

## Next AM/FM Auction Scheduled for July 27, 2021 Partial Filing Freeze Imposed

The FCC's Office of Economics and Analytics and its Media Bureau have announced that bidding in the next auction for vacant AM and FM allotments will begin on July 27, 2021. The procedures proposed for this Auction 109 are set out in a *Public Notice* (DA 21-131). The Commission will offer for sale four AM construction permits and 136 FM construction permits. A list of the communities, channels, and proposed minimum opening bids for these permits is found on pages 6 and 7.

Auction 109 will include all of the 130 FM permits that were previously set to be offered in Auction 106, plus six additional FM permits and four AM permits. Auction 106 was postponed last March due to the COVID-19 pandemic. That auction is now canceled. All of the applications submitted to participate in it have been dismissed. All parties seeking to participate in Auction 109, regardless of whether they filed an Auction 106 application, must file a new short-form application.

Auction 109 will include four AM permits to replace stations in the St. Louis market whose license renewal

*continued on page 7*

## Enforcement Bureau Issues EAS Advisory

The FCC's Enforcement Bureau has issued an *FCC Enforcement Advisory* (DA 21-10) to remind participants in the Emergency Alert System ("EAS"), including broadcasters, of their obligations to comply with the EAS rules, including ensuring that EAS alerts are accessible to persons with disabilities.

The EAS is a national warning system that enables the President to communicate via live audio to the public during an emergency. Participants must transmit presidential messages during national emergencies. The system is also used to transmit optional local and regional messages such as severe weather alerts and AMBER (Americans Missing: Broadcast Emergency Response) alerts. The Federal Emergency Management Agency ("FEMA")

*continued on page 3*

## DTS Rules Refined, Expanded To Include LPTV

With a *Report and Order* (FCC 21-21) in Docket 20-74, the FCC has amended its rules governing distributed transmission systems ("DTS"), also known as single frequency networks, used by television stations to enhance service within their coverage areas. Similar to the use of translator stations, DTS transmitters operate within the coverage of the parent station to improve service in areas where the parent station's signal is weak or obstructed. Unlike translators, DTS transmitters operate on the same channel as the parent station. These revisions are intended to clarify an ambiguity in the rules about the amount of the DTS signal that can exceed, or "spill over," the edge of the parent's service area. This action also makes it easier for Class A and low power stations to establish DTS facilities by codifying the application process for these stations.

The FCC has defined a DTS station's maximum authorized service area to be an area comparable to that which the full service station could be authorized to serve with a single transmitter. To determine the boundaries of

*continued on page 8*

### IN THIS ISSUE

Filming in National Parks .....	2
Last Chance for C-Band Earth Stations ....	3
Deadlines to Watch .....	4-5
Permits Offered in Auction 109.....	6

For more information about or help with any of the items reported in **Antenna™** 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

# Fees for Filming in National Parks Held Unconstitutional

A judge for the United States District Court in Washington, D.C., has declared unconstitutional a statute and its implementing regulations that required commercial filmmakers to pay fees for a permit to film in the national parks. The law in question is 54 U.S.C. § 100905 which required the Secretary of the Interior, through the National Park Service (“NPS”), to charge a fee for a permit for “commercial filming activities or similar projects” within the bounds of any area administered by the NPS. In addition to the fee for the permit, the NPS was to charge fees to recover costs it might incur as a result of the filming project. The ostensible purpose for the fees was to obtain fair market value for the use of the public lands and their resources.

In the NPS rules implementing this statute, “commercial filming” was defined as:

[T]he film, electronic, magnetic, digital, or other recording of a moving image by a person, business, or other entity for a market audience with the intent of generating income. Examples include, but are not limited to, feature film, videography, television broadcast, or documentary, or other similar projects.

There was no corresponding fee requirement for noncommercial filming. “News-gathering” activities were specifically exempted from the fee regime. For this purpose, “news” was defined as “information that is about current events or that would be of current interest to the public, gathered by news-media entities for dissemination to the public.”

The plaintiff in this case was Gordon Price. In the court’s narration of the facts, Price is described as a “part-time independent filmmaker who lives and works in Yorktown, Virginia.” In February 2017, Price and a colleague began filming an independent feature entitled *Crawford Road* about a stretch of road in York County, Virginia, that has been the subject of rumors of hauntings and was the location of unsolved murders.

As elements of this movie, Price filmed scenes in areas open to the general public at four locations within the Yorktown Battlefield in the Colonial National Park, which is property administered by the NPS. No more than four people were present during this filming. Price used only a camera tripod and microphone without any heavy equipment. However, he never requested or paid for a permit.

*Crawford Road* premiered at a restaurant in Newport News, Virginia, in October 2018, before an audience of approximately 250 people. The film garnered attention in the local press and on social media sites. However, this attention apparently led to a government enforcement action. In December, two NPS officers served Price with a notice of criminal violation for failing to obtain a commercial filming permit. The case was docketed in the U.S. District Court for

the Eastern District of Virginia, where Price challenged the NPS action on the grounds that it was facially invalid as a content-based prior restraint on his freedom of speech. The government decided to dismiss the charge against Price, explaining that “the interests of justice [were not] served by pursuing this prosecution.”

Nonetheless, the government maintained that the permitting regime was constitutional, that all commercial filming within NPS properties still required a permit, and that failure to comply with this requirement would continue to be considered a criminal violation. The court determined that the government’s voluntary dismissal deprived it of jurisdiction to consider Price’s constitutional question.

This episode affected Price in two ways. First, he cancelled scheduled showings of *Crawford Road* until he was able to edit the film to delete scenes that had been shot on NPS property. The situation has created a roadblock for Price in his efforts to obtain distribution for the film. Second, Price aborted his plans for another film for which he had scouted shooting locations at the Yorktown Battlefield and the Manassas National Battlefield – both of which would have been at risk for new permit disputes with the NPS. Consequently, in December 2019, Price sued the federal government in the U.S. District Court in Washington, complaining that the statutory and regulatory regime for filmmaking permits on NPS properties was unconstitutional as a violation of his First Amendment right to freedom of expression, and asking the court to enjoin the government from enforcing these regulations. Both sides moved for a judgment on the pleadings. The court granted Price’s motion and enjoined the government as he requested.

The court’s analysis began by citing Supreme Court precedent that (1) free expression by motion pictures is included within the free speech and free press protected by the First Amendment, and (2) the creation and dissemination of information are speech within the meaning of the First Amendment. The First Amendment protects actual photos, videos, and recordings, and for this to have meaning, it must protect the act of creating that material as well.

The next element of the analysis concerned the government’s restriction of speech in a public forum. Again, citing Supreme Court precedent, the court noted that in a traditional public forum, such as parks, streets and sidewalks, the government may impose reasonable time, place and manner restrictions on private speech. It is well-settled that national parks provide space for traditional public forums. Restrictions based on content must satisfy strict scrutiny, and those based on viewpoint are prohibited.

The court found that the NPS permit regime was content-based because it targeted only commercial filmmaking and ignored noncommercial filming entirely. The rules defined commercial filming as that made for a market audience with the intent of generating income. The court concluded that the requirement for the permit turned

*continued on page 5*

# C-Band Earth Stations Have Last Chance To Provide Notice

The FCC's International Bureau has issued a *Public Notice* (DA 21-81) to announce that C-Band satellite earth station operators have one last opportunity to notify the Commission of their stations' incumbent operational status. The deadline to do so is April 19, 2021.

The FCC is in the process of reallocating a portion of the 3.7-4.2 GHz band (commonly called the C-Band) to wireless broadband services and moving users in the fixed-satellite service out of that spectrum. Operators of satellite earth stations on the affected frequencies have been directed to confirm that their stations are operational and therefore entitled to migrate to a different channel, or in cases where the station is not operating, to disclose that fact to the Commission. Section 25.16(c) of the FCC's Rules provides that an earth station authorization is automatically terminated if the station is not operated for a period exceeding 90 days.

The FCC has engaged the services of RSM US LLP ("RSM") to act as a coordinator of the transition. During previous filing windows, earth station operators have had the opportunity to identify their stations and claim reimbursement for their relocation costs. RSM has reported to the Commission that numerous earth stations have been reported as inactive,

or have not been accounted for at all. Attachment A released with the *Public Notice* listed the known earth stations deemed inactive. The list is available here: <https://docs.fcc.gov/public/attachments/DOC-369398A2.pdf>. Attachment B identified the earth stations whose operators have been unresponsive to the previous solicitations for information: <https://docs.fcc.gov/public/attachments/DOC-369398A3.pdf>.

The operators of the earth stations identified on these lists are directed either (1) to file to remove those antennas from the International Bureau's database as no longer operational, as required by the Commission's rules, or (2) to file a notice in Docket 20-205 via the Electronic Comment Filing System that the station is still operational and that the operator intends to participate in the C-Band transition.

C-Band earth station operators on these lists who do not respond to affirm the continued operation of the identified earth stations will be deemed to have had the authorizations for these antennas automatically terminated by rule. These terminated earth stations will also be removed from the incumbent earth station list. They will not be entitled to protection from interference from the new wireless services or be eligible for reimbursement of any transition costs, including the costs for filters. The deadline to respond is April 19, 2021.

---

## Enforcement Bureau Issues EAS Advisory continued from page 1

is required by law to conduct a national level EAS test at least once every three years. For each of these tests, the FCC requires EAS participants to transmit the message, comply with the FCC's audio and visual requirements, and submit test results to the FCC. The Commission evaluates these results to determine whether EAS participants need to make adjustments to enhance the reliability and reach of their alerts.

The most recent national level test of the EAS was conducted in 2019. In reporting on the results of that test, the FCC's Public Safety and Homeland Security Bureau noted improvements in key areas, but also identified issues that impair dissemination of EAS messages. In particular, the *Advisory* notes the need for improved compliance with the requirements designed to make the alert message accessible to individuals with hearing and vision disabilities.

To improve EAS performance, and ensure compliance with the EAS regulations in Sections 11.1 through 11.61 of the FCC's Rules, the *Advisory* sets out the following directives:

- EAS participants must ensure that their EAS equipment's monitoring and transmitting functions are available and operational whenever the station and system are operating. Software and firmware should be upgraded to the most recent versions. Participants should take security precautions, such as changing default passwords and maintaining equipment behind firewalls. EAS equipment clocks should be properly synchronized.

- EAS participants must transmit national level EAS messages, required monthly tests, and required weekly tests. National EAS messages can be delivered through the Integrated Public Alert and Warning System ("IPAWS") and/or the broadcast-based distribution system. Participants are required to monitor the IPAWS platform on the Internet for EAS messages that are written in the Common Alerting Protocol. Messages in this Protocol initiated through the IPAWS can include audio, video or data files, images, foreign language translations of alerts, and links providing detailed information. Under the broadcast-based distribution method, FEMA transmits the EAS message to a pre-established hierarchy of broadcast, cable and satellite systems, which in turn transmit the message to other media outlets or audiences, as designated in each state's EAS plan. Each EAS participant must monitor at least two independent monitoring sources assigned by the participant's state EAS plan. Participants must understand and identify their role in their state's plan. When a monitored source fails, the participant should investigate the cause of the failure to receive the message and take available steps to remedy it.
- EAS participants must ensure that the EAS message is accessible. For the visual portion of the message, the text must be displayed:

*continued on page 8*



# DEADLINES TO WATCH



## License Renewal, FCC Reports & Public Inspection Files

January 30	Deadline to place annual certification of compliance with the commercial limits for children's television programming in station's Public Inspection File, covering the period January 1, 2020, through December 31, 2020.	April 1	Deadline to file license renewal applications for radio stations in <b>Texas</b> , and television stations in <b>Indiana, Kentucky, and Tennessee</b> .
February 1	Deadline to file license renewal applications for radio stations in <b>Kansas, Nebraska, and Oklahoma</b> , and television 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, Pennsylvania, Tennessee, and Texas</b> .
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 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	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	Radio stations in <b>Texas</b> , and television stations in <b>Indiana, Kentucky, and Tennessee</b> begin broadcasting post-filing announcements within five business days of acceptance of application for filing and continuing for four weeks.
February 1	Deadline for Children's Television Programming Reports for all full power and Class A television stations for 2020.	April 10	Deadline to place quarterly Issues/Programs List in Public Inspection File for all full service radio and television stations and Class A TV stations.
February	Radio stations in <b>Kansas, Nebraska, and Oklahoma</b> , and television stations in <b>Arkansas, Louisiana, and Mississippi</b> begin broadcasting post-filing announcements within five business days of acceptance of application for filing and continuing for four weeks.	April 10	Deadline for noncommercial stations to place quarterly report re third-party fundraising in Public Inspection File.
		April 10	Deadline for Class A TV stations to place certification of continuing eligibility for Class A status in Public Inspection File.

## Proposed Amendments to the Television Table of Allotments

The FCC is considering petitions to amend the digital television Table of Allotments by changing the channels allotted to the communities identified below. The deadlines for submitting comments and reply comments are shown.

COMMUNITY	STATION	PRESENT CHANNEL	PROPOSED CHANNEL	COMMENTS	REPLY COMMENTS
Jonesboro, AR	KAIT	8	27	FR+30	FR+45
Augusta, GA	WRDW-TV	12	27	FR+30	FR+45
Savannah, GA	WTOC-TV	23	11	FR+30	FR+45
Oswego, IL	WAOE	-	10	FR+30	FR+45
Peoria, IL	WAOE	10	-	FR+30	FR+45
Cedar Rapids, IA	KCRG-TV	9	32	FR+30	FR+45
Cape Girardeau, MO	KFVS	11	32	FR+30	FR+45
Jefferson City, MO	KRCG	12	29	FR+30	FR+45
Kearney, NE	KHGI	13	18	FR+30	FR+45
Tulsa, OK	KTUL	10	14	FR+30	FR+45
Amarillo, TX	KVII-TV	7	20	FR+30	FR+45
St. George, UT	KMYU	9	21	FR+30	FR+45

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



# 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 20-330; NPRM (FCC 20-158) Fixed-Satellite Service operations in the 17 GHz Ka-Band	March 3	March 18
Docket 20-401; NPRM (FCC 20-166) Geo-targeting by FM booster stations		March 12
Docket 21-39; Public Notice (DA 21-131) Procedures for Auction 109	March 15	March 22
Docket 20-36; NPRM (FCC 20-156) Unlicensed operations in TV white spaces	FR+30	FR+60
Docket 16-155; Public Notice (DA 20-1545) Standard questions for review of foreign ownership proposals	FR+30	FR+45
Docket 20-443; NPRM (FCC 21-13) Allocating terrestrial mobile services to share spectrum with satellite services	FR+30	FR+60
<i>FR+N means the filing deadline is N days after publication of notice of the proceeding in the Federal Register.</i>		

## Paperwork Reduction Act Proceedings

The FCC is required by 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
Sponsorship identification, Section 73.1212	Mar. 1
Antenna structure registration, Sections 17.4, 17.48, 17.9	Mar. 29

## Fees for Filming in National Parks Held Unconstitutional continued from page 2

on the assessment of whether the content of a film is meant to appeal to a market audience.

Being content-based, the permit regime must therefore withstand strict scrutiny. The government must show that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest. The permit fee in question was a stand-alone fee to recover “fair market value” for the use of the public property. It was not intended to recover the government’s costs in overseeing the filmmaker or to compensate for the filmmaker’s wear and tear on the property. The rule prescribed separate fees for those costs. Thus the only purpose for the basic permit fee appeared to be to raise revenue for the NPS, which is allowed to keep such funds for its own use. This triggered the court’s reference to yet another Supreme Court decision rejecting the government’s attempt to justify content-based restrictions on speech by pointing to the need to raise revenue. Instead, the Supreme Court said, the government should impose a tax generally, rather than directing it at a specific speaker. Furthermore, the government may not

impose a charge for the enjoyment of a Constitutional right. The filming permit failed the strict scrutiny test.

The court concluded its ruling by declaring the permit regime for commercial filmmaking to be unconstitutional and enjoined the government from enforcing the permit and fee requirements for “commercial filming” on properties under NPS jurisdiction.

The court also noted however that the legislation that led to the statute in question was decades old and appeared to be directed toward major productions then occurring on NPS properties, such as *Star Wars* and *Dances with Wolves*. No distinction was made between such large-scale projects and Price’s production that involved only one camera and only a few people. The court observed that a more targeted permitting regime for commercial filmmaking, more closely focused on the threat to property and safety posed by large groups and heavy filming equipment, might pass constitutional muster in the future.

The decision is *Price v. Barr*, 2021 U.S. Dist. LEXIS 11885.

# Construction Permits Offered in Auction 109

FM PERMITS	CHANNEL	OPENING BID	FM PERMITS	CHANNEL	OPENING BID
Kotzebue, AK	280A	\$ 1,500	Narrowsburg, NY	275A	\$ 40,000
Yakutat, AK	280A	750	Sagaponack, NY	233A	45,000
Camden, AL	230A	3,500	Shelter Island, NY	277A	45,000
Maplesville, AL	292A	10,000	Westfield, NY	265A	25,000
Thomaston, AL	280C3	15,000	Clayton, OK	262A	1,500
Rison, AR	255A	7,500	Millerton, OK	265C2	10,000
Desert Hills, AZ	292A	25,000	Wayne, OK	266A	20,000
Ehrenberg, AZ	228C2	15,000	Wright City, OK	295A	10,000
First Mesa, AZ	281C	15,000	Boardman, OR	231C3	7,500
Overgaard, AZ	234C1	20,000	Huntington, OR	228C1	45,000
Salome, AZ	231A	1,500	Powers, OR	293C2	15,000
Sells, AZ	2285A	1,500	Edgefield, SC	238A	25,000
Snowflake, AZ	259C2	25,000	Englewood, TN	250A	25,000
Tusayan, AZ	222C1	2,500	Albany, TX	255A	1,500
Boonville, CA	300A	7,500	Big Lake, TX	252C2	1,500
Cartago, CA	233A	1,500	Big Lake, TX	281C1	60,000
Coalinga, CA	247B1	45,000	Bogata, TX	247A	20,000
Cottonwood, CA	221A	35,000	Canadian, TX	235C1	25,000
Earlimart, CA	228A	45,000	Carrizo Springs, TX	228A	7,500
Essex, CA	280B	750	Carrizo Springs, TX	295A	3,500
Ft. Bragg, CA	253B1	10,000	Centerville, TX	274A	2,500
King City, CA	275A	5,000	Crystal Beach, TX	268A	1,500
Ludlow, CA	261B1	1,500	Encino, TX	250A	2,500
Randsburg, CA	275A	1,500	Fort Stockton, TX	263C	15,000
Sacramento, CA	300B	45,000	Groom, TX	273A	1,500
Battlement Mesa, CO	275C3	75,000	Hale Center, TX	236C1	20,000
Dotsero, CO	261A	25,000	Junction, TX	277C3	1,500
Eckley, CO	257C1	7,500	Lockney, TX	271C3	7,500
Hugo, CO	222A	1,500	Lovelady, TX	288A	7,500
Stratton, CO	246C1	7,500	Milano, TX	274A	7,500
Cross City, FL	249C3	20,000	Mount Enterprise, TX	279A	10,000
Fort Walton Beach, FL	295A	60,000	Mullins, TX	277A	5,000
Pembroke, GA	257C1	75,000	Olney, TX	282A	3,500
Haynesville, LA	286A	3,500	Paint Rock, TX	296C3	2,500
Oil City, LA	285A	15,000	Premont, TX	264C3	10,000
Dunkerton, IA	280A	60,000	Richland Springs, TX	235A	1,500
Rockford, IA	225A	25,000	Rising Star, TX	290C3	5,000
Abingdon, IL	291A	25,000	Roscoe, TX	228A	10,000
Orange, MA	247A	45,000	Rule, TX	253A	1,500
Carney, MI	260A	5,000	Sanger, TX	281C3	75,000
Custer, MI	260A	7,500	San Isidro, TX	255A	750
Houghton, MI	242C1	25,000	San Isidro, TX	278A	750
Lake Isabella, MI	255A	45,000	Teague, TX	237C3	10,000
Onekama, MI	227C3	20,000	Trinity, TX	251A	10,000
Pigeon, MI	267A	10,000	Wellington, TX	253C3	3,500
Grand Marais, MN	245C3	1,500	Wells, TX	254A	10,000
Bourbon, MO	231A	15,000	Huntington, UT	287C3	10,000
Cuba, MO	269A	20,000	Paragonah, UT	258A	20,000
Maryville, MO	285C3	15,000	Hardwick, VT	290A	10,000
Wheatland, MO	272A	10,000	West Rutland, VT	298A	25,000
Bruce, MS	233A	10,000	Coupeville, WA	266A	25,000
McLain, MS	245A	10,000	Kahlotus, WA	283A	2,500
New Albany, MS	268A	25,000	Raymond, WA	300A	7,500
New Augusta, MS	269A	45,000	Trout Lake, WA	236A	10,000
Valier, MT	289C1	10,000	Crandon, WI	276A	1,500
Bayard, NE	251A	15,000	Tomahawk, WI	265C3	10,000
Gackle, ND	256C1	15,000	Albin, WY	282C3	2,500
Groveton, NH	268A	10,000	Cora, WY	274C2	3,500
Jefferson, NH	247A	10,000	Lusk, WY	242A	750
Stratford, NH	254A	10,000	Manville, WY	255C1	5,000
Animas, NM	279C1	2,500	Marbleton, WY	257C1	3,500
Chama, NM	241C3	2,500	Meeteetse, WY	259C	10,000
Des Moines, NM	287C	10,000	Medicine Bow, WY	259C3	750
Lovington, NM	269C3	25,000	Rawlins, WY	298C2	5,000
Skyline-Ganipa, NM	240A	10,000	Rozet, WY	256C3	20,000
Caliente, NV	264A	1,500	Wamsutter, WY	285A	750
Tonopah, NV	224A	1,500	Wheatland, WY	293A	3,500
Keeseville, NY	231A	75,000			
Livingston Manor, NY	296A	25,000			

continued on page 7

## Construction Permits Offered in Auction 109 continued from page 6

FORMER AM CALL SIGN	COMMUNITY	FREQUENCY	CLASS	OPENING BID
KFTK	East St. Louis, IL	1490	C	\$ 50,000
KQQZ	Fairview Heights, IL	1190	B	50,000
WQQW	Highland, IL	1510	D	50,000
KZQZ	St. Louis, MO	1430	B	50,000

---

## Next AM/FM Auction Scheduled for July 27, 2021 continued from page 1

applications were dismissed with prejudice in a hearing before an Administrative Law Judge. To facilitate the auction of these four AM permits, they will be treated as existing “allotments” with the facilities of the former stations that occupied these frequencies.

At a later date, the Commission will announce the schedule for a filing window for short-form applications for the permits offered in this auction. Where two or more applications are filed for the same permit, the applicants will proceed to the bidding. Applicants will be required to deposit a refundable upfront payment equal to the minimum opening bid for each permit for which they apply. The proposed amounts for these payments are shown in the table on page 6 and atop this page. In setting these figures, the Commission says that it has taken into account the type of service and class of facility, market size, population covered in the proposed service area, and recent broadcast transaction data. The public is invited to comment on the appropriateness of the proposed upfront payments and opening bids.

The Commission proposes to use a simultaneous multiple-round design for this auction, similar to that employed in broadcast auctions it has conducted in the past. Bidding will take place online, with an option for placing bids by telephone as well. All permits will be available in each round until the auction closes. The Commission proposes a system of incremental bidding with 10 percent as the increment above the provisional winning bid. After the minimum opening bid has been accepted, the minimum acceptable bid will be 10 percent greater than the provisionally winning bid from the previous round. After that, higher incremental bids may be placed at increments of 5 percent. An applicant would have the option to submit a higher bid consisting of the sum of the provisionally winning bid and one of eight incremental percentages of that bid, i.e., the provisionally winning bid plus 15, 20, 25, 30, 35, 40, 45 or 50 percent.

A bidder will be required to bid on the full range of permits for which it is eligible in a given round, unless it is

the provisionally winning bidder on a permit in the previous round or it uses one of three available activity waivers. Failure to bid with the full range of eligibility will result in a reduction of eligibility for future rounds.

A bidder may remove a bid before the round closes. However, the Commission proposes to prohibit a provisionally winning bidder from withdrawing its bid after the round has closed.

At the close of bidding, a schedule will be established for the payment of winning bids. Applicants who do not win any permits will have their upfront payments refunded. A winning bidder that defaults on payment of the bid price or that is disqualified after the auction closes will be liable for a default payment. Under the Commission’s rules, the default payment consists of a deficiency payment, equal to the difference between the amount of the Auction 109 bidder’s winning bid and the amount of the winning bid the next time that the construction permit is won in an auction, plus an additional payment equal to a percentage of the defaulter’s bid or of the subsequent winning bid, whichever is less. The Commission proposes that for Auction 109, the value for that additional payment would be 20 percent.

The FCC invites public comment on these proposed procedures, which must be submitted by March 15. March 22 will be the due date for reply comments.

To provide a stable environment for permits on offer in this auction, the Commission has frozen the filing of applications and petitions for rulemaking that would have an impact on any Auction 109 construction permit. The freeze includes any (1) applications proposing to modify any allotment; (2) petitions and counterproposals that propose any change in channel, class, community, or reference coordinates for any listed allotment; and (3) applications, petitions and counterproposals that fail to fully protect any allotment. The freeze will terminate automatically the day after the deadline for winning Auction 109 applicants to file their long-form applications.

## DTS Rules Refined, Expanded To Include LPTV continued from page 1

a DTS station's maximum service area, the Commission established a Table of Distances, centered on the parent station's antenna site, which it derived from the hypothetical maximum service area for which a full service station could apply. A DTS transmitter must be located within either the parent reference station's Table of Distances area, or the parent reference station's authorized service area. The DTS transmitter's noise-limited service contour must also be contained within the same parameters, except that where an extension of coverage beyond the parent station's authorized service area is of a "minimal amount" and necessary to ensure that the combined coverage of all of the associated DTS transmitters covers all of the parent station's authorized service area. The Commission has determined that the imprecision of this "minimal spillover" concept gives rise to unnecessary regulatory confusion.

To remedy this problem, the FCC adopted a specific bright-line limit for the spillover of the DTS signal. For UHF stations, the DTS 41 dBu F(50,50) contour must not exceed the parent station's 41 dBu F(50,50) contour. The corresponding values will be 28 dBu for Low VHF stations, and 36 dBu for High VHF stations. The Commission believes that relaxing and clarifying the amount of DTS spillover permitted at the fringe of a full power station's authorized service area will improve the station's ability to provide a stronger and more uniform signal to viewers located at the edges of the service area and behind terrain obstacles, while still adequately protecting other users of the spectrum.

Both ATSC 1.0 and ATSC 3.0 stations can deploy DTS and benefit from this clarification in the rules. However, the Commission expects that this enhancement of DTS will be especially useful for ATSC 3.0 stations to help them provide improved audio and video, mobile viewing capabilities, geo-targeting, and advanced data services to a larger

number of consumers.

Until now Class A and low power television stations have been permitted to deploy DTS only by applying for an experimental authorization. The FCC now recognizes that changes in the marketplace since the transition to digital television, including the evolution of ATSC 3.0, have made DTS more attractive to low power television stations. Therefore, the Commission amended the rules to allow Class A and low power stations to apply for and to deploy DTS with facilities that comply with the contour-based limit for spillover adopted in this proceeding (there is no Table of Distances for low power stations). The DTS transmitter must be located within the parent station's authorized F(50,90) contour and the DTS transmitter's F(50,50) contour must be contained within the parent station's F(50,50) contour.

The shift from authorizing Class A and LPTV DTS on a case-by-case, experimental basis to licensing these facilities under a codified rule will require modification of the FCC's processes, including application forms, the Licensing and Management System, and engineering review. Until these modifications can be implemented, the Commission will continue to process DTS requests for Class A and LPTV stations on a case-by-case basis. Such applications should be filed as requests for Special Temporary Authority.

Although they voted for adoption of the *Report and Order*, Commissioners Jessica Rosenworcel and Geoffrey Starks issued partial dissenting statements. They expressed concern that the Commission had not paid enough attention to the potential impact that the revised spillover allowances could have on other spectrum users.

The amended rules will become effective 30 days after notice of this action is published in the Federal Register.

---

## Enforcement Bureau Issues EAS Advisory continued from page 3

- » At the top of the screen or where it will not interfere with other visual messages (such as closed captioning).
- » In a manner (i.e., font size, color, contrast, location, and speed) that is readily readable and understandable.
- » Without overlapping lines or extending beyond the viewable screen.
- » In full at least once during the alert.
- The full audio portion of the message must be transmitted completely at least once.
- EAS participants are required to participate in national level tests and to submit accurate and complete reports to the FCC.

The *Advisory* cautions that there may be consequences for failing to comply with the FCC's EAS requirements, including monetary forfeitures. The Enforcement Bureau may treat each failure either to transmit EAS messages or to file accurate EAS test reports as a separate violation for purposes of calculating the proposed amount of the forfeiture.

The *Advisory* directs questions about EAS participants' obligations to Maureen Bizhko of the Public Safety and Homeland Security Bureau at [Maureen.Bizhko@fcc.gov](mailto:Maureen.Bizhko@fcc.gov).

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. © 2021 Donald E. Martin, P.C.