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AN UPDATE ON COMMUNICATIONS LAW & ISSUES
November 2021

Next Gen Solution Proposed for Multicast Streams

The FCC has proposed a revised regime for the continued broadcast of multicast video streams during a television station's transition to ATSC 3.0 (also called Next Generation television, or Next Gen TV) in a *Second Further Notice of Proposed Rulemaking* (FCC 21-116) in Docket 16-142. In response to a petition filed by the National Association of Broadcasters ("NAB"), the Commission proposes to license Next Gen TV stations for transmitting certain of their non-primary video programming streams (i.e., multicast streams) on the technical facilities of a host station during the transitional period. This arrangement would operate under the same licensing framework, and generally under the same regulatory regime, as that established for the simulcast of primary video programming streams on

continued on page 6

Full Power TV Permits Offered in Auction 112

The FCC's Office of Economics and Analytics and the Media Bureau have jointly issued a *Public Notice* (DA 21-1444) to propose procedures for Auction 112 in which construction permits for 27 full power television stations will be offered for sale. A list of these permits and the minimum opening bid for each follows at the end of this article. The bidding is expected to begin in June 2022.

The procedures proposed for this auction substantially follow the model that the FCC has used in the past for the auction of broadcast permits. The Commission proposes a simultaneous multiple-round design. Bidding would occur simultaneously for all permits in each round, and the auction would not conclude for any permit until there is a round in which there is no bidding activity with respect to any permit.

To be eligible to bid, interested parties will be required to file a short-form application and deposit a refundable upfront payment by a deadline to be announced. The upfront payment associated with a permit will equal the

continued on page 5

Computer Modeling Proposed for FM Antennas

The FCC has proposed to amend its rules to permit the use of computer modeling to demonstrate the performance of directional antennas for FM broadcast stations. Public comment on this proposal is solicited in a *Notice of Proposed Rulemaking* (FCC 21-117) adopted in Docket 21-422. This action follows after review of proposals made by a group of antenna manufacturers and a large station group owner in a Joint Petition for Rulemaking submitted to the Commission last summer. The Commission notes that this issue could have a significant impact on the FM radio industry as over 20 percent of FM stations use directional antennas.

Using a computer to predict the performance of a directional antenna could replace the expensive and cumbersome practice of taking actual measurements on a test range or indoors within an anechoic chamber. However, the language in Section 73.316 of the FCC's Rules requires

continued on page 3

IN THIS ISSUE

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Vegetation Removal Leads to $20K Civil Penalty

Fort Myers Broadcasting Company ("FMBC") has entered into a *Consent Decree* (DA 21-1365) with the FCC's Enforcement Bureau to resolve an investigation about violations of the Commission's environmental rules. The company agreed to pay a civil penalty of $20,000 and to implement a compliance program.

Section 1.1307 of the FCC's Rules requires licensees and applicants to conduct an Environmental Assessment to evaluate whether certain proposed facilities may significantly affect the environment. Under Section 1.1312, this obligation expressly applies to certain facilities for which no preconstruction authorization is required. Factors to be considered include whether the proposed site might affect listed threatened or endangered species or designated critical habitats. The FCC's Antenna Structure Registration ("ASR") Rules require the owner of any proposed or existing antenna structure to submit an Environmental Assessment with the ASR application if an assessment would be required under Section 1.1307.

FMBC is the FCC licensee of radio and television stations in Florida. According to the *Consent Decree* narrative, in July and August of 2020, FMBC engaged a series of independent contractors to perform the required environmental review, antenna structure registration procedures, and construction for a proposed wireless communications tower within a designated critical habitat of the endangered Florida bonneted bat in Punta Gorda, Florida. During the ASR application and environmental review process, FMBC disclosed that it had conducted preconstruction activities. In the course of the subsequent investigation by the Enforcement Bureau, FMBC admitted that it had begun construction by clearing vegetation at the proposed tower site on or about August 3, 2020. This occurred before preparing an Environmental Assessment and before submitting an ASR application to the FCC for the tower. Subsequently, the FCC's Wireless Telecommunications Bureau concluded the environmental review and authorized construction of the tower.

In exchange for the termination of the investigation, FMBC admitted to violating the Environmental and ASR Rules, agreed to pay a civil penalty of $20,000, and agreed to implement a three-year plan for compliance with the Environmental and ASR Rules. The plan includes developing a compliance manual, staff training, annual reports to the Enforcement Bureau, and immediate reporting of any new incidents of noncompliance.

Permittee Fined for Failure To File License Application

The FCC's Media Bureau has released a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (DA 21-1386) to KAZT, LLC, proposing a $3,500 fine for failure to file an application for a license to cover its construction permit for television translator station K30DT, Flagstaff, Arizona.

According to the Order, KAZT was issued a construction permit for the station on April 12, 2021, with an expiration date of July 13, 2021. KAZT constructed the station immediately and prepared an application for a license to cover the permit in the FCC's Licensing and Management System. However, because of an administrative oversight, the application form was not actually submitted to the FCC. Nonetheless, the station went on the air, and continued broadcasting for several months past the expiration date of the permit.

The licensee was not aware that anything was amiss until FCC staff contacted it on September 28, 2021, to inquire about the status of the station. KAZT then filed the license application on October 14, and on October 19, amended the application to include a request for a waiver of the July 13 filing deadline, along with evidence that the station actually had been constructed prior to the expiration of the construction permit. It did not, however, request a special temporary authority to operate the station after the expiration of the permit.

The FCC's forfeiture guidelines specify a forfeiture of $3,000 for failure to file a required form, and $10,000 for operating a transmitter without an authorization. The Media Bureau tentatively found that based upon its review of the facts and circumstances, a forfeiture of $7,000 would be appropriate. In the final analysis, however, the proposed fine was further reduced to $3,500 because the station is a secondary service translator.

KAZT has 30 days to pay the proposed forfeiture, or to seek its reduction or cancellation.

Email Addresses Now Required

In a *Report and Order* (FCC 21-79) adopted earlier this year in Docket 10-234, the FCC mandated the disclosure and use of an email address in connection with every entity and person seeking an FCC Registration Number ("FRN") in the Commission Registration System ("CORES"). An FRN is required to do business with the FCC. Individual principals of business entities that are FCC applicants and licensees must also have an FRN. This rule becomes effective 30 days after publication in the Federal Register. Publication occurred on October 29.

The FCC states that this change will foster a registration system that is easier to manage and maintain, and that is more secure. The Commission is in the process of a transition to a new upgraded CORES from the original legacy CORES. The legacy CORES database has not required a registrant to input an email address. All new registrants are encouraged to begin with the new CORES. The Commission says that adoption of this rule change will enable it eventually to retire the legacy CORES and retain the new CORES to deliver enhanced features and security to the members of the public using the FCC's systems.

Because it helps authenticate the individuals who will be using the Commission's information systems, the FCC believes that the new CORES will be a more secure tool for the Commission and external users through the use of personal username registration and email verification. An email address is a unique ID and digital identity for each user. It helps to ensure that the FCC provides better service and user experience based on data collected in connection with a registered email address.

Computer Modeling Proposed for FM Antennas *continued from page 1*

an FM permittee with a directional antenna to submit with its application for a license to cover the construction permit "tabulation of the measured relative field pattern" authorized in the construction permit. The Commission observes that it has already accepted virtual calculations for other services and notes the inequity of this for FM broadcasters. The corresponding provision governing directional television stations in Section 73.685 requires only a "tabulation of the relative field pattern," with no reference to measuring.

To accomplish virtual tabulation of an antenna pattern, computer software is needed. The FCC asks whether it should adopt and require a specific program for verification of FM directional antenna patterns. The petitioners in the Joint Petition for Rulemaking explained that several software programs currently exist. The Commission asks whether there is a common program or model that antenna manufacturers and/or broadcast engineers agree provides the greatest accuracy. If there is no consensus as to a standard modeling software, the Commission invites comment on the range of modeling software that should be acceptable. The Commission also asks whether there are circumstances in specific cases that would require physical measurements, such as an installation on the side of a building.

Permitting computerized modeling might require changes in the handling of interference complaints. The Commission invites comment about the adequacy of the present procedures, especially with respect to which party should bear the burden of proof when an interference complaint is made against a virtually tabulated directional FM station.

The Commission is especially interested in receiving comments from broadcasters, engineers, and manufacturers who have experience with the use of both computerized calculations and actual measurements to tabulate the pattern for a directional FM antenna. Parties with such experience are asked to rate their confidence in the reliability of computerized modeling for these purposes.

The deadline for filing comments in this proceeding will be 30 days after notice 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

December 1	Deadline to file license renewal applications for radio stations in **Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island,** and **Vermont**, and television stations in **Colorado, Minnesota, Montana, North Dakota,** and **South Dakota**.
December 1	Deadline to place EEO Public File Report in Public Inspection File and on station's Internet website for all nonexempt radio and television stations in **Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota,** and **Vermont**.
December 1	Deadline for all broadcast licensees and permittees of stations in **Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota,** and **Vermont** to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s).
December 1	Deadline for television stations that provided ancillary or supplementary services during the 12-month period ending September 30, 2021, to file annual Ancillary/Supplementary Services Report.
December 1	Deadline for all full power radio, and full power, low power, and Class A television stations to file Biennial Ownership Report with snapshot date of October 1, 2021.
December	Radio stations in **Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island,** and **Vermont,** and television stations in **Colorado, Minnesota, Montana, North Dakota,** and **South Dakota** begin broadcasting license renewal post-filing announcements within five business days of the acceptance of application for filing and continuing for four weeks.
January 10	Deadline to place quarterly Issues/Programs List in Public Inspection File for all full service radio and television stations and Class A TV stations.
January 10	Deadline for noncommercial stations to place quarterly report re third-party fundraising in Public Inspection File.
January 10	Deadline for Class A TV stations to place certification of continuing eligibility for Class A status in Public Inspection File.

Deadlines for Comments in FCC and Other Proceedings

DOCKET	COMMENTS	REPLY COMMENTS
(All proceedings are before the FCC unless otherwise noted.)		
Docket 21-346; NPRM (FCC 21-99) Network resiliency	December 6	January 4
Docket 21-449; Public Notice (DA 21-1444) Full power TV Auction 112	December 13	December 23
Docket 16-142; 2nd FNPRM (FCC 21-116) Multicasting in Next Gen TV	FR+60	FR+90
Docket 21-422; NPRM (FCC 21-117) Computer modeling for FM directional antennas	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 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
Instructions for TV Broadcaster Relocation Fund reimbursements; Form 1876	Dec. 16

Full Power TV Permits Offered in Auction 112 *continued from page 1*

minimum opening bid for that permit. An applicant's bidding eligibility will be governed initially by the amount of its upfront deposit. For each $1,000 of upfront payment, an applicant will receive one bidding unit. An activity rule will require applicants to bid frequently or suffer reductions in eligibility. To retain its eligibility to bid, an applicant must have the provisional winning bid or place a bid on permits having bidding units that total 100 percent of its current total units. Failure to do so will result in a reduction of eligibility down to the number of bidding units engaged during the round, unless the applicant has used one of three activity waivers.

To discourage unproductive and anti-competitive behavior, the FCC proposes to not make certain information in the short-form applications public until after bidding has concluded. This information will include (1) the permits selected on the application, (2) the amount of the applicant's upfront payment, (3) the applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the applicant.

After the first round, the minimum permissible bid will be calculated on the basis of the provisional winning bid from the previous round. Bidders would be able to select one of nine incremental amounts for its bid. The lowest permissible bid would be 110 percent of the provisional winning bid from the previous round. Possible higher bids would increase by increments of 5 percent of the provisional winning bid, i.e., 115 percent, 120 percent, 125 percent, etc. An applicant will be prohibited from withdrawing a bid after the close of the round in which it is submitted.

The auction would conclude after a round in which no higher bids are submitted for any permit. The FCC would then announce the winning applicants and set a schedule for payment of the bid purchase price and the filing of long-form applications.

The FCC invites public input on the proposed design for this auction. Comments are due by December 13. The deadline for reply comments will be December 23.

COMMUNITY	CHANNEL	UPFRONT PAYMENT & MINIMUM OPENING BID
Fairbanks, AK	7	$ 200,000
Flagstaff, AZ	32	200,000
Yuma, AZ	11	200,000
Eureka, CA	17	200,000
Idaho Falls, ID	20	200,000
Sun Valley, ID	5	200,000
Freeport, IL	9	500,000
Alexandria, MN	7	500,000
Butte, MT	24	200,000
Great Falls, MT	26	200,000
Havre, MT	9	200,000
Ely, NV	27	200,000
Tonopah, NV	9	200,000
Winnemucca, NV	7	200,000
Carlsbad, NM	19	200,000
Silver City, NM	10	200,000
Silver City, NM	12	200,000
Syracuse, NY	15	1,000,000
Grand Forks, ND	27	500,000
Aberdeen, SD	9	200,000
Price, UT	11	200,000
Vernal, UT	16	200,000
Walla Walla, WA	9	200,000
Eagle River, WI	26	200,000
Wittenberg, WI	31	500,000
Jackson, WY	11	200,000
Sheridan, WY	7	200,000

Next Gen Solution Proposed for Multicast Streams *continued from page 1*

the host station. The Commission says that the benefit of such arrangements would be the continued availability to audiences of multicast ATSC 1.0 content that might otherwise be suspended or eliminated due to the shortage of available bandwidth while a station is implementing ATSC 3.0. This regulatory framework would be temporary during the transition to Next Gen TV.

While a station is converting its facilities from ATSC 1.0 to ATSC 3.0, it cannot continue to transmit in ATSC 1.0. The FCC has adopted rules to accommodate this situation so that the public can continue to receive the full range of primary stream content in ATSC 1.0. The transitioning ATSC 3.0 station partners with another station in the market with nearly the same coverage area to act as a host to broadcast the transitioning station's 1.0 stream as well as its own. The ATSC 3.0 station's license is temporarily modified to include the channel on the host station carrying its program stream. The originating station remains completely responsible for regulatory compliance of the program stream being hosted on the partner station. The 3.0 and 1.0 program streams must be simulcast, or "substantially similar."

This regulatory framework as it was adopted does not provide for the broadcast of more of the ATSC 3.0 station's 1.0 content than its primary simulcast video stream. Many stations now offer a variety of programming on multicast channels. The NAB reports that potential partner stations have been hesitant to agree to carry a Next Gen station's 1.0 multicast streams under a private contract because of the legal uncertainties of the arrangement.

To address this situation, the FCC's Media Bureau has implemented an interim procedure by which a Next Gen station can request a special temporary authority ("STA") to air its non-simulcast 1.0 multicast streams on a host station. The host station may or may not be the same station that simulcasts the Next Gen station's primary 1.0 stream. The legal status of such a channel is nearly the same as that of the channel covered by the license for the primary 1.0 stream. The STA lasts for only six months, but may be renewed. The FCC has found this case-by-case process to be resource-intensive for both the Commission and broadcasters.

The FCC proposes to improve on the STA procedure by adopting rules to permit the Next Gen station's license to include multiple 1.0 program streams on one or more host stations. First, the Commission proposes to allow a Next Gen station to license one or more simulcast multicast streams on a host station or stations, whether that guest stream is the 3.0 broadcast or the 1.0 simulcast. Secondly, the Commission proposes that the Next Gen station which is broadcasting in 3.0 on its own channel may license one or more multicast streams aired only in 1.0 format on a host station or stations even if it is not simulcasting that stream in 3.0. The Commission also seeks comment on permitting a Next Gen station to air its required simulcast primary stream on more than one host station. The purpose for this arrangement would be to minimize service loss during the transition where no single available host station has a coverage area sufficiently congruent to that of the originating station.

The concept of licensing non-simulcast multicast streams to be broadcast by host 1.0 stations gives rise to a number of policy questions about which the Commission seeks comment. First of these is the question of the impact of these rules on enforcement of the Commission's multiple ownership rules. The Commission asks whether a licensed channel on a host station should be an attributable interest for the licensee of the originating station. The Commission also queries whether it should otherwise limit the number of program streams or the amount of spectrum that a Next Gen station could control on host stations' facilities. In the alternative, the Commission suggests that consideration of this topic could be appropriately conducted in the 2018 Quadrennial Review of the multiple ownership regulations.

Another issue concerns geographic coverage. The required simulcast of the Next Gen station's primary stream must reach at least 95 percent of the Next Gen station's coverage area. As for other stations hosting non-simulcast multicast streams, the Commission proposes that the host station must be in the same Designated Market Area and provide the minimum required level of service to the Next Gen station's community of license.

Qualified programming on a multicast channel can count toward a station's Core Programming for purposes of the children's television programming rules. The Commission tentatively concludes that a multicast channel transmitted by a host station ideally should reach at least 95 percent of the population in the Next Gen station's service area if the children's programming on that channel is to count as Core Programming for the Next Gen station.

A Next Gen station wishing to obtain a license for channels on the facilities of a host station must file an application. The Commission proposes to revise the application form to accommodate multicast licensing. It seeks comment about what information the form should request of applicants so as to provide transparency about the Next Gen station's arrangements with its host stations.

The Commission requests comments on these proposals. The comment deadline will be 60 days after publication of notice of this proceeding in the Federal Register. Reply comments will be due 90 days after that publication.