

## Broadcaster Calls for All-Digital AM Radio

Texas radio group owner Bryan Broadcasting Corporation has filed a Petition for Rulemaking with the FCC asking the agency to initiate a proceeding to authorize the MA3 all-digital mode of HD radio for any AM station that chooses to implement it. Bryan describes itself as the licensee of four AM stations, five FM stations, and six FM translators, and a firsthand observer of the decline of audience share for AM radio.

The petitioner observes that there is now so much interference and impulse noise that listening to AM radio has become unacceptable to contemporary audiences. Common household items such as smart phone chargers, compact

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## License Revoked for Delinquent Regulatory Fees

The FCC's Media Bureau has revoked the license of FM station WJDF, Orange, Massachusetts, for failure to pay past-due regulatory fees. The *Revocation Order* (DA 19-255) indicates that the station's licensee had not paid its regulatory fees for the fiscal years 2014 through 2018, totaling, with penalties, interest, and collection costs, \$9,641.73.

On November 30, 2018, the Bureau had sent the station an *Order to Pay or Show Cause* (DA 18-1218), ordering the licensee to pay all of the fees within 60 days or to show cause why the fees were inapplicable or should be waived or deferred, and warning that the failure to respond could result in the revocation of the station's license. The Commission received no response.

Section 9 of the Communications Act requires the FCC to collect regulatory fees from the entities that it regulates to cover the cost of operating the agency. The law also authorizes monetary penalties for late payment and the revocation of authorizations for which payment is not received. Although this action was not taken until after the licensee failed to pay regulatory fees for a number of years, the Bureau cautioned that the failure to pay any single regulatory fee or related penalties and interest, or any portion thereof, could result in license

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## C-Band Earth Station Certifications Due May 28

The 3.7-4.2 GHz band, commonly called the C-Band, is presently used for transmitting signals between satellites and satellite earth stations in the fixed-satellite service ("FSS"). In support of the FCC's ongoing study about whether to repurpose for other services some or all of the spectrum in this band, the agency is collecting data about current usage of these frequencies. The Commission ordered satellite and earth station owners to provide certifications about their operations in an *Order and Notice of Proposed Rulemaking* (FCC 18-91) in Docket 18-122, released in July of last year. However, this information collection requirement was not approved by the Office of Management and Budget until January and only became effective on January 28. The Commission's International Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology have now jointly issued a Public Notice (DA 19-278), setting May 28 as the deadline for updating and certifying the accuracy of the earth station data on file in the Commission's records.

Operators of FSS earth stations in the C-Band that are

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# First Amendment Protects Sports Commentators

An NCAA basketball referee's lawsuit against a sports radio network, Kentucky Sports Radio, LLC ("KSR"), and its on-air talent, Matt Jones and Drew Franklin, alleging intentional infliction of emotional distress, invasion of privacy, tortious interference with a business relationship, negligence, harassment, engaging in harassing communications, and civil conspiracy has been dismissed by a federal judge. The broadcast and Internet content that gave rise to these claims involved intense criticism about the plaintiff's performance in refereeing a college basketball game. The defendants moved to dismiss on First Amendment freedom-of-speech grounds. In the U.S. District Court for the Eastern District of Kentucky, the judge ruled that under the circumstances of this case, this content was protected under the First Amendment and was not subject to tort liability. He dismissed the case with prejudice.

This suit arose from incidents during a game at the Elite Eight stage of the 2017 NCAA men's basketball tournament. A well-known NCAA referee and the plaintiff in this case, John Higgins, was a member of the three-person crew officiating the game between the University of Kentucky and the University of North Carolina. North Carolina won.

Not surprisingly, the game was a hot topic of discussion on KSR's network. KSR produces and distributes radio programming devoted primarily to the coverage of University of Kentucky basketball and football. KSR's programming is carried on more than 40 radio stations throughout Kentucky. KSR also maintains a website featuring commentary and blogs. Matt Jones is an owner of the company, a radio program host, and he manages a blog on the KSR website. Drew Franklin is a frequent contributor on KSR programs and the KSR website.

During the days following the game, KSR, Jones and Franklin relentlessly discussed in disparaging terms the officiating of the game, including their perception that Higgins was at least partially responsible for Kentucky's loss. Jones and Franklin also both wrote highly critical articles about Higgins's refereeing that appeared on the KSR website. Kentucky fans in the audience responded to these messages with their own hostile criticisms of Higgins in tweets, emails and uploads to the blog.

Aside from being an NCAA referee, Higgins is the president and co-owner of a company called Weatherguard, a roofing, siding and gutter contractor in the Omaha, Nebraska, area. The next day after the game, an unknown individual uploaded a video to the video sharing platform, vimeo.com. The video showed scenes from the game overlaid with commentary from UK Sports Radio announcers criticizing the officiating. The video ended with a photo of Higgins standing next to a Weatherguard truck. Also on the screen were Weatherguard's telephone number, Weatherguard's website URL, Higgins's home telephone number, and a message encouraging viewers to write a review of Higgins on the Weatherguard Facebook page.

In their ongoing commentaries critical of Higgins's officiating, Jones and Franklin frequently referred to and/or

read emails from listeners who were also critical of Higgins. In one of his website articles, Franklin included a link to the anonymous video that had been posted on vimeo.com. They discussed the Weatherguard website and read negative reviews about the company that had been posted there by angry Kentucky fans. Some of the Facebook posts reproduced in Franklin's article on the KSR website contained material that the judge described as foul commentary and direct attacks. In another article promoting Jones's show, Franklin wrote, "It's a busy day on KSR as Matt and Ryan . . . continue the hatred for John Higgins. . . . Join the fun by calling . . ."

Weatherguard received some 700 false negative reviews on its Facebook page, nearly all of them from Kentucky fans. Likewise, there was a flood of bogus negative reviews on Yelp. This resulted in the decline of Weatherguard's Google star business rating from 4.8 (out of 5) to 1.2 in two days' time. A number of individuals filed false reports against Weatherguard with the Better Business Bureau, some of them easily identified by the names that were used, such as those of former Kentucky basketball coaches. The company's phone lines were flooded with some 3,000 calls on the days following the game. Most of them were complaints from Kentucky. Weatherguard had difficulty functioning to serve the demands of legitimate business customers because of this disruption to its telephone system. Higgins and his family received abusive and offensive phone calls at their home, including death threats. In response to that, police added special surveillance patrols around the Higgins residence. For their safety, Weatherguard employees were told to not come to work for several days.

Jones and Franklin reported on these activities, often reading the Facebook postings and tweets on the air, and otherwise kept their audience aware of the hostility being focused at Higgins. Jones read emails on the air from listeners who said they were going to post poor reviews about Weatherguard online, and then proceeded to announce the name of Weatherguard's webpage, Rooferees. However, he did end the segment by concluding, "Now I still don't think you should troll the guy but now I have less sympathy if his [company's] name is Rooferees." Jones claimed that he at other times tried to discourage listeners from contacting Higgins and his business. Franklin wrote in his blog, "We here at Kentucky-Sports-Radio-dot-com do not condone the activity from Big Blue Nation on John Higgins'[sic] roofing company's Facebook page. But like Big Blue Nation, we are still upset over some of Higgins'[sic] calls in the UK-UNC game, so we can and we will read the activity on the Facebook page."

The judge determined, and by their arguments, the parties acknowledged, that the First Amendment offers special protection for speech involving matters of public concern. He cited precedent for the principle that debate on public issues in a public forum should be uninhibited, robust and wide-open. Therefore, such speech should not be chilled by the prospect of tort liability. The issue to be decided then was whether coverage of an NCAA basketball tournament game was a matter of public concern. Higgins argued that a college

# Repack Reimbursement in Place for LPTV and FM Stations

As forecast, at its March meeting, the FCC adopted a *Report and Order* (“R&O”) (FCC 19-21) in Docket 18-214 that establishes procedures for the reimbursement of low power television and television translator stations (collectively, “LPTV”) and FM stations for expenses incurred due to the repack of the broadcast television band after the incentive spectrum auction. Although the rules and the process have been created, the Commission’s Media Bureau has not yet released the forms that stations seeking funds will need to complete and submit.

To be eligible for reimbursement, an LPTV station must have been licensed (or had a license application pending) and transmitting as of April 13, 2017 – the date on which the Commission released the post-auction channel assignments for full power and Class A stations. To qualify as “transmitting,” a station must have been operating not less than two hours on each day of the week, and not less than a total of 28 hours per calendar week for nine of the 12 months just prior to April 13, 2017. The LPTV station must also have filed an application in the Special Displacement Window opened from April 10, 2018, to June 1, 2018. LPTV stations in the so-called Phase 0 that were required to vacate their channels early due to early broadband build-out and filed their displacement applications before the Window will also qualify. A station must have a granted application to receive reimbursement. The Commission will not waste funds on costs incurred for an application that does not result in a construction permit. If the Window application was not granted because it was mutually exclusive with another application or because the station was displaced again, the grant of a successor application could qualify for reimbursement.

Full power and Class A stations are generally eligible to receive reimbursement that is reasonable to provide facilities “comparable” to those that were in place prior to the auction. This “comparable” standard will not necessarily be applied to LPTV stations. LPTV stations may need to relocate some distance from the original transmitter site, and therefore may need more power and/or height to reach their original service areas. This may require the purchase of equipment that is not “comparable” to the original equipment. Nonetheless, only the “reasonably incurred” costs for the LPTV station’s new facilities are reimbursable. This might not include the cost of upgraded equipment. Stations are encouraged to reuse existing equipment and take other measures to mitigate costs.

The Commission clarified some specific issues that may arise. The agency says that the cost of a full service mask filter would be reimbursable if it was specified in the Special Displacement Window application. On the other hand, requests for funds to buy new or replacement microwave studio-to-transmitter links will be evaluated on a case-by-case basis. Likewise, claims for funds for interim facilities will be judged on a case-by-case basis. Consulting fees (such

as for engineers and lawyers) will be reimbursable in the same manner as equipment costs. The Commission will not reimburse a station for lost revenues, nor for the cost of resolving conflicts between mutually exclusive applications. The FCC will not reimburse a station for expenses for which it has already received reimbursement from another source – including T-Mobile’s Supplemental Reimbursement Program or its translator reimbursement grant program administered through PBS.

Reimbursement is also available to FM stations that experience disruptions to their operations because they are collocated with or located nearby one or more television stations whose facilities are modified in the repack. Full power FM stations, FM translators, and low power FM stations will be eligible for reimbursement. The station must have been licensed and transmitting from facilities on April 13, 2017, that were impacted by the auction and/or the repack.

Disruptions to FM stations caused by the television repack will not require any channel changes. All such disruptions will result from physical changes to television facilities that operate with or near the FM station. The Commission will divide affected FM stations into three categories: (1) stations forced to relocate their antenna sites permanently; (2) stations forced to temporarily dismantle equipment or make other changes not requiring FCC approval; and (3) stations forced to temporarily reduce power or cease transmission on their primary facility to accommodate antenna or tower modifications.

Category (1) and (2) stations need not necessarily construct comparable facilities in order to be reimbursed, but they should replicate as closely as feasible the signal contours that they are replacing. To be reimbursed, the Commission will require them to use existing equipment if possible, but new equipment may be purchased where needed.

The Commission will reimburse Category (3) FM stations for the cost of auxiliary facilities needed to replace regular service subject to disruptions that are more than de minimis or more severe than those that it defines as “reasonable.” Time off the air for less than 24 hours, or any amount of time off the air between midnight and 5:00 a.m. will be considered de minimis. A reduction in power during which a station could still cover at least 80 percent of the area and population covered by its full authorized facilities will be deemed a reasonable disruption, and therefore will not be subject to reimbursement. The Commission declined to adopt the proposal in the *Notice of Proposed Rulemaking* in this proceeding for a graduated scale for prioritizing Category (3) stations for reimbursement according to the length of time of the disruption.

All three categories of FM stations will have the same eligibility status. If there are sufficient funds available, the Commission will reimburse 100 percent of the reasonable



# DEADLINES TO WATCH



## License Renewal, FCC Reports & Public Inspection Files

April 1, 2019	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 <b>Delaware, Indiana, Kentucky, Pennsylvania, Tennessee and Texas.</b>	April 10, 2019	Deadline for noncommercial stations to file quarterly report re third-party fundraising.
April 1, 2019	Deadline to file EEO Broadcast Mid-term Report for all television stations in employment units with five or more full-time employees in <b>Delaware and Pennsylvania.</b>	May 1 & 16, 2019	Radio stations in the <b>District of Columbia, Maryland, Virginia and West Virginia</b> broadcast pre-filing announcements regarding license renewal applications.
April 1, 2019	Deadline for all broadcast licensees and permittees of stations in <b>Delaware, Indiana, Kentucky, Pennsylvania, Tennessee and Texas</b> 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).	June 1, 2019	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 <b>Arizona, District of Columbia, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, West Virginia, and Wyoming.</b>
April 1 & 16, 2019	Radio stations in the <b>District of Columbia, Maryland, Virginia and West Virginia</b> broadcast pre-filing announcements regarding license renewal applications.	June 1 & 16, 2019	Radio stations in the <b>District of Columbia, Maryland, Virginia and West Virginia</b> broadcast post-filing announcements regarding license renewal applications.
April 10, 2019	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.	June 1 & 16, 2019	Radio stations in <b>North Carolina and South Carolina</b> broadcast pre-filing announcements regarding license renewal applications.
April 10, 2019	Deadline to file quarterly Children's Television Programming Reports for all commercial full power and Class A television stations.	June 3, 2019	Deadline to file license renewal applications for radio stations in <b>District of Columbia, Maryland, Virginia and West Virginia.</b>
April 10, 2019	Deadline to file quarterly Transition Progress Reports for television stations subject to modifications in the repack (waived for stations in Phase 3).	June 3, 2019	Deadline for all broadcast licensees and permittees of stations in <b>Arizona, District of Columbia, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, West Virginia, and Wyoming</b> 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).

## Cut-Off Date for Applications to Change Community of License

The FCC has accepted for filing the 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 **April 16, 2019**. Informal objections may be filed anytime prior to grant of the application.

PRESENT COMMUNITY	PROPOSED COMMUNITY	STATION	CHANNEL	FREQUENCY
Brunswick, GA	Yulee, FL	WSOL-FM	268	101.5
Neoga, IL	Mattoon, IL	WMCI	267	101.3
Warroad, MN	Wannaska, MN	KOLJ-FM	216	91.1
Hico, TX	Meridian, TX	KITT	293	106.5
Meridian, TX	Tolar, TX	KOME-FM	238	95.5
Montasano, WA	Belfair, WA	KLSY	229	93.7
Raymond, WA	Union, WA	KJET	289	105.7



# 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
Auction application, Form 175	April 29
TV white space broadcast bands, Sections 15.713, 15.714, 15.715, 15.717	April 30
Emergency Alert System	May 6
Satellite rules, Part 25, Forms 312, 312-EZ, 312-R	May 24
Station identification, Sections 73.1201, 74.783, 74.1283	May 28

### Deadlines for Comments in FCC and Other Proceedings

DOCKET	COMMENTS	REPLY COMMENTS
(All proceedings are before the FCC unless otherwise noted.)		
Docket 06-160; 2nd NPRM Processing applications in the Direct Broadcast Satellite Service		April 22
Docket 19-61; Public Notice Procedures for Auction No. 104 for LPTV construction permits		April 29
Docket 18-349; NPRM 2018 Quadrennial Review of broadcast ownership rules	April 29	May 29
Docket 11-43; Public Notice Video description marketplace		May 1
Docket 19-98; Public Notice Applications to transfer control of NBI Holdings, LLC, and Cox Enterprises, Inc. to Terrier Media Buyer, Inc.	May 10 (Petitions to Deny)	May 28 (Oppositions)
RM-11836; Petition for Rulemaking Proposal to allow MA3 all-digital mode of HD radio for AM stations	May 13	May 28
Docket 19-3; NPRM Comparative standards for applicants for noncommercial stations	May 20	June 18
Department of Labor, Wage & Hour Division RIN 1235-AA20 Defining exemptions for executive, professional and outside sales employees	May 21	N/A

### 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.

COMMUNITY	CHANNEL	MHZ	COMMENTS	REPLY COMMENTS
Caliente, NV	264A	100.7	April 29	May 14

### Cut-Off Date for Application to Deliver Programs to a Foreign Station

The FCC has accepted for filing the following application for a permit to deliver programming to a foreign broadcast station. The deadline for comments about and petitions to deny this application is indicated.

APPLICANT	FOREIGN STATION(S)	FILING DEADLINE
Broadcast Company of the Americas, LLC	XEPRS-AM (1090 kHz) Rosarito Baja California, Mexico	May 6

**FREEZE LIFTED ON FILING LPTV  
DISPLACEMENT & DIGITAL  
COMPANION CHANNEL APPLICATIONS  
EFFECTIVE APRIL 18, 2019**

**DEADLINE TO SUBMIT CERTIFICATIONS  
REGARDING USE OF C-BAND  
SATELLITE EARTH STATIONS  
MAY 28, 2019**

# Adjustment Proposed for ‘White Collar’ Overtime Exemptions

The Wage and Hour Division of the Department of Labor (“DOL”) has issued a *Notice of Proposed Rulemaking* (84FR10900) to consider adjustments to the rules governing exemptions from minimum wage and overtime pay rules for executive, administrative, professional, outside sales and computer employees – the so-called “white collar” exemptions.

Rules established under the Fair Labor Standards Act set requirements for minimum wages and overtime pay for employees who work more than 40 hours per week. To be exempt from the overtime pay requirements, employees must generally be paid on a salary basis at or above a specified minimum weekly salary level and meet certain requirements related to their primary job duties.

The current threshold for an employee’s weekly salary to qualify as exempt was set in 2004 at \$455. In a 2016 rulemaking,

the weekly threshold was raised to \$913. However, that order was invalidated by a judicial ruling. The DOL now proposes to set the threshold at \$679 per week. This would create a substantial increase in the number of employees subject to the minimum wage and overtime rules.

The formula used to determine the appropriate threshold salary level in this proposal is essentially the same that was used to set the 2004 figure. The proposed threshold is approximately the 20th percentile of earnings for full-time salaried workers in the lowest-wage census region in the United States (in this case, the South) and/or in the retail sector. The DOL proposes to establish a routine for future adjustments to the threshold every four years using this formula.

The DOL invites comments on these proposals. The filing deadline is May 21 in Docket RIN 1235-AA20.

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## LPTV Filing Freezes Lifted April 18

The FCC’s Media Bureau has issued a Public Notice (DA 19-193) to announce the lifting of freezes on the filing of certain types of applications for low power television and television translator stations (“LPTV”). Freezes were imposed to ensure the availability of channels for applicants in the special LPTV displacement filing window which had been displaced as a result of the television spectrum incentive auction process. The special displacement window was completed on June 1, 2018, and the post-window settlement

period ended on January 10, 2019. In view of the completion of these proceedings, the Bureau has determined that it is appropriate now to receive applications on a first-come, first-serve basis effective on April 18.

As of April 18, LPTV licensees and permittees may file minor change displacement applications and applications for digital companion channels. The freeze remains in effect for the filing of applications for new digital LPTV stations and for major changes to such stations.

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## Bidding in LPTV Auction 104 To Begin on September 10

The FCC’s Incentive Auction Task Force and Media Bureau have set September 10 as the date to begin competitive bidding in Auction 104 to resolve the last conflicts among applicants who filed mutually exclusive applications in the special LPTV displacement filing window. That filing window was open to low power television and television translator stations that were displaced because of events resulting from the incentive auction. After the conclusion of the filing window, the Commission conducted a settlement window during which mutually exclusive applicants could arrange to resolve their conflicts through various types of

settlements. The applications subject to this auction belong to the remaining applicants whose conflicts are still unresolved. There are 19 such applications in six mutually exclusive groups.

In a Public Notice (DA 19-229), the Task Force and the Bureau have proposed procedures to govern this auction. They propose an online simultaneous multiple-round auction design, similar to that adopted in most other recent auctions involving broadcast construction permits. Comments on the proposed auction design and procedures were due April 15. The deadline for reply comments in Docket 19-61 is April 29.

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## ENT Forum Set for May 10

The FCC’s Consumer and Governmental Affairs Bureau will host a public forum regarding the use of enhanced Electronic Newsroom Technique (“ENT”) procedures for live captioning of local television news programming. This event, open to the public, will take place on May 10, 2019, from 1:00

p.m. to 4:45 p.m. Eastern Time, in the Commission Meeting Room at the agency’s headquarters at 445 12th Street, SW, Washington, D.C. This meeting will be webcast with open captioning at [www.fcc.gov/live](http://www.fcc.gov/live).

## C-Band Earth Station Certifications Due May 28 continued from page 1

licensed or registered in the FCC's International Bureau Filing System ("IBFS"), including temporary-fixed or transportable earth stations (such as a station on a satellite news-gathering truck) must certify the accuracy of all information reflected in their licenses or registrations in IBFS. The certification must include the applicant's or registrant's name, the call sign(s), file number(s), along with the following signed statement:

The undersigned, individually and for the applicant, licensee or registrant, hereby certifies that all information reflected in his or her licenses or registrations in IBFS, including any attached exhibits, are true, complete and correct to the best of his or her knowledge and belief, and have been made in good faith.

The Commission conducted a filing window from April 19, 2018, to October 31, 2018, for the owners of earth stations to request new or modified licenses or registrations. Except for the need to update their filings in cases where changes have occurred since the earlier submission, earth station owners who filed during that filing window are exempt from this current certification mandate.

Operators of temporary-fixed or transportable FSS C-Band earth stations that are licensed or authorized in IBFS must also provide the following additional information, regardless of when they were licensed or registered:

- Earth station call sign (or IBFS file number if registration is pending);
- Address where the equipment is typically stored;
- The area within which the equipment is typically used;
- Frequency (as in "how often" rather than spectrum) and duration of use;
- Number of transponders typically used in the 3.7-4.2 GHz band, and extent of use on both uplink and downlink; and
- Licensee/registrant and contact information.

All required information is to be submitted electronically online in IBFS, at <https://licensing.fcc.gov/myibfs> using the "Pleadings and Comments" link. Fixed, temporary fixed, and transportable earth station owners must file certifications as a pleading type "C-Band certification" for each call sign. Temporary fixed and transportable earth station owners must file the additional data requested above using the pleading type "Other" for each call sign.

## First Amendment Protects Sports Commentators continued from page 2

basketball game was inconsequential and did not merit the status of a topic of public concern. However, even if it were, Higgins asserted that the defendants' speech was not limited to coverage of the game. It extended to Weatherguard's business, Higgins's personal life, and the commentary of third parties, which were not matters of public concern.

The judge found that speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest. Given the size of the social and economic footprint of the NCAA tournament, the judge easily decided that the game was a matter of public concern. He also determined that the discussion of third-party reactions to the game was a logical extension of coverage of that event.

The judge acknowledged that Higgins had suffered real harm. However, that harm resulted from the actions of third parties and not the defendants in this case. The defendants did not directly contact or interfere in Higgins's business or personal life. Although the third parties listening to KSR may have felt encouraged to publicly express their anger toward Higgins, assigning responsibility to the defendants for the

actions of these third parties would potentially quell open debate and commentary on public issues. In any event, the judge also referenced the defendants' efforts to discourage their listeners from causing trouble for Higgins.

Upon ruling in the defendants' favor in this case, the judge clarified what this opinion does not hold. (1) The opinion does not hold that the plaintiff does not have a claim for defamation against the defendants. Defamation was not pleaded in the complaint, and therefore the judge would not consider it in this decision. (2) This opinion does not hold all speech on matters of public concern is protected from tort liability. Each case is unique and requires a review of the content, form and context of the speech at issue. (3) The opinion does not prevent the plaintiff from suing the third parties. (4) This opinion does not indicate that the Court condones or approves of the defendants' actions. Whether the defendants acted badly based on general principles of common decency and journalistic ethics was not an appropriate consideration for the Court. Whether the defendants should have acted differently is a question best left to the court of public opinion.

The ruling is entitled *John M. Higgins, et al., v. Kentucky Sports Radio, LLC, et al.*, 2019 U.S. Dist. LEXIS 45535.

### TELEVISION REPACK

#### STATIONS ASSIGNED TO PHASE 3

TESTING PERIOD BEGINS: **APRIL 13, 2019**

COMPLETION DEADLINE: **JUNE 21, 2019**

#### STATIONS ASSIGNED TO PHASE 4

TESTING PERIOD BEGINS: **JUNE 22, 2019**

COMPLETION DEADLINE: **AUGUST 2, 2019**

## Broadcaster Calls for All-Digital AM Radio continued from page 1

fluorescent lamp bulbs, computer monitors and flat screen televisions contribute to the rising noise floor in the analog environment. Bryan characterizes this swelling noise floor as an “existential threat to AM radio.” Bryan asserts that the solution to this problem and the future of AM radio is the all-digital transmission system, capable of delivering a pristine audio signal free of interference and clutter.

The MA3 mode is defined in the in-band/on-channel Digital Radio Broadcasting Standard (NRSC-5-D) developed by the National Radio Systems Committee. It employs multiple digital subcarriers within the AM channel, replacing the usual analog modulation components. The broadcast in MA3 is entirely digital as compared to the presently authorized HD hybrid MA1 mode in which a station transmits both an analog and a digital signal. WWFD, Frederick, Maryland, has been operating since last summer

in the MA3 mode under the terms of an experimental authorization issued by the FCC. Bryan references positive trade press reports about the WWFD operation. It is said to produce a high-quality enjoyable signal that does not create interference to nearby analog AM stations.

Bryan acknowledges that not every AM station licensee will be eager to spend the resources necessary to implement MA3, especially not before substantial penetration of digital receivers in the consumer market. Accordingly, Bryan proposes that the FCC authorize AM stations to employ the MA3 mode on a voluntary basis.

The Commission has solicited public reaction to this proposal. The agency has not formulated its own notice of proposed rulemaking. Rather, it seeks input about Bryan’s Petition for Rulemaking. Comments are due to be submitted in RM-11836 by May 13. Reply comments will due by May 28.

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## License Revoked for Delinquent Regulatory Fees continued from page 1

revocation.

A few days after release of this *Revocation Order*, the Bureau launched similar proceedings against the licensees of KSBH(FM), Coughatta, Louisiana, and WJLI(FM), Metropolis, Illinois. Separate *Orders to Pay or Show Cause* were sent to KSBH (DA 19-266) and WJLI (DA 19-267), demanding that

the licensees pay overdue regulatory fees within 60 days or risk license revocation. According to these *Orders*, the licensee of KSBH owes a total of \$11,386.77 for six scattered fiscal years during the period from FY 2009 to FY 2017. The licensee of WJLI is charged for \$17,296.21 for five nonconsecutive fiscal years from FY 2007 to FY 2013.

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## Repack Reimbursement in Place for LPTV and FM Stations continued from page 3

expenses for all affected stations. As with television stations, the Commission will not reimburse stations for costs that have been funded from other sources.

The Commission adopted a reimbursement process for LPTV and FM stations similar to that in effect for full power and Class A television stations. Stations will be required to file eligibility certifications, estimates of expenses, and reports to document and claim expenses for reimbursement. The Commission directed the Media Bureau to release the forms and set filing deadlines. When the Media Bureau has completed its review of the forms, it will issue an initial allocation from the Reimbursement Fund to each eligible station. These funds will be available for the station to draw down. To date, the Media Bureau has not released these forms.

As with full-power and Class A television, reimbursements to LPTV and FM stations are subject to audits and the

possibility of on-site inspections. Recipients of reimbursement funds are required to retain documentation to support their reimbursement claims for 10 years after receipt of the last payment.

The Incentive Auction Task Force and the Media Bureau have released a Public Notice (DA 19-176) to announce adoption of the final catalog of potentially reimbursable costs for LPTV and FM stations. The catalog will be incorporated into the Reimbursement Form as a reference guide. It is a wide-ranging, but not necessarily exhaustive list of equipment and services that stations may need in the course of their repack-related modifications. The catalog is available to download from the FCC’s website at <https://www.fcc.gov/document/mb-and-iatf-release-lptvtv-translator-fm-station-cost-catalog>.

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