

FM Class C4 Waiver Denied

In a *Letter Decision* (DA 21-145) to the applicant and commenting parties, the Chief of the Audio Division of the FCC's Media Bureau has denied a request for a waiver of the FM spacing rules in Sections 73.207 and 73.215 of the FCC's Rules, and dismissed an application by Commander Communications Corp. to modify the facilities of WRTM-FM, Sharon, Mississippi. In an application filed on July 16, 2018, Commander proposed to upgrade the station from a Class A FM to a "limited" Class C3 status, increasing the effective radiated power from 4.6 kW to 9.2 kW. Granting the application would have made the station essentially equivalent to the proposed Class C4 status that is the subject of an ongoing rulemaking proceeding.

Under consideration in that proceeding is a proposal to create an intermediate class of FM stations between the present Class A and Class C3, to be identified as Class C4. The proposal includes establishing a process for an FM station to qualify for treatment under Section 73.215 so that it would be protected from received interference on the basis of its actual authorized operating parameters rather than predicted maximum facilities.

Commander's application did not specify a fully-

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Deadline for LPTV Digital Transition Is July 13

The FCC's Media Bureau has released a *Public Notice* (DA 21-260) to remind the operators of analog low power television and television translator stations that they must cease analog broadcasting by 11:59 p.m., local time, on July 13, 2021. Stations that have not completed construction of their digital facilities by that time must request special temporary authority to be silent and go off the air until they are able to operate in the digital mode.

If a station licensee anticipates that it will not be able to complete construction of the digital facilities by July 13, it can request an extension of the digital construction permit for a period of not more than 180 days. The deadline for submitting such a request is March 15.

An application for extension of time to construct

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Politicians' Defamation Suits Dismissed

Lawsuits alleging that CNN defamed Congressman Devin Nunes and his Senior Advisor, Derek Harvey, have been dismissed by two federal district courts for failure to state a claim upon which relief may be granted. Both cases stem from media coverage of political disputes during the run-up to the first impeachment of Donald Trump.

Congressman Nunes filed his complaint in the U.S. District Court for the Eastern District of Virginia, in Alexandria, Virginia, on December 3, 2019. At CNN's request, the case was moved to the U.S. District Court for the Southern District of New York in New York City. Nunes alleged that CNN (1) intentionally published and disseminated a demonstrably false news article and related report about him, and (2) engaged in a conspiracy to defame him and to damage his personal and professional reputation.

These claims arose from the stories published and transmitted on November 22, 2019, reporting on investigations related to the first Trump impeachment. Specifically, the stories concerned reports that the Congressman had traveled

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Renewal Applications Designated for Hearing

The FCC's Media Bureau has issued a *Hearing Designation Order* (DA 21-79) to determine the effects on a broadcast licensee's qualifications to hold FCC licenses after its sole shareholder was convicted of multiple felonies. Auburn Network, Inc. (ANI) the licensee of WANI(AM), Opelika, Alabama; WGZZ(FM), Waverly, Alabama; WHBD-LD, Auburn, Alabama; and three FM translator stations. The Commission's Administrative Law Judge ("ALJ") will preside over this hearing.

On June 3, 2016, a jury convicted ANI's sole shareholder, Michael Hubbard, of 12 felony counts under Alabama's Ethics Act related to Hubbard's conduct while he was the Speaker of the Alabama House of Representatives. The Alabama Supreme Court ultimately upheld six of the convictions. These included two counts of soliciting or receiving a thing of value from a principal, one count of using an official position for personal gain, two counts of representing for compensation a business entity before an executive agency, and one count of use of public property for private benefit. Hubbard is currently serving a four-year prison sentence.

ANI filed applications on November 27, 2019, to renew the radio station licenses, which are being held in abeyance pending the resolution of this proceeding. Hubbard's convictions were disclosed in the applications. After the Alabama Supreme Court upheld the convictions, ANI filed an application to assign its stations to Auburn Network, LLC, a newly created entity, owned entirely by an individual who is already an FCC licensee and has no known qualifications issues.

A policy stemming from an appellate judicial decision in 1964, known as the Jefferson Radio policy, generally prohibits the assignment or transfer of a license when character issues

are pending against the licensee. This policy serves as a deterrent to preclude bad actors from selling out from under their misconduct. The application includes information that the Media Bureau interprets as a request for an exception to the Jefferson Radio policy. The Media Bureau states that on the present record, it cannot find ANI to be qualified to be a licensee, and thus the Jefferson Radio policy precludes allowing the assignment of the stations to the proposed assignee, even though ANI asserts that neither Hubbard nor ANI would profit from the transaction. The assignment application will also be held in abeyance pending the resolution of this proceeding.

Under Section 309(e) of the Communications Act, the FCC is required to designate an application for hearing if a substantial and material question of fact arises as to whether granting the application would serve the public interest, convenience, and necessity. An applicant's character is a factor in determining an applicant's qualifications. The statute also provides that the FCC may revoke a license if conditions come to its attention which would have justified denying the original application.

In assessing character qualifications for a broadcast license, the FCC considers evidence of any felony conviction as relevant to the question of the applicant's character qualifications. Whether a specific episode or pattern of felonious misconduct is disqualifying depends on the facts of each case, including a consideration of any mitigating factors. Hubbard and ANI have an opportunity in this hearing to adduce mitigating evidence if they can.

Any other person seeking status as a party in interest to this proceeding must file a petition to intervene pursuant to Section 1.223 of the FCC's Rules.

New DTDRT Applications Due by July 13

In the course of the post-Incentive Auction repack, some full power television stations were required to implement modifications to their facilities that reduced their coverage area. To address this problem, the FCC created a new translator service, featuring digital-to-digital replacement translators ("DTDRT"). DTDRT stations are to be deployed to fill in the missing gaps in a repacked and modified station's new coverage pattern.

The licensees of eligible full power stations were given a one-time opportunity to file applications for construction permits for such stations. The time for filing DTDRT applications was set to run for one year after the completion of the post-Incentive Auction transition. That transition period ended on July 13, 2020. Therefore, the deadline for filing applications for new DTDRT stations is July 13, 2021.

Filing Window Announced for PLMR T-Band Applications

The FCC's Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau have released a *Public Notice* (DA 21-190) announcing a filing window from March 22 to June 21, 2021, for incumbent T-Band licensees in the Private Land Mobile Radio ("PLMR") services to file applications for expanded facilities in the T-Band if they propose narrowband operations. The T-Band consists of the spectrum from 470 to 512 MHz. PLMR services, such as public safety, industrial and land transportation radio

users, share this band with broadcast television channels 14 through 20 in 11 cities. PLMR operations are permitted on these channels where there is no broadcast station. However, they must maintain fixed mileage separation from the transmitter sites of affected nearby authorized television stations. Section 90.307(e) of the FCC's Rules references the list of television stations that PLMR applicants must protect. The list can be viewed at <https://www.fcc.gov/general/oet-technical-documents>.

Injunction Restraining à la Carte Law Upheld

The United States Court of Appeals for the First Circuit has upheld a ruling by the U.S. District Court in Maine that temporarily enjoined the State of Maine from enforcing its statute that would have required cable television systems to offer unbundled individual channels to subscribers. This manner of offering video programming is often dubbed “à la carte.”

In 2019, Maine enacted a statute entitled “An Act to Expand Options for Consumers of Cable Television in Purchasing Individual Channels and Programs.” It was promoted as a consumer protection measure. As the title indicates, the law required cable television systems to offer unbundled television channels to subscribers. However, it did not impose any similar restriction on the satellite carriers or Internet programmers that compete with cable television.

Cable and television companies sued the State, asserting that the law infringed the First Amendment rights of cable operators, and that the statute was preempted by federal law. They claimed that regulating the manner in which cable systems sell their speech products was a burden on free speech. The District Court agreed and determined that the law triggered the need for elevated, i.e., strict or intermediate, scrutiny under the First Amendment. It granted a preliminary injunction requested by the plaintiffs, pending resolution of the scrutiny question. The State of Maine appealed the injunction.

In granting the preliminary injunction, the District Court had signaled that the plaintiffs were likely to succeed on the merits of their First Amendment claim. To counter that, the State argued on appeal that the First Amendment was not implicated. Counsel for the State conceded at oral argument that if the First Amendment was implicated at all, the existing record was insufficient to justify the law and the State could not prevail on the appeal, but rather would need to return to the trial court to develop a broader record.

The appellate court relied on Supreme Court precedent for the principle that “singling out” the media, or one

segment of the media, for special treatment, raises First Amendment concerns that must be addressed. In this case, cable television was singled out from its competitors and burdened with costly obligations that they did not face. The cable companies argued that the burden of this singling out is more than nominal. They identified various kinds of costs that would be imposed by the law. These include technical issues, such as the need to overhaul ordering, billing and distributions systems. Other burdens are legal, such as renegotiating agreements with programming suppliers.

The State countered that the “singling out” principle is inapplicable to consumer protection laws, that it usually pertains only to laws that impose special taxes on the press, or that it applies only if the law directly or independently implicates free speech. The appellate court was unpersuaded by any of these arguments.

The Court of Appeals concluded that it could detect no basis for departing from the Supreme Court’s explicit statement that laws singling out one segment of the press for special treatment are always subject to at least some degree of heightened First Amendment scrutiny. The Maine statute expressly treats cable operators differently from some of their competitors. That unique treatment triggers heightened scrutiny under the First Amendment.

The court left open the question of whether the Maine law would trigger “singling out” concerns if it applied to all pay-TV providers and systems. The court said that Supreme Court precedent suggests that the broader the scope of a regulation, the less likely it is to raise First Amendment concerns.

The Court of Appeals returned the case to the District Court to determine what level of scrutiny should be applied, and possibly to revisit the question of federal preemption if necessary. The injunction remains intact pending resolution of this proceeding.

The decision is *Comcast of Maine/New Hampshire, Inc. v. Mills*, 2021 U.S. App. LEXIS 5468.

Reminder Issued for Tower Ownership Registration

The FCC’s Wireless Telecommunications Bureau has issued a *Public Notice* (DA 21-230) to remind owners of towers and other structures that support antennas about the requirements to report ownership changes in the Commission’s Antenna Structure Registration (“ASR”) system. This follows a previous *Public Notice* (DA 19-69) issued February 11, 2019, that announced new procedures for registering changes in structure ownership. The Bureau states that this reminder is necessary because of “inconsistent compliance” with the requirements announced in 2019.

The ownership change application procedure is a two-

step process that requires both the current owner of record and the new owner of record to take several steps. Each must log into the FCC’s ASR system, complete respective portions of the application, and provide the signature of an authorized person. The Bureau says that in the time since these changes were enacted, there have been a number of instances where ownership changes were not properly completed because one of the parties failed to complete the process. These failures have made it difficult to identify the owner responsible for compliance with the Commission’s rules about towers, and have led to complications in subsequent transfers.



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

April 1	Deadline to file license renewal applications for radio stations in Texas , and television stations in Indiana, Kentucky, and Tennessee .	April	Radio stations in Texas , and television stations in Indiana, Kentucky, and Tennessee begin broadcasting post-filing announcements within five business days of acceptance of application for filing and continuing for four weeks.
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 Delaware, Indiana, Kentucky, Pennsylvania, Tennessee, and Texas .	April 10	Deadline to place quarterly Issues/Programs List in Public Inspection File for all full service radio and televisions stations and Class A TV stations.
April 1	Deadline for all broadcast licensees and permittees of stations in Delaware, Indiana, Kentucky, Pennsylvania, Tennessee, and Texas to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s).	April 10	Deadline for noncommercial station 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 channel 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
Corpus Christi, TX	KRIS-TV	13	26	Mar. 17	Mar. 29
Jefferson City, MO	KRCG	12	29	Mar. 22	Apr. 5
Kearney, NE	KHGI	13	18	Apr. 1	Apr. 16
Lubbock, TX	KCBD	11	36	Apr. 1	Apr. 16
Savannah, GA	WTOC-TV	23	11	April 5	April 19
Augusta, GA	WRDW-TV	12	27	April 7	April 22
Cape Girardeau, MO	KFVS	11	32	April 8	April 23
Tulsa, OK	KTUL	10	14	April 9	April 26
Jonesboro, AR	KAIT	8	27	FR+30	FR+45
Albany, GA	WFXL	12	29	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
Hannibal, MO	KHQA-TV	7	22	FR+30	FR+45
Superior, NE	KSNB-TV	4	--	FR+30	FR+45
York, NE	KSNB-TV	-	24	FR+30	FR+45
Toledo, OH	WLMB	5	35	FR+30	FR+45
Amarillo, TX	KVII-TV	7	20	FR+30	FR+45
St. George, UT	KMYU	9	21	FR+30	FR+45
Green Bay, WI	WLUK-TV	12	18	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 20-401; NPRM (FCC 20-166) Geo-targeting by FM booster stations		March 12
Docket 21-39; Public Notice (DA 21-121) Procedures for Auction 109	March 15	March 22
Docket 20-330; NPRM (FCC 20-158) Fixed-Satellite Service operations in the 17 GHz Ka-Band		March 18
Docket 20-36; NPRM (FCC 20-156) Unlicensed operations in TV white spaces	March 29	April 26
Docket 16-155; Public Notice (DA 20-1545) Standard questions for review of foreign ownership proposals	April 2	April 19
Docket 20-443; NPRM (FCC 21-13) Allocating terrestrial mobile services to share spectrum with satellite services	April 7	May 7

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 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
Radio station digital notification, Form 335	Mar. 12
Satellite earth station applications, Forms 312, 312-EZ, 312-R	Mar. 22
Antenna structure registration, Sections 17.4, 17.48, 17.49	Mar. 29
Radio service authorization application, Form 601-2.0	Apr. 26
ATSC 3.0 simulcasting, Sections 73.3801, 73.6029, 74.782, Form 2100	Apr. 27

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 the community of license for each station. These applications may also include proposals to modify technical facilities. The deadline for filing comments about any of the applications in the list below is **April 13, 2021**. Informal objections may be filed anytime prior to grant of the application.

PRESENT COMMUNITY	PROPOSED COMMUNITY	STATION	CHANNEL	FREQUENCY
Cross City, FL	Archer, FL	WUFQ	203	88.5
Morris, IL	Somonauk, IL	WCSJ(AM)	N/A	1550
Cheyenne, WY	Laporte, CO	KKPL	260	99.9

**RULES RE NEXT GEN TV
AUXILIARY AND SUPPLEMENTARY SERVICES
EFFECTIVE AS OF
MARCH 25, 2021**

**DEADLINE FOR INACTIVE AND UNRESPONSIVE
INCUMBENT C-BAND EARTH STATION
OPERATORS TO ASSERT OPERATIONAL STATUS
APRIL 19, 2021**

Politicians' Defamation Suits Dismissed continued from page 1

to Europe in late 2018 to meet with former Ukrainian Prosecutor General Victor Shokin. CNN reported that an attorney for Lev Parnas, a former associate of Rudy Giuliani, had stated that Parnas was willing to testify before a Congressional committee that Nunes's meetings with Shokin were to discuss "digging up dirt" on former Vice President Joe Biden. Stories recounting these allegations were distributed in written form via the Internet and in video on the CNN television news channel.

CNN responded with a motion to dismiss the complaint for failure to state a legitimate claim on the grounds that the plaintiff had failed to comply with the retraction demand requirements of California law. A California statute requires the party claiming to be defamed to demand a retraction from the publisher within 20 days of learning of the allegedly defamatory publication. Failing such a notice, the complainant is limited to seeking special damages. Nunes never asked CNN for a retraction and he did not identify or claim special damages in either his original or amended complaints. (Special damages are objectively quantifiable losses such as justifiable costs or expenses, as compared to damages with subjective values, such as harm to one's reputation.)

The technical issue that was critical to the outcome was whether the California statute should be applied to this case. Because the suit was initiated in Virginia, Virginia's choice-of-law rules governed the choice of the substantive state law to be applied in this case. Virginia courts generally follow the principle that the law of the place where the offending act happened governs all matters related to the basis for the lawsuit.

Defamation is generally said to occur when the defaming communication is received and/or viewed by a third party. In cases that involve the instantaneous, multistate publication and broadcasting that mass communication facilitates, determining the place of the offending act poses complex questions as to where the defamatory publication occurs. The Virginia Supreme Court has never addressed this question directly. Therefore, the court had to predict how the Virginia Supreme Court might rule if presented with such a case. Piecing together suggestions and observations from other Virginia decisions, the court predicted that the Virginia Supreme Court would rule that the place of publication would be the state where the plaintiff is most injured as a result of the allegedly defamatory statement. That would usually be presumed to be the state where the plaintiff is domiciled on the basis that third parties in the plaintiff's state would have the most interest in the matter in question. Nunes was born, raised and educated in California. He has spent many years in public service in California, including representing the citizens of that state in Congress since 2003. As an elected political figure in California, the court reasoned that a story defaming Nunes would have the potential to cause him the most injury in California. Hence, California's retraction statute should apply to this case.

Because Nunes never asked CNN for a retraction, and did not seek special damages in his complaint, the court

granted CNN's motion to dismiss and did not adjudicate the substantive merits of the Congressman's claim that he was defamed. The decision is *Devin G. Nunes v. Cable News Network, Inc.*, 2021 U.S. Dist. LEXIS 31423.

In a case involving similar and related allegations of defamation, a Senior Advisor to Congressman Nunes, Derek Harvey, also sued CNN, as well as Lev Parnas, and Parnas's attorney, Joseph Bondy. Harvey launched his lawsuit in the U.S. District Court for the District of Maryland, alleging that the defendants had falsely accused him of participating in an effort to aid and abet the commission of criminal, unethical and dishonest conduct. This claim arose from the same CNN written and video stories of November 22, 2019, that gave rise to the Nunes suit, concerning reports that Nunes and Harvey had participated in investigations of possible wrongdoings by Joe and Hunter Biden. All three defendants moved for dismissal. The court immediately dismissed Parnas and Bondy without prejudice because it did not have personal jurisdiction over them. CNN's motion to dismiss was based on the argument that the plaintiff had failed to state a claim on which relief could be granted.

The court observed that under Maryland law, a defamatory statement is one that tends to expose a person to public scorn, hatred, contempt or ridicule. Indeed, Harvey's complaint alleged that the defendants' false statements had exposed him to public scorn, ridicule, and contempt. The court expressed doubt as to how Harvey could meet this threshold requirement with respect to any of the material he claimed to be defamatory in this case. The record showed that Harvey was a Senior Advisor to Congressman Nunes, who was the "leader of the Republican opposition" to the first impeachment of President Trump. The House Republicans stated in the executive summary of the official House impeachment report that they believed there was "nothing wrong with asking serious questions" about the Bidens and their dealings in Ukraine. The court opined that, given this public record, Harvey's arguments that it was defamatory for CNN to state or imply that he was assisting Nunes in investigation of a political rival "are simply without merit."

Nonetheless, the court went on to analyze a list of 20 statements that Harvey claimed were false and defamatory. They were measured against the basic requirements to plead a defamation case under Maryland law. The plaintiff must sufficiently allege: (a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting to at least negligence on the part of the publisher; and (d) either actionability of the statement irrespective of actual harm or the existence of special harm caused by the publication. The court found that none of the 20 statements would have qualified as a sufficiently pleaded claim. Some of them were obviously not false. Some of them did not pertain to Harvey, and therefore could not defame him. Some of them were privileged in that they only reported fairly and accurately legal and official proceedings that might themselves be defamatory. Some of them were not even published by the defendant, CNN.

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Politicians' Defamation Suits Dismissed continued from page 6

The court further determined that even if one or more of the allegedly defamatory statements were satisfactory for purposes of the complaint, Harvey had failed to allege actual malice on the part of CNN. A public official or public figure must plead, and ultimately prove, that the defendant made the allegedly defamatory statement with actual malice as opposed to mere negligence. Public figures, who by reason of the notoriety of their achievements or the success with which they seek the public's attention, assume a place on the public stage and thereby run the risk of closer public scrutiny. At the same time, they also are more likely to have access to channels of effective communication to correct falsehoods published

about them. Harvey argued that he was not a public figure and that he therefore only needed to prove that CNN had been negligent rather than malicious. The court disagreed, citing Harvey's position as a Senior Advisor to the ranking member of the House Intelligence Committee, and his former career of 26 years in Army intelligence, eventually serving on the National Security Council.

The court concluded that Harvey had failed to plausibly claim how any of the 20 statements he challenged were legally defamatory, and it granted CNN's motion to dismiss. The decision is titled *Harvey v. CNN, Inc.*, 2021 U.S. Dist. LEXIS 29487.

FM Class C4 Waiver Denied continued from page 1

spaced assignment site as required by Sections 73.203(b) and 73.207 of the FCC's Rules, nor did it satisfy the Section 73.215(e) minimum distance separation requirements for a short-spaced station with respect to WNSL(FM), Laurel, Mississippi. Therefore, in the absence of an actual provision in the rules for Class C4, Commander needed a waiver of Sections 73.207 and 73.215(e) to operate WRTM-FM at a higher power level than permitted for a Class A station.

Commander offered the following arguments to support its request: (1) WRTM-FM is a Class A station in Zone II (where stations generally have higher power than the typical Class A station); (2) the upgraded station would not displace any low power FM or translator stations; and (3) the station's community of license would not be changed. According to Commander, the modification would allow the station to reach more listeners and would be a more efficient use of spectrum. Commander also asserted that an application granted with the requested waivers would be much faster than a rulemaking proceeding, and that WRTM-FM could then serve as a test case to demonstrate how a potential Class C4 facility might work.

The Audio Division Chief rejected every argument. He wrote that a "waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest." He also relied on Commission precedent that waivers of the allocation

rules in particular are justified "only in the most compelling circumstances." He concluded that Commander's proposal failed to overcome this high bar.

The Chief observed that there is nothing unique or special about a licensee seeking to cover greater population. A mere increase in population served is not enough to warrant a waiver when the area in question is not underserved. Further, the Commission will not entertain a Section 73.215 waiver request that is based on the theory that the short-spaced station cannot construct, or is unlikely to construct, maximum class facilities. Maximum class protection under Section 73.215 is not a waste of spectrum. It serves the public interest by allowing for interference-free service while providing flexibility for future site relocations and service improvements. Finally, the FCC will not force a station such as WNSL to accept diminished protection when it has voluntarily accepted designation under Section 73.215.

The Division Chief observed that Commander sought waiver of well-established rules that are fundamental to the FCC's core mission of providing a "fair, efficient, and equitable distribution of radio service." He concluded that changes such as the creation of a new class of FM station, or the reduction of protection for stations that operate below class maximums, should be deliberated carefully in a rulemaking proceeding, and not implemented piecemeal through the waiver process, or by way of one or more demonstration test cases.

**DEADLINE FOR LOW POWER TV
AND TV TRANSLATOR STATIONS
TO TRANSITION TO DIGITAL MODE**

JULY 13, 2021

**DEADLINE FOR ANALOG LOW POWER TV
AND TV TRANSLATOR STATIONS TO
REQUEST EXTENSION OF
DIGITAL CONSTRUCTION PERMIT**

MARCH 15, 2021

Deadline for LPTV Digital Transition Is July 13 continued from page 1

must include an exhibit to show that failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control and that the licensee has taken all reasonable steps to resolve the problem expeditiously. Such circumstances include, but are not limited to: (1) delays in obtaining zoning or other approvals, or similar constraints; (2) inability to obtain equipment; or (3) financial hardship. Extension applications must include: (a) a detailed accounting of all steps taken by the station to complete construction of the proposed facilities, including dates for each action; (b) a detailed accounting of any and all circumstances outside of the station's control that prevented the station from completing construction, including dates of each circumstance; and (c) a timeline plan of how and when the station expects to complete construction and begin operations. Extension applications claiming financial hardship must include: (a) an itemized estimate of the cost of meeting the build-out requirements; (b) a detailed statement explaining why the applicant's financial condition precludes such an expenditure; (c) a detailed accounting of the applicant's good faith efforts to meet the deadline, including its good faith efforts to obtain the requisite financing and an explanation of why those efforts were unsuccessful; and (d) an indication when the applicant reasonably expects to complete construction.

After March 15, the only means available for extending the construction deadline will be the FCC's rule for tolling construction permits. The tolling rule provides that a construction permit deadline may be tolled, i.e. temporarily suspended, only for specific circumstances not under the licensee's control, such as acts of God or delays due to administrative or judicial review.

Any permitted extension of the construction permit does not affect the deadline for terminating analog

transmissions, which will remain July 13 in all cases. Licensees that anticipate the need to modify the digital construction permit are encouraged to file their modification applications by May 1.

LPTV and translator stations with digital companion channels must complete the digital transition by either (1) "flash cutting" their existing analog facility to digital (resulting in a new digital license in place of the analog license and cancellation of the authorization for the companion channel), or (2) surrendering the analog channel by July 13 and continuing to operate the companion digital channel as the main channel.

To ensure that viewers are aware of the impending termination of analog service, stations are required to notify audiences of their planned transition to digital. Stations have the flexibility to determine the frequency, length, and content of their notifications. For those stations with the technical ability to locally originate programming, viewer notification must be done on the air at a time when the highest number of viewers are watching. For those stations that lack the technical ability to locally originate programming, or conclude that airing of viewer notifications would pose a hardship, they may notify viewers by some other reasonable means.

The FCC's *Public Notice* does not address the question of the so-called "Franken" radio operations which transmit audio content on the aural portion of analog LPTV stations on channel 6. These transmissions can be received at the low end of the FM band on most radio receivers. A number of such LPTV stations provide this radio-like program service. Although the FCC at one time solicited public comment to consider the future of these operations, no indicators about them are offered now, and it appears they will go silent along with the analog channel 6 stations by July 13.