

## FCC Seeks To Update Record in 2018 Quadrennial Review

The FCC's Media Bureau has issued a *Public Notice* (DA 21-657) in Docket 18-349 soliciting public input to update and refresh the record in the 2018 Quadrennial Review proceeding. Under Section 202(h) of the Telecommunications Act of 1996, the FCC is required to conduct periodic reviews of its media ownership rules to determine whether they remain "necessary in the public interest as the result of competition." These review proceedings are conducted every four years and are known as "quadrennial" reviews.

In December 2018, the FCC released a *Notice of Proposed Rulemaking* (FCC 18-179) in this docket. This launched a review of, among other things, the local radio ownership rule (limiting the number of radio stations that can be held under common ownership in a market), the local television ownership rule (limiting the number of television stations that can be held under common ownership in a market), the dual network rule, and diversity-related proposals that had been discussed but not acted upon in the combined 2010/2014 Quadrennial Review proceeding. The comment period closed in the spring of 2019.

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## July 13 Is Deadline for LPTV Transitions

July 13 will be the construction deadline for low power television and television translator stations whose digital displacement construction permits were issued before July 13, 2018. These are stations that were displaced in the early stages of the Incentive Auction by the mandated relocation of full power stations. In many cases, the displaced station's three-year construction permit to move to a new channel was still subject to being displaced again at a later stage of the Incentive Auction repack process. To avoid requiring such stations to rebuild their facilities more than once, all such construction permits were extended as a group until the date one year after the close of repack. The repack officially ended on July 13, 2020. The one-year post-repack period ends July 13, 2021.

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## Comment Invited on New LP250 Proposal

Low power FM advocate REC Networks ("REC") has filed a new Petition for Rulemaking with the FCC, proposing that the Commission establish a new class of low power FM stations with maximum facilities of 250 watts of effective radiated power at 30 meters above average terrain. Such stations would have a typical service contour radius of 7.1 kilometers (about 4.4 miles). The FCC has invited public comment on the Petition in RM-11909. Comments will be due by June 21.

REC acknowledges that the FM band in most urban areas is already too congested to allow for the development of new stations. On the other hand, REC asserts that there is plenty of room and a pressing need for greater LPFM service in rural areas. The LP250 class would exist parallel to the incumbent stations in the LP100 class which would remain subject to the current power and spacing rules. To qualify as a minor change, the relocation of the transmitter site for a LP250 class station would be limited 14.2 kilometers (as compared to 11.2 kilometers for LP100 stations).

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# Third-Party Benefits for Performers Excluded From Program License Agreement

The U.S. District Court in Nashville has dismissed claims for musicians' performance fees in a lawsuit brought by the American Federation of Musicians ("AFM") against two television program producers and distributors under common control, Rural Media Group, Inc. ("RMG") and RFD-TV, LLC ("RFD"). AFM represents musicians who perform on two television programs important in this case: "Ray Stevens CabaRay Nashville," produced by Ray Stevens Productions, LLC ("Stevens"), and "The Marty Stuart Show," produced by Marty Stuart Tours, LLC ("MST"). Stevens is a signatory to an AFM collective bargaining agreement ("CBA") known as the National Public Television Agreement. MST is a signatory to another AFM CBA, the Basic Cable Agreement.

RMG entered into a program license agreement with Stevens that gave RMG the exclusive right to distribute rebroadcasts of "Ray Stevens CabaRay Nashville." Under the terms of that license, RMG agreed that it would be responsible for payment of all union or guild fees, residuals, or other payments to any union or guild arising from RMG's use of the programs. However, the license also included a provision stating that rights and obligations conferred under the agreement are for the sole benefit of the parties and "are not intended to confer any rights on any other persons." RMG has aired a number of these programs. AFM claims that each broadcast entitled its members who performed on them to receive fees pursuant to the National Public Television Agreement. RMG did pay AFM fees for one episode of the program, but refused to do so thereafter.

Likewise, RFD has an exclusive license agreement with MST to air rebroadcasts of the "The Marty Stuart Show." The provisions of this contract are generally parallel to those in the RMG agreement. RFD agreed to pay union and guild fees, but also disallowed benefits to any third party. AFM again claims that, under the Basic Cable Agreement, its member musicians are entitled to performance fees each time one of the episodes of this program series is broadcast. RFD did pay AFM these fees for several years, but then refused to do so.

On behalf of its affected member musicians, AFM sued RMG and RFD to collect the performance fees for the two program series. Among AFM's claims were counts for (1) breach of contract under the program license agreements, to which AFM claimed to be a third-party beneficiary; (2) violations of the Labor Management Relations Act based on alleged violations of the CBAs; (3) violations of the Digital Millennium Copyright Act, alleging that under this law, the defendants' purchase of the rights to air the programs also carried with it an assumption of the underlying collective bargaining agreements; (4) unjust enrichment if the defendants' failure to pay were to be inequitable but not in violation of a contract; and (5) estoppel based on the defendants' commitment to pay that was later ignored.

The defendants filed a motion to dismiss, arguing that the plaintiff had failed to state a claim for which relief could be granted. At this phase of the case, the court's task is to

rule on whether the plaintiff has stated a claim that merits the presentation of evidence, and not whether the plaintiff can ultimately prove the claim. This decision partially grants that motion and partially denies it.

The court dismissed the count derived from the claim that the plaintiff is entitled to redress as a third-party beneficiary for breach of the original program license agreements. The original producers of the programs, Stevens and MST, are parties to collective bargaining agreements with AFM that secured rights to performance fees for AFM's members every time an episode of one of the series is aired. The defendants acquired the rights to these programs with agreements that included language by which they apparently assumed obligations to pay all union and guild fees and residuals arising from their exploitation of the programs. At the same time, the license agreements included provisions to preclude the creation of obligations to or benefits for any third party. The agreements included explicit statements that they were for the exclusive benefit of the parties and their successors and assigns. AFM asserted that this exclusion was merely "boilerplate" and not really at the core of the parties' intentions.

The court resolved these contradictions by citing Tennessee law which governed these transactions. Under that state's law, to qualify as a third-party beneficiary, a plaintiff must show, among other things, that the parties to the contract have not agreed to exclude such beneficiaries. Notwithstanding the defendants' commitments in the license agreements to be responsible for performers' rights fees, the court determined that this test clearly decided the question because the agreements explicitly denied any benefit for third parties. The count based on this argument was dismissed.

The court denied the defendants' motion to dismiss the counts alleging violations of the Labor Management Relations Act ("LMRA") and the Digital Millennium Copyright Act ("DMCA"). These involve technical principles that relate to collective bargaining agreements which may preempt state law, including the Tennessee principle about excluding third-party beneficiaries. The court opined that there is no categorical rule that only signatory employers (in this case, Stevens and MST) may be sued under the LMRA. While the principle of ordinary contract law would not bind an unconsenting successor to a contracting party, a collective bargaining agreement is not an ordinary contract. Furthermore, under certain circumstances, the DMCA provides for obligations arising from collective bargaining to be automatically assumed by the transferee of a copyright in a work that was produced subject to the collective bargaining agreement. This case will proceed to trial for the presentation of evidence and a determination of whether it is appropriate to weigh that evidence under these statutes.

The decision is entitled *American Federation of Musicians of the United States and Canada v. Rural Media Group, Inc., and RFD-TV, LLC.*, 2021 U.S. Dist. LEXIS 41692.

# Change in Bargaining Position Does Not Violate Good-Faith Requirement

The FCC's Media Bureau has rejected a good-faith negotiation complaint filed by Gray Television Licensee, LLC and Gray Media Group, Inc. (collectively, "Gray") against Frontier Communications, a cable television system operator. In a *Memorandum Opinion and Order* (DA 21-464), the Media Bureau ruled that Frontier's change in its bargaining position during retransmission consent negotiations was justified by its discovery of new facts affecting its perception of the value of the programming on Gray's television station, and did not violate the good-faith standard.

The FCC's rules require television stations and multichannel video programming distributors ("MVPDs") to act in good faith when negotiating retransmission consent agreements. The Commission has adopted a two-part test for good faith. The first part consists of an objective list of negotiation standards, the violation of any of which constitutes a per se violation of the duty to negotiate in good faith. Two of these per se standards were at issue in this case:

(1) A negotiating entity may not refuse to negotiate regarding retransmission consent. The parties are required to actively participate in negotiations with the intent of reaching an agreement. However, the ultimate failure to reach an agreement is not in itself a rule violation.

(2) A negotiating entity may not refuse to designate a representative with authority to make binding representations.

The second element of the two-part test considers the totality of the circumstances. This may include an outrageous fact pattern that constitutes an overall failure to negotiate in good faith even though there is no violation of the per se standard. However, the Bureau cautions that mere disagreement about the rates or other terms and conditions of retransmission consent is not, by itself, indicative of a lack of good faith.

Gray and Frontier were parties to a retransmission consent agreement covering carriage of Gray's stations WWSB(TV) on a Frontier system serving Tampa and Sarasota, Florida, and WMBF-TV and WCSC-TV on a Frontier system in Myrtle Beach and Charleston, South Carolina. That agreement was set to expire on December 18, 2020. On November 23, 2020, Gray offered to extend the existing agreement until December 31 to allow additional time to negotiate a new agreement. Frontier responded that it would prefer to finalize the new agreement by December 18 because it had many other agreements set to expire on December 31.

According to the Media Bureau's account, for 25 days the parties negotiated cordially, exchanging drafts of the agreement, emails and phone calls. They made progress on non-economic issues, but ultimately could not come to an agreement on the value of the stations' programming.

On December 18 at 4 p.m., Frontier's negotiator informed Gray that Frontier would be deleting the stations from its systems at 5 p.m. when the current agreement expired. Frontier's negotiator then informed Gray that Frontier rejected Gray's most recent proposal. Gray claims that Frontier's negotiator indicated that she lacked authority to enter into an agreement on any terms. In its opposition to Gray's complaint, Frontier characterized Gray's assertion as "unsupportable." Gray indicates that when it asked for an explanation, Frontier's negotiator expressed vague concerns about carriage of a duplicate ABC affiliate in the Tampa market, and failed to explain why Frontier would no longer discuss the South Carolina stations where the duplication issue was not a factor.

Frontier explained its bargaining position in its pleading.

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## Deadlines Set for Claims for Repack Reimbursements

The FCC has announced deadlines for submitting invoices to support claims for reimbursement from the TV Broadcaster Relocation Fund. The schedule of deadlines is set out in a *Public Notice* (DA 21-404) released jointly by the Incentive Auction Task Force and the Media Bureau. Congress allocated \$2.75 billion to the Fund to reimburse eligible entities for the reasonable expenses they incurred in the course of the restructuring of the television band that resulted from the Incentive Auction. Participants eligible to receive reimbursement from the Fund include 957 full power and Class A television stations, 873 LPTV and TV translator stations, 90 FM stations, and 181 multichannel video programming distributors ("MVPDs").

The final deadlines for submitting invoices are:

- October 8, 2021, for full power and Class A stations

assigned to transition Phases 1-5.

- March 22, 2022, for full power and Class A stations assigned to transition Phases 6-10.
- September 5, 2022, for LPTV, TV translator, and FM stations, and MVPDs.

Each entity seeking reimbursement must submit all supporting expense documents and initiate close-out procedures by the assigned respective deadline. The Commission does not anticipate the need to grant extensions of time to meet these deadlines. Claimants who fail to meet these deadlines will lose their allocations of funds. The FCC must close out the entire Relocation Fund by July 3, 2023, and return any remaining funds to the U.S. Treasury.

Claimants are reminded that they must retain these records for 10 years from the date the account is closed out.



# DEADLINES TO WATCH



## License Renewal, FCC Reports & Public Inspection Files

June 1	Deadline to file license renewal applications for radio stations in <b>Arizona, Idaho, Nevada, New Mexico, Utah, and Wyoming</b> and television stations in <b>Michigan and Ohio</b> .	July 10	Deadline for noncommercial stations to place quarterly report re third-party fundraising in Public Inspection File.
June 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>Arizona, the District of Columbia, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, West Virginia, and Wyoming</b> .	July 10	Deadline for Class A TV stations to place certification of continuing eligibility for Class A status in Public Inspection File.
June 1	Deadline for all broadcast licensees and permittees of stations in <b>Arizona, the District of Columbia, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, West Virginia, and Wyoming</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).	August 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>California, Illinois, North Carolina, South Carolina and Wisconsin</b> .
June	Radio stations in <b>Arizona, Idaho, Nevada, New Mexico, Utah and Wyoming</b> , and television stations in <b>Michigan and Ohio</b> begin broadcasting post-filing announcements within five business days of acceptance of application for filing and continuing for four weeks.	August 2	Deadline to file license renewal applications for radio stations in <b>California</b> and television stations in <b>Illinois and Wisconsin</b> .
July 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.	August 2	Deadline for all broadcast licensees and permittees of stations in <b>California, Illinois, North Carolina, South Carolina, and Wisconsin</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).
		August	Radio stations in <b>California</b> and television stations in <b>Illinois and Wisconsin</b> begin broadcasting post-filing announcements within five business days of acceptance of application for filing and continuing for four weeks.

## 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 **June 22, 2021**. Informal objections may be filed anytime prior to grant of the application.

PRESENT COMMUNITY	PROPOSED COMMUNITY	STATION	CHANNEL	FREQUENCY
Paris, KY	Stamping Ground, KY	WGKS	245	96.9
Stamping Ground, KY	Paris, KY	WLXO	241	96.1
Horseheads, NY	Enfield, NY	WCID	266	101.1
Monterey, TN	Algood, TN	WLIV-FM	245	96.9
Seattle, WA	Kent, WA	KKDZ (AM)	N/A	1250

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

**JULY 13, 2021**

### DATES FOR AUCTION 109

**UPFRONT PAYMENTS DUE 6:00 PM ET, JUNE 16**  
**MOCK AUCTION JULY 23**  
**BIDDING BEGINS JULY 27**





# 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 15-94; NOI (FCC 21-36) Emergency Alert System		June 14
RM-11909; Petition for Rulemaking Proposal to create a new class of low power FM stations	June 21	July 6
Docket 21-234; Public Notice (DA 21-621) Applications to assign licenses from Meredith Corporation to Gray Television, Inc.	June 25 (Petitions to Deny)	July 12 (Oppositions)
Docket 20-443; NPRM (FCC 21-13) Allocating terrestrial mobile services to share spectrum with satellite services		July 7
Docket 11-93; Public Notice (DA 21-447) Rules implementing CALM Act		July 9
Docket 21-115; NPRM (FCC 21-46) Updating rules for wireless microphones	FR+30	FR+60
Docket 18-349; Public Notice (DA 21-657) Updating record in 2018 Quadrennial Regulatory Review	FR+30	FR+60

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
Closed-captioning in Internet-delivered video programming	June 14
Auction short-form application, Form 175	June 15
International broadcast station applications, Forms 309, 310, 311	June 17
Self-identification re mid-term EEO review, Section 73.2080(f)(2)	June 22
Equipment tests, Section 73.1610	July 6
Consumer complaint center; informal consumer complaints	July 12
EEO Program Report, Form 2100, Schedule 396	Aug. 2

## 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
Boise, ID	KBOI-TV	9	20		June 14
Missoula, MT	KECI-TV	13	20		June 14
Eagle River, WI	-----	----	26		June 14
New Orleans, LA	WYES-TV	*11	*28		June 17
Butte, MT	KTVM-TV	6	20		June 24
Redding, CA	KRCR	7	15		June 28
Quincy, IL	WGEM-TV	10	19	June 28	July 12
Medford, OR	KTVL	10	16		June 28
Las Vegas, NV	KTNV-TV	13	26	July 16	Aug. 2

\* Channel reserved for noncommercial broadcasting

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

# FCC Seeks To Update Record in 2018 Quadrennial Review continued from page 1

Since then, litigation involving Commission decisions from earlier quadrennial reviews was ultimately resolved by the Supreme Court in *FCC v. Prometheus Radio Project*. That decision had the effect of affirming the FCC's actions to repeal the prohibition on in-market newspaper/broadcaster cross ownership and in-market radio/television cross ownership, and to repeal the television joint sales agreement attribution rule. The Commission's adoption of its eligible entity standard and the creation of an incubator program were also affirmed.

Given the Supreme Court's decision and the passage of time, the FCC is reopening this docket for commenters to offer new and current material for the record. The Commission seeks supplemental input on the quantitative rules that limit the number of stations one owner can hold in a market. The Commission asks specifically for information regarding the broadcast industry's evolution since early 2019 and its current trajectory, including the effects, if any, of technological change, new entrants, consolidation, or changing market conditions. The FCC asks how it should account for multicast streams, satellite stations, low power television stations, or the deployment of ATSC 3.0 for purposes of the local television ownership rules. Commenters are requested to describe the effects that the Incentive Auction and/or the COVID-19 pandemic have had on the broadcast industry. The Commission invites discussion about and submission of any new empirical data or studies that would have a bearing on these topics.

Because diversity issues were prominent in the case that went to the Supreme Court, it is no surprise that the FCC invites new input on the diversity-related proposals cited in the 2018 *Notice of Proposed Rulemaking* and their potential effect on media ownership. These proposals included:

(1) Extending the cable procurement program to broadcasting. Section 76.75(e) of the FCC's Rules provides that a cable television system must "encourage minority and female entrepreneurs to conduct business with all parts of its operation." The proposal under consideration was to adopt a similar rule for broadcasters.

(2) Developing a market for tradeable "diversity credits." Under a proposed plan, diversity credits would be linked to broadcast licenses, commensurate with the extent to which the licensee was considered to be "socially and economically

disadvantaged." When a transaction occurs that would be deemed to promote diversity (such as the breakup of a local ownership cluster, or the sale of a station to a socially or economically disadvantaged business), the FCC would award the seller additional diversity credits commensurate with the extent to which the transaction promoted diversity. On the other hand, when a transaction reduces diversity, the buyer would be required to submit diversity credits to the Commission. If a company wished to pursue a transaction costing more diversity credits than it possessed, it would need to purchase credits from one or more third parties with credits to sell.

(3) Adopting formulas for media ownership limits that foster diversity.

One such formula, known as the Tipping Point Formula, would preclude a broadcaster from acquiring competing stations in a market if as a result that broadcaster would hold stations controlling combined revenue so large as to leave insufficient revenue for the independent station(s) in the market to provide a meaningful local service. The formula includes a number of variables which must be defined, such as "independent" and "meaningful local service." The Commission asks commenters to define these terms, and to address the validity of the underlying premise that retaining independent stations in a market helps maintain diversity.

A second formula under review is called the Source Diversity Formula. This formula seeks to measure the level of consumer welfare derived from viewpoint diversity in the broadcast market. This formula is not limited to radio sources and could be used in place of the "number of voices" test. This formula also relies on vague terms that need definition. The Commission will rely on commenters to suggest those definitions.

Commenters are strongly encouraged to provide detailed analysis, empirical evidence, and/or specific proposals that the Commission should consider. Commenters are asked to explain how their submissions will relate to the FCC's interest in ensuring that its rules continue to promote the goals of competition, localism, and diversity.

The deadline for comments in this docket will be 30 days after notice of this proceeding is published in the Federal Register. Reply comments will be due 60 days after that publication.

**FILING WINDOW FOR APPLICATIONS  
FOR NEW AND MAJOR CHANGES TO  
NONCOMMERCIAL FM STATIONS**

**NOVEMBER 2 – 9, 2021**

**CONSTRUCTION DEADLINE FOR LPTV  
DISPLACEMENT CONSTRUCTION PERMITS  
ISSUED BEFORE JULY 13, 2018**

**JULY 13, 2021**

# Media Bureau Reminds Broadcasters To Place Sharing Agreements in Public File

The FCC's Media Bureau has issued a *Public Notice* (DA 21-305) to remind commercial broadcasters of their obligation to post every "sharing" agreement pertaining to the operation of the station in the online Public File within 30 days of execution. Such agreements include those involving the lease of airtime, the joint sale of advertising, and the sharing of operational services. The Bureau emphasized that this requirement is based on the substance of the

agreement, and not merely its name. This rule covers any agreement involving the provision of programming, sale of advertising, or the provision of services between stations not under common control. All stations participating in any such arrangement are required to post the agreement. This requirement applies equally to contracts involving stations in the same market or in different markets. There is no exception for foreign programming.

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## Change in Bargaining Position Does Not Violate Good-Faith Requirement continued from page 3

In the Tampa market, Frontier also carries WFTS. Both WFTS and WWSB are ABC affiliates. Due to the FCC's finding that WFTS is significantly viewed in Sarasota County, Frontier is permitted to air all WFTS programming there, including national ABC programming. Because of network non-duplication and syndicated exclusivity, Frontier only airs WWSB's local, non-network or [non-]syndicated programming to about 100,000 of its 150,000 Tampa system subscribers. About 50,000 Frontier subscribers (in the Sarasota area) receive the national ABC network and syndicated programming airing on WWSB. The unusual circumstance of having two affiliates of the same network in the market decreased the desirability and value of carrying WWSB.

Furthermore, during the negotiation Frontier determined that WWSB's locally produced content, including newscasts, was available live and for free on WWSB's website and mobile application. Frontier argued that because the reruns of WWSB's locally produced content were available for viewing free of charge, the value of retransmitting WWSB on its system was seriously diminished.

The Media Bureau concluded that, contrary to Gray's accusations, Frontier had complied with its per se obligation to negotiate. Prior to December 18, the parties had negotiated extensively and cordially for 25 days. Upon the discovery of

facts that would reduce the value of WWSB's programming, Frontier was justified for logical business reasons in terminating the negotiations. These circumstances did not indicate a lack of good faith on Frontier's part.

The Media Bureau accepted Frontier's explanation that when its negotiator said she could not agree to any of the terms under discussion, she was merely reflecting the company's bargaining position and not her lack of authority to bind Frontier.

Gray also argued that Frontier's conduct showed that it failed the test for the totality of the circumstances. Gray suggested that Frontier had actually decided to let the existing agreement expire before negotiations had begun. Gray characterized Frontier's behavior as a charade, pretending to be engaged in serious negotiations, but then abruptly exiting the discussion. The Media Bureau again accepted Frontier's explanation that its negotiating posture legitimately changed when it discovered information that devalued the carriage of WWSB. The Bureau said that when Frontier's bargaining position changed, it was not obligated to reissue its prior offers that Gray had previously rejected. The Bureau concluded that the parties simply failed to agree to financial terms, and this type of business disagreement is not a proper basis for a complaint. Accordingly, the complaint was denied.

## July 13 Is Deadline for LPTV Transitions continued from page 1

Displacement constructions permit issued after July 13, 2018, would have had a full three-year term to complete construction after the turmoil of the repack subsided. Therefore, these permits were not included in the blanket extension and they will expire normally at the conclusion of the three-year period.

July 13 is also an important deadline for any low power television and television translator stations still operating in the analog mode. They must terminate analog transmissions no later than 11:59 p.m., local time, on July 13, 2021. If the station's digital facilities are not ready for operation by that time, the station must go off the air and request a special temporary authority to be silent. The FCC's Media Bureau released a *Public Notice* (DA 21-260) outlining the procedures for this process.

Stations that need additional time to construct their digital facilities could seek to have the permit tolled. The FCC's 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.

The FCC had offered an opportunity to request a special one-time extension of up to 180 days for permits for stations transitioning from analog. However, the deadline for requesting such an extension was March 15. A station still needing an extension that it has not requested could file an extension request and seek a waiver of the March 15 deadline.

In addition to showing good cause for why it could not meet the March 15 deadline, the request 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 permittee'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 why those efforts were unsuccessful; and (d) an indication when the applicant reasonably expects to complete construction.

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## Comment Invited on New LP250 Proposal continued from page 1

Like LP100 stations, LP250 stations would be subject to requirements for minimum distance separation from co-channel and first adjacent-channel stations. The separation between LP250 stations and co-channel full service stations would be five to nine kilometers greater than required of LP100 stations, and two to three kilometers greater for stations on a first adjacent-channel. Under REC's proposal, the separation criteria proposed for LP250 stations would include the 20-kilometer buffer between contours of the stations in question incorporated into the separation criteria for co-channel and first adjacent-channel LP100 stations. Using this formula, REC says that full power stations would be "overprotected" by 8.6 dB on the same channel, and by 17.8 dB on a first adjacent channel.

Applications for new stations would be subject to a future filing window. However, upgrading from LP100 to LP250 (with any ERP in the range of 101 to 250 watts) would

be a minor change and would not require a filing window. REC provides the results of its research based upon the separation criteria that it proposes. Of the 2,185 existing LPFM stations, 1,185 could upgrade to LP250 status at their present transmitter sites and on their current channels. Changing to an adjacent-channel or intermediate frequency channel would allow 92 more existing stations to upgrade. Another 405 existing stations could upgrade to LP250 status by moving to a non-adjacent channel (which might not qualify as a minor change). To mitigate the effects of a "land rush" and the possibility for groups of mutually exclusive upgrade applications to be filed immediately upon the effective date for such new rules, REC suggests that temporary initial limitations would be imposed on groups of co- and adjacent-channel LP100 stations located near each other.

The deadline for filing comments about REC's Petition is June 21. Reply comments will be due by July 6.

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