

Pre-Auction Technical Certifications Due July 9

The FCC's Media Bureau has released a list of all full power and Class A television facilities that are eligible for protection in the post-incentive auction repacking process and for relinquishment in the reverse auction. Station licensees must review this list to confirm that the facilities identified correctly describe each station's actual authorization and operation. Each licensee is then required to file by July 9 a Pre-Auction Technical Certification on FCC Form 2100, Schedule 381, through the Commission's Licensing Management System. On this form, each licensee will verify and certify to the accuracy of the authorization and underlying database technical information for each eligible facility. A separate form is required for each station. The database is intended to include all facilities licensed or for which a license application was pending as of May 29, 2015. The list is available online at www.fcc.gov/document/mb-announces-incentive-auction-eligible-facilities-july-9-deadline.

The Pre-Auction Technical Certification Form includes two questions. First, each licensee must certify that it has reviewed the authorization for each of its eligible facilities on the list. Each licensee must indicate whether the underlying

continued on page 2

Court Affirms Use of TVStudy for Repacking

The U.S. Court of Appeals for the D.C. Circuit has affirmed the FCC's decision to use its *TVStudy* computer software program to calculate coverage statistics for television stations in the repacking process that will follow the incentive spectrum auction. The National Association of Broadcasters and Sinclair Broadcast Group, Inc. had each separately appealed this decision to the Court of Appeals. The court consolidated the two cases and issued one ruling.

The statute authorizing the incentive spectrum auction instructs the FCC on how to repack the television stations that remain on the air after the auction. The law states that the Commission "shall make all reasonable efforts to preserve" the coverage area and population served by each station as of February 22, 2012 by using the methodology described in OET Bulletin 69. (OET is the FCC's Office of Engineering and Technology.)

OET Bulletin 69 was first issued in 1977 and updated in 2004. It relies on the Longley-Rice methodology

continued on page 3

EAS Fine Tuned

The FCC has adopted new provisions in its rules to govern the procedures for executing alerts in the Emergency Alert System ("EAS") in the *Sixth Report and Order* in Docket 04-296. These include creation of a national location code, mandatory use of a National Periodic Test event code for future nationwide tests, the electronic filing of test reports, and minimum accessibility rules for visual EAS messages.

The most publicly visible of these changes are the new requirements for the visual aspects of the EAS message. The Commission requires the visual element of an EAS message in video programming to meet minimum accessibility standards for crawl speed, completeness and placement similar to those in effect for closed captions.

The Commission adopted legibility requirements. The new rules mandate that the visual message be displayed in a size, color, contrast, location and speed that is readily readable and understandable. The agency declined to prescribe specific acceptable crawl speeds or font types. Instead, it gave EAS participants the flexibility to implement this requirement consistent with their best practices and equipment capability. In

continued on page 7

IN THIS ISSUE

Tower Registration Rules.....	2
Deadlines To Watch.....	4-5
Channels for White Space.....	5
Channel Sharing.....	6
Small Cable Exemption.....	8

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Pre-Auction Technical Certifications Due by July 9 continued from page 1

database technical information for each of its stations is correct, and then select one of the following certifications:

(a) The authorization for the eligible facility and all underlying database technical information is accurate and complete.

(b) The authorization for the eligible facility is inaccurate because of a discrepancy between the authorization and the underlying database technical information.

(c) The eligible facility has been operating with parameters at variance from those specified in its authorization and the database technical information.

Responding to the second question on the form, each licensee is to provide additional data concerning the eligible facility's transmitter, antenna and support structure for use by the Commission in the repacking process.

If the licensee certifies that there is a discrepancy between the authorization and the underlying database technical information on file with the FCC, the licensee must include an exhibit with the certification form showing the correct information. The Media Bureau will review the exhibit and revise the Commission's database as appropriate. Such corrections will be taken into account for purposes of repacking protection and reverse auction rights.

On the other hand, if a licensee certifies that its eligible facility has been operating at variance from the authorized parameters described in the underlying database technical information, the licensee must either bring the station's operation into conformance with the licensed parameters or

file an application for modification of its facilities. That application should be accompanied by a request for a Special Temporary Authorization to allow the station to continue to operate with parameters at variance from the database. However, even if this modification application is eventually granted and the modified facilities licensed, these new facilities will not be taken into account for purposes of repacking protection or reverse auction rights. Instead, the Commission will rely on the facilities described in the database technical information as of May 29.

If a Pre-Auction Technical Certification Form for an eligible facility is not submitted to the FCC by July 9, the Commission will consider the authorization as described on the list and in the underlying database technical information as of May 29, 2015 for that facility to be accurate for purposes of repacking protection and reverse auction rights.

Any licensee who believes that its facility should be eligible for repacking protection and reverse auction participation, but cannot find it on the list, should file a Petition for Eligible Entity Status by July 9.

The certifications, corrections and granted Petitions for Eligible Entity Status will provide the basis for a detailed summary of baseline coverage area and population to be developed by the Commission's Office of Engineering and Technology. That document will be the final list of facilities to be protected in the repacking process and eligible for reverse auction compensation.

Wireless Bureau Reiterates Tower Registration Rules

The FCC's Wireless Telecommunications Bureau has released a Public Notice to remind the owners of antenna structures of their obligations to comply with the Commission's rules under the Antenna Structure Registration ("ASR") system. Common errors that the Bureau has recently observed include:

- An antenna structure owner fails to obtain a No Hazard Determination from the FAA and/or fails to register the structure with the FCC prior to construction.
- A registrant fails to notify the FCC within five days of completion of construction or dismantlement.
- The lighting and painting used for the tower differ from the lighting and painting listed in the ASR system and/or specified in the structure's No Hazard Determination issued by the FAA.
- The actual height or location of a registered structure is materially different from the registered height or location of the structure. Under new rules awaiting approval by the Office of Management and Budget and not yet in effect, a material difference is defined as a discrepancy of one foot or greater in

height or one second or greater of latitude or longitude.

The information in existing ASRs should be updated promptly upon receipt of a new No Hazard Determination from the FAA.

The Bureau reminds applicants that they may not prematurely certify that the antenna structure would not have a significant environmental effect. Examples of premature certification to be avoided include:

- An applicant may not certify that construction of a tower is exempt from environmental notification before completing the environmental review.
- An applicant may not certify that the FCC has notified it that an Environmental Assessment is not required before the Bureau has actually notified the applicant to that effect.
- An applicant may not certify that the FCC has issued a Finding of No Significant Impact before the FCC has actually issued its Finding of No Significant Impact.

The Bureau says that each of these defects is a violation of the FCC's rules and may result in an FCC enforcement action.

Court Affirms Use of TVStudy for Repacking continued from page 1

to evaluate signal coverage and interference qualities by predicting signal strength on the basis of the profile of terrain elevation between the transmitter site and the reception point. A computer program is needed to make these predictions. That program in turn requires data inputs about population, terrain and station facilities.

During the course of the Commission's rulemaking proceeding to establish the procedures for the auction, OET announced the development a new computer program, entitled *TVStudy*. OET said that the Commission would employ this program to determine stations' coverage area and population numbers to be used as the basis for calculating compliance with the statute's repacking mandate.

Subsequently, the Commission said that it would rely on data from the 2010 census to determine the population served by each station as of February 22, 2012. The agency decided to incorporate other data updates, including a new terrain elevation database maintained by the U.S. Geological Survey rather than the previous terrain database discussed in OET-69 which is no longer maintained. The Commission also opted to fine tune the process by inputting actual beam tilt data from each station (instead of a standard beam tilt for all stations) and increasing geographic precision (rather than rounding coordinates to the nearest second).

The broadcasters complained that these changes in the process violated the statutory mandate to "preserve as of February 22, 2012, the coverage area and population served by each broadcast television licensee, as determined using the methodology described in OET Bulletin 69." They interpreted that language to mean that the Commission was to preserve a station's coverage area and population served as the data would have been calculated in implementing Bulletin 69 on February 22, 2012. The broadcasters asserted that the OET-69 methodology was a "fixed suite of software and procedures that existed on February 22, 2012" and that the FCC was bound to make its calculations on that basis without alterations.

The Commission countered that the OET-69 methodolo-

gy does not encompass specific computer software (such as *TVStudy*) or input values. Instead, the agency said that OET-69 methodology comprises (1) a specification for determining a contour that defines the boundaries of a station's coverage area, and (2) an algorithm for evaluating the availability of service within that contour, including the effects of interference from neighboring stations. Thus, *TVStudy* would merely be another way to implement OET-69, rather than replacing or contradicting it.

In agreeing with the Commission's point of view, the court concluded that "It is self-evident that the accuracy of the Commission's determinations would be improved by its use of more recent population data, more precise terrain calculations, and more exact technical information." The court said that it was completely understandable that the Commission would decline to use obsolete software and inaccurate data.

The court also rejected the broadcasters' arguments against various other aspects of the policies about repacking that the Commission had adopted. There was the question of "terrain loss" that may result in reduced coverage for a station when it is moved to a channel with different propagation characteristics. The broadcasters said that such channel reassignments could violate the requirement to duplicate coverage as it existed on February 22, 2012. The court noted the Commission's claim that most channel reassignments would send stations to frequencies with superior propagation qualities. However, even if a few stations suffer de minimis reductions in coverage, that would be tolerable because the Commission's mandate is to preserve stations' coverage "without sacrificing the goal of a successful incentive auction."

The FCC's repacking plan did not include protection for fill-in translators. Again, the broadcasters argued that omitting them would fail to preserve a station's February 22, 2012 coverage statistics. The court found however that translator stations were not included within the statute's meaning of stations whose coverage areas must be preserved.

The decision is entitled *National Association of Broadcasters v. Federal Communications Commission*, No. 14-1154 (D.C.C.A. June 12, 2015)

...it was completely understandable that the Commission would decline to use obsolete software and inaccurate data.

Final Version of TVStudy Released

Broadcasters' challenges having been rejected by the Court of Appeals, the FCC's Office of Engineering and Technology ("OET") has released for public comment what it calls the "final version" of the *TVStudy* software (Version 1.3.2) for use in the incentive auction and the repacking of remaining television stations that will follow the auction.

OET also released a set of baseline data of television stations eligible for repacking protection and reverse auction participation. The new software is used to derive baseline data for each station, including noise-limited, terrain-limited and interference-free coverage area and population served.

continued on page 6



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

- July 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.
- July 10, 2015 Deadline to file quarterly Children's Television Programming Reports for all commercial television stations.
- August 1, 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 **California, Illinois, North Carolina, South Carolina** and **Wisconsin**.
- August 3, 2015 Deadline to file Biennial Ownership Report for all noncommercial radio stations in **California, North Carolina,** and **South Carolina** and noncommercial television stations in **Illinois** and **Wisconsin**.
- August 3, 2015 Deadline to file EEO Broadcast Mid-term Report for all radio stations in employment units with more than 10 full-time employees in **North Carolina** and **South Carolina**.
- August 3, 2015 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.

**DEADLINE FOR FULL SERVICE AND CLASS A TELEVISION STATIONS TO FILE PRE-AUCTION TECHNICAL CERTIFICATIONS
JULY 9, 2015**

Deadlines for Comments In FCC and Other Proceedings

Docket	Comments	Reply Comments
(All proceedings are before the FCC unless otherwise noted.)		
Docket 15-121; NPRM Assessment of Regulatory Fees		July 6
RM-11750; Petition for Rulemaking Adjudication of spectrum interference disputes	July 13	July 27
Copyright Office Docket 2015-01; Notice of Inquiry Enforcement and monetization of copyright in visual works	July 23	Aug. 24
Docket 12-268, 13-26 Public Notice TVStudy final version and baseline coverage statistics	July 30	N/A
Docket 12-107; 2nd FNPRM Changes to audio crawl rule	FR+30	FR+60
Dockets 12-268, 15-137; NPRM Television channel sharing	FR+30	FR+45
Docket 15-146; NPRM White space devices in vacant UHF channels	FR+30	FR+60

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

Requests for Exemption from Closed Captioning Rules

The following video programmers have requested exemption from the FCC's closed captioning rules. Interested parties may file comments and/or oppositions by July 13, 2015, and replies by August 3, 2015, in Docket 06-181 about these requests

Programmer	Location	Case Identifier
First Baptist Church of Beaver	Beaver, WV	CGB-CC-1345
Delaware Standardbred Owners Assn/"Post Time"	Delaware	CGB-CC-1346
Seeking the Lost Ministries/"Seeking the Lost"	Jasper, AL	CGB-CC-1347
Word of Life Full Gospel Baptist Church/"The Word of Life"	Monroe, AL	CGB-CC-1350
Fallah Productions/"Windy City Poker Championship," "Chad Brown Poker Championship," "Jax 50K Cash Game"	Homewood, IL	CGB-CC-1352



DEADLINES TO WATCH



Cut-Off Date for AM and FM Applications to Change Community of License

The FCC has accepted for filing the AM and FM applications identified below proposing to change each station's community of license. These applications may also include proposals to modify technical facilities. The deadline for filing comments about any of the applications in the list below is **August 10, 2015**. Informal objections may be filed anytime prior to grant of the application.

Present Community	Proposed Community	Station	Channel	Frequency
Barstow, CA	Kramer Junctin, CA	New	267	101.3
Hollister, CA	Chualar, CA	KXSM	226	93.1
Limon, CO	Deer Trail, CO	KIIQ	229	93.7
Homer, LA	Simsboro, LA	KWZM	272	102.3
Jackson, WY	Etna, WY	KJNT(AM)	N/A	1480

Paperwork Reduction Act Proceedings

The FCC is required under the Paperwork Reduction Act to periodically collect public information on the paperwork burdens imposed by its record-keeping requirements in connection certain rules, policies, applications and forms. Public comment has been invited about this aspect of the following matters by the filing deadlines indicated.

Topic	Comment Deadline
Topic Comment Deadline Public inspection files, political files, Sections 73.3526, 73.3527, 73.1943	July 6
Broadcast station applications for assignment and transfer of control, Forms 314 & 315; Section 73.3580	July 13
International broadcast station license application, Form 421-IB	July 13
International broadcast station construction permit application, Form 420-IB	July 17
Equal Employment Opportunity, Section 73.2080	Aug. 10
Program Tests, Section 73.1620	Aug. 14
Emergency Alert System, Part 11	Aug. 21

TV Channel Would Be Set Aside for White Space Devices

The FCC has proposed regulations to ensure that spectrum will remain widely available for unlicensed "white space" devices and for wireless microphones. White space devices conduct a variety of wifi operations. The Commission proposes a system for preserving at least one vacant television channel for white space operations in every area (a term not necessarily equivalent to market or DMA). The initial planning for these channels would be incorporated into the repacking process that will follow the incentive auction. The Commission's repacking simulations indicate that areas encompassing the vast majority of the population of the United States would have at least two vacant channels available because full power television stations cannot operate on adjacent channels without causing harmful interference to each other. To ensure that these channels remain preserved, the Commission proposes to require broadcasters to demonstrate that their applications for new, modified or displaced facilities would not eliminate the last available vacant UHF television channel for use by white space devices and wireless microphones. The showings that would be required vary with the type of broadcast station application.

Low power television, television translator and broadcast auxiliary service applicants would be required to include this

vacant channel study in any application filed after the auction. Failure to include this information would subject the application to dismissal. Class A television stations would be exempt from this obligation for applications filed during the 39 month postauction transition period. That is the period during which television stations will be repacked – i.e., moved into their post-auction channels and locations. After the transition period has closed, Class A stations would be obligated to include a demonstration as well to show that the application would not preclude the last available white space channel. Full power stations would be exempt during the 39 month transition period. The Commission has tentatively concluded that full power station modification applications should also be exempt after the transition. After the transition period has closed, the Media Bureau will again accept petitions for new television allotments. The Commission asks whether such petitioners should also be required to show that a vacant white space channel would remain in the area.

The vacant channel to be preserved would be in the UHF band – generally, on channel 21 or above. However, if the Commission adopts the proposal in a pending rulemaking proceeding to allow personal/portable white space devices to

continued on page 8

Channel Sharing Rules Refined

One of the options available to television stations that offer to relinquish their spectrum rights in the reverse auction segment of the incentive spectrum auction is to share a six-megahertz channel with another licensee. Licensees whose reverse auction applications are accepted will be compensated from proceeds gained in the forward auction. The FCC established rules to govern this channel sharing in 2012. Responding to petitions for reconsideration, the Commission has now issued a *First Order on Reconsideration* to refine those rules and perhaps make shared channel operations more attractive to prospective bidders in the reverse auction.

In the original rules, the FCC required parties to a channel sharing agreement (“CSA”) to execute the agreement and submit it to the Commission with the pre-auction application. Now the agency has amended the rule to allow winning reverse auction bidders to enter into CSAs after the completion of the auction, provided that (1) they indicate in their pre-auction applications that they have a present intent to find a channel sharing partner after the auction, and (2) they execute and implement their CSAs by the date on which they would otherwise be required to relinquish their licenses (i.e., within three months of receiving their auction proceeds). While parties to pre-auction CSAs will be permitted to communicate with each other during the auction, the prohibitions on collusion during an auction will apply to applicants who state an intention to enter into a post-auction CSA without naming a partner. The Commission acknowledges that events during and after the auction beyond the licensee’s control may affect its ability to enter into a suitable CSA. Consequently, the pre-auction statement of intent to enter into a CSA will not bind a successful bidder to seek out a channel-sharing partner and execute a post-auction CSA.

CSAs were originally intended to be permanent arrangements. They could be amended and the rights of either party could be assigned or transferred, subject to Commission consent. However, the channel was to be designated permanently as a shared channel in the Table of Allotments. The Commission has decided to modify this rule to permit flexibility for licensees to determine the length of their CSAs. They can also include provisions in the CSA to address what would become of spectrum vacated by a party whose license was revoked or not renewed. Rather than automatically reverting to the Commission for reassignment, the parties may agree that the surviving

party will take over the entire six-megahertz channel, subject to the FCC’s consent. This avoids the possibility of the FCC assigning a new party to share a channel with the surviving party without the surviving party’s consent. This general principle is subject to the caveat that reserved non-commercial channels must remain noncommercial. Any new licensee for the noncommercial portion of a shared channel must be qualified to be a noncommercial licensee.

The FCC reiterated that it will not dictate business terms in CSAs beyond those items required by the rules. CSAs submitted to the FCC before the auction will be reviewed only to determine the eligibility of the parties to participate. All CSAs will be reviewed after the auction to ensure that they comply with the Commission’s rules for CSAs, but not to regulate the business judgements of the parties as to any other terms. The rules require CSAs to include the following provisions: (1) each licensee must have unrestrained access to the shared transmission facilities; (2) an allocation of bandwidth between the parties; (3) provisions for operation, maintenance, repair and modification of facilities and the division of responsibilities for these matters; (4) termination or transfer/assignment rights to the shared licenses, including the ability of a new licensee to assume an existing CSA.

At least 60 days prior to the date by which a CSA must be implemented, the channel sharee must file a minor change application for a construction permit for the same technical facilities as the sharer station. That application must include a copy of the CSA – whether executed before or after the auction. Following grant of the construction permit and the initiation of shared operations, both parties must file a license application.

Any station that had cable or satellite carriage rights as of November 30, 2010, will continue to have those rights as a party to a CSA.

In a companion *Notice of Proposed Rulemaking*, the Commission proposes to allow licensees to enter into new CSAs after the auction and completely unrelated to the purpose or operation of the reverse auction. Essentially the same rules would apply to these CSAs as are now being imposed on CSAs created in the auction context. The FCC requests public comment on this proposal within 30 days of publication in the Federal Register of notice of this proceeding. Reply comments may be filed until 45 days after publication.

Final Version of TVStudy Released continued from page 3

OET invites comment on the detailed summary of baseline data. The summary and list of eligible stations can be viewed online at https://transition.fcc.gov/Daily_Releases/Daily_Digest/2015/ddtoday.html. Comments are due by July 30.

This list of stations and baseline data are only preliminary. Additions and changes may be made in response to public input and petitions. The final data for use in the auction and repacking will be released later.

EAS Fine Tuned continued from page 1

any event, the message must be legible and remain on the screen long enough to be read.

The visual element of the message must appear in its entirety at least once. Participants are urged to display it more often if there is time. However, the visual element need not necessarily be displayed during the entire length of the event that triggers the alert.

The rules already required visual EAS messages, whether a crawl or block text, to be placed at the top of the screen, or where they will not interfere with other messages. To this the Commission has now added that visual element cannot contain overlapping lines of EAS text or extend beyond the viewable display of the screen, except for crawls that intentionally scroll on and off the screen. The Commission considered but decided not to adopt a requirement that the EAS message be prevented from blocking other non-EAS content on the screen.

The Commission declined to adopt a rule requiring audiovisual synchronicity for EAS messages. Primary control over this feature would lie with the alert originator rather than the last outlet to deliver messages to the public. Downstream equipment might not be coordinated with the originating equipment to make synchronicity feasible. Furthermore, the Commission will allow message originators to include as much information in each of the aural and

video channels as will fit – possibly resulting in content that is not identical.

EAS participants will have six months after the effective date to bring their operations into compliance with these legibility rules. The effective date will be 30 days after publication in the Federal Register.

Another new provision is the adoption of six zeros – “000000” – as the national location code for tests and alerts. In the nationwide EAS test conducted in November, 2011, the location code for Washington, D.C. was used as the location code because there was no national code. This caused confusion in some places where decoders failed to activate equipment because the signal was read as “out of area.” All EAS encoder/decoder equipment must now be capable of processing “000000” in the location code field as a header code indicating that the alert is relevant for the entire country. The deadline for deployment of this equipment is the first anniversary of the effective date of the new rules.

The Commission has also adopted the National Periodic Test Code (“NPT”) as the event code for future nationwide tests in lieu of the Emergency Action Notification (“EAN”). The agency says that this will make testing less burdensome and less confusing to participants. However, participants will have to ensure that their equipment is NPT-compatible. The compliance deadline is one year after the effective date.

The Tower Crew Did It

The FCC’s Enforcement Bureau has issued a *Forfeiture Order* to the licensee of WENY(AM), Southport, New York, for \$7,000 because the fencing around its antenna site was not properly secured for a period of several days. The Commission’s rules require that a broadcast antenna site be enclosed within an effective locked fence. The purpose is to protect the public from entering areas with a high potential for exposure to radio frequency radiation.

On July 11, 2013, an Enforcement Bureau agent observed that the padlock for the antenna fencing gate enclosing the WENY antenna site was unlocked, allowing unrestricted access to the antenna. In response to a *Notice of Violation* sent by the Bureau, WENY explained that its engineer had deliberately left the gate unlocked on July 5, 2013, to allow personnel from a tower repair company to access the site in order to finalize a bid for a tower repair project. The tower company personnel apparently came and went, but failed to lock the padlock on the way out. Station personnel locked the gate on July 12 after being notified by the Bureau’s agent that it was unlocked.

The Bureau issued a *Notice of Apparent Liability for Forfeiture* for \$7,000 against WENY for “apparently willfully and repeat-

edly violating Section 73.49 of the Commission’s rules.” Responding to the *Notice*, WENY admitted that the gate had been unlocked for several days, but argued that the rule violation was neither willful nor repeated, and that the forfeiture should be vacated. WENY said that the violation resulted from its “inadvertent error to have incorrectly assumed that the tower crew would lock the fence around the tower following departure.” WENY also asserted that its failure was not repeated because the incident was a one-time event, and WENY personnel responded to address the problem immediately upon learning about it.

The Bureau said that WENY personnel knew that they had left the fence unlocked. Therefore the act was willful. That WENY’s engineer did not deliberately intend to violate the rule by leaving the fence unlocked is irrelevant. The Communications Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the rule. Furthermore, the violation was repeated because the unlocked condition of the fence continued for several days. WENY’s request to vacate the forfeiture was denied.

HD Carriage Exemption for Small Cable Systems Extended

Certain small cable systems will continue to be exempt from the requirement to carry high definition broadcast television signals thanks to the FCC's action in a *Sixth Report and Order* in Docket 98-120. The Commission enacted a compromise on this issue proposed jointly by the American Cable Association ("ACA") and the National Association of Broadcasters ("NAB").

The Communications Act requires cable operators to carry television signals "without material degradation." In the context of the carriage of digital signals, the Commission has interpreted this mandate (1) to prohibit cable operators from discriminating in their carriage between broadcast and nonbroadcast signals; and (2) to require cable operators to transmit high definition signals to their subscribers in high definition.

To accommodate the concerns of small cable operators about cost and technical capacity, in 2008, the FCC granted a three-year exemption from the HD carriage requirement to cable systems meeting the following criteria for smallness: (1) 2,500 or fewer subscribers; (2) not affiliated with a cable operator serving more than ten percent of all MVPD subscribers; and (3) an activated channel capacity of 552 MHz or less. In 2012, the Commission extended the exemption for those systems until June 12, 2015.

In January of this year, the ACA petitioned the FCC for an additional three-year extension of the exemption, and for

a clarification that analog-only cable systems are not subject to the HD carriage requirement. Since then, the NAB and the ACA have engaged in dialog about their differing viewpoints on HD carriage. Out of those discussions, a joint proposal emerged that the FCC has now adopted. The new policy on small cable system carriage is as follows:

- A small cable system is redefined as one (1) with 1,500 or fewer subscribers; (2) not affiliated with a cable operator serving more than two percent of all MVPD subscribers; and (3) having an activated channel capacity of 552 MHz or less.
- After June 12, 2015, a cable system meeting the above definition of "small," will be exempt from the HD carriage requirement as long as it does not offer any HD programming. Beginning December 12, 2016, a previously exempt system will no longer be exempt if it offers any HD programming.
- Beginning December 12, 2016, when an exempt small cable system offers any programming in HD, the system must give notice that it is offering HD programming to all broadcast stations in its market that are carried on its system.
- A small cable system utilizing the HD carriage exemption on June 12, 2015 that does not qualify for the exemption on June 13, 2015 must come into compliance by December 12, 2016.

TV Channel Would Be Set Aside for White Space Devices

continued page 5

operate on channels 14-20, those channels would be considered available too. An applicant need not show that the same channel is available throughout its proposed service area – as long as there is at least one channel in each two by two kilometer cell of a grid covering the entire proposed protected service area.

A channel would be considerable available for white space operations if it can accommodate wireless microphones and 40 milliwatt personal/portable devices operating in a manner that complies with the existing rules for protecting cochannel television stations, other authorized services, and certain receive sites in the television bands. A 40 milliwatt device must be at least

four kilometers outside of a cochannel television station's protected contour under current rules. The Commission is considering reducing that minimum separation to 1.3 kilometers, and poses the question whether that value should also be used in this context.

These proposals are set out in a *Notice of Proposed Rulemaking* in Docket 15-146. The Commission solicits public comment. The deadline for filing comments will be 30 days after Federal Register publication of notice of the proceeding. Reply comments will be due 60 days after publication.

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