

All Radio Public Files Must Be Online by March 1

The final stage of the FCC's multi-year project to implement online public access for all broadcast station and cable system public inspection files culminates on March 1 when all public files must be online and publically accessible on the Commission's website. Television stations and commercial radio stations with five or more full-time employees in the top 50 Nielsen radio markets were subject to earlier deadlines to complete the task of establishing and maintaining their public files online. All other radio stations required to have public files must complete this transition from paper records to the online electronic files by March 1.

Most documents currently required to be in the public file must be uploaded and accessible to the public by the March 1 deadline. After March 1, new documents must be timely uploaded as they are created or acquired. Items must be maintained in the online file for the same period of time that was required for the paper version of the public file. The Commission is importing some documents to each station's online file. For example, every station is required to have a contour map of its service area in the public file. The Commission will generate a contour map for every radio station and make it accessible on the webpage for that station's public file.

A partial exception to the online mandate concerns the political file. Although such documents must be maintained for two years, stations need only upload political file materials newly generated

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Noncom FM Licensee Agrees to Pay \$115K Penalty for Underwriting Violations

An investigation by the FCC's Enforcement Bureau into the program underwriting practices of the Cesar Chavez Foundation ("CCF") at its noncommercial FM stations has ended in a *Consent Decree* in which the licensee agreed to pay a civil penalty of \$115,000. The *Decree* also provides for a one-year moratorium on underwriting at CCF's stations, KNAI-FM, Phoenix, and KUFW(FM), Woodlake, California, and a four-year compliance plan.

Noncommercial stations are prohibited from broadcasting advertisements, defined as the promotion of the goods or services of a for-profit entity in exchange for remuneration. A noncommercial station may air underwriting announcements to identify entities that contribute to the station and may identify the contributors' goods or services, but without comparative or qualitative descriptions, price information, calls to action, inducements to conduct business, or excess-

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Modernization Proposed for Paper Contract Rule

The FCC has proposed to stop requiring broadcast stations to file certain contracts and other documents with the Commission in the ordinary course of business. This proposal to modernize Section 73.3613 of the agency's rules was adopted in a *Notice of Proposed Rulemaking* in Docket 18-4.

Section 73.3613 currently requires that within 30 days of execution, stations submit to the Commission paper copies of the following categories of documents: network affiliation agreements between a television station and a national network; documents that relate to ownership or control of the licensee or permittee (including such items as partnership agreements, articles of incorporation, bylaws, and limited liability company articles, and trust instruments); contracts for management of the station by someone other than a regular employee, officer or director of the licensee, or by any person where the contract provides for a sharing of profits and losses; attributable time brokerage agreements; and attributable joint sales agreements.

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Biennial Ownership Reports Due March 2

The 2017 Biennial Ownership Reports for all commercial and noncommercial broadcast stations are to be filed with the FCC by March 2. (Low power FM stations are exempt from this requirement.) The data reported on Form 323 or 323-E is required to reflect the structure and personnel that were in place on the snapshot date – October 1, 2017.

The Commission's rules require stations to submit owner-

ship reports in odd-numbered years. Usually, the filing deadline is December 1. That deadline was postponed to March 2, 2018, for the 2017 reports because the Commission drafted new versions of the online report forms and moved the process from the Consolidated Database System to the Licensing and Management System. The new forms and system only became available to the public around December 1 and there would have been insufficient time to complete the filings.

LPTV Special Displacement Filing Window Set for April 10 – May 15

The FCC's Incentive Auction Task Force and Media Bureau have announced the opening of the LPTV Special Displacement Filing Window from April 10, 2018 until 11:59 Eastern Time on May 15, 2018. This window will provide an opportunity for low power television and television translator stations (collectively "LPTV") that have been displaced by full power or Class A stations as a result of the incentive auction or the post-auction repack to apply for open channels. The current freeze on the filing of LPTV modification applications will be temporarily lifted for this filing window and reimposed when the window closes.

April 10 will also be the first day on which full power stations can file applications for digital-to-digital replacement translators ("DTDRTs"). DTDRTs provide fill-in service for full power stations that suffer more than the permitted one percent loss in coverage area or population as a result of the repack. Applications for new DTDRTs will be accepted until July 13, 2021, one year after the close of the post-auction transition period.

To be eligible to file an application in this window, an LPTV station must be both "operating" and "displaced." "Operating" means that the station had a license or had an application pending for a license as of April 13, 2017. That is the date of release of the post-auction television table of allotments. To qualify as being "displaced," the LPTV station must be licensed on television channels 38-51 in the spectrum being repurposed to wireless services; or it must be displaced by a full power or Class A station in the repacked television band on channels 2-36. LPTV stations that do not qualify for this filing window will have an opportunity to file applications after the close of this Special Displacement Window when the Commission will again lift the freeze on the filing of LPTV applications.

To assist LPTV applicants, the Commission has compiled a database that identifies locations and channels where LPTV applications would likely be unsuccessful because of the pres-

ence of protected authorizations and applications of full power and Class A television stations, non-displaced LPTV stations, and land-mobile operations. Applicants should avoid these areas. Applicants must employ the Commission's *TVStudy* program to ensure that their proposals will not cause harmful interference. The Commission encourages applicants in the 40 largest markets to select new channels for displaced stations that are adjacent to channels used by other television broadcasters so as "to help provide for flexibility in the future." Such flexibility might aid in the development of white space services. The data offered in this database is based on use of the incentive auction repacking and optimization software nationwide. The database is available online at <https://data.fcc.gov/download/incentive-auctions/LPTV-Data>.

LPTV stations will be able to apply for any open channel in the repacked band from 2 to 36. In selecting a new antenna site, digital stations are restricted to the area within a radius of 48 kilometers from the reference coordinates of the existing facility's community of license. Analog stations may propose to move the antenna site up to the maximum of 16.1 kilometers from the existing antenna site. With a request for a waiver of the rule against contingent applications, LPTV applicants will be permitted to apply for channels presently occupied but soon to be vacated by full power and Class A stations in the process of relinquishing their spectrum as a result of the auction or the repack.

All applications submitted in the Special Displacement Filing Window will be considered as filed on the last day of the window. Applications filed before April 10 by displaced stations that were forced to cease broadcasting on their original channels by the early start-up of wireless operations will also be considered as filed on the last day of the window. Mutually exclusive applicants will have an opportunity to negotiate technical amendments or buyouts to resolve their conflicts during a post-window settlement period. Conflicts that remain after the settlement period will be resolved by auction.

Repacking Stations to Be Audited on Reimbursements

The FCC's Incentive Auction Taskforce and Media Bureau have announced a plan to conduct on-site audits of a statistically valid sample of television stations that are eligible for reimbursement from the TV Broadcaster Relocation Fund to confirm the existence and functionality of baseline equipment. Congress allocated \$1.75 billion to the Fund to be used to cover the costs incurred by stations that need to modify their facilities in the course of the post-auction repack of television spectrum.

In establishing the process for conducting the incentive auction process, the Commission made it clear early that audits, data validations, and site visits would be employed to guard against waste, fraud and abuse in the distribution and use of money from the Fund. The Commission specifically contemplated that third-party contractors might be engaged to perform such monitoring, both during and after the three-year transition period during which reimbursements from the Fund will be disbursed. Of the 957 stations eligible to receive reimbursement from the Fund, approximately 60 will be randomly selected for these audits.

The Commission has previously required all eligible stations to submit their estimated relocation costs on Schedule 399 of Form 2100. In addition to cost estimates, this form also required each station to list its current operational equipment. The auditors will visit the selected stations on-site to validate the existence and functionality of the equipment that was listed in the Schedule 399.

The site visits will be conducted by an outside contractor employed by the FCC. It is anticipated that each visit will involve one or two members of the contractor's staff, spending one or two days in on-site inspection of the station's existing facilities and equipment. The auditors will compare their findings to the disclosures in the station's Schedule 399 and then prepare a report for the Commission.

Selected stations will be notified in advance by next-day delivery and email. The visit will be scheduled at a mutually convenient time, arranged during pre-visit telephone conferences. Selected stations will be contacted this year between February and May.

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on or after the station's deadline for online file implementation. However, stations must then continue to keep the earlier items in the local political file for the balance of the two-year holding period. Prior to the repeal of the Main Studio Rule, these files were to be maintained at the main studio. Now such records must generally be kept at a location within the station's community of license that is accessible to the public during regular business hours. If the station's main studio was located outside of the community of license, that site is grandfathered to continue to host the remains of the political file.

There is a permanent obligation to maintain a complete back-up copy of the political file at this same location. The Commission has assured the public that its upgraded website can accommodate the increased usage and storage demands resulting from the creation of online public files. Nevertheless, to ensure compliance with the statutory mandate for promptly providing the contents of political files to candidates and the public, stations are required to have the entire political file available at the local site as a precautionary measure so that it can be accessible immediately in the event the Commission's website becomes unavailable.

Modernization Proposed for Paper Contract Rule continued from page 1

The biennial ownership report form asks each licensee to identify documents to which it is a party from the list in Section 73.3613. The public inspection file rules require that the station's file contain either a complete list of the required documents named in the station's current ownership report, or copies of the documents themselves.

The Commission suggests that submitting paper copies of the documents to the Commission while also having them immediately available for inspection under the public file rule is an unnecessary duplication of effort. The Commission proposes to clarify that if the filing obligation is eliminated, a station must still ensure that the inventory of Section 73.3613 documents in its public file is complete and current, regardless of whether it opts to retain copies of the documents or merely a list. Furthermore, upon request, stations will be expected to produce copies of the documents to the Commission or to the public within seven days.

In the interest of clarity and simplification, the Commission seeks comment on whether to revise the relevant public file rules to refer specifically to Section 73.3613 instead of referencing the items listed in the ownership reports (which are the same). In the alternative, the Commission asks whether Section 73.3613 should just be eliminated.

Section 73.3613 also applies to international broadcast stations, which are not subject to the public file requirement. The Commission proposes to repeal the filing requirement for these stations as well, subject to an obligation to make the documents available to the agency upon request.

The Commission invites public comment on these proposals. The deadline to submit comments will be 30 days after notice of this proceeding is published in the Federal Register. Reply comments will be due 45 days after that publication.



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

February 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.**

February 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).

February 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.**

March 1, 2018 Deadline for all radio stations to upload public inspection files to FCC-hosted website.

March 2, 2018 Deadline to file 2017 Biennial Ownership Reports for all AM, full service FM, full service TV, Class A TV and Low Power TV stations.

April 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 **Delaware, Indiana, Kentucky, Pennsylvania, Tennessee and Texas.**

April 2, 2018 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).

April 2, 2018 Deadline to file EEO Broadcast Mid-term Report for all radio stations in employment units with more than 10 full-time employees in **Delaware and Pennsylvania**; and all television stations in employment units with five or more full-time employees in **Texas.**

Deadlines for Comments In FCC and Other Proceedings

| Docket | Comments | Reply Comments |
|---|----------|----------------|
| (All proceedings are before the FCC unless otherwise noted.) | | |
| Docket 17-143; Public Notice Procedures of Auction 99 | | |
| Cross-service FM construction permits | Feb. 13 | Feb. 21 |
| Docket 17-317; NPRM Communicating TV station carriage elections to MVPDs | Feb. 15 | Mar. 2 |
| Docket 17-340; Public Notice Technological Advisory Council's recommendations re Basic Spectrum Principles | | Feb. 15 |
| Docket 16-142; FNPRM Next generation broadcast television standard | Feb. 20 | Mar. 20 |
| Docket 17-344; Public Notice Response efforts during 2017 hurricane season | | Feb. 21 |
| Docket 17-79; Public Notice Excluding "Twilight Towers" from routine historic preservation review | | Feb. 26 |
| Dockets 14-50, 17-289; NPRM Rules and policies to promote new entry and ownership diversity in broadcasting | Mar. 9 | Apr. 9 |
| U.S. Copyright Office Docket 2005-6; NPRM Copyright royalty reporting practices of cable systems | Mar. 16 | Apr. 6 |
| Docket 17-318; NPRM National limits on television station ownership | Mar. 19 | Apr. 18 |
| Docket 18-4; NPRM Repeal of requirement to file contracts | Mar. 19 | Apr. 2 |

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

**AUCTION NO. 99
CROSS-SERVICE FM TRANSLATOR
CONSTRUCTION PERMITS
BIDDING BEGINS
MAY 15, 2018**



DEADLINES TO WATCH



Paperwork Reduction Act Proceedings

The FCC is required under the Paperwork Reduction Act to periodically collect public information on the paperwork burdens imposed by its record-keeping requirements in connection with certain rules, policies, applications and forms. Public comment has been invited about this aspect of the following matters by the filing deadlines indicated.

| Topic | Comment Deadline |
|---|------------------|
| Public inspection files; political files, Sections 73.3526, 73.3527, 73.1212, 73.1943 | Feb. 26 |
| Wireless microphones, Section 74.803 | Mar. 12 |
| Satellite earth stations, Forms 312, 312-EZ, 312-R | Mar. 13 |
| Antenna structure registration requirements, Sections 17.4, 17.48, 17.49 | Apr. 2 |

Lowest Unit Charge Schedule for 2018 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 periods are imminent in the following states.

| State | Election Event | Date | LUC Period |
|----------------|----------------|---------|------------------|
| Arkansas | State Primary | May 22 | Apr. 7 - May 22 |
| California | State Primary | June 5 | Apr. 21 - June 5 |
| Georgia | State Primary | May 22 | Apr. 7 - May 22 |
| Idaho | State Primary | May 15 | Mar. 31 - May 15 |
| Illinois | State Primary | Mar. 20 | Feb. 3 - Mar. 20 |
| Indiana | State Primary | May 8 | Mar. 24 - May |
| Kentucky | State Primary | May 22 | Apr. 7 - May 22 |
| Nebraska | State Primary | May 15 | Mar. 31 - May 15 |
| North Carolina | State Primary | May 8 | Mar. 24 - May 8 |
| Ohio | State Primary | May 8 | Mar. 24 - May 8 |
| Oregon | State Primary | May 15 | Mar. 31 - May 15 |
| Pennsylvania | State Primary | May 15 | Mar. 31 - May 15 |
| Texas | State Primary | Mar. 6 | Jan. 20 - Mar. 6 |
| West Virginia | State Primary | May 8 | Mar. 24 - May 8 |

**LPTV SPECIAL DISPLACEMENT
FILING WINDOW
APRIL 10 – MAY 15, 2018**

**AUCTION NO. 83
FM TRANSLATOR
CONSTRUCTION PERMITS
BIDDING BEGINS JUNE 21, 2018**

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

The FCC has accepted for filing the AM and FM applications identified below proposing to change each station's community of license. These applications may also include proposals to modify technical facilities. The deadline for filing comments about any of the applications in the list below is **February 26, 2018**. Informal objections may be filed anytime prior to grant of the application.

| Present Community | Proposed Community | Station | Channel | Frequency |
|-----------------------|--------------------|----------|---------|-----------|
| Decatur, AL | Mooresville, AL | WWTM(AM) | N/A | 1390 |
| Lake Isabella, CA | Arvin, CA | KKCA | 239 | 95.7 |
| St. Simons Island, GA | Darien, GA | WSSI | 224 | 92.7 |
| Pocatello, ID | Hailey, ID | KPTO(AM) | N/A | 1440 |
| New Boston, OH | Portsmouth, OH | WPAY-FM | 281 | 104.1 |
| Portsmouth, OH | New Boston, OH | WUKV | 202 | 88.3 |
| Weatherford, OK | Burns Flat, OK | KLXM | 285 | 104.9 |
| Snyder, TX | Stanton, TX | KTPR | 210 | 89.9 |
| Parowan, UT | Enoch, UT | KUQU | 230 | 93.9 |
| Richmond, VA | Sandston, VA | WBTL(AM) | N/A | 1540 |

Rulemakings to Amend FM Table of Allotments

The FCC is considering an amendment proposed to the FM Table of Allotments to add the following channel. The deadlines for filing comments and reply comments are shown.

| Community | Channel | MHz | Comments | Reply Comments |
|------------------|---------|-------|----------|----------------|
| Desert Hills, AZ | 292A | 106.3 | Mar. 26 | Apr. 10 |

Cut-Off Dates for Noncommercial FM Applications

The FCC has accepted for filing the applications for new noncommercial FM stations identified below. Petitions to deny must be filed by the deadline shown. Informal objections may be filed anytime prior to grant of the application.

| Community | Channel | MHz | Applicant | Deadline |
|---------------|---------|-------|------------------------------------|----------|
| Barrow, AK | 259 | 99.7 | Adventist Radio Alaska Corporation | Mar. 12 |
| Bethel, AK | 241 | 96.1 | Adventist Radio Alaska Corporation | Mar. 12 |
| Fairbanks, AK | 295 | 106.9 | Adventist Radio Alaska Corporation | Mar. 12 |

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

Resolution Proposed for ‘Twilight Towers’ Problem

The FCC has requested public comment on a draft Program Comment produced by the Advisory Council on Historic Preservation (“ACHP”) addressing the problem of so-called “Twilight Towers.” If the proposal is adopted, collocations on these towers would generally be exempt from routine historic preservation review under Section 106 of the National Historic Preservation Act (“NHPA”).

ACHP was established by the NHPA in 1966 as an independent federal agency to promote the preservation, enhancement, and productive use of the nation’s historic resources. The Council advises the President and Congress on national historic preservation policy and makes recommendations to administrative agencies, such as the FCC, for protecting historic sites.

The ACHP’s rules contain general procedures for considering effects on historic properties, but they also provide a means for establishing customized or streamlined alternative review procedures called “program alternatives.” When the ACHP determines that a defined program or activity has minimal potential to affect or adversely affect historic properties, a program alternative may reduce the scope of or entirely eliminate the review process. One type of program alternative is the “Program Comment,” such as the proposal under consideration in this proceeding.

Absent an exclusion, a proposal to construct a new antenna structure or to collocate a new antenna system on an existing structure is generally subject to review of the proposal’s effect on historic sites and properties as required by Section 106. Twilight Towers are towers whose construction commenced between March 16, 2001 and March 7, 2005, for which either Section 106 review was not completed, or completion of the review cannot be documented. Section 1.1307 of the Commission’s rules directs applicants and licensees, when evaluating whether a proposed action may have an effect on historic properties, to follow the procedures in the ACHP’s rules or an applicable program alternative, such as National Programmatic Agreements (“NPAs”) adopted in 2001 and 2005. Under the 2001 NPA, collocations on towers whose construction began on or before March 16, 2001, are generally excluded from review regardless of whether the underlying tower has undergone Section 106 review. On the other hand, collocations on towers begun after March 16, 2001, were excluded from review only if the Section 106 review for the underlying tower had been completed. The 2005 NPA became effective on March 7, 2005, and established detailed procedures for reviewing the effects of communications towers on historic properties.

Although prior to March 7, 2005, the Commission’s rules provided that applicants and licensees should evaluate whether their proposals would affect historic properties, the text of the rule did not require them to conduct this evaluation by following the ACHP’s regulations or any other specific process. Consequently, because of this lack of clarity, many towers constructed during this period were not subjected to a complete Section 106 review. Because the successful comple-

tion of the Section 106 process is presently mandatory for the exclusion from review of collocations on towers completed after March 16, 2001, licensees cannot collocate on these Twilight Towers unless each collocation completes Section 106 review or the underlying tower is subjected to a post-construction review process. The net result is significant diminished interest on the part of licensees and applicants to attempt to collocate their antennas on towers that fall into this category.

With this cloud hanging over them, many towers constructed during the 2001-2005 period remain underutilized. The Commission’s focus in this proceeding is to improve the usefulness and efficiency of existing infrastructure to support the development of burgeoning broadband facilities. However, there are also implications for broadcasters who want to collocate their antennas on Twilight Towers or who want to attract new tenants to Twilight Towers that they own.

The ACHP’s proposal would simply exclude collocations on most Twilight Towers from further Section 106 review as justified on the basis of the following factors:

- (1) the limited reliability of Section 106 review documentation from the 2001-2005 time period;
- (2) the lack of specificity in the FCC’s rules regarding Section 106 review during this period;
- (3) the limited likelihood that Section 106 review could identify any previously unknown adverse effects from these towers 12 or more years after they have been constructed;
- (4) the significant public interest benefit in making these towers readily available for collocation.

The ACHP says that this general exclusion of Twilight Towers will mirror the exclusion that already applies to collocations on towers constructed before March 16, 2001. Consistent with that policy, there are some exceptions to the exclusions. An antenna could be mounted on a Twilight Tower without Section 106 review, *unless*:

- (1) the antenna would increase the height of the tower by more than 10%, or by the height of an additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater;
- (2) the collocation would involve installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter;
- (3) the collocation would involve adding an appurtenance (other than the antenna) to the body of the tower that would protrude more than 20 feet from the tower’s edge, or more than the tower width at the level of the appurtenance, whichever is greater;
- (4) the collocation would involve excavation outside of the current tower site;

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Underwriting Violations continued from page 1

sive “menu listings” of the goods or services offered by the supporting entity.

In the context of an ongoing contested proceeding regarding the 2013 license renewal application for KUFW, the Commission received multiple complaints alleging that from August 2016 through March 2017, CCF had aired spots on behalf of contributors that were really paid advertisements rather than program underwriting announcements. It was alleged that these announcements included promotion of for-profit underwriters’ goods and services, including qualitative and comparative descriptions, pricing, and calls to action.

The complainant submitted English translations of Spanish transcripts of a number of the spots which it said it had recorded off the station’s air. The following is an illustrative example of these translated transcripts:

The sales you are looking for are at Herrera’s Jewelers like this complete package with shoes, pants, and name brand shirt. You can obtain your Boost mobile phone at no charge. What about some Cuadra Rodeo or Los Altos boots or Italian Montero, Levis or Wrangler jeans? You can send money to Mexico. Herrera’s Jewelers at your service in Selma, Reedley and Parlier. You can pay your utilities bills. They can cash your income tax from work or from the government without charge. What about a watch, a bracelet or a necklace in a 14K gold finish? If you like to dress in the trendy clothes or are looking for tickets to dances, you can visit Herrera’s Jewelers. What about some Cuadra Rodeo or Los

Altos boots or Italian Monteor, Levis or Wrangler jeans? They can cash your income tax from work or from the government without charge. More information at [phone number].

The Bureau sent CCF multiple letters of inquiry requesting more information. CCF admitted that the announcements had been broadcast as alleged and thereafter agreed to enter into the *Consent Decree*. The Bureau agreed to terminate its investigation and to dismiss any pending third-party complaints against CCF related to this investigation. However, the Commission is expressly not precluded from investigating or adjudicating other complaints of rule violations against CCF or its affiliates that might be filed.

CCF agreed to pay the government a civil penalty of \$115,000. It also agreed to refrain from broadcasting underwriting announcements in connection with contributions from for-profit entities and to refrain from entering into agreements for such broadcasts for one year from the date of the order adopting the *Consent Decree* – which was February 1. This moratorium covers not only CCF’s current stations, but also any station that it may acquire during the one-year period.

CCF is also obligated under the *Consent Decree* to implement a compliance plan for underwriting practices at its stations. The plan’s elements must include appointment of a compliance officer, development of written operating procedures and a compliance manual, staff training, periodic consulting with broadcast counsel, and annual reports to the FCC for four years.

Resolution Proposed for ‘Twilight Towers’ Problems continued from page 6

- (5) the tower has already been determined by the FCC to have an adverse effect on a historic property;
- (6) the tower is the subject of a pending FCC review concerning Section 106 compliance;
- (7) the collocation licensee, the tower owner, or the FCC has received a substantiated written complaint that the collocation would have an adverse effect on a historic property.

The deadline for comments in Docket 17-79 was February 9. Replies are due by February 26. After considering input from all interested parties, the Commission says it will revise the draft Program Comment as appropriate, summarize the comments for the ACHP, and formally request that the ACHP issue the Program Comment. The ACHP will then have 45 days in which to decide whether to issue a final Program Comment.

Freeze on TV Community Changes Partially Lifted

The FCC’s Media Bureau has announced a partial lifting of the freeze on the filing of petitions for rulemaking to change the community of license for full power television stations. Proposals will now be accepted that propose a change of the community of license without proposing any modification of the station’s technical facilities.

The freeze was imposed on August 3, 2004 to help stabilize the environment in the television table of allotments for the transition from analog to digital broadcasting. The freeze sub-

sequently remained in effect to ensure continued stability through the incentive auction and post-auction repack.

The freeze remains in effect for petitions to modify a community of license that propose facilities modifications because the post-auction repack transition is in progress. The freeze also remains in place concerning petitions for rulemaking for allotment of new DTV channels for new stations and for changing the channel of an authorized station.

FCC Proposes to Modernize Carriage Elections, But Rejects Station's Attempt with Priority Express Mail

In a *Notice of Proposed Rulemaking* in Docket 17-317, the FCC has proposed to modernize the process by which television stations notify cable systems and satellite carriers (collectively, multichannel video program distributors, or "MVPDs") about their must-carry elections.

Currently, Sections 76.64(h) and 76.66(d) of the Commission's rules direct each television station to provide notice just before the beginning of each three-year carriage cycle to each MVPD serving its market regarding whether it is electing to demand carriage, or to withhold carriage pending negotiations for retransmission consent. Both rules specify that these notices must be sent by certified mail. For notices to satellite carriers, Section 76.66(d) adds that the notice must be sent with "return receipt requested."

The FCC now seeks public comment on what alternative means of serving election notices would adequately satisfy the needs of broadcasters and MVPDs. The options suggested are express delivery services, and/or electronic mail. The Commission invites evaluation of the degree of confidence that can be achieved concerning the actual delivery of email, especially in the face of the significant legal and financial consequences that would arise from the failure to make a timely carriage election notice. Is there an electronic equivalent to certified mail? Would the broadcasters' burden really be reduced with the use of express delivery services? More broadly, are there other measures the agency could adopt to minimize the difficulties for broadcasters while ensuring that MVPDs are timely notified of the broadcasters' elections?

February 15 is the deadline for filing comments in this proceeding. Reply comments will be due by March 2.

Ironically, shortly after the Commission released this proposal in Docket 17-217 to modify election delivery requirements, the

agency's Media Bureau ruled that a station's delivery of its must-carry election notice to a satellite carrier via Priority Express Mail was invalid.

KMTP-TV, San Francisco, timely sent its election for mandatory carriage to satellite carrier DISH Network on September 27, 2017, for the 2018-2020 carriage cycle. The letter contained all of the information required by the Commission's rules, and DISH acknowledges that it received the notice. DISH, however, refused carriage for KMTP-TV on the grounds that the letter was not sent by certified mail with return receipt requested as mandated by Section 76.66(d) of the Commission's rules.

KMTP-TV filed a carriage complaint with the FCC. The station argued that its election letter should have been acceptable because "Certified Mail is a lesser included service to Priority Express Mail." KMTP-TV noted that "Priority Express Mail" did not exist when Section 76.66 was adopted. Had that category of postal service been available then, the Commission would likely have included it as an option. The station concluded that DISH was attempting to place form over substance. DISH responded that it was within its rights to reject the notice because the rule expressly requires certified mail, return receipt requested.

The Bureau issued a *Memorandum Opinion and Order* in which it agreed with DISH's position that KMTP-TV's notice was invalid. The rule is explicit about the precise manner in which the election notice is to be delivered and KMTP-TV did not comply with the rule. The Bureau explained that the requirement that carriage elections be made by certified mail provides assurances that satellite carriers are aware of their carriage obligations. The Media Bureau said that because satellite carriers have to contend with hundreds of elections and must-carry requests from local stations, a "bright line approach" is necessary to establish that an election was mailed and received.

FM Translator Auctions Scheduled

The FCC's Wireless Telecommunications Bureau and Media Bureau have announced the dates for the beginning of bidding in two auctions featuring construction permits for new FM translator stations in the commercial FM band. Both auctions are closed. Only parties who have previously filed applications will be able to bid.

Auction 83 is open to 102 applicants in 43 groups of mutually exclusive applications. These are the only remaining pending applications from the thousands that were filed in the 2003 FM translator filing window. Bidding in Auction 83 is scheduled to commence on June 21, 2018. Other procedural dates will be announced in subsequent public notices.

In Auction 99, 26 applicants are in line to bid in 12 groups of mutually exclusive applications. These applications were filed in July and August of 2017, in the Commission's first

cross-service translator filing window. Each application is permanently designated to rebroadcast a particular AM station. May 15, 2018, is the announced start date for bidding in Auction 99. Other procedural dates will be set later.

The Bureaus have released a Public Notice for each auction, proposing procedures for each that are essentially the same that the Commission has used in prior auctions for broadcast permits with a simultaneous multiple-round design. Each auction will be conducted online. The Commission has invited comment on its proposed procedures. The deadlines for comments and reply comments for Auction 99 in Docket 17-143 are February 13 and February 21, respectively. For Auction 83, in Docket 17-351, comments were due on February 6 and reply comments were due on February 13.

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