*

As with all non-Presidential alerts, carriage of Blue Alerts and use of the Blue Alert code would be voluntary.

The Commission seeks public comment about this proposal. Can the current EAS accommodate Blue Alerts as effectively as it does the other types of alerts? As of last November, 27 states had implemented various Blue Alert plans. Florida and Montana use the "Law Enforcement Emergency" ("LEW") event code for Blue Alerts. Other states have other mechanisms. Would adoption of a national Blue Alert dedicated code help ensure nationwide coordination and consistency? Would it foster the development of similar plans in other states? Would such a system be effective, and likely to save lives?

Previous additions to the list of event codes have been

implemented within six months. The Commission therefore believes it is feasible and it proposes that EAS equipment manufacturers should integrate the Blue Alert event code into equipment yet to be manufactured or sold, and make necessary software upgrades available to EAS participants no later than six months after the effective date of the new rule. EAS participants could upgrade their equipment on a voluntary basis, either by installing new equipment, or by way of a software upgrade to install the code in existing equipment. The Commission estimates that such software upgrades could be installed by station personnel in less than an hour – perhaps in as little as 10 minutes.

The public is invited to comment on this proposal in Docket 15-94 by July 31. August 29 is the deadline for reply comments.

Video Description Requirement Would Be Expanded *continued from page 1*

12:00 midnight. A program may be aired twice and counted both times toward meeting a station's requirements under any aspect of these rules.

The draft Report and Order has been circulated among the Commissioners for tentative consideration at the agency's July

meeting, and has been released in advance to promote greater public awareness of the Commission's activities. This advance draft is subject to further deliberation, revision and/or withdrawal until the Commission votes on it. The Commission's formal action on this item will be reported in a future issue of this newsletter.

Mandatory Station Divestiture Follows Chronic Silence

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Communications Act directs the Commission to grant an application for renewal of a broadcast license if the agency can find that during the preceding license term, (a) the station has served the public interest, convenience and necessity; (b) there have been no serious violations by the licensee of the Communications Act or the FCC's rules; and (c) there have been no other violations by the licensee of the Act or the agency's rules which, taken together, would constitute a pattern of abuse. The statute further provides that if the station fails to meet that standard, the Commission may deny the application, or grant it on appropriate terms and conditions, including a short-term renewal. If, upon conducting an evidentiary hearing, the Commission finds that a licensee has failed to meet the standard of Section 309(k)(1) and that no mitigating factors justify a lesser sanction, the agency must deny the license renewal application.

Many of the Cochise stations had been on the air for only a few days during the preceding license term. Section 312(g) of the Act provides that if a broadcast station fails to transmit broadcast signals for any consecutive 12-month period, the license for that station expires at the conclusion of that period. The Bureau noted that some licensees of silent stations have adopted the practice of resuming operation for a short period of time, sometimes for as little as a day, before the one-year limit of Section 312(g) applies to their stations. The Bureau observed that Cochise followed this pattern. Of the 22 Cochise stations, 12 had been on the air less than a cumulative total of 30 days each during the previous license terms. Only two stations had been silent for less than a year of the license term. Most of them had been off the air intermittently for more than three or four years during the license term. The previous license terms for most of these stations had been only four or five years rather than the standard eight years.

The Bureau found that with respect to most of the Cochise stations, it could not make an affirmative determination under Section 309(k)(1) of the Act. It cited a 2001 ruling in which the Commission had declared that "a licensee will face a very heavy burden in demonstrating that it has served the public interest where it has remained silent for most or all of the prior license term." Simply stated, a silent station is not providing a public service to its community. The Bureau concluded that the record of service to the public by the Cochise stations was too "sporadic and irregular" to support a finding that they served the public interest in the last license term. Rather than spending time and resources on evidentiary hearings, the Bureau and Cochise

agreed to settle the matter with consent decrees.

Under the terms of the *Decrees*, Cochise agrees to donate 10 of its stations to nonprofit entities. Such stations that are presently licensed as commercial stations are to be converted to noncommercial status. The stations to be donated are: KXMK, Oatman, Arizona; KWYX, Casper, Wyoming; KTWY, Shoshoni, Wyoming; KWWY, Shoshoni, Wyoming; KZLM, Lewiston, Montana; KFMR, Ballard, Utah; KZNM, Milan, New Mexico; KHSK, Allen, Nebraska; KDNM, Reserve, New Mexico; and KSFQ, Thatcher, Arizona. Applications for Commission consent to assign these stations to the donees must be on file within 120 days of the effective date of the *Consent Decree*, which was May 26 (except that the deadline for an application for KXMK is 180 days from May 26). The pending license renewal application for each station will be granted upon consummation of the donation transaction. Each donee must agree to hold

and operate the station for at least four years. The broadcast equipment in use at each station is to be donated with the license. Cochise will not be permitted to claim the value of any of these donations as a tax deduction. The Bureau may cancel the license for any station for which an assignment application has not been filed by the deadline.

As for the stations that Cochise will keep, upon operating each station for an immediate 30-day period with no silent breaks, the Commission will grant the pending license renewal application for a very short one-year term. During the one-year term, each station must comply with the required minimum operating schedule. If it fails to do so for 10 days

cumulatively during the one-year term, Cochise must submit the license for cancellation unless the down time was due to causes beyond the licensee's control.

There are different terms for, KUTQ, La Verkin, Utah, for which an assignment application has been pending since 2015. Cochise must operate the station error-free during the time-frame for divesting the 10 stations listed above with the 120-day deadline for filing an assignment application. If there are no further silent periods (other than those beyond the licensee's control), the Bureau commits to acting on the license renewal and assignment applications for KUTQ within 30 days of completion of Cochise's divestiture obligations. The license will be renewed for a two-year short-term, and the assignment application granted. The assignment transaction must be consummated within 10 days of finality of the action granting the assignment application.

*...a silent station
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STA Mistakes Result in License Expiration

The FCC's Media Bureau has dismissed the 2012 license renewal application for KAWK(FM), Custer, South Dakota, finding that the station had not operated with a bona fide authorization for longer than 12 consecutive months and that the station's license had therefore expired pursuant to Section 312(g) of the Communications Act.

Problems began for KAWK with the loss of its transmitter site in April 2002. Since that time, the station has bobbed between intermittent periods of silence and broadcasting with temporary facilities. On May 28, 2002, KAWK requested a Special Temporary Authority ("STA") to remain silent because of the loss of its transmitter site. The Commission granted that request. On January 9, 2003, KAWK applied for an extension of the silent STA, explaining that it was "finalizing plans to obtain approval to propose a new site." That request was also granted.

On March 6, 2003, KAWK requested an engineering STA to operate from a temporary site other than that authorized in its license. This application also included a statement that the station was seeking a new permanent transmitter site. However, KAWK has never filed an application for a construction permit proposing such a new permanent site. The requested engineering STA was granted and the station continued to operate at that temporary site until October 21, 2008.

Beginning on that date and continuing for several years, the station requested STAs to be silent and filed notices of resumption of operations nine times. The form for the resumption notice requires the station to identify the facilities with which it is resuming broadcasting – i.e., those authorized in a license, or a construction permit, or whatever else is the case. In the resumption notice filed on September 4, 2009, KAWK reported that the station had resumed operating on August 16, 2009, "pursuant to the specifications of its license," without reference to the loss of the licensed transmitter site that it had reported to the Commission in March 2003.

Noting this confusion, the Bureau sent the station a Letter of Inquiry while processing the license renewal application. In its response, KAWK said that it had been operating from the same temporary site since March 2003, and that authority to broadcast from that site had been extended on multiple occasions. It said that every resumption notice filed since August 2009 relied on a "previously authorized temporary site," and that the reference to a "licensed site" in a resumption notice was mistaken and an "oversight." KAWK further explained that it had believed that in a resumption notice it was entitled to rely on a site that had been authorized in a prior STA despite

the silent period that followed the use of that site. In each resumption notice it was merely identifying the facilities authorized in the earlier engineering STA as those in place for the resumed operation. Furthermore, KAWK reported that this temporary site received a certificate of compliance from the South Dakota Broadcasters Association Alternative Inspection Program on September 1, 2016.

Under Section 312(g) of the Communications Act, a broadcast station's license expires if the station does not transmit broadcast signals for 12 consecutive months. In the *Letter Decision* dismissing the KAWK renewal application, the Bureau stated that "Well-established Commission precedent dictates that licensees cannot avoid the statutory deadline set forth in Section 312(g) through the use of unauthorized facilities." A station is subject to Section 312(g) license expiration if (a) it fails to operate for 12 consecutive months or longer; (b) it operates with unauthorized facilities for 12 consecutive months or longer; or (c) a combination of the two situations lasts for 12 consecutive months or longer.

The Bureau explained that when an engineering STA expires, the authorization for those facilities expires. If the station wishes to continue to use those facilities on a temporary basis, an extension of the STA must be filed before it expires. If the STA expires and/or the station goes silent, the station must file a new STA request, specifying those facilities. A resumption notice merely stating that the station has returned to the air with the facilities authorized in a previous STA does not constitute a request to have those facilities authorized. Consequently, such broadcasting is considered a transmission from unauthorized facilities, and cannot be recognized as legitimate on-air time for purposes of calculating the 12-month period under Section 312(g).

On the basis of Commission records and KAWK's own admissions, the station was either silent or operating with unauthorized facilities from October 21, 2008 through April 26, 2012. The Bureau concluded that the license had therefore long since expired as a matter of law, and dismissed the 2012 renewal application as moot.

The Bureau acknowledged that Section 312(g) does give the FCC discretion to reinstate an expired license to "promote equity and fairness." The Bureau said that the agency has exercised this discretion only in cases where the failure to broadcast for 12 consecutive months was due to "compelling reasons beyond the licensee's control," and has declined to do so in cases where, as in this one, the licensee's failure to operate was due to its own actions, finances or business judgments.