

FCC Considers Geo-Targeting for FM Boosters

After reviewing and receiving public comment on a Petition for Rulemaking submitted to the FCC last spring by GeoBroadcast Solutions, LLC, the Commission has released a *Notice of Proposed Rulemaking* (FCC 20-166) in Docket 20-401 to consider amending its rules so as to allow FM booster stations to originate small amounts of program content targeted to the immediate area where the booster operates. Under the current rules, booster stations are restricted to repeating the program stream of a primary station. They operate on the same frequency as the primary station and within the primary station's service area. They are generally used to enhance the primary station's service in areas where reception of the primary station's signal is problematic, such as behind a terrain shield.

GeoBroadcast has developed technology that it asserts will allow a booster to broadcast different content within the primary station's protected contour without causing first-adjacent channel interference. GeoBroadcast says that the co-channel interference, or self-interference, would be "manageable" and not detrimental to listeners. The FCC seeks public input on all aspects of this proposal.

In addition to the rule that limits a booster to

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Pandemic Rejected as Grounds for Tolling Construction Permit

A request to toll the construction permit for a new AM radio station, KWIE, Culver City, California, that relied in part on the complications associated with the COVID-19 pandemic as grounds for the tolling, has been denied by the Audio Division of the FCC's Media Bureau. That denial has been affirmed in a *Letter Decision* (DA 20-1457) issued by the Audio Division Chief dismissing and denying the permittee's Petition for Reconsideration.

The FCC issues broadcast construction permits that authorize the construction of new stations or the modification of existing stations. Permits are good for three years. Generally, the permittee must complete the construction and

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Deadline for Carriage Complaints Clarified

The FCC has refined its rules concerning the resolution of carriage complaints between video programming providers and multichannel video programming distributors ("MVPDs"). In a *Report and Order* (FCC 20-162) in Docket 20-70, the Commission amended the provisions of Section 73.1302 of its regulations pertaining to the deadline for filing carriage complaints.

Section 73.1302(h) lists three events which would trigger the time limitations for filing a carriage complaint. The complaint must be submitted to the FCC within one year of the date on which any of the following events occurs:

- (1) the defendant MVPD enters into a contract with a video programming vendor that a party alleges to violate the program carriage rules;
- (2) the defendant MVPD makes a carriage offer that allegedly violates the program carriage rules, and such offer is unrelated to any existing contract between the complainant and the MVPD; or
- (3) a party has notified an MVPD that it intends to file a

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NAB Seeks Refinement of Next Gen Simulcast Rules

The National Association of Broadcasters (“NAB”) has filed a Petition with the FCC asking the Commission to issue a declaratory ruling and, if necessary, to initiate a rulemaking proceeding to clarify the legal status of television programming originated by one station and broadcast by another station pursuant to a simulcasting agreement as an element of the transition to ATSC 3.0 broadcasting. The FCC’s Media Bureau has released a *Public Notice* (DA 20-1394) inviting the public to comment on the Petition in Docket 16-142.

At the outset of the ATSC 3.0 transition, the FCC adopted Section 73.3801 of its Rules to govern the arrangements between two television stations to simulcast each other’s programming to facilitate the transition. To maintain continuity of service to the public, pairs of stations share each other’s transmission facilities. So, for example, Station A will convert from ATSC 1.0 to 3.0 and carry station B’s programming in ATSC 3.0. In turn, Station B will broadcast Station A’s programming in ATSC 1.0.

NAB says that Section 73.3801 lacks adequate clarity. It reports that stations that have entered or are contemplating entering into such simulcasting agreements are uncertain about whether the originating station or the host station bears the ultimate responsibility for the programming. NAB seeks a declaratory ruling from the FCC “to clarify that its existing rules permit a station transmitting in ATSC 3.0 to partner with one or more other stations that would host the first station’s simulcasted ATSC 1.0 multicast streams to preserve existing service to the market.” NAB further asks the FCC to “establish rules permitting a station transmitting in ATSC 3.0 to partner with one or more other stations that

would host the first station’s ATSC 1.0 multicast streams, regardless of whether those ATSC 1.0 multicast streams are simulcast in ATSC 3.0, and also permit a station transmitting in ATSC 1.0 to partner with one or more other stations to host content transmitted in ATSC 3.0.”

NAB acknowledges that the contractual arrangements between such partnering stations typically will provide that each party is legally responsible for the program stream that it originates. NAB wants the FCC to confirm that this principle holds true for regulatory purposes. It suggests that the Commission would simply be making clear that the originator of a particular multicast stream, and not the host, would be the sole party responsible for ensuring compliance with statutory and regulatory requirements regarding hosted multicast streams. This would include, but not be limited to, the FCC’s rules regarding political broadcasting, children’s programming, equal employment opportunities, the Public Inspection File, indecency, sponsorship identification, station identification, contests, the CALM Act, and the Emergency Alert system.

NAB also asks the FCC to confirm that ATSC 3.0 simulcasting arrangements do not implicate the multiple ownership or cross-ownership rules, nor do they create or diminish a station’s carriage rights on cable and satellite systems.

The Petition is available on the FCC’s website here: <https://ecfsapi.fcc.gov/file/1109643512438/ATSC%203.0%20Multicast%20Petition.pdf>. Comments from the public are due to be filed by December 24. The deadline for reply comments is January 25.

TV Station Admonished for Half-Second Lapse

The Chief of the Video Division of the FCC’s Media Bureau has issued an *Admonishment Letter* (DA 20-1449) to television station WVVA, Bluefield, West Virginia, for broadcasting a commercial website address during the closing credits of a children’s television program in violation of Section 73.670(b) of the FCC’s Rules.

The license renewal application for commercial television stations includes a question about whether the station has complied with the FCC’s rules about children’s television programming limitations. In response to that item on its license renewal application filed on June 1, 2020, WVVA disclosed that on October 12, 2013, the station aired the URL address for the website “www.lazytown.com” which appeared during the closing credits of the children’s program “Lazy Town.” The program came to the station as part of the NBC Kids Saturday Morning E/I Block. The inclusion of the website address in the broadcast was described as “inadvertently included” and “fleeting.” It was estimated to appear on the screen for merely one half of a second.

In the Children’s Television Act of 1990, Congress directed the FCC to adopt rules limiting the amount of

commercial matter that a station may air during children’s programming. The FCC is to consider the degree to which stations comply with these rules in its review of license renewal applications. In addition to limiting the amount of explicitly commercial advertising permitted in children’s programming, the FCC has also adopted restrictions on the appearance of website addresses in children’s programming directed at children ages 12 and under. Section 73.607(b) of the FCC’s Rules permits the display of website addresses during children’s program material or during promotional material only if it meets the following four-prong test:

- (1) the website offers a substantial amount of bona fide program-related or other noncommercial content;
- (2) the website is not primarily intended for commercial purposes, including either e-commerce or advertising;
- (3) the website’s home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and
- (4) the page of the website to which viewers are directed by the website address is not used for e-commerce,

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Contest, Tower Miscues Lead to Expensive Consent Decree

The FCC's Enforcement Bureau and Magic Broadcasting II, LLC, have entered into a *Consent Decree* to resolve investigations into alleged violations of the FCC's rules concerning antenna towers and broadcast contests. Magic is the licensee of FM stations WILN, Panama City, Florida, and WVFT, Gretna, Florida. The Enforcement Bureau released an *Order* (DA 20-1419) adopting the *Consent Decree*, under which Magic agreed to pay a civil penalty of \$125,000 and to implement a five-year compliance plan.

The FCC received complaints in September and October 2018, alleging that WILN had failed to comply with the FCC's rules pertaining to on-air contests, specifically with respect to contests identified as "Troll Tracker" and "Alexa Almighty." Under Section 73.1216 of the FCC's Rules, broadcasters are required to fully disclose to audiences all material terms of contests, and to conduct contests substantially as announced or advertised. Section 508 of the Communications Act prohibits a broadcast licensee from knowingly deceiving the public by prearranging the outcome of a purportedly bona fide contest.

According to the narrative included in the *Consent Decree*, the "Troll Tracker" contest was to be conducted as though it were a scavenger hunt. The complainants allege that a listener solved the puzzle earlier than anticipated by station staff, thereby circumventing the station's goal of enhancing listenership during a protracted competition. To overcome this problem, station staff allegedly induced the listener and her boyfriend to sign nondisclosure agreements and to fraudulently continue the contest for the benefit of the unwitting audience. At the same time, station staff allegedly also arranged for that listener ultimately to win the contest.

In the "Alexa Almighty" contest, the complainants alleged that Magic offered listeners the chance to win prizes if they called WILN at designated times during the day to speak with the announcer. The complainants asserted that it was impossible for the station to have conducted the contest as advertised because the programming at the time that listeners were invited to call was a voice track with no live announcer on the air. Instead, it was alleged that the station aired prerecorded telephone calls between station employees and their friends posing as contestants.

In addition to violating the FCC's contest rule, this alleged scenario would also have run afoul of Section 73.1208. That rule mandates that when time is of special significance or when an attempt is made to create the

impression that the program material is occurring simultaneously with the broadcast (i.e. live), the station must disclose that the content was prerecorded

The Enforcement Bureau queried Magic repeatedly about these claims. However, Magic would neither confirm nor deny the allegations. It maintained that it had no information in its possession to indicate whether the station broadcast the prerecorded programming described in the complaints. The Enforcement Bureau states that Magic has not provided any evidence to rebut the complainants' allegations, and that it has no independent reason to doubt the credibility of the complainants. Magic acknowledged that it is unable to ascertain whether the complaints are in any way materially inaccurate, incomplete or otherwise erroneous.

On another front, in September 2019, the Enforcement Bureau received an anonymous complaint claiming that a tower, which was eventually determined to be supporting WVFT's antenna, had not been properly lit for more than a year. An Enforcement Bureau agent followed up with research revealing that the registered owner of the structure was no longer in business. The agent then began communicating with WVFT's owner, Magic. It came to light that Magic had (a) failed to monitor the lighting system for the tower as required by Section 17.47(a) of the FCC's Rules for some 453 days; (b) failed to immediately notify the FAA when a light on the structure went dark as required under Section 17.48; and (c) failed to notify the FCC of its acquisition in 2012 of the tower, as required by Section 17.57.

To resolve these investigations and avoid the burdens of further litigation, the Enforcement Bureau and Magic agreed to the *Consent Decree* with the following provisions. Magic admitted to the rule violations alleged in the complaints, and certified that it has brought the tower supporting the WVFT antenna into full compliance with the FCC's Rules. Magic also agreed to pay a civil penalty of \$125,000, payable in 20 quarterly installments of \$6,250 each.

Finally, Magic also agreed to establish a five-year compliance plan under which it will adopt procedures and policies to ensure future compliance with the FCC's rules pertaining to antenna structures and contests. A compliance officer will be appointed to develop a compliance manual and conduct compliance training of all Magic personnel whose duties involve the antenna structure or contests. Magic is to submit annual compliance reports to the FCC for the next five years.



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

December 1	Deadline to file license renewal applications for radio stations in Colorado, Minnesota, Montana, North Dakota and South Dakota , and television stations in Alabama and Georgia .	January 10	Deadline to place quarterly Issues/Programs List in Public Inspection File for all full service radio and television stations and Class A TV stations.
December 1	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 Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota, and Vermont .	January 10	Deadline for noncommercial stations to place quarterly report re third-party fundraising in Public Inspection File.
December 1	Deadline for all broadcast licensees and permittees of stations in Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota, and Vermont to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s).	February 1	Deadline to file license renewal applications for radio stations in Kansas, Nebraska, and Oklahoma , and television stations in Arkansas, Louisiana, and Mississippi .
December 1	Deadline for television stations that provided ancillary or supplementary services during the 12-month period ending September 30, 2020, to file annual Ancillary/Supplementary Services Report.	February 1	Deadline to place EEO Public File Report in Public Inspection File and on station's Internet website for all nonexempt radio and television stations in Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York, and Oklahoma .
December 1 & 16	Radio stations in Iowa and Minnesota , and television stations in Florida, Puerto Rico, and the Virgin Islands broadcast post-filing announcements regarding license renewal applications.	February 1	Deadline for all broadcast licensees and permittees of stations in Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York, and Oklahoma to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s).
December	Radio stations in Colorado, Minnesota, Montana, North Dakota and South Dakota , and television stations in Alabama and Georgia begin broadcasting post-filing announcements within five business days of acceptance of application for filing and continuing for four weeks.	February 1	Deadline for Children's Television Programming Reports for all full power and Class A television stations for 2020.
December 1 & 16	Requirement to broadcast pre-filing announcements regarding license renewal applications has been eliminated for radio stations in Kansas, Nebraska, and Oklahoma and television stations in Arkansas, Louisiana, and Mississippi .	February 1	Deadline to place annual certification of compliance with the commercial limits for children's television programming in station's Public Inspection File, covering the period January 1, 2020 through December 31, 2020.
		February	Radio stations in Kansas, Nebraska, and Oklahoma , and television stations in Arkansas, Louisiana, and Mississippi begin broadcasting post-filing announcements within five business days of acceptance of application for filing and continuing for four weeks.



DEADLINES TO WATCH



Deadlines for Comments in FCC and Other Proceedings

DOCKET	COMMENTS	REPLY COMMENTS
(All proceedings are before the FCC unless otherwise noted.)		
Docket 20-299; NPRM (FCC 20-146) Sponsorship ID for foreign government programming	December 24	January 25
Docket 16-142; Public Notice (DA 20-1394) Legal status of multicast streams under Next Gen TV simulcasting rules	December 24	January 25
Docket 20-36; NPRM (FCC 20-156) Unlicensed operations in TV white spaces	FR+30	FR+60
Docket 20-401; NPRM (FCC 20-166) FM broadcast booster stations	FR+30	FR+60

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

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
Blanketing interference, Sections 73.88, 73.318, 73.685	Dec. 14
3.7 GHz service licensee and earth station operator agreements	Dec. 14
EEO Program Model, Form 396-A	Dec. 14
Closed captioning, Section 79.1	Jan. 4
Advertisement loudness mitigation, Section 73.682(e)	Jan. 5
Participation in competitive bidding for support, Section 1.21001	Jan. 25
Prohibited communications during competitive bidding, Section 1.21002	Jan. 25
Radio station digital notification, Form 335	Jan. 25
Program tests, Section 73.1620	Feb. 2

Cut-Off Date for AM and FM Applications to Change Community of License

The FCC has accepted for filing the applications identified below proposing to change the community of license for each station. 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 **January 11, 2021**. Informal objections may be filed anytime prior to grant of the application.

PRESENT COMMUNITY	PROPOSED COMMUNITY	STATION	CHANNEL	FREQUENCY
Port St. Joe, FL	Youngstown, FL	WTKP	229	93.7
Jamestown, NY	Tidioute, PA	WCOT	215	90.9
Ramapo, NY	Haverstraw, NY	WRCR(AM)	n/a	1700
Tidioute, PA	Clintonville, PA	WCGT	204	88.7
Pinopolis, SC	St. Stephen, SC	WTUA	290	105.9
Centralia, WA	McKenna, WA	KZTM	275	102.9

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rebroadcasting the primary station's signal, the FCC solicits comment about what other rules may need to be amended. It asks whether there should be different treatment of commercial and noncommercial boosters. Input is sought on whether the application process needs to be changed, and whether the number of geo-targeted boosters that can be associated with one primary station should be limited.

GeoBroadcast suggested that the broadcaster deploying a booster that originates its own programming must manage the self-interference to ensure that service to its community is not degraded. The FCC asks whether it is reasonable to expect a primary FM station to manage its self-interference adequately without additional guidance or mandates. The Commission also asks whether managing self-interference will have a financial impact on the station.

The FCC poses a number of questions about engineering issues related to this new kind of booster. Among them are the following;

- Should a station deploying geo-targeted boosters provide notice to other broadcasters or the public to help identify potential sources of interference?
- Would the development of a large group of such boosters cause a rise in the noise floor in the FM environment?
- Would geo-targeted boosters pose an interference threat to translators, LPFM stations, or HD radio stations?
- From a consumer electronics standpoint, what would be the effect of self-interference on different types of radio receivers?

- Would the proposed rule changes inhibit the development of other geo-targeting technologies?

GeoBroadcast proposed that although the geo-targeted booster would feature some amount of hyper-local content, it would nonetheless broadcast substantially similar programming to that of the primary station. The FCC invites comment on the purpose of such a requirement and what the consequences would be of not adopting it. Hyper-local content may include advertisements, promotions for upcoming programs, weather, news, and emergency information. GeoBroadcast envisioned an allocation of three minutes per hour, or five percent of air time, for hyper-local content. The FCC seeks input about this formula.

The FCC also requests comment on the public interest value of geo-targeting boosters, such as whether there would be a positive economic impact for stations, and in particular, minority-owned stations. Comment is invited about the potential impact on audiences. While there could be greater variety of content, commenters could address the potential impact of degraded service due to self-interference that might drive audiences away from FM listening.

The FCC seeks comment on these and other related issues about geo-targeted FM booster stations. Comments will be due 30 days after notice of this proceeding is published in the Federal Register. The deadline for filing reply comments will be 60 days after that publication.

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advertising, or other commercial purposes.

The lazytown.com website address was found to violate the fourth prong of the test. According to the Chief, as recently as July 2, 2014, the top of the homepage of the website contained what is considered to be commercial content in the form of a link labeled "shop."

The Video Division Chief wrote that the display of this website address for any period of time – even if just for a half-second – did not comply with the fourth prong of the test in Section 73.670(b). No evidence was offered by the station to demonstrate that the lazytown.com website was rule-compliant. Furthermore, the FCC has determined that credits are part of the program matter. Consequently, the

incident in question could not be overlooked simply because the website address was displayed during the closing credits.

The Chief acknowledged that the offending commercial matter came from a source outside of the station – its network program provider. However, the Chief said that this circumstance does not relieve the station of responsibility for violations that occur in the provided programming. The station is liable for whatever content it broadcasts.

The Chief imposed on WVVA the relatively mild sanction of an admonishment in this case because the violation appears to have been an "isolated occurrence." However, she also noted that "we do not rule out more severe sanctions for similar violations of this nature in the future. . . ."

Pandemic Rejected as Grounds for Tolling Construction Permit continued from page 1

file an application for a license within that three-year period. If the permit expires before the construction is completed, the permittee ceases to be authorized to build or modify the station. If the subject of the permit is a new station, the station ceases to exist and is deleted from the FCC's database.

Section 73.3598(b) of the FCC's Rules provides that, under certain circumstances, the running of a construction permit can be suspended, or tolled. One of the categories of conditions that could justify the tolling of a permit is found in Section 73.3598(b)(1): "Construction is prevented due to an act of God, defined in terms of natural disasters (e.g., floods, tornadoes, hurricanes, or earthquakes)."

In 2016, the FCC issued a construction permit for a new AM radio station that came to have the call sign KWIF to the Levine/Schwab Partnership d/b/a Schwab Multimedia LLC. After tolling due to administrative review while an objection to the grant of the application was considered, the construction deadline and expiration date of the permit were set for April 13, 2020.

On March 23, 2020, Schwab requested that the construction permit be tolled, citing construction delays caused by the COVID-19 pandemic and a California statewide shelter-in-place order issued by the governor on March 19. The Audio Division granted the request and tolled the permit until September 23, 2020, "absent earlier resolution of the COVID-19 closure." In granting the request to toll the permit, the Audio Division noted that when tolling ended, 22 days would remain on the life of the permit.

Schwab filed a request for further tolling on September 21, 2020, due to the continuing COVID-19 pandemic and "intense fires in Southern California." Schwab asserted that many non-essential businesses in Los Angeles County were closed due to the pandemic. This had "made it virtually impossible to obtain equipment because of supply chain issues" and had caused consulting engineers and tower crews to be unavailable or unwilling to travel to the area. Schwab also stated that air quality in the Culver City area had been "severely impacted by smoke" from the wildfires in Southern California. Schwab reported that the Los Angeles Department of Public Health had urged all individuals "in impacted areas" to stay indoors. Schwab explained that until the air quality improved, "it would be difficult to find construction crews to work in such dangerous conditions."

The Audio Division denied this second tolling request, and set the new expiration date on October 30, 2020 (allowing for time consumed by the pleading cycle). The Audio Division observed that radio stations are "essential services" and not subject to the restrictions that Schwab cited. Further, the Audio Division noted that Schwab had not submitted any evidence of its effort to construct the station. The Division also discounted the argument about wildfires and air quality as justification for further tolling. Culver City was not in an area that had been burned or evacuated. Schwab had failed to show specifically how air quality in Culver City affected potential construction activities or how long such a condition might have lasted.

Schwab petitioned for reconsideration of the denial of

tolling. It presented data and information about the quality of the environment in Culver City, and documentation of its efforts to construct the station. To the extent the Petition offered this factual evidence, it was dismissed on procedural grounds. The Chief ruled that Schwab could have and should have included these materials with its tolling request rather than waiting until seeking reconsideration.

Otherwise, Schwab argued that although radio stations are essential services not subject to the pandemic restrictions, construction, equipment delivery, and similar activities related to building the station are subject to restrictions. In his *Letter Decision*, the Division Chief found that this assertion contradicted the State Public Health Officer's list of Essential Critical Infrastructure Workers. Among those workers considered to be essential are "[w]orkers who support radio, television, and media service . . ." and "[w]orkers responsible for infrastructure construction," including "construction of new facilities."

The Chief also affirmed the finding that Schwab had failed to specifically demonstrate the impact of air quality in Culver City on construction activities. Schwab had relied solely on a Los Angeles Citywide Coronavirus Update from September 9, 2020. This Update did indicate that "the combination of fire, smoke and high temperatures" created conditions that were unhealthy, and it advised individuals in "impacted areas to avoid unnecessary outdoor exposure," However, it did not indicate what areas were impacted. Schwab had offered no additional evidence to show that the proposed antenna site was in an impacted area.

Furthermore, the Chief confirmed that Schwab was not eligible for the relief offered in the Media Bureau's September 10, 2020, *Public Notice* (DA 20-1059) to waive construction permit deadlines for certain FM translator construction permits that have resulted from Auctions 99 and 100. Those new FM translators will be rebroadcasting AM stations and Schwab, being the permittee of an AM station had claimed a similar public interest value in preserving its AM station. Schwab had pointed to language in the *Public Notice* that seemed to indicate the FCC would be sympathetic to its position: "shutdowns associated with the pandemic have forced stations to halt construction, have disrupted equipment availability and deliveries, and have interrupted travel for tower and equipment installers." The Chief explained that although these factors were mentioned in the *Public Notice*, they were not the primary basis for it. In the *Public Notice*, the Media Bureau had explained that the construction deadline waivers for the FM translators were intended to address economic difficulties experienced by AM stations during the pandemic – most significantly, the reduction and loss of advertising revenues. Because KWIF was not even constructed and operational, Schwab could not claim the loss of advertising as a factor contributing to its problem.

In conclusion, the Chief denied the Petition for Reconsideration, and because the construction permit had expired, ordered that KWIF be deleted from the FCC's database.

New Forms Required for NCE, LPFM Applications

In December 2019, the FCC adopted new rules and procedures for certain applications for noncommercial stations and low power FM stations. Several of these new rules only became effective on October 30, after approval by the Office of Management and Budget. The FCC's Media Bureau has issued a *Public Notice* (DA 20-1298) announcing and explaining these changes. Applications for noncommercial and LPFM construction permits must now be filed on the new Schedule 340 and Schedule 318, respectively, in the Licensing Management System on the FCC's website.

For applications for new stations and applications for modifications involving a relocation of the antenna site, the applicant is now required to explicitly certify that it has reasonable assurance of the availability of the proposed

antenna site and to disclose the name and phone number of the contact person from whom such reasonable assurance was obtained. The requirement to have reasonable assurance of site availability is not new. However, until now, certification was implied with the submission of the application form rather than being expressly stated.

In addition, applicants for new stations who are awarded the permit in comparative proceedings on the basis of certain preferences are subject to holding periods. Applications for assignments, transfers of control, or modifications that are filed prior to the end of the holding period will now include requirements to expressly certify that the assignee/transferee or the modified facilities would qualify for the preferences that were factors in awarding the original construction permit.

Deadline for Carriage Complaints Clarified continued from page 1

complaint with the FCC based on a violation of the program carriage rules.

The text of the rule for the third element had originally included language to explain that the notice to the MVPD was to be based upon a request for carriage or to negotiate for carriage of the complainant's programming on the defendant's distribution system that was denied or unacknowledged. The FCC eliminated this restrictive language in 1994 without clearly explaining why. As carriage complaints have been litigated since then, the Commission has come to see that the shorter version of the rule is open to multiple interpretations. The purpose of a statute of limitations is to provide certainty. Contrary to that principle, the rule could be interpreted to permit a complainant to independently initiate a new year-long period for a complaint merely by delivering a new notice to the MVPD unrelated in time to any specific act or omission of the MVPD.

The FCC adopted a revision to the rule that it had proposed in the *Further Notice of Proposed Rulemaking* earlier in this docket. The third limitation provision will now set the deadline at one year after the date the MVPD has denied or failed to acknowledge a request by a programming provider for carriage or to negotiate for carriage of the programming provider's programming by the MVPD. This provision will pertain to situations where there is no existing contract or an offer for carriage, or where a party seeks renewal of an existing contract. To help set the marker for when there is a failure to respond to a request, a programming provider may ask the MVPD to respond within a reasonable period of time. If the MVPD fails to respond within the stated period of time,

the expiration of that period will trigger the beginning of the one-year limitation period for filing a complaint.

To harmonize its rules, the FCC adopted similar amendments to the statute of limitations for complaints about program access, open video systems, and retransmission consent.

The FCC also addressed a discrepancy between provisions in Part 1 and Part 76 of its Rules concerning the effective date of decisions by administrative law judges. The Media Bureau may refer carriage disputes to an administrative law judge ("ALJ") for a hearing on the merits if a complainant establishes that a prima facie violation of Section 76.1301 of the FCC's Rules has occurred. In the past, if the ALJ's initial decision was appealed to the full Commission, there has been confusion about whether the ALJ's decision is effective during the Commission's review of it. The FCC has now resolved that in such cases, the ALJ's initial decision will not become effective until 50 days after it is released, and if a party asks the Commission to review it, the decision will be automatically stayed until there is a final decision. Programmers expressed fears that an unresolved appeal could linger indefinitely in the system while the parties await a final decision. The Commission addressed those concerns by establishing a 180-day "aspirational" shot-clock for circulating among the Commissioners a proposed ruling on review of an ALJ's decision. The 180-day clock would begin to run upon the filing of the request for review of the ALJ's decision by the aggrieved party.

These amendments to the FCC's Rules will become effective 30 days after publication in the Federal Register.

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