

DOJ to Review ASCAP, BMI Consent Decrees

The Antitrust Division of the U.S. Department of Justice has launched an examination of the operation and effectiveness of the Consent Decrees under which ASCAP and BMI collect copyright royalties for their members. The DOJ understands that ASCAP, BMI and others believe that the Consent Decrees need to be modified in view of the many recent changes in how music is delivered and experienced. The DOJ's review will explore whether the Consent Decrees should be modified, and if so, how.

These Consent Decrees, originally entered in 1941, resulted from litigation initiated by the DOJ to address competitive concerns about the market power each organization had acquired by the aggregation of public performance rights held by its members. The DOJ periodically reviews the Consent Decrees to ensure that they remain effective, sometimes leading to amendments. The ASCAP Decree was last amended in 2001, and the BMI Decree, in 1994.

As a part of its review, the DOJ seeks public comment from interested parties, especially concerning competition

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Proposal Would Create FM Class C4

The FCC has issued a Public Notice to invite comment about a Petition for Rulemaking filed by SSR Communications, Inc. in January, 2013, proposing the creation of a new class of FM station – Class C4. SSR is the licensee or permittee of FM stations in Mississippi and Louisiana.

SSR proposes changes to the FCC's rules that would allow many stations to increase their facilities and service areas through the more efficient use of spectrum. SSR offers two proposals in this vein: (1) create a new Class C4 FM station that could fill the gap between Class A and Class C3 facilities; and (2) adopt show-cause procedures to allow short-spacing to stations with less than full facilities under Section 73.215 of the Commission's rules.

The proposed Class C4 FM station would essentially be the outgrowth of a Class A facility in a geographic pocket where it had room to grow without causing interference to other stations. Maximum facilities would be 12,000 watts ERP at 100 meters HAAT.

SSR asserts that the establishment of Class C4 would present

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Internet Video Clips To be Captioned

The FCC has expanded its rules requiring the closed captioning of video programming distributed via Internet Protocol to bring video clips under the regulation. This action in the *Second Order on Reconsideration* in Docket 11-154 continues the Commission's efforts to implement the Twenty-First Century Communications and Video Accessibility Act of 2010.

When the Commission first adopted a captioning requirement for IP video in 2012, the rule was applied only to full-length video programming, and not to clips. In response to a Petition for Reconsideration filed by consumer groups, the Media Bureau solicited updated information on the closed-captioning of IP-delivered clips, including the degree to which clips were being captioned voluntarily. This additional record gathering showed that a significant percentage of video clips remain uncaptioned.

Further, upon reconsideration of its earlier interpretation of the statute, the Commission determined that Congress intended the IP closed captioning mandate to

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immediate upgrade opportunities for hundreds of stations. SSR examined 1,236 licensed Class A stations on the commercial band in Zone II. Zone II encompasses most of the continental United States except for congested areas in the Northeast and California. Stations located in the Canadian or Mexican border zones were excluded from the study. Existing Class A stations whose current community of license could not be served by a fully-spaced Class C4 allocation were also excluded. After these exclusions, 376 Class A stations were identified that could immediately upgrade to the proposed Class C4.

SSR also proposed to create a show-cause process for encouraging the use of fallow spectrum in commercial band allocations where the incumbent station is at less than full facilities. Licensees or permittees planning a minor modification to increase their facilities could file a “triggering” application directed at a co-channel or adjacent channel sta-

tion that had been operating with reduced facilities for at least ten years. The triggering applicant would ask the FCC to issue an order directing the targeted station to indicate within 30 days its intention to file an upgrade application to maximize its facilities or to accept short-spacing from the triggering applicant under Section 73.215 of the rules. The affected station would then have an additional 180 days in which to file its application if it indicated an interest in doing so. Failure to file such an application within that time would result in the Commission moving forward to process the triggering short-spaced application under Section 73.215.

SSR argues that the public interest value in these proposals lies not only enhanced exploitation of the spectrum, but also in providing opportunities for minority broadcasters and recent entrants to enhance their services. Comments can be submitted in RM-11727 until August 18. Reply comments are due September 2.

Internet Video Clips to be Captioned continued from page 1

extend to all covered video programming, including clips. The captioning requirement for IP video will now pertain to all programming of whatever length when the video programming distributor or provider (including television stations) posts on its website or application a clip that it published or exhibited on television with captions in the United States.

This new requirement will become effective on January 1, 2016 for “straight lift” clips – i.e., clips that contain a single excerpt of a captioned television program with the same video and audio that was presented on television. Captioning for “montages,” clips containing multiple straight lift clips, will be mandated as of January 1, 2017. Clips in these categories that are in the programmer’s online library before the respective deadlines are exempt.

July 1, 2017 will also be the effective date for the requirement as applied to clips of programming previously shown live and near-live with captions. Clips of live programming must be captioned online within 12 hours of the original broadcast or distribution. The grace period for clips of near-live programming is eight hours.

The quality of the captioning in the clip must be at least as good as that of the captioning in the full-length program from which the clip was lifted. Further, the requirement to pass through captioning that was included in programming from an outside source will be applied to clips as well. As with full length programming, the evaluation of captioning quality will include such features as completeness, place-

ment, accuracy and timing.

The Commission’s action also included a *Second Further Notice of Proposed Rulemaking*. The agency invites public comment on a number of fine points:

- Should the captioning rules for clips apply to online clips provided by third party distributors (such as Hulu) when the associated programming was shown on television with captions?
- In the future, should the 12-hour grace period for captioning IP-delivered clips of live programming and the 8-hour grace period for near-live programming be shortened or eliminated?
- Should the captioning mandate include online “mash-ups” – files that contain a combination of video clips that have been shown on television with captions and online-only content?
- Should the captioning requirement eventually be applied to video clips that are first added to the distributor’s library on or after January 1, 2016 for straight lift clips, or January 1, 2017 for montages, but before the associated video programming is shown on television with captions and which then remain online in the distributor’s library after they have been shown on television?

Comments in Docket 11-154 will be due 60 days after notice of this proceeding is published in the Federal Register. The deadline for reply comments will be 30 days later.

FCC Invites Comment on Pandora's Foreign Ownership Query

The FCC has issued a Public Notice soliciting comment about a petition submitted by Pandora Radio, LLC for a declaratory ruling under Section 310(b)(4) of the Communications Act that it would not serve the public interest to prohibit foreign shareholders in its parent company, Pandora Media, Inc., from holding more than a 25% controlling interest – the statutory benchmark – of the parent company. Pandora Media, Inc. is the well-known Internet music streamer. The subsidiary, Pandora Radio, has filed an application to acquire FM radio station KXMZ, Box Elder, South Dakota. ASCAP has opposed that acquisition, arguing, among other things, that Pandora Radio has failed to disclose the level of alien ownership in its publicly-traded parent, Pandora Media.

Section 310 of the Act explicitly limits foreign ownership in a licensee corporation to 20%. Foreign ownership in a company that is the parent of a licensee company is limited to 25%, unless the FCC finds that a larger share would not be inconsistent with the public interest.

Pandora Radio states that although it has reasonable grounds to believe that it complies with the 25% statutory benchmark, it is unable to reliably demonstrate that compliance with procedures previously employed in such cases involving publicly traded companies. Pandora explains that this is because the identity, and therefore the citizenship, of more than half of the beneficial owners of Pandora shares cannot be ascertained due to shareholder privacy regulations of the Securities and Exchange Commission.

Although it believes that at least 80% of the parent com-

pany's shares are held by U.S. citizens now, Pandora requested a prospective declaratory ruling that would allow in the future for up to 100% of the parent's equity to be beneficially owned by foreign investors without additional Commission approval. However, Pandora would be required to obtain prior Commission approval for the aggregate voting authority of foreign investors to exceed 49.99%, or for the level of U.S. citizens on its board of directors to fall below 50%.

In the alternative, Pandora requested treatment similar to that presently received by common carrier wireless licensees. According to that policy, Pandora Media would in the future be permitted to be 100% owned and controlled by foreign investors, provided that (1) no foreign investor that is not named in the petition as amended increases its equity or voting interest to 5% (or 10% for certain institutions) without prior Commission approval, except that (2) any foreign investor named in the petition may increase its equity and/or voting interest in Pandora to 49.99% without additional Commission approval. If the Commission approves this approach, Pandora committed to amending the petition to disclose a list of all of the shareholders that it has been able to identify. Pandora says it can monitor changes in foreign voting control levels using reports required by the SEC that must disclose when a shareholder acquires a five percent or greater voting share.

The Commission has established a pleading cycle in Docket 14-109 for this deliberation. August 28 and September 29 are the posted deadlines for comments and reply comments respectively.

DOJ to Review ASCAP, BMI Consent Decrees *continued from page 1*

issues that arise from joint licensing of music and the remedies for those issues. Specifically, the DOJ requests public comment on the following topics:

- Do the Consent Decrees continue to serve important competitive purposes today? Are there provisions that are no longer necessary for or no longer effective in protecting competition?
- What modifications, if any, would enhance competition and efficiency?
- Do differences between the two Consent Decrees adversely affect competition?
- How easy or difficult is it to acquire in a useful format the contents of ASCAP's or BMI's repertory? How, if at all, does the current degree of repertory transparency impact competition? Are modifications of the transparency requirements in the Consent Decrees warranted? If so, why?
- Should the Consent Decrees be modified to allow rights holders to permit ASCAP and BMI to license their per-

formance rights to some music users but not others? If such partial or limited grants were allowed, should there be limits on how such grants are structured?

- Should the rate-making function currently performed by the rate court be changed to a system of mandatory arbitration? What procedures should be considered to expedite resolution of fee disputes? When should the payment of interim fees begin and how should they be set?
- Should the Consent Decrees be modified to permit rights holders to grant ASCAP and BMI other rights in addition to rights of public performance?

The preferred method for submitting comments is by electronic mail to ASCAP-BMI-decree-review@usdoj.gov. Comments can also be mailed or sent by courier to Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, 450 5th Street, N.W., Suite 4000, Washington, D.C. 20001. The Department asked for comments to be submitted by August 6.



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

- August 1, 2014 Deadline to file license renewal applications for television stations in **California**.
- August 1, 2014 Deadline to file Biennial Ownership Report for all noncommercial radio stations in **Illinois** and **Wisconsin** and noncommercial television stations in **California**.
- August 1, 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 **California, Illinois, North Carolina, South Carolina** and **Wisconsin**.
- August 1, 2014 Deadline for all broadcast licensees and permittees of stations in **California, Illinois, North Carolina, South Carolina** and **Wisconsin** to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s). Stations for which this is the license renewal application due date will submit this information as a part of the renewal application.
- Aug. 1 & 16, 2014 Television stations in **Arizona, California, Idaho, Nevada, New Mexico, Utah** and **Wyoming** broadcast post-filing announcements regarding license renewal applications.
- Aug. 1 & 16, 2014 Television stations in **Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon** and **Washington** broadcast pre-filing announcements regarding license renewal applications.
- Sep. 1 & 16, 2014 Television stations in **California** broadcast post-filing announcements regarding license renewal applications.
- Sep. 1 & 16, 2014 Television stations in **Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon** and **Washington** broadcast pre-filing announcements regarding license renewal applications.
- October 1, 2014 Deadline to file license renewal applications for television stations in **Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon** and **Washington**.
- October 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**.
- October 1, 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 **Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, Mariana Islands, Missouri, Oregon, Puerto Rico, Virgin Islands** and **Washington**.
- October 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.

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 **September 22, 2014**. Informal objections may be filed anytime prior to grant of the application.

Present Community	Proposed Community	Station	Channel	Frequency
Fowler, MI	Alma, MI	WQBX	285	104.9
Rosebud, SD	Kilgore, NE	New	258	99.5
Muenster, TX	Oak Ridge, TX	KTMU	204	88.7
Uvalde, TX	Bracketville, TX	New	212	90.3

Cut-Off Dates for Noncommercial FM Translator Applications

The FCC has accepted for filing the below-identified applications for new noncommercial FM translator stations. The deadline for petitions to deny any of these applications is **August 14, 2014**. Informal objections can be filed anytime prior to grant of the application.

Community	Channel	MHz	Applicant
Oldsmar, FL	217	91.3	Radio Training Network, Inc.
Gainesville, GA	213	90.5	Living Way Ministries, Inc.
St. Joseph, MO	205	88.9	Community Broadcasting, Inc.
Weehawken, NJ	220	91.9	Living Way Ministries, Inc.
Narberth, PA	213	90.5	World Revivals, Inc.

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



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
Alaska	State Primary	Aug. 19	July 5 - Aug. 19
Arizona	State Primary	Aug. 26	July 12 - Aug. 26
Connecticut	State Primary	Aug. 12	June 28 - Aug. 12
Delaware	State Primary	Sept. 9	July 26 - Sept. 9
Florida	State Primary	Aug. 26	July 12 - Aug. 26
Guam	Territory Primary	Aug. 30	July 16 - Aug. 30
Hawaii	State Primary	Aug. 9	June 25 - Aug. 9
Kansas	State Primary	Aug. 5	June 21 - Aug. 5
Massachusetts	State Primary	Sept. 16	Aug. 2 - Sept. 16
Michigan	State Primary	Aug. 5	June 21 - Aug. 5
Minnesota	State Primary	Aug. 12	June 28 - Aug. 12
Missouri	State Primary	Aug. 5	June 21 - Aug. 5
New Hampshire	State Primary	Sept. 9	July 26 - Sept. 9
Rhode Island	State Primary	Sept. 9	July 26 - Sept. 9
Tennessee	State Primary	Aug. 7	June 23 - Aug. 7
Vermont	State Primary	Aug. 26	July 12 - Aug. 26
Washington	State Primary	Aug. 5	June 21 - Aug. 5
Wisconsin	State Primary	Aug. 12	June 28 - Aug. 12
Wyoming	State Primary	Aug. 19	July 5 - Aug. 19
United States	General Election	Nov. 4	Sep. 5 - Nov. 4

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	Aug. 6	Sept. 8
Antitrust Division, Dept. of Justice Request for comments re review of ASCAP and BMI Consent Decrees	Aug. 6	N/A
Docket 05-231; FNPRM Closed captioning		Aug. 8
Docket 04-186; Public Notice Request for comment re Google's TV band database system registration	Aug. 13	Aug. 19
Docket 03-185; Public Notice Request for blanket extension of LPTV digital construction permits	Aug. 14	Aug. 29
Docket 04-296; NPRM Review of Emergency Alert System	Aug. 14	Aug. 29
Docket 14-108; Public Notice LPTV station request for waiver of Section 74.709 re protection of land mobile service	Aug. 15	Aug. 29
RM-11727; Public Notice Petition for Rulemaking to amend rules re FM allotment and assignment policies	Aug. 18	Sept. 2
Docket 14-97; Public Notice Termination of dormant proceedings	Aug. 20	Sept. 4
RM No. 11728; Public Notice Petition for Rulemaking re video programming vendors	Aug. 28	Sept. 12
Docket 14-109; Public Notice Request for comment re Pandora's request for ruling re foreign ownership of broadcast stations	Aug. 28	Sept. 29
Docket 14-28; NPRM Open Internet		Sept. 10
Docket 2014-03; NOI U.S. Copyright Office Music Licensing Study	Sept. 12	N/A
Docket 11-154; 2ndFNPRM Closed-captioning of Internet protocol delivered video programming	FR+60	FR+90
FR+N means that the filing is due N days after publication of notice of the proceeding in the Federal Register.		

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
Broadcast station log, Section 73.1820	Aug. 7
User interfaces for digital apparatus and navigation devices, Sections 79.107, 79.108, 79.110	Aug. 11
Auction application form, Form 175	Aug. 19
Advertising rates for political candidates, Section 73.1942	Aug. 28
LPTV, TV Translator and TV Booster license application, Form 347	Aug. 29
Filing of broadcast station contracts, Section 73.3613	Sept. 2
FM broadcast license application, Form 302-FM	Sept. 8
Requests for Special Temporary Authorizations, Sections 73.1615, 73.1635, 73.1740, 73.3598	Sept. 12
Requests to extend LPTV construction permits, Form 337	Sept. 12
Digital TV Ancillary/Supplemental Services Report, Form 317	Sept. 15
AM broadcast license application, Form 302-AM	Sept. 22

Woman Claims Station's Negligently Supervised Staff Invaded Her Privacy

The licensee of radio station KRBZ, "The Buzz," Kansas City, has sustained mixed results in its efforts to deflect a law suit brought against it by a local resident, Ashley Patton, for damages she alleges were caused by the station's negligent supervision of its employees, and the invasion of her privacy by those employees. The U.S. District Court in Kansas City, Kansas has granted the station's motion for summary judgment with respect to the negligent supervision claim, but denied it on the issue about invasion of privacy. The case will now proceed to trial on that issue.

On the morning of April 20, 2012, KRBZ aired its regular morning show, "Afrentra's Big Fat Morning Buzz," featuring on-air talent Afrentra Bandokoudis (known as "Afrentra") and Daniel Terreros (known as "Danny Boi"). The announcers prompted listeners to send text messages to the radio station's "text line" identifying the names of persons that were said to be local porn stars. Two separate individuals, using different telephones, responded with text messages to the effect that a person named Ashley Patton was involved in the local porn scene.

Danny Boi conducted a Google search to attempt to verify the information received in the text messages. The search returned positive results for a similarly-spelled name, "Ashley Payton." Danny Boi then stated Ashley Patton's name on the air with a strong reference to the effect that she was a local porn star. Over the next few hours, until the show went off the air at 10 a.m., there followed patter between Afrentra and Danny Boi about local porn personalities. They committed to posting a list of "alleged" porn stars on the station's website. Such a list was indeed posted. A recording of some portion of the program was made into a podcast which was also posted on the station's website.

Plaintiff Ashley Patton did not hear any of this programming directly on the air. Later in the day, she was alerted by a friend to what had happened. She went to the The Buzz website and found her name on the porn star list and in the podcast. This caused her great distress. She called the station to demand that they take down the posts. She reached the station's program director with her complaint and request. The program director said he was unaware of this incident in the morning's programming. When she complained about being identified as a porn star, the program director's first response was to ask, "Well, are you?" Eventually, the plaintiff persuaded the program director to change the spelling of the name on the list from "Patton" to "Payton." He said he would call her back after further investigation, but he never did.

In a subsequent call to the station's attorney, the attorney committed to the plaintiff that the podcast with her name in the recording would be removed from the website. However, she later found that the original podcast was still on the station's website. During a second phone call with the attorney, he asked the plaintiff if she would prefer an on-air apology or one that was merely written. She responded that further mention of

this incident on the air would only make matters worse.

Ms. Patton found this incident insulting and humiliating. It caused her to suffer anxiety, nervousness, mental stress and insomnia for months afterward. During the summer of 2012, she was taking medication for anxiety and insomnia. She eventually initiated the law suit and asserted that the station's on-air personnel had invaded her privacy by this incident, and that the station had been negligent in failing to supervise its staff appropriately to avoid such incidents.

Negligent supervision is a recognized cause of action under Kansas law. It concerns the duty to supervise and control persons with whom the defendant has a special relationship, including the defendant's employees. In moving for summary judgment on this issue, the defendant argued that no Kansas court decision had previously addressed a negligent supervision claim based on false light invasion of privacy. The defendant also pointed to precedent for rejecting negligent supervision claims where there were other adequate remedies under federal or state statutes, such as in employment-related cases involving incidents between coworkers. The court rejected that argument because in this case, the plaintiff is not also an employee of the negligent supervisor, but is instead a member of the public. However, the defendant's final argument persuaded the judge. Under Kansas law, the victim of negligent supervision must suffer physical harm to sustain the claim. Ms. Patton suffered no physical injury and that became the basis for granting summary judgment for the defendant.

The defendant radio station had a great deal more difficulty with the invasion of privacy issue. Kansas law recognizes four types of invasion of privacy, one of which is described as publicity placing another person in a false light. The false light in which the subject is placed must be highly offensive to the reasonable person, and the actor must have knowledge or must act in reckless disregard as to the falsity of the publicized matter and the false light in which the subject would be placed.

Whether The Buzz morning announcers had knowledge or acted in reckless disregard as to the falsity of light in which they cast Ms. Patton will be a factual question for the jury to decide. Citing an appellate decision, the court said that professions of good faith on the part of the defendant will be unlikely to prove persuasive where a story is based on an unverified anonymous telephone call (or as in this case, a text message). The court concluded that there is evidence from which a reasonable jury could conclude that the defendant, through its employees, acted with reckless disregard in broadcasting the plaintiff's name and identifying her as a local porn star. On such a record, the court could not grant summary judgment for the defendant, and sent the case on to trial.

The ruling is *Patton v. Entercom Kansas City, LLC*, 2014 U.S. Dist. LEXIS 77134.

Copyright Office Extends Music Licensing Inquiry

The Copyright Office has requested a second round of comments in its inquiry into music licensing. The Office initiated a study on this topic with the release of a *Notice of Inquiry* in March seeking written comments on a range of issues. Eighty-five written submissions were received. The Office also conducted three two-day public roundtables in June in New York, Los Angeles and Nashville. The record developed from these efforts has raised additional issues that are relevant to the study and about which the Office wants to build a better record.

Of substantial interest to all stakeholders in the field, and perhaps the most important issue for broadcasters, is the question litigated recently in two U.S. District Courts concerning oversight of the Consent Decrees that govern the operations of ASCAP and BMI (the performing rights organizations, or "PROs"). The courts ruled that under those decrees, music publishers cannot withdraw selected rights – such as new media rights – to be directly licensed outside of the PROs' operations. A publisher's song catalog must be "all in" or "all out." Subsequently, in public statements and at the roundtable meetings, certain major music publishers indicated that, if the consent decrees remain intact without modification, they intend to withdraw their entire catalogs

from ASCAP and BMI and license public performances themselves directly.

Following after these events, the Copyright Office has posed another list of subjects on which it invites interested parties to comment. Among these, the most relevant for broadcasters concern the mechanics of licensing the public performance of musical works. The Office requests the parties' views on the logistics and consequences of potential publisher withdrawals from ASCAP and/or BMI. What would be the effect on music users? Are there ways to improve the current PRO distribution methodologies? What are the marketplace developments that have led to discrepancies between PRO revenues and distributions on the one hand, and declining songwriter income on the other?

Other topics to be covered in this second round of comments include elimination or modification of the Section 115 statutory license for recording music; streamlining the rate-setting procedures of the Copyright Royalty Board; and transparency and efficiency in the identification and distribution of music.

Comments in Docket 2014-03 are due by September 12. They must be submitted online to www.copyright.gov/docs/musiclicensingstudy.

Permit Has to Precede Tower

The FCC's Media Bureau has issued a *Notice of Apparent Liability for Forfeiture* to the permittee of KQTC, Eldorado, Texas, for premature construction of a modification to the original permit for the station. The Bureau ruled that constructing the broadcast tower intended to support the station's antenna prior to grant of a construction permit for that facility violated Section 319(a) of the Communications Act. The statute provides that "[n]o license shall be issued under the Authority of this Act for the operation of any station unless a permit for its construction has been granted by the Commission."

The original construction permit for KQTC was granted to the successful bidder in Auction 93. Subsequently, the successor to the original permittee, Saver Media, filed a modification application, proposing to relocate the authorized antenna site. While this modification application was pending, the FCC received an Informal Objection in which it was alleged that Saver had already constructed the tower to support the station's antenna and had taken delivery of a transmitter building. The objector argued that this constituted unauthorized premature construction of the station.

In response, Saver conceded that it had built the tower, but noted that its broadcast antenna was not yet installed on the tower. Saver explained that, in addition to using the tower for the KQTC antenna, it also intended to rent space on the structure to other companies for the provision of their communications services. Among these services would be a proposed wireless internet hub. Saver acknowledged that the tower was not yet approved for the frequencies to be used by these other

services, but committed to have all frequencies approved by the FAA prior to installation of any equipment on the tower.

The Bureau inferred that Saver was arguing that it constructed the tower for legitimate alternative purposes and thus did not violate the prohibition against premature construction. The Bureau found Saver's explanation to be inadequate however because it failed to demonstrate that it actually had an agreement with any other entity for use of the tower, and because Saver did not identify any other FCC licensee that was authorized to use the tower for signal transmissions.

The Bureau explained that Section 319 was enacted to ensure that applicants do not use their incurred expenses as a method of exerting improper pressure on the Commission to grant an application. This prohibition is not absolute however. The Commission has allowed certain types of pre-authorization construction, such as site clearance, pouring of concrete for tower foundations, installation of a tower base and anchors, installation of a new electric power line, purchase and on-site storage (but not installation) of broadcast equipment, and other preliminary steps having no intrinsic broadcast use. However, construction of towers and installation of antennas prior to the issuance of a construction permit are "strictly prohibited."

The Commission's *Forfeiture Policy Statement* sets \$10,000 as the base amount for a fine for construction and operation of a station without an authorization. The Bureau found no reason to adjust that figure upward or downward, and therefore proposed a forfeiture of \$10,000. Saver has 30 days to respond.

Processing of LPFM MX Groups Begins

The FCC has announced the tentative selectees in 79 groups of mutually exclusive low power FM applications that were filed during the LPFM filing window last November. These groups included some 248 applicants, located in the western United States. The Commission says that two additional public notices identifying tentative selectees in other regions will be released during the “next several months.” Petitions to deny the tentative selectees must be filed by August 8.

In cases involving multiple tentative selectees where applicants earned ties in comparative points, the parties have a 90-day window, ending on October 7, for negotiating voluntary time-share agreements. If tied applicants in the group fail to submit a voluntary agreement, the Commission will impose an involuntary time-share arrangement on groups of three or fewer applicants. If more than three applicants are tied as tentative selectees, the Commission will choose the three with the longest history of being an established local entity in the community for an involuntary arrangement. Voluntary time-share

agreements may include fewer than all of the tied applicants in the group, whose points will then be counted together for purposes of the comparative analysis among the remaining tied applicants.

During the 90-day window ending October 7, all applicants in these MX groups have the opportunity to file major change amendments to resolve technical conflicts with other applicants and to become grantable singletons. Generally, this means they can move to any other FM channel and can relocate the antenna site outside of the 5.6 kilometer radius around the original site allowed for a minor change. Ordinarily, major change amendments can only be filed during a filing window.

Many of the tentative selectees requested waivers for short-spacing to existing stations. Applicants proposing major changes during the 90-day window for such amendments may also be posing new requests for short-spacing waivers. Existing licensees will want to monitor these waiver requests to determine their impact.

Extensions Proposed for LPTV Permits

The FCC’s Media Bureau has requested public comment on a Petition filed by a low power TV trade organization, the Advanced Television Broadcasting Alliance (“ATBA”), urging the Commission to extend all outstanding construction permits for new digital LPTV stations until September 1, 2015. The Commission has previously extended en masse all construction permits for LPTV digital flash cuts and digital companion stations until that date. September 1, 2015 is the deadline for completion of the transition to digital operations for all LPTV stations.

On the other hand, construction permits for brand new digital LPTV stations retain their conventional three-year spans, many of which are set to expire before September 1, 2015. The Media Bureau has a policy of liberally granting requests for six-month extensions of these permits.

ATBA asserts that the uncertainty about repacking the television band after the incentive auction makes it impractical to construct new LPTV stations right now. Before the auction is completed, it is difficult to predict how much

spectrum may still be available for LPTV stations, especially in congested markets. There is little point in building a station in 2014 for which there may be no frequency available in 2015. The incentive auction is now tentatively planned for mid-2015. That may allow for spectrum clarity by September.

ATBA explains that in this environment, many permittees of new digital LPTV stations will simply elect to ask for extensions until the auction is complete. Why not save their time and effort used to file the requests, and the Commission staff’s time to process those requests by issuing a blanket extension of all outstanding permits for new digital LPTV stations?

The Media Bureau did not express its views on this proposal in its Public Notice soliciting input. However, if the Bureau were inclined to deny the Petition, it would probably not be asking for public comment. Comments must be submitted by August 14 in Docket 03-185. August 29 is the deadline for reply comments.

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