

## Foreign Ownership Review Streamlined

The FCC has streamlined its procedures for reviewing proposals involving foreign ownership interests in broadcast stations in a *Report and Order* in Docket 15-236. The standardized procedures already used for common carrier licenses will now be employed to evaluate broadcast transactions with slight modifications appropriate for broadcasting. The Commission adopted many of the proposals set out in the 2015 *Notice of Proposed Rulemaking* in this docket.

Section 310(b)(3) of the Communications Act prohibits persons who are not United States citizens from holding more than a 20% interest in a broadcast, common carrier or aeronautical station license. Section 310(b)(4) allows, without special review, a maximum of 25% foreign ownership for entities organized under U.S. law that control another entity that is a radio licensee. A company that controls another entity that holds a license can exceed the 25% benchmark only after FCC approval. Until now, the Commission has reviewed such proposals involving broadcast licensees on an ad hoc case-by-case basis. In this proceeding, the Commission adopted specific rules to guide parties through the process.

A request for a Section 310(b)(4) review must be set out in a

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## NAB Reaches Streaming Music Agreements With Sony and Warner

The National Association of Broadcasters (“NAB”) has announced that it has reached agreements with two major music publishers that will make it easier for radio broadcast stations to transmit their over-the-air program streams on the Internet. The music publishers, Sony Music Entertainment and Warner Music Group, agreed to waive certain requirements included in the statutory license for streaming music on the Internet encoded in the Millennium Digital Copyright Act. These agreements serve to revive prior arrangements that NAB had made with the major labels and independents but which had expired last year.

The statutory license includes a number of restrictions that may hinder the way in which radio stations would ordinarily air music. Under the terms of the agreement with Sony, which runs until December 31, 2020, Sony has waived some of those restrictions. The

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## Awry Contest Jeopardizes Station’s License Renewal

The FCC has designated the license renewal application of KDND(FM), Sacramento, for a hearing before an administrative law judge to determine whether the station’s licensee, an entity under common control with and a predecessor-in-interest to the current licensee, Entercom License, LLC, operated the station in the public interest during the most recent license term and whether the license should be renewed. This proceeding grew out of events that transpired in conjunction with an on-air contest conducted by the station on January 12, 2007, that led to the death of a contestant. The FCC described the facts surrounding the incident as follows.

The contest, conducted by a three-person team of on-air hosts during the “Morning Rave Show,” was entitled “Hold Your Wee for a Wii.” The contestant who was able to drink water at regular intervals for the longest time without urinating or vomiting would win a Nintendo Wii video game console. Participants were solicited from the station’s audience with announcements explaining that contestants would be drinking water every fifteen minutes (identifying the quantity

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of the water as 8 ounces one time, and 16 ounces another time), and that "the last person standing without going wee wins the Nintendo Wii."

According to the FCC, when the 18 contestants arrived at the station early that morning, they were told that they would be drinking 8-ounce bottles of water every 10 minutes, rather than every 15 minutes. Contestants would be disqualified for urinating, vomiting, eating, failing to drink the entire bottle or leaving the station's kitchen area.

All contestants were required to sign a release form that included a generic waiver of liability. There was no mention of specific risk involved in the competition and no medical personnel were present.

The contestants drank their first 8-ounce bottles at 6:20 a.m. At about 8:00 a.m., the water quantity was increased to a 16.9-ounce bottle every 10 minutes. This change in procedures by the show hosts was apparently motivated by their concern that the contestants might outlast the scheduled end of the show at 10:00 a.m., and the desire to maximize the entertainment value for listeners.

At about 9:15 a.m., after downing about nine 8-ounce bottles and eight 16.9-ounce bottles, Jennifer Lea Strange and Lucy Davidson were the only contestants remaining. The station then offered each of them a pair of Justin Timberlake concert tickets as a second-place prize if she would drop out. Both of them declined and continued drinking.

Later, a disoriented Ms. Strange allegedly complained of a headache and lightheadedness. Station staff again offered her the Timberlake tickets to withdraw and take second place, and she accepted. Both contestants were awarded their prizes on the air. Ms. Strange then drove herself home. Later that day, she succumbed to a coma and died. An autopsy indicated that she had died of water intoxication – a potentially fatal disturbance in brain functions that results from the over-consumption of water.

Ms. Strange's survivors sued Entercom for wrongful death in California state court. After a fully-litigated trial, a jury awarded the plaintiffs a \$16.5-million judgment. The jury found that Entercom was negligent in the death of Jennifer Strange and that she was not contributorily negligent. The parties subsequently reached a settlement to avoid prolonging the litigation.

From evidence presented in the trial, it appeared that the contest was created and implemented almost entirely by the "Morning Rave Show" personalities without having been submitted for review by Entercom's corporate in-house legal department. The Commission found that Entercom's contest review and oversight processes resulted in no single individual having clear responsibility for compliance with contest policy, thus allowing each person involved to disclaim personal responsibility.

The then-current license term for KDND was set to expire in 2013, and Entercom timely filed an application

for renewal. The Media Action Center ("MAC") and its director, Sue Wilson, filed a Petition to Deny the renewal application, arguing principally that Entercom's conduct in the events associated with the contest called into question its basic character qualifications to be a broadcast licensee. MAC also alleged that KDND had violated the FCC's contest rule by failing to completely disclose the material terms of the contest to the station's on-air audience, and that the terms were abruptly and inappropriately modified while the contest was in progress.

The Commission had launched an investigation in January 2007 shortly after the contest incident, relying on evidence generated by that investigation, the transcript from the wrongful-death trial, and materials submitted by MAC. While the FCC declined to initiate a proceeding as to whether Entercom has the basic qualifications to be a licensee, it did conclude that there are substantial and material questions of fact as to whether Entercom operated the station in the public interest and whether the station's license should be renewed. The Commission determined that a trial-like hearing is necessary resolve those questions, and observed that its task in this case is different from that of the California court in the wrongful-death trial. That litigation concerned alleged negligence by Entercom and its employees. On the other hand, Section 309(k)(1) of the Communications Act requires the FCC to determine whether the public interest, convenience and necessity will be served by granting the license renewal application. Nonetheless, the agency opined that causing the death of a member of the station's listening audience appears to be prima facie contrary to the public interest.

In the *Hearing Designation Order*, the Commission directed its administrative law judge to adduce evidence and make findings with respect to the following issues:

- (a) To determine whether Entercom designed and conducted a contest that was inherently dangerous;
- (b) To determine whether Entercom increased the danger to the contestants in the "Hold Your Wee for a Wii" contest by changing the contest terms;
- (c) To determine whether Entercom was aware of the potential dangers of the "Hold Your Wee for a Wii" contest and water intoxication;
- (d) To determine whether Entercom failed to protect the contestants of the "Hold Your Wee for a Wii" contest from its potential dangers;
- (e) To determine whether Entercom failed to warn the contestants of the "Hold Your Wee for a Wii" contest of the contest's potential dangers;
- (f) To determine whether Entercom prioritized entertainment value over the welfare of contestants of the "Hold Your Wee for a Wii" contest;
- (g) To determine whether Entercom failed to properly train and exercise appropriate supervision of KDND staff

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# NAB Reaches Streaming Music Agreements with Sony and Warner

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most important elements of the waiver agreement are these:

- The statutory license restricts how often webcasters may transmit recordings from a specific artist or album during a certain period of time. The limit during a three-hour period is three songs from an album (no more than two consecutively), and four songs by the same artist or from a boxed set (no more than three consecutively). The waiver permits streaming up to half of an album during a three-hour period, provided that the programming is consistent with the station's normal practices.
- The statutory license restricts the pre-announcing of songs. The Sony waiver permits pre-announcing as long as the exact time that a cut will air is not announced. Publication of a written program schedule is not allowed.
- The statutory license requires a station to display simultaneously while streaming the music, the title, album and artist of each song on its website or the consumer's device. The Sony agreement continues to require this feature, but excuses occasional or inadvertent lapses.
- The statutory license allows for temporary (or ephemeral) copies of songs used to facilitate the broadcast or streaming process to be kept for a maximum of six months. If after that time such a copy is still needed for station operations, the first one must be destroyed and a new one made. The agreement eliminates this obligation.

Stations with larger audiences must give Sony some ben-

efits in exchange for these waivers. Stations that regularly stream more than 80,000 Aggregate Tuning Hours of music per month must agree to these additional conditions:

- The station must display a "BUY NOW" button on its website, player or application that takes the listener to a Sony-authorized download vendor where music can be purchased.
- If the station makes its simulcast stream available as a transmission syndicated or aggregated through third-party websites or mobile apps, it must restrict their streaming to the United States.

Stations must proactively opt in to take advantage of the Sony waiver. The NAB is facilitating this process free of charge for all commercial and noncommercial radio broadcast stations regardless of NAB membership status. The opt-in registration page is found at this link: [www.nab.org/sites/sonywaiver/](http://www.nab.org/sites/sonywaiver/).

The agreement with Warner contains similar waiver provisions. No action is needed however to take advantage of it because it is an extension of a prior agreement. With the extension, this agreement will run until September 30, 2019.

Broadcasters should note that these waivers relax only parts of the statutory license. Stations utilizing the statutory license must still comply with other provisions – most notably to continue to pay the copyright royalty fees to SoundExchange.

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## Awry Contest Jeopardizes Station's License Renewal

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and the "Hold Your Wee for a Wii" contest to ensure the safety of the contestants;

(h) To determine, in light of the evidence adduced under the foregoing issues and the totality of the circumstances, whether Entercom operated KDND in the public interest during the most recent license term; and

(i) To determine, in light of the evidence adduced under the foregoing issues and the totality of the circum-

stances whether Entercom's license renewal application should be granted.

In addition to Entercom, the Commission's Enforcement Bureau and MAC were named as parties with standing to present evidence at the hearing. Entercom bears the burden of proceeding with the introduction of evidence and the burden of proof. The Commission directed that the hearing should commence in not less than nine months.

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petition for declaratory ruling and filed electronically as an exhibit with an application for an authorization, if there is one. If no application is involved, the petition is to be filed electronically as a non-docketed filing in the Commission's Electronic Comment Filing System.

A broadcast petitioner can now request advance consent for any of the following scenarios that would allow for greater flexibility and more agile restructuring when opportunities arise for new investors to join the enterprise or for existing interest holders to increase their stake. These include: (1) approval of up to and including 100 percent aggregate foreign ownership (voting and/or equity) by unnamed and future for-

ign investors in the controlling U.S. parent of a broadcast licensee, subject to certain conditions; (2) approval for any named foreign investor that proposes to acquire a less than 100 percent controlling interest to increase that interest to 100 percent at some future time; and (3) approval for any non-controlling named foreign investor to increase its voting and/or equity interest up to and including a non-controlling interest of 49.99 percent at some future time.

When requesting approval to exceed the 25% threshold, a petitioner must identify each specific investor holding a five percent or greater stake in the entity. The standard broadcast

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# DEADLINES TO WATCH



## License Renewal, FCC Reports & Public Inspection Files

December 1, 2016 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.**

December 1, 2016 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.** (The FCC has amended its rules so as to reschedule this filing date for December 1, 2017, pending review by the Office of Management and Budget. As of this writing, that review has not been completed. Until OMB approves the new forms, the prior rule and schedule will remain in effect.)

December 1, 2016 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).

December 1, 2016 Deadline to file EEO Broadcast Mid-term Report for all radio stations in employment units with more than 10 full-time employees in **Colorado, Minnesota, Montana, North Dakota and South Dakota**; and all television stations in employment units with five or more full-time employees in **Alabama and Georgia.**

December 1, 2016 Deadline for all digital television stations to file annual Ancillary/Supplementary Services Report for 12-month period ending September 30.

January 10, 2017 Deadline to place Issues/Programs List for previous quarter in public inspection file for all full service radio and television stations and Class A TV stations.

January 10, 2017 Deadline to file quarterly Children's Television Programming Reports for all commercial full power and Class A television stations.

## Deadlines for Comments In FCC and Other Proceedings

Docket	Comments	Reply Comments
(All proceedings are before the FCC unless otherwise noted.)		
Docket 16-306; Public Notice Catalog of repacking reimbursement expenses	Nov. 14	Nov. 29
Docket 16-306; Public Notice Post-incentive auction transition schedule		Nov. 15
Docket 16-41; NPRM Fostering diversity of video programming	Dec. 27	Jan. 23

## 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 **November 10, 2016.** Informal objections may be filed any time prior to grant.

Community	Station	Channel	Applicant
Fort Smith, AR	KWFT-LD	6	Kaleidoscope Foundation, Inc.
Lucerne Valley, CA	K24LS-D	24	Hesperia Area Recreation Dist. Foundation
Lucerne Valley, CA	K26MW-D	26	Hesperia Area Recreation Dist. Foundation
Lucerne Valley, CA	K32LS-D	32	Hesperia Area Recreation Dist. Foundation
Coolin, ID	New	18	Priest Lake Translator District
Louisville, KY	WBXV-LD	22	L4 Media Group, LLC
Caballo, NM	K18LP-D	18	New Mexico State University
Port Jervis, NY	W22EW-D	22	Venture Technologies Group, LLC
Port Jervis, NY	W25FA-D	25	Venture Technologies Group, LLC
Port Jervis, NY	W28ES-D	28	Venture Technologies Group, LLC
Port Jervis, NY	W31EF-D	31	Venture Technologies Group, LLC
Uvalde, TX	KNHB-LD	2	CTV Broadcasting, LLC

## Cut-Off Dates for Noncommercial FM Applications

The FCC has named the applicant for a new noncommercial FM station identified below as the tentative selectee. Petitions to deny must be filed by the deadline shown. Informal objections may be filed any time prior to grant of the application.

Community	Channel	MHz	Applicant	Deadline
Horizon City, TX	218	91.5	Open Arms Community of El Paso	Nov. 28



# 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 **December 27, 2016**. Informal objections may be filed any time prior to grant of the application.

Present Community	Proposed Community	Station	Channel	Frequency
Kissimmee, FL	Winter Park, FL	WHOO(AM)	N/A	1080
Chubbuck, ID	Blackfoot, ID	KLLP	253	98.5
Idaho Falls, ID	Aberdeen, ID	KID-FM	241	96.1
Princeton, KY	Providence, KY	WAVJ	285	104.9
Providence, KY	Sebree, KY	WWKY	249	97.7
Roundup, MT	Klein, MT	KZMO	260	99.9
Fernley, NV	Hazen, NV	KNEZ	297	107.3
Brockport, NY	Brighton, NY	WOKR(AM)	N/A	1600
Loretto, TN	Florence, AL	WLXA	252	98.3
Christoval, TX	Stanton, TX	New	290	105.9
Laramie, WY	Saratoga, WY	KAIW	205	88.9

## Rulemakings to Amend FM Table of Allotments

The FCC is considering an amendment proposed to the FM Table of Allotments to add or delete (indicated with a "D") the following channels. The deadlines for filing comments and reply comments are shown. The asterisk indicates that these channels are reserved for noncommercial use.

Community	Channel	MHz	Comments	Reply Comments
Gaylord, MI	246C2	97.1	Nov. 28	Dec. 13
Mullin, TX	224A(D)	92.7	Dec. 19	Jan. 3
Mullin, TX	277A	103.3	Dec. 19	Jan. 3
Red Lake, MN	287C1	105.3	Dec. 27	Jan. 10

## Threshold Qualifications Filing Window for Tribal Allotment

The FCC has received the application and Tribal Qualifications showing of the Cheyenne River Sioux Tribe for a new FM station as described below. Other qualified tribal entities may file competing applications by the indicated filing deadline.

Community	Channel	MHz	Filing Deadline
Eagle Butte, SD	228C1	93.5	November 18

**DEADLINE TO FILE FORM 3  
IN EAS TEST REPORTING SYSTEM  
NOVEMBER 14, 2016**

## 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
Modifications to FM translator and booster stations, Section 74.1251	Nov. 14
Dismissal of petitions to deny and informal objections, Section 73.2588	Nov. 14
Broadcast license renewal application, Form 303-S	Nov. 14
Requests for waivers of regulatory fees and application fees	Nov. 21
Non-duplication and syndicated exclusivity, Sections 76.122, 76.123, 76.124	Nov. 21
Petitions to amend FM and TV tables of allotment, Section 1.420	Nov. 21
International and experimental broadcast applications, Forms 309, 310, 311	Nov. 25
DTV Program System and Information Protocol (PSIP), Section 73.682(d)	Nov. 28
Disturbance of AM antenna pattern, Sections 1.3002, 1.3003, 1.3004, 73.875, 73.1657, 73.1690	Dec. 19
Broadcast station operating power and mode tolerances, Section 73.1560	Jan. 3

## Cut-Off Dates for FM Booster Applications

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

Community	Parent Station	Channel	MHz	Filing Deadline
Kahului, HI	KKHI	240	95.9	Nov. 17
Greenfield, IN	WJCF	201	88.1	Nov. 17

**COMMERCIAL RADIO STATIONS IN TOP-50 MARKETS WITH 5 OR MORE FULL TIME EMPLOYEES SHOULD HAVE BEGUN USING ONLINE PUBLIC FILE AS OF JUNE 24, 2016 FOR NEW DOCUMENTS. DEADLINE TO UPLOAD PRIOR EXISTING DOCUMENTS IS DECEMBER 24, 2016**

# Deadline Set for Multilingual EAS Reports; Appeal Filed

The FCC's rules do not presently require participants in the Emergency Alert System ("EAS") to distribute alerts in any language other than English. However, neither is there any rule to prohibit non-English alerts. With the growth of significant communities whose primary language is one other than English, the Commission has decided that State EAS Plans should include information about non-English EAS activities in their respective jurisdictions. In March of this year, the Commission adopted an *Order* in Docket 04-296 mandating EAS participants to report their efforts, if any, to provide EAS alerts in languages other than English to their respective State Emergency Communication Committees ("SECCs"). Each SECC is then to compile and summarize this information for inclusion in its State EAS Plan. This process has been codified in Section 11.21 of the Commission's rules.

The effective date for this data collection plan had to await review and approval by the Office of Management and Budget. When that approval was announced on November 3, the Commission's *Order* became effective. The FCC had set the deadline for all EAS participants to submit their reports to the SECCs at one year after the effective date. Accordingly, that deadline is scheduled for November 3, 2017.

While broadcasters and other EAS participants are required to cooperate with SECCs and other local authorities to compile this information, the Commission set no specific required compliance method. SECCs and EAS participants are given broad flexibility to describe any measures that have been taken to provide EAS alerts to non-English speakers. If no such activities have been undertaken, the Commission assured respondents that this requirement may be fulfilled by simply indicating that no measures have been taken. Nonetheless, the Commission set forth some specific categories of information that it wants EAS participants to provide:

- A description of any actions taken by the EAS participant (individually or in conjunction with other participants or with emergency authorities) to make EAS alert content available in languages other than English to its non-English-speaking audience.
- A description of any future actions planned by the EAS participant to provide EAS alert content in languages other than English to its non-English-speaking audience, along with an explanation for the participant's decision to plan or not to plan such actions.
- Any other relevant information that the EAS participant may wish to provide, including state-specific demographics on languages other than English spoken within the state, and identification of resources used or needed to originate current or proposed multilingual EAS alert content.

The FCC adopted the *Order* in response to a Petition for Immediate Interim Relief that had been filed in 2005 in the wake of Hurricane Katrina by the Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the organization now known as the Minority Media, Telecom and Internet Council ("MMTC"). The petitioners had urged an aggressive approach to meeting the emergency information needs of non-English-speaking communities. They asked the FCC to amend its EAS rules to incorporate the following:

- Primary Entry Point ("PEP") stations would air all Presidential level messages in both English and Spanish.
- A "Local Primary Spanish" ("LP-S") station would be designated where appropriate, and state and local EAS plans would designate an LP-S station where an LP-1 station has been designated.
- A "Local Primary Multilingual" ("LP-M") station would be designated in local areas where a substantial part of the population is primarily fluent in a language other than English or Spanish.
- At least one broadcast station in every market would monitor and rebroadcast emergency information carried by local LP-S and LP-M stations.
- When a local LP-S or LP-M station loses its transmission capability in an emergency, other stations remaining on the air would broadcast emergency information in the affected languages until the LP-S or LP-M station returns to the air.

The Commission rejected these suggestions, observing that imposing such changes on the current EAS structure would be inherently cumbersome. The petitioners were quite dissatisfied when the result of their efforts turned out to be a mere exercise in gathering information rather than a mandate to implement new systems to serve members of the public who do not understand English. MMTC and the League of United Latin American Citizens have jointly petitioned the U.S. Court of Appeals for the D.C. Circuit to review the Commission's *Order*. In their appeal, MMTC and the League assert that the technical problems cited by the Commission have resulted from reliance on outdated equipment which could be replaced. They argue that the FCC's decision violates the Communications Act by "treating language minorities unequally based on their national origin." The cycle for responsive pleadings in this appellate proceeding has not yet been completed and what action the court will ultimately take remains to be seen.

# Repack Reimbursement Catalog Updated

The FCC's Media Bureau has released an updated version of the catalog of expenses for which eligible television broadcasters will be able to request reimbursement in the course of the repacking of the television band that will occur after completion of the Incentive Auction. In 2013, the Commission engaged the consulting firm of Widelity, Inc. to develop this catalog. The first edition was published for public comment, but the Commission has not yet adopted baseline cost estimates for the eligible expenses listed. To ensure that cost estimates are current, Widelity has again been retained to produce an updated version of the catalog. The Bureau seeks public comment on the updated catalog.

The Bureau also requests input on how it should go about adjusting baseline costs in the catalog throughout the three-year reimbursement period during the post-auction repacking process. The Bureau wants to maintain current values in the cost estimates to reflect the natural changes in

the economy that affect prices. It proposes to update the costs listed in the catalog annually based upon the Producer Price Index ("PPI"). The Bureau proposes to rely on the PPI annual average, specifically the WPUFD4 series, as calculated by the Bureau of Labor Statistics, rather than the seasonally-adjusted final demand index.

The Bureau solicits public comment on these matters in Docket 16-306. Comments must be filed by November 14. Reply comments are due by November 29.

The catalog is available on the Commission's website as a stand-alone document. It will also be embedded as part of the online Reimbursement Form, Form 2100, Schedule 399. The form is available for beta testing in the Commission's License and Management System ("LMS") database. The beta environment will be open to all television broadcasters with an active facility associated with their FCC Registration Number.

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## Foreign Ownership Review Streamlined

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ownership attribution principles in Section 73.3555 of the Commission's rules will pertain in the foreign ownership context for evaluating vertical ownership chains, determining what interests in other licensed entities must be disclosed and determining insulation where necessary.

Broadcast petitioners can obtain a one-time declaratory ruling regarding their foreign ownership interests that would apply to all broadcast licenses then or subsequently proposed to be acquired by the same licensee or its covered subsidiaries and affiliates, regardless of geographic location or service. However, assignment and transfer-of-control applications would continue to be subject to petitions to deny and informal objections in the normal application of the Commission's rules.

The Commission adopted a new standard for the methodology that publicly traded companies can use to assess their compliance with the ownership restrictions of Section 310(b). They can rely on ownership information that is known or that reasonably should be known to determine aggregate levels of foreign ownership. The Commission expects that such licensees could identify interests from their own records and corporate knowledge, and with reference to publicly available information such as reports filed with the Securities and Exchange Commission. The FCC no longer believes that surveys and random sampling techniques for collecting shareholder data are useful.

Privately held licensees are subject to a stricter standard. They are required absolutely to know the status of all interest holders and to maintain compliance with Section 310(b) accordingly.

The Commission emphasized that all licensees have an affirmative duty to monitor their foreign equity and voting interests to ensure their compliance with all of the provisions of Section 310(b). In situations where a licensee discovers that it is out of compliance with the statutory 25% benchmark of Section 310(b)(4) or a current declaratory ruling, it may file

a petition for a remedial declaratory ruling. The Commission says that it would not expect to take enforcement action against the licensee for such noncompliance provided that: (1) the licensee notifies the relevant Bureau by letter no later than 10 days after learning of the circumstance that rendered the noncompliance and states in the letter that it will file a petition for declaratory ruling or take remedial action to come into compliance within 30 days of the discovery of the noncompliance, and (2) the licensee demonstrates in its petition for declaratory ruling or its report of successful remedial action that the noncompliance resulted solely from circumstances beyond the licensee's control that were not reasonably foreseeable to or known by the licensee with the exercise of the required due diligence. If a petition for remedial declaratory ruling is filed, the Commission will not require the licensee to remedy the noncompliance until it has ruled on the petition. If the petition is denied, the licensee must come into compliance within 30 days.

In the case of a publicly traded broadcast licensee that discovers noncompliance with the 20% limit strictly required by Section 310(b)(3), the licensee must take immediate steps to become compliant. The Commission would not expect to take enforcement action if the licensee notifies the Media Bureau within 10 days of discovery of the noncompliance that it will take remedial action within 30 days, and that the noncompliance was due solely to circumstances beyond its control that were not reasonably foreseeable to or known by it with the exercise of the required due diligence.

The adoption of these rules and policies is not retroactive. Licensees operating under the terms of previously issued declaratory rulings will be required to continue to comply with those rulings. However, such licensees are eligible to pursue new petitions for declaratory rulings. Petitions for declaratory rulings pending at the time that the new rules become effective will be evaluated under the new rules.

# Serial Pseudonym Filer Pays \$100,000 Civil Penalty

Capping a series of investigations into numerous rule violations stretching back to the 1980s, the FCC's Media Bureau has come to terms in a Consent Decree with one Brian Dodge and various entities he created to be vehicles for broadcast applications. These applications have involved or proposed three AM stations, two noncommercial FM stations, numerous FM translator stations and eight low power FM stations in New England and upstate New York.

The Consent Decree recounts that Dodge has participated in filing numerous applications since 1982, in his own name, and in the name of various other individuals or entities. Although some of these applications resulted in operating stations, those stations frequently existed under a cloud about whether the representations in the filings were accurate as to the parties, and whether rules were violated, especially concerning the operation of FM translators.

For a while, Dodge managed to thwart Commission efforts to investigate him simply by failing to respond to the agency's letters. In 1993, Commission staff sent him a detailed inquiry letter seeking clarification (a) of his role in Harvest Broadcasting Association, the licensee of several translator stations; (b) an explanation of apparent misrepresentations made to the Commission; (c) an explanation for his failure to respond to prior site availability allegations and a request that he do so; and (d) information about questionable operation of the translators. Although a response to this letter of inquiry is required under the Commission's rules, Dodge never responded. Since that time, Dodge's real name has not appeared in any FCC application as a principal or an applicant.

Apparently in an effort to avoid detection and escape association with the inquiry described above, and to provide cover for violations or potential violations of multiple ownership restrictions, Dodge populated his applications with names of principals such as "Tim Allen," "Pastor Tim Allen," "Bishop Tim Allen," "Brian Allen," "Matt Allen," and "Bree Allen" – all of which were pseudonyms for himself. His wife, his mother and his grandmother were also named in some of the applications – in which Dodge was the de facto controlling party.

During the 2013 low power FM filing window, Commission staff became suspicious when multiple LPFM applications arrived with various connections to Tim Allen. Using various applicant names and pseudonyms

for attributable parties to the applications, Dodge filed eight applications in the filing window. LPFM principals are not permitted to have an attributable interest in any other station. Dodge was the sole principal of the owner of WWNH(AM), Madbury, New Hampshire, and was thus disqualified from being an LPFM applicant in any one application, much less in eight.

Commission staff blocked the processing of these applications in the agency's electronic filing system. Various FCC staff members then received telephone calls about the applications from Dodge, who identified himself as "Tim Allen." However, the caller ID function on the Commission's telephones identified him as Brian Dodge. Two of those applications were eventually granted. Those authorizations will be cancelled under the Consent Decree.

Under the terms of the Consent Decree, Dodge admitted to the numerous violations of which he was accused. Dodge agreed to the cancellation of the two LPFM authorizations. He agreed to stop pursuing revival of the license for WCKL(AM), Catskill, New York, which had expired for being silent for more than a year (which he disputed). He agreed to dismiss pending petitions for reconsideration of the dismissal of noncommercial FM applications filed by Granite State Educational Foundation, in which he was an unnamed real party. He agreed to pay a civil penalty of \$100,000.

Provided that red light holds against the processing of filings for seven translator stations held by Dodge's Harvest Broadcasting Association are removed, the pending license renewal applications for those stations will be granted – each for a shortened one-year license term. Within 180 days of the renewal grant, Harvest must demonstrate to the Media Bureau that it is operating those stations in compliance with Section 74.1232 of the Commission's rules, which prohibits a translator from common ownership with and receiving financial support from the parent station if the translator's primary contour extends beyond the parent's contour. There was evidence in the proceeding that Harvest had been violating this rule with respect to these stations.

The Bureau also agreed to grant the pending license application to cover the construction permit for WWNH for a one-year term, again, provided that the red light hold on the processing of the license application is removed.

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