

Deadline for Aural Access To Non-Textual Emergency Information Waived Again

The Chief of the FCC's Media Bureau has waived for an additional 18 months – until May 26, 2018 – the requirement mandated in Section 79.2 of the Commission's rules that television broadcasters provide an aural representation of visual, non-textual emergency information on a secondary audio channel. This waiver was requested in a petition filed jointly by the American Council of the Blind, the American Foundation for the Blind and the National Association of Broadcasters ("NAB").

The Commission originally adopted the rule in April 2013, implementing a provision of the Twenty-First Century Communications and Video Accessibility Act of 2010. Under the rule, the provider or distributor of video programming that includes visual emergency information content in non-news programming is required to provide an audio description of that visual content and transmit it on a secondary audio channel. The content of visual emergency information might be textual, such as a screen crawl, or non-textual, such as maps or graphic displays.

The deadline for compliance with this rule originally was
continued on page 3

Bill Introduced to Abolish Newspaper Cross-Ownership Rule

Representative Greg Walden (R-OR) has introduced a bill in the U.S. House of Representatives to eliminate the FCC's rule that restricts the cross-ownership of daily newspapers and broadcast stations in the same market. H.R. 6474, co-sponsored by Representative John Yarmuth (D-KY), has been referred to the Committee on Energy and Commerce.

A sharply divided FCC adopted a controversial action this past summer in the 2014 Quadrennial Regulatory Review proceeding, declining to eliminate or substantially alter the cross-ownership prohibition. The ban on cross-ownership, found in Section 73.3555(d) of the FCC's rules, has been in effect since 1975.

Congressman Walden described his bill as a legislative response to the FCC's inaction on this topic. The bill is brief and to the point. It simply states that Section 73.3555(d) shall have no force or effect after the date of enactment of this legislation. The Commission would be required to remove this section from its rule
continued on page 6

Radio Public Files To Be Uploaded by December 24

Deadline for Larger Commercial Stations in Top 50 Markets

Early in 2016, the FCC amended its rules for radio station public inspection files. Until then, each radio station has been required to maintain its public inspection file at its main studio. Under the amended rules, radio stations, like their television counterparts, begin to maintain their public files on an FCC-hosted website.

For large commercial stations (those with five or more full-time employees in the top 50 Nielsen radio markets), this new arrangement became effective as of June 24, 2016. Affected stations were to begin uploading to the FCC's website newly created documents by that date. There is a six-month transition period for those stations to complete the upload of older documents that were required to be in the public file as of June 24. The deadline for uploading those documents is **December 24, 2016**.

All other radio stations required to have public files must complete uploading existing documents and begin uploading
continued on page 6

IN THIS ISSUE

Decommissioning AM.....	2
LPFM Cross-Ownership.....	2
DMCA Takedown Agents.....	3
Deadlines To Watch.....	4-5
Regs for Short Towers.....	6
DMCA Takedown.....	7
Missing Renewal Application.....	8

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

pillsbury

1200 Seventeenth St. NW
Washington, DC 20036

Tel: 202.663.8167

Fax: 202.663.8007

E-mail: scott.flick@pillsburylaw.com

MMTC Suggests Decommissioning AM Band

In a policy memorandum to the incoming Trump administration on minority media and telecom issues, the Multicultural Media, Telecom and Internet Council (“MMTC”) has identified “Twelve Imperatives” for the first 100 days of the new administration. Perhaps the most eye-catching of these imperatives is the proposal to “Create a ‘Glide Path’ for the Short-Term Survival and Long-Term Humane Decommissioning of the AM Band in a Manner that Preserves Minority Ownership.” The memo is addressed to the Trump Telecom Transition Team and to the two Republican members of the FCC, Ajit Pai and Michael O’Rielly.

This section of the memo appears to be premised on the assumption that AM broadcasting is in a terminal decline that cannot be reversed. MMTC states, “Realistically, AM may disappear in 30 years or less.” MMTC observes that 60% of all minority-owned radio stations are on the AM band and that the “great majority” of multilingual radio service is on AM stations. The Council states that FCC policy should facilitate the preservation of the program services presently on AM stations so that they can survive “when the AM band disappears.” The Commission should help AM broadcasters get fair compensation for the loss of their assets and assistance in moving their programming to other platforms. MMTC has created an AM Glide Path Taskforce to help achieve these objectives. MMTC points to models for government intervention to aid distressed industries in federal programs to assist tobacco farmers’ transition to other crops, and those for transitioning coal mining to other energy sources.

MMTC suggests that market mechanisms could work to compensate AM station owners if AM spectrum could be reallocated to other uses for which there may be demand, fostering a community of buyers for that spectrum. Such other uses might include maritime mobile, aeronautical fixed and mobile, drones, driverless vehicles, irrigation and the Internet of Things. MMTC urges the new administration and the new FCC to consider regulatory relief to help bring these changes about and to help ensure that station sellers will find spectrum buyers. In

addition, MMTC would have the government consider compensation or tax incentives for AM licensees who voluntarily return their licenses to the FCC.

MMTC’s memo triggered responses from the radio industry. Among them was an article in the trade press by Thom Callahan, president of the Southern California Broadcasters Association. He produced data showing a 3.8% increase in listenership from the first quarter of 2015 through the third quarter of 2016 for the 19 AM stations that offer original programming in the Los Angeles market. He described the growth of minority and multilingual programming on AM radio as a natural phenomenon running parallel to the changing demographic patterns of multi-ethnic and multicultural life in the United States. Callahan cited the broad range of content offerings and the dynamism of AM radio stations in the Los Angeles market as evidence of AM radio’s vitality. In short, he believes that MMTC’s version of the state of AM radio is “grossly inaccurate.”

MMTC’s memorandum included 11 other “imperatives.” The items in this list of recommendations to the new administration of most interest to broadcasters include the following:

- Appoint and support FCC leadership that integrates diversity and inclusion into the regulatory rulemaking and public engagement processes. Reinstate the Advisory Committee for Diversity in the Digital Age.
- Provide for multilingual emergency information in all radio markets.
- Engage the FCC to address employment discrimination in all communications industries. Restore FCC EEO enforcement premised on identifying regulatees that recruit primarily by word of mouth from homogeneous workplaces. Conduct a thorough review of the employment of under-represented groups in the communications industries.
- Adopt an “Overcoming Disadvantages Preference” that would define eligible entities for competitive authorizations and thereby increase ownership diversity.

LPFM Applicant Rebuked for Cross-Ownership Misrepresentation

The FCC Commissioners have ordered the Media Bureau to commence investigative and enforcement proceedings concerning Community Radio of Decorah, the holder of a construction permit for low power FM (“LPFM”) station KCOD-LP, Decorah, Iowa. The matter to be investigated is Community’s apparent violation of Section 1.17 of the agency’s rules, which requires statements made to the Commission to be truthful and accurate. Questions have arisen concerning the truthfulness of certifications made in Community’s original construction per-

mit application and of responses to inquiries from the Media Bureau with respect to the involvement of one of Community’s principals on the governing board of the licensee of a full power FM station.

Section 73.860(a) of the Commission’s rules restricts cross-ownership between LPFM and all other broadcast stations. With certain exceptions not applicable in this case, no person with an attributable interest in an LPFM station may have an attributable interest in any other

continued on page 3

Deadline for Aural Access Waived Again continued from page 1

set for May 26, 2015. The FCC later granted a blanket waiver as to non-textual content for 18 months – i.e., until November 26, 2016 – in response to an NAB request. NAB explained that the television industry needed more time to develop technology for an automated system that could convert graphic visual contents to speech. As the extended deadline approached without a solution in hand or in the foreseeable future, the NAB and advocates for the blind petitioned the Commission for another extension.

After evaluating the prospects for implementing non-automated methods for producing aural descriptions of graphic materials, the Bureau concluded that the impact of requiring such procedures on station operations would be unproductive, especially for stations with small staffs. It was persuaded that the disadvantages of further delay in implementing the rule are outweighed by the benefits for both stations and consumers to be gained by developing a long-term, high-quality solution. The Bureau granted the 18-month waiver, but emphasized that upon expiration of this waiver period, full compliance with the rule will be required.

It is important to note that the obligation to provide an aural presentation of on-screen textual content has not been waived. The Bureau offered an interpretation of the rule that would exempt graphic content from the requirement for an aural description in certain cases. Where the critical emergency information in the graphic content is also being presented visually in a crawl or other textual mechanism that is being converted to speech, it is not necessary to create a duplicating aural description.

In seeking the extension of the waiver, the petitioners expressed the need to continue working with technology developers and vendors who are exploring innovations to solve the problem of graphics-to-speech production. They committed to engage with technology leaders to explore the prospects for artificially intelligent application program interfaces to resolve this problem. To encourage the broadcast and tech industries to expedite this research and development, the Bureau ordered the petitioners to file a progress report on their efforts to develop a technical solution on November 22, 2017.

Copyright Office Launches Electronic Directory of Agents for Takedown Notices

The U.S. Copyright Office has initiated a new electronic system to designate and search for agents to receive notification of claimed infringement under the Digital Millennium Copyright Act (“DMCA”). The DMCA provides a safe harbor for Internet service providers to shield them from liability for copyright infringements committed by third parties using their facilities. Parties claiming to own copyrighted content can request that the service provider take down the material in question. If the service provider promptly does so, it will not be liable.

To facilitate the takedown notice process, the service provider must identify an individual to act as its agent for receiving takedown notices. The agent’s name and contact information must be listed on the provider’s website and on a directory of agents maintained by the Copyright Office. A

copyright claimant can quickly ascertain the appropriate agent to whom the takedown notice should be sent by consulting the Copyright Office’s directory.

As of December 1, 2016, the Copyright Office began collecting agent data electronically and making it available to the public for online searching. Service providers must now designate their agents electronically on the directory. Paper registrations will no longer be accepted. Service providers who had previously submitted paper registrations must update them on the electronic directory by December 31, 2017.

The link for the Copyright Office’s directory where agents can be listed and searched is:
<https://www.copyright.gov/dmca-directory/>.

LPFM Applicant Rebuked continued from page 2

broadcast station. The LPFM construction permit application requires the applicant to certify compliance with this rule. Community’s application was signed by James Glesne, one its principals. In due course, the Commission granted the application and issued a construction permit.

Several days before the LPFM application was granted, the Pottsville Chamber of Commerce filed an Ownership Report for its noncommercial FM station KPVL, Pottsville, Iowa. In the Report, Glesne was identified as a member of the Chamber’s governing board and his interest in the LPFM application was disclosed.

Upon the grant of Community’s application, the

licensees of two local commercial radio stations petitioned the Bureau for reconsideration of that action. Chief among their assertions was Community’s violation of the cross-ownership prohibition and its misrepresentation in certifying to the contrary. The Bureau dismissed the petition, ruling that the petitioners failed to demonstrate good cause for why they could not have raised the issue prior to the grant of the application. At the same time, the Bureau admonished Community for making an apparently negligent false certification in the application. The Bureau also said that the cross-ownership violation could be cured because Glesne had eventually resigned

continued on page 7



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

- December 1, 2016 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, 2016 Deadline to file Biennial Ownership Report for all noncommercial radio stations in **Colorado, Minnesota, Montana, North Dakota** and **South Dakota**, and noncommercial television stations in **Alabama, Connecticut, Georgia, Maine, Massachusetts, New Hampshire, Rhode Island** and **Vermont**. (The FCC has amended its rules so as to reschedule this filing date for December 1, 2017, pending review by the Office of Management and Budget. As of this writing, that review has not been completed. Until OMB approves the new forms, the prior rule and schedule will remain in effect.)
- December 1, 2016 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, 2016 Deadline to file EEO Broadcast Mid-term Report for all radio stations in employment units with more than 10 full-time employees in **Colorado, Minnesota, Montana, North Dakota** and **South Dakota**; and all television stations in employment units with five or more full-time employees in **Alabama** and **Georgia**.
- December 1, 2016 Deadline for all digital television stations to file annual Ancillary/Supplementary Services Report for 12-month period ending September 30.
- January 10, 2017 Deadline to place Issues/Programs List for previous quarter in public inspection file for all full service radio and television stations and Class A TV stations.
- January 10, 2017 Deadline to file quarterly Children's Television Programming Reports for all commercial full power and Class A television stations.
- February 1, 2017 Deadline to place EEO Public File Report in public inspection file and on station's Internet website for all nonexempt radio and television stations in **Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York** and **Oklahoma**.
- February 1, 2017 Deadline to file Biennial Ownership Report for all noncommercial radio stations in **Kansas, Nebraska** and **Oklahoma**, and noncommercial television stations in **Arkansas, Louisiana, Mississippi, New Jersey** and **New York**. (The FCC has amended its rules so as to reschedule this filing date for December 1, 2017, pending review by the Office of Management and Budget. As of this writing, that review has not been completed. Until OMB approves the new forms, the prior rule and schedule will remain in effect.)
- February 1, 2017 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, 2017 Deadline to file EEO Broadcast Mid-term Report for all radio stations in employment units with more than 10 full-time employees in **Kansas, Nebraska** and **Oklahoma**; and all television stations in employment units with five or more full-time employees in **Arkansas, Louisiana**, and **Mississippi**.

COMMERCIAL RADIO STATIONS IN TOP-50 MARKETS WITH 5 OR MORE FULL TIME EMPLOYEES SHOULD HAVE BEGUN USING ONLINE PUBLIC FILE AS OF JUNE 24, 2016 FOR NEW DOCUMENTS. DEADLINE TO UPLOAD PRIOR EXISTING DOCUMENTS IS DECEMBER 24, 2016



DEADLINES TO WATCH



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 **December 27, 2016**. Informal objections may be filed anytime prior to grant of the application.

Present Community	Proposed Community	Station	Channel	Frequency
Kissimmee, FL	Winter Park, FL	WHOO(AM)	N/A	1080
Kissimmee, FL	Winter Park, FL	WHOO(AM)	N/A	1080
Chubbuck, ID	Blackfoot, ID	KLLP	253	98.5
Idaho Falls, ID	Aberdeen, ID	KID-FM	241	96.1
Princeton, KY	Providence, KY	WAVJ	285	104.9
Providence, KY	Sebree, KY	WWKY	249	97.7
Roundup, MT	Klein, MT	KZMO	260	99.9
Fernley, NV	Hazen, NV	KNEZ	297	107.3
Brockport, NY	Brighton, NY	WOKR(AM)	N/A	1600
Loretto, TN	Florence, AL	WLXA	252	98.3
Christoval, TX	Stanton, TX	New	290	105.9
Laramie, WY	Saratoga, WY	KAIW	205	88.9

Rulemakings to Amend FM Table of Allotments

The FCC is considering an amendment proposed to the FM Table of Allotments to add or delete (indicated with a "D") the following channels. The deadlines for filing comments and reply comments are shown. The asterisk indicates that these channels are reserved for noncommercial use.

Community	Channel	MHz	Comments	Reply Comments
Gaylord, MI	246C2	97.1		Dec. 13
Mullin, TX	224A(D)	92.7	Dec. 19	Jan. 3
Mullin, TX	277A	103.3	Dec. 19	Jan. 3
Red Lake, MN	287C1	105.3	Dec. 27	Jan. 10

Deadlines for Comments In FCC and Other Proceedings

Docket	Comments	Reply Comments
(All proceedings are before the FCC unless otherwise noted.)		
Docket 16-41; NPRM Fostering diversity of video programming	Dec. 27	Jan. 23
U.S. Copyright Office Docket 2015-7; NOI Safe harbor provisions of the DMCA	Feb. 6	N/A

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
Disturbance of AM antenna pattern, Sections 1.3002, 1.3003, 1.3004, 73.875, 73.1657, 73.1690	Dec. 19
Broadcast station operating power and mode tolerances, Section 73.1560	Jan. 3
Satellite network non-duplication protection; satellite syndicated program exclusivity; Sections 76.122, 76.123, 76.124	Jan. 4
Public inspection files and political files, Sections 73.3526, 73.3527, 73.1212, 76.1701, 73.1943	Jan. 9
Video description of video programming, Section 79.3	Jan. 13
Significantly viewed signals, Section 76.54	Jan. 13
Alternative Broadcast Inspection Program	Jan. 30

Cut-Off Dates for Noncommercial FM Applications

The FCC has named the applicant for a new noncommercial FM station identified below as the tentative selectee. 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
Nenana, AK	256	99.1	Big River Public Broadcasting Corp.	Dec. 7
Nenana, AK	236	95.1	40 Below Broadcasting	Dec. 7



Radio Public Files To Be Uploaded by December 24 continued from page 1

new items on a current basis by March 1, 2018. Those stations have the option to begin uploading currently generated items sooner if they wish. However, if a station begins uploading new documents as they come into existence, it must continue to do so without a lapse, even prior to the March 1, 2018 deadline.

The online public file should include most of the items required to be in the public file at the main studio. Documents already available on the FCC's website, such as applications, Ownership Reports and EEO filings need not be uploaded. The Commission will import these documents to each station's online file. 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. Generally, all other documents required to be in the file as of the deadline for uploading must be uploaded to the online file by that date, and subsequently generated materials must be submitted on an on-going basis thereafter. There are exceptions for two categories of documents:

(1) Although the contents of political files must be maintained for two years, stations need only upload political file materials newly generated on or after June 24,

2016. Stations must continue to maintain the pre-June 24 paper files at the main studio for the balance of the two-year holding period.

(2) Commercial stations are presently required to keep correspondence from the general public in their public files, but should not upload this material to the online public inspection file. In a separate rulemaking proceeding, the FCC is considering a proposal to eliminate the requirement to keep such correspondence in the public file. Pending Commission action on that proposal, stations are still required to maintain a public correspondence file at the main studio for public review.

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. However, to ensure compliance with the statutory mandate for promptly providing the contents of political files to candidates and the public, stations are required to take precautionary measures so that political files can be accessible immediately in the event the Commission's website becomes unavailable. To meet this requirement, stations must maintain a back-up copy of the political file at the main studio..

New Regs for Shorter Towers Likely in 2017

Legislation adopted by Congress and signed by the President earlier this year may eventually lead to rules that will require many towers in the height range of 50 to 200 feet above ground level to be marked and lighted for the purpose of enhancing aviation safety. The FAA Extension, Safety and Security Act of 2016 became law on July 15, 2016. It requires the Federal Aviation Administration to adopt new rules for marking and lighting shorter towers that had previously generally been exempt.

At the present time, the FAA generally requires towers that are 200 feet or taller above ground level to have lights and to be marked with specifically colored paint. Shorter towers are exempt from these requirements unless they are located under or near the flight paths around airports.

The new statute directs the FAA to amend its rules so as to mandate marking and lighting for many self-supported or guyed towers that meet these criteria: (1) between 50 and 200 feet tall; (2) 10 feet or less in diameter; and (3) supporting mounted "accessory facilities" such as antennas, cameras,

weather instruments, sensors, and other equipment. The law primarily targets towers in rural areas. The new rules would pertain only to towers located outside the incorporated boundaries of towns and cities, on undeveloped land, or on land used for agriculture. The following structures would be exempt: (1) towers adjacent to a building; (2) towers on the developed area around a farmhouse; (3) structures supporting electricity transmission or distribution lines; (4) wind-powered electrical generators with rotor blades of more than six feet in diameter; and (5) towers with street lights constructed by government entities.

The FAA is required to adopt these rules within one year from enactment of the statute. That means they must be in place by July 15, 2017. The agency has not yet initiated a rulemaking proceeding to address this mandate. The new rules are to cover existing towers as well as new structures. The owners of existing towers subject to these regulations will have one year from the effective date to bring their towers into compliance.

Bill Introduced to Abolish Newspaper Cross-Ownership Rule

continued from page 1

book within a year.

Operating in a lame duck session, the 114th Congress will conclude its business in December. That would not appear to leave enough time for a specialty bill such as H.R. 6474 to work its way through the process. Pending legisla-

tion that has not been acted upon will die with the Congress. However, some observers suggest that this bill might survive and be enacted as a rider on important legislation to fund the government which must be acted upon before this Congress adjourns. In the alternative, Congressman Walden may introduce this bill again next year.

Copyright Office Solicits More Comments on Takedown Procedures

The U.S. Copyright Office has requested a second round of comments in its ongoing proceeding to study the impact and effectiveness of the safe harbor provisions of the Digital Millennium Copyright Act (“DMCA”). Section 512 of the Act establishes a mechanism to protect online service providers from liability for copyright infringement committed by third parties on or through their facilities. Safe harbors are available for (a) serving as a conduit for the automatic transmission of content by third parties; (b) caching (i.e., temporarily storing) material that is transmitted automatically from one third party to another; (c) storing (i.e., hosting) material at the direction of a user on a service provider’s system; and (d) referring or linking users to online sites using uniform location tools (such as a search engine). Upon proper notice from a party claiming copyright ownership in certain content, an Internet service provider can avoid liability if it promptly takes down the material in question. The Office seeks information on the costs and burdens of this notice-and-takedown process on all kinds of copyright owners, online service providers and the general public.

The Copyright Office launched this proceeding late in 2015 with a *Notice of Inquiry*. Some 92,000 comments were received by the April 1, 2016 filing deadline. Additional input was garnered from roundtable discussions that were convened in New York and San Francisco in May. This record has produced several themes that the Office wishes to pursue in greater detail. The public is invited to submit additional comments in reply to comments already in the record and/or to comment in general on the themes that have emerged. Participants are asked not to repeat comments that they have already submitted.

The topics for further comment including the following:

- Characteristics of the current Internet ecosystem. There is great diversity among the users of the Internet. How should any modifications of the DMCA take into account these differences? Should the takedown process recognize and address the differences between individual senders of manual notices and automated systems? What are the perspectives and interests of individual Internet users as compared to large organizations?
- Operation of the current DMCA safe harbor system. What are the most significant practical barriers to using the takedown system? Are the schedules for reacting to takedown notices and counter-takedown notices practical and convenient? Is the process too intimidating or too costly? Should penalties for abuses of the system be strengthened? Should repeat infringer policies in the context of a conduit operation be different than when the service provider is caching or hosting?
- Potential future evolution of the safe harbor system. What measures could or should be undertaken to improve users’ understanding of the safe harbor process so as to improve the functioning of the process? Can the adoption of additional voluntary measures be encouraged or incentivized? Would it be advisable to adopt a notice-and-stay-down system? If so, how would it work? What other aspects of the DMCA could be improved with future legislation?

The deadline to file comments in Docket 2015-7 is February 6.

LPFM Applicant Rebuked continued from page 3

his position in the Chamber of Commerce.

The commercial station licensees filed an Application for Review, asking the Commissioners to weigh in on the case. The Commission affirmed the Bureau’s dismissal of the Petition for Reconsideration, and agreed with the Bureau that the cross-ownership violation need not be fatal to Community’s application. Section 73.860 states that no LPFM “license” shall be granted to any party with an attributable interest in another broadcast station. LPFM construction permit applicants occasionally do have such ties. In such cases, the Bureau adds a condition to the construction permit to require divestiture of that interest before a license will be granted to the LPFM applicant.

Nonetheless, the Commission expressed concerns about Community’s false certification. The application was prepared and signed by Glesne himself, who presumably knew of his membership on the Chamber’s board. In responses to the Petition for Reconsideration (submitted

only after a request from the Bureau), Glesne variously stated that he had submitted his Chamber resignation on December 31, 2013, and then that he had submitted a backdated version of it in April 2014. Despite instructions from the Bureau, Glesne’s explanations were not offered under the penalty of perjury. Rather than explaining his inconsistencies, Glesne preferred to deflect responsibility to the Chamber of Commerce.

Under these circumstances, the Commission determined that the Bureau’s admonishment was an inadequate sanction for Community. It was concerned that the Bureau’s approach could be interpreted by Community or other LPFM applicants as a tolerance for what is, at best, careless application preparation, and violations of rules and directives. The Commission directed the Bureau to pursue further investigation of the matter and to determine an appropriate enforcement action. In a concurring opinion, Commissioner Pai said he would have preferred designating the case for a hearing immediately.

Station Fined for Missing License Renewal

The FCC's Media Bureau has proposed a \$13,000 fine for the licensee of WINW(AM), Canton, Ohio, Pinebrook Corporation, for failing to timely file a license renewal application in 2004 and subsequently operating for a number of years without a license.

License renewal applications for radio stations in Ohio were due by June 1, 2004. The regular then-current license term for those stations would expire on October 1, 2004. Pinebrook filed a renewal application on July 30, several weeks late, but still prior to the expiration of the license.

That application was dismissed by the Commission on January 18, 2005 due to a "red light" issue. When an outstanding bill is past due to the FCC (often an unpaid regulatory fee), the debtor entity is placed in "red light" status and the Commission will not process any application or request submitted by that entity. If the situation persists too long, pending applications will be dismissed. That is what happened to the WINW license renewal application.

Pinebrook says that it did not receive any notice of that dismissal and there is no record that the FCC actually communicated directly with Pinebrook about it. Notice of the dismissal was published in due course in the Commission's daily Public Notice listing all actions it takes on applications. However, Pinebrook was functioning without an attorney and was not cognizant of the Commission's daily Public Notices. Pinebrook's owner and sole principal assumed that the renewal application was still pending and continued to operate the station. When a license renewal application has been filed before the expiration of the old license, the Commission generally permits the station to continue operating until it takes action on the renewal application even if the old license has expired. Pinebrook relied on this policy to continue broadcasting.

In January 2011, the Bureau sent Pinebrook a status inquiry letter, which Pinebrook said was the first indication it had received that its application had been dismissed. It then filed a new license renewal application, and a series of requests for Special Temporary Authority to operate while the renewal application was pending. The next normal license renewal deadline for radio stations in Ohio came on June 1, 2012. The Bureau had not acted on the second WINW renewal by that time, and so Pinebrook was required to file a supplemental renewal application for the new term that would begin October 1, 2012. During this interval, Pinebrook suffered a number of setbacks that took the station off the air temporarily and required facilities modifications, including the theft of the copper feed line to the transmitter, and the loss of the lease for its transmitter site.

In its *Notice of Apparent Liability for Forfeiture*, the Bureau concluded that Pinebrook had failed to timely file a license renewal application and that it had willfully operated the station for a period of several years without a license or other authorization. The FCC's *Forfeiture Policy Statement* sets the base forfeiture amount for failing to file a required form at \$3,000, and for operating without an authorization at \$10,000. Although the Bureau has the discretion to adjust the base amount of a forfeiture as circumstances may warrant, it decided to impose these forfeitures in this case without adjustment. Nonetheless, the Bureau said that it would grant the pending renewal application upon completion of this proceeding – including payment of the forfeiture.

Pinebrook has filed a Petition for Reconsideration, arguing that its operation of WINW without an authorization could not have been a "willful" rule violation because it did not know its renewal application had been dismissed. The Petition remains pending as of this writing.

Incentive Auction Needs Stage 4

The FCC's Incentive Auction Taskforce and the Wireless Telecommunications Bureau have concluded Stage 3 of the Incentive Auction without raising enough revenue in the forward auction to cover the spending required to fund the purchases from the reverse auction and the related costs, such as post-auction repacking, that the Commission is required to cover. The shortfall was over \$20 billion. Following procedures established at the outset of the Incentive Auction, the process will move into Stage 4. Bidding in the Stage 4 reverse auction is set to begin December 13. Applicants who ended Stage 3 as provisional winning bidders will be eligible to bid in Stage 4.

The clearing target for the Stage 4 reverse auction is reduced to 84 megahertz (as compared to 108 megahertz in Stage 3, 114 megahertz in Stage 2 and 126 megahertz in Stage 1). That will occupy the spectrum used by the present television channels from 38 to 51. The band plan for the Stage 4 forward auction will be composed of 7 pairs of 5-megahertz channels offered for wireless services, and 14 megahertz devoted to guard bands.

All television licensees, whether or not they are participating in the auction, remain subject to the Commission's anti-collusion rules. They are prohibited from communicating auction-related information to any other television licensees or to forward auction applicants.

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 correct, but no warranty, express or implied, is given as to the accuracy or completeness of any information or statement published herein. Copyright 2016 by Atlantic Star Media, Inc. All rights reserved.