

## All TV Political Files To Go Online July 1

In 2012 the FCC adopted rules to require all full service and Class A television stations to maintain their public inspection files on a website provided by the Commission. All material required to be in the public file as of August 2, 2012 was to be uploaded to the Commission's website by that date. An exception to this mandate concerned the political files. Only stations located in the top 50 markets and affiliated with the top four commercial networks were required to place their political files online by that date. All other stations were excused from this task until July 1, 2014. Those other stations were nonetheless still required to maintain their political files at their main studios as in the past.

The FCC has released a Public Notice to remind television broadcasters of this imminent deadline. As of July 1, 2014, all stations that are required to maintain their public files on the Commission's website will also be required to upload their political files. The requirement is prospective from July 1 forward. For stations for which this is a new obligation, only documents newly required to be in the file after that date need to be uploaded. Current contents in the file prior to July 1 must continue to be maintained at the station's main studio for the retention period required in the rules.

## 2014 Quadrennial Ownership Review Launched

As reported in this newsletter last month, the FCC has initiated the 2014 Quadrennial Review of its media ownership rules. The Commission has now released the full text of its *Further Notice of Proposed Rulemaking and Report and Order* in Docket 14-50. Congress has mandated that the Commission review the ownership rules every four years.

In the *Report and Order*, the Commission made joint sales agreements ("JSAs") attributable for purposes of the multiple ownership rules. Stations presently operating with JSAs that would be pushed into noncompliance of the multiple ownership limits will have two years to unwind the agreement or resolve the conflict in a different way. The Commission said that it would carefully consider requests for waivers. JSAs must be filed with the FCC within 30 days after the parties enter into them.

In the *Further Notice of Proposed Rulemaking* part of the document, the Commission continues to evaluate and to seek addi-

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## Copyright Office Studies Music Licensing

The United States Copyright Office has issued a *Notice of Inquiry* to gather information for a comprehensive review of the methods for licensing copyrighted music. This study is preparatory to the drafting of a report to Congress on this topic. The report will assist the legislature in its review of the Copyright Act. The current version of the Copyright Act was enacted in 1976, and amended by the Digital Millennium Copyright Act in 1998. Congress is evaluating potential revisions of the law in light of recent technological developments that affect the creation, dissemination and use of copyrighted works.

Members of the public are invited to give their input on a wide range of topics concerning music licensing. Highlights include the following:

- Assess the effectiveness of the current process for licensing the public performance of musical works through performing rights organizations (such as ASCAP and BMI).
- Setting rates for ASCAP and BMI is governed by decades-old consent decrees in antitrust proceedings

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# 2014 Quadrennial Ownership Review Launched continued from page 1

tional public comment on issues raised in the 2010 Quadrennial Review, and issues that had been remanded back to the agency from the courts. The Commission reviews its ownership rules through the prism of fostering diversity, localism and competition. In almost every element of this *Further Notice*, the Commission requests input about the impact the proposal might have on the entry barriers for new minority and female broadcast owners.

## Local Television Ownership Rule

Under the present local television ownership rule, an entity may own up to two full service television stations in the same designated market area (“DMA”) if (1) the Grade B contours do not overlap, or (2) at least one of the stations is not ranked in the top four stations in the market and at least eight independently owned television voices would remain in the DMA. The Commission has tentatively concluded that this rule should continue on the books with one technical modification. It proposes to replace the Grade B contour with the digital noise limited service contour. An existing combination that finds itself in violation of the rule because of this change will be grandfathered. However any future transfer of those stations will have to comply with the rule in effect at that time.

Television industry commenters had proposed to raise the in-market ownership cap, and to include other video media in the voice count. They argued that the Commission should acknowledge the presence of non-broadcast television voices such as those provided by cable, satellite and Internet services. However, the FCC tentatively concluded that regulations should continue to focus on fostering competition among broadcast television stations without considering other video programming in the market.

A proposed refinement of this rule concerns the sales and swaps of network affiliations that can affect the rankings of the top four stations in the market. The Commission noted that in at least one specific case, a swap of network affiliations between two stations resulted in a duopoly of two of the top four ranked stations because acquisition of a major network affiliation by one of the stations caused it to climb in the ratings. While technically, this transaction was not prohibited by the rule because it is triggered by a transaction involving licenses, not network affiliations, the FCC viewed this transaction as an evasion of the rule. The Commission now proposes to enlarge the rule to prohibit any kind of sale or swap transaction involving network affiliations that results in a one owner accumulating multiple top-four stations.

The question arose in the earlier proceeding about the

effect of digital multicasting on these rules. In particular, what if one licensee obtained two major network affiliations, running one of them on a multicast subchannel? The Commission tentatively declined to adopt a rule to address this situation, noting that it almost never happens outside of very small markets where there are fewer stations than networks to be carried.

## Local Radio Ownership Rule

The Commission proposes to retain the existing local radio multiple ownership rule. The number of stations that one entity can own varies with the size of the market up to a maximum of eight stations in the largest markets. Within the caps in each size market there are subcaps for AM and FM.

Industry commenters asserted that satellite radio and Internet audio have become substantial competitors to terrestrial broadcast radio and that their presence justifies relaxing the restrictions in the rule. The Commission tentatively disagrees and solicits more public comment on this issue.

The Commission did propose a clarification to an application of the rule. To safeguard against manipulation of the formula, the agency prohibits a party from receiving the benefit of a change in Arbitron Metro boundaries or “home” market designation unless that change has been in place for at least two years. (The FCC did not acknowledge that Nielsen has acquired Arbitron.) The FCC now proposes to limit this exception to the waiting period to the scenario where a change in the community of license also involves the physical relocation of the station’s transmitter to a site outside of the relevant Arbitron Metro boundary.

## Newspaper/Broadcast Cross-Ownership

The newspaper/broadcast cross-ownership rule prohibits the common ownership a daily newspaper and full power radio or television station if the station’s service contour encompasses the newspaper’s city of publication.

The Commission says that it has believed for some time that the newspaper/radio cross-ownership restriction no longer serves a useful. Attempts to modify or eliminate it have been stymied with procedural problems and litigation. Once again now, the Commission proposes to eliminate the restriction on common ownership of a newspaper and a radio station in the same service area. This proposal is premised on the perception that radio is not a principal source of news for most Americans and that it does not therefore contribute significantly to viewpoint diversity. The Commission suggests that if newspapers and radio stations could be co-owned in the same market, they might produce synergies

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# Settlement Window Open for FM Translator Applicants

The FCC’s Media Bureau has announced a settlement period for mutually exclusive applicants for new FM translator stations in Auction 83. These applications were originally submitted to the FCC during a filing window in 2003. Only a few applications remain pending. Most have been granted or dismissed. Ordinarily, the Commission’s anti-collusion rules prohibit mutually exclusive applicants in an auction proceeding from communicating with each other. That

prohibition is temporarily lifted during this settlement period so that applicants can negotiate agreements to resolve their conflicts with buy-outs or technical amendments. Such settlement agreements must be submitted to the FCC for approval. Settlement agreements and amendments intended to implement the agreements and/or resolve conflicts must be filed with the FCC by June 30.

# 2014 Quadrennial Ownership Review Launched continued from page 2

that could improve the bottom line for both, and allow both to become more viable producers of local news content.

The FCC proposes to fine-tune the rule as it pertains to television, and then to establish criteria for presumptions in favor of waivers of the rule. The updated rule would prohibit the common ownership of a newspaper and a full service television station when (1) the community of license of the station and the community of publication of the newspaper are in the same Nielsen DMA, and (2) the principal community contour of the television station (as defined in Section 73.625 of the rules) encompasses the entire community of publication of the newspaper.

With the understanding that both favorable and negative presumptions can be rebutted, the Commission says that it is inclined to adopt guidelines for presumptions for waivers of the newspaper/television cross-ownership rule. One such criterion might be the size of the market. The agency asks whether there should be a favorable presumption for waivers in the top 20 markets. Further, in those top 20 markets, should the favorable presumption only pertain to TV stations ranked below the top four in the markets, and/or only if eight independent television and daily newspaper voices would remain after the merger?

The Commission also asks for comment on whether it should treat a presumption either in favor of or against a waiver request as establishing a prima facie case. The party seeking to overcome the presumption would have the burden of showing that the proposed newspaper/television combination would or would not unduly harm viewpoint diversity in the market.

The FCC proposes to continue its policy of favorable treatment for a proposal that would otherwise incur a negative presumption if a failing/failed station or newspaper is involved in the merger.

## Radio/Television Cross-Ownership Rule

Presently, the rules permit the common ownership or control of up to two television stations and four radio stations in a market where at least ten independent media voices would remain post-merger. Where 20 post-merger voices would exist, an entity can own two television stations and six radio stations, or one television station and seven radio stations. A combination of one radio and up to two television stations is permitted regardless of the number of post-merger voices. The rule is triggered when a station's community of license is encompassed by the service contour of one of the other stations. The Commission says that evidence from the 2010 proceeding indicates that this restriction may no longer be useful or in the public interest. It solicits comment in support of or opposed to that tentative finding.

## Dual Network Rule

The dual network rule permits common ownership of multiple broadcast networks, except that no combination may include more than one of the top four networks – ABC, CBS, Fox and NBC. The Commission has tentatively concluded that this rule should remain in place and invites public comment about that conclusion.

## Diversity and “Eligible Entities”

The Commission previously employed a mechanism for

encouraging diversity of ownership identified as the “Eligible Entity.” Eligible entities were given enhanced opportunities to acquire broadcast stations. Although the eligible entities were revenue-based, the stated goal of the policy was to facilitate minority and female broadcast ownership. The Third Circuit Court of Appeals rejected this regimen as arbitrary and capricious because the FCC had failed to show how it would specifically benefit those groups. The Court suggested that the Commission consider again the entity definitions proposed earlier in the rulemaking proceeding, including a definition based on the socially disadvantaged business definition used by the Small Business Administration (“SBA”). However, now the Commission says that it does not have sufficient empirical evidence available to it to adopt a standard for socially disadvantaged entities that would survive the heightened judicial scrutiny that a race- or gender-based definition would trigger.

Nonetheless, the Commission proposes to reestablish the eligible entity concept on the basis of revenue using SBA standards for the small business. Under that standard, an entity with annual revenue of no more than \$35.5 million would be considered “eligible.” The Commission asks for comment on this proposal, especially concerning what impact it could have on the prospects for increased minority and female broadcast ownership.

## Shared Services Agreements

The Commission has received comments and observations in other proceedings to the effect that cooperative arrangements between separately owned television stations may have a negative effect on competition, diversity and localism. Such arrangements often involve sharing studio space, operational support, staff, programming and/or other services. Such agreements are often executed in conjunction with an option to purchase, right of first refusal, put/call arrangement or other contingent interest or loan guarantee. The Commission says it is unable to assess the impact of these agreements now because most of them fall outside of the scope of documents that must be made public, such as joint sales agreements, local marketing agreements and time brokerage agreements. Consequently, the agency now proposes to require that other kinds of shared services agreements (“SSAs”) between commercial television stations be disclosed.

The Commission tentatively defines an SSA as an agreement or series of agreements, written or oral, in which (1) a station or any entity with an attributable interest in the station, provides any station-related services, including but not limited to, administrative, technical, sales, and/or programming to a station not under common ownership; or (2) two or more stations (or entities with attributable interests in such stations) not under common ownership collaborate to provide and enable the provision of station-related services to one or more of the collaborating stations.

The Commission requests public input on how these SSAs should be disclosed. Should they be placed in the station's public inspection file? Online or merely in the paper file at the main studio?

These are the highlights of the FCC's proposals. Comments on these and other points raised in the *Further Notice* must be filed 45 days after notice is published in the Federal Register. Reply comments will be due 75 days after that public notice.



# DEADLINES TO WATCH



## License Renewal, FCC Reports & Public Inspection Files

- May 1 & 16, 2014 Radio stations in **Delaware** and **Pennsylvania**, and television stations in **Texas** broadcast post-filing announcements regarding license renewal applications.
- May 1 & 16, 2014 Television stations in **Arizona, Idaho, Nevada, New Mexico, Utah** and **Wyoming** broadcast pre-filing announcements regarding license renewal applications.
- June 1 & 16, 2014 Radio stations in **Delaware** and **Pennsylvania**, and television stations in **Arizona, Idaho, Nevada, New Mexico, Texas, Utah** and **Wyoming** broadcast post-filing announcements regarding license renewal applications.
- June 1 & 16, 2014 Television stations in **California** broadcast pre-filing announcements regarding license renewal applications.
- June 2, 2014 Deadline to file license renewal applications for televisions in **Arizona, Idaho, Nevada, New Mexico, Utah** and **Wyoming**.
- June 2, 2014 Deadline to file Biennial Ownership Report for all noncommercial radio stations in **Michigan** and **Ohio** and television stations in **Arizona, Idaho, Nevada, New Mexico, Utah** and **Wyoming**.
- June 2, 2014 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 **Arizona, District of Columbia, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, West Virginia** and **Wyoming**.
- June 2, 2014 Deadline for all broadcast licensees and permittees of stations in **Arizona, District of Columbia, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, West Virginia** and **Wyoming** 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.

## Deadlines for Comments In FCC and Other Proceedings

| Docket | Comments | Reply Comments |
|--------|----------|----------------|
|--------|----------|----------------|

(All proceedings are before the FCC unless otherwise noted.)

|   |  |       |
|---|--|-------|
| Docket 12-268; Public Notice Catalog of potential expenses and estimated costs re repacking television spectrum |  | May 6 |
|---|--|-------|

|  |        |     |
|--|--------|-----|
| Copyright Office Docket 2014-03; NOI Licensing of Music Copyrights | May 16 | N/A |
|--|--------|-----|

|  |        |         |
|--|--------|---------|
| Docket 04-296; Public Notice Request for comments to refresh record re proposal to require multilingual EAS facilities | May 28 | June 12 |
|--|--------|---------|

|  |         |         |
|--|---------|---------|
| Docket 05-231; FNPRM Closed captioning | June 25 | July 25 |
|--|---------|---------|

|  |         |         |
|--|---------|---------|
| Docket 10-71; FNPRM Network non-duplication and syndicated exclusivity rules | June 26 | July 24 |
|--|---------|---------|

|  |       |       |
|--|-------|-------|
| Docket 14-50; FNPRM 2014 Quadrennial Regulatory Review | FR+45 | FR+75 |
|--|-------|-------|

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

## Cut-Off Dates for Noncommercial FM Applications

The FCC has accepted for filing the application for a new non-commercial FM station as identified below. Petitions to deny must be filed by the deadline shown. Informal objections may be filed anytime prior to grant of the application.

| Community   | Channel | MHz  | Applicant                            | Deadline |
|-------------|---------|------|--------------------------------------|----------|
| Bozeman, MT | 204     | 88.7 | Guild of St. Peter Educational Assn. | May 15   |

## 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 |
|-------------------|----------------|---------|-------|-----------------|
| Santa Clarita, CA | KSWD           | 262     | 100.3 | May 15          |
| Pueblo, CO        | KPCR           | 257     | 99.3  | May 15          |
| Holden, ME        | WNSX           | 249     | 97.7  | May 15          |
| Colville, WA      | KZGZ           | 283     | 104.5 | May 27          |



# DEADLINES TO WATCH



## 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        |
|----------------|--|---------|-------------------|
| Alabama        | State Primary                              | June 3  | Apr. 19 - June 3  |
| Arkansas       | State Primary                              | May 20  | Apr. 5 - May 20   |
| California     | State Primary                              | June 3  | Apr. 19 - June 3  |
| Colorado       | State Primary                              | June 24 | May 10 - June 24  |
| Georgia        | State Primary                              | May 20  | Apr. 5 - May 20   |
| Idaho          | State Primary                              | May 20  | Apr. 5 - May 20   |
| Indiana        | State Primary                              | May 6   | Mar. 22 - May 6   |
| Iowa           | State Primary                              | June 3  | Apr. 19 - June 3  |
| Kentucky       | State Primary                              | May 20  | Apr. 5 - May 20   |
| Maine          | State Primary                              | June 10 | Apr. 26 - June 10 |
| Maryland       | State Primary                              | June 24 | May 10 - June 24  |
| Mississippi    | State Primary                              | June 3  | Apr. 19 - June 3  |
| Montana        | State Primary                              | June 3  | Apr. 19 - June 3  |
| Nebraska       | State Primary                              | May 13  | Mar. 29 - May 13  |
| New Jersey     | State Primary                              | June 3  | Apr. 19 - June 3  |
| New Mexico     | State Primary                              | June 3  | Apr. 19 - June 3  |
| New York       | State Primary<br>(Federal candidates only) | June 24 | May 10 - June 24  |
| North Carolina | State Primary                              | May 6   | Mar. 22 - May 6   |
| Ohio           | State Primary                              | May 6   | Mar. 22 - May 6   |
| Oklahoma       | State Primary                              | June 24 | May 10 - June 24  |
| Oregon         | State Primary                              | May 20  | Apr. 5 - May 20   |
| Pennsylvania   | State Primary                              | May 20  | Apr. 5 - May 20   |
| South Carolina | State Primary                              | June 10 | Apr. 26 - June 10 |
| South Dakota   | State Primary                              | June 3  | Apr. 19 - June 3  |
| Utah           | State Primary                              | June 24 | May 10 - June 24  |
| Virginia       | State Primary                              | June 10 | Apr. 26 - June 10 |
| West Virginia  | State Primary                              | May 13  | Mar. 29 - May 13  |

## Rulemakings to Amend FM Table of Allotments

The FCC is considering the following additions and deletions (indicated with a "D") to the FM Table of Allotments. The deadlines for filing comments and reply comments are shown.

| Community        | Channel | MHz   | Comments | Reply Comments |
|------------------|---------|-------|----------|----------------|
| Haynesville, LA  | 286A    | 105.1 |          | May 6          |
| Haynesville, LA  | 288A(D) | 105.5 |          | May 6          |
| Tocquerville, UT | 246C    | 97.1  | May 26   | June 10        |
| Tocquerville, UT | 280C(D) | 103.9 | May 26   | June 10        |
| Dayton, WA       | 272A    | 102.3 | May 26   | June 10        |
| Custer, MI       | 260A    | 99.9  | June 16  | July 1         |
| Custer, MI       | 263A(D) | 100.5 | June 16  | July 1         |

## 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 |
|---|------------------|
| Satellite delivery of network signals to unserved households  | May 7            |
| Satellite Home Viewer Improvement Act: local broadcast signal carriage and retransmission consent issues, | May 13           |
| Educational and informational TV programming for children, Sections 73.671, 73.673                        | May 13           |
| Applications to assign or transfer control of experimental authorizations, Forms 702 and 703              | May 13           |
| AM auction Section 307(b) submissions   | May 16           |
| Remittance Advice Form, Form 159  | May 16           |
| Pre-sunrise and post-sunset service AM authorization, Section 73.99                                       | May 19           |
| Identification of Must Carry TV signals, Sections 76.56, 76.1614, 76.1620, 76.1708, 76.1709               | May 28           |
| Satellite earth stations and space stations, Part 25, Form 312  | June 2           |
| Exposure to radiofrequency radiation, Sections 1.1307 and 1.1311  | June 9           |
| Noncommercial broadcast construction permit application, Form 340   | June 9           |
| FM translator time of operation, Section 74.1263  | June 9           |
| Broadcast Station Annual Employment Report, Form 395-B  | June 16          |
| Market definitions for purposes of must carry, Section 76.59  | June 16          |
| Regulatory fee "True-ups"   | June 30          |

## Cut-Off Dates 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 **May 27, 2014**. Informal objections may be filed anytime prior to grant of the application.

| Present Community | Proposed Community | Station | Channel | Frequency |
|-------------------|--------------------|---------|---------|-----------|
| Cambria, CA       | San Miquel, CA     | New     | 293     | 106.5     |
| Coral Springs, FL | Delray Beach, FL   | WBUR    | n/a     | 1120      |
| Milledgeville, GA | Buckhead, GA       | WLRR    | 264     | 100.7     |
| Sidney, IA        | Malvern, IA        | KIMI    | 299     | 107.7     |
| Reno, NV          | Sparks, NV         | KCKQ    | n/a     | 1180      |
| Healdton, OK      | Dickson, OK        | KAZC    | 207     | 89.3      |
| Sister Bay, WI    | Ephraim, WI        | WSBW    | 286     | 105.1     |
| Canaan, VT        | Milan, NH          | New     | 231     | 94.1      |

# Closed Captioning Exemption Petitions Must be Filed Electronically

Under new procedures recently adopted in the FCC's rulemaking about closed captioning, electronic filing procedures are now required for all requests for exemption from the Commission's closed captioning rules. Those rules generally require that video programming exhibited on broadcast television include closed captioning. Video programming providers, producers and owners can petition the Commission to be exempt if they can show that compliance with the rule would be economically burdensome as that term is defined by the Commission. All such petitions must be submitted to the FCC via email to this address: [captioningexemption@fcc.gov](mailto:captioningexemption@fcc.gov). The Commission's email system does not accept .ZIP files or file sizes larger than 13.3 megabytes.

The facts and information included in a petition for exemption must be supported by an affidavit from an individual or individuals with personal knowledge of those facts. The petition must address the following four factors: (1) the nature and cost of the closed captioning for the programming in question; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner. The petitioner may also dis-

cuss any other factors that it believes would be useful for the Commission to consider, including alternatives that might constitute a reasonable substitute for closed captioning.

The Commission will place petitions on public notice. Comments about and oppositions to petitions must be filed within 30 days of the public notice, submitted to the same email address. The petitioner can file a reply within 20 days of the comment deadline.

The FCC advises petitioners to redact sensitive information such as social security numbers, employer ID numbers and bank account numbers that the petitioner does not wish to be viewed by the public. The Commission says that it will not redact information, and may reject petitions that contain unredacted sensitive information. Petitioners may request confidential treatment of any information contained in the petition. In that case, the petitioner must submit a written request for confidential treatment and two versions of the petition – a confidential version with all information intact, and a public version with confidential information redacted. However, the public version must contain sufficient information to support the assertion that captioning would be burdensome.

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## Copyright Office Studies Music Licensing continued from page 1

in U.S. District Court in New York. Are these consent decrees serving their intended purpose? Are these procedures relevant in today's marketplace? Are there better alternatives?

- Assess the need for and effectiveness of the Section 115 statutory license for reproduction and distribution rights (the so-called "mechanical" rights).

- Assess the need for and effectiveness of the statutory licenses for making ephemeral copies and publicly performing sound recordings under Section 112 and 114 of the Copyright Act (as used in connection with noninteractive digital audio services).

- Assess the effectiveness of the royalty ratesetting process and standards applicable to statutory licensing under Section 114 – i.e., the process before the Copyright Royalty Board.

- How do differences in the applicability of the sound recording public performance right impact music licensing? These rights pertain to digital performances, such as on

Internet audio services, but not to over-the-air analog broadcasting.

- How prevalent is direct licensing by musical work owners in lieu of licensing through a common agent or performing rights organization? What impact does such licensing have on the music marketplace?

- Would the music marketplace benefit from modifying the scope of the existing statutory licenses?

- What innovations have been or are being developed by copyright owners and users to make the process of music licensing more effective?

- How have developments in the music marketplace affected the income of songwriters, composers and recording artists?

- Are revenues attributable to the performance and sale of music fairly divided between creators and distributors?

- How does the music licensing process affect investment in the music industry?

- Could the federal government encourage the adoption of universal standards for the identification of musical works and sound recordings to facilitate the music licensing process?

The deadline for filing comments is May 16. All comments must be submitted electronically on the Copyright Office's website at:

[www.copyright.gov/docs/musiclicensingstudy](http://www.copyright.gov/docs/musiclicensingstudy).

**FM TRANSLATOR AUCTION 83  
PRE-AUCTION FILING WINDOW  
FOR SETTLEMENTS  
APRIL 30 – JUNE 30, 2014**

# Don't Lock out the Inspector

The FCC has issued a *Notice of Apparently Liability for Forfeiture* against Class A television station WPHA-CD, Philadelphia, for the sum of \$89,200 – primarily for twice refusing to allow Enforcement Bureau field staff on to the premises at the main studio to conduct an inspection.

During business hours on August 17, 2011, agents from the Enforcement Bureau's Philadelphia Office attempted to inspect the station's main studio. Upon arriving at the station, they found that access to the building was blocked by a locked gate across the driveway. They contacted the station manager by phone and requested access. The manager told them to wait by the gate and he met them there several minutes later. However, instead of inviting the agents into the main studio facility, he told them that he was leaving for a medical appointment and asked whether they could return the next day. When asked by the agents if there was anyone else who could let them into the main studio, the manager replied that there was no one else available at the main studio.

After leaving the main studio location, one of the agents attempted to contact the sole principal of the licensee of the station. The agent left him a voicemail message and requested a return phone call. In that message, the agent indicated that the main studio was inaccessible to the public and that the station manager had failed to make it available for inspection. No response was received.

On September 30, 2011, the agents returned to the station's main studio during business hours and again found themselves blocked by the locked gate. One of them contacted the station manager by phone and advised him that the main studio must be made available to the public. The locked gate prevented that access. The manager responded that the gate needed to be locked for security reasons and that the public should contact the station to obtain access. The agents noted that no information was posted on or at the gate to inform the public about how to make that contact. The manager did not appear at the gate to greet the agents and after waiting several minutes, they left. They returned again later the same day and again found the gate locked.

One of the agents again telephoned the licensee's principal and left a message about the main studio being improperly inaccessible. The principal never returned the call.

On March 6, 2012, an Enforcement Bureau agent monitored the WPHA-CD signal and used direction-finding equipment to locate the source of the transmission at an antenna tower owned by American Tower. An employee of the tower company confirmed that the station had been broadcasting from that tower since 2004. However, according to the station's license, it was actually authorized to broadcast from another tower about 0.2 mile away, also owned by American Tower. Upon inspecting the authorized tower and consulting with the American Tower

employee, the agent concluded that WPHA-CD had no equipment on its authorized tower.

On the basis of the findings of Enforcement Bureau field staff in Philadelphia, the Commission alleges that WPHA-CD was violating three important rules: Section 73.1225(a) in refusing to make the station available for inspection by FCC personnel; Section 73.1125(a) in failing to properly staff the main studio with at least two full time staff members; and Section 73.1350(a) in operating from an unauthorized site. Rather than issuing the *Notice of Apparent Liability* from the Enforcement Bureau, as would ordinarily be the procedure for violations detected and reported by field agents, the agency issued this release in the name of the full Commission to underscore its view of the gravity of the violations.

The Commission's *Forfeiture Policy Statement* lists the base amount of the fines for these violations as \$7,000 for failure to allow inspection, \$7,000 for main studio rule violations, and \$4,000 for operating from an unauthorized location. The agency retains the discretion to adjust these figures as circumstances may warrant. The Commission proposed to impose the base amount of the fine for the main studio rule violation – \$7,000. For the unauthorized operation, it proposed to adjust the fine upward to \$7,200. The FCC found the most egregious offense in the failure to allow inspections. It adjusted the amount of the fine for that violation upward to the statutorily allowed maximum of \$37,500 for each of two separate violations – one on each day that the agents attempted to visit the main studio – totaling \$75,000. Thus the combined forfeiture proposed for all of these violations comes to \$89,200.

The Commission concluded that "This is simply unacceptable." The agency observed that the licensee and its sole principal are experienced broadcasters with numerous stations across the country. Therefore, they should be aware of their obligation to allow on-the-spot inspections by FCC agents. The Commission said that its agents do not need to make appointments for inspections, and that such visits are not subject to the licensee's convenience. Noting that its fines for previous cases where inspectors were unable obtain access to station facilities were not so high, the Commission drew the distinction that this case "involved repeated, direct, in-person refusals of access by the highest level of a broadcast station's management, as well as multiple failures by the licensee's sole principal to return FCC agent calls concerning the refusals." It determined that this licensee's "actions exhibited a blatant disregard of and contempt for the Commission's authority. . . . [They constituted] an egregious violation of the Commission's rules warranting stringent enforcement action."

WPHA-CD has 30 days to respond to the *Notice*.

# Copyright Royalty Board Reissues Music Streaming Rates

The Copyright Royalty Board (“CRB”) is an agency within the Library of Congress whose function is to set copyright royalty rates for the public digital performance and ephemeral copying of sound recordings. This includes the royalties paid by broadcasters to the SoundExchange in connection with streaming their over-the-air broadcast programming on the Internet. The Copyright Act requires the Board to review and adjust, if necessary, the rates every five years. As reported here in January, the CRB has initiated a proceeding for setting the rates for the five-year period beginning January 1, 2016.

More recently, the CRB also reestablished the rates for the period from January 1, 2011 through December 31, 2015. Those rates had originally been set in December, 2010. However, on appeal, the legitimacy of that decision was undermined when the U.S. Court of Appeals ruled that the CRB was structurally unconstitutional. The court cured this problem by changing the provisions in the law concerning

the powers held by the Librarian of Congress over CRB members. It then remanded the matter back to the CRB for further proceedings.

In this second version of the rate table, all of the royalties, based on rates per performance, remain the same as they had been set in the original 2010 decision for 2011-2015. Therefore there is no immediate change in the fees to be paid to SoundExchange. However, a CRB now populated with a roster of new members offered a decision laced with hints that it would be open to considering other rate structures in the future, including those based upon a percentage of the user’s revenue in lieu of a fixed amount per performance. This echoes sentiments expressed by the CRB in its invitation for parties to register to participate in the 2016–2020 proceeding. The harbingers are increasing that point to the possibility for change in a major cost factor – copyright royalties – for the business of Internet streaming.

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## Massachusetts Governor Decries Pirate Shutdown

On April 17, the FCC moved against an unlicensed FM station in the Boston area that identified itself as “Touch 106.1 FM.” Operating in conjunction with the U.S. Attorney in Boston and federal marshals, the Commission took the station off the air and seized its equipment. Touch had been broadcasting for eight years, airing what was described as family-friendly, profanity free, public service programming of particular interest especially to the African American community. Touch has been the subject of FCC enforcement actions since at least 2008, when the Commission fined it \$17,000 for operating illegally. As government agents moved in behind him to secure the station, Touch co-founder Charles Clemons spoke to reporters outside of the studio and vowed to take legal action to return the station to the air. Clemons said that everyone who worked at the station was a volunteer.

The closure of an unlicensed, or so-called “pirate,” radio station by the FCC is not an extraordinary event in and of itself. The Commission adopts and releases a num-

ber of actions every month ordering the operators of unlicensed stations off the air and imposing fines on them. In fact, the U.S. Attorney’s office stated that it also seized equipment from two other Boston area unlicensed stations on the same day. The case of Touch 106.1 FM was unusual in that a number of state and local politicians immediately criticized the FCC’s action and urged the prompt restoration of the station’s service.

The Boston Globe quoted Massachusetts Governor Deval Patrick as saying that he had received advance warning about the federal raid from the U.S. Attorney’s office and that he had urged the office not to proceed. “I am incredibly disappointed,” Patrick stated. “I understand what the legal basis is, but you’d like to think of their bringing more of a problem-solving approach. Touch is a pretty important voice in the community. I’ve been on it many times and have tremendous respect for the team over there.” Patrick said that his office has been in contact the station’s attorney and the FCC to attempt to resolve the matter.

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