

## Class A AMs Studied Again

The FCC is taking another look at modernizing the rules that govern Class A AM radio stations in a *Second Further Notice of Proposed Rulemaking* (FCC 18-139) in Docket 13-249. Class A stations are authorized to broadcast with up to 50 kilowatts of effective radiated power, both day and night. There are 57 such stations in the continental United States, and 16 in Alaska. These stations were authorized to provide service over an extended area under a regulatory regime that was devised several decades ago when there were many fewer stations in outlying areas. New AM stations that have been developed in those distant areas are required to protect the Class A stations, which means they must curtail their critical-hours and nighttime transmissions. ("Critical hours" is defined as two hours after local sunrise and two hours before local sunset.) The Commission is evaluating feasible ways to allow those newer stations to upgrade their facilities and improve their viability while minimizing detriment to the Class A stations.

In 2015, the Commission proposed a substantial reduction in nighttime protection for Class A stations that would have allowed many other stations to increase their nighttime power. The Commission says that this

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## Contract Filings Eliminated

The FCC has abolished the 80-year-old requirement in Section 73.3613 of its rules that broadcast licensees routinely file paper copies with the Commission of contracts and other documents having a bearing on ownership or control of the station. This was the main import of a *Report and Order* (FCC 18-145) adopted in Docket 18-4. Under the old rule, licensees and permittees of commercial and noncommercial AM, FM, television and international broadcast stations have been required to file paper copies of such documents with the agency within 30 days of their execution. According to the Commission, the current availability of station records in the online public inspection file makes the paper filing rule

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## Congress Passes Music Modernization Act

After months of tussling, Congress has finally passed and the President has signed into law the Orrin G. Hatch-Bob Goodlatte Music Modernization Act ("MMA"). This legislation touches on a variety of aspects of the copyright licenses for electronic media to perform music.

An issue of immediate interest to radio broadcasters is one concerning the existing consent decrees that have governed the pricing and operations of ASCAP and BMI for many decades. These consent decrees were implemented to address antitrust lawsuits brought against ASCAP and BMI. Their royalty prices are reviewed and controlled by the U.S. District Court in New York City. These consent decrees are presently being targeted for review by the Department of Justice, along with many others. DOJ has telegraphed its view that many of the existing decrees are no longer necessary.

The MMA requires DOJ to give Congress advance notice before recommending to the court that the decrees with ASCAP and BMI be dissolved. In that event, if Congress

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For more information about or help with any of the items reported in **Antenna**<sup>TM</sup> please contact:

**Donald E. Martin, P.C.**

P.O. Box 8433

Falls Church, Virginia 22041

Tel: (703) 642-2344

Fax: (703) 642-2357

E-mail: dempc@prodigy.net

# Shifting Family Ownership Costs \$2 Million

The FCC's Media Bureau and Wireless Telecommunications Bureau have entered into a Consent Decree with Carolina Rays, LLC, licensee of Class A television station WLNN-CD, Boone, North Carolina, to resolve an investigation concerning unauthorized transfers of control and the submission of inaccurate information in an application in the reverse incentive auction, Auction 1001.

Carolina Rays filed an application in the reverse auction and became a winning bidder. In exchange for relinquishing its spectrum usage rights, Carolina Rays agreed to accept an incentive payment of \$21,321,125. The company also maintained an option to continue to broadcast by sharing a channel with another station. The station went dark on November 30, 2017, to facilitate the post-auction repack. The licensee said it intended to return the station to the air if and when a channel-sharing host station could be identified and an agreement negotiated.

In the midst of the reverse auction proceeding, it came to the Commission's attention that Carolina Rays may have engaged in multiple unauthorized transfers of control between 2008 and when it became a winning bidder. The agency's records reflect that Carolina Rays reported the following various ownership configurations:

- 2008 Assignment application for station acquisition: Terry Smith, 100%.
- 2011 Ownership Report: Terry Smith and Sarah Smith, spouses, each 50%.
- 2015 Ownership Report: Terry Smith, 50%; children Shawn Smith, Wade Smith, Brett Smith, Ty Smith and Ashley Smith, each 10%.
- 2017 Amendment to 2015 Ownership Report: Sarah Smith, 50%; Jerry Smith, 25%; Mary Smith, 25%.

No other ownership reports have been filed since the station was acquired in 2008, and no application for FCC consent to an assignment or a transfer of control has been filed since 2008.

The Communications Act and the FCC's rules require Commission consent prior to a transfer of control of a broadcast licensee. These filings show evidence of at least three transfers of control from 2008 until 2017. No such consent was requested or obtained for these transfers.

Carolina Rays explained to the Bureaus that it was a "family-held operation" and that it "did not engage or consult with FCC counsel in connection with any FCC reporting obligation or its participation in the incentive auction." Further, the company stated that all of the individuals named in the unauthorized transfer of control are "direct and immediate family members," and that there was no change in marital status during the period. Carolina Rays said that it had otherwise had a history of compliance with the FCC's rules and urged that these circumstances be considered as mitigating factors.

The Bureaus and Carolina Rays agreed to terminate the investigation of these incidents with a Consent Decree to avoid further needless expense and time-consuming proceedings. Carolina Rays admitted that it had violated the Commission's regulations and agreed to forfeit its opportunity to revive the station on a shared channel. Finally, the Decree provides for Carolina Rays to pay the U.S. Treasury \$2 million in settlement of this matter as a final and nonappealable debt owed to the United States. This payment will be made by way of an offset against the proceeds of the incentive auction which have not yet been disbursed to Carolina Rays.

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## Catalog of Reimbursable LPTV and FM Costs Open for Comment

In the 2018 Reimbursement Expansion Act, Congress provided funding for and expanded the list of entities eligible to receive reimbursement for costs reasonably incurred because of the post-incentive auction television repack to include low power television, television translator and FM stations. The FCC's Media Bureau has proposed a catalog of costs that these stations could potentially claim for reimbursement, and has released a Public Notice (DA 18-1072) requesting comment on the catalog.

In a *Notice of Proposed Rulemaking and Order* (FCC 18-113) in Docket 18-214 released in August, the Commission proposed to reimburse LPTV and translator stations for both "hard" expenses, such as new equipment and tower rigging, and "soft" expenses, such legal and engineering services. The Commission also proposed to reimburse such costs for FM stations that must replace or modify equipment or construct or upgrade auxiliary facilities.

The Bureau previously developed a catalog of expenses

for full power and Class A stations whose facilities have been disrupted by the repack. This catalog for LPTV and FM stations will serve the same purpose, which is to facilitate the reimbursement process. The catalog provides predetermined costs and cost ranges to use as estimates when stations do not have vendor quotes. Stations can rely on the figures in the catalog and will only need to provide additional documentation to justify their claims if their expenses exceed the range in the catalog or are for items or services not included in the catalog.

The Bureau seeks comment on whether any types of expenses that LPTV and FM stations are likely to incur are missing from the catalog, and whether the cost ranges are reasonable. The proposed catalog can be viewed and downloaded at: <https://www.fcc.gov/edocs/daily-digest/2018/10/22>. Comments are due by November 21. Reply comments must be submitted by December 6.

# Stations Fined for Unauthorized Silence

The licensee of several Alaskan broadcast stations has been fined \$8,000 for prolonged periods of silence on two of its FM translator stations without FCC authorization. This was a violation of Section 74.1263(c) of the Commission's rules, which requires notice to the agency if a translator is silent for 30 or more consecutive days. The Commission's Media Bureau has explained the circumstances that it said justified the fine in a *Forfeiture Order* (DA 18-1063).

This proceeding began in 2013 after the stations' licensee, Alaska Educational Radio System, Inc. ("AER"), filed license renewal applications for a number of Alaska stations, including its full power station KABN-FM, Kasilof, and for translators K223BJ, Eagle River; K300BY, Willow Creek; and K283AZ, Anchorage. In the course of litigating objections to those applications, it came to light that the translators had been off the air for extended periods of time without proper notice to the FCC.

K223BJ was identified in the Commission's records as rebroadcasting the signal of KABN-FM from March 18, 2008, until September 26, 2013, when its parent station was changed to KKNL-FM. However, KABN-FM was silent from January 31, 2010, to January 30, 2011; from March 26, 2012, until March 22, 2013; and from March 26, 2013, until March 23, 2014. With nothing in the record to indicate otherwise, the Commission assumed that the translator had been silent when its parent station was silent. That conclusion was not refuted by AER. Thus, it was evident that the translator was silent for several periods that exceeded 30 days in length.

Regarding K300BY, AER indicated in its September 2013 license renewal application that the station was off the air. However, AER never otherwise provided notice to the FCC as required by Section 74.1263(c). AER filed a

resumption notice for K300BY on September 30, 2014. The same fact pattern pertained to K283AZ. The Commission therefore inferred that these stations had been silent for that entire period of time without authorization. AER did not refute this finding.

The Bureau proposed a collective \$10,000 fine in a *Notice of Proposed Liability for Forfeiture* (DA 18-738) issued in July. AER responded with a request for a reduction or cancellation of the fine on the grounds that (1) "it was unaware of the violations;" (2) the amount of the fine was disproportionate because the violations all stemmed from a "single source" (the silent parent station); and (3) it was unable to pay the fine because it had no liquid assets and less than \$20,000 in fixed assets.

The Bureau rejected each of these arguments. It said that being unaware of the violations does not excuse or mitigate them. The argument about a single source of the violations was refuted with the observation that each translator had a different parent station, rather than all of them rebroadcasting KABN-FM, as AER claimed. Finally, the Commission will not reduce forfeitures due to inability to pay without credible documentation such as tax returns for the most recent three years or financial statements prepared in accord with generally accepted accounting procedures. AER provided no such documentation. It promised to do so by September 24, but the Bureau has yet to receive it.

The Bureau did cancel a portion of the fine and reduced the total from \$10,000 to \$8,000 in the *Forfeiture Order* because during the intervening time after the release of the *Notice of Proposed Liability*, AER surrendered the license for K300BY and the Commission staff cancelled it.

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## Procedures Proposed for FM Translator Auction

The FCC's Wireless Telecommunications Bureau and Media Bureau have released a Public Notice (DA 18-1038) proposing the procedures and soliciting comments for conducting Auction 100. This auction will involve competitive bidding to resolve the conflicts in 13 groups of mutually exclusive cross-service FM translator applications (FM translators retransmitting AM stations). This will be a "closed" auction – open only to parties who filed applications during the cross-service translator filing window. These are the only mutually exclusive applications remaining from the filing window.

The Bureaus propose an online simultaneous multiple-round auction design, similar to other auctions that have been conducted for broadcast construction permits. The proposed activity rule for this auction would require an applicant be active on 100 percent of its bidding eligibility in each round, or use one of three waivers that it would have at its disposal.

The Public Notice established an upfront payment for

each applicant. The deadline for submitting this payment will be set in a future publication. The upfront payment proposed for each applicant is listed in the Public Notice. For winning bidders, the upfront payment will be credited against the purchase price. If the applicant is not the winning bidder and is not subject to penalties for withdrawing a bid, the upfront payment will be refunded. Failure to deposit the upfront payment will disqualify an applicant from bidding.

The Bureaus have proposed a minimum opening bid for each application equal to the upfront payment for that application. Applicants will have the option to post subsequent bids at nine different increments above the amount of the provisionally winning bid. The first increment would be 10 percent above the provisionally winning bid and higher possible bids would be set in ascending increments of five percent.

The Bureaus seek comment on these proposals for Auction 100. Comments are due by November 15. Reply comments must be filed by November 28.



# DEADLINES TO WATCH



## License Renewal, FCC Reports & Public Inspection Files

- December 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 **Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, North Dakota, South Dakota, New Hampshire, Rhode Island** and **Vermont**.
- December 3, 2018 Deadline to file EEO Broadcast Mid-term Report for all television stations in employment units with five or more full-time employees in **Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island** and **Vermont**.
- December 3, 2018 Deadline for all broadcast licensees and permittees of stations in **Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, North Dakota, South Dakota, New Hampshire, Rhode Island** 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).
- January 10, 2019 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, 2019 Deadline to file quarterly Children's Television Programming Reports for all commercial full power and Class A television stations.
- January 10, 2019 Deadline to file quarterly Transition Progress Reports for television stations subject to modifications in the repack.
- January 10, 2019 Deadline for noncommercial stations to file quarterly report re third-party fundraising.

### TELEVISION REPACK

#### STATIONS ASSIGNED TO PHASE 1

TESTING PERIOD BEGAN: **SEPTEMBER 14, 2018**  
COMPLETION DEADLINE: **NOVEMBER 30, 2018**

#### STATIONS ASSIGNED TO PHASE 2

TESTING PERIOD BEGINS: **DECEMBER 1, 2018**  
COMPLETION DEADLINE: **APRIL 12, 2019**

## Deadlines for Comments in FCC and Other Proceedings

DOCKET COMMENTS REPLY COMMENTS

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

Docket 17-329; Public Notice Competitive bidding procedures for Auction 100 (cross-service FM translator applications)	Nov. 15	Nov. 28
Docket 18-272; Public Notice Termination of dormant proceedings	Nov. 16	Dec. 3
Docket 18-214; Public Notice Reimbursable costs for LPTV and FM stations related to TV repack	Nov. 21	Dec. 6
Docket 18-122; NPRM Flexible use of 3.7-4.2 GHz band		Nov. 27
Docket 13-249; 2 <sup>nd</sup> FNPRM Protection of Class A AM stations	FR+60	FR+90

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

## Rulemakings To Amend Post-Transition Digital TV Table Of Allotments

The FCC is considering amendments proposed to the Digital TV Table of Allotments to add and/or delete the following channels. The deadlines for filing comments and reply comments are shown.

COMMUNITY	PRESENT CHANNELS	PROPOSED CHANNELS	COMMENTS	REPLY COMMENTS
Morehead, KY	*15, 21	*15	Nov. 26	Dec. 4
Richmond, KY		21	Nov. 26	Dec. 4

*\*Reserved noncommercial channel*

### NATIONWIDE EAS TEST

FORM THREE DUE: **NOVEMBER 19, 2018**

### DEADLINE TO RESOLVE MUTUALLY EXCLUSIVE CONFLICTS AMONG LPTV DISPLACEMENT APPLICATIONS

**JANUARY 10, 2019**





# 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
Satellite local broadcast signal carriage and retransmission consent, Section 76.66	Nov. 19
Broadcast call sign reservation and authorization, Form 380	Nov. 19
Satellite earth stations, Forms 312, 312-EZ, 312-R	Nov. 19
Emergency alert system, Part 11	Dec. 3
Non-duplication and syndicated exclusivity, Sections 76.94, 76.95, 76.105, 76.106, 76.107, 76.1609	Dec. 3
Definition of television markets for cable must-carry, Section 76.59	Dec. 3
Notice of digital audio broadcasting, Form 335	Dec. 3
Cable carriage of television broadcast signals, Sections 76.56, 76.57, 76.61, 76.64	Dec. 3
LPTV digital transmissions, Sections 74.787, 74.790, 74.794, 74.796, 74.798	Dec. 3
Media Bureau Incentive Auction implementation, Section 73.3700	Dec. 3
Interference to radio astronomy, Section 73.1030	Dec. 3
Requests for Special Temporary Authority	Dec. 14
Licensee-conducted contests, Section 73.1216	Dec. 14
Broadcast incubator program	Jan. 2

## Settlement Window Announced for Displacement LPTV Applications

The FCC's Incentive Auction Task Force and Media Bureau have issued a Public Notice (DA 18-1108) to announce a settlement window for mutually exclusive applications that were filed during the LPTV Special Displacement Window that was open from April 10, 2018 until June 1, 2018. The Special Displacement Window was an opportunity for licensees of low power television, television translator and analog-to-digital replacement translator stations to request modifications for their stations that were displaced by the incentive auction and repacking process. To resolve mutually exclusive conflicts between or among applications, applicants may file settlement agreements and/or engineering amendments to their applications until 11:59 p.m. ET, on January 10, 2019.

The Special Displacement Window initiated an auction proceeding. The Commission's anti-collusion rules prohibit communications between competing parties about their applications and bidding strategies. During the settlement window, that rule is waived to allow applicants to negotiate their agreements. Upon the close of the window, the waiver will be lifted and applicants will again be prohibited from communicating with each other about their applications.

Engineering amendments must be minor change amendments and must not create a new conflict with any other authorization or any other application filed during the Special

Displacement Window. In cases where the conflict cannot be resolved with a minor amendment, an applicant may propose to move to any available channel, even if such a move would otherwise be a major change.

Conflicts may also be resolved by way of a settlement agreement that provides for one or more engineering amendments and/or the dismissal of one or more applications in the mutually exclusive group. Such an agreement, along with all required documents, must be submitted to the Commission for its approval as an amendment to the application of each applicant that is a party to the agreement. If consideration is paid in exchange for a dismissal, it cannot exceed the dismissing applicant's reasonable and prudent expenses, which must be documented.

A settlement agreement can also provide for a channel-sharing arrangement to resolve a conflict. To collocate with a host's proposed facilities, a sharee must file an engineering amendment to its application. The amendment must also include the channel-sharing agreement.

Applications that remain in mutually exclusive groups after the close of the settlement window will proceed to resolution by competitive bidding in an auction. This includes situations in which amendments filed by applicants in different mutually exclusive groups to resolve those conflicts result in new mutually exclusive conflicts.

## Class A AMs Studied Again continued from page 1

proposal drew forceful comments on both sides of the question. Among the comments were additional proposals that the agency described as “thoughtful and evidence-based alternatives.” Therefore, rather than concluding the proceeding, the Commission is offering new variants of the earlier proposals. While it continues to recognize the value of wide-area service, the Commission says that the record shows that newer AM stations, FM stations, satellite radio and other media have supplanted that service in many cases.

Under the current rules, Class A stations in the continental United States are protected by co-channel stations during daytime to their 0.1 mV/m groundwave contour, at nighttime to their 0.5 mV/m-50 percent skywave contour. Stations on adjacent channels must protect these Class A stations’ 0.5 mV/m groundwave contour both day and night. All Class A stations are protected to their 0.1 mV/m groundwave contour during critical hours. However, under current noise conditions, it is very difficult to hear the 0.1 mV/m groundwave signal. The nighttime AM skywave service has become “sporadic and unreliable” due to environmental interference.

Acknowledging that changes are necessary, the Commission offers the following alternatives to its prior proposals:

### Daytime hours

Protect Class A stations to their 0.5 mV/m daytime groundwave contour from both co-channel and first-adjacent channel stations.

### Critical hours

*Alternative 1:* No protection for Class A stations.

*Alternative 2:* Protect Class A stations to their 0.5 mV/m groundwave contour (single station method).

### Nighttime hours

*Alternative 1:* No overlap permitted between a Class A station’s 0.5 mV/m nighttime groundwave contour and any

interfering station’s 0.025 mV/m 10 percent skywave contour.

*Alternative 2:* Class A stations protected such that interference from any other station may not be increased above the greater of the 0.5 mV/m nighttime groundwave contour or the 50 percent exclusion RSS NIF level (multiple station method).

The Commission solicits comments on these alternatives, emphasizing the need for realistic estimates of the numbers of listeners that may lose primary service as opposed to secondary or sporadic service. Likewise, commenters are urged to be realistic about the new service that might be provided by other stations that could reduce their protection of Class A stations and upgrade their facilities.

The Commission also seeks input on the effect that these proposals would have on the Emergency Alert System (“EAS”). Twenty-five Class A stations are EAS Primary Entry Point stations. How would the receipt of EAS alerts by other EAS participants be affected by the proposals to reduce protection for Class A stations? In the alternative, the commenters are also asked to address the potential benefits during emergencies of having more service from local AM stations.

In the 2015 *Further Notice of Proposed Rulemaking* in this proceeding, the FCC proposed certain changes in the methodology for calculating nighttime interference, and for Class B, C and D stations, changes in the daytime protected contours. The agency does not alter those proposals now. However, parties who submitted comments responding to those proposals are encouraged to review their comments and update them, if necessary, in light of the new proposals offered now regarding Class A stations.

Comments in Docket 13-249 will be due 60 days after notice of this proceeding is published in the Federal Register. The deadline for reply comments will be 90 days after publication.

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## Contract Filings Eliminated continued from page 1

redundant and unnecessary. Instead of requiring automatic filing, the new rule will obligate licensees and permittees to furnish copies of such documents to the FCC only if requested to do so. The documents must be submitted within seven days of the request.

The Commission’s public inspection file rules, Sections 73.3526 (commercial stations) and 73.3527 (noncommercial stations), have required stations to maintain in their public files either copies of the contracts and agreements, or a list of those documents, that must be identified in the station’s ownership report. In turn, the ownership report rule has required the listing of the items required by Section 73.3613. The Commission amended the public inspection file rules to refer directly to the documents listed in Section 73.3613.

Materials to be provided to the Commission upon request pursuant to the revised Section 73.3613 include the following: (1) television network affiliation agreements; (2)

instruments relating to the present or future ownership of the licensee or permittee, including articles of incorporation, partnership or limited liability company agreements, bylaws, agreements regarding voting rights, and options to buy or sell ownership interests; and (3) mortgage or loan agreements that impose restrictions on the licensee or permittee.

Section 73.3613 formerly also included attributable time brokerage agreements and joint sales agreements. The public inspection file rule already requires complete copies of these agreements to be maintained in the public inspection file. Consequently, continuing to reference them in Section 73.3613 is redundant and the Commission amended the rule to delete them.

These amendments to Section 73.3613 do not become effective until 30 days after publication in the Federal Register.

# Multiple Translators May Not Require Showing of Technical Need

The FCC has issued a *Memorandum Opinion and Order* (FCC 18-89) denying an Application for Review filed by Triangle Access Broadcasting against the Media Bureau's decision to allow seven fill-in translators within the 60 dbu contour of the translators' common parent station WQDR-FM, Raleigh, North Carolina. WQDR-FM and the seven translators are under common control.

Triangle's argument was based upon its reading of Section 74.1232(b) of the Commission's rules, which states that "[m]ore than one FM translator may be licensed to the same applicant, whether or not such translators serve substantially the same area, upon an appropriate showing of technical need for such additional stations." Triangle asserted that the Bureau had erred in granting licenses for the last six of these translators without requiring a demonstration of technical need. Triangle disputed the Bureau's interpretation of "substantially the same area" as a 50 percent or greater overlap of the coverage areas of two translators. Triangle argued essentially that any second co-owned translator within the primary station's protected service contour would require a demonstration of technical need before it could be allowed. Triangle also expressed concern that the seven WQDR-FM translators, collectively, form a "de facto" full service FM station, contrary to a 2009 ruling in which the Commission said that it "would consider it an abuse of our rules for a licensee to use two or more cross-service translators to effectively create a de facto FM station."

Responding to these arguments, the Commission cited its rulemaking proceeding in which Section 74.1232(b) was adopted. In that 1970 ruling, the Commission clarified that an "appropriate" showing of need for multiple translator stations may be, but is not always, required. A demonstration of need is not required when the translators will rebroadcast different primary stations, even if they serve substantially the same area. A demonstration would be necessary only

where stations serving substantially the same area would be broadcasting the same programming. In 1970, the Commission did not define the phrase, "substantially the same area." In this case, the Bureau had followed its own guideline that "more than 50 percent" is a reasonable and appropriate interpretation of "substantially the same area." The Commission affirmed the Bureau's decision, reasoning that the Bureau's interpretation is in accordance with both the language and underlying rationale of the rule which allows translators some flexibility for siting while limiting substantially duplicate coverage unless the applicant demonstrates technical need. The Commission observed that the rule also provides the option of demonstrating technical need on a case-by-case basis despite apparent substantial duplicate coverage. Of the seven translators in this case, only one pair of them overlapped their 60 dbu contours more than 50 percent. Actually, their overlap was 95 percent. However, no technical demonstration of need was required because they were each carrying a different digital subchannel of the primary station. Hence there was no duplicate programming coverage.

The Commission dismissed Triangle's argument about multiple translators creating a "de facto" full power station as lacking factual underpinning. The mere fact that one party owns seven translators does not, by itself, raise concerns about an abuse of the Commission's rules. Triangle had offered no other evidence of abuse. The agency said that the rulemaking decision which Triangle cited was inapposite because it was addressing cross-service translators, not translators for FM stations.

Finally, the Commission disposed of Triangle's complaint that it was inappropriate for a translator authorization to be issued before the proposed primary station is on the air. A translator does not go on the air until its facilities are complete and its license application has been filed. Prior to that, it does not matter whether the primary signal is available.

*Triangle argued essentially that any second co-owned translator within the primary station's protected service contour would require a demonstration of technical need before it could be allowed.*

# Media Bureau To Activate All Online Public Files

The FCC's Media Bureau has issued a Public Notice (DA 18-1131) to remind broadcasters that by March 1, 2018, all radio stations required to have a public inspection file should have activated their online public files on the Commission's public file database. All previously created documents required to be in the public file, except for certain political materials, should have been uploaded by that date. Since that date, stations have been obligated to upload newly created documents on an ongoing current basis.

The Bureau announced that on November 15, 2018, it would activate the public file accounts of radio stations that had not yet done so. Once activated, the files in these accounts are available to the public.

# Congress Passes Music Modernization Act

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disagrees with DOJ and can act quickly enough, it would have the opportunity to attempt to preserve the current or another more regulated process for setting royalties.

The right to perform sound recordings made before February 15, 1972 has been the subject of much litigation in recent years. Prior federal law did not extend copyright protection to those sound recordings and they were subject to a mixed variety of state copyright laws. The MMA has now brought these pre-1972 works under federal copyright protection, preempting state laws and establishing nationwide uniformity.

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