

FCC Declines To Investigate COVID-19 News Coverage

The FCC has denied an “Emergency Petition for Inquiry” filed by a public interest advocacy organization known as Free Press, requesting an investigation into what it called the “broadcast of false information on COVID-19.” In a *Letter* (DA 20-385) signed by Media Bureau Chief Michelle M. Carey, and General Counsel Thomas M. Johnson, Jr., the FCC said it would “not second-guess broadcasters (much less deploy the formal investigative power of the state against them) that are serving a critical function in providing the public comprehensive coverage of the current public health crisis and the government’s response.”

Free Press implored the FCC to initiate “an urgent investigation into the broadcast of:

- False information about COVID-19;
- Disinformation about public health measures, guidance and warnings; and
- Deadly false assertions about untested “cures” and home remedies that are endangering public health. . . .”

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Broadcasters Classified as Essential Workers During COVID-19 Emergency

Most residents of the United States are presently subject to orders issued by state and local governments restricting out-of-home activities and movement due to the COVID-19 pandemic. The federal government also has precautionary guidelines in place. A common element of these restrictions is that non-essential businesses should substantially curtail their operations, that non-essential employees should not report to their regular place of work, and that non-essential movement away from home should be limited or prohibited.

A federal government agency within the Department of Homeland Security, the Cyber and Infrastructure Security Agency (“CISA”), has issued an advisory memorandum that identifies “Essential Critical Infrastructure Workers.” This

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Pandemic Upends FCC Routines

The ongoing COVID-19 pandemic has affected the FCC’s activities and processes. Like much of the rest of the country, most FCC staff members are telecommuting. The filing window in the lobby of the FCC’s headquarters is closed. Visitors are not allowed into the FCC’s facilities without a clear operational necessity or special permission from the Office of Managing Director. To accommodate the altered environment for industries that it regulates, as well as for its own employees, the FCC has temporarily waived certain rules, postponed deadlines, and rescheduled events. Some of these items pertinent to broadcasters are highlighted below.

Quarterly Issues and Programs Lists

The usual deadline to upload the quarterly Issues and Programs List to the online Public Inspection File is the tenth day after the end of the calendar quarter. That deadline for the first quarter of 2020 (January-March) has been postponed until July 10, 2020, the same date that is the deadline for uploading these lists for the second quarter (April-June). The Media Bureau announced this postponement in a *Public Notice* (DA 20-353).

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Petitioner Proposes FM ‘ZoneCasting’

Broadcast equipment vendor, GeoBroadcast Solutions, LLC, has filed a Petition for Rulemaking with the FCC proposing that the FCC amend its rule for FM booster stations so as to allow them to broadcast localized content that differs somewhat from the programming on the primary station. The FCC has created a proceeding for the Petition in RM-11854 and invited public comment.

The petitioner asks that the FCC permit FM stations to use “single frequency network” (“SFN”) technology. The petitioner says that this would enable a station to geo-target smaller areas within its primary coverage area with hyper-local content specifically designed for and directed to a more localized audience.

FM booster stations are permitted to operate within the parent station’s primary service contour on the same frequency as the parent station. They are typically used to enhance the parent station’s service in areas where reception of the parent’s signal is degraded, such as when shielded by terrain. As the petitioner describes it, SFN technology is deployed with lower-power and lower-height FM transmitters that are synchronized with the parent station’s transmitter. This prevents them from causing interference to each other and also frees them technically to transmit different content. The petitioner labels this technique as “ZoneCasting.” It says that ZoneCasting is the product of a decade of development and testing. Extensive testing is said to show that ZoneCasting does not result in harmful interference within the SFN, either between the parent station and the boosters or among the stations in the booster cluster.

Section 74.1231(i) of the FCC’s Rules requires a booster to retransmit exclusively the parent station’s signal. It cannot rebroadcast the signal of another station, nor can it originate programming. The petitioner proposes that the FCC amend this section to insert the following language:

The programming aired on the FM broadcast booster station must be substantially similar to that aired by its primary station. For purposes of this section, “substantially similar” means that the programming must be the same except for advertisements, promotions for upcoming programs, and enhanced capabilities including hyper-localized content (e.g., geo-targeted weather, targeted emergency alerts, and hyper-local news).

The petitioner claims that deployment of boosters with SFN technology would allow a radio station to geo-target specific audiences within its coverage area with hyper-local news, advertising, weather reports, and emergency alerts. It references research to demonstrate that both advertisers and audiences would be eager to make new or expanded use of radio if they could experience a more targeted match of content and audience. Implementation would apparently be easy because consumers would not need new or different receivers, and radio stations could develop new clusters of boosters without the need to invest in new technology.

The FCC has not yet adopted a notice of proposed rulemaking, but has asked for public comment about this proposal in RM-11854. Comments will be due by May 4. The deadline for reply comments will be May 18.

Broadcasters Classified as Essential Workers continued from page 1

memo is intended to assist state and local authorities who must, in the course of enforcing the pandemic-related restrictions, make determinations about who and what are “essential.” The memo identifies important categories of workers in various critical industries. Workers considered essential in the broadcasting industry are identified in the following excerpt on Communications and Information Technology:

- Maintenance of communications infrastructure (including privately owned and maintained communication systems) supported by technicians, operators, call-centers, wireline and wireless providers, cable service providers, satellite operations, undersea cable landing stations, Internet Exchange Points, and manufacturers and distributors of communications equipment;
- Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting,
- Workers at Independent System Operators and Regional Transmission Organizations, and Network Operations staff, engineers and/or technicians to manage the network or operate facilities;
- Engineers, technicians and associated personnel responsible for infrastructure construction and restoration, including contractors for construction and engineering of

fiber optic cables;

- Installation, maintenance and repair technicians that establish, support or repair service as needed;
- Central office personnel to maintain and operate central office, data centers, and other network office facilities;
- Customer service and support staff, including managed and professional services as well as remote providers of support to transitioning employees to set up and maintain home offices, who interface with customers to manage or support service environments and security issues, including payroll, billing, fraud, and troubleshooting; and
- Dispatchers involved with service repair and restoration.

The complete text of the memorandum is available here: <https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf>

As CISA states, the memorandum is only advisory. The ultimate discretion about who is essential and therefore exempt from the restrictions lies with state and local public safety officials. In the event that police or other public safety officers impede the movement of broadcast station staff in commuting to work or in the performance of their duties, it may be helpful for them to carry credentials that identify them as essential workers. To that end, CISA has released two “Bearer”

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Adjustments Proposed for Program Carriage Rules

The FCC has proposed changes to its procedural rules for resolving program carriage disputes between video program providers (including broadcast television stations) and multichannel video programming distributors (“MVPDs”). These proposals are set forth in a consolidated document (FCC 20-39) identified as a *Further Notice of Proposed Rulemaking* in Docket 11-131, and a *Notice of Proposed Rulemaking* in Docket 20-70.

The FCC administers a regulatory regime for governing the relationships between television stations and MVPDs that includes procedures for adjudicating complaints about violations of those rules. For a carriage complaint to be considered timely filed, it must satisfy one of the three prongs of the statute of limitations found in Section 76.1302(h) of the FCC’s Rules. A complaint is considered timely if it comports with any one of the following:

(1) it is filed within one year of the date that the defendant MVPD enters into a program carriage contract that a party alleges to violate the program carriage rules;

(2) it is filed within one year of the date that the defendant MVPD presents a carriage offer that a party alleges violates the program carriage rules; or

(3) it is filed within one year of the date on which a party has notified an MVPD that it intends to file a complaint alleging a violation of the program carriage rules.

The FCC observes that the third prong may be problematic because it lacks a reference to the timing of the alleged violation. A complainant could wait for years after the allegedly violating incident to notify the MVPD of its intention to complain. The statute of limitations would not begin to run until that notice of intent is given. This provision runs contrary to the fundamental purpose of a statute of limitations which is to protect a potential defendant from “stale and vexatious claims” by ending the possibility of litigation after a reasonable amount of time has elapsed.

The FCC proposes to revise the third prong to clarify that it applies only in circumstances where there is not an existing program carriage contract or contract offer and a defendant MVPD has denied or failed to acknowledge a request for carriage or a request to negotiate carriage. The statute of limitations would run for one year from the date on which the MVPD denied the request for carriage or the request to negotiate carriage, or failed to respond to such a request. There would remain the question of when to determine that a request is not acknowledged. The FCC suggests that the MVPD might be deemed to have failed to acknowledge a

request if it does not respond within 30 or 60 days. Public comment is requested on the entire proposal.

The FCC seeks comment on an issue raised in prior comments concerning the requirement that MVPDs not discriminate against program vendors on the basis of their affiliation or non-affiliation. Ordinarily, the time for filing a complaint would begin to run when the MVPD makes an offer or the parties execute a contract that would violate this rule. The question arises however as to how a program provider can determine that the MVPD is discriminating against it if it does not know the terms of agreements that the MVPD has with other programmers. The FCC asks whether setting the one-year period for filing timely complaints to begin with the offer or contract execution might preclude wronged programmers from filing valid complaints.

The FCC may refer a program carriage dispute to an administrative law judge (“ALJ”) within the FCC. Presently, the procedural rules governing carriage complaint proceedings differ somewhat from other types of proceedings where an ALJ would preside. The procedural rules in Part 1 of the FCC’s Rules provide that an ALJ’s decision does not become effective until 50 days after it is issued. The decision is automatically stayed if a party files exceptions to the decision (i.e., an appeal within the FCC). On the other hand, a decision by an ALJ in a program carriage case becomes effective upon its release and is not automatically stayed during the review process. The FCC proposes to revise the carriage hearing procedures to make them consistent with other kinds of ALJ proceedings within the FCC.

Comments filed in Docket 11-131 in 2011 addressed a number of proposals regarding carriage disputes. In view of the passage of time since then, the FCC solicits new comments on whether the proposals set forth then are needed now. These topics include revising discovery procedures, permitting the award of damages, adopting a best “final offer” dispute resolution model, heightening the evidentiary showing to obtain a mandatory carriage remedy, explicitly prohibiting retaliation for filing a complaint, adopting a good-faith negotiation rule, clarifying what constitutes discrimination, and codifying the burden of proof requirements for a discrimination case.

The FCC seeks public comment on these matters. The deadline to file comments is May 18 and reply comments are due by June 1.

Former St. Louis Area AM Facilities Protected

The FCC’s Media Bureau has announced a freeze on the filing of minor modification applications that would impinge upon the formerly authorized facilities of four AM radio stations in the St. Louis, Missouri, area, whose licenses have not been renewed. In a *Public Notice* (DA 20-299), the Bureau said that this freeze was implemented to avoid the possibility of conflicts with new and major change applications that may be filed during a potential auction filing window for construction permits to replace the former stations. The

freeze will remain in effect until the earlier of the close of the auction filing window or an announcement lifting or modifying the freeze.

The 2012 license renewal applications for these stations had been designated for a hearing, but the applications were dismissed earlier this year by the administrative law judge. These stations were KFTK, East St. Louis, Illinois, 1490 kHz; WQQW, Highland, Illinois, 1510 kHz; KZQZ, St. Louis, Missouri, 1430 kHz; and KQQZ, DeSoto, Missouri, 1190 kHz.



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

April 1	Deadline to file license renewal applications for radio stations in Indiana, Kentucky, and Tennessee.	June 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 Arizona, the District of Columbia, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, West Virginia, and Wyoming.
April 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 Delaware, Indiana, Kentucky, Pennsylvania, Tennessee, and Texas.	June 1	Deadline for all broadcast licensees and permittees of stations in Arizona, the District of Columbia, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, West Virginia, and Wyoming 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).
April 1	Deadline for all broadcast licensees and permittees of stations in Delaware, Indiana, Kentucky, Pennsylvania, Tennessee, and Texas 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 & 16	Radio stations in Indiana, Kentucky, Michigan, Ohio, and Tennessee and television stations in the District of Columbia, Maryland, Virginia, and West Virginia broadcast post-filing announcements regarding license renewal applications.
April 1 & 16	Radio stations in Arkansas, Indiana, Kentucky, Louisiana, Mississippi, and Tennessee broadcast post-filing announcements regarding license renewal applications.	June 1 & 16	Radio stations in Illinois and Wisconsin and television stations in North Carolina and South Carolina broadcast pre-filing announcements regarding license renewal applications.
April 10	Deadline to file quarterly Transition Progress Reports for television stations subject to modifications in the repack.	July 10	Deadline to place Issues/Programs List for first and second quarters of 2020 in Public Inspection File for all full service radio and television stations and Class A TV stations.
April 10	Deadline for noncommercial stations to file quarterly report re third-party fundraising.	July 10	Deadline to file Children's Television Programming Reports for all commercial full power and Class A television stations for the period September 16 - December 31, 2019.
May 1 & 16	Radio stations in Indiana, Kentucky, and Tennessee broadcast post-filing announcements regarding license renewal applications.	July 10	Deadline for noncommercial stations to file quarterly report re third-party fundraising.
June 1	Deadline to file license renewal applications for radio stations in Michigan and Ohio , and television stations in the District of Columbia, Maryland, Virginia, and West Virginia.		

TELEVISION REPACK

STATIONS ASSIGNED TO PHASE 9

TESTING PERIOD BEGINS: **MARCH 14, 2020**

COMPLETION DEADLINE: **MAY 1, 2020**

Phase 9 Stations experiencing construction delays due to the COVID-19 pandemic may request waivers.

STATIONS ASSIGNED TO PHASE 10

TESTING PERIOD BEGINS: **MAY 2, 2020**

COMPLETION DEADLINE: **JULY 3, 2020**



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 20-60; Public Notice (DA 20-199) Competition in communications marketplace	Apr. 27	May 28
Docket 15-80; 2nd NPRM (FCC 20-20) Access for state and other federal agencies to Disaster Information Reporting System	Apr. 30	June 1
Docket 20-25; Public Notice (FCC 20-23) C-Band auction procedures	May 1	May 15
Docket 20-35; NPRM (FCC 20-19) Records of cable operator interests in video programming	May 4	May 18
Docket 20-36; NPRM (FCC 20-17) Unlicensed device operations in television band white space	May 4	June 2
RM-11854; Petition for Rulemaking FM boosters and ZoneCasting	May 4	May 18
Docket 20-73; NPRM Significantly viewed stations	May 14	June 15
Docket 19-226 NPRM (FCC 19-126) Human exposure to radiofrequency electromagnetic fields	May 15	June 15
Docket 11-131; FNPRM (FCC 20-39) Docket 20-70; NPRM (FCC 20-39) Program carriage disputes	May 18	June 1
Federal Trade Commission Regulatory Review (85 FR 10104) Guidelines for endorsements and testimonials in advertising	June 22	N/A
Docket 20-74; NPRM (FCC 20-43) Distributive transmission systems and NextGen TV	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 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
TV station notices to MVPDs re repack modifications, Sections 73.3700, 73.3800	Apr. 20
Agreements to remove conflicts between applications, Section 73.3525	Apr. 20
Noncommercial FM licensing and service requirements, Section 73.503	Apr. 20
Noncommercial TV licensing and service requirements, Section 73.621	Apr. 20
Noncommercial broadcast public inspection files, Section 73.3527	Apr. 20
Availability of contracts by broadcast stations, Section 73.3613	Apr. 20
Broadcast license applications, Form 302-AM; Form 2100, Schedule B; Form 2100, Schedule F	Apr. 20
Broadcast construction permit applications, Form 301; Form 2100, Schedule A; Form 2100, Schedule 301-FM	Apr. 20
Accelerated relocation for satellite space stations in 3.7 GHz band	Apr. 27
Lump sum payment elections for incumbent satellite earth station operators in 3.7 GHz band	Apr. 27
Low power television construction permit application, Form 2100, Schedule C	May 7
Universal Licensing System recordkeeping and third-party disclosures	May 4
Remittance Advice Form, Form 159	May 19



DEADLINES TO WATCH



Revised Lowest Unit Charge Schedule for 2020 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 advertising that promotes the candidate's campaign for office. Lowest-unit-charge restrictions are in effect now or soon will be in the following jurisdictions. Some jurisdictions have rescheduled elections due to the COVID-19 pandemic. Additional rescheduling may occur. Therefore this schedule is subject to change as each jurisdiction makes its decision about how to proceed.

JURISDICTION	ELECTION EVENT	DATE	LUC PERIOD
Alabama	State Primary Runoff	Jul. 14	May 30 - Jul. 14
Alaska	State Primaries	Aug. 18	Jul. 4 - Aug. 18
Arizona	State Primaries	Aug. 4	Jun. 20 - Aug. 4
Connecticut	Presidential Primaries	Jun. 2	Apr. 18 - Jun. 2
Connecticut	State Primaries	Aug. 11	Jun. 27 - Aug. 11
Colorado	State Primaries	Jun. 30	May 16 - Jun. 30
Delaware	Presidential Primaries	Jun. 2	Apr. 18 - Jun. 2
District of Columbia	Dem. Pres. Primary	Jun. 2	Apr. 18 - Jun. 2
Florida	State Primaries	Aug. 18	Jul. 4 - Aug. 18
Georgia	State & Pres. Primaries	May 19	Apr. 4 - May 19
Guam	Dem. Pres. Caucus	May 2	Mar. 18 - May 2
Hawaii	Dem. Pres. Primary	May 22	Apr. 7 - May 22
Hawaii	State Primaries	Aug. 8	Jun. 24 - Aug. 8
Idaho	State Primaries	May 19	Apr. 4 - May 19
Indiana	State & Pres. Primaries	Jun. 2	Apr. 18 - Jun. 2
Iowa	State Primaries	Jun. 2	Apr. 18 - Jun. 2
Kansas	Dem. Pres. Primary	May 2	Mar. 18 - May 2
Kansas	State Primaries	Aug. 4	Jun. 20 - Aug. 4
Kentucky	Dem. Pres. Primary	Jun. 23	May 9 - Jun. 23
Kentucky	State Primaries	May 19	Apr. 4 - May 19
Louisiana	Presidential Primaries	Jun. 20	May 6 - Jun. 20
Maine	State Primaries	Jun. 9	Apr. 25 - Jun. 9
Maryland	State & Pres. Primaries	Jun. 2	Apr. 18 - Jun. 2
Michigan	State Primaries	Aug. 4	Jun. 20 - Aug. 4
Minnesota	State Primaries	Aug. 11	Jun. 27 - Aug. 11
Mississippi	State Primary Runoff	Jun. 23	May 9 - Jun. 23
Missouri	State Primaries	Aug. 4	Jun. 20 - Aug. 4
Montana	State & Pres. Primaries	Jun. 2	Apr. 18 - Jun. 2
Nebraska	State & Pres. Primaries	May 12	Mar. 28 - May 12
Nevada	State Primaries	Jun. 9	Apr. 25 - Jun. 9
New Jersey	State & Pres. Primaries	Jun. 2	Apr. 18 - Jun. 2
New Mexico	State & Pres. Primaries	Jun. 2	Apr. 18 - Jun. 2
New York	State & Pres. Primaries	Jun. 23	May 9 - Jun. 23
North Carolina	State Primary Runoff	Jun. 23	May 9 - Jun. 23
North Dakota	State Primaries	Jun. 9	Apr. 25 - Jun. 9
Ohio	State & Pres. Primaries	Absentee voting until Apr. 28	
Oklahoma	State Primaries	Aug. 25	Jul. 11 - Aug. 25
Oregon	State & Pres. Primaries	May 19	Apr. 4 - May 19
Pennsylvania	State & Pres. Primaries	Jun. 2	Apr. 18 - Jun. 2
Rhode Island	Presidential Primaries	Jun. 2	Apr. 18 - Jun. 2
South Carolina	State Primaries	Jun. 9	Apr. 25 - Jun. 9
South Dakota	Presidential Primaries	Jun. 2	Apr. 18 - Jun. 2
South Dakota	State Primaries	Aug. 11	Jun. 27 - Aug. 11
Tennessee	State Primaries	Aug. 6	Jun. 22 - Aug. 6
Texas	State Primary Runoff	Jun. 23	May 9 - Jun. 23
Utah	State Primaries	Jun. 30	May 16 - Jun. 30
Vermont	State Primaries	Aug. 11	Jun. 27 - Aug. 11
Virgin Islands	Dem. Pres. Caucus	Jun. 6	Apr. 22 - Jun. 6
Virginia	State Primaries	Jun. 23	May 9 - Jun. 23
Washington	State Primaries	Aug. 4	Jun. 20 - Aug. 4
West Virginia	State & Pres. Primaries	Jun. 9	Apr. 25 - Jun. 9
Wyoming	State Primaries	Aug. 18	Jul. 4 - Aug. 18

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Sponsorship Identification

The Communications Act and the FCC's Rules require the identification to the audience of the sponsor of sponsored program content. The FCC's Media Bureau has issued an *Order* (DA 20-376) temporarily waiving this rule under certain limited circumstances. It has come to the Bureau's attention that some advertisers that have purchased time in advance are no longer able or no longer wish to broadcast the ads they had intended for those spots because of the radically changed circumstances affecting their business and/or the public. Some advertisers in this posture have offered to donate the purchased airtime for the broadcast of PSAs produced by or for public health agencies such as the Centers for Disease Control and Prevention regarding COVID-19. Many such sponsors may not wish to be identified with the PSA and/or may not want the audience to be distracted or confused by their sponsorship identification. Under these circumstances, the Media Bureau has determined that it would be in the public interest to waive the sponsorship identification requirement. Such public health messages can now be aired without identifying the party that paid for the time. This waiver policy will be in effect until June 30, 2020.

Children's Television Programming

Commercial full power and Class A television stations seeking to meet certain license renewal processing guidelines must broadcast minimum amounts of regularly-scheduled programming designed to meet the educational and informational needs of children. If that programming is preempted, it must be rescheduled within seven days before or after the originally scheduled time to be counted toward the station's quota. Preemptions are exempt from this requirement if they are for coverage of breaking news or non-regularly scheduled live locally produced programming. By a *Public Notice* (DA 20-396), the Media Bureau has also temporarily exempted preemptions of children's programming that result from the broadcast of locally produced community events, including religious services, with the goal of limiting gatherings of people and promoting social distancing in compliance with the CDC's guidelines for combating COVID-19. The community event must be broadcast live or recorded and broadcast the same day. This waiver is in effect until April 30, 2020.

Children's Television Programming Reports

The first Children's Television Programming Report for an annual reporting period rather than a calendar quarter, which is required for commercial full power and Class A stations, was originally due to be submitted by January 30, 2020. That deadline was reset to March 30, 2020. By a *Public Notice* (DA 20-353), the Media Bureau has now postponed it again until July 10, 2020. Because of rule changes adopted mid-year in 2019, the first annual report will cover only the period from September 16 through December 31, 2019.

TV Stations Repacking in Phase 9

Television stations assigned to Phase 9 in the schedule for repacking the post-incentive-auction television band are scheduled to complete their modifications and begin transmitting with their new facilities by May 1, 2020. The FCC recognizes that construction and delivery delays are occurring as a result of the COVID-19 pandemic, and that stations must undertake efforts to protect the health of their employees. Accordingly, in a *Public Notice* (DA 20-282), the FCC has invited Phase 9 stations that believe they cannot complete their modifications by the May 1 deadline because of the pandemic to request a waiver of the Phase 9 deadline and reassignment to Phase 10, which ends on July 3. The waiver should be filed via the Licensing Management System as a legal request for special temporary authority.

Phase 9 stations that anticipate completion of their modifications by May 1 may continue their transition on that schedule unless they have a direct downstream linkage to a station moving from Phase 9 to Phase 10.

TV Time Brokerage

A television station that brokers time on another station in the same market under a local marketing agreement, shared services agreement, or a similar arrangement, is considered to have an attributable interest in the brokered station if it supplies more than 15 percent of the brokered station's weekly programming. Common ownership or control of two stations in the same market is only permitted under certain limited circumstances. To comply with the rule, the brokering station must limit its programming on the brokered station to not more than 15 percent of the brokered station's weekly airtime. In a *Public Notice* (DA 20-336), the Media Bureau explains that it will entertain requests for temporary waivers of the 15 percent limit. Stations seeking this waiver must show how the additional programming provided in excess of the permitted 15 percent would assist in providing community-specific information regarding the COVID-19 pandemic, and how the community's needs would be better met by allowing the brokering station to provide more programming. Waivers granted under this policy would expire when COVID-19 is no longer determined to be a national emergency.

FM Auction 106

The bidding on 130 FM construction permits in Auction 106 was scheduled to begin on April 28. However, the FCC's Office of Economics and Analytics and Media Bureau issued a *Public Notice* (DA 20-327) to announce the indefinite postponement of the auction due to the COVID-19 pandemic. All of the short-form applications were dismissed. Communications between applicants are no longer restricted. Requests for refunds of the upfront payments can be submitted on the refund form that can be accessed in the online auction application system. A new schedule for filing applications will be announced in a future public notice.

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Free Press said its concerns arose from “deadly disinformation broadcast on television stations across the country in the form of context-less coverage of President Donald Trump’s press conferences and other statements.” The Petition referenced a number of President Trump’s remarks about various aspects of the COVID-19 pandemic and expressed dismay that those remarks were, in Free Press’s view, largely false or misleading. The Petition also cited the on-air statements of a number of other media personalities expressing their views that the pandemic was not as serious as others in the media were suggesting.

As the legal basis for its request, Free Press relied on Section 73.1217 of the FCC’s Rules, which prohibits the broadcast of a hoax. That rule generally prohibits a radio or television station from broadcasting false information about a crime or catastrophe. Free Press asserted that the broadcast of much of President Trump’s communications about the pandemic violates this rule.

Free Press urged the FCC to conduct an urgent examination of the extent to which broadcasters air hoaxes and false or misleading information about COVID-19. Its proposed remedy for this problem would be for the FCC to issue an emergency enforcement guidance to recommend that broadcasters prominently disclose when information they air is false or scientifically suspect. Free Press asserted that when “the president tells lies about a public health emergency, broadcasters have a choice: don’t air them, or put those lies in context with disclaimers noting that they may be untrue and are unverified.”

Responding to the Petition, the FCC said that Free Press exhibits a fundamental misunderstanding of the FCC’s limited role in regulating broadcast journalism. Rejecting Free Press’s assertion that the FCC “has a duty to rein in broadcasters that seed confusion with lies and disinformation,” the FCC said

that it cannot and will not act as a self-appointed, free-roving arbiter of truth in journalism. Further the FCC noted that even if the material to which Free Press objects truly lacked veracity, even false speech enjoys some First Amendment protection. In any event, Section 326 of the Communications Act prohibits the FCC from interfering with freedom of the press or censoring broadcast content.

The FCC explained that the hoax rule would not apply to the circumstances in question. Under the rule, the broadcast of false information is a violation only if (1) the station licensee knew that the information was false; (2) it was foreseeable that broadcast of the information would cause substantial public harm; and (3) the broadcast did directly cause substantial public harm. The FCC said that Free Press’s expanded interpretation of the rule would enable “government-led flyspecking of broadcasters’ editorial judgments . . . and [lead the FCC] to issue prospective enforcement guidance discouraging such coverage . . .” The FCC observed that the pandemic is a rapidly evolving national and international crisis, in which new and difficult-to-understand medical and technical information is continually revealed, vetted, and verified or dismissed. The FCC said that under these circumstances, “it is implausible, if not absurd, to suggest that broadcasters knowingly deceived the public by airing these press conferences or other statements by the President about COVID-19.”

The FCC concluded that the antidote to the harm alleged in the Petition is not government intervention, but a free press (no pun intended). The FCC will leave to the press “its time-honored and constitutionally protected role in testing the claims made by our political leaders – as well as those made by national advocacy organizations.”

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letters that a station staff member can present if stopped or questioned about his or her movement or activity. One relates to the operation and maintenance of communications facilities and networks. The other letter concerns providing fuel for vehicles and generators. Copies of these generic letters are available to download from the website of the National Association of Broadcasters here:

https://www.nab.org/coronavirus/documents/CISA_Access_Letter.pdf, and here:

https://www.nab.org/coronavirus/documents/CISA_Fuel_Letter.pdf.

Credentials that are more specific to the individual and his or her employer and duties are likely to be more effective. Documents issued by station management or institutional administration may be useful. Local public safety authorities may also be willing to issue such credentials. The form and nature of credentials may vary depending on the nature of the restrictions in effect in each jurisdiction. Sources of information for the specific local requirements may be available from local public safety authorities and/or state broadcasters’ associations.

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