

Congress Passes STELA Reauthorization

Both houses of Congress have now voted to reauthorize STELA (the Satellite Television Extension and Localism Act of 2010) in a new bill called the STELA Reauthorization Act of 2014 (or "STELAR"). The legislation has been sent to the President and it is expected that he will sign it into law. The principal element of this legislation is to extend for five years most of the basic arrangements currently in place for satellite television operators to carry terrestrial television stations. However, there are also provisions that will amend the Communications Act and the Copyright Act, as discussed below.

Television stations are able to petition the FCC to modify their markets for purposes of claiming must-carry rights on local cable systems. Until now there was no similar mechanism for modifying markets for satellite carriage. STELAR now directs the Commission to attend to market modification proposals related to satellite carriage, and to make decisions on the basis of essentially the same criteria that it uses in the context of cable carriage decisions. These include the history of carriage of the station in the market; whether the station

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Website Disclosure Proposed for Contest Rule

The FCC has proposed to amend its regulations for licensee-conducted contests to allow broadcast stations to disclose the rules for contests on an Internet website in place of the current requirement to broadcast all material contest terms on the air. This action was made public in a *Notice of Proposed Rulemaking* in Docket 14-226. The Commission's proposal comes in response to a Petition for Rulemaking filed in 2012 by station group owner Entercom Communications Corp. Entercom asked the FCC to update the contest rule to reflect how consumers access information in the 21st century – i.e., by immediate instantaneous research on the Internet.

The present contest rule in Section 73.1216 of the agency's regulations was adopted in 1976. A broadcast station that broadcasts or advertises information about a contest that it conducts must periodically fully and accurately disclose the material terms of the contest on the station's air while the contest is in progress. These material terms must be announced when the contest is first promoted to the audience, and then at reasonable intervals thereafter. Material terms are factors that

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FCC Investigates Bogus EAS Alert

The FCC's Public Safety and Homeland Security Bureau has launched an investigation of an unauthorized Emergency Alert System ("EAS") message that was transmitted in several states on October 24 of this year. The incident occurred when a syndicated radio program inappropriately transmitted a recording of an EAS alert with an Emergency Action Notification ("EAN") event code. EAN codes automatically interrupt programming for an emergency message from the President. EAS alerts with an EAN event code are designed for automatic reception and transmission by EAS participants, including broadcasters. Triggering a false EAN code can quickly set off an errant chain reaction of alarms. On October 24, it precipitated confusion and inconvenience among both EAS participants and the public.

The Bureau has released a Public Notice to solicit comment about how such incidents affect EAS participants, public safety and other government agencies, and the public at large. The Bureau is conducting this review in coordination with the Department of

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define the operation of the contest and which affect participation. Typically, they would include how to enter the contest, eligibility restrictions, entry deadlines, the extent, nature and value of prizes, the basis for valuation of the prizes, time and means of selection of winners, and tie-breaking procedures. Entercom and the Commission observed that these requirements can amount to a lengthy announcement that most people may not listen to or hear. In any event, providing a written version of the rules online will allow consumers time to fully comprehend how the contest is intended to function.

The Commission proposes to allow a station the discretion to decide whether to post the material terms of its contest online, or to announce them on the air as is now required for all stations. Either approach would be rule-compliant. If the station does not have its own website, it could use its licensee's site. If neither the station nor the licensee has a website, the contest rules could be posted on any readily available accessible website that is free to use and that does not require registration. Obviously, posting rules on a website will not by itself satisfy the desired end of actually informing the public about those rules if the public does not know where to look for them. Consequently, the

Commission proposes that stations taking the website option, would be required to announce the website address each time the contest is mentioned or promoted on the air.

The FCC tackles the problem of how to know whether a term is "material" and therefore required to be in the disclosure statement. The agency suggests that this problem could be solved by eliminating the distinction between material terms and other terms. In that case, all contest terms would have to be disclosed without regard to materiality.

If a station using the website disclosure option changes a material term in the contest rules after the contest has been announced to the public, the Commission would require the station to announce on the air that the rules have been changed and to direct the audience to the website where they are posted. The Commission asks for comment about how frequently such an announcement should be broadcast.

The FCC invites comment on these proposals. In particular, what would be the costs and benefits of adopting these changes, and what impact would they have on small stations?

Comments will be due 60 days after publication of notice of this proceeding in the Federal Register. The deadline for reply comments will be 30 days later.

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Homeland Security and the Federal Emergency Management Agency (whose Integrated Public Alert and Warning System was not involved in the October 24 incident). The Bureau invites members of the public and the communications industries to report the effects and implications of false alerts in general, and of the October 24 incident in particular. The Bureau said it would especially like to receive comment on these topics:

- To what extent have EAS participants been directly affected by unauthorized EAS alerts, including EANs?
- Is there a difference among different types of EAS participants in how an unauthorized EAN or other EAS alert is received and transmitted? How does EAS equipment handle the absence of an End of Message ("EOM") code?
- How do EAS participants determine the authenticity of an alert message?
- How is EAS equipment programmed to manage message authentication?
- To what extent have EAS participants adopted the use

of "strict time" filters?

- What steps can be taken to enhance EAS alert authentication?
- What mechanisms do EAS participants use to assess network integrity?
- What impact does an unauthorized EAS alert have on public safety agencies and other local government units?
- What actions have local government agencies taken to mitigate public confusion when there is an unauthorized EAS alert?
- What actions can be taken in the future to avoid or mitigate the effects of an unauthorized alert?
- What is the effect of unauthorized EAS alerts on the public, including people with disabilities and people whose primary language is not English?

The Bureau has established Docket 14-200 to receive these filings, which are to be submitted by December 5. Reply comments can be filed until December 19.

Station Agrees to Fine for Broadcasting Phone Calls

The FCC's Enforcement Bureau has adopted a Consent Decree that terminates an investigation about the broadcast of recorded telephone conversations on television station KTVX, Salt Lake City, without the consent of the person who was called. A key element of the Consent Decree is that the former licensee of the station will pay a civil penalty of \$35,000. After the incidents that formed the subject matter of this case, the licensee sold the station. As a condition for obtaining Commission consent to the sale, funds were placed in escrow to secure the payment of any forfeiture that might be imposed.

In August, 2012, the FCC received a complaint alleging that KTVX had broadcast a recorded telephone conversation twice without the prior consent of the party on the other end of the line. The station's staff reportedly called a member of the public in the context of a news interview. The conversation was recorded and aired in newscasts to the surprise of the person that had been called. Section 73.1206 of the Commission's rules mandates that before recording a telephone conversation for broadcast, or before broadcasting a telephone conversation, the station must inform any party to the call of the station's intention to broadcast the conversation except in cases where the other party already knows or is presumed to know under the circumstances of the call that the conversation is being or will be broadcast.

In April, 2014, the Bureau sent the station's licensee a Letter of Inquiry concerning this complaint. The station did not respond to this inquiry.

Eventually, the Bureau was able to make contact with the station licensee, and negotiations about a settlement ensued. To terminate the proceeding and obtain the Bureau's agreement that it would not rely upon the facts of record in this proceeding in any future enforcement action, the licensee admitted to violating the broadcast telephone rule and the rule that requires licensees to respond to communications from the Commission, and it agreed to pay what is termed as a civil penalty of \$35,000 to the U.S. Treasury.

The Bureau's Order does not discuss the schedule for the base amount of forfeitures in Section 1.80 of the Commission's rules. It is noteworthy that in Section 1.80, the base fine for violating the telephone rule is \$4,000. The base amount for failing to respond to Commission communications is also \$4,000. Even if each broadcast of the phone conversation was counted as a separate violation warranting a separate fine, the total aggregated base amount for this group of rule violations would have been \$12,000. There is no indication in the Order about how and why the amount of the civil penalty was set at \$35,000.

The Bureau said that "Consumers have a right to be free from having a broadcaster surreptitiously record their conversation and then broadcast it to their community. The Commission holds broadcasters to a high standard, and this Order . . . upholds that standard."

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covers or provides service to the community; whether opportunities for audiences to view in-state stations would be increased; whether other stations carried by the satellite provider cover matters of local interest to the community in question; and a comparison of viewing patterns of MVPD subscribers and non-subscribers. However, the FCC may not create new carriage obligations for a satellite carrier that are not technically or economically feasible for the satellites that the carrier has in operation at the time of the FCC determination.

Under this new law, retransmission consent agreements cannot prohibit the MVPD's carriage of a distant significantly viewed station

The FCC recently adopted a rule to prohibit a station in the top four in its market from jointly negotiating retransmission consent agreements with another station not under common control. STELAR extends that prohibition to all stations in the market.

In another recent action, the FCC made television joint sales agreements ("JSAs") attributable for purposes of the multiple ownership rules. In situations where this change caused parties to pre-existing JSAs to fall out of compliance with the multiple ownership rules, station owners were given two years to divest their agreements or make other

arrangements to comply – until June 19, 2016. STELAR extends that transition period by six months. December 19, 2016 will be the new deadline for divesting offending JSAs.

STELAR removes the prohibition against an MVPD from deleting or repositioning on its system a commercial television station during a ratings period.

Low power television stations are given a boost for MVPD carriage in the new law. Presently, MVPD carriage of an LPTV signal is subject to distant signal fees beyond a 35-mile radius. STELAR expands that copyright-free area to the entire Designated Market Area where the LPTV is located and to communities in other markets if they are within 20 miles of the LPTV station in the top 50 markets, or within 35 miles in markets below the top 50.

The FCC is directed to conduct studies and proceedings so as to gather data and ideas for reporting back to Congress on various issues, including an analysis of consumers' access to broadcast programming from stations located outside of their local market; alternatives to the present scheme of designated market areas with an eye toward providing consumers with more programming options; and recommendations to increase localism in counties served by out-of-state designated market areas.



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

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|-------------------|---|-------------------|--|
| Dec. 1, 2014 | Deadline to file Ancillary/Supplemental Services Report for all digital television stations. | Jan. 1 & 16, 2015 | Television stations in New Jersey and New York 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 . | Jan. 10, 2015 | Place Issues/Programs List for previous quarter in public inspection file for all full service radio and television stations and Class A TV stations. |
| Dec. 1, 2014 | Deadline to file Biennial Ownership Report for all noncommercial radio stations in Colorado, Minnesota, Montana, North Dakota and South Dakota and noncommercial television stations in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont . | Jan. 10, 2015 | Deadline to file quarterly Children's Television Programming Reports for all commercial television stations. |
| Dec. 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 Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota and Vermont . | Feb. 1 & 16, 2015 | Television stations in New Jersey and New York broadcast post-filing announcements regarding license renewal applications. |
| Dec. 1, 2014 | Deadline for all broadcast licensees and permittees of stations in Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota and Vermont to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s). Stations for which this is the license renewal application due date will submit this information as a part of the renewal application. | Feb. 1 & 16, 2015 | Television stations in Delaware and Pennsylvania broadcast pre-filing announcements regarding license renewal applications. |
| Dec. 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 Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota and Vermont . | Feb. 2, 2015 | Deadline to file license renewal applications for television stations in New Jersey and New York . |
| Dec. 1, 2014 | Deadline for all broadcast licensees and permittees of stations in Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota and Vermont to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s). Stations for which this is the license renewal application due date will submit this information as a part of the renewal application. | Feb. 2, 2015 | Deadline to file Biennial Ownership Report for all noncommercial radio stations in Kansas, Nebraska and Oklahoma , and noncommercial television stations in New Jersey and New York . |
| Dec. 1 & 16, 2014 | Television stations in Alaska, American Samoa, Connecticut, Guam, Hawaii, Maine, Mariana Islands, Massachusetts, New Hampshire, Rhode Island, Oregon, Vermont and Washington broadcast post-filing announcements regarding license renewal applications. | Feb. 2, 2015 | Deadline to place EEO Public File Report in public inspection file and on station's Internet website for all nonexempt radio and television stations in Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York and Oklahoma . |
| Dec. 1 & 16, 2014 | Television stations in New Jersey and New York broadcast pre-filing announcements regarding license renewal applications. | Feb. 2, 2015 | Deadline for all broadcast licensees and permittees of stations in Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York and Oklahoma to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s). Stations for which this is the license renewal application due date will submit this information as a part of the renewal application. |
| Jan. 1 & 16, 2015 | Television stations in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island , and Vermont broadcast post-filing announcements regarding license renewal applications. | | |





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 14-200; Public Notice Inquiry re unauthorized EAS message	Dec. 5	Dec. 19
Docket 12-201; FNPRM Regulatory fees for DBS		Dec. 26
Docket 14-170; NPRM Updating competitive bidding rules	Dec. 29	Jan. 20
Public Notice; Review of EAS best practices	Dec. 30	N/A
Docket 12-268; NPRM Spectrum access for wireless microphone operations	Jan. 5	Jan. 26
Docket 14-165; NPRM Unlicensed operations in white spaces in TV band	Jan. 5	Jan. 26
Docket 14-229; Public Notice Report to Congress on status of competition in provision of satellite services	Jan. 7	Jan. 22
Docket 03-185; 3 rd NPRM Low Power TV and the Incentive Auction	Jan. 12	Jan 26
Docket 12-267; FNPRM Licensing and operating rules for satellite services	Jan. 29	Mar. 2
Docket 14-226; NPRM Contests conducted by broadcast licensees	N+60	N+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
Registration of stationary TV pickup receive sites, Section 74.605	Dec. 15
AM directional antenna field strength measurements, Section 73.61	Dec. 15
Closed Captioning, Section 79.1	Dec. 15
Regulatory fee exemption for nonprofit entities	Dec. 22
TV White Space Broadcast Bands, Sections 15.713, 15.714, 15.715, 15.717	Dec. 22
EAS, Part 11	Dec. 22
Cable carriage and dispute resolution, various Part 76 rules	Dec. 22
Broadcast station chief operators, Section 73.1870	Dec. 29
Commercial broadcast construction permit application, Form 301	Jan. 5
Application for Antenna Structure Registration, Form 854	Jan. 20
Auction Application, Form 175	Jan. 20
Broadcast Mid-Term Report, Form 397	Jan. 20
Children's Television Programming Report, Form 398	Jan. 26
Station records for LPTV, FM translator, CARS stations, Sections 74.781, 74.1281, and 78.69	Jan. 26
Commercial leased access rates, terms & conditions, Sections 76.970, 76.971 and 76.975	Jan. 26
Blanketing interference, Sections 73.88, 73.318, 73.685 and 73.1630	Jan. 26
Broadcast EEO Program Report, Form 396	Jan. 26
Low power auxiliary stations co-channel coordination with television, Section 74.802	Jan. 30



EAS 'Best Practices' under Review

Earlier this year, the FCC's Security, Reliability and Interoperability Council IV ("CSRIC") adopted a voluntary regimen of "best practices" to improve security of the Emergency Alert System ("EAS"). CSRIC is a federal advisory committee that provides recommendations to the FCC concerning, among other things, the security and reliability of commercial and public safety communications systems.

The EAS is vulnerable to security weaknesses, as are all contemporary communications systems. With the transition of EAS to the Internet-based Common Alerting Protocol, the Commission acknowledges that this vulnerability is likely to increase. The CSRIC sought to address the issue of EAS vulnerability with these "best practices" recommendations. The FCC's Public Safety and Homeland Security Bureau has now issued a Public Notice to request public comments on the implementation and effectiveness of the CSRIC's recommendations and alternatives that EAS stakeholders may have also developed.

The CSRIC's recommended "best practices" include the following:

Firewalls

- A firewall should always be used between EAS equipment and the public Internet to reduce unknown external

Cut-Off Dates for Low Power Television Applications

The FCC has accepted for filing the following digital low power television applications. The deadline for filing petitions to deny any of these applications is **January 2, 2015**. Informal objections may be filed anytime prior to grant..

Community	Station	Channel	Applicant
Delta Junction, AK	K07NJ	11	Chena Broadcasting, LLC
Gainesville, FL	W48DR-D	31	DTV Innovators, LLC
Ocala, FL	New	18	Frank Digital Broadcasting, LLC
Springfield, MA	WHTX-LP	43	Entravision Holdings, LLC
Great Falls, MT	New	14	William & Ruth Bruggeman
Great Falls, MT	New	15	William & Ruth Bruggeman
Great Falls, MT	New	23	William & Ruth Bruggeman
Overton, NV	New	38	Moapa Valley Television Maintenance District
Antonito, NM	K51DM	46	Son Broadcasting, Inc.
Weatherford, OK	K23IY-D	19	Oklahoma Community Television
Bend, OR	KBND-LP	14	Combined Communications, Inc.
Brookings, OR	K10LR	17	KTVL Licensee, LLC
Coos Bay, OR	K46AS	15	KMTR Television, LLC
Sioux Falls, SD	New	20	EICB-TV East, LLC
Austin, TX	KBVO-CD	31	KXAN, LLC
St. George, UT	K40KZ	15	EICB-TV East, LLC
Abingdon, VA	WAPW-CA	21	Holston Valley Broadcasting Corp.
Klamath Falls, OR	K07PU	15	KTVL Licensee, LLC
Squaw Valley, OR	K07KZ	17	Sinclair Eugene Licensee, LLC
Williams, OR	K04JP	14	KTVL Licensee, LLC

actors from compromising the system.

- An internal firewall should be used to separate the EAS equipment from all other equipment and network connections to reduce insider threats.

Passwords

- Default passwords should be changed before connecting to the Internet.
- Passwords should be complex.
- Passwords should be changed at least every 90 days.
- Passwords should be kept confidential, unposted and unshared with individual accounts.
- Unencrypted passwords should not be sent through unprotected channels.

Update Awareness and Implementation

- EAS participants should regularly monitor EAS equipment manufacturer information resources (such as websites) to obtain vendor patch and security notifications and services to remain current with new vulnerabilities, viruses and other security issues.

- Security updates and patches should be promptly applied and the system rebooted if necessary.

- After updates and patches are installed, verification and testing should be conducted immediately to ensure their integrity and accuracy.

- EAS participants should always be sure that the manufacturer of their EAS equipment has their current contact information.

User Accounts

- Each user should have a single individual unshared account for access.

- Limit each user's access to what is necessary.

- Disable or remove default user accounts.

- Remove unnecessary user accounts.

- Do not use administrative accounts for normal usage.

- There should be a clear process and policy to update access and accounts when the roles of users change, such as at terminations or transfers.

User Restriction and Training

- Each user should be provided with only the appropriate level of device and system access.

- All users should be trained in the practices for "safe computing," and undergo annual refreshers.

Network and Equipment Inspections

- Periodically inspect and maintain EAS equipment and interfacing networks.

Limit Remote Access

- Remote access to EAS devices should always be via a secure channel, and should be severely restricted and logged.

- Remote access should never be made possible by an

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Auction Task Force Releases More Software

The FCC's Incentive Auction Task Force has issued a Public Notice to announce the release of additional new software for use in connection with the process of repacking the television spectrum after the incentive auction (now likely to be set for 2016). The two software programs are described as:

1. An FCC staff-developed "Constraint Generator" software used to generate pairwise interference constraint files.
2. An open-source, satisfiability solver-based implementation of "Feasibility Checker" software that can be used to evaluate the feasibility of assigning channels to stations during the repacking process, consistent with the pairwise interference constraint files.

This release follows up on a Public Notice released last January which explained how the pairwise interference constraint files could be used to determine whether, if a given set of reverse auction bids from broadcasters were accepted, channels could be assigned to all broadcasters remaining on the air in a manner consistent with the applicable constraints. These programs demonstrate how to simulate implementation of the principles described in the January Public Notice. They are intended to assist in evaluating the feasibility of assigning channels to stations in the context of a real-time descending clock reverse auction. This approach determines whether there

exists at least one feasible channel assignment for a given set of stations using pairwise interference constraint files. Building on data output from the *TVStudy* software, the Constraint Generator creates pairwise interference files that pre-calculate all the channels a station could be assigned that would comply with the statutory requirement to preserve each station's pre-auction coverage area and population served. The Feasibility Checker can then be used to determine whether a given channel reassignment is feasible using the pairwise interference constraint files.

The Task Force emphasizes that this newly released software is a work in progress and has not been finalized for use in the incentive auction. The purpose of this release is to allow interested parties a preliminary opportunity to validate data previously released and to simulate their own repacking scenarios – which they are encouraged to do. The software is available on the Commission's LEARN website, www.fcc.gov/learn.

The Task Force invites public comment about this software. Comments can be filed using the procedures for ex parte submissions in permit-but-disclose proceedings. Commenters are asked to reference Docket 12-268 and Docket 13-26.

EAS Best Practices under Review

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EAS device that is not secured by a firewall or other network security system.

- Remote access to EAS equipment should only be from a system that is secured to the same level as the EAS equipment.
- Network accessible administrative ports on EAS equipment should be within the participant's isolated network and should be monitored for unauthorized use.

Disable Unnecessary Services

- Unneeded network-accessible services should be disabled, or additional compensating controls should be installed, such as proxy servers, firewalls, or filter lists.

Integrity

- EAS devices should be configured to validate digital signatures on CAP messages, if the source of the message requires it, to prevent the airing of spoofed or otherwise altered messages.

Security

- EAS equipment should always be maintained in a secure physical environment.
- Basic network security protocols should be followed.
- A professional security audit is recommended.

Response and Recovery

- EAS participants should have an incident response plan.

The Bureau requests responses to the following questions about the CRSIC's recommendations for "best practices."

1. What progress have EAS participants made in implementing these best practices? What efforts have other stakeholders (equipment manufacturers, state and local governments) taken to enhance EAS security?
2. What barriers have EAS stakeholders encountered in attempting to implement these recommendations?
3. What successes or breakthroughs have been achieved in implementing the recommendations?
4. What are stakeholders' plans for implementation of these recommendations?
5. How effective are these recommendations at mitigating security risk?
6. What alternatives have been implemented and how effective are they?
7. In addition to these recommendations, what other security measures have stakeholders implemented?
8. What measures should stakeholders undertake to ensure security against continuously evolving technological threats?

Comments should be filed by December 30 through the FCC's Office of the Secretary, referencing DA 14-1628.

Rejection of Experimental Authority for Relaxed NCE Underwriting Sustained

The FCC has affirmed a Media Bureau decision to deny the request of Maricopa Community College District for an experimental authorization to relax standards for public radio underwriting announcements on Maricopa's noncommercial radio stations in Phoenix, KJZZ(FM) and KBAQ(FM). Maricopa had requested authority to conduct a three-year "controlled and limited experiment" on the effect of including presently prohibited material in noncommercial underwriting announcements. In the alternative, Maricopa requested a waiver of the Commission's underwriting rules and policies.

Maricopa proposed to include information in its underwriting announcements that is generally prohibited, such as bank interest rates; sales, discounts and special events; and qualitative adjectives based in fact. The purpose of the demonstration project would have been to gather data to ascertain whether such enhancements could increase revenue without harming program quality or audience satisfaction. Maricopa's proposal sprang from its concerns about the decline in funding for public broadcasting from governmental sources. It said that it sought to develop future policy choices by providing data to Congress and the FCC.

In denying the request, the Media Bureau said that experimental authorizations were meant to facilitate technical experiments – not those contemplating alternate legal scenarios. The Bureau also said that Maricopa had failed to justify the need for a waiver. Maricopa then filed an Application for Review, asking the full Commission to review the Bureau's decision.

While agreeing with everything that the Bureau said, the Commission's ruling also emphasized that it has no authority to permit noncommercial stations to carry advertising because the Communications Act explicitly prohibits it, as do

the Commission's rules. While the agency can waive its own rules, it cannot waive provisions of the statute. The agency disagreed with Maricopa's characterization of its proposed announcements as merely pushing the edge of the underwriting envelope rather than full blown advertisements. The Commission said they were advertisements. In an alternate vein, Maricopa had argued that it was not asking the Commission to waive the statute, but merely to suspend enforcing it during the experimental period. The FCC rejected this approach for lack of legal basis.

Commissioner Ajit Pai issued a Concurring Statement. He agreed with the ultimate decision to deny Maricopa's request, but suggested that the Commission should have grounded it more in procedural reasons, such as the propriety of handling a revision of the underwriting rules in an industry-wide rulemaking proceeding rather than by a special waiver for one licensee. He felt that the Commission should have avoided the issue of statutory interpretation because this ruling could have a broader impact on public broadcasting than was anticipated. He expressed difficulty in understanding how some of the underwriting announcements he sees on public television are lawful if the announcements that Maricopa proposed are prohibited under the Communications Act. Referring to announcements that have aired with the *Downton Abbey* series, he queried that if it violates the statute for underwriting announcements to use qualitative adjectives based on fact, "how can Viking River Cruises tout its 'modern river cruise vessel[s]' in a thirty-second 'underwriting announcement' that obviously appears designed to entice viewers into taking a river cruise so that they can be 'transported . . . to another world, a world of dramatic landscapes, majestic castles and remarkable characters'?"

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