

Court Vacates Verification Requirement of Foreign Sponsorship ID Rule

The U.S. Court of Appeals for the D.C. Circuit has vacated the FCC's recently adopted foreign sponsorship ID rule that required broadcasters to research the identities of foreign program sponsors in an attempt to ensure the accuracy of the on-air identification of the sponsor. This regulation was adopted over concerns about broadcast content sponsored by foreign governments or entities under the control of foreign governments. Such programming is not prohibited, but the sponsor must be accurately identified.

The Commission's new rules expanded Section 317 of the Communications Act—the section requiring on-air identification of sponsors. Under those new rules as adopted, the Commission imposed on broadcasters enhanced investigatory and recordkeeping obligations, regardless of whether the licensee had any reason to believe

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FCC To Review Next Gen TV

The FCC has released a *Third Further Notice of Proposed Rulemaking* (FCC 22-47) to review the current state of implementation and usage of the ATSC 3.0 mode of television broadcasting, commonly called Next Gen TV. Comments in this proceeding will be due 30 days after publication in the Federal Register. Reply comments must be filed within 60 days of that publication.

When ATSC 3.0 was authorized in 2017, the rules required that any station choosing to put a 3.0 signal on the air also had to maintain an ATSC 1.0 signal with programming substantially similar to the 3.0 programming. To accomplish this, one station can modify its facilities to the ATSC 3.0 mode, and another station simulcasts the programming of both stations in ATSC 1.0. This "substantially similar" requirement is scheduled to sunset on July 17, 2023. Now a year away from the sunset date, the Commission has asked for public comment about whether

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New Reference Proposed for DMA Assignments

In a recently-adopted *Notice of Proposed Rulemaking* (FCC 22-55), the FCC proposes to rely on a different publication to determine a television station's designated market area ("DMA") for purposes of cable and satellite carriage rights. Comments and reply comments on the NPRM are due by August 29 and September 26, respectively.

The Communications Act and the FCC's Rules specify that the annual Nielsen Station Index Directory (the "Directory") (or a successor publication) is to be used for assigning television stations to DMAs. A station's DMA determines the market in which it is entitled to demand carriage on any cable television system or satellite carrier that carries other local stations in the same DMA.

The annual Directory has been replaced by the monthly Local TV Station Information Report (the "Report"). The Commission has tentatively concluded that it should

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Updates Proposed for Digital LPTV Rules

Updates are proposed by the FCC for the rules governing low power television and television translator stations (collectively “LPTV”) to reflect the end of the digital transition for LPTV. To that end, the Commission has adopted an *Order and Sixth Notice of Proposed Rulemaking* (FCC 22-58). In the *Order*, the Commission adopts minor ministerial amendments to LPTV rules that do not require notice and comment procedures to change language concerning or delete references to the digital transition. The *NPRM* proposes substantive amendments that would update the rules to reflect changes in technology and/or to make them consistent with current Commission practice. The most significant of these proposals are discussed below.

Sections 74.709(a) and (b) of the FCC’s Rules require LPTV stations to protect certain channels for use by stations in the Land Mobile Radio Service (“LMRS”) in 13 cities. The co-channel LPTV station’s transmitter site must be at least 130 kilometers from the coordinates of these cities. The coordinates for the cities are calculated using 1927 North American Datum (“NAD 27”). Since this rule was adopted, there have been improvements in technology and measuring capabilities, resulting in the 1983 North American Datum (“NAD 83”) standard. Many other FCC Rules rely on NAD 83 rather than NAD 27, including the separation and protection criteria for LMRS stations. The Commission proposes to specify that reference coordinates for the relevant communities are to be calculated using NAD 83.

Updates are proposed for the rules governing station identification announcements by LPTV stations in Section 74.783 of the Rules. This rule originally pertained to analog stations, and the Commission now proposes the obvious update to apply it to digital LPTV stations as well.

Section 73.783(a)(1) provides alternative methods for stations to identify themselves. The Commission proposes to include a new option for LPTV stations to the Program and System Information Protocol (“PSIP”) to transmit the station’s call sign as the “short channel name” on at least one program stream.

To use the PSIP short channel name, a station must request and be assigned a transport stream ID (“TSID”). If a station has been assigned a TSID, the Commission proposes to require it to broadcast with the assigned TSID at all times while in operation. This TSID requirement would be in addition to and not in place of one of the other station identification requirements. The Commission also proposes

the same requirement with respect to a station’s bit stream ID, which has the same function as the TSID, but in the ATSC 3.0 context.

As with full power TV stations, LPTV stations are permitted to operate with a virtual channel instead of the station’s actual RF channel. Current practice requires an LPTV station to select a virtual channel that avoids conflicts with the virtual channel of any other station with which there is a contour overlap. The Commission proposes to make this practice a requirement.

The protocol for assigning call signs to LPTV has been to add the two-digit channel number and a two-letter combination to the “W” or “K” that must begin the call sign. The supply of two-letter combinations has been exhausted, so the Commission proposes to amend the protocol to allow the LPTV call sign to conclude with a three-letter combination rather than two letters. These call signs will be assigned in alphabetical order of the three-letter endings, beginning with “AAA,” continuing sequentially through the third letter.

Sections 74.735(c) and 74.750(f) of the rules reference vertically polarized transmitting antennas for LPTV stations. Despite these references, the Commission’s LMS filing system does not allow stations to specify a vertical antenna. The Commission notes that consumers’ home receiving antennas are generally horizontally, not vertically, polarized. Therefore, the Commission proposes to modify the language in Sections 74.735(c) and 74.750(f) to remove the reference to vertical-only antennas. The Commission also proposes to clarify that the horizontal power must be higher than or equal to the vertical power in all directions, and require documentation that the antenna meets this requirement.

Section 74.751(b) permits an LPTV licensee to relocate facilities fewer than 500 feet without requesting prior authorization. However, the Commission staff’s standard processing practice requires a licensee to file a minor modification application whenever a station seeks to relocate its antenna. The Commission proposes to revise the rule to reflect current staff practice and to require LPTV licensees and permittees to file a modification application to request authorization for all station relocations.

The Commission solicits public input on these and other minor rule changes. The deadline for filing comments will be 30 days after publication in the Federal Register. Reply comments will be due 45 days after that publication.

Public File Rule Clarified for Class D FM Stations

The FCC's Media Bureau has issued an *Order* (DA 22-662) in Docket 22-240 to resolve confusion about the Online Public Inspection File ("Public File") obligations of Class D FM licensees, permittees, and applicants. All Class D FM stations are noncommercial stations with relatively low power. Such stations are exempt from the obligation to prepare quarterly Issues/Programs Lists for their Public Files. The Bureau issued this *Order* to correct and clarify this issue in Section 73.3527 of the Commission's Rules.

Section 73.3527 lists the Public File obligations of noncommercial broadcast stations. Subsection 73.3527(e)(8) requires stations to compile and place in the Public File a quarterly "list of programs that have provided the station's most significant treatment of community issues during the preceding three month period" – often called the Issues/Programs List.

In 1976, prior to the adoption of Section 73.3527 in its present form, the FCC had clarified that Class D FM stations are exempt from the requirement to maintain lists of programs addressing issues in the station's community. When Section 73.3527 was adopted, a Note was added to codify that Class D stations and stations broadcasting exclusively instructional programming were exempt from

the mandate regarding the Issues and Programs List. Since the 1980s, the Commission has adopted a number of orders amending its rules, but never abolished the exemption for Class D stations. Nonetheless, as the text of the rules has been revised and reformatted from time to time, the Note about this exemption has been inadvertently omitted more than once from the formal text of the rule in the Code of Federal Regulations.

During an interim in 2009 when the Note was missing from the text, the Media Bureau actually fined a station for failing to maintain an Issues/Programs List and rejected the station licensee's argument that Class D stations were exempt. The Bureau now admits that this ruling was an error and affirmatively disavows it.

To rectify this ongoing problem, the Commission has now moved the concept of the exemption that had been expressed in the Note into the text of the rule – in Subsection 73.3527(e)(8).

The Bureau determined that it could take this action without allowing for notice and comment because the substance of the rule is not being changed. Rather, a footnote is merely being moved into the text of the rule.

Stock Sales Create an Unauthorized Transfer of Control

The FCC's Media Bureau has entered into a *Consent Decree* (DA 22-635) with Radio Cleveland, Inc. ("RCI") to resolve an investigation into whether RCI committed an unauthorized transfer of control when two agreements for the sale of the corporation's stock were consummated prior to the FCC consenting to the transactions. RCI is the licensee of five commercial radio stations in Mississippi.

Section 310(d) of the Communications Act prohibits the transfer of control of an entity that holds a broadcast license or permit without the prior consent of the FCC. Likewise, Section 73.3540(a) of the FCC's Rules states that "[p]rior consent of the FCC must be obtained for a voluntary assignment or transfer of control."

On June 17, 2020, RCI filed an application for transfer control of WAID(FM). On September 9, 2020, RCI filed another transfer of control application for the four other stations. The applications request FCC consent to transfer 45 percent of RCI's stock from Clint Webster to Kevin Cox; and to transfer 10 percent of RCI stock from Greg Shurden to Kevin Cox. These transfers would result in Kevin Cox holding a 100 percent voting and ownership interest in RCI. The asset purchase agreements that were submitted to the FCC with these applications indicated that the stock transfers had already occurred on or before January 1, 2020. Upon inquiry by Commission staff, RCI's counsel confirmed the stock had

changed hands prior to filing the applications.

RCI admitted to completing the unauthorized transfer of control, and agreed to pay a civil penalty of \$6,000. In exchange for these concessions by RCI, the Media Bureau agreed to terminate the investigation and to grant the applications, pending payment of the penalty and upon the condition that no other issues arise that would preclude their grant.

The Bureau's finding that Webster, Shurden, and Cox engaged in an unauthorized transfer of control may be taken into account in the course of any future application, proceeding, or enforcement action involving any of them.

The Commission's *Forfeiture Policy Statement* sets \$8,000 as the base penalty amount for an unauthorized transfer of control. The FCC can take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Downward adjustments may be made based on: (1) minor violation; (2) good faith or voluntary disclosure; (3) history of overall compliance; and (4) inability to pay. Applying the above factors in this case, the Media Bureau found that a reduction from the \$8,000 base forfeiture amount for an unauthorized transfer control was appropriate because RCI did not have a history of prior offenses.



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

July 10	Deadline to place quarterly Issues / Programs List in Public Inspection File for all full power radio and televisions stations and Class A TV stations.	August 1	Deadline for all broadcast licensees and permittees of stations in California, Illinois, North Carolina, South Carolina, and Wisconsin to file annual report on any 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).
July 10	Deadline for noncommercial stations to place quarterly report regarding third-party fundraising in Public Inspection File.	August	Television stations in California begin broadcasting license renewal post-filing announcements within five business days of acceptance for filing of license renewal application and continuing for four weeks.
July 10	Deadline for Class A TV stations to place certification of continuing eligibility of Class A status in Public Inspection File.		
August 1	Deadline to file license renewal applications for television stations in California .		
August 1	Deadline to place EEO Public File Report in Public Inspection File and on station's website for all nonexempt radio and television stations in California, Illinois, North Carolina, South Carolina, and Wisconsin .		

Deadlines for Comments in FCC and Other Proceedings

DOCKET		COMMENTS	REPLY COMMENTS
(All proceedings are before the FCC unless otherwise noted.)			
Docket 22-137; NOI (FCC 22-29) Improving receiver performance		July 27	
Docket 22-203; Public Notice (DA 22-535) Competition in the Communications Marketplace		Aug. 1	
Dockets 14-165, 20-36; FNPRM (FCC 22-6) Unlicensed devices in the television band white spaces		Aug. 1	
Docket 03-185; 5th FNPRM (FCC 22-40) Operation of Franken FMs (FM6)		Aug. 1	
Docket 16-142; 3rd FNPRM (FCC 22-47) Next Gen Television	Aug. 8	Sep. 6	
Docket 10-213; Public Notice (DA 22-661) 21st Century Video Accessibility Biennial Report	Aug. 8	N/A	
Docket 22-209; Public Notice (DA 22-567) Petition for Rulemaking re New Content Vendor Diversity Report		Aug. 22	
Docket 22-239; NPRM (FCC 22-55) DMA Assignments for TV stations	Aug. 29	Sep. 26	
Docket 22-261; 6th NPRM (FCC 22-58) Digital LPTV	FR+30	FR+45	

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

**DEADLINE TO FILE CLAIM FOR 2021
DISTANT TV SIGNAL COPYRIGHT ROYALTIES**

AUGUST 1, 2022



DEADLINES TO WATCH



Paperwork Reduction Act Proceedings

The FCC is required by 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
Experimental authorizations, Section 73.1510	Aug. 5
FM translator and booster station time of operation, Section 74.1263	Aug. 5
Satellite network non-duplication protection, and satellite syndicated program exclusivity rules, Sections 76.122, 76.123, 76.124	Aug. 9
FM license application form, Form 2100, Schedule 301-FM	Aug. 12
AM pre-sunrise authorization, Section 73.99	Aug. 12

Lowest Unit Charge Schedule for 2022 Political Campaign Season

During the 45-day period prior to a primary election or party caucus and the 60-day period prior to the general election, commercial broadcast stations are prohibited from charging any legally qualified candidate for elective office (who does not waive his or her rights) more than the station's Lowest Unit Charge ("LUC") for that class of advertising when airing ads that promote the candidate's campaign for office. A lowest-unit-charge period is upcoming or already occurring in the following states.

STATE	ELECTION EVENT	DATE	LUC PERIOD
Arizona	State Primary	Aug. 2	June 18 – Aug. 2
Kansas	State Primary	Aug. 2	June 18 – Aug. 2
Michigan	State Primary	Aug. 2	June 18 – Aug. 2
Missouri	State Primary	Aug. 2	June 18 – Aug. 2
Washington	State Primary	Aug. 2	June 18 – Aug. 2
Tennessee	State Primary	Aug. 4	June 20 – Aug. 4
Connecticut	State Primary	Aug. 9	June 25 – Aug. 9
Minnesota	State Primary	Aug. 9	June 25 – Aug. 9
Vermont	State Primary	Aug. 9	June 25 – Aug. 9
Wisconsin	State Primary	Aug. 9	June 25 – Aug. 9
Hawaii	State Primary	Aug. 13	June 29 – Aug. 13
Alaska	State Primary	Aug. 16	July 2 – Aug. 16
Wyoming	State Primary	Aug. 16	July 2 – Aug. 16
Florida	State Primary	Aug. 23	July 9 – Aug. 23
Massachusetts	State Primary	Sep. 6	July 16 – Sep. 6
Delaware	State Primary	Sep. 13	July 30 – Sep. 13
New Hampshire	State Primary	Sep. 13	July 30 – Sep. 13
Rhode Island	State Primary	Sep. 13	July 30 – Sep. 13
United States	General Election	Nov. 8	Sep. 9 – Nov. 8

DEADLINE FOR LPTV, TV TRANSLATOR, AND FM STATIONS, AND MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTORS TO FILE CLAIMS FOR TV REPACK REIMBURSEMENT

SEPTEMBER 6, 2022

FCC To Review Next Gen TV

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the expiration date should be extended. The agency solicits comment about whether the rule has worked as intended or if it inhibits innovation and creativity in programming.

With the goal of ensuring that the public will continue to have access to broadcasters' primary programming, having a substantial portion of households out of range of an over-the-air ATSC 3.0 signal or without the capability to receive that signal could pose a problem if the substantially similar requirement sunsets and 3.0 stations turn off their 1.0 signals. The Commission's records indicate that there are 306 stations authorized to operate in ATSC 3.0 across 68 of the 210 television markets and just over 51 percent of all U.S. households are within range of an over-the-air ATSC 3.0 signal. Many of those households are not yet equipped to receive a 3.0 signal. The Commission wants to know if this data is accurate and asks stations to report on whether the simulcast transition model has been successful. The Commission also wants to know how many markets have ATSC 3.0 service from the four major commercial networks and PBS. The Commission asks to what extent the pandemic has delayed or complicated the rollout of ATSC 3.0 and seeks data on the availability of consumer equipment capable of receiving ATSC 3.0 transmissions, including low-cost set-top 3.0 to 1.0 converter devices.

From the outset, the FCC has required stations broadcasting in ATSC 3.0 to comply with the ATSC A/322 standard, which determines certain technical aspects of the 3.0 signal to ensure that it is compatible with equipment used by consumers and multichannel video programming distributors. The A/322 requirement is scheduled to sunset on March 6, 2023. The Commission invites comment about whether this expiration date should be extended. The Commission's goal is to balance the need to protect the compatibility of consumer equipment with the need for flexibility so as not to inhibit the development of new technologies.

Equipment needed for ATSC 3.0 transmissions is subject to patent licensing. The Commission solicits comment about how the marketplace is handling royalties for these patents, and whether licenses are being offered on reasonable and nondiscriminatory terms, a commitment made by the patent owners to the Advanced Television Systems Committee. The Commission previously found that it would be premature to impose regulations on ATSC 3.0 patent licensing in the absence of issues, and asks if there have been developments that would warrant a change in this policy.

New Reference Proposed for DMA Assignments

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now use the Report as the reference for DMA station assignments. The Commission requests public comment about this tentative conclusion, and about two aspects of the monthly Report.

Commenters are asked to weigh in on which monthly Report should be used to determine a station's DMA for the triennial carriage election cycle (the current determination is based on two-year-old data). The *NPRM* asks whether stations will benefit more from knowing their DMA assignments far in advance of a carriage election (as is currently done) or whether those assignments should be based on more recent data. The Commission therefore seeks comment on whether the rule should reference the October Local TV Report published two years prior to each triennial carriage election, or whether it should rely on a Local TV Report that is published nearer in time to each triennial carriage election.

The Commission also asks whether it matters that the

Report only includes Class A and low power TV stations that reach a de minimis average audience size threshold; such stations are not entitled to mandatory satellite carriage rights and their mandatory cable carriage depends on, among other things, distance to the cable headend but not the station's presence in any particular DMA. Thus, for purposes of the satellite and cable carriage rules, it appears to be unnecessary to know whether a Class A or low power station is in a given DMA. If such information is necessary for stations other than those already identified in the Report, Nielsen can generate for subscribers a report that includes all Class A and low power TV stations.

The Commission asks whether there are any other differences between the Directory and the Report that should be considered and whether there are other publications that could publicly provide the information needed to assign stations to DMAs.

Court Vacates Verification Requirement of Foreign Sponsorship ID Rule

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that a sponsor was a foreign governmental entity. The five-step process was as follows:

- (1) Tell the sponsor about the Section 317 disclosure requirement;
- (2) Ask the sponsor whether it is a foreign governmental entity or an agent of one;
- (3) Ask the sponsor whether anyone further back in the production or distribution chain is a foreign governmental entity or an agent of one;
- (4) Independently confirm the sponsor's status, at both the time of the airtime lease and at the time of any renewal, by checking the Department of Justice's Foreign Agents Registration Act website and the FCC's U.S.-based foreign media outlets reports; and
- (5) Document those inquiries and investigations.

Broadcast industry groups led by the National Association of Broadcasters petitioned the Court of Appeals to review the FCC's order. They argued that the obligation to investigate sponsors in government databases is too burdensome for broadcasters.

In its decision, the Court cited the language of Section 317 that specifies the due diligence that a broadcaster must conduct to identify sponsors:

The licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section.

The Court read the statute to mean that the broadcaster should inquire of its employees and of the sponsor directly about the identity of the sponsor but need not verify the information it receives. In short, the FCC could impose a duty of inquiry but not a duty of investigation.

The FCC argued that, even if Section 317 does not affirmatively authorize it to require searches of the federal sources, it can require the searches as part of its Section 317 general authority to "prescribe appropriate rules and regulations to carry out the provisions."

The Court countered that a generic grant of rulemaking authority to fill gaps does not allow the FCC to alter the specific choices Congress made. A general grant of authority cannot displace the clear, specific text of the Act.

The decision is *National Association of Broadcasters, et al., v. Federal Communications Commission*, No. 21-1171 (D.C. Cir. July 12, 2022).