September 2019

Antenna™

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

New Kidvid Rules Effective September 16

This summer, the FCC revised its rules concerning children's television programming. The Commission characterized the *Report and Order* (FCC 19-67) with which it took this action as a modernization of the rules that would increase flexibility for broadcasters in their compliance efforts. The summary of these regulations has now been published in the Federal Register, and except for provisions which must be approved by the Office of Management and Budget ("OMB"), they are set to become effective as of September 16. Revisions becoming effective on that date include the following rule sections:

73.671(c)(2) – expanded Core Programming hours;

73.671(c)(3) – certain programming need not be regularly scheduled;

73.671(c)(4) – certain programming need not be at least 30 minutes in length;

73.671(d) – safe harbor processing guidelines revised;

73.671(e)(3) – preemption exemption for non-regularly scheduled live programming.

Stations subject to the children's programming requirements must comply with the old rules prior to the September 16 transition date. The quarterly Children's Television Programming Report due by October 10 should cover the period from July 1 through September 15.

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Snapshot Date for Biennial Ownership Reports Is October 1

Section 73.3516 of the FCC's rules requires the licensee of each broadcast station (except translators and low power FM stations) and each entity with an attributable interest in such licensees to file an ownership report every two years, in odd-numbered years, including 2019.

The report must identify the officers, directors, partners, shareholders and all others with an attributable interest in the station as of October 1. Reports must be filed electronically in the FCC's Licensing and Management System any time between October 1 and December 2. Regardless of when it is filed, the report is to show the ownership structure in place precisely as it is on October 1.

Regulatory Fees Due September 24

The FCC has established the rates for regulatory fees for Fiscal Year 2019, which ends on September 30, 2019, in a *Report and Order* (FCC 19-83) in Docket 19-105. The Commission is required by statute to collect these fees to help cover the cost of operating the agency. This year, Congress has directed the Commission to collect $339 million, an increase of approximately $17 million from the figure for FY 2018. The deadline for paying fees without a penalty is September 24.

To apportion the responsibility for paying regulatory fees among the entities that the Commission regulates, the agency estimates its cost for overseeing each type of regulated entity, and then divides that cost figure among the entities in the group. To determine the costs related to each type of regulated entity, the Commission calculates the cost for operating each of its core bureaus by counting the number of full-time equivalent employees ("FTEs") directly devoted to the work of each bureau and the number of FTEs indirectly supporting the activities of each bureau. Following this formula, the Commission has determined that 35.93% of the total amount

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Misuse of Alert Tones Costly for CBS

Compliance with the FCC's rules concerning the Emergency Alert System ("EAS") and Wireless Emergency Alert ("WEA") has been the topic of recent high-profile enforcement actions by the agency. The transmission of actual or simulated EAS tones when there is no emergency or outside of proper testing or public service announcements is a violation of Section 11.45 of the FCC's rules. Section 10.520(d) similarly prohibits the improper transmission of WEA tones. WEA tones are similar to the EAS tones and are used for emergency alerts transmitted over wireless networks, including mobile telephones. The Commission seeks to protect the integrity of the alert system by avoiding confusion when the tones are used, fatigue among listeners from over-used alerts, and false activation of the EAS on the facilities of participants downstream in the distribution daisy-chain.

In a contested case, the Commission has issued a *Notice of Apparent Liability for Forfeiture* (FCC 19-88) in the amount of $272,000 against CBS Broadcasting, Inc., and its network and broadcast station subsidiaries. In the course of an investigation triggered by complaints from the public, the Commission learned that the April 12, 2018, episode of CBS's primetime comedy series, *Young Sheldon*, included a "tornado warning sound effect" in a dramatic portrayal of a family facing a life-threatening tornado emergency. CBS characterized the sound effect as a "delicate and tasteful" use of modified EAS tones that would not be mistaken for an alert about a real emergency.

CBS reported that the production team at Warner Bros. Television, where *Young Sheldon* is produced, had downloaded the EAS codes and Attention Signal from YouTube. Then the sound technicians modified the audio level of the tornado warning sound effect so that it played under the program dialogue of an embedded Bugs Bunny cartoon, and shortened the Attention Signal from 8 seconds to 3.4 seconds. CBS asserted that the tones were deliberately edited and mixed so as not to confuse viewers that an actual emergency existed. The network argued that no reasonable viewer would have mistaken the depiction of a fictional tornado warning in the program as an actual EAS tone. Furthermore, in an actual emergency or authorized test, programming is preempted and the EAS graphic covers the entire screen. The Commission said that this argument was belied by the fact that members of the public had complained of confusion and concern. It also failed to address the problem of audience members who may only hear the audio without seeing the visual portion of the program.

Section 11.45 of the rules prohibits the inappropriate transmission of a simulation of the EAS tones, as well as of the tones themselves. CBS acknowledged that the sound effect in the program was a simulation of the EAS tones. The Commission said that CBS, in defending its use of the simulated tones within a fictional dramatic presentation, misunderstood the nature of Section 11.45. The issue is not whether the program, taken as whole, is a convincing simulation of an EAS activation. Rather, the issue is simply whether the program included any actual or simulated EAS tones in the absence of a permitted use.

CBS argued that the restrictions on use of the alert tones violates the First Amendment. It contended that prohibiting a dramatic presentation of the EAS tones that are neither false nor fraudulent, nor reasonably cause confusion, is not the "least restrictive means" to achieve the government's goals, and therefore enforcement action would fail a "strict scrutiny" First Amendment review. In response, the Commission relied on Supreme Court precedent for the principle that, because of the scarcity of spectrum, over-the-air broadcasting is subject to intermediate scrutiny rather than strict scrutiny. Under intermediate scrutiny, restrictions are upheld when they advance important governmental interests unrelated to the suppression of free speech, and do not burden substantially more speech than necessary to further those interests. Ensuring the integrity of the EAS is deemed to be a sufficiently important government interest.

CBS transmitted the program twice over its network – once for eastern stations, and once again for stations in the west. The program was broadcast by 15 CBS-owned stations, and carried by an additional 212 affiliated stations. The FCC found that it had previously imposed an $8,000 base fine for violations of Section 11.45, and decided to apply that figure as the base for this event too. In calculating the proposed forfeiture for this case, the agency considered each of the two network transmissions and the local broadcast by each of the 15 CBS-owned stations to be a separate incident, amounting to 17 separate violations. The $8,000 base multiplied by 17 violations produces a total of $136,000. The Commission may adjust the base amount of a fine as it deems warranted. It found that the reach of the CBS network on its 212 affiliates to cover nearly all of the nation increased the extent and gravity of the violations in this case. In consideration of this fact, the Commission doubled the proposed fine to $272,000.

CBS has 30 days in which to pay the forfeiture or respond with arguments as to why it should be reduced or canceled.

Several days prior to the release of the CBS *Notice*, the FCC's Enforcement Bureau adopted consent decrees with two other broadcasting companies and two cable television networks concerning the misuse of EAS tones in their programming. Rather than contesting the allegations of rule violations, these companies agreed in separate consent decrees to admit the violations, to pay a collective total of over $600,000 in civil penalties, and to implement significant compliance programs.

In October 2018, the Commission received complaints that ABC had improperly transmitted alert signals during the October 3, 2018, episode of the late night program, *Jimmy Kimmel Live!* The agency investigated and discovered that the WEA tones had been incorporated into a sketch regarding the then-recent nationwide Presidential WEA test. ABC explained that this happened due to a misunderstanding that the tones were permissible. This program was transmitted three times by the ABC network to its affiliates in the various time zone regions across the U.S.

ABC agreed to settle the proceeding by admitting liability, paying a civil penalty of $395,000, and implementing a compliance plan. The plan must include a compliance training program about proper use of the alert tones for all relevant

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Advocates for the Hard of Hearing Call for Captioning Quality Metrics

A coalition of nine academic and advocacy groups supporting the needs and interests of Americans who are deaf or hard of hearing has filed a Petition for Declaratory Ruling and/or Petition for Rulemaking with the FCC, urging the agency to take steps to promote the development and implementation of technology-neutral objective standards for the quality of closed captioning accompanying live television programming. The Commission has issued a Public Notice (DA-19-776) soliciting comments on the Petition.

The Petition asks the Commission to undertake three specific tasks:

(1) Initiate an inquiry into the state of the art of closed captioning techniques for live television programming and how the varying dimensions of caption quality affect the accessibility of live video programming, including accuracy, synchronicity, completeness, and placement.

(2) Use the record produced in the inquiry to develop rules requiring live television programming to be captioned at a level that meets or exceeds technology-neutral metrics guaranteeing that the programming is accessible by the deaf and hard of hearing.

(3) Immediately issue a declaratory ruling and/or expedited rule change with near-term guidance and policy on the use of automatic speech recognition ("ASR") technologies for captioning live television programs.

The Petition recounts over two decades of the regulatory history of captioning quality since the enactment of the Telecommunications Act of 1996 with the mandate to ensure that video programming is fully accessible. The Petition criticizes the Commission for failing to develop objective metrics to assess quality, and for relying instead on an approach featuring "methodology-specific quality-agnostic" "best practices" which has failed to result in sufficient improvements in captioning quality. The Petition urges the FCC to act expeditiously because of the proliferation of technologies and practices that make uniform output more difficult.

The Petition is especially concerned about the rise of what it characterizes as inexpensive, but poor quality ASR technologies. ASR techniques may possibly permanently undermine the market for live human captioners with no guarantee that they will not perpetuate or exacerbate the existing quality problems. For this reason, the Commission is asked to take immediate action to regulate ASR for quality control purposes while the larger examination of the issues is going forward.

The Commission's Consumer and Governmental Affairs Bureau solicits public comment about the Petition, which is available online at https://www.fcc.gov/ecfs/filing/10801131063733. The proceeding has been assigned to Docket 05-231. Comments are due by October 15, and reply comments are due by October 30.

Streamlining Proposed for Administrative Hearings

In a *Notice of Proposed Rulemaking* in Docket 19-214, the FCC has proposed amendments to its rules and policies that would streamline its process for administrative hearings. Within the Commission, such hearings presently are typically conducted like trials in civil litigation and may feature, among other things, live testimony from witnesses before an administrative law judge ("ALJ"), cross-examination of witnesses, and an initial decision by an ALJ that is subject to review by the Commissioners. The agency observes that such trial-type hearings are costly and impose significant burdens and delays on both applicants and the Commission that may not be necessary. The Commission proposes to conduct most of these proceedings as "paper" hearings, resolved on the basis of pleadings and evidentiary materials submitted to the Commission by the parties without in-person testimony from witnesses.

Situations in which the Commission is required or permitted by the Communications Act to conduct a hearing in order to resolve one or more issues include the following:

- When it is unable otherwise to make a determination that granting an application would serve the public interest, convenience and necessity.
- When it is unable otherwise to make the necessary findings to justify renewal of a broadcast license.
- When considering to modify or revoke a license or construction permit.
- Before revoking an authorization for failure to pay a regulatory fee if the licensee's response to a notice of intent to revoke presents a substantial or material question of fact.

The Supreme Court has identified three potential sources of procedural requirements for federal administrative agencies such as the FCC to conduct hearings: (1) the Administrative Procedure Act ("APA"), (2) the agency's governing statute (for the FCC, the Communications Act), and (3) the Due Process Clause of the Constitution.

The APA provides standards for both formal (trial-like) and informal hearings. By itself, the APA does not dictate when an agency should employ either type of hearing. Instead, the agency must apply the APA in conjunction with its enabling statute, and use formal hearing procedures when the enabling statute requires adjudication to be determined "on the record" after opportunity for an agency hearing.

The Communications Act does not include any express "on the record" language about hearings that would trigger

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DEADLINES TO WATCH

License Renewal, FCC Reports & Public Inspection Files

September 1 & 16	Radio stations in **North Carolina** and **South Carolina** broadcast post-filing announcements regarding license renewal applications.
September 1 & 16	Radio stations in **Florida, Puerto Rico** and **the Virgin Islands** broadcast pre-filing announcements regarding license renewal applications.
October 1	Deadline to file license renewal applications for radio stations in **Florida, Puerto Rico** and **the Virgin Islands**.
October 1	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 **Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, the Mariana Islands, Missouri, Oregon, Puerto Rico, the Virgin Islands** and **Washington**.
October 1	Deadline for all broadcast licensees and permittees of stations in **Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, the Mariana Islands, Missouri, Oregon, Puerto Rico, the Virgin Islands** and **Washington** 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).
October 1 & 16	Radio stations in **Florida, Puerto Rico, North Carolina, South Carolina** and **the Virgin Islands** broadcast post-filing announcements regarding license renewal applications.
October 1 & 16	Radio stations in **Alabama** and **Georgia** broadcast pre-filing announcements regarding license renewal applications.
October 10	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.
October 10	Deadline to file quarterly Children's Television Programming Reports for all commercial full power and Class A television stations for the period July 1-September 15, 2019.
October 10	Deadline to file quarterly Transition Progress Reports for television stations subject to modifications in the repack.
October 10	Deadline for noncommercial stations to file quarterly report re third-party fundraising.

EFFECTIVE DATE FOR NEW KIDVID RULES

SEPTEMBER 16, 2019

TELEVISION REPACK

STATIONS ASSIGNED TO PHASE 6

TESTING PERIOD BEGINS: **SEPTEMBER 7, 2019**

COMPLETION DEADLINE: **OCTOBER 18, 2019**

STATIONS ASSIGNED TO PHASE 7

TESTING PERIOD BEGINS: **OCTOBER 19, 2019**

COMPLETION DEADLINE: **JANUARY 17, 2020**

DEADLINE TO FILE NATIONWIDE EAS TEST FORM THREE

September 23, 2019

DEADLINE TO PAY REGULATORY FEES

SEPTEMBER 24, 2019

DEADLINE FOR LPTV AND FM STATIONS TO FILE REIMBURSEMENT CLAIMS RE TELEVISION REPACK

OCTOBER 15, 2019

DEADLINES TO WATCH

Deadlines for Comments in FCC and Other Proceedings

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

DOCKET	COMMENTS	REPLY COMMENTS
Docket 18-202; FNPRM Kidvid rules	Sep. 16	Oct. 15
Docket 19-165; NPRM Electronic delivery of MVPD notices to television stations		Sep. 19
Docket 19-177; NPRM EEO compliance and enforcement	Sep. 20	Nov. 4
Docket 17-317; FNPRM Must-carry notifications	Sep. 30	Oct. 15
Docket 19-140; NPRM Aviation Radio Service		Sep. 30
Docket 05-231: Public Notice Petition for Rulemaking re live closed captioning quality metrics	Oct. 15	Oct. 30
U.S. Department of Justice Antitrust Division, U.S. v Nexstar Media Group, Inc. Proposed Final Judgment and Competitive Impact Statement	Oct. 15	n/a
Docket 10-162; Public Notice FCC policies and practices to ensure accessibility of its programs and activities	Oct. 21	n/a
Docket 11-154; Public Notice Waiver of IP closed captioning requirement for Pluto TV	Oct. 24	Nov. 7
Docket 19-193; NPRM LPFM technical rules	FR+30	FR+45
Docket 19-105; FNPRM Regulatory fees	FR+30	FR+60
Docket 19-214; NPRM Streamlining administrative hearings	FR+30	FR+45

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

Cut-Off Date for AM and FM 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 **October 29, 2019**. Informal objections may be filed anytime prior to grant of the application.

PRESENT COMMUNITY	PROPOSED COMMUNITY	STATION	CHANNEL	FREQUENCY
Apache Junction, AZ	Sun Lakes, AZ	KVVA-FM	296	107.1
Barstow, CA	Hinkley, CA	KWIE	267	101.3
Panama City, FL	Upper Grand Lagoon, FL	WLTG(AM)	n/a	1430
Macomb, IL	Carthage, IL	WCAZ(AM)	n/a	1510
Lowell, MA	Lawrence, MA	WLLH(AM)	n/a	1400
Lefors, TX	Stinneett, TX	KDBW	219	91.7
Memphis, TX	Lefors, TX	KHNZ	267	101.3
Sanderson, TX	Rankin, TX	NEW	286	105.1

Regulatory Fees Due September 24 *continued from page 1*

to be collected, or $121.82 million, should be collected from the Media Bureau's regulatees – a group that includes broadcasters. These were the figures initially proposed in this proceeding for the Media Bureau regulatees, and the Commission declined to modify them despite comments from broadcast interests that the indirect FTEs should be calculated differently.

Radio broadcasters were successful in persuading the Commission to recount the number of feeable radio licenses. Previously in this proceeding, the agency had undercounted the total number of feeable radio stations by 553. Correcting this error brought the total number of stations in the pool to 10,011. Although the total sum of the fees allocated to radio broadcasting remained static, this recount had the effect of reducing each station's share of the total amount.

Until last year, the fee for each full power television station had been based entirely upon the ranked size of the market in which it was located. In contrast, fees for radio stations were calculated on the basis of the population within their service areas. In a *Report and Order and Order* (FCC 18-126) adopted last year, the Commission established a plan to move television to a population-based structure as well. In a transition phase this year, the full power television fees are derived from a hybrid formula that relies on both the market rank and the population within the station's noise limited service contour. The fee is the average of (1) what the market rank fee would be for this year (which are about 8.5% greater than the FY 2018 market rank fees), and (2) an amount calculated by multiplying the population in the station's service area by $0.007224. Each station's fee is unique and specific to its market rank and population covered. The 2019 fee for each full power commercial television station is listed on the FCC's website at http://fcc.gov/licensing-databases/fees/regulatory-fees.

The Commission's initial calculations included an anomaly regarding the fees for satellite television stations. Rather than averaging the deliberately discounted historical satellite station fee with the fee based on the population within the station's contour, the originally proposed fees for satellite stations had been calculated on the average of the fee for the station's undiscounted market size fee and the contour-based fee – resulting in dramatically higher fees for satellite stations than had been customary in the past. This error has been corrected in the finalized schedule of television station fees.

The Commission has set $1,000 as the de minimis threshold. A party with total aggregated fees of $1,000 or less is exempt from the requirement to pay fees.

Noncommercial stations are exempt from regulatory fees.

Fees are calculated on the basis of the status of the station as of October 1, 2018 – including if the station's authorization expired or was surrendered later during the fiscal year. Under circumstances in which an authorization has changed hands during the fiscal year, the Commission will look to collect the regulatory fee for the entire year from the entity that holds the authorization on September 24.

All fees must be paid by 11:59 p.m., Eastern Time, September 24, 2019. Fees not paid by the deadline will be subject to a 25 percent late-fee penalty and charges for administrative costs. Failure to pay regulatory fees and/or any late penalty will subject the regulatee to sanctions, including withholding agency action on pending applications and petitions, and ultimately, the revocation of the subject authorization. The Commission's online fee-filer system is open to receive online payments at https://www.fcc.gov/licensing-databases/fees/fee-filer.

The charts on page 7 of this publication list the regulatory fees for FY 2019 for most types of authorizations of interest to broadcasters (except for full power television stations). For purposes of comparison, they also show the figures that were originally proposed for the FY 2019 fees, and the actual FY 2018 fees. The fee for each specific station is available at http://fccfees.com.

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Streamlining Proposed for Administrative Hearings *continued from page 3*

the APA's requirement for a formal adjudication. Furthermore, the Commission finds nothing in the Communications Act that unambiguously requires trial-type hearings in all such proceedings. Consequently, the Commission tentatively concludes that its hearings generally are subject only to the APA's requirements for informal adjudications.

The Commission also believes that the proposed streamlining would comport with the due process requirements of the Fifth Amendment. The essential elements of due process are notice and an opportunity to be heard when a governmental decision places an individual's liberty or property interests in jeopardy. The Commission cites numerous judicial rulings to the effect that administrative agencies can resolve factual disputes on the basis of the written record produced in an informal paper hearing while still affording the parties appropriate due process. The Commission therefore tentatively concludes that it need not conduct an oral hearing if it can adequately resolve factual disputes on a written record.

There are, however, court decisions that suggest that a written record alone may not be appropriate to resolve questions of intent, motive or credibility. Comment is sought on the question of when the Commission might need a formal oral hearing to adjudicate such issues. However, the Commission notes that when an agency reviews an ALJ's initial decision, the agency is not bound by the ALJ's findings of fact, and may reject the judge's credibility findings as long as the agency's decision is supported by substantial evidence. In light of this, the Commission asks what is the additional benefit of a trial-type hearing.

The Commission invites public comment on these proposals and requires them to be filed within 30 days of publication of notice of this proceeding in the Federal Register. Reply comments will be due 45 days after that publication.

REGULATORY FEES FOR FISCAL YEAR 2019

Type of Authorization	Actual FY 2019	Proposed FY 2019	Actual FY 2018
Full Power Television			
Markets 1-10	$ *	$ *	$ 49,750
Markets 11-25	*	*	37,450
Markets 26-50	*	*	25,025
Markets 51-100	*	*	12,475
Remaining Markets	*	*	4,100
Construction Permit	4,450	4,450	4,100
Satellite Television Station (all markets)	*	*	1,500
Low Power TV, TV/FM Translators and Boosters	345	345	380
AM Radio Construction Permit	595	660	550
FM Radio Construction Permit	1,000	1,150	965
Satellite Earth Station	425	425	325

* Fees proposed for full power television stations for FY 2019 are calculated on the basis of a formula specific to each station as described in the text above. The fees for every full power commercial television station are listed online at https://www.fcc.gov/licensing-databases/fees/regulatory-fees.

ACTUAL FY 2019 REGULATORY FEES FOR RADIO

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM A, B1, C3	FM B,C,C0,C1,C2
0-25,000	$ 950	$ 685	$ 595	$ 655	$ 1,000	$ 1,200
25,001-75,000	1,425	1,000	895	985	1,575	1,800
75,001-150,000	2,150	1,550	1,350	1,475	2,375	2,700
150,001-500,000	3,200	2,325	2,000	2,225	3,550	4,050
500,001-1,200,000	4,800	3,475	3,000	3,325	5,325	6,075
1,200,001-3,000,000	7,225	5,200	4,525	4,975	7,975	9,125
3,000,001-6,000,000	10,825	7,800	6,775	7,450	11,950	13,675
6,000,000+	16,255	11,700	10,175	11,200	17,950	20,500

ORIGINALLY PROPOSED FY 2019 REGULATORY FEES FOR RADIO

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM A, B1, C3	FM B,C,C0,C1,C2
0-25,000	$ 1,000	$ 760	$ 660	$ 725	$ 1,150	$ 1,325
25,001-75,000	1,575	1,150	990	1,000	1,725	2,000
75,001-150,000	2,375	1,700	1,475	1,625	2,600	2,975
150,001-500,000	3,550	2,575	2,225	2,450	3,875	4,475
500,001-1,200,000	5,325	3,850	3,350	3,675	5,825	6,700
1,200,001-3,000,000	7,975	5,775	5,025	5,500	8,750	10,075
3,000,001-6,000,000	11,950	8,650	7,525	8,250	13,100	15,100
6,000,000+	17,950	13,000	11,275	12,400	19,650	22,650

ACTUAL FY 2018 REGULATORY FEES FOR RADIO

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM A, B1, C3	FM B,C,C0,C1,C2
0-25,000	$ 880	$ 635	$ 550	$ 605	$ 965	$ 1,100
25,001-75,000	1,325	950	825	910	1,450	1,650
75,001-150,000	1,975	1,425	1,250	1,350	2,175	2,475
150,001-500,000	2,975	2,150	1,850	2,050	3,250	3,725
500,001-1,200,000	4,450	3,225	2,775	3,050	4,875	5,575
1,200,001-3,000,000	6,700	4,825	4,175	4,600	7,325	8,350
3,000,001-6,000,000	10,025	7,225	6,275	6,900	11,000	12,525
6,000,000+	15,050	10,850	9,400	10,325	16,500	18,800

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New Kidvid Rules Effective September 16 *continued from page 1*

Stations should calculate their weekly average of children's programming broadcast over this period based on 11 weeks. Stations should respond to all questions on the report form for the covered period except for the item concerning plans for future programming, the requirement for which has been waived. Under the new rules, these periodic reports will be due annually rather than quarterly. The first annual report, covering the period from September 16 through December 31, will be due January 30, 2020. The new annual report will be submitted on Form 2100 Schedule H, which is being revised. It will not be available for use until it is approved by OMB.

Under the new regulations, the safe harbor processing guidelines for determining compliance with the children's programming rules have been modified to include a new 156-hour annual guideline as an alternative to the existing three-hour weekly guideline. Stations relying on the three-hour per week guideline should air at least 45 hours of Core Programming during the approximately 15-week period from September 16 to December 29. Compliance under the 156-hour per year guideline will be calculated on a pro rata basis for that same period.

With respect to the rules that the Commission modified but which remain subject to OMB approval, stations must continue to comply with the old requirements that will remain in effect until that approval is received and the revisions become effective. These include the continuing requirements:

- to reschedule any Core Programming that is preempted in compliance with the "second home" preemption policy;
- for commercial stations to provide target age information to publishers of program guides;
- for noncommercial stations to display the E/I symbol during Core Programming.

The Commission's Media Bureau has released a Public Notice (DA 19-864) to provide guidance for this transition.

Regulatory Fees Due September 24 *continued from page 7*

Proposed Rulemaking

Along with the *Report and Order* setting the 2019 regulatory fees, the Commission adopted and released in the same item a *Further Notice of Proposed Rulemaking*. Among the proposals were two that affect broadcasters, both of which spring from comments filed in this proceeding.

Commenters suggested that the predicted contour distance for VHF television stations on channels 2 through 13 does not adequately take into account possible distortions that may result from terrain blockage. Under such conditions, the population actually receiving the station's signal may be significantly reduced. The commenters assert that the population count for such VHF stations is overstated and should be adjusted downward accordingly. Such a reduction in predicted population coverage would reduce a station's regulatory fee. The Commission asks whether it should adjust the VHF contour modeling to address this issue, and if so, how.

Other commenters suggested that regulatory fees are a counterproductive burden on the development of radio stations participating in the Commission's incubator program. This program is designed to help stabilize new and/or struggling radio station operators to become self-sufficient and successful. A commenter offered the suggestion that a station in the Commission's incubator program should be exempt from regulatory fees for the entire license term. The Commission asks commenters to discuss an appropriate reduction of the fee, and suggests a discount of 50 percent.

Comments on these topics will be due 30 days after notice of this proceeding is published in the Federal Register. The deadline for reply comments will be 60 days after that publication.

Misuse of Alert Tones Costly for CBS *continued from page 2*

employees and the development of operating procedures and a compliance manual that all relevant employees will be required to follow. ABC must promptly report all new EAS violations and otherwise submit routine annual compliance reports to the FCC for three years.

Responding to a complaint from the public in the autumn of 2017, the Enforcement Bureau investigated whether KDAY(FM), Redondo Beach, California, and co-owned KDEY-FM, Ontario, California, had broadcast a simulation of the EAS attention signal outside of the context of an emergency or a test. It came to light that the tones were incorporated into a promotional audio bed used for entertainment purposes as part of the stations' morning show. The simulated alert tones were overlaid with and surrounded by voiceovers, music, on-air chatter and other sound effects. KDAY broadcast this recording 106 times from September to November 2017. KDEY-FM aired it 33 times in October and November. The licensee believed that the promotional bed was produced by a former employee.

To resolve this case, the stations' licensee, Meruelo Radio Holdings, LLC, agreed to admit to the rule violation, to pay a civil penalty of $67,000, and to implement a three-year compliance plan similar to the plan that ABC agreed to implement.