

## EEO Mid-Term Reports Abolished; More EEO Review Ahead

The FCC has amended Section 73.2080 of its rules to eliminate the requirement for broadcast stations to file EEO Mid-Term Reports (Form 397). The Commission took this action in adopting a *Report and Order* (FCC 19-10) in Docket 18-23, implementing most of the proposals made earlier in this proceeding in a *Notice of Proposed Rulemaking* (FCC 18-20).

Until now, radio stations with 11 or more full-time staff members and television stations with a full-time staff of five or more have been required to submit a Form 397 four

*continued on page 7*

## FCC Studies TV Ratings System

At the direction of Congress, the FCC's Media Bureau has initiated a review of the TV Parental Guidelines. These are age- and content-based ratings to help identify whether television programming is appropriate for children to view. The Consolidated Appropriations Act of 2019 requires the Commission to submit a report to Congress by May 15, 2019, on the Guidelines and the ability of the TV Parental Guidelines Oversight Monitoring Board to oversee the ratings system and address public concerns. To gather information for this report, the Bureau invites comment in its Public Notice (DA 19-120).

The Telecommunications Act of 1996 provided that parents should receive timely information about the nature of upcoming video programming and the technical tools for blocking content believed to be harmful for children. The legislation also provided that distributors of video programming should be given the opportunity to develop a voluntary system to furnish ratings information to parents.

Responding to the 1996 Act, industry groups, including the National Association of Broadcasters, the National Cable Television Association, and the Motion Picture Association of America, jointly proposed a system of voluntary parental guidelines – the TV Parental Guidelines – developed and implemented by their members. They also proposed to

*continued on page 8*

## FCC Poised to Establish Repack Reimbursement Process for LPTV and FM Stations

The FCC has released an advance draft of a Report and Order ("R&O") in Docket 18-214 that would establish procedures for the reimbursement of low power television and television translator stations (collectively, "LPTV") and FM stations for expenses incurred due to the repack of the broadcast television band after the incentive spectrum auction. This item is scheduled for consideration at the Commission's March open meeting. If approved, this action would generally adopt most of the proposals set out in the *Notice of Proposed Rulemaking* (FCC 18-113) released last August.

Congress made funds available for LPTV and FM reimbursements in the Reimbursement Expansion Act ("REA") when it added \$1 billion in new funding to the \$1.75 billion previously allotted to the Television Broadcaster

*continued on page 6*

### IN THIS ISSUE

Noncom Application Processing .....	2
Satellite TVs Streamlined .....	3
Deadlines to Watch .....	4-5

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

# Changes Proposed for Noncom Application Processing

The FCC has adopted a *Notice of Proposed Rulemaking* (FCC 19-9) in Docket 19-3 in which it proposes numerous revisions to the rules and procedures governing the comparative selection process for choosing which application(s) to grant from a group of mutually exclusive noncommercial broadcast applications.

In recent years, the Commission has resolved hundreds of groups of mutually exclusive new and major change noncommercial FM (“NCE”) and low power FM (“LPFM”) applications involving thousands of applications. The comparative procedures employed to select the winning applicants in these cases were “paper hearings.” The Commission evaluated applications on the basis of fair distribution criteria intended to select the proposal for a new station at the community with the greatest need for new service, and comparative points awarded for characteristics of the applicant deemed to be desirable. On the basis of this experience, the agency says that it is now positioned to make improvements in its noncommercial comparative procedures.

An NCE applicant can earn three points in the comparative evaluation if it has been local to the proposed community of license for at least two years prior to filing the application and commits to remaining local. Section 73.7003(b)(1) of the rules stipulates that the commitment to remain local must be incorporated into the applicant’s governing documents. The Commission now proposes to eliminate the requirement that the governing documents include this commitment. The basic requirement to be local as a condition to earn the three comparative points would remain intact. Only the mandate to include a commitment to localism in the applicant’s governing documents would be abolished. To ensure that a winning applicant which had been awarded localism points would indeed remain local, an applicant claiming points for localism would be required to commit in the original construction permit application form to remain local until at least four years after the station has gone on the air. The Commission would also amend the holding rule in Section 73.7005 to include a provision explicitly requiring a winning applicant that receives points for localism to remain local for the four-year holding period.

Under the comparative selection point system, two points are awarded for local diversity of ownership. To qualify, the principal community contour of the applicant’s proposed station must not overlap with that of any other station in the same service in which the applicant holds an attributable interest. The applicant’s governing documents must contain a commitment to maintain this diversity into the future. The Commission proposes to retain diversity as a requirement to earn the two points, but would eliminate the need for the commitment in the governing documents. As with the localism qualification, the Commission proposes to require applicants claiming the two points for diversity to commit in the construction permit application to maintain that diversity into the future. The holding period rule would also be amended to require a prevailing applicant that was awarded points for diversity to maintain that diversity for a period of at least four years after the station begins broadcasting.

An aspect of evaluating an applicant’s claim to points

for diversity of ownership involves commitments to divest the applicant’s existing attributable ownership interests in other stations. The general rule has been that to be eligible for diversity points, an applicant must divest itself of any relevant ownership interest that would preclude the diversity claim by the close of the filing window. There were three exceptions to this policy for radio applicants for which the Commission would accept a contingent divestiture pledge: (1) non-fill-in translator stations, (2) Class D stations, and (3) LPFM stations. In each case, the applicant is required to divest its interest in the other station before the new station goes on the air. Now the Commission proposes to expand the availability of the contingent divestiture pledge to cover interests in any station that would affect the integrity of the diversity claim. The pledge would have to be made by the close of the filing window.

In cases presenting ties between or among applicants, the current rules provide for two tie-breaker criteria. First, the applicant with attributable interests in the fewest number of other broadcast authorizations prevails. The second tie-breaker favors the applicant with the fewest number of attributable interests in same-service applications for new stations. Applicants still tied after these tie-breakers are subject to time-sharing.

The Commission seeks ideas for other tie-breaker criteria. To reduce the number of applications that may contribute to ties, the Commission suggests encouraging settlements by relaxing the restrictions on them in rule Section 73.3525, which notably include limiting settlement payments to the dismissing applicant’s expenses. The Commission also requests comment on the concept of allowing tied competing applicants to enter into settlement agreements to aggregate their comparative points, as is presently allowed for LPFM applicants.

Under the present rules, mutually exclusive applicants that are tied for the highest number of comparative points and that survive the tie-breaker process are subject to mandatory time-sharing. Applicants are given 90 days in which to enter into their voluntary time-sharing agreement. Failure to arrive at an agreement within the 90-day period is to be followed by a hearing on how to allocate time between or among the remaining parties. Although there have been a number of tied applicant groups subject to time-sharing, a hearing has never been designated. Instead, indefinite amounts of time have been consumed waiting for the parties to work out an agreement. The Commission now proposes, that if a voluntary time-share agreement is not reached in 90 days, to resolve such cases by dismissing all but the three applicants that have been local for the longest periods of time. The Commission then would divide the broadcast day into three equal parts and allow each of the three remaining applicants to select a preferred day part.

Until the station has been on the air for four years, the current rule Section 73.7005 limits an NCE permittee or licensee that has obtained its authorization through the comparative point system to assigning the authorization only to another entity that would qualify for an equal or greater number of points. As noted above, the Commission proposes to add to this section the requirement that the original permittee/licensee should maintain the same qualifications for which it earned points until the station has been

*continued on page 3*

# Satellite TV Procedures Streamlined

The FCC has streamlined the assignment and transfer procedures for satellite television stations in a *Report and Order* (“R&O”) (FCC 19-17) adopted in Docket 18-63. The Commission took this action after consideration of the comments received in response to the *Notice of Proposed Rulemaking* (FCC 18-34) adopted in this docket early in 2018.

Television satellite stations are full-power terrestrial broadcast stations that rebroadcast some or all of the programming of another full-power station, known as the parent station. The two stations usually have a common owner or operator. The Commission authorizes satellite status for stations in situations where they are not economically viable to stand alone but where there are public interest concerns that television service be provided. A satellite station is not counted for the purpose of calculating its owner’s compliance with the multiple ownership rules.

Under its policies regarding applications for new satellite station status, the Commission evaluates each proposal on a case-by-case basis with guidelines for applicants to follow in making their case for satellite status. Under those guidelines,

the applicant needs to demonstrate that the station serves an underserved area, and that no alternative operator is ready and able to acquire and operate the station as a full-service facility. Until now, owners of satellite stations seeking to assign or transfer control of them have been required to provide a complete evidence-based demonstration that the conditions that originally gave rise to the satellite status continue to exist at the time of the proposed assignment or transfer of control.

The Commission now has simplified the process for reauthorizing satellite status for a station undergoing an assignment or transfer. In situations where there has been no material change in the circumstances that warranted the grant of the station’s existing satellite authorization, the Commission will reauthorize that status if (1) both parties certify that those circumstances continue to exist with no material change, and (2) the application includes the complete text of the original authorization. This process may even be used in transactions where the satellite station becomes paired with a different parent station.

*continued on page 8*

---

## Changes Proposed for Noncom Application Processing

on the air for four years, and to rename the section “Maintenance of Comparative Criteria.” The Commission requests comment on methods to promote compliance with these provisions and sanctions for violating them.

A significant change proposed for the LPFM selection process involves discussions between or among applicants about agreements to aggregate comparative points. Current rules allow mutually exclusive LPFM applicants to enter into voluntary time-sharing agreements. The combined group is then eligible to be awarded the sum of the total aggregated points that each individual applicant would have earned. The Commission clarifies that applicants and prospective applicants may enter into discussions about time-sharing with the goal of aggregating their points at any time in the process. The Commission would honor such agreements if they are conditioned upon each party becoming a tentative selectee.

While the construction permit for all other broadcast services is three years in length, the LPFM construction permit lasts only 18 months. The Commission proposes to lengthen the LPFM construction permit to three years as well.

The Commission proposes to modify its procedures for tolling NCE and LPFM construction permits. A construction permit may be tolled, i.e., suspended, if construction of the station is delayed due to causes beyond the permittee’s control, such as a physical catastrophe, litigation or administrative and judicial review. The burden is on the permittee to request tolling and to report on the status of the condition that gave rise to the tolling every six months. The Commission proposes to automatically toll permits under administrative review within the FCC and upon judicial review of an FCC action,

and to eliminate the need for the semi-annual reports in cases involving NCE and LPFM stations.

If an application for a new noncommercial station sustains a major change, it is dismissed. One such major change occurs when changes in the applicant’s governing board result in a situation where no person or persons identified as board members in the original application continue to hold more than 50 percent of the voting control. On the other hand, gradual turnover of the membership of the governing board a licensee is typically considered “insubstantial,” and therefore only a minor change in ownership. The Commission proposes to align the processing of applications for new stations on this point with the interpretation of minor changes for existing licensees. The agency has tentatively concluded that it should classify as a minor change in ownership a change in a noncommercial applicant’s governing board that occurs gradually over time and has little or no effect on the organization’s mission, even if it results in the change of a majority of the board.

It has long been understood that a construction permit application for a new broadcast station includes an implied certification that the applicant has reasonable assurance of the availability of the proposed transmitter site for construction of the station. However, there is no explicit certification to that effect in the application form. The Commission proposes to add such a certification to the noncommercial construction permit application forms — Form 340 and Form 318.

The FCC invites public comment on these and related issues to be submitted within 60 days of the publication of notice of this proceeding in the Federal Register. Reply comments must be filed within 90 days of that publication.



# DEADLINES TO WATCH



## License Renewal, FCC Reports & Public Inspection Files

April 1, 2019	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 <b>Delaware, Indiana, Kentucky, Pennsylvania, Tennessee and Texas.</b>	April 1 & 16, 2019	Radio stations in the <b>District of Columbia, Maryland, Virginia and West Virginia</b> broadcast pre-filing announcements regarding license renewal applications.
April 1, 2019	Deadline to file EEO Broadcast Mid-term Report for all television stations in employment units with five or more full-time employees in <b>Delaware and Pennsylvania.</b>	April 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.
April 1, 2019	Deadline for all broadcast licensees and permittees of stations in <b>Delaware, Indiana, Kentucky, Pennsylvania, Tennessee and Texas</b> 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).	April 10, 2019	Deadline to file quarterly Children's Television Programming Reports for all commercial full power and Class A television stations.
		April 10, 2019	Deadline to file quarterly Transition Progress Reports for television stations subject to modifications in the repack.
		April 10, 2019	Deadline for noncommercial stations to file quarterly report re third-party fundraising.
		May 1 & 16, 2019	Radio stations in the <b>District of Columbia, Maryland, Virginia and West Virginia</b> broadcast pre-filing announcements regarding license renewal applications.

## Cut-Off Date for Applications to Change Community of License

The FCC has accepted for filing the 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 **April 16, 2019**. Informal objections may be filed anytime prior to grant of the application.

PRESENT COMMUNITY	PROPOSED COMMUNITY	STATION	CHANNEL	FREQUENCY
Brunswick, GA	Yulee, FL	WSOL-FM	268	101.5
Neoga, IL	Mattoon, IL	WMCI	267	101.3
Warroad, MN	Wannaska, MN	KOLJ-FM	216	91.1
Hico, TX	Meridian, TX	KITT	293	106.5
Meridian, TX	Tolar, TX	KOME-FM	238	95.5
Montasano, WA	Belfair, WA	KLSY	229	93.7
Raymond, WA	Union, WA	KJET	289	105.7

### TELEVISION REPACK

#### STATIONS ASSIGNED TO PHASE 2

TESTING PERIOD BEGINS: **DECEMBER 1, 2018**

COMPLETION DEADLINE: **APRIL 12, 2019**

#### STATIONS ASSIGNED TO PHASE 3

TESTING PERIOD BEGINS: **APRIL 13, 2019**

COMPLETION DEADLINE: **JUNE 21, 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
Payment instructions for TV Repack reimbursements, Form 1876	April 5
Equipment performance measurements, Section 73.1590	April 15
Auction application, Form 175	April 29
TV white space broadcast bands, Sections 15.713, 15.714, 15.715, 15.717	April 30

## 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
Gadsden, AL	26, 45	26	Mar. 15	Mar. 25
Hoover, AL		45	Mar. 15	Mar. 25

### Deadlines for Comments in FCC and Other Proceedings

DOCKET	COMMENTS	REPLY COMMENTS
--------	----------	----------------

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

Federal Aviation Administration Docket FAA-2018-1084 Display of registration numbers on drones	March 15	N/A
Docket 18-314; NPRM Streamlining rules governing satellite services	March 18	April 16
Docket 17-317; Public Notice Modernization of carriage election notice	March 18	March 26
Docket 19-41; Public Notice TV Ratings		March 19
Docket 06-160; 2nd NPRM Processing applications in the Direct Broadcast Satellite Service	March 25	April 22
Docket 11-43; Public Notice Video description marketplace	April 1	May 1
Docket 18-349; NPRM 2018 Quadrennial Review of broadcast ownership rules	April 29	May 29
Docket 19-3; NPRM Comparative standards for applicants for noncommercial 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.

### Cut-Off Date for Application to Deliver Programs to a Foreign Station

The FCC has accepted for filing the following application for a permit to deliver programming to a foreign broadcast station. The deadline for comments about and petitions to deny this application is indicated.

APPLICANT	FOREIGN STATION(S)	FILING DEADLINE
Entravision Communications Corporation	XHDTV -TV Tecate-Cerro Bola Baja California, Mexico	April 8

**FOREIGN MEDIA  
DISCLOSURE STATEMENTS DUE**

**APRIL 12, 2019**

# FCC Poised to Establish Repack Reimbursement Process for LPTV and FM Stations

*continued from page 1*

Relocation Fund for full power and Class A television stations, and multichannel video programming distributors (“MVPDs”).

The REA appropriated \$600 million for fiscal year 2018 and \$400 million for fiscal year 2019. Of the \$600 million authorized for fiscal year 2018, not more than \$350 million was to be used for reimbursements to full power and Class A television stations; not more than \$150 million for LPTV stations; not more than \$50 million for FM stations; and \$50 million for consumer education related to the reorganization of television spectrum. The REA was silent about how to use the \$400 million earmarked for fiscal year 2019. In this R&O, the Commission says that it would prioritize payments to full power and Class A television stations and MVPDs over payments to LPTV and FM stations. In other words, if there is not enough money to cover every claimant’s expenses, LPTV and FM stations may not receive full reimbursement for all of their costs.

The R&O would set the eligibility criteria for LPTV and FM stations to receive reimbursement. To receive funds, an LPTV station must have been licensed (or had a license application pending) and transmitting as of April 13, 2017 – the date on which the Commission released the post-auction channel assignments for full power and Class A stations. To qualify as “transmitting,” a station must have been operating not less than two hours on each day of the week, and not less than a total of 28 hours per calendar week for nine of the 12 months just prior to April 13, 2017. The LPTV station must also have filed an application in the Special Displacement Window opened from April 10, 2018, to June 1, 2018, for LPTV stations displaced by the repack to request alternate facilities. LPTV stations in the so-called Phase 0 that were required to vacate their channels early due to early broadband build-out and filed their displacement applications before the Window will also qualify. A station must have a granted application to receive reimbursement. The Commission will not waste funds on costs incurred for an application that does not result in a construction permit. However, that granted application need not necessarily be the one filed in the Special Displacement Window. If the Window application was not granted because it was mutually exclusive with another application or because the station was displaced again, the grant of a successor application could qualify for reimbursement.

Full power and Class A stations are generally eligible to receive reimbursement that is reasonable to provide facilities “comparable” to those that were in place prior to the auction. The Commission does not believe that this “comparable” standard should be applied to LPTV stations. LPTV stations may need to relocate some distance from the original transmitter site, and therefore may need more power and/or height to reach their original service areas. This may require the purchase of equipment that is not “comparable” to the original equipment. Nonetheless, the agency says that

it would reimburse only the “reasonably incurred” costs for the LPTV station’s new facilities. This might not include the cost of upgraded equipment. Stations would be encouraged to reuse existing equipment and take other measures to mitigate costs.

The draft R&O includes some clarifications about specific issues that may arise. The Commission says that the cost of a full service mask filter would be reimbursable if it was specified in the Special Displacement Window application. On the other hand, requests for funds to buy new or replacement microwave studio-to-transmitter links would be evaluated on a case-by-case basis. Likewise, claims for funds for interim facilities would be judged on a case-by-case basis. Consulting fees (such as for engineers and lawyers) would be reimbursable in the same manner as equipment costs. The Commission would not reimburse a station for lost revenues, nor for the cost of resolving conflicts between mutually exclusive applications. The FCC would not reimburse a station for expenses for which it has already received reimbursement from another source – including T-Mobile’s Supplemental Reimbursement Program or its translator reimbursement grant program administered through PBS.

The REA also authorizes reimbursement to FM stations that experience disruptions to their operations because they are collocated with or located nearby one or more television stations whose facilities are modified in the repack. The REA expressly covers both full power FM stations and FM translators. In the R&O, the agency says it would find low power FM stations to be eligible also. To be eligible for reimbursement, an FM station must have been licensed and transmitting from facilities on April 13, 2017, that were impacted by the auction and/or the repack.

Disruptions to FM stations caused by the television repack will not require any channel changes. All such disruptions will result from physical changes to television facilities that operate with or near the FM station. According to the draft R&O, the Commission would adopt its proposal to divide affected FM stations into three categories: (1) stations forced to relocate their antenna sites permanently; (2) stations forced to temporarily dismantle equipment or make other changes not requiring FCC approval; and (3) stations forced to temporarily reduce power or cease transmission on their primary facility to accommodate antenna or tower modifications.

Category (1) and (2) stations need not necessarily construct comparable facilities in order to be reimbursed, but they should replicate as closely as feasible the signal contours that they are replacing. To be reimbursed, the Commission would require them to use existing equipment if possible, but new equipment may be purchased where needed.

The Commission would reimburse Category (3) FM stations for the cost of auxiliary facilities needed to replace regular service subject to disruptions that are more than

*continued on page 7*

# FCC Poised to Establish Repack Reimbursement Process for LPTV and FM Stations

*continued from page 6*

de minimis or more severe than those that it defines as “reasonable.” Time off the air for less than 24 hours, or any amount of time off the air between midnight and 5:00 a.m. would be considered de minimis. A reduction in power during which a station could still cover at least 80% of the area and population covered by its full authorized facilities would be deemed a reasonable disruption, and therefore not subject to reimbursement. The Commission would decline to adopt the proposal in the *Notice of Proposed Rulemaking* for a graduated scale for prioritizing Category (3) stations for reimbursement according to the length of time of the disruption.

All three categories of FM stations would have the same eligibility status. If there are sufficient funds available, the Commission would reimburse 100% of the reasonable expenses for all affected stations. As with television stations, the Commission would not reimburse stations for costs that have been funded from other sources.

The Commission would adopt a reimbursement process for LPTV and FM stations similar to that in effect for full power

and Class A television stations. Stations would be required to file eligibility certifications, estimates of expenses, and reports to document and claim expenses for reimbursement. The Commission will direct the Media Bureau to release the forms and set filing deadlines. When the Media Bureau has completed its review of the forms, it would issue an initial allocation from the Reimbursement Fund to each eligible station. These funds would be available for the station to draw down.

As with full-power and Class A television, reimbursements to LPTV and FM stations would be subject to audits and the possibility of including on-site inspections. Recipients of reimbursement funds would be required to retain documentation to support their reimbursement claims for 10 years after receipt of the last payment.

The advance draft Report and Order discussed in this article has not yet been adopted by the FCC. The text remains subject to revision until the Commission has adopted and released it.

---

## EEO Mid-Term Reports Abolished; More EEO Review Ahead

*continued from page 1*

months prior to the fourth anniversary of the expiration of the station’s last license term – which would ordinarily be the halfway point in the current term.

The Commission has decided that eliminating Form 397 will advance its goal of reducing unnecessary regulatory burdens without undermining its statutorily-required mid-term reviews of broadcaster compliance with the EEO rules. Section 334 of the Communications Act directs the FCC to conduct a mid-term review of television (but not radio) stations’ employment practices and to instruct them on how to improve their recruitment practices when necessary. However, the statute does not mandate the use of Form 397 or prohibit the elimination of such a form. The Commission plans to continue to conduct mid-term reviews of broadcasters’ EEO practices, but without the Form 397, which is no longer needed because nearly all the information it collected is also available in stations’ public inspection files.

The Form 397 consists of three elements: (1) a certification that the station has the requisite number of full-time employees to be subject to the mid-term review; (2) identification of a person responsible for EEO matters at the station; and (3) copies of the station’s two most recent annual EEO public file reports. The last two of these elements are now available to the public in the station’s online public inspection file. The station must identify its EEO-responsible person in the Form 396 which is filed at the end of each license term with the license renewal application. A station’s EEO public file reports are to be maintained in the public file for the duration of the license term.

The only information currently on the Form 397 which is not otherwise available in the station’s public file is information about the size of a radio station’s full-time staff. While all stations with five or more full-time employees must place the annual EEO public file report in their public files, radio stations are not subject to the mid-term review unless they employ 11 or more full-time staffers. To address this issue, the Commission will incorporate a new element into the online public file mechanism where a radio station will disclose the size of its staff.

The Form 397 will be completely eliminated after the conclusion of the current mid-term review cycle which will end April 1, 2019. Television stations with an April 1 due date for their 2019 Mid-Term Reports must still file them this year for the last time.

In addition to proposing to eliminate the Form 397, the Commission also solicited comment in the *Notice of Proposed Rulemaking* on the agency’s track record for EEO enforcement, and how the agency could improve EEO enforcement and compliance. A group of 33 organizations responded to this invitation jointly with concerns that the FCC has not adequately addressed what they called “the core issue” of word-of-mouth recruiting. They also recommended that the agency reform its EEO audit process and relocate its EEO staff in the Enforcement Bureau. Rather than addressing these issues in this *Report and Order*, the Commission committed to adopt a Further Notice in this proceeding within 90 days to seek additional comments about EEO enforcement and compliance.

## Satellite TV Procedures Streamlined

*continued from page 3*

The Commission concludes that the regulatory burdens of reproving conditions that have not materially changed are unwarranted. Indeed, the Commission has no record of having ever denied a reauthorization request.

The Commission emphasized, however, that the materiality certifications should be informed by the specific factors that were the basis of the original authorization. The agency rejected suggestions offered in comments to restrict the term “material change” to specific defined situations. A proposal was made that the Commission presume all changes to be nonmaterial except when: (1) a satellite station seeks to modify its facilities so as to increase by 20 percent or more its overlap of the parent station, (2) the seller has received a

bona fide offer within the preceding three years to purchase and operate the satellite as a full-service stand-alone station; or (3) information submitted to support the original request has changed fundamentally. Instead, the facts of each case should guide the determination of whether there has been a material change.

The new policy will be codified in Note 5 of Section 73.3555 of the Commission’s rules. Before this policy becomes effective, its requirements pertaining to the collection of information must be approved by the Office of Management and Budget. After that, it will be published in the Federal Register. The effective date will be 30 days after that publication.

## FCC Studies TV Ratings System

*continued from page 1*

establish an Oversight Monitoring Board to ensure that the guidelines would be accurately and consistently applied. In 1998, the FCC determined that these arrangements complied with the 1996 Act.

The TV Parental Guidelines contain both age- and content-based ratings. The age-based ratings are: TV-Y (all children); TV-Y7 (directed to older children age 7 or older); TV-G (general audience); TV-PG (parental guidance suggested); TV-14 (parents strongly cautioned — may be unsuitable for children under 14); and TV-MA (mature audience only — may be unsuitable for children under 17). The content-based descriptors are: V (violence); FV (fantasy violence in older children’s programming); S (sexual content); D (suggestive dialogue); and L (strong language in programming). The guidelines apply to most television broadcast and cable programming, except for news and sports programming and advertisements. Ratings information is displayed in the form of an icon at the beginning of and often after commercial breaks during all rated programming.

The Commission has received complaints that the system does not always function as intended. The Bureau says that the Parents Television Council recently asserted that the content ratings are “often misleading, or outright deceptive.” The Council claimed that programs with graphic violence and gun violence are too often rated as appropriate for children.

The Bureau invites comment generally on the accuracy of the ratings being applied to television programming. Are both the content-based and age ratings being correctly and consistently applied?

In their proposal to establish the Oversight Monitoring

Board, the industry groups had described how the Board should function. They said it would:

- provide information to television producers and program distributors concerning the Guidelines;
- address complaints and requests from the public about the Guidelines and their implementation;
- regularly hear parents’ views about the Guidelines and their application to programming;
- conduct focus groups and quantitative studies to determine whether the Guidelines are providing useful information to parents;
- consider any needed changes to the Guidelines;
- undertake independent, scientific research and evaluation of the V-chip.

The 2019 Appropriations Act directs the Commission to report on the ability of the Board to address public concerns. The Bureau now seeks public input to inform its report to Congress. Has the Board’s performance lived up to the commitments proffered by the industry? Are ratings actually being applied to the programming that the industry committed to rate? What steps has the Board taken to improve the ratings system? Has the Board undertaken enforcement activities? Does the Board respond to comments and queries from the public? If so, how and when? Does the current system meet the expectations of the 1996 Act? In addition to responses to these questions, the Bureau solicits any other information about the ratings system that the Commission should consider for inclusion in its report to Congress.

The Bureau set March 12 as the filing deadline for comments. Reply comments are due by March 19 in Docket 19-41.

ANTENNA™ is an information service about current events in communications law edited and published by Donald E. Martin. This publication is produced only to report on current events and factual matters in the field of communications law. Publication and dissemination of this material is not intended to constitute the practice of law or the rendering of legal advice. No attorney-client relationship shall be deemed to exist between the publisher or provider and any other party as a result of the publication, dissemination, distribution or other use of this material. The publisher attempts to ensure that the information reported is accurate, but no warranty, express or implied, is given as to the accuracy or completeness of any information or statement published herein. All material published herein is protected by copyright and all rights are reserved. © 2019 Donald E. Martin, P.C.