pillsbury Antenna™ DECEMBER 2017
AN UPDATE ON COMMUNICATIONS LAW & ISSUES

FCC Revises Ownership Rules

A sharply divided FCC has adopted measures revising and reducing many of the restrictions in the agency's rules concerning broadcast multiple ownership and cross-ownership. On a 3-2 vote along party lines, the Commission approved an *Order on Reconsideration and Notice of Proposed Rulemaking* with which it intends to conclude the 2010/2014 Quadrennial Review of the broadcast ownership rules.

The Commission's broadcast ownership rules limit the number of attributable broadcast and newspaper interests that a single entity can hold. The Commission is required by statute to review these rules every four years to determine whether they remain "necessary in the public interest as the result of competition," and to "repeal or modify any regulation [that the Commission] determines to be no longer in the public interest." Resolution of the 2010 review was so delayed by appeals that it was consolidated with the 2014 review.

In August 2016, the Commission adopted a *Second Report and Order* which left the regulations under review largely intact. That order reinstated the television Joint Sales Agreement attribution rule and the revenue-based eligible entity standard for purposes of ownership diversity. Several parties petitioned the Commission to reconsider that decision. This new order is the Commission's response to those reconsideration requests. In 2016, the *Second Report and Order* was adopted by an FCC controlled by Democrats. The agency now has a Republican majority that is generally

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Main Studio Rule Repeal Effective January 8

After nearly eight decades of regulating the operation of broadcast stations' principal studio facilities at various levels of complexity, the FCC's Main Studio Rule will vanish on January 8, 2018. The Commission voted to abolish the rule at its October meeting. However, a rulemaking action by the agency cannot become effective until 30 days after it has been published in the Federal Register. That publication occurred on December 8.

As of January 8, stations will no longer be obligated to maintain a studio facility in or near the community of license with required minimum staffing or required program production and transmission capabilities.

Each station must continue to maintain a local or toll-free phone number for community members to contact station personnel. The phone number is to be listed in the station's online public file.

Next Gen TV Approved

The FCC has adopted rules in a *Report and Order* in Docket 16-142 to govern the implementation of the ATSC 3.0 transmission standard for television broadcasting. ATSC 3.0 is the new television transmission standard developed by the Advanced Television Systems Committee as the world's first Internet Protocol-based broadcast transmission platform. The Commission says that ATSC 3.0 merges the capabilities of the over-the-air broadcasting with the broadband viewing and delivery methods of the Internet. Deployment of this technology at local TV stations will be voluntary.

ATSC 3.0 will be capable of two-way interactive services, targeted advertising and localized content directed to specific viewers. The question arose as to whether this kind of a service would fall within the legal definition of "broadcasting" – a necessary question for deciding how to regulate it. The Commission has determined that the Communications Act describes broadcasting as an unencrypted service intended to be received by the public at large, without the need for special decoding receiving equipment, and without a private contractual arrangement between the provider and the audience. Given the

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Cross-Service FM Translator Filing Window Set For January 25-31

Filing Freeze Begins January 18

The FCC's Media Bureau and Wireless Telecommunications Bureau have scheduled the second filing window for short-form applications for construction permits for new cross-service FM translator stations. The translators that result from this filing window will rebroadcast AM stations. This filing window is part of the Commission's ongoing effort to revitalize AM radio.

This filing opportunity will be limited to the licensee, permittee or proposed assignee in a pending assignment application of any AM station that was not identified for rebroadcast by a translator in either of the 2016 translator modification windows or the 2017 cross-service FM translator auction filing window. AM stations that have obtained one or more fill-in translators by means other than those filing windows may still participate in this filing window. Only one application may be filed in connection with each eligible AM station. Any translator station resulting from this filing window will be required to rebroadcast the AM station designated in its application.

In the short-form, the applicant identifies itself, designates one or more authorized bidders and provides the technical data for its proposal. The facilities requested in these applications must qualify as "fill-in" translators for the AM stations proposed to be rebroadcast. The 1 mV/m contour proposed for the FM translator must be completely contained within the greater of the AM station's 2 mV/m daytime contour or a circle centered at the AM transmitter site with a radius of 25 miles.

After the close of the filing window, Media Bureau staff will review the short-form applications for conflicts. Singleton applicants will be invited to file long-form applications. For cases involving groups of mutually exclusive short-form applications, the Bureau will announce a settlement window for resolving those conflicts. Applications that remain in conflicts after the close of that window will be subject to competitive bidding in Auction 100.

Because this will be an auction filing window, applicants must be mindful of the FCC's restrictions on certain communications by auction applicants. Section 1.2105(c)(1) of the agency's rules states that "all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing to each other . . . in any manner the substance of their own, or each other's, or any other applicant's bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, ..." This restriction begins on the deadline for filing applications and continues until the deadline for down payments, except for a brief waiver during the settlement window.

Applications filed during the window must protect all existing LPFM, FM translator and FM booster authorizations and previously filed applications. To ensure that applicants can rely on a stable database during the window, the Commission will impose a freeze on the filing of all minor-change applications for LPFM, FM translator and FM booster stations during the period from January 18 through January 31.

FCC Revises Ownership Rules

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critical of the earlier action. This most recent *Order* and the 2016 action take completely opposite approaches on many issues, although ostensibly relying on the same record compiled during the proceeding.

Perhaps the highest profile matter in this action is the repeal of the restriction on newspaper/broadcast cross-ownership. Under the old rule, adopted in 1975, the common ownership of a daily newspaper and a broadcast station in the same market was prohibited. The stated purpose was to preserve and promote viewpoint diversity and competition. However, now newspapers are in decline and no longer hold the market dominance that they did in 1975. In any event, the Commission has found that the rule is no longer needed to promote viewpoint diversity because of the abundance of alternative sources of news and information available in the marketplace. Further, there may now be benefits for the public in allowing newspapers and broadcast stations to combine their resources and strengthen their capabilities, especially contributing to localism in small markets.

The Commission also repealed the rule against radio and television cross-ownership which limits an entity to owning no more than two television stations and one radio station in the same small market. In larger markets, if at least 10 independently owned media voices would remain in the market post-merger, the cap is two television stations and four radio stations. If there would be 20 independent voices post-merger, an entity can own two television stations and six radio stations, or one television station and seven radio stations. Such combinations must also comply with the limits on local television and local radio ownership. These restrictions were established in 1999, again primarily to promote viewpoint diversity.

The agency found that repeal of this restriction is now justified because of changes in the media ecosystem. The Commission cited data from the record in this rulemaking indicating that the overwhelming majority of Americans no longer rely on radio as a source of local news. Further, most news-talk stations are carrying nationally-syndicated programming, rather than local content. The Commission has determined that radio is no longer playing a leading role in local news and information and that the presence of Internet platforms that offer news and information content mitigate any loss of viewpoint diversity.

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Next Gen TV Approved *continued from page 1*

infancy of the technology, the Commission reasoned that it is premature to set a boundary between Next Gen services that clearly fall within this description and others that may or may not, but that have not yet been developed. However, to ensure that television licensees continue to offer a traditional broadcast service in addition to whatever else they might do with this technology, the Commission will require each station deploying ATSC 3.0 to provide at least one free over-the-air video program stream. As a legally defined broadcast service, the 3.0 program stream will be subject to all of the restrictions and obligations generally imposed on broadcasters.

The Commission believes that deployment of ATSC 3.0 during the post-incentive auction repack is advantageous in that it may allow stations to consolidate construction projects and build once rather than twice. However, it observes that costs related to ATSC 3.0 that would not otherwise be necessary for the repack are not eligible for reimbursement from the TV Broadcaster Relocation Fund.

The FCC determined that the most effective way to implement a smooth transition to ATSC 3.0 will be through simulcasting partnerships. Television receivers capable of receiving 3.0 are generally not yet available in the United States, and their penetration into the American market will likely be gradual. Therefore, it will be necessary to continue to provide the currently deployed ATSC 1.0 service while developing ATSC 3.0. Stations will be required to simulcast their primary video stream in both formats by partnering with another station in the market. One partner will air the ATSC 1.0 streams for both stations while the other one converts its facilities to ATSC 3.0. Initially, the content of the 1.0 and 3.0 program streams must be the same, except for advertisements, program promotions and content that features the enhanced capabilities of ATSC 3.0. This requirement will expire five years from the effective date of these rules.

Simulcast agreements must include provisions specifying each station's rights and responsibilities, including: (1) each party's access to transmission facilities; (2) an allocation of channel capacity; (3) operation, maintenance, repair and modification of facilities, including a list of all equipment and each party's financial responsibilities; (4) conditions under which the agreement may be terminated, assigned or transferred; and (5) how the guest signal may be passed off of the host station.

The arrangements pairing stations for simulcasting will be proposed by stations and authorized by the FCC in license modification applications (rather than construction permit applications). The station originating programming will become the temporary licensee of the simulcast guest channel carrying its programming on the host station's transmission plant. Unless additional modifications are proposed that would ordinarily require a construction permit application, a simple license modification application can be used to: (1) move a 1.0 signal to a host station, move a 1.0 signal to a different host, or discontinue a 1.0 guest signal; (2) begin airing a 3.0 signal on a host station, move a 3.0 signal to a new host, or host a guest 3.0 signal; (3) convert a station to 3.0, or from 3.0 back to 1.0. In applications proposing simulcasts, applicants will be required to certify that they have a simulcast agreement that complies with the requirements stated above. The agreement itself need not be submitted with the application, but must be available upon request.

The simulcast ATSC 1.0 signal must be hosted by a station in the same DMA as the originating station that is converting to 3.0. It must cover the originating station's community of license and must generally reach at least 95% of the population served by the originating station. Applicants may request exceptions to these requirements with an explanation as to whether a qualifying simulcast station was available, and if so, why it was not chosen, and what steps the applicant would take to mitigate the reduction in service.

On the other hand, if an originating station decides to simulcast its 3.0 signal on a different station, it will have greater flexibility. The 3.0 signal may be hosted by any station within the same DMA, but there will be no requirement for it to duplicate the footprint of the 1.0 signal on the originating station.

Low power television and television translator stations are exempt from the requirement for a simulcast transition. Because of the difficulties these stations may face in finding suitable partners, they will have the option to flash cut directly to ATSC 3.0. Nonetheless, if opportunities arise, they will be free to enter into simulcast agreements with other low power/translator stations or with full power stations.

The ATSC 3.0 signal will not have mandatory carriage rights on cable or satellite systems, even if it is the station's only signal. Of course, it can be the subject of retransmission consent agreements. Must-carry rights will continue to attach to the ATSC 1.0 signal. The 1.0 signal will have the same carriage rights that it enjoyed at the originating station, provided that the station qualified for and has been exercising those rights at the originating station's location, and provided that the signal continues to qualify for must-carry at the host station. Stations cannot elect must-carry for the 3.0 signal in place of the 1.0 signal.

The relocation of a 1.0 signal to a temporary simulcast host may allow it to reach new communities outside of the DMA. This situation might give rise to requests from the licensee for market modifications to assert must-carry rights in those new communities. The Commission says that it is "unlikely to rule favorably" on such requests because the relocation of the signal to the host location is only temporary.

The Commission adopted service and interference protection standards for ATSC 3.0 equivalent to those in place for the DTV ATSC 1.0 signals, found in OET Bulletin No. 69.

There will be no Next Gen tuner mandate. The Commission will not require television receivers to be ATSC 3.0-capable. The agency concluded that such a mandate is unnecessary at this time because the deployment of ATSC 3.0 will be voluntary and market-driven, and that stations will continue to transmit ATSC 1.0 signals indefinitely.

In the same action, the Commission adopted a *Further Notice*

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DEADLINES TO WATCH

License Renewal, FCC Reports & Public Inspection Files

Dec. 1, 2017	Deadline to place EEO Public File Report in public inspection file and on station's Internet website for all nonexempt radio and television stations in **Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota** and **Vermont**.
Dec. 1, 2017	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).
Dec. 1, 2017	Deadline to file EEO Broadcast Mid-term Report for all radio stations in employment units with more than 10 full-time employees in **Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island** and **Vermont**; and all television stations in employment units with five or more full-time employees in **Colorado, Minnesota, Montana, North Dakota** and **South Dakota**.
Dec. 1, 2017	Deadline for digital television stations that received revenues from the provision of ancillary or supplementary services to file annual Ancillary/ Supplementary Services Report for 12-month period ending September 30, 2017. (Stations that did not receive revenue from the provision of such services are exempt from the filing requirement this year pending FCC action on a proposal to modify the reporting obligation.)
Dec. 1, 2017 to March 2, 2018	Filing window for 2017 Biennial Ownership Reports for all AM, full service FM, full service TV, Class A TV and Low Power TV stations.

U.S. COPYRIGHT OFFICE DEADLINE TO REGISTER AGENT FOR TAKE DOWN NOTICES REGARDING INFRINGING WEBSITE CONTENT UNDER NEW ELECTRONIC REGISTRATION SYSTEM DECEMBER 31, 2017

Jan. 10, 2018	Deadline to place Issues/Programs List for previous quarter in public inspection file for all full service radio and television stations and Class A TV stations.
Jan. 10, 2018	Deadline to file quarterly Children's Television Programming Report for all commercial full power and Class A television stations.
Jan. 10, 2018	Deadline to file quarterly Transition Progress Report for all television stations subject to modifications in the repack.
Jan. 10, 2018	Deadline for noncommercial stations to file quarterly report re third-party fundraising.
Feb. 1, 2018	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**
Feb. 1, 2018	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).
Feb. 1, 2018	Deadline to file EEO Broadcast Mid-term Report for all radio stations in employment units with more than 10 full-time employees in **New Jersey** and **New York**; and all television stations in employment units with five or more full-time employees in **Kansas, Nebraska** and **Oklahoma**.

FILING WINDOW FOR LONG-FORM FM TRANSLATOR APPLICATIONS IN AUCTION 99 DECEMBER 1 – 21, 2017

DEADLINE FOR ALL RADIO STATIONS THAT HAVE NOT YET DONE SO TO UPLOAD PUBLIC FILE TO FCC PUBLIC FILE WEBSITE MARCH 1, 2018

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 17-264; NPRM Publishing notices of applications; digital TV ancillary and supplementary reports	Dec. 29	Jan. 16
U.S. Copyright Office Docket 2005-6; NPRM Copyright royalty reporting practices of cable systems	Jan. 16	Jan. 30
Docket 17-340: Public Notice Technological Advisory Council's recommendations re Basic Spectrum Principles	Jan. 31	Feb. 15
Dockets 14-50, 17-289; NPRM Broadcast multiple- and cross-ownership rules	FR+60	FR+90
Docket 16-142; FNPRM Next generation broadcast television standard	FR+60	FR+90

FR+N means that 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
Procedures for hearings, Section 1.221, 1.229, 1.248	Dec. 14
Procedures for carriage complaints, Section 76.7, 76.9, 76.61, 76.914, 76.1001, 76.1003	Dec. 14
Procedures for program carriage complaints and MVPD affiliation, Sections 76.1302	Dec. 14
Procedures for program access complaints on open video systems, 76.1513	Dec. 14
Permit but disclose proceedings, Section 1.1206	Dec. 26
AM measurement data	Jan. 2
Application form for International Broadcast Station, Form 420-IB	Jan. 2
Application for license for International Broadcast Station, Form 421-18	Jan. 2
Application for radio service authorization, Form 601	Jan. 2
Application for consent to assignment or transfer of control of radio service authorization, Form 603	Jan. 2
Application to modify broadcast license, Section 73.3544	Jan. 16
Determining AM station operating power, Section 73.51	Jan. 16
Posting and filing of station license, Sections 73.1230, 74.165, 74.432, 74.564, 74.664, 74.765, 74.832, 74.1265	Jan. 23
Blanketing interference, Sections 73.88, 73.318, 73.685	Jan. 26
Broadcast EEO Program Model Report, Form 396-A	Jan. 29
Children's Television Programming Report, Form 2100, Schedule H	Jan. 29

December 31 Is Deadline to Register DMCA Takedown Agent

Under the Digital Millennium Copyright Act, an Internet website operator can claim safe harbor immunity from liability for copyright infringement because of content placed on the site by a third party user without the operator's knowledge that an infringement had occurred. To qualify for this immunity, the website operator must designate an agent to receive takedown notices from copyright owners who object to their copyrighted content appearing on the site. The website operator must register the designated agent and his or her contact information with the Copyright Office.

Until now, this registration procedure has been a manual paper process. The Copyright Office is converting its facilities to an electronic online process. All service providers and website operators must register their takedown agents in the new online system by December 31, 2017. Even providers who have registered agents on file will need to register them again in the online system. All paper registrations will expire as of December 31.

Any website or service provider that allows users to upload, post or transmit content (including user-generated material, blog posts, or links to other websites) should have a takedown agent registered with the Copyright Office. Failure to have an agent in the Copyright Office's database may cause the service provider to lose its immunity from claims for copyright infringement.

The agent registration process is accomplished online at the Copyright Office's website at: https://www.copyright.gov/dmca-directory/.

OET Seeks Comment on Interference Recommendations

The Spectrum and Receiver Working Group of the FCC's Technological Advisory Council has developed recommendations to address the increasing challenges of efficient and fair allocation of spectrum in congested RF environments. The Working Group has been especially concerned about finding a balance between the respective rights and responsibilities of transmitters and receivers. To help establish this balance, the Council has promulgated nine principles of spectrum management:

1. Harmful interference is affected by the characteristics of both a transmitting service and a nearby receiving service in frequency, space or time.

2. All radio services should plan for non-harmful interference from signals that are nearby in frequency, space or time, both now and for any changes that occur in the future.

3. Even under ideal conditions, the electromagnetic environment is unpredictable. Operators should expect and plan for occasional service degradation or interruption. The Commission should not base its rules on exceptional events.

4. Receivers are responsible for mitigating interference outside their assigned channels.

5. Systems are expected to use techniques at all layers of the stack to mitigate degradation and interference.

6. Transmitters are responsible for minimizing the amount of their transmitted energy that appears outside their assigned frequencies and licensed areas.

7. Services under FCC jurisdiction are expected to disclose the relevant standards, guidelines and operating characteristics of their systems to the Commission if they expect protection from harmful interference.

8. The Commission may apply Interference Limits to quantify rights of protection from harmful interference.

9. A quantitative analysis of interactions between services shall be required before the Commission can make decisions regarding levels of protection.

The Council has recommended that the FCC adopt the following policies, incorporating these principles:

1. Implement and formalize the Council's recommendations in its white paper, Basic Spectrum Principles, as Commission policy, and set clear expectations about the affected system's capabilities regarding interference, such as harm claim thresholds. (The white paper is available at https://transition.fcc.gov/bureaus/oet/tac/tacdoc/meeting121015/Principles-White-Paper-Release-1.1.pdf.)

2. Adopt risk-informed interference assessment and statistical service rules more widely. (A paper on risk-informed interference assessment is available at http://transition.fcc.gov/bureaus/oet/tac/tacdocs/meeting4115/Intro-to-RIA-v100.pdf.)

3. Implement steps for improving interference resolution, including a next-generation architecture for radio spectrum interference resolution, creating a public database of past radio-related enforcement activities, and incorporate interference hunters in the resolution process.

The Commission's Office of Engineering and Technology has requested public comment on these principles and proposed policies. The deadline for comments to be submitted in Docket 17-340 is January 31. Reply comments are due by February 15.

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of Proposed Rulemaking to address several lingering issues. The first of these concerns waivers and exceptions to the local simulcasting requirement. In adopting the rule, the agency said it would entertain requests for waivers of the coverage requirement in cases where a station claims that it cannot find a viable partner. Now the Commission seeks input on how it should evaluate whether viable partners actually exist for a station in its DMA. Should there be a threshold number of stations in the market below which it is reasonable to presume that viable partners are scarce? Should Class A stations and noncommercial stations enjoy an automatic presumption that they have no viable partners because of their particular characteristics? In situations where waivers of the simulcast coverage rule are granted, what steps should stations be required to take to mitigate the reduction in service?

The suggestion was made in the rulemaking proceeding that vacant channels should be made available for simulcasting. Secondary spectrum users, such as low power television interests and operators of white-space services opposed this concept for the obvious reason that it would impinge on their use of otherwise vacant channels. The Commission invites public comment. If such usage is allowed, should applications be considered minor or major changes? How should competing applications be treated?

The Commission tentatively concluded that a station should not gain or lose significantly viewed status in a community outside of its DMA merely because it has located its 1.0 simulcast channel at a host station. A station with significantly viewed status in a community outside of its home DMA can be carried on satellite into the community, can be carried by cable and satellite into the community with reduced copyright royalty rates as a local station, and can be exempt from non-duplication or syndicated exclusivity complaints from stations in that DMA. The Commission has frozen the filing of petitions to change significantly viewed status for Next Gen stations moving their 1.0 signals to other locations, pending resolution of this issue. Should the Commission reverse its tentative conclusion and allow such status changes?

Comments on these issues in Docket 16-142 will be due 60 days after notice of this proceeding is published in the Federal Register. Reply comments must be filed 30 days later.

Translators Cannot Originate Programming

The FCC's Media Bureau has proposed a $4,000 forfeiture against TEA-VISZ, Inc. ("TEA"), licensee of FM translator station W272AY, Park Falls, Wisconsin, for originating programming – a violation of Section 74.1231(b) of the Commission's rules. Translator stations are generally prohibited from originating programming – i.e., broadcasting content that is not the rebroadcast of another station's broadcasts.

Heartland Comm. Licensee, LLC, a group owner with a number of radio stations in the Wisconsin/Michigan border area, filed a petition to deny the 2012 license renewal application for W272AY, alleging numerous rule violations, including originating programming by the translator, unauthorized silent periods, failure to notify the FCC of a change of the primary station, and improper relationships between TEA and the licensee of the purportedly unrelated primary station. TEA disputed these allegations and offered evidence to counter Heartland's accusations (except for those about program origination) and the Bureau accepted TEA's explanations.

Heartland asserted that TEA regularly originated its own programming on W272AY. It presented sworn declarations from listeners attesting to having heard W272AY airing content on five separate dates in August and September 2012 that differed from the programming of the parent station. W272AY was broadcasting music while the primary station which it was supposed to be rebroadcasting, WIMI, was carrying Green Bay Packers football.

TEA did not deny the allegation. Rather, it claimed that this had happened "only a very few times," and that this isolated error was due to its engineer's mistake in connecting the remote control switch. TEA explained that the translator was unable to air the Packers football games because of territorial restrictions. Nonetheless, TEA's engineer had wanted the translator to be able to broadcast emergency announcements that might occur during the football black-out periods. TEA explained that he therefore, without TEA's prior knowledge, wired the station to broadcast music rather than remain silent. The engineer offered a statement to the effect that as soon as he realized his error, he disconnected the music and the translator thereafter went silent during Packers football on WIMI.

The Bureau found that a sanction was in order. It said that TEA's description of the incidents as limited in number and its claim to be unaware that they were happening did not excuse them. The Bureau observed that a licensee is "fully responsible for all programming broadcast over a station." Because TEA's defense rested at least partially on the fact that it claimed not to know that its station was airing music instead of football, the agency admonished the licensee for its "apparent lack of full control over station programming." For violating the prohibition on program origination by a translator in Section 74.1231(b), the Bureau proposed in a *Notice of Apparent Liability for Forfeiture* to fine TEA $4,000.

Nevertheless, the Bureau concluded that TEA's conduct was not so serious as to be an obstacle to license renewal. Five years after the renewal application was filed, the Bureau agreed to issue a separate order granting license renewal upon the resolution of the forfeiture order, i.e., upon payment of the fine.

TEA has 30 days to petition for reconsideration or to seek the reduction or cancellation of the fine.

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The Commission also amended the limitations on local television station ownership. The rule adopted in 1999 allowed an entity to own up to two television stations in the same DMA if their service areas do not overlap, or if at least one of the stations is not among the top-four stations in the market and at least eight independently owned television stations would remain in the market after the merger. On reconsideration, the Commission repealed the "Eight-Voices Test." It said that there was no evidence to support the idea that eight should be a special value for the number of voices in a market. Use of this threshold value arbitrarily denies smaller communities the benefits that can be derived from the common ownership of television stations.

On the other hand, the Commission generally agreed with the earlier finding that the record supports the restriction on owning more than one station among the top four stations in the market. However, instead of applying a bright-line test, the agency adopted what it called a hybrid approach that will allow applicants to request a case-by-case examination of a proposed combination that would otherwise be prohibited. The Commission said that this would help mitigate the potential drawbacks associated with a strict application of the top-four rule.

In this current action on reconsideration, the Commission abolished the rule that defines an interest in a joint sales agreement ("JSA") between television stations as attributable for purposes of calculating ownership limits. This rule is triggered when one station agrees to sell advertising for another station in the same market that amounts to at least 15% of that station's weekly advertising time. The rationale for the rule was that a station can be controlled by an outside party that controls the sale of its advertising, and thus controls its revenues. Although the rule had been originally adopted in 2014, vacated by the U.S. Court of Appeals for the Third Circuit, and then adopted again by the Commission in 2016, the current FCC said that record evidence had never supported this concept.

As for the local market multiple ownership rules for radio, the 2016 order left the existing rule mostly intact, and the Commission generally did not disturb that outcome on reconsideration. The number of stations that can be owned in common rises with the size of the market as measured by the total number of stations in the market. In the largest markets – with 45 or more radio stations – eight is the maximum number of stations that can be owned by one entity, provided that no more than five of them

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are in the same service (AM or FM).

On reconsideration, the Commission did address a proposal presented by station group owner Connoisseur Media regarding embedded markets. An embedded market is one that is somewhat self-sufficient albeit completely contained within a larger parent market. The current rule disregards embedded markets and takes into account all of the stations in the entire larger market for making the calculations about the market cap. Connoisseur proposed a two-part test to give rise to a presumptive waiver for allowing the limit for the larger market to be exceeded. In a parent market with multiple embedded markets, (1) each embedded market would be treated as a separate market for calculating the total number of stations allowed under common ownership in the embedded market, and (2) provided that none of the stations in one embedded market has a contour overlap with a station under common control in another embedded market. The Commission agreed to adopt this approach, but limited its application for the time being to two markets – New York and Washington. In the longer view, the Commission said that it intends to examine the matter of embedded markets in the 2018 Quadrennial Review.

In the *Notice of Proposed Rulemaking* portion of the action, the Commission launched an examination of how to design and implement its incubator program to support the entry of new and diverse voices in the broadcast industry. Typically, an incubator program provides a channel or platform for incentives for an established entity to provide some form of assistance to the entity targeted for development. This is a topic that has been roiling in the Quadrennial Review proceedings for some time.

The Commission first seeks comment on what kinds of entities should be eligible to participate in an incubator program. Options include the following:

1. <u>New Entrants</u>. The Commission already employs a "new entrant" definition for entities entitled to claim bidding credits in broadcast auctions. New entrants are entities with attributable interests in few or no other media of mass communication.

2. <u>Revenue-based Eligible Entity</u>. For allocating certain preferences, the Commission has adopted the definition for a small business entity that qualifies as a small business under the Small Business Administration's ("SBA") revenue grouping according to industry.

3. <u>Socially and Economically Disadvantaged Businesses</u>. The standard for this category of entity is based on the SBA's definition. Persons of certain racial or ethnic backgrounds are presumed to be disadvantaged. All other individuals may qualify for the program if they can demonstrate that they are disadvantaged.

4. <u>Overcoming Disadvantages Preference</u>. This standard employs various criteria to demonstrate that an entity or individual has overcome significant disadvantage.

The Commission seeks suggestions for what should qualify as an incubation activity. Such activities should provide the incubated entity with support that it otherwise lacks and that is essential to its operation and ability to serve its community. The Commission observes that as traditionally conceived, a comprehensive program could include management or technical assistance, loan guarantees, financial assistance through loans and/or equity investment, and training and business planning assistance. Should other approaches be considered as well, such as donating stations, or arrangements whereby the new entrant gains experience without first owning a station, such as programming a station and selling advertising under a local marketing agreement?

The agency also wants to review the range of benefits that could be available to the party who conducts the incubation. In the past this has frequently meant a waiver of the multiple ownership rules. Are there waivers of other rules that could be justified and that would be beneficial? The incubation concept has only been used in radio. Should it be expanded to television? How is the incubation program evaluated for success? Do the benefits outweigh the costs?

Comments on these issues involving the incubator program will be due in Docket 17-289 60 days after notice of this proceeding appears in the Federal Register. The deadline for reply comments will be 90 days after that publication.