

## Prerecorded 'Live' Program To Be Identified as Prerecorded

The FCC's Enforcement Bureau and Salem Media Group have agreed to a *Consent Decree* (DA 20-100) to conclude an investigation about the reported violation of the live broadcasting rule in Section 73.1208 of the Commission's Rules by KRLA, Glendale, California. KRLA is licensed to an entity called New Inspiration, which is a subsidiary of Salem. Salem agreed to pay a civil penalty of \$50,000 and to implement a three-year compliance plan.

Rule Section 73.1208 provides that:

- (a) Any taped, filmed or recorded program material in which time is of special significance, or by which an affirmative attempt is made to create the impression that it is occurring simultaneously with the broadcast, shall be announced at the beginning as taped, filmed or recorded. The language of the announcement shall be clear and in terms commonly understood by the public. For television stations, the announcement may be made visually or aurally.
- (b) Taped, filmed, or recorded announcements which are of a commercial, promotional or public service nature need not be identified as taped, filmed or recorded.

The FCC received a complaint in August 2017, alleging that KRLA broadcast a call-in program entitled "HealthLine Live" as live when it was actually prerecorded. The Enforcement Bureau sent New Inspiration a Letter of Inquiry in December 2017, to which the broadcaster responded in January 2018.

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## Piracy Becomes More Expensive

Congress has passed and the President has signed into law the Preventing Illegal Radio Abuse Through Enforcement Act, otherwise known as the PIRATE Act. This legislation amends the Communications Act, adding a new Section 511, to require the FCC to increase its enforcement activities against operators of radio stations on the AM and FM broadcast bands who do not have licenses. Such stations are often called pirate stations.

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## Tower Violations Lead To \$1.13 Million Penalty

The FCC's Enforcement Bureau and Scripps Broadcasting Holdings, LLC, have entered into a *Consent Decree* (DA 20-24) to resolve an investigation about how Scripps' predecessor-in-interest violated the Commission's rules concerning registered antenna structures. In exchange for the Enforcement Bureau's termination of the proceeding, Scripps agreed to implement a two-year compliance program and to pay a civil penalty of \$1,130,000.

On August 31, 2018, a small aircraft collided with a broadcast antenna tower at Kaplan, Louisiana, registered to KATC Communications, LLC, which at the time, was a subsidiary of Cordillera Communications, LLC. This accident was investigated by the FCC and other government agencies. The Enforcement Bureau ultimately found no evidence connecting the collision to a violation of the Commission's Part 17 Rules (which pertain to antenna structures). However, this incident precipitated the Bureau's discovery of a broad pattern of noncompliance with these regulations by various Cordillera subsidiaries (collectively, "Cordillera")

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# University Noncom Stations Agree to \$76,000 Civil Penalty for Underwriting Violations

The FCC's Enforcement Bureau has entered into a *Consent Decree* (DA 20-12) with the University of Arkansas resolving a three-year investigation into allegations that two of the University's noncommercial FM stations had violated the prohibition on broadcasting commercial advertisements. In exchange for the Bureau's termination of the investigation, the University agreed to implement a five-year underwriting compliance plan and to pay a civil penalty of \$76,000.

The stations in question were KBPU, De Queen, Arkansas, and KTYC, Nashville, Arkansas. They were being managed by Cossatot Community College of the University of Arkansas, a campus under the University's control. In December 2016, two local commercial radio station group owners submitted a formal complaint to the FCC, alleging that the stations were broadcasting spots that were too promotional to be rule-compliant noncommercial underwriting announcements.

The complaint included purported transcripts of announcements aired from September 14 through September 17, 2016. Excerpts from those transcripts of announcements associated with specific for-profit contributors to the stations included:

- "a better way to bank" (Horatio State Bank);
- "the most powerful muscle car ever" (De Queen Auto Group);
- "amazing 10 year warranty" (Jim's Furniture and Decor);
- "they go above and beyond" (Coy Wiles Tire Company);
- "famous for having great claim service" (State Farm);
- "offers excellent bearing protection" (Romaine Oil Company);
- "we beat those city banks, a country mile" (First State Bank); and
- "an outstanding jewelry store" (Jeanine's Fine Jewelry).

In response to the Enforcement Bureau's Letters of Inquiry, the University admitted that the stations had broadcast the announcements as alleged. The Bureau accepted that admission and did not provide any analysis of the specific language in the announcements. The Bureau offered only a general statement of the law that noncommercial underwriting announcements intended to acknowledge contributions from for-profit entities must not promote the contributors' products, services or businesses. Such announcements must not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease.

The University agreed to pay the penalty in four installments of \$19,000 each. Under the terms of the *Consent Decree*, the University is obligated to establish an underwriting compliance plan that includes development of a compliance manual, staff training, a multi-level review process to vet the content of underwriting announcements, regular consultations with knowledgeable FCC counsel about underwriting compliance, and undertaking a compliance education program for prospective for-profit underwriters to educate them about the requirements for appropriate underwriting announcements. FCC records indicate that the University is the licensee of seven noncommercial radio stations. Although the Bureau said that it had not received complaints about any of the stations other than KBPU and KTYC, the underwriting compliance plan must incorporate the staffs and activities of all of the University's stations, including stations it might subsequently acquire. The University is required to file compliance reports with the Commission six months after the *Consent Decree* effective date, and then annually for five years on the anniversary of the effective date.

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## Court Enjoins Enforcement of 'A La Carte' State Law

The U.S. District Court in Maine has issued a preliminary injunction to temporarily prevent enforcement of a new state statute that would require cable television systems in that state to allow their subscribers to purchase cable channels and programs individually. Such a subscription model, often called "a la carte," differs from most plans typically offered by cable systems that require subscribers to purchase entire bundles of preselected channels. The state enacted this law, known as LD 832, in an effort to address consumers' complaints about the high cost of cable service that includes unwanted channels. Maine is the first state in the nation to mandate a la carte offerings by cable systems.

A major cable system operator in Maine, Comcast of Maine/New Hampshire, launched a lawsuit in federal court to have the law struck down. A number of program providers,

including broadcasters, joined with Comcast to sue the state of Maine. The plaintiffs asked the court for a preliminary injunction to prevent the state from enforcing the law while the litigation is pending.

In evaluating a motion for a preliminary injunction, the court must consider (1) the likelihood that the moving party will succeed on the merits of its claim in the underlying action, (2) whether and to what extent the moving party will suffer irreparable harm if the injunction is withheld, (3) the balance of hardships between the parties, and (4) the public interest impact of issuing or withholding the injunction. In this ruling, the court granted the plaintiffs' motion, largely on the grounds that they are likely to succeed in the underlying lawsuit.

After rejecting the plaintiffs' claim that LD 832 was preempted by the Communications Act, the court addressed

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# MVPD Notices to Stations Go Electronic

The FCC has amended its Rules concerning how multichannel video programming distributors (“MVPDs”), i.e., cable television systems and direct broadcast satellite (“DBS”) systems, must provide notice to television stations about carriage-related matters. Until now, these notices were delivered on paper through the postal mail. In a *Report and Order* (FCC 20-8) in Docket 19-165, the Commission has moved these notice obligations to email, essentially as proposed in the 2019 *Notice of Proposed Rulemaking* (FCC 19-68) in this proceeding. The Commission says that this transition will provide benefits including reductions in costs, administrative burdens, and environmental waste associated with the use of paper.

After July 31, 2020, MVPDs will be required to use email to deliver the following types of notices to television stations:

- Notice that a new cable system intends to commence service (Section 76.64(k)),
- Notice when a new cable system is activated (Section 76.1617),
- Notice of the deletion or repositioning of a television signal on a cable system (Section 76.1601),
- Notice of a change in the designation of a cable system’s principal headend (Section 76.1607),
- Notice of integration of multiple cable systems, requiring uniform carriage election (Section 76.1608),
- Notice that a cable system serves 1,000 or more subscribers

and is no longer exempt from network non-duplication and syndicated exclusivity rules (Section 76.1609),

- Notice of a DBS operator’s intention to retransmit a “significantly viewed” out-of-market station (Sections 76.54(e) and 76.66(d)(5)),
- Notice of a DBS operator’s intention to launch new local-into-local or HD carry-one, carry-all service (Section 76.66(d)(2)),
- DBS operator’s response to carriage requests (Sections 76.66(d)(1)(vi) and (d)(3)(iv)),
- Notice of location or relocation of local DBS receive facility (Section 76.66(f)(3)-(4)),
- Notice of deletion of a duplicating signal or addition of a formerly duplicating signal on DBS system (Section 76.66(h)(5)).

Full power and Class A television stations are required to designate an email address for MVPD carriage-related communications in their online Public Inspection Files. MVPDs will be required to send these notifications to that email address. For low power television and translator stations that are not required to have a Public Inspection File, MVPDs are directed to send notices to the licensee’s email address as shown in its filings on the FCC’s Licensing and Management System (“LMS”) (and specifically not to the email address for a contact person that might be identified in an LMS filing).

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## Definitions Proposed for Groups of Retrans Negotiators

The FCC has released a *Notice of Proposed Rulemaking* (FCC 20-10) in Docket 20-31 in which it proposes to amend Section 76.65 of its Rules concerning good faith negotiations for retransmission consent between television stations and multichannel video programming distributors (“MVPDs”). The Commission is directed to take this action by Congress in Section 1003 of the Television Viewer Protection Act of 2019.

An important purpose for this legislation was to give smaller MVPDs an improved negotiating position with respect to large broadcasters in the process of negotiating retransmission consent. It allows qualified MVPDs to participate in “buying groups” that can negotiate with large television station groups with more leverage than a small individual MVPD would have. The statute instructs the Commission to adopt rules that provide for negotiation of retransmission consent between qualified MVPD groups and large station groups. In this proceeding, the Commission is to adopt definitions for each side of such negotiations.

The FCC proposes that a MVPD may satisfy its obligation to negotiate in good faith for retransmission consent with a large station group by joining a qualified MVPD buying group to negotiate on its behalf, as long as the buying group itself negotiates in good faith as defined by the Commission’s rules.

A qualified MVPD buying group would:

(1) negotiate on behalf of two more MVPDs, (a) none of which serves more than 500,000 subscribers nationally, and (b) that do not collectively serve more than 25 percent of all households served by any MVPD in any single local market where the applicable opposing large station group operates; and

(2) negotiate agreements for retransmission consent (a) that contain standardized contract provisions for each MVPD in the group, and (b) under which the group entity assumes liability to remit to the large station group all of the retransmission fees received from the group members.

The Commission would define the “large station group” across the table from the MVPDs as a group of television stations that

(1) are directly or indirectly under common control, (2) generally negotiate agreements for retransmission consent as a single entity, and

(3) collectively have a national television audience reach of more than 20 percent.

The Commission requests public comment on these proposed definitions. Comments will be due 15 days after notice of this proceeding is published in the Federal Register. The deadline for reply comments will be 25 days after that publication.



# DEADLINES TO WATCH



## License Renewal, FCC Reports & Public Inspection Files

February 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 <b>Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York, and Oklahoma.</b>	April 1	Deadline to file license renewal applications for radio stations in <b>Indiana, Kentucky and Tennessee.</b>
February 3	Deadline to file license renewal applications for radio stations in <b>Arkansas, Louisiana and Mississippi.</b>	April 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 <b>Delaware, Indiana, Kentucky, Tennessee, Texas, and Pennsylvania.</b>
February 3	Deadline for all broadcast licensees and permittees of stations in <b>Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York, and Oklahoma</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 1	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).
February 1 & 16	Radio stations in <b>Alabama, Arkansas, Georgia, Louisiana and Mississippi</b> broadcast post-filing announcements regarding license renewal applications.	April 1 & 16	Radio stations in <b>Arkansas, Indiana, Kentucky, Louisiana, Mississippi, and Tennessee</b> broadcast post-filing announcements regarding license renewal applications.
February 1 & 16	Radio stations in <b>Indiana, Kentucky and Tennessee</b> broadcast pre-filing announcements regarding license renewal applications.	April 1 & 16	Radio stations in <b>Michigan and Ohio</b> broadcast pre-filing announcements regarding license renewal applications.
March 1 & 16	Radio stations in <b>Arkansas, Louisiana and Mississippi</b> broadcast post-filing announcements regarding license renewal applications.	April 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.
March 1 & 16	Radio stations in <b>Indiana, Kentucky and Tennessee</b> broadcast pre-filing announcements regarding license renewal applications.	April 10	Deadline to file quarterly Transition Progress Reports for television stations subject to modifications in the repack.
March 30	Deadline to file Children's Television Programming Reports for all commercial full power and Class A television stations for the period September 16 - December 31, 2019.	April 10	Deadline for noncommercial stations to file quarterly report re third-party fundraising.

## Cut-Off Date for FM Application to Change Community of License

The FCC has accepted for filing the application identified below proposing to change the station's community of license. The deadline for filing comments about this application is in the list below is **March 16, 2020**. Informal objections may be filed anytime prior to grant of the application.

PRESENT COMMUNITY	PROPOSED COMMUNITY	STATION	CHANNEL	FREQUENCY
Annona, TX	Mount Vernon, TX	New	263A	100.5



# DEADLINES TO WATCH



## Deadlines for Comments in FCC and Other Proceedings

DOCKET

COMMENTS

REPLY COMMENTS

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

Docket 19-347; NPRM (FCC 19-132) Cable service change notifications		Feb. 21
Docket 11-154; Public Notice (DA 19-1152) Waiver of IP closed captioning requirement for Pluto TV	Feb. 21	Mar. 6
Federal Aviation Administration; NPRM Docket FAA-2019-1100; Notice No. 20-01 (84 FR 72438) Remote identification of unmanned aircraft systems	Mar. 2	N/A
RM-11851; Petition for Rulemaking Request to authorize digital FM asymmetric sideband operations	Mar. 6	Mar. 23
Docket 19-311; NPRM (FCC 19-123) All-digital AM broadcasting	Mar. 9	Apr. 6
Council on Environmental Quality; NPRM Docket CEQ-2019-0003 (85 FR 1684) Update procedural provisions of National Environmental Policy Act	Mar. 10	N/A
U.S. Copyright Office; NOI Docket 2019-7 (84 FR 66328) Status of online dissemination as "publication" for purposes of copyright registration	Mar. 19	Apr. 16
Docket 19-226; NPRM (FCC 19-126) Human exposure to radiofrequency electromagnetic fields	FR+30	FR+60
Docket 20-31; NPRM (FCC 20-10) Retransmission consent negotiations between MVPD and broadcast groups	FR+15	FR+25

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

## 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
Rebroadcasts, Sections 73.1207, 74.784, 74.1284	Feb. 20
Public Inspection Files and political files, Sections 73.3426, 73.3527, 73.1212, 73.1943	Feb. 20
Must-carry rules, Sections 76.56, 76.1614, 76.1620, 76.1709	Feb. 21
FM station license application, Form 2100, Schedule 302-FM	Feb. 21
Auction disclosures, Sections 1.2110, 1.2111, 1.2112	Mar. 23
Emergency antennas, Section 73.1680	Mar. 30
Television channel sharing, Section 74.799, Form 2100, Schedule D	Mar. 30
CORES updates/changes, Form 160	Mar. 30
Post incentive auction LPTV licensing and operations, Sections 74.787, 74.793, 74.799, 74.3700; Form 2100, Schedule C	Mar. 30
Application for wireless radio authorization, Form 601	Apr. 6
Application for assignment or transfer of control of wireless radio authorization, Form 603	Apr. 6



# DEADLINES TO WATCH



## Lowest Unit Charge Schedule for 2020 Political Campaign Season

During the 45-day period prior to a primary election or party caucus and the 60-day period prior to the general election, commercial broadcast stations are prohibited from charging any legally qualified candidate for elective office (who does not waive his or her rights) more than the station's Lowest Unit Charge ("LUC") for advertising that promotes the candidate's campaign for office. Lowest-unit-charge restrictions are in effect now or soon will be in the following jurisdictions. Some of these dates may be subject to change.

JURISDICTION	ELECTION EVENT	DATE	LUC PERIOD
Alabama	State & Pres. Primaries	Mar. 3	Jan. 18 - Mar. 3
Alaska	Dem. Pres. Primary	Apr. 4	Feb. 19 - Apr. 4
American Samoa	Dem. Pres. Caucus	Mar. 3	Jan. 18 - Mar. 3
American Samoa	Rep. Pres. Caucus	Mar. 24	Feb. 8 - Mar. 24
Arizona	Dem. Pres. Primary	Mar. 17	Feb. 1 - Mar. 17
Arkansas	State & Pres. Primaries	Mar. 3	Jan. 18 - Mar. 3
California	State & Pres. Primaries	Mar. 3	Jan. 18 - Mar. 3
Colorado	Presidential Primaries	Mar. 3	Jan. 18 - Mar. 3
Connecticut	State & Pres. Primaries	Apr. 28	Mar. 14 - Apr. 28
Delaware	Presidential Primaries	Apr. 28	Mar. 14 - Apr. 28
Florida	Presidential Primaries	Mar. 17	Feb. 1 - Mar. 17
Georgia	Presidential Primaries	Mar. 24	Feb. 8 - Mar. 24
Guam	Rep. Pres. Caucus	Mar. 14	Jan. 29 - Mar. 14
Guam	Dem. Pres. Caucus	May 2	Mar. 18 - May 2
Hawaii	Rep. Pres. Caucus	Mar. 10	Jan. 25 - Mar. 10
Hawaii	Dem. Pres. Primary	Apr. 4	Feb. 19 - Apr. 4
Idaho	Presidential Primaries	Mar. 10	Jan. 25 - Mar. 10
Illinois	State & Pres. Primaries	Mar. 17	Feb. 1 - Mar. 17
Indiana	State & Pres. Primaries	May 5	Mar. 21 - May 5
Kansas	Dem. Pres. Primary	May 2	Mar. 18 - May 2
Kentucky	Rep. Pres. Caucus	Mar. 21	Feb. 5 - Mar. 21
Kentucky	Dem. Pres. Primary	May 19	Apr. 4 - May 19
Kentucky	State Primaries	May 19	Apr. 4 - May 19
Louisiana	Presidential Primaries	Apr. 4	Feb. 19 - Apr. 4
Maine	Presidential Primaries	Mar. 3	Jan. 18 - Mar. 3
Maryland	State & Pres. Primaries	Apr. 28	Mar. 14 - Apr. 28
Massachusetts	Presidential Primaries	Mar. 3	Jan. 18 - Mar. 3
Michigan	Presidential Primaries	Mar. 10	Jan. 25 - Mar. 10
Minnesota	Presidential Primaries	Mar. 3	Jan. 18 - Mar. 3
Mississippi	State & Pres. Primaries	Mar. 10	Jan. 25 - Mar. 10
Missouri	Presidential Primaries	Mar. 10	Jan. 25 - Mar. 10
Nebraska	State & Pres. Primaries	May 12	Mar. 28 - May 12
Nevada	Dem. Pres. Caucus	Feb. 22	Jan. 8 - Feb. 22
New York	Presidential Primaries	Apr. 28	Mar. 14 - Apr. 28
North Carolina	State & Pres. Primaries	Mar. 3	Jan. 18 - Mar. 3
North Dakota	Dem. Pres. Primary	Mar. 10	Jan. 25 - Mar. 10
Ohio	State & Pres. Primaries	Mar. 17	Feb. 1 - Mar. 17
Oklahoma	Presidential Primaries	Mar. 3	Jan. 18 - Mar. 3
Oregon	State & Pres. Primaries	May 19	Apr. 4 - May 19
Pennsylvania	State & Pres. Primaries	Apr. 28	Mar. 14 - Apr. 28
Puerto Rico	Dem. Pres. Primary	Mar. 29	Feb. 13 - Mar. 29
Puerto Rico	Rep. Pres. Primary	Mar. 8	Jan. 23 - Mar. 8
Rhode Island	Presidential Primaries	Apr. 28	Mar. 14 - Apr. 28
South Carolina	Dem. Pres. Primary	Feb. 29	Jan. 15 - Feb. 29
Tennessee	Presidential Primaries	Mar. 3	Jan. 18 - Mar. 3
Texas	State & Pres. Primaries	Mar. 3	Jan. 18 - Mar. 3
Utah	Presidential Primaries	Mar. 3	Jan. 18 - Mar. 3
Vermont	Presidential Primaries	Mar. 3	Jan. 18 - Mar. 3
Virgin Islands	Rep. Pres. Caucus	Mar. 12	Jan. 27 - Mar. 12
Virginia	Dem. Pres. Primary	Mar. 3	Jan. 18 - Mar. 3
Washington	Presidential Primaries	Mar. 10	Jan. 25 - Mar. 10
West Virginia	State & Pres. Primaries	May 12	Mar. 28 - May 12
Wisconsin	State & Pres. Primaries	Apr. 7	Feb. 22 - Apr. 7
Wyoming	Dem. Pres. Caucus	Apr. 4	Feb. 19 - Apr. 4

## Court Enjoins Enforcement of ‘A La Carte’ State Law continued from page 2

First Amendment issues. The plaintiffs’ contended that the statute infringed upon their First Amendment rights in two ways. First, they alleged that exercising a cable system’s editorial control over how to provide programming is protected speech. The court denied this claim, reasoning that LD832 was directed at how cable systems sell their channels and not at how they select or edit content.

The plaintiffs’ second argument was that because LD 832 designates cable operators for disfavored treatment as compared to other multichannel video programming distributors (“MVPDs”), it violates the First Amendment’s prohibition on speaker-based restrictions. The court agreed with this proposition, citing precedent for the principle that the government may not treat different elements of the press in arbitrarily different ways. This then necessitated a review of which level of scrutiny should apply to the statute.

The plaintiffs argued that LD 832 is subject to strict scrutiny. If regulation of speech is content-based, it must withstand strict scrutiny. However, the court found that LD 832’s a la carte mandate was not content-based and is not subject to strict scrutiny.

The court then turned to assessing LD 832 under intermediate scrutiny. Under intermediate scrutiny, a regulation or law will be sustained if it furthers an important or substantial government interest, if the government interest is unrelated to the suppression of free expression, and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

The state’s objective in adopting LD832 was to encourage lower pricing and greater choice for consumers. The plaintiffs urged that the state had not provided any evidence of an absence of consumer choice, excessive pricing, or a lack of a la carte options in the marketplace before LD 832 was enacted. The court agreed and further observed that the state had not accounted for the significant transactional costs that would result from upending the cable market in Maine or the likelihood that these costs would be passed on to consumers. The court also noted that LD 832 included no mechanism to prevent cable operators from pricing an individual cable channel at the same level as an entire tier. The court concluded that the state had failed to show that LD 832 would be likely to reduce prices and increase affordable access to cable service. The statute would likely therefore not further the state’s governmental interest. Accordingly, plaintiffs were likely to succeed in showing that LD 832 would not withstand intermediate scrutiny, and were likely to succeed in the underlying suit.

Judge Nancy Torresen noted that a determination of the likelihood of success for purposes of a preliminary injunction is based only on the present state of the record. She then described the evidentiary record as inadequate to allow her to make a final determination on the plaintiffs’ request for a permanent injunction. A further hearing was to be scheduled.

This decision is entitled *Comcast of Maine/New Hampshire, et al., v. Mills, et al.*, 2019 U.S. Dist. LEXIS 219159. Defendant Janet Mills is the Governor of Maine. The state of Maine has appealed this ruling.

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## Piracy Becomes More Expensive continued from page 2

The new law authorizes the FCC to levy fines on pirate operators of up to \$100,000 per day of unlicensed broadcasting, to a maximum of \$2,000,000.

Upon locating an unlicensed station, the Commission’s policy has generally been to issue a notice of unlicensed operation to the operator in the hope that this will be sufficient to persuade the station’s owner to go silent. However, the new statute mandates the FCC to amend its rules to require that, absent good cause, in any case of alleged piracy, the agency shall proceed directly to issue a notice of apparent liability without first issuing a notice of unlicensed operation.

The law directs the Commission to conduct special sweeps not less than once each year in the top five radio markets where piracy is prevalent to identify, locate, and terminate pirate stations. Follow-up sweeps are to be conducted six months later to monitor the situation in those markets.

Within 90 days of enactment of the legislation, and semi-

annually thereafter, the FCC is to publish a database on its website listing every licensed station in the nation, and identifying every entity that has received a notice of unlicensed operation, notice of apparent liability, or forfeiture order in connection with an unlicensed broadcast operation.

The Commission is to submit an annual report to Congress summarizing its implementation of this statute and its enforcement activities during the preceding year. The Commission may include in this report its efforts to enlist the cooperation of federal, state and local law enforcement personnel to assist in its enforcement efforts. Although federal laws and regulations usually preempt state laws and regulations, this statute forbids the FCC to preempt any state or local law prohibiting pirate radio broadcasting.

Unlicensed low power transmitters that operate legally under Part 15 of the Commission’s Rules are specifically excluded from the kinds of operations targeted by the PIRATE Act.

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### TELEVISION REPACK

#### STATIONS ASSIGNED TO PHASE 8

TESTING PERIOD BEGINS: **JANUARY 18, 2020**

COMPLETION DEADLINE: **MARCH 13, 2020**

#### STATIONS ASSIGNED TO PHASE 9

TESTING PERIOD BEGINS: **MARCH 14, 2020**

COMPLETION DEADLINE: **MAY 1, 2020**

## Tower Violations Lead to \$1.13 Million Penalty continued from page 1

that warranted further investigation. The Enforcement Bureau found compliance problems at 11 towers owned by Cordillera at various sites around the United States.

Under Section 17.47(a) of the Commission's Rules, the owner of any antenna structure registered with the Commission that has been assigned lighting specifications is required to check on the lights at least once every 24 hours, either visually or by use of a monitoring system that will automatically notify a caretaker if the lights are not properly illuminated. The Enforcement Bureau said that there had been numerous, sometimes longstanding, irregularities in the monitoring of the lighting systems at 10 of Cordillera's towers.

If the owner of an antenna structure learns that the required lighting is not properly illuminated, Section 17.49 of the Commission's Rules mandates that it maintain the following information in its records for two years: (1) the nature of the extinguishment or improper functioning of the light(s), (2) the date and time that the problem was observed, (3) the date and time that notice was provided to the Federal Aviation Administration, if applicable, and (4) the date, time and nature of adjustment, repairs or replacements. According to the Enforcement Bureau's findings, Cordillera failed to maintain complete records of 12 light failure incidents at seven of its antenna structures.

The change of ownership of a registered antenna structure must be reported to the FCC within five days according to Section 17.57 of the agency's Rules. The

investigation revealed that Cordillera failed to timely notify the Commission about the acquisition of two of its towers.

In response to a Letter of Inquiry from the Enforcement Bureau, Cordillera had admitted these violations and said that it had addressed them.

While the Enforcement Bureau's investigation was in progress, Cordillera and Scripps Media filed applications in November 2018, to transfer control of 10 of Cordillera's 11 license subsidiaries. Scripps Broadcasting Holdings was later substituted as the transferee in these transactions. To facilitate the grant of the transfer of control applications while the investigation was pending, Scripps agreed to accept liability with respect to the investigation and to toll the statute of limitations for two years. The Media Bureau thereupon granted the transfer applications on April 5, 2019.

The Enforcement Bureau and Scripps subsequently negotiated the terms of the *Consent Decree*. Scripps agreed to pay a civil penalty of \$1,130,000 and to implement a two-year compliance plan. The compliance plan is to include the appointment of a knowledgeable compliance officer who will oversee the development of operating procedures, a compliance manual and a training program for relevant staff regarding antenna structure requirements. All incidents of noncompliance at any of Scripps' antenna structures must be promptly reported to the Enforcement Bureau. Comprehensive reports on the company's compliance efforts are to be filed with the Commission at the 90-day, 12-month, and 24-month milestones after the effective date of the *Decree*.

## Prerecorded 'Live' Program To Be Identified continued from page 1

In its response, New Inspiration admitted the program had actually been prerecorded, but the broadcast had included no announcement to that effect. The host suggested that he was taking calls from listeners and speaking with them live over the air. It was evident that the program's title and the apparent interactive discussion with callers suggested to the audience that the program was being broadcast live. It was also revealed that multiple other radio stations owned by Salem broadcast the same recorded program without announcing that it is prerecorded.

The Enforcement Bureau said that in pursuing this matter, it was protecting consumers by ensuring that the public knows when certain program material is "live," rather than taped, filmed or recorded. Stations that violate Section 73.1208 mislead the public. The Bureau explained its intention that adoption of this *Consent Decree* would "send a signal to the industry that the Commission remains vigilant in its duty to ensure that licensees adhere to the live broadcasting rule."

Under the terms of the agreement, Salem is to pay a civil penalty of \$50,000 and implement a three-year compliance plan that includes the typical elements of such plans. A compliance officer must be appointed. The plan is to include operating procedures, development of a compliance manual and staff training with respect to the requirement that prerecorded programming must be identified as such to the audience. Salem must report all future violations of the live broadcasting rule that might occur at its stations within 15 days. Annual reports on the company's compliance efforts are required at the end of each 12-month period for three years following the effective date of the *Decree*.

### FM AUCTION 106

UPFRONT PAYMENTS DUE	MARCH 20, 2020
MOCK AUCTION	APRIL 24, 2020
BIDDING BEGINS	APRIL 28, 2020

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