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Antenna™

An update on broadcasting law & issues from Donald E. Martin

FCC Considers National TV Ownership Limits

The FCC has launched a review of its rule restricting the national audience reach permitted of entities owning television stations in a *Notice of Proposed Rulemaking* in Docket 17-318. Presently, any company or person is limited to holding attributable interests in television stations that collectively reach no more than 39 percent of the households in the United States.

The Commission has historically imposed limits on television station ownership in an effort to promote diversity, localism, and competition. The agency has applied various formulas to limit the number of television stations that can come under common ownership, including restrictions on the total number of stations, restrictions on the size of the audience reach, and sometimes, combinations of these two factors. The current 39 percent limit on audience reach came about when Congress enacted the 2004 Consolidated Appropriations Act ("CAA"), in which it directed the Commission "to modify its rules to set the national cap at 39 percent of national television households." The Commission is considering whether the national cap now serves the public interest given the changes that have occurred in the television industry.

However, a preliminary question to resolve concerns whether the FCC even has the authority to repeal or adjust the cap. The ambiguous language of the statute opens the matter to differing

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LPTV Applications Frozen

On December 20, 2017, the FCC's Media Bureau announced a freeze on the filing of minor change applications for low power television and TV translator stations (collectively, "LPTV"). The freeze became effective immediately and will continue until after the Special Displacement Filing Window to be held in the next few months. The Bureau will continue to process applications that were filed before the freeze. The Bureau said that it will also consider on a case-by-case basis new filings with requests for waivers of the freeze that demonstrate that the change is needed for technical reasons or to maintain quality service to the public.

The Special Displacement Filing Window will be an opportunity for LPTV stations that have been displaced by the post-Incentive Auction repack process to apply for a new channel.

At least 60 days prior to the opening of that Filing Window, the Bureau will release a national channel database to assist LPTV applicants in finding open channels. The freeze is intended to stabilize the database during the 60-day run-up to the Filing Window.

'Blue Alert' Added to EAS

The FCC has amended Part 11 of its rules to include a new "Blue Alert" to the Emergency Alert System ("EAS"), to be indicated by the three-letter event code, "BLU." A Blue Alert can be initiated at the request of a law enforcement agency to signal to the public the presence or movement of a potentially dangerous suspect in connection with an incident in which a law enforcement officer has been killed, injured, or is missing in the line of duty. The Commission adopted this amendment in a *Report and Order* in Docket 15-94. This action is intended to promote the development of Blue Alert plans throughout the United States, and to further the Commission's statutory responsibilities under the Blue Alert Act. The need for a separate EAS event code dedicated to this type of message has been identified by the Office of Community Oriented Policing Services ("COPS Office") of the United States Department of Justice ("DOJ").

In enacting the Blue Alert Act, Congress directed the Attorney General to establish a national Blue Alert communications network to issue Blue Alerts using

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Captioning Registration and Complaint Rules Become Effective

New rules concerning closed captioning of video programming that the FCC adopted almost two years ago have just recently become effective as of December 22, 2017. In February 2016, the FCC amended its rules governing the closed captioning of video programming to more clearly allocate responsibilities for captioning between video programming distributors ("VPDs"), including broadcast television stations, and video programmers, including program producers and owners. Programmers now have the significant new obligations to insert captioning in their nonexempt programs and to file a statement annually with the Commission to certify compliance with the closed captioning rules. These rule changes resulted in changes to the information collection requirements under the Paperwork Reduction Act. That meant that the rules could not become effective until they had been approved by the Office of Management and Budget, and notice of that approval had been published in the Federal Register. This notice was finally published on December 22, 2017, and the rules came into effect on the same day.

A video programmer is defined as any entity that provides video programming that is intended for distribution to residential households including, but not limited to, broadcast or nonbroadcast television networks and the owners of such programming. These rules cover programming distributed by various means, including broadcast television, cable and satellite systems, and Internet protocol.

Until now, the primary responsibility for ensuring captioning compliance rested on VPDs. VPDs were assumed to be able to encourage programmers to insert captioning via contractual mechanisms and market forces. However, the Commission determined that this was an ineffective method for ensuring that programming reaching the public includes good quality captioning. Therefore, the responsibility for captioning has now been divided between the VPD and the programmer, allocating to each party those parts of the process over which it has the most control.

Video programmers are typically the entities with the most direct control over the production and quality of the captioning for their programming. The FCC had previously adopted standards for the non-technical quality of captioning that include the elements of accuracy, synchronicity, completeness, and placement. By the time a captioned program reaches the VPD, those elements are usually fixed and it may be impractical to expect the VPD to be able to adjust them. The Commission has recognized the primary role of programmers in this process by allowing VPDs to satisfy their obligations for captioning quality by obtaining certifications of compliance from the programmer. However, the Commission found that compliance has been haphazard and inconsistent. The new rule assigns the obligation for non-technical quality control of captioning to the programmer, and programmers will now be required to submit annual certifications of their compliance to the FCC.

In this mandatory certification, each programmer must certify that its programming (1) is in compliance with the obligation to provide closed captioning and (2) either complies with the captioning quality standards of Section 79.1(j)(2) of the Commission's rules or adheres to the Commission's captioning quality Best Practices set out in Section 79.1(k)(1). If a programmer claims an exemption from mandatory captioning, the programmer must certify that the programming qualifies for the exemption and specify each category of exemption that is claimed. The programmer must file the certification with the FCC upon launching its programming operation and annually thereafter on or before July 1. The certification need not be updated during the interim if new or different programming comes to be offered. However, an update will be required if a new or different exemption is claimed mid-year. Certifications are to be filed electronically on the FCC's website and available for public review under procedures to be developed by the agency's Consumer and Government Affairs Bureau. The Bureau will establish the process and the first filing deadline for these certifications.

VPDs retain exclusive responsibility for the technical elements of captioning, including pass-through of all the captioning they receive from programmers and final delivery to the viewer without adversely affecting the non-technical quality. To be clear, the rules still mandate that all nonexempt programming distributed by a VPD includes captioning that meets the Commission's quality standards. Distribution of nonexempt programming that fails to include captioning is a rule violation. A VPD can satisfy its obligation to comply with this rule by determining that the programmer has an appropriate certification on file with the FCC, and then passing that programming and any associated captioning through to viewers.

The Commission also established a system for facilitating and addressing consumer complaints related to captioning. Consumers may submit complaints either directly to the VPD or to the Commission. The Commission will refer the complaints to the VPD and the programmer (if the programmer can be identified). The VPD must investigate and respond immediately. The programmer can commence its own investigation then also, but it is not required to do so. The VPD will be required to exercise due diligence to identify the source of the problem. At a minimum, this means the VPD must check the program stream, its processing equipment, and the consumer's equipment. If the investigation reveals that the problem is within the VPD's control, the VPD must correct it and inform the Commission, the consumer, and the programmer within 30 days of when the Commission referred the complaint to the VPD. If the VPD's investigation reveals that the problem is not under its control, it must certify to that effect to the Commission, the consumer and the programmer.

Thereupon, the burden of resolving the complaint shifts to the programmer. It must undertake an investigation of its equipment and practices, correct any problems that it finds, and respond in writing within 30 days that it has cured the problem or that it cannot find any problem within its control.

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$13+ Million Fine Proposed for Sponsorship ID Miscues

The FCC has adopted a *Notice of Apparent Liability for Forfeiture* ("NAL") proposing to fine television station group owner Sinclair Broadcast Group, Inc. $13,376,200 for repeatedly broadcasting certain programming without disclosing to the audience that the content had been paid for by a sponsor. Such disclosures are required by Section 317 of the Communications Act and Section 73.1212 of the Commission's rules. This would be the largest fine ever imposed by the Commission for violation of the sponsorship identification rule.

In April 2016, the Commission received an anonymous complaint alleging that some Sinclair stations had broadcast "compensated stories as news content" about Huntsman Cancer Institute ("HCI") on behalf of the Huntsman Cancer Foundation ("HCF") without disclosing that HCF had paid for those stories to be aired. This prompted the Commission's Enforcement Bureau to launch an investigation and it issued a letter of inquiry to Sinclair in July 2016.

The NAL recounted factual findings of this investigation, which the Commission says are mostly undisputed by Sinclair, although Sinclair disagrees with the inferences that the Commission draws. Sinclair had entered into an agreement with HCF to promote HCF and HCI through broadcasts on Sinclair stations and on certain non-Sinclair stations to which it distributed programming. According to the NAL, the arrangements for the HCI promotional campaign called for production of short features 60-90 seconds in length made to appear like independently produced news stories, and a separate genre of 30-minute long-form programs. These programs were produced at Sinclair's Salt Lake City station and distributed from there to other Sinclair stations and to the non-Sinclair stations. The Commission calculated that between January 15 and July 26, 2016, these materials were broadcast 1,366 times on 64 Sinclair stations, and 278 times on 13 non-Sinclair stations, with no disclosures to the audience that HCF had paid for them.

Some of the long-form programs did include disclosures that they had been sponsored, but the Commission contended that these disclosures failed to clearly identify the sponsor. An audio statement that the program was sponsored aired in connection with an on-screen graphic with the message, "Thanks for joining us for this special broadcast from the Huntsman Cancer Institute." While Sinclair asserted that this sufficed to identify the sponsor, the Commission disagreed, reasoning that the program supplier, or sponsor, might not necessarily be the entity featured in the program. Programs identified in this manner aired 71 times on Sinclair stations and 8 times on non-Sinclair stations.

In its response to the letter of inquiry, Sinclair explained that any violations that may have occurred had resulted from inadvertent human error. It averred that its executive and legal staffs had repeatedly instructed station personnel to include proper sponsorship identification announcements in the programs. The company claimed that any errors in complying with the Commission's rules were the products of miscommunications and misunderstandings, which were exacerbated by the automation process for assembling and scheduling programming. However, the Commission determined that good intentions do not absolve a party and that sanctions are nonetheless appropriate. Citing precedent from one of its own prior decisions, the agency explained that "It is immaterial whether [the licensee's] violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight."

Section 1.80(b) of the FCC's rules sets the base forfeiture at $4,000 for each violation or for each day of a continuing violation of the sponsorship identification rule. The Commission has discretion to adjust this amount, taking into account the nature, circumstances, extent and gravity of the violation, and with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, economic gain realized from the activity in question, and such other matters as justice may require. The Commission proposed a substantial upward adjustment in the amount of the fine. It described Sinclair as a "sophisticated broadcaster with national reach" and annual revenues over $2.7 billion. More than 1,700 individual violations occurred over a seven-month period on 77 stations scattered across the country. The agreement with HCF had generated $275,000 in revenue per month. The Commission noted that Sinclair stations have been repeatedly cited in recent years for other rule violations. These observations led the Commission to propose a fine of $7,800 for each of the 1,644 incidents where no sponsorship disclosure was broadcast, and $7,000 for each of the 79 incidents where the program was announced as sponsored but without what the Commission considered to be a clear identification of the sponsor. The total comes to $13,376,200.

Despite the record size of this proposed forfeiture, Commissioners Mignon Clyburn and Jessica Rosenworcel issued dissenting statements asserting that it should have been much larger. They referred to a laundry list of past rule violations at Sinclair stations and the company's apparent ability to afford a much larger figure. They complained that the amount of the proposed fine is only one-sixth of the statutory maximum permitted, and that it represents an "unreasonable and suspicious favor to a company with a clear record of difficulty complying with the law." In his own separate statement, Chairman Ajit Pai offered the rejoinder that his colleagues' position "deviates so wildly from our precedent that it will no doubt strike reasonable people as suspicious."

Sinclair has 30 days from the release date of the NAL to seek the reduction or cancellation of the forfeiture. The company has issued a press release indicating its intention to contest the NAL.

DEADLINES TO WATCH

License Renewal, FCC Reports & Public Inspection Files

January 10, 2018 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, 2018 Deadline to file quarterly Children's Television Programming Report for all commercial full power and Class A television stations.

January 10, 2018 Deadline to file quarterly Transition Progress Report for all television stations subject to modifications in the repack.

January 10, 2018 Deadline for noncommercial stations to file quarterly report re third-party fundraising.

February 1, 2018 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**.

February 1, 2018 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).

February 1, 2018 Deadline to file EEO Broadcast Midterm Report for all radio stations in employment units with more than 10 full-time employees in **New Jersey** and **New York**; and all television stations in employment units with five or more full-time employees in **Kansas, Nebraska** and **Oklahoma**.

March 2, 2018 Deadline to file 2017 Biennial Ownership Reports for all AM, full service FM, full service TV, Class A TV and Low Power TV stations.

REPEAL OF MAIN STUDIO RULE EFFECTIVE JANUARY 8, 2018

Deadlines for Comments In FCC and Other Proceedings

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

Docket	Comments	Reply Comments
Docket 17-264; NPRM Publishing notices of applications; digital TV ancillary and supplementary reports		Jan. 16
U.S. Copyright Office Docket 2005-6; NPRM Copyright royalty reporting practices of cable systems	Jan. 16	Jan. 30
Docket 17-359; Public Notice Petition for Declaratory Ruling re foreign ownership interests of Zoo Communications, LLC and Anco Media Group, LLC	Jan. 18	Feb. 2
Docket 17-360; Public Notice Petition for Declaratory Ruling re foreign ownership interests of Grupo Multimedia LLC and Deportes y Musica Communications, LLC	Jan. 19	Feb. 5
Docket 17-344; Public Notice Response efforts during 2017 hurricane season	Jan. 22	Feb. 21
Docket 17-340: Public Notice Technological Advisory Council's recommendations re Basic Spectrum Principles	Jan. 31	Feb. 15
Docket 16-142; FNPRM Next generation broadcast television standard	Feb. 20	Mar. 20
Dockets 14-50, 17-289; NPRM Broadcast multiple- and cross-ownership rules	FR+60	FR+90
Docket 17-79; Public Notice Excluding "Twilight Towers" from routine historic preservation review	FR+30	FR+45
Docket 17-317; NPRM Communicating TV station carriage elections to MVPDs	FR+30	FR+45
Docket 17-318; NPRM National limit on TV station ownership	FR+30	FR+60

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

DEADLINES TO WATCH

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
Application to modify broadcast license, Section 73.3544	Jan. 16
Determining AM station operating power, Section 73.51	Jan. 16
Posting and filing of station license, Sections 73.1230, 74.165, 74.432, 74.564, 74.664, 74.765, 74.832, 74.1265	Jan. 23
Blanketing interference, Sections 73.88, 73.318, 73.685	Jan. 26
Broadcast EEO Program Model Report, Form 396-A	Jan. 29
Children's Television Programming Report, Form 2100, Schedule H	Jan. 29
Interference data in AM broadcast application, Section 73.37	Feb. 2
Broadcast transmission system operation, Section 73.1350	Feb. 2
Visual modulation monitoring, Section 73.691	Feb. 2
Application for permit to deliver programming to a foreign station, Form 308, Sections 73.3545, 73.3580	Feb. 5
International broadcast station license renewal application, Form 422-IB	Feb. 12
Terrain shielding by LPTV stations	Feb. 12
Requests for waivers of commercial loudness rule	Feb. 12
Auxiliary station coordination with co-channel TV stations, Section 74.802	Feb. 12
Mitigation of commercial loudness, Section 73.682(e)	Feb. 12

FILING FREEZE FOR MINOR CHANGE APPLICATIONS FOR LPFM, FM TRANSLATOR AND FM BOOSTER STATIONS
JANUARY 18 – JANUARY 31, 2018

DEADLINE FOR ALL RADIO STATIONS THAT HAVE NOT YET DONE SO TO UPLOAD PUBLIC FILE TO FCC PUBLIC FILE WEBSITE
MARCH 1, 2018

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 **February 26, 2018**. Informal objections may be filed anytime prior to grant of the application.

Present Community	Proposed Community	Station	Channel	Frequency
Decatur, AL	Mooresville, AL	WWTM(AM)	N/A	1390
Lake Isabella, CA	Arvin, CA	KKCA	239	95.7
St. Simons Island, GA	Darien, GA	WSSI	224	92.7
Pocatello, ID	Hailey, ID	KPTO(AM)	N/A	1440
New Boston, OH	Portsmouth, OH	WPAY-FM	281	104.1
Portsmouth, OH	New Boston, OH	WUKV	202	88.3
Weatherford, OK	Burns Flat, OK	KLXM	285	104.9
Syder, TX	Stanton, TX	KTPR	210	89.9
Parowan, UT	Enoch, UT	KUQU	230	93.9
Richmond, VA	Sandston, VA	WBTL(AM)	N/A	1540

Lowest Unit Charge Schedule for 2018 Political Campaign Season

During the 45-day period prior to a primary election or party caucus and the 60-day period prior to the general election, commercial broadcast stations are prohibited from charging any legally qualified candidate for elective office (who does not waive his or her rights) more than the station's Lowest Unit Charge ("LUC") for advertising that promotes the candidate's campaign for office. Lowest-unit-charge periods are imminent in the following states.

State	Election Event	Date	LUC Period
Illinois	State Primary	Mar. 20	Feb. 3 - Mar. 20
Texas	State Primary	Mar. 6	Jan. 20 - Mar. 6

FM Translator Filing Window Is January 25-31

The last of the cross-service FM translator filing windows in the FCC's program to revitalize AM radio will be open from January 25 to 31. The licensee, permittee or proposed assignee of any AM radio station for which an application was not already filed in an earlier FM translator window may submit a short-form application in this auction proceeding for a new fill-in FM translator station. Each translator station that results from this filing window will be bound to rebroadcast the AM station designated in its application.

FCC Considers National TV Ownership Limits *continued from page 1*

interpretations. The CAA could be read as not setting the cap itself, but merely directing the FCC to set it at that point in time. If that is the case, does the agency have discretion to take new action on the cap without further direction from Congress? The Commission invites public comment on this issue.

If the Commission finds that it does have authority to modify or abolish the national reach cap, it will proceed to consider whether such a limit on station ownership continues to serve the public interest. Toward that end, the agency invites comment on the effects that changes in the marketplace have had on the justification for establishing the cap. Are regulatory prompts still necessary to foster diversity, localism, and competition? Are policies encouraging those goals still desirable? If a national reach cap remains necessary, is 39 percent the right ceiling? Would it be useful to impose different reach caps on different types of owners? What impact do other elements of the FCC's regulatory structure – such as local exclusivity and retransmission consent negotiating rules – have on diversity, localism, or competition? How would removing the reach cap affect the dynamic between networks and affiliates? How might repeal of the national reach cap affect barriers to entry for women, minorities, or small businesses?

The so-called "UHF discount" is a corollary to the restrictive rule. Using the discount, only 50 percent of the households served by a UHF station (on channel 14 or higher) are counted against the maximum reach that an owner with multiple stations is allowed to cover. The UHF discount is an artifact of the analog broadcasting era when broadcasting on UHF frequencies was considered to be inferior to that on VHF channels. Reception of UHF transmissions was often problematic. Digital UHF transmissions are more robust and provide improved service so that these channels are no longer deemed inferior.

The discount was briefly abolished in 2016. However, after the change of administrations in the federal government in 2017, the Commission reinstated the discount on the grounds that it was so inextricably linked to the national reach cap as to preclude disturbing one without reviewing both of them ensemble. In reinstating the discount, the Commission committed to evaluating it again in the context of a broader examination of the national reach cap. This proceeding is intended to fulfill that commitment.

If a limit on station ownership is still desirable, the Commission queries whether the UHF discount is still necessary or appropriate. If a weighting method for determining compliance with a cap remains useful, are there other factors for this that might be more appropriate than the channel on which a station broadcasts? What impact would elimination of the discount have on the need for or function of the national cap?

If rule changes adopted in this proceeding result in licensees falling out of compliance, should they be grandfathered, or required to divest some of their holdings in order to comply with the new limit? If such owners are grandfathered, should their combinations be grandfathered for future transactions?

The Commission solicits public comment on these and related questions in Docket 17-318. The deadline for comments will be 30 days after public notice of this proceeding is published in the Federal Register. Reply comments will be due 60 days after publication.

FCC Assesses Hurricane Response

The FCC's Public Safety and Homeland Security Bureau has released a Public Notice to request feedback on the resiliency of the communications infrastructure, the effectiveness of emergency communications, and government and industry responses during the 2017 hurricane season. Four hurricanes made landfall in the United States and its territories during 2017. Presidential emergency or major disaster declarations were made for seven states and two territories. The FCC shares responsibilities with other government agencies for coordination of effective emergency communications networks during natural disasters. The agency attempts to address the communications needs of the affected areas by coordinating frequency assignments and issuing public notices, orders and waivers. In this Public Notice, the Bureau said that during this hurricane season, the Commission granted over 200 requests for special temporary authority ("STA"), issued over 30 public notices and orders permitting the flexible use of spectrum or other non-standard actions to support incident response, and conducted numerous scans to verify the status of broadcast stations to ensure they could provide emergency alerts to the public.

The Bureau seeks comment and poses specific questions on a wide range of topics related to all elements of the nation's communications systems. Some of the questions of most relevance to broadcasters are these:

- What was the impact of the storms on broadcast services?
- To what extent did broadcast-specific best practices exist prior to the storms for high-risk areas and conditions? Were they implemented? If so, how effective were they?
- What were the major causes of communications outages during the hurricanes?
- To what extent was the communications infrastructure resilient?
- Was the Commission's guidance for obtaining waivers and STAs helpful?
- How effective were the Commission's responses to requests for waivers and STAs?
- To what extent did government agencies issue emergency alerts to the public over the Emergency Alert System?
- What challenges arose with the use of back-up power?

The Bureau intends to use the responses to this Public Notice to help develop topics for workshops to be offered in the coming months. The deadline to submit comments in Docket 17-344 is January 22. Reply comments will be due by February 21.

‘Blue Alert’ Added to EAS *continued from page 1*

plans that would be adopted in coordination with state and local governments, law enforcement agencies, and other appropriate entities. The law requires the Attorney General to appoint a national coordinator of the Blue Alert Act communications network. The coordinator is to develop voluntary guidelines for state and local governments to create compatible and integrated Blue Alert plans throughout the country, and to coordinate relevant efforts with and among Federal agencies, including the FCC. In September 2016, the Attorney General named the COPS Office to be the National Blue Alert Coordinator. The Coordinator has urged the FCC to integrate the Blue Alert into the EAS with a dedicated event code.

The COPS Office has developed Blue Alert Guidelines. A Blue Alert may be issued only when a request is made by a law enforcement agency having primary jurisdiction over the incident, and one of the following three threshold criteria has been met: (1) death or serious injury of a law enforcement officer in the line of duty; (2) threat to cause death or serious injury to a law enforcement officer; or (3) a law enforcement officer is missing in connection with official duties. If a Blue Alert is based upon the first of the criteria, the law enforcement agency must confirm that a law enforcement officer has been killed, seriously injured, or attacked. If a Blue Alert is based upon the second criterion, the law enforcement agency must confirm that the threat is imminent and credible, and at the time of receipt of the threat, any suspect involved is wanted by a law enforcement agency. Finally, if a Blue Alert is based upon the third criterion, the agency must have concluded that there is an indication of serious injury to, or death of, the missing law enforcement officer. In all cases, the agency must confirm that any suspect involved has not been apprehended and there is sufficient descriptive information of the suspect, including any relevant vehicle and license tag information. The COPS Office recommends that Blue Alerts should be focused on the geographic areas most likely to facilitate the apprehension of the suspect, and that the message should include the suspect’s last known location, direction of travel, and possible destination. The geographic element of the alert can be accommodated by using the county-specific Federal Information Processing Standards codes. The procedure would be similar to that currently used for AMBER alerts.

The Commission encourages all stakeholders to cooperate voluntarily to implement Blue Alerts as soon as possible. However, implementation of Blue Alert capability for EAS will not become mandatory until 12 months after the effective date of the new rule. Equipment manufacturers indicate that the 12-month window will be enough time to allow them to deploy the new BLU event code within a scheduled in-version update of equipment software. The Commission says that this should enable EAS participants to achieve Blue Alert compliance with little or no incremental expense.

Captioning Registration and Complaint Rules *continued from page 2*

At any time during the complaint resolution process, if the VPD’s investigation reveals that the problem arises from a third-party source not under the control of either the VPD or the programmer, it must report that finding to the Commission, the consumer, and the programmer.

If the investigations of the VPD and the programmer fail to lead to a resolution of the problem, the Commission expects them to continue to cooperate with each other to resolve the complaint. The VPD, in consultation with the programmer, is required to submit a report of their efforts to address the problem to the Commission and the complainant within 30 days of the programmer’s certification.

In an effort to foster solving problems rather than hastily casting blame for them, the Commission established a “compliance ladder” to address violations of the captioning quality rules. The ladder will be invoked in situations where complaints received by the Commission indicate a continuing pattern or trend of noncompliance by a VPD or programmer. The Commission clarified that multiple complaints about the same incident would not be viewed as a pattern or trend. The ladder has three steps:

1. The Commission will notify a VPD or programmer that it has identified a pattern or trend of possible noncompliance. The VPD or programmer must then respond within 30 days, describing corrective measures it has taken, including measures it may have taken in response to informal complaints or inquiries from viewers.

2. Subsequently, if the Commission receives additional evidence to indicate that the noncompliance pattern or trend is continuing, it will notify the VPD or programmer for the second time. The VPD or programmer will then have 30 days in which to submit a written action plan describing additional measures it will take to bring its closed captioning performance into compliance. The VPD or programmer will be required to conduct spot checks of its captioning performance, and report the results of its action plan and spot checking 180 days after the action plan is submitted.

3. Evidence of a continued pattern or trend of noncompliance that persists after the date for submission of the action plan results report may lead to enforcement action by the agency’s Enforcement Bureau.

VPDs and programmers continue to have the obligation to complete a contact registration form on the FCC’s online registry for the convenience of consumers and Commission staff who may have complaints or inquiries about captioning.

Stations Faulted for Deficient Recruitment

The FCC's Media Bureau has released a *Notice of Apparent Liability for Forfeiture* ("NAL") proposing to fine Cumulus Licensing, LLC, $20,000 for violations of the Commission's EEO rules at a South Carolina cluster of one AM and four FM stations. The stations, forming a single employment unit, are WDAI, Pawleys Island; WSYN, Surfside Beach; WSEA, Atlantic Beach; WLFF, Conway; and WHSC (now WRWM), Conway.

The Commission's rules require all broadcast stations to adhere to principles of equal opportunity in their employment practices. Stations involved in employment units with five or more full-time employees must also conduct recruitment procedures designed to foster broad outreach into the labor pool, and must maintain records of those activities. The Commission routinely audits the records and practices of a randomly selected small sample of stations. In a letter dated March 29, 2011, the Bureau notified Cumulus that this employment unit had been selected for an audit. (At the time of the audit letter, two additional stations were part of this employment unit. Cumulus subsequently assigned those stations to a new owner and the audit of them was subsequently terminated separately.) After reviewing Cumulus' response to the audit letter and its public file EEO reports for the 12-month periods ending July 31, 2009 and July 31, 2010, the Bureau has cited Cumulus for failing to comply with the recruitment, self-assessment, record-keeping, reporting and public file requirements of the FCC's rules. The Bureau described these violations as follows.

In the 2009 public file report, no recruitment sources were identified for three of the five full-time hires listed. The only source for one of the remaining hires was word-of-mouth. Word-of-mouth was the only recruitment source identified for two of the six full-time hires listed on the 2010 report. The Commission does not regard word-of-mouth referrals to qualify as the public outreach recruitment required by the rules. The Bureau concluded that Cumulus had failed to recruit properly for six of its 11 full-time hires during the two-year period under review, in apparent violation of Section 73.2080(c)(1) of the Commission's rules.

That rule also requires broadcasters to provide information about job vacancies to likely sources of candidates for employment that ask to be notified when openings occur. The Ohio Center for Broadcasting had requested this information, but Cumulus failed to notify the Center about seven of its 11 full-time vacancies over the two-year period.

The Bureau found that Cumulus had failed to retain records of the number or source of its interviewees for 10 of the 11 full-time vacancies, in violation of Section 73.2080(c)(5)(v). Cumulus explained that these records were missing "due to unauthorized removal of documentation" from its files. The company said that the majority of these records disappeared after the dismissal of the employment unit's business manager. The Bureau responded that this explanation did not excuse Cumulus from having violated the rule. The absence of these records led to Cumulus' failure to report interviewee data in its EEO public file reports – a violation of Section 73.2080(c)(6)(iv).

The lack of records also contributed to two additional rule violations. Each licensee subject to these recruitment rules is required to analyze its recruitment program to ensure that the program was effective in achieving broad outreach. Cumulus was unable to perform this analysis without the interviewee data. Further, records of the recruitment process are required to be in the station's public inspection file. If the records have been lost or destroyed, they are no longer available for the public file and the public file rule has been violated.

The FCC's *Forfeiture Policy Statement* and Section 1.80 of its rules do not set a base forfeiture for specific EEO violations. However, there is a base forfeiture amount of $1,000 for failure to maintain required records. The Bureau relied on this provision to propose a $1,000 fine for each of the six recruitment violations – i.e., each of the six hires that were made without the required outreach to the public and to sources of candidates – totaling $6,000. An additional $2,000 was proposed for each of the other five separate record-keeping rules that was broken, amounting to $10,000. The Bureau used its discretion to increase the total proposed fine to $20,000, adding another $4,000 due to what the Bureau described as a "history of prior offenses," citing two recent cases in which Cumulus was sanctioned for EEO violations at other stations.

The Bureau also imposed a three-year stint of reporting requirements. At the beginning of each September over the next three years, Cumulus is to submit information to the Bureau's EEO staff to document its ongoing compliance with the Commission's recruitment rules during the preceding reporting year. Each such report is to include:

(a) the employment unit's most recent EEO public file report;

(b) dated copies of all advertisements and other communications announcing each full-time vacancy;

(c) for each full-time vacancy, the recruitment source that referred the hiree, the job title, and the date when the vacancy was filled;

(d) a list of all sources that requested job notifications;

(e) the total number of interviewees for each full-time vacancy and the referral source for each interviewee;

(f) the sources contacted for each full-time vacancy.

The reporting requirement will follow each station to any potential new licensee should Cumulus seek to assign a station to a new owner during the three-year period.

Applications for license renewal for these stations were filed later in 2011 after the audit letter was issued. The NAL does not address these applications and they remain pending.

Cumulus has 30 days from the release of the NAL to oppose the proposed forfeiture and/or to contest any other element of it.

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