

Regulatory Fees Due September 23

The FCC has adopted a *Report and Order* in Docket 14-92 setting the amounts to be paid in regulatory fees for the fiscal year ending September 30, 2014 and scheduling the deadline for paying those fees. That deadline is 11:59 p.m. Eastern Time on September 23. Congress has mandated the FCC to collect \$339,844,000 in regulatory fees for FY 2014. The Commission has the task of apportioning these fees among the entities that it regulates. The chart on page 6 indicates the fees that have been set for this year for most types of authorizations of interest to broadcasters, and compares those fees to the amounts originally proposed for this year and to those imposed for FY 2013. The Commission generally adopted the schedule of fees that it proposed earlier this summer except that the fees for full service television stations are slightly less than those that had been proposed.

In accord with the federal government's efforts to promote a paperless business environment, the FCC will only accept regulatory fee payments that are made electronically by ACH, credit card or bank wire transfer. Payments proffered

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Antenna Structure Rules Streamlined

Rules governing the construction, maintenance and registration procedures for antenna structures have been revised and reformed by the FCC in a *Report and Order* in Docket 10-88. This action results from proposals considered in a *Notice of Proposed Rulemaking* ("NPRM") adopted in 2010 as a part of the 2004 and 2006 Biennial Regulatory Reviews, and from a Petition for Rulemaking filed in 2006 by PCIA – The Wireless Infrastructure Association. The Commission sought to clarify ambiguous provisions, eliminate obsolete requirements and harmonize its rules with those of the Federal Aviation Administration ("FAA").

Registration. Towers and other structures supporting antennas must be studied by the FAA for hazards to air navigation if they exceed 200 feet in height or are located in critical areas near an airport. If the FAA makes a determination that the structure would not be a hazard to air navigation, the proponent then must register the structure with the FCC. The Commission will issue a numbered Antenna Structure Registration ("ASR"). Upon registration, the FCC's rules have

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FCC Begins Dialog About Online Public Files for Radio

In a new proceeding initiated to propose that cable television and direct broadcast satellite operators post their public inspection files online as all television stations are now required to do, the FCC has injected a similar proposal for radio into the discussion.

The Campaign Legal Center, Common Cause and the Sunlight Foundation have jointly filed a Petition for Rulemaking in which they asked the Commission to launch a proceeding to consider mandatory online public files for cable and DBS. The Petition dwells almost entirely on the matter of enhanced public access to documentation that would be found in the political file section of the public inspection file.

The Petition was filed on July 31, and the FCC quite promptly issued a Public Notice in Docket 14-127 on August 7 soliciting comments on an expedited schedule. Comments were due August 28. The reply comment deadline was set for September 8.

The requirement for broadcast television stations

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required structure owners to comply with the marking and lighting recommendations in two outdated FAA Advisory Circulars from 1995 and 1996. In this action, the Commission deletes references to those Circulars and instead adopts a rule mandating compliance with the marking and lighting requirements for the specific structure that is the subject of the FAA's determination of no hazard. The Commission also clarified that it retains the right to impose additional or different marking and lighting requirements.

The FCC's rules provide an exemption to the lighting and marking requirements for previously authorized structures, and provide that changes in the FAA Circulars do not impose new restrictions on existing structures. This rule now is updated to delete the reference to the defunct Circulars. Registered structures will continue to be exempt from subsequently adopted marking and lighting requirements unless the FAA recommends new specifications for a particular structure.

Alterations to Registered Structures. The old rules provided that the antenna structure owner must obtain a new registration prior to altering the existing structure. However, the degree of alteration that would trigger this obligation is not specified. The FAA's rules require a new air hazard study for any change or correction of one foot or more in height or one second or greater in latitude or longitude. The FCC amended its rule for requiring a new registration to coincide with the FAA's regulation.

The Commission's rules have required a structure owner to notify the Commission within 24 hours of construction or dismantlement, and "immediately" in case of changes in height or ownership. The FAA's required schedule for all of these notifications is within five days. Again, to make its rules consistent with those of the FAA, the FCC adopted a similar five-day window for reporting such changes.

Displaying ASRN. The ASR number is required to be displayed "in a conspicuous place so that it is readily visible near the base of the antenna structure." The purpose of the rule is provide the public with the means of obtaining ownership and other information about the structure. However, in many cases, the base of the structure is not accessible to the public. This rule

is modified to require the ASR number to be posted so that it is visible to a member of the general public who reaches the closest publicly accessible location near the antenna structure base. If multiple nearby locations are equally accessible, the ASR number must be posted at each of them.

Inspection of Lights and Alarms. The FCC's current rules require the owner of a structure for which lighting is required to observe the lights to ensure they are functioning properly at least once every 24 hours either visually or by observing an automatic indicator designed to register any failure of the lights. In the alternative, an automatic alarm system can be employed to notify the operator of a lighting failure. Automatic and mechanical control devices, indicators and alarms must be inspected at least quarterly. In the NPRM, the Commission invited comment about eliminating the inspection requirement, or creating an exemption from the requirement for structures that are monitored by a system with a properly staffed network operations center ("NOC"). NOC systems employ self-diagnostic functions (such as alarm notification, 24-hour polling, and manual contact), have an operations center with a trained staff capable of responding to alarms 24 hours per day, and maintain a backup operations center that can function in the event of catastrophic failure.

The Commission has previously granted a number of waivers of the inspection rule for structures currently under NOC-based monitoring. Now the agency has created a procedure to qualify for exemption from inspections for structures subject to NOC-based monitoring. To qualify, a structure owner must provide certification and supporting documentation that it is using an advanced NOC monitoring system that has been approved by the Commission. It must also certify that it maintains a facility to receive notifications of outages from the NOC system. Structure owners that have previously obtained waivers are automatically exempt as long as they maintain the systems in place that were documented in the waiver request. Structure owners wishing to use an NOC system that has not yet been approved by the Commission may request a waiver. Structure owners are reminded that exemption from the inspection requirement

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Dialog Begins about Online Public Files for Radio continued from page 1

to upload their public inspection file documents to a website hosted by the FCC became effective on August 2, 2012. The Commission says that since that time, over half a million items have been successfully uploaded and that the site has generated nearly five million page views. As of July 1, 2014, all television stations have fully transitioned to the online file process. With the complete implementation of the television station rule, the Commission suggests that the time is ripe for considering the expansion of this mandate to other elements of the television ecosystem.

Then the Commission added a one-sentence invitation

for public comment about initiating a rulemaking to require broadcast radio stations to use the online public file as well, and about an appropriate time frame for implementing such a requirement. In a footnote in the Public Notice, the agency observed that in the original order adopting the rule for television, it had delegated to Media Bureau staff the authority to allow radio stations to voluntarily post their public files in the online database when the staff determines that such an option would be feasible and desirable. The Commission reports that the staff is presently analyzing the budget and technical issues that are involved in allowing radio stations to upload documents voluntarily to the online public file.

Media Bureau Defers Must-Carry Claim during Virtual Channel Dispute

The FCC's Media Bureau has issued a Letter Decision granting the requests of Cablevision Systems, Time Warner Cable and Comcast Cable to defer implementing the must-carry request and channel position election of KVVN(TV), Middletown Township, New Jersey, until 90 days after a final decision is reached on the question of an appropriate virtual channel for KVVN to use in the Program System and Information Protocol ("PSIP"). KVVN filed an application to modify its facilities and relocate to Middletown Township from Ely, Nevada, after its RF channel 3 was allotted to Middletown Township. This unusual cross-country reallocation was ordered by the U.S. Court of Appeals for the D.C. Circuit under unique circumstances.

WFSB(TV), Hartford, Connecticut, filed an Informal Objection to the modification application objecting to the future use of virtual channel 3 by KVVN because WFSB has been assigned that virtual channel since 2004. WFSB argued that because the noise limited contours of the two stations overlap, they cannot both operate on the same virtual channel. WFSB asserted that under the PSIP Standard the FCC has adopted, its own RF channel – 33 – should be KVVN's virtual channel. The Bureau's Video Division granted the modification application. WFSB filed a Petition for Reconsideration of that decision which remains pending.

KVVN, having been granted the modification, has notified the cable television systems in the New York DMA

where it is entitled to must-carry that it is electing must-carry and that it is requesting carriage on channel 3. Under the must-carry rules, a station is entitled to demand cable carriage on its RF channel. KVVN's must-carry election letters were sent out on June 6, making its election effective by September 4.

In its request to defer carriage of KVVN, Cablevision states that although WFSB is in the Hartford-New Haven DMA, a market modification order has included Fairfield County, Connecticut, in its market. Fairfield County is in the New York DMA. Cablevision states that WFSB is carried on channel 3, presenting an obvious conflict with KVVN's demand. Comcast says that it also transmits WFSB on channel 3 to communities in Fairfield County and elsewhere. Time Warner asserts that it operates cable systems serving over one million subscribers in the New York DMA, that it offers a variety of programming lineups that occupy channel 3, and that those lineups have been in place for many years. All of the cable operators urge they should not be required to negotiate new channel positions for the programming services that KVVN would displace on channel 3 while the question about what KVVN's virtual channel will be remains unresolved. They do not want to have to make room for KVVN on channel 3 only to be ordered later to move it to a different channel where it would displace other services.

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with paper checks (including cashier's checks) will be returned and will not be considered timely. The Commission will impose a 25% late fee and additional charges for administrative costs on fees that are not received electronically by the deadline. Furthermore, the Commission will not act on applications or requests for other benefits submitted by parties with past-due fees. At some point after the payment deadline, the FCC will refer unpaid accounts to the U.S. Treasury for collection. At that time, the process of paying the past-due fee and clearing one's record with the FCC becomes more complicated and time-consuming. Payment instructions can be found on the FCC's website at fcc.gov/regfees.

The Commission is in a multi-year process of reforming its regulatory fee procedures and reapportioning the total amount to be imposed on each category of regulatee. A significant change for broadcasters this year is the combining of the VHF and UHF full service television categories. Where there used to be different fees for these two types of station, they now incur the same fee in the same-size market. Another change concerns expanded band AM radio stations (on frequencies between 1600 and 1700 kHz). For the first time this year, stations in that band will incur a regulatory fee.

The FCC adopted other changes that will not become effective until next year. Among these is a new de minimis threshold. Presently, a regulatee with less than \$10 in liabilities for all of its regulatory fees for a fiscal year is exempt from the requirement to pay fees. The Commission has raised this threshold to \$500, beginning next year. Also, the agency has decided to eliminate entirely the fee for broadcast auxiliary authorizations (such as studio-to-transmitter links, remote pick-ups, etc.), currently set at \$10 per authorization.

Regulatory fees are imposed on the basis of the status of the authorization as of October 1, 2013. Nonprofit entities are exempt from regulatory fees, including for stations that they operate in a commercial mode.

In the same action, the Commission adopted a *Second Further Notice of Proposed Rulemaking* to explore whether direct broadcast satellite operators should incur regulatory fees for Media Bureau services in addition to the fees now imposed for expense the Commission incurs in its International Bureau in connection with DBS oversight. Comments on this issue will be due 30 days after publication of notice of the proceeding in the Federal Register. Replies will be due 30 days later.



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

- Sept. 1 & 16, 2014 Television stations in **California** broadcast post-filing announcements regarding license renewal applications.
- Sept. 1 & 16, 2014 Television stations in **Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon** and **Washington** broadcast pre-filing announcements regarding license renewal applications.
- Oct. 1, 2014 Deadline to file license renewal applications for television stations in **Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon** and **Washington**.
- Oct. 1, 2014 Deadline to file Biennial Ownership Report for all noncommercial radio stations in **Iowa** and **Missouri** and noncommercial television stations in **Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon** and **Washington**.
- Oct. 1, 2014 Deadline to place EEO Public File Report in public inspection file and on station's Internet website for all non-exempt radio and television stations in **Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, Mariana Islands, Missouri, Oregon, Puerto Rico, Virgin Islands** and **Washington**.
- Oct. 1, 2014 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). Stations for which this is the license renewal application due date will submit this information as a part of the renewal application.
- Oct. 1 & 16, 2014 Television stations in **Alaska, American Samoa, California, Guam, Hawaii, Mariana Islands, Oregon,** and **Washington** broadcast post-filing announcements regarding license renewal applications.
- Oct. 1 & 16, 2014 Television stations in **Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island** and **Vermont** broadcast pre-filing announcements regarding license renewal applications.
- Oct. 10, 2014 Place Issues/Programs List for previous quarter in public inspection file for all full service radio and television stations and Class A TV stations.
- Oct. 10, 2014 Deadline to file quarterly Children's Television Programming Reports for all commercial television stations.
- Nov. 1 & 16, 2014 Television stations in **Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon,** and **Washington** broadcast post-filing announcements regarding license renewal applications.
- Nov. 1 & 16, 2014 Television stations in **Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island** and **Vermont** broadcast pre-filing announcements regarding license renewal applications.
- Dec. 1, 2014 Deadline to file license renewal applications for television stations in **Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island** and **Vermont**.

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 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 |
|--|------------------|
| FM broadcast license application, Form 302-FM | Sep. 8 |
| Requests for Special Temporary Authorizations, Sections 73.1615, 73.1635, 73.1740, 73.3598 | Sep. 12 |
| Requests to extend LPTV construction permits, Form 337 | Sep. 12 |
| Digital TV Ancillary/Supplemental Services Report, Form 317 | Sep. 15 |
| Nationwide Programmatic Agreement re Sec. 106 NHPA, Form 620 | Sep. 18 |
| AM broadcast license application, Form 302-AM | Sep. 22 |
| Application for Radio Service Authorization, Form 601 | Oct. 14 |
| Emergency antennas, Section 73.1680 | Oct. 27 |

Lowest Unit Charge Schedule for 2014 Political Campaign Season

During the 45-day period prior to a primary election or party caucus and the 60-day period prior to the general election, commercial broadcast stations are prohibited from charging any legally qualified candidate for elective office (who does not waive his or her rights) more than the station's Lowest Unit Charge for advertising that promotes the candidate's campaign for office and includes a "use" by the candidate. Lowest-unit-charge periods are imminent in the following states.

| State | Election Event | Date | LUC Period |
|---------------|------------------|----------|-------------------|
| Delaware | State Primary | Sept. 9 | July 26 - Sept. 9 |
| Massachusetts | State Primary | Sept. 16 | Aug. 2 - Sept. 16 |
| New Hampshire | State Primary | Sept. 9 | July 26 - Sept. 9 |
| Rhode Island | State Primary | Sept. 9 | July 26 - Sept. 9 |
| United States | General Election | Nov. 4 | Sep. 5 - Nov. 4 |



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 14-50; FNPRM 2014 Quadrennial Regulatory Review | | Sep. 8 |
| Docket 14-127; Public Notice Expansion of online public file requirement to cable TV, satellite TV and radio | | Sep. 8 |
| Docket 14-28; NPRM Open Internet | | Sep. 10 |
| U.S. Copyright Office Docket 2014-03; NOI Music licensing study | Sep. 12 | N/A |
| Docket 14-90; Public Notice AT&T application to acquire DIRECTV | Sep. 16 | Oct. 16 |
| RM-11727; Public Notice Petition for Rulemaking to amend rules re FM allotment and assignment policies | Sep. 18 | Oct. 3 |
| RM No. 11728; Public Notice Petition for Rulemaking re video programming vendors | Sep. 29 | Oct. 14 |
| Docket 14-109; Public Notice Request for comment re Pandora's request for ruling re foreign ownership of broadcast stations | | Sep. 29 |
| Docket 11-154; 2ndFNPRM Closed-captioning of Internet protocol delivered video programming | Oct. 6 | Nov. 3 |
| Docket 12-201, FNPRM Regulatory fees for DBS | N+30 | N+60 |

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

NCE FM Filing Window for Three Vacant FM Allotments Closes September 8

The FCC's Media Bureau is conducting a filing window for applications for new stations on three FM allotments that have been reserved for noncommercial use. The filing window closes at 6 p.m. Eastern Time on September 8.

Applications for new noncommercial stations may be filed for only the communities and channels listed below.

| Community | Channel |
|--------------------|---------|
| Greenup, Illinois | 230A |
| Asbury, Iowa | 254A |
| Van Alstyne, Texas | 260A |

These allotments were reserved for noncommercial use by means of the "third channel reservation test." The proponents for establishing these allotments demonstrated to the FCC that no reserved band channel (below 92 MHz) is available and that a station on the allotment could provide the first or second noncommercial radio service to at least 10% of the population within its 1 mV/m contour. Applicants for these allotments must propose to provide a first or second noncommercial radio service to at least 10% of the population within the proposed 1 mV/m contour, and that population must number at least 2,000 people.

The FCC's noncommercial comparative selection procedures will be used to choose a winning applicant in these cases where there are mutually exclusive applications.

Cut-Off Dates for FM Booster Applications

The FCC has accepted for filing the applications for new FM booster stations as described below. The deadline for filing a petition to deny each of these applications is indicated. Informal objections may be filed any time prior to grant of the application.

| Community | Parent Station | Channel | MHz | Filing Deadline |
|-----------------|----------------|---------|-------|-----------------|
| Cedar Cove, CO | KGCO | 202 | 83.3 | Sep. 22 |
| Bloomington, IL | WIBL | 299 | 107.7 | Sep. 22 |
| Laramie, WY | KLMI | 291 | 106.1 | Sep. 22 |

**REGULATORY FEES DUE
SEPTEMBER 23, 2014**

**MUST CARRY / RETRANSMISSION
CONSENT ELECTIONS FOR 2015-2017
DUE
OCTOBER 1, 2014**

FCC Regulatory Fees for Fiscal Year 2014

(See story on page 1)

| Type of Authorization | Actual FY2014 | Proposed FY2014 | Actual FY2013 |
|---|------------------|--------------------|------------------|
| VHF Television | | | |
| Markets 1-10 | \$ 44,650 | \$ 44,875 | \$ 86,075 |
| Markets 11-25 | 42,100 | 42,300 | 78,975 |
| Markets 26-50 | 26,975 | 27,100 | 42,775 |
| Markets 51-100 | 15,600 | 15,675 | 22,475 |
| Remaining Markets | 4,750 | 4,775 | 6,250 |
| Construction Permit | 4,750 | 4,775 | 6,250 |
| UHF Television | | | |
| Markets 1-10 | 44,650 | 44,875 | 38,000 |
| Markets 11-25 | 42,100 | 42,300 | 35,050 |
| Markets 26-50 | 26,975 | 27,100 | 23,550 |
| Markets 51-100 | 15,600 | 15,675 | 13,700 |
| Remaining Markets | 4,750 | 4,775 | 3,675 |
| Construction Permit | 4,750 | 4,775 | 3,675 |
| Satellite Television Station (all markets) | 1,550 | 1,550 | 1,525 |
| Satellite Television Station CP (all markets) | 1,300 | 1,325 | 960 |
| Low Power TV, TV/FM Translators and Boosters | 410 | 410 | 410 |
| Broadcast Auxiliary | 10 | 10 | 10 |
| Satellite Earth Station | 295 | 245 | 275 |
| AM Radio Construction Permit | 590 | 590 | 590 |
| FM Radio Construction Permit | 750 | 750 | 750 |

PROPOSED & ACTUAL FY 2014 FEES FOR RADIO

| Population Served | AM Class A | AM Class B | AM Class C | AM Class D | FM A, B1, C3 | FM B,C,C0,C1,C2 |
|---------------------|---------------|---------------|---------------|---------------|-----------------|--------------------|
| 0-25,000 | 775 | 645 | 590 | 670 | 750 | 925 |
| 25,001-75,000 | 1,550 | 1,300 | 900 | 1,000 | 1,500 | 1,625 |
| 75,001-150,000 | 2,325 | 1,625 | 1,200 | 1,675 | 2,050 | 3,000 |
| 150,001-500,000 | 3,475 | 2,750 | 1,800 | 2,025 | 3,175 | 3,925 |
| 500,001-1,200,000 | 5,025 | 4,225 | 3,000 | 3,375 | 5,050 | 5,775 |
| 1,200,001-3,000,000 | 7,750 | 6,500 | 4,500 | 5,400 | 8,250 | 9,250 |
| 3,000,001+ | 9,300 | 7,800 | 5,700 | 6,750 | 10,500 | 12,025 |

ACTUAL FY 2013 FEES FOR RADIO

| Population Served | AM Class A | AM Class B | AM Class C | AM Class D | FM A, B1, C3 | FM B,C,C0,C1,C2 |
|---------------------|---------------|---------------|---------------|---------------|-----------------|--------------------|
| 0-25,000 | 775 | 645 | 590 | 670 | 750 | 925 |
| 25,001-75,000 | 1,550 | 1,300 | 900 | 1,000 | 1,500 | 1,625 |
| 75,001-150,000 | 2,325 | 1,625 | 1,200 | 1,675 | 2,050 | 3,000 |
| 150,001-500,000 | 3,475 | 2,750 | 1,800 | 2,025 | 3,175 | 3,925 |
| 500,001-1,200,000 | 5,025 | 4,225 | 3,000 | 3,375 | 5,050 | 5,775 |
| 1,200,001-3,000,000 | 7,750 | 6,500 | 4,500 | 5,400 | 8,250 | 9,250 |
| 3,000,001+ | 9,300 | 7,800 | 5,700 | 6,750 | 10,500 | 12,025 |

Antenna Structure Rules Streamlined continued from page 6

does not relieve of them of the obligation to maintain the required lighting or to promptly notify the FAA of the need for a Notice to Airmen (“NOTAM”).

FAA Notices. Section 17.48(a) of the Commission’s rules requires the owner of a structure to promptly report outages of top steady burning or flashing lights to the FAA. The FAA will then issue a NOTAM to notify aircraft pilots of the outage. The FAA cancels a NOTAM after 15 days. The FCC’s rule does not currently require the structure owner to provide the FAA with any update on the status of repairs other than the initial outage report and the resumption of normal operation. If it takes longer than 15 days to repair the faulty light, the FAA may have no further record of the outage and the NOTAM will expire. To address this problem, the Commission amended its rule to require that structure owners notify the FAA periodically of the status of outage repairs so that any necessary NOTAM can be extended or reissued to cover the entire period of the outage.

Timeliness of Repairs. The Commission observed in the NPRM that Section 17.48(b) requires the repair of a dark or improperly functioning side intermediate light “as soon as possible.” On the other hand, the standard for repairing lights, automatic indicators and control or alarm systems in Section 17.56(a) is “as soon as practicable.” The agency expressed concern that these different standards could lead to confusion and invited comment about whether a specific time limit should be adopted for completing all such repairs. Upon consideration, the Commission decided against adopting a specific period of time for completing repairs because of the widely varied circumstances and complications that can make certain repairs too difficult or dangerous if a fixed schedule is required. To encourage prompt action, but also to allow for needed flexibility, the Commission amended Section 17.48(b) to say “as soon as practicable.” That standard will apply to determining timeliness for all lighting and alarm repairs.

Recordkeeping. Section 17.49 of the Commission’s rules requires structure owners to maintain records of observed or otherwise known outages or improper functioning of lighting on the structure. However, no instruction is given for how long that record must be maintained. The agency has now inserted a provision in this rule that these records are to be maintained for two years.

Standard for Repainting. Antenna structures required under Part 17 of the FCC’s rules to be painted must, according to Section 17.50, be “cleaned or repainted as often as necessary to maintain good visibility.” In the NPRM, the Commission asked for suggestions on clarifying this ambiguous provision. Most commenters responded in support of adopting the FAA’s “In-Service Aviation Orange Tolerance Chart” to use as a reference for determining when a tower needs to be cleaned or repainted. The Commission agreed to adopt this Tolerance Chart as the standard. The FAA recommends that the color should be sampled on the upper half of the structure because weathering is greater there. The Commission declined to prescribe a specific distance from which the chart should be compared with the top half of the structure. The agency admits that while placing the color chart directly over the surface of a portion of the top half of the tower would offer the best results, such a move may not be practical “due to weather or access limitations.” The agency also declined to compel repainting structures every ten years or on any specific schedule. Using the Tolerance Chart to determine when repainting is needed should be a practical and adequate guide for structure owners.

The Commission concluded with the reminder that for regulatory purposes a structure is an “antenna structure” during its entire lifetime. The Part 17 rules pertain to a structure from the time construction begins and continues through dismantlement regardless of when it begins or ceases to support an antenna or to transmit radio energy.

Media Bureau Defers Must-Carry Claim continued from page 3

The result would be substantial confusion for the displaced services and for the cable operators’ subscribers. To avoid unnecessary business disruption and customer confusion, the cable operators seek the deferment for KVVN carriage until 90 days after the issue is decided. KVVN says that it is sensitive to the cable operators’ problems, and it is willing to accommodate a brief deferral. However, KVVN states that it needs to settle these issues and obtain carriage throughout the DMA before the Fall ratings period.

The Media Bureau determined that the disruption to existing cable operations and the potential confusion for the viewing public outweigh KVVN’s need for a speedy resolution of its must-carry claims. It granted the cable operators’ requests. While the Bureau said that it anticipates it will be

able to decide the matter “without lengthy delay,” it acknowledged that KVVN might not enjoy cable carriage this Fall.

KVVN has filed an Application for Review to appeal the Media Bureau’s ruling to the full Commission. It complains that this decision may well deprive it of any cable carriage for years to come. It also warns that allowing this decision to stand would establish a precedent deleterious to the prospects for an orderly post-incentive auction repacking process. It suggests that upending the rules for virtual channel assignments will sew chaos in the environment where a substantial proportion of existing stations will be changing channels simultaneously.

Soon-to-be Former Station Owner Pegged for Alleged Indecency Violation

The Border Media Business Trust, parent of the former licensee of KBDR(FM), Mirando City, Texas, has entered into a Consent Decree with the FCC's Enforcement Bureau terminating an investigation about allegations that the station broadcast indecent programming. For the purposes of the settlement, Border Media admitted to violating the statute and the FCC regulations prohibiting indecent content on the air between 6:00 a.m. and 10:00 p.m., and agreed to pay a civil penalty to the U.S. Treasury in the amount of \$37,500. Border Media is in the process of selling its broadcast stations and soon neither it nor any of its related companies will be a broadcast station licensee.

This case arose from a complaint received by the Enforcement Bureau about the KBDR morning show on May 18, 2011. The complainant alleged that the station's disc jockey, known on the air as "Danny Boy," used "language talking about profane issues, with disregard to children." Specifically, the complainant averred that Danny Boy asked the rhetorical question as to what you have to do get a

woman give you oral sex, referring to it by way of a common slang term, and used other "sexual related vulgar language."

Responding to the Enforcement Bureau's inquiry in a January, 2014 letter, Border Media said that it could not admit or deny these specific allegations because Danny Boy's employment with the station had been terminated on June 7, 2011, and management was unable to locate any recordings of the broadcast described in the complaint. Further, Border Media explained that the current station personnel have no knowledge of the content of the programming that was the subject of the complaint.

Nevertheless, Border Media decided to obtain the benefits of terminating this proceeding without the burdens and risks of further litigation. In exchange for Border Media's admission of the violation and payment of the civil penalty, the Enforcement Bureau agreed to conclude the case and to refrain from using the record developed in this investigation in any subsequent proceeding against Border Media.

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