

FCC Proposes to Revive Annual EEO Reports

The FCC has adopted a *Further Notice of Proposed Rulemaking* (FCC 21-88) in Docket 98-204 to consider reviving its practice of collecting workforce composition data from broadcast licensees on an annual basis with the use of Form 395-B. This form gathers information about the race, ethnicity and gender of station employees.

Broadcast stations were required to complete and file Form 395-B annually from 1970 until it was suspended in 2001 in the wake of an appellate court decision that vacated certain aspects of the Commission's Equal Employment Opportunity ("EEO") rules. Court decisions vacated certain rules based on how the Commission used employment data to assess EEO compliance. However, the Commission's practice of simply collecting data was not proscribed. In 2004, the Commission updated the Form 395-B, and revised the rules regarding its filing. However, the requirement to file the form was suspended until the resolution of issues about the confidentiality of employment data to be

continued on page 6

First Deadline for Repack Reimbursement Documentation Is October 8

Certain full power and Class A television stations that have completed their modifications required by the post-Incentive Auction repack face an October 8, 2021, deadline to finish submitting invoices to the TV Broadcaster Relocation Fund Administrator to document their claims for reimbursement of expenses incurred in the repack. This deadline pertains to all stations that transitioned in Phase 1 through Phase 5 of the transition scheduling plan and to stations that were granted permission to transition prior to the Phase 1 testing period. The FCC's Incentive Auction Taskforce and the Media Bureau released a *Public Notice* (DA 21-970) to remind stations of the reimbursement schedule.

continued on page 8

Noncommercial FM Filing Window Will Be November 2-9

Partial Filing Freeze Begins October 5

The FCC has scheduled a filing window for applications for new full power noncommercial FM stations and for major changes to such stations from from 12:01 a.m. Eastern Time November 2, 2021, until 6:00 p.m. Eastern Time on November 9, 2021. The Commission's Media Bureau has released a *Public Notice* (DA 21-885) that details the filing instructions. Applicants in this filing window must be nonprofit entities or government agencies. These proposals are limited to specifying a frequency in the portion of the FM band reserved for noncommercial broadcasting, 88.1 to 91.9 MHz.

To allow prospective applicants to determine channel availability in a stable environment, the FCC will impose a freeze on the filing of certain minor change applications beginning at 11:59 p.m. on October 4 and running through the end of the filing window. The freeze will apply to all

continued on page 7

IN THIS ISSUE

Political Broadcasting Rules	2
Clarification of Foreign Sponsorship.....	3
Sanctions Against Copyright Nemesis	3
Deadlines to Watch	4-5

For more information about or help with any of the items reported in *Antenna*™ please contact:

pillsbury

1200 Seventeenth St. NW
Washington, D.C. 20036

Tel: 202.663.8167

Fax: 202.663.8007

E-mail: scott.flick@pillsburylaw.com

Updates Proposed for Political Broadcasting Rules

The FCC has proposed updates for its rules governing political programming and political files in a *Notice of Proposed Rulemaking* (FCC 21-91) in Docket 21-293. Within their online Public Inspection Files, broadcasters must maintain a political file with records about requests they receive for airtime from candidates for elective office and for airtime for issue ads. The proposed amendments would modernize the rules to reflect current political campaign practices that employ social media and websites. They would also finally bring the FCC's Rules into conformance with the requirements of the Bipartisan Campaign Reform Act of 2002 ("BCRA").

The Communications Act requires commercial broadcast stations to give "legally qualified candidates" for federal office "reasonable access" to their airwaves and to permit them to purchase "reasonable amounts of time." The statute also provides that when one "legally qualified candidate" for a public office uses a station to communicate with the audience, the station is obligated to afford other candidates for the same office an "equal opportunity" to use the station. Further, "legally qualified candidates" are entitled to purchase airtime just prior to elections at the station's lowest unit rate.

Despite these references to the concept, the Communications Act does not define the term "legally qualified candidate." Consequently, to enforce the statute, it was necessary for the FCC to adopt a definition, as reflected in Section 73.1940 of its Rules. Under that rule, generally, a person seeking election (other than for President or Vice President) must publicly announce his or her intention to run for office, must be qualified to hold the office, and must have qualified for a place on the ballot or have publicly committed to seeking election as a write-in candidate. Section 73.1940(f) lists the requirements to demonstrate a "substantial showing" of a bona fide candidate.

To make a substantial showing of a bona fide candidacy, one must demonstrate that he or she has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities might include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, and establishing a campaign headquarters. Not all of these activities are necessarily required in all cases.

In order to make its rules consistent with present-day campaign practices, the FCC proposes to add to this list the use of social media and the creation of a campaign website as accepted elements of a "substantial showing" of a candidate's active candidacy. These activities did not exist when these rules were first adopted. The FCC observes that both of these activities are now common practices associated with political campaigning.

Comment is requested on the types of campaign-related activities for which social media could be used in demonstrating a substantial showing of a bona fide

candidacy. These might include online activities to raise funds, solicit votes, share policy positions, and engage with voters. The FCC clarified that it is not proposing that a social media or online website presence alone would be sufficient to support a claim to being a legally qualified candidate. However, use of these media could be an additional element of the candidate's comprehensive demonstration of a bona fide candidacy. The FCC also requests comment on whether other activities consistent with modern campaigning practices should be added to the list of recognized activities that can be part of a "substantial showing."

The FCC also proposes in this proceeding to bring its rules into line with BCRA's recordkeeping requirements. Although the Commission has advised broadcasters and others about compliance with the BCRA requirements, it has never adopted a parallel provision to incorporate BCRA mandates into its own regulations.

BCRA added a new Section 315(e) to the Communications Act. Section 315(e)(1) requires that information regarding any request to purchase advertising time on behalf of a legally qualified candidate for public office, or any request to purchase advertising time that communicates a message relating to any political matter of national importance, be placed in the station's political file.

Section 315(e)(2) identifies the specific records to be placed in the station's political file for both candidate and issue advertisements. These include the following:

- (1) whether the request to purchase broadcast time is accepted or rejected by the station;
- (2) the rate charged for the broadcast time;
- (3) the date and time on which the communication is aired;
- (4) the class of time that is purchased;
- (5) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);
- (6) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and
- (7) in the case of any other request, the name of the person (or entity) purchasing the time, the name, address, and phone number of a contact person for such person (or entity), and a list of the chief executive officers or members of the executive committee or of the board of directors of such entity.

The FCC proposes to adopt the provisions of Section 315(e)(1) and 315(e)(2) as new rules in its own regulations. The Commission states that adopting such rules would ensure that its regulations comply with the statutory requirements.

Public comment is solicited on these proposals. The deadline to file 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.

Broadcasters Seek Clarification of Foreign Sponsorship ID Rule

The FCC's Media Bureau has issued a *Public Notice* (DA 21-945) in Docket 20-299 to invite public comment on a Petition for Clarification filed jointly by the station affiliates associations of the ABC, CBS, FOX, and NBC television networks. The petitioners asked the FCC to clarify certain provisions that were adopted last April in its *Report and Order* (FCC 21-42) in this proceeding.

In the *Report and Order*, the Commission adopted new mandates for broadcast licensees who lease airtime to entities representing or related to foreign governments. On-air disclosure is required to accompany such programming. This requirement is meant to cover programming for which the ultimate source and/or the sponsor is an entity or individual that is a foreign government, a foreign political party, an agent acting on behalf of such entities, or a U.S.-based foreign media outlet. The broadcast licensee has the responsibility to conduct due diligence about its prospective time lessee. A broadcaster must exercise reasonable care to determine if an entity to which it is considering leasing airtime would trigger the need for on-air disclosures about a foreign government connection. Such diligence would include, at a minimum, the following:

- (1) inform the lessee at the time of agreement and at renewal of the foreign sponsorship disclosure requirement;
- (2) inquire of the lessee at the time of agreement and at renewal whether it falls into any of the categories that qualify it as a foreign government entity;
- (3) inquire of the lessee at the time of agreement and at renewal whether it knows of anyone further back in the chain of producing/distributing the programming that will be aired pursuant to the lease which qualifies as a foreign government entity and has provided some type of inducement to air the programming;
- (4) if the lessee does not identify itself as an entity that would be subject to the disclosures, independently confirm

the lessee's status at the time of agreement and at renewal by consulting the Department of Justice website maintained under the Foreign Agents Registration Act and the FCC's semi-annual reports of U.S.-based foreign media outlets; and

(5) memorialize these inquiries and investigations to track compliance in the event that documentation is required to respond to a future Commission inquiry on the issue.

The obligation to conduct reasonable diligence pertains not only to future airtime lease agreements, but also to agreements presently in effect.

When disclosures are required, an announcement should be aired in the language of the programming associated with it at the beginning and conclusion of the programming block, and at 60-minute intervals if the leased segment is longer than 60 minutes.

Paid advertising is already subject to the sponsorship identification requirements of Section 73.1212 of the FCC's Rules. The *Report and Order* said that the increased level of diligence and disclosure requirements that apply to leases of discrete blocks of program time do not apply to traditional short-form advertising. The petitioners are concerned that the term "traditional short-form advertising" is vague and lacks definition. The petitioners point out that broadcasters typically sell advertising in a variety of lengths to a variety of sponsors. For instance, long-form programs (sometimes called "infomercials") are not traditional short-form advertising, but neither do they seem to be the intended target of the new requirements. The petitioners suggest that the enhanced regulations about foreign government sponsorship be applied on the basis of the source of the content and not the length of the programming. They ask the FCC to clarify this point.

The FCC solicits public input on the issue raised by the petitioners. Comments are due by September 2, and reply comments are due by September 17.

Sanctions Against Copyright Nemesis Upheld on Appeal

The U.S. Court of Appeals for the Second Circuit, sitting in New York City, has affirmed an *Opinion and Order* of the U.S. District Court for the Southern District of New York in which the District Court sanctioned attorney Richard Liebowitz for dishonest conduct in litigation involving a claim of copyright infringement. Liebowitz has become well-known in recent years for representing photographers in numerous lawsuits against media companies, including many broadcasters. In these cases, Liebowitz would typically allege, on behalf of the photographer plaintiffs, that the media defendants had used or displayed the photographers' works, often on the defendants' websites, without authorization. These cases were often resolved

with monetary settlements paid by the defendants before going to trial.

The District Court's ruling came in response to the defendant's motion for sanctions against Liebowitz in a proceeding in which Liebowitz represented Arthur Usherson as a plaintiff asserting copyright infringement against Bandshell Artist Management for the public display of Usherson's photograph of musician Leon Redbone. The incident that initially aroused the judge's ire was Liebowitz's failure to appear in person—for the second time—at a court-ordered mediation session, and then misrepresenting to the court the circumstances of his failure

continued on page 6



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

August 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 California, Illinois, North Carolina, South Carolina and Wisconsin .	October 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 Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, Mariana Islands, Missouri, Oregon, Puerto Rico, Virgin Islands , and Washington .
August 2	Deadline to file license renewal applications for radio stations in California and television stations in Illinois and Wisconsin .	October 1	Deadline for all broadcast licensees and permittees of stations in Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, Mariana Islands, Missouri, Oregon, Puerto Rico, Virgin Islands , and Washington 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).
August 2	Deadline for all broadcast licensees and permittees of stations in California, Illinois, North Carolina, South Carolina , and Wisconsin 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).	October	Radio stations in Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon , and Washington , and television stations in Iowa and Missouri begin broadcasting post-filing announcements within five business days of acceptance of application for filing and continuing for four weeks.
August	Radio stations in California and television stations in Illinois and Wisconsin begin broadcasting post-filing announcements within five business days of acceptance of application for filing and continuing for four weeks.		
October 1	Deadline to file license renewal applications for radio stations in Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon , and Washington , and television stations in Iowa and Missouri .		

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

The FCC has accepted for filing the applications identified below proposing to change the community of license for each station. These applications may also include proposals to modify technical facilities. The deadline for filing comments about any of the applications in the list below is **September 7, 2021**. Informal objections may be filed anytime prior to grant of the application.

PRESENT COMMUNITY	PROPOSED COMMUNITY	STATION	CHANNEL	FREQUENCY
Decatur, AL	Mooreville, AL	WWTM(AM)	N/A	1400
Canaan, CT	Norfolk, CT	WSGG	207	89.3
Clayton, GA	Toccoa, GA	WRBN	239	95.7
Elberton, GA	Clayton, GA	WHTD(AM)	N/A	1400
Portal, GA	Statesboro, GA	WXRS-FM	263	100.5
Geneva, IL	Somonauk, IL	WDYS(AM)	N/A	1480
Barbourville, KY	North Corbin, KY	WKKQ	241	96.1
Crab Orchard, KY	Hustonville, KY	WPBK	275	102.9
North Corbin, KY	Crab Orchard, KY	WKFC	270	101.9
Buffalo, MO	Fair Grove, MO	KBFL-FM	260	99.9
Springfield, MO	Buffalo, MO	KWTO-FM	267	101.3
Tidioute, PA	Clintonville, PA	WCGT	204	88.7
Pendleton, SC	Powdersville, SC	WLTE	238	95.5
San Diego, TX	Bishop, TX	KUKA	290	105.9



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 21-320; Public Notice Incremental reduction plan for Phase I accelerated C-Band relocation payments	August 27	N/A
Docket 21-115; NPRM (FCC 21-46) Updating rules for wireless microphones		August 30
Docket 18-349; Public Notice (DA 21-657) Updating record in 2018 Quadrennial Regulatory Review	September 2	October 1
Docket 20-299; Public Notice (DA 21-945) Clarification of Foreign Government Programming Sponsorship Identification	September 2	September 17
Docket 21-263; NPRM (FCC 21-84) Radio technical rules update	September 7	September 20
U.S. District Court for District of Columbia United States vs. Gray Television, Inc. Civil Case No.1:21-cv-02041-CJN Proposed Final Judgement re Gray Television's acquisition of Quincy Media	October 4	N/A
Docket 15-94; FNPRM (FCC 21-77) Emergency Alert System	October 19	November 18
Docket 98-204; FNPRM (FCC 21-88) EEO rules and policies	FR+30	FR+60
Docket 21-293; NPRM (FCC 21-91) Political programming and recordkeeping	FR+30	FR+45

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

Paperwork Reduction Act Proceedings

The FCC is required by the Paperwork Reduction Act to periodically collect public information on the paperwork burdens imposed by its recordkeeping 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 market definitions for must carry, Section 76.59	Aug. 30
Interference with radio astronomy installations, Section 73.1030	Aug. 30
Sponsorship identification, Section 73.1212	Sep. 20
Public Inspection Files, Sections 73.3526, 73.3527	Sep. 20
Political files, Sections 73.1212, 73.1943	Sep. 20
Digital LPTV, Sections 74.787, 74.790, 74.794, 74.796, 74.798	Oct. 4

Proposed Amendments to the Television Table of Allotments

The FCC is considering petitions to amend the digital television Table of Allotments by changing the channels allotted to the communities identified below. The deadlines for submitting comments and reply comments are shown.

COMMUNITY	STATION	PRESENT CHANNEL	PROPOSED CHANNEL	COMMENTS	REPLY COMMENTS
Henderson, NV	KVVU	9	24	Sep. 3	Sep. 20
Portland, OR	KPTV	12	21	Sep. 8	Sep. 23
Fredericksburg, TX	KCWX	5	8	FR+30	FR+45

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

FCC Proposes to Revive Annual EEO Reports continued from page 1

collected by it. The Commission now invites commenters to refresh the record and to provide further input on the legal, logistical and technical issues surrounding Form 395-B.

The primary question at issue concerns how the FCC can collect employment data while keeping it confidential and/or unattributable to specific stations. The FCC observes that broadcasters have previously expressed concerns that the collection of employment data on a station-attributed basis and its access by Commission staff and the public have the effect of pressuring stations to adopt inappropriate race- and gender-based hiring policies in an effort to develop staff profiles believed to be favored by the Commission. Broadcasters have also worried that the FCC and/or the public might use employment data against stations as a basis for audits or to file petitions to deny license renewal. The Commission asks for comment about how it could ensure that data is used only for the intended purposes of analyzing industry trends and making reports to Congress. On the other hand, the Commission seeks comment on

the benefits, if any, of making employment data publicly available on a station-attributed basis.

The Commission notes that after Form 395-B was suspended, new legislation has been enacted that may affect its ability to maintain confidentiality of the employment data collected. The Foundations for Evidence-Based Policymaking Act of 2018 appears to require that government agencies, including the FCC, publish data they collect in an open format if the data mechanism was created after the law was enacted in January 2019. The Commission requests comment on whether this legislation would affect its ability to keep Form 395-B information confidential.

The deadline for submitting comments in this docket will be 30 days after notice of the proceeding is published in the Federal Register. Reply comments must be filed within 60 days of that publication.

Sanctions Against Copyright Nemesis Upheld on Appeal continued from page 3

to appear in person. In discussing this, the judge observed that Liebowitz had recently been reprimanded in another case in the same District Court for falsely explaining that he had missed a court appearance due to his grandfather's funeral. Then it came to light that Liebowitz had falsely alleged in the complaint that initiated the lawsuit in this case that Usherson held a copyright registration for the photograph in question. Although Usherson was the owner of the copyright, he had not obtained a registration prior to launching the lawsuit. Registration of a work with the Copyright Office is a prerequisite to suing for infringement. Had the defendant or the court known this earlier, the case would have been subject to immediate dismissal.

The District Court ordered Liebowitz to pay the court \$83,517.49 in attorney's fees and costs, and \$20,000 for falsely alleging in the complaint that the photograph had been registered with the Copyright Office. Liebowitz was also ordered (1) to send a copy of the court's *Opinion and Order* to every current client of his law firm, (2) to file a copy of the *Opinion and Order* in the docket of every pending case brought by him, (3) to file a copy of the *Opinion and Order* in every suit initiated by him during the next year, and (4) during the next year, to submit evidence of copyright registration with the complaint in any suit he initiates alleging copyright infringement.

The judge noted that Liebowitz had been labeled as a

"copyright troll" in an earlier case in the Southern District. According to the court, he had filed approximately 1,280 lawsuits in the Southern District Court since 2017—more than any other attorney. The judge concluded the *Opinion and Order* with a listing of some 40 other recent cases in various federal courts throughout the country in which Liebowitz had been admonished or held in contempt for false representations to courts. He also referred the *Opinion and Order* to the court's Grievance Committee, where Liebowitz was eventually suspended from practicing law.

On appeal, Liebowitz argued that the District Court had abused its discretion in imposing the non-monetary sanctions, and that the nationwide scope of the sanctions is overly broad. The Court of Appeals rejected these arguments concerning the non-monetary sanctions in a brief *Summary Order*, citing numerous other decisions as precedent and noting that Liebowitz's demonstrated bad faith behavior had been exhibited frequently and nationwide. The appellate court will rule on the monetary sanction in another decision.

The decision is entitled *Richard P. Liebowitz, et al, Appellants, Arthur Usherson, Plaintiff v. Bandshell Artist Management, Defendant-Appellee*, 2021 U.S App. LEXIS 18955.

Of course, the demise of attorney Liebowitz should not be interpreted as an opportunity for the unauthorized use of copyrighted works.

Noncommercial FM Filing Window Will Be November 2-9 continued from page 1

minor change applications and amendments to applications pertaining to stations on frequencies from 88.1 to 92.5 MHz, and from 98.7 to 102.7 MHz. Applications on any of these frequencies could preclude or conflict with certain applications on noncommercial frequencies.

If the FCC receives acceptable applications in this filing window that are mutually exclusive with each other, it will resolve the conflict and choose one applicant as the tentative selectee by applying the comparative selection criteria set out in Sections 73.7002 and 73.7003 of its rules. The Commission amended these rules last year, fine tuning the comparative criteria for selecting a winning applicant. The tentative selectee chosen from the group is then subject to petitions to deny and a more thorough legal and engineering review by Commission staff before grant of the application.

If mutually exclusive FM applications designate different communities of license, the highest level comparative threshold issue concerns which application, if any, would substantially further the fair distribution of service goal stated in Section 307(b) of the Communications Act. In deciding how and where to allocate broadcast services, the statute requires the FCC to do so in a way that will provide a fair, efficient, and equitable distribution of radio service among states and communities. Section 73.7002 of the rules specifies how this determination is made.

Unless a mutually exclusive group of applications includes a Tribal Applicant (for which there is a priority preference under certain conditions), an analysis will be made to determine which, if any, of the applications would provide the first or second reserved noncommercial channel service to be received by at least 10 percent of the population within the proposed 60 dbu contour, constituting at least 2,000 people. An applicant proposing to provide such service will be considered superior to applicants not providing such service. If there is only one such application in the group, that applicant will be named the tentative selectee. If more than one application proposes such service, the applicant providing the highest level of service to the most people will be named the tentative selectee, provided that the difference in population served by the applicant serving the most people is at least 5,000 people more than the application proposing to serve the next highest number of underserved people. If multiple applications are considered essentially equal in this analysis, they will be compared under the point system described below.

If the analysis of the fair distribution of service does not produce a tentative selectee, or if all of the applicants in the group propose the same community of license, the mutually exclusive applications are compared with a point system set out in Section 73.7003 of the FCC's Rules. Points are awarded on the basis of desired characteristics, and the applicant earning the most points is named the tentative selectee.

An applicant can earn three points if it has been an established local entity for at least two years. To qualify as "local," the applicant must have its headquarters, an educational campus, or the residences of at least 75 percent

of the members of its governing board within 25 miles of the reference coordinates of the proposed community of license. A governmental applicant is local if the proposed community of license is within the area where it has jurisdiction. To be eligible for the points, the applicant must include with its application documentary evidence that it met this criterion for being local for at least two years immediately preceding the close of the filing window, i.e., since November 9, 2019.

Two points in the comparative analysis will be awarded to the applicant that can demonstrate diversity of broadcast station ownership. This means the applicant must show that neither the applicant nor anyone holding an attributable interest in the applicant (such as an officer or governing board member) holds an attributable interest in any other radio station license or construction permit the principal community contour of which overlaps the principal community contour of the station proposed in the application. The principal community contour for FM stations is the 3.16 mV/m contour. For AM stations, it is the 5 mV/m contour.

Applicants (and their principals) with attributable interests in other nearby stations who want to claim the points for diversity of ownership must include in the application a contingent divestiture commitment. If the application is granted, the divestiture must be completed before the new station goes on the air. If the applicant does not win the permit, no divestiture will be required.

Other criteria for earning comparative points include: (1) operating a statewide network if applicant does not qualify for points for diversity of ownership (two points), and (2) proposing to serve the largest geographic area and population in the mutually exclusive group (one point).

The rules provide for a tie-breaker mechanism in the event that two or more applicants in the same group are awarded the same number of points. The applicant with the fewest number of other stations in the same service (radio or television) as of the time of application will become the tentative selectee. If there is still a tie after that calculation, the applicant with the fewest pending applications for new stations in the same service will prevail.

If necessary, a third-level tie-breaker will be employed. If a tie remains after the comparing interests in other stations and applications, a preference will be given to the applicant that: (1) has been unsuccessful in all previous noncommercial filing windows in which it participated—that is, its application was accepted for filing, but was subsequently dismissed in favor of an applicant possessing superior points or tie-breaker criteria, (2) has been in continuous existence from the date of the previous filing until the present, and (3) has no existing station or pending application.

If a tie persists after the third tie-breaker analysis, the remaining tied applicants will be required to attempt to negotiate a written time-share agreement within 90 days. If they are unable to agree upon a time-share plan, the FCC will subject them to mandatory time-sharing. The maximum number of applicants that the Commission will

continued on page 8

Noncommercial FM Filing Window Will Be November 2-9 continued from page 7

process for mandatory time-sharing is three. If the group includes more than three applicants, the Commission will dismiss all but the three applicants that have been local for the longest uninterrupted periods of time. Each remaining applicant will be eligible for an equal, concurrent, non-renewable license term.

A pending application that experiences a “major change” in ownership is dismissed. For nonprofit noncommercial applicants, the members of the governing board are usually considered to be the owners. Under prior rules, a change of 50 percent or more of the members of the applicant’s governing board after the close of the filing window was considered a major change and the application would be dismissed. The FCC has relaxed this approach, realizing that nonprofit organizations often have routine or mandated changes in board membership that do not affect the organization’s mission or operations. Now, routine gradual turnover in the board’s membership will not trigger the dismissal of the application. Sudden board changes that take place over the course of less than six months will also be treated as minor unless there is evidence that the change in the board is the result of a conflict within the organization, a takeover, or some other change that would alter the essence or mission of the organization. All changes in board membership during the pendency of the application must be reported in an

amendment to the application.

All applicants for new noncommercial stations must have reasonable assurance of the availability of the proposed transmitter site at the time that the application is filed. The application form includes an affirmative certification that the applicant does have such reasonable assurance. The certification will require the applicant to list the name and telephone number of the person that the applicant contacted to obtain consent to specify the site and to identify that person as the site’s owner, or the owner’s agent or authorized representative.

Applicants for new noncommercial stations must also certify that they are financially qualified. To be financially qualified, the applicant must determine how much it will cost to construct the station and to operate it on the air for three months without receiving new revenue. The applicant then must have enough net liquid assets on hand to cover that amount, or be able to rely on the availability of sufficient funds from committed sources to cover the calculated costs.

In this filing window, an applicant is limited to filing no more than 10 applications in which it has an attributable interest (including attributable interests of officers and board members). If the FCC determines that more than 10 applications have been submitted, it will dismiss those that were filed after the first 10 were received.

First Deadline for Repack Reimbursement Documentation Is October 8 continued from page 2

The deadline for repacked full power and Class A stations in Phase 6 through Phase 10 will be March 22, 2022. Low power television and FM stations have until September 5,

2022, to submit their invoices to the Fund Administrator for reimbursement. The FCC does not anticipate that there will be any need to extend these deadlines.

**FILING WINDOW FOR APPLICATIONS
FOR NEW AND MAJOR CHANGES TO
NONCOMMERCIAL FM STATIONS**

NOVEMBER 2 – 9, 2021

DATE FOR NATIONWIDE EAS TEST

ETRS Form Three Due

SEPTEMBER 27

**TELEVISION STATIONS IN REPACK
PRE-PHASE 1 AND PHASES 1-5
DEADLINE TO SUBMIT INVOICES FOR
REIMBURSEMENT**

OCTOBER 8, 2021

The Pillsbury Law ANTENNA™ is an information service about current events in communications law published by Atlantic Star Media, Inc. This publication is produced only to report on current events and factual matters in the field of communications law. Publication and dissemination of this material is not intended to constitute the practice of law or the rendering of legal advice. No attorney-client relationship shall be deemed to exist between the provider and the reader or between the publisher and the reader as a result of the publication, dissemination, distribution or other use of this material. The publisher makes its best effort to ensure that the information reported is accurate, but no warranty, express or implied, is given as to the accuracy or completeness of any information or statement published herein. Copyright 2021 by Atlantic Star Media, Inc. All rights reserved.