

## Court Vacates Investigation Element of Foreign Sponsorship ID Rule

The U.S. Court of Appeals for the D.C. Circuit has vacated the FCC's recently adopted foreign sponsorship ID rule that required broadcasters to research the identities of foreign program sponsors in an attempt to ensure the accuracy of the on-air identification of the sponsor to the audience. This regulation was adopted in the context of high visibility concerns about broadcast content sponsored by foreign governments or entities under the control of foreign governments. Such programming is not prohibited, but the sponsor must be accurately identified.

The Commission's new rules represented a refinement of the directive of Section 317 of the Communications Act that requires the identification of sponsors. The Commission imposed these obligations on broadcasters to ensure accurate sponsorship identification in connection with

*continued on page 7*

## FCC To Review Next Gen TV

The FCC has released a *Third Notice of Proposed Rulemaking* in Docket 16-142 (FCC 22-47) to review the current state of implementation and usage of the ATSC 3.0 mode of television broadcasting, also commonly called Next Gen TV.

When ATSC 3.0 was first authorized in 2017, a process was established for stations to partner with one another in an effort to provide a seamless transition for viewers to continue to access ATSC 1.0 streams. One station in the pair modifies its facilities to the ATSC 3.0 mode, and the other station simulcasts the programming of both stations in ATSC 1.0. The Commission required a station's ATSC 1.0 and primary 3.0 streams to be substantially similar. That specific requirement is scheduled to sunset on July 17, 2023. The FCC said in 2020 that it would revisit this decision about a year prior to the sunset date. The Commission now has asked for public comment about whether the expiration date for this rule should be extended. The agency solicits comment about the role that the

*continued on page 6*

## New Reference Proposed for DMA Assignments

The FCC has proposed to rely on a new publication to determine a television station's designated market area ("DMA") for purposes of cable and satellite carriage rights. This proposal is explained and comment is requested in a *Notice of Proposed Rulemaking* (FCC 22-55) in Docket 22-239.

The Communications Act and the FCC's Rules specify that the annual Nielsen Station Index Directory (or a successor publication) is to be used for assigning television stations to DMAs. It is important for stations to be identified with a specific DMA because a station is entitled to demand carriage on any cable television system in its DMA, and on any satellite carrier that carries other local stations in the same DMA.

The Nielsen Company has indicated that it will no longer publish the Directory. It is being replaced by the Local TV Station Information Report, which is a monthly publication. The Commission has tentatively concluded that it should adopt the Report as a successor to the Directory for use as

*continued on page 6*

### IN THIS ISSUE

Digital LPTV Rules .....	2
Class D FM Stations and the Public File .....	3
Stock Sales Create an Unauthorized Transfer of Control .....	3
Deadlines to Watch .....	4-5

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# Updates Proposed for Digital LPTV Rules

Updates are proposed by the FCC for the rules governing low power television and television translator stations (collectively (“LPTV”) to reflect the end of the digital transition for LPTV. To that end, the Commission has adopted an *Order and Sixth Notice of Proposed Rulemaking* (FCC 22-58) in Dockets 03-185 and 22-261. In the *Order*, the Commission adopts minor ministerial amendments to LPTV rules to change language concerning or to delete references to the digital transition that do not require notice and comment. The *Proposed Rulemaking* portion of the release proposes substantive amendments that would update the rules to reflect changes in technology and/or to make them consistent with current Commission practice. The most significant of these proposals are discussed below.

Sections 74.709(a) and (b) of the FCC’s Rules require LPTV stations to protect certain channels for use by stations in the Land Mobil Radio Service (“LMRS”) in 13 cities. The co-channel LPTV station’s transmitter site must be at least 130 kilometers from the coordinates of these cities. The coordinates for the cities are calculated on the basis of the 1927 North American Datum (“NAD 27”). In the interim since this rule was adopted, there have been improvements in technology and measuring capabilities. The geodetic calculations have been refined and a more accurate database has been produced, known as 1983 North American Datum (“NAD 83”). Many other of the FCC Rules rely on NAD 83 rather than NAD 27, including the separation and protection criteria for LMRS stations. The Commission proposes to update this rule by specifying that reference coordinates for the relevant communities are to be calculated using NAD 83.

Updates are proposed for the rules governing station identification announcements by LPTV stations in Section 74.783 of the rules. This rule originally pertained to analog stations, and the Commission now proposes the obvious update to cover digital LPTV stations as well.

Section 73.783(a)(1) provides alternative methods for stations to identify themselves. The Commission proposes to include a new option for LPTV stations to use the Program and System Information Protocol (“PSIP”) to transmit the station’s call sign as the “short channel name” on at least one program stream.

In order to use the PSIP short channel name, a station must request and be assigned a transport stream ID (“TSID”). If a station has been assigned a TSID, the Commission proposes to require it to broadcast with the assigned TSID at all times while in operation. This TSID requirement would be in addition to and not in place of one of the other station identification requirements. If operating in the ATSC 3.0 mode, the station’s bit stream has the same function

as the TSID. The Commission proposes the same station identification requirement with respect to the bit stream.

As with full power stations, LPTV stations are permitted to operate with a virtual channel that appears in tuners instead of the station’s actual RF channel. It is the Commission’s current practice to require an LPTV station to select a virtual channel that avoids conflicts with the virtual channel of any other station with which there is a contour overlap. The Commission proposes to codify this practice as a rule.

The protocol for assigning call signs to LPTV stations has been to add the two-digit channel number and a two-letter combination to the “W” or “K” that must begin the call sign. The supply of two-letter combinations has been exhausted. Consequently, the Commission proposes to amend the protocol so as to allow for the LPTV call sign to conclude with a three-letter combination rather than merely two. These call signs will be assigned in alphabetical order of the three-letter endings, beginning with “AAA,” continuing sequentially with the third letter.

Sections 74.735(c) and 74.750(f) of the rules reference vertically polarized transmitting antennas for LPTV stations. Despite these references, the Commission’s LMS filing system does not and has not allowed stations to specify a vertical antenna. The Commission notes that consumers’ home receive antennas are generally horizontally, not vertically, polarized. Therefore, the Commission proposes to modify the language in Sections 74.735(c) and 74.750(f) to remove the reference to vertical-only antennas. The Commission also proposes to clarify that the horizontal power is to be higher than or equal to the vertical power in all directions, and require documentation that the antenna meets this requirement.

Section 74.751(b) permits an LPTV licensee to relocate facilities up to 500 feet without requesting prior authorization. However, this is contrary to the Commission staff’s standard processing practice, which is to require a licensee to file a minor modification application whenever a station seeks to relocate its antenna. The Commission proposes to revise the rule to reflect current staff practice and to require LPTV licensees and permittees to file a modification application to request authorization for all station relocations.

The Commission solicits public input on these and other minor rule changes. The deadline for filing comments will be 30 days after publication of notice of this proceeding in the Federal Register. Reply comments will be due 45 days after that publication.

# Public File Rule Clarified for Class D FM Stations

The FCC's Media Bureau has issued an *Order* (DA 22-662) in Docket 22-240 to resolve confusion about the Public Inspection File obligations of Class D FM licensees, permittees, and applicants. All Class D FM stations are noncommercial stations with relatively low power. Such stations are exempt from the obligation to prepare quarterly Issues and Programs Lists for their Public Inspection Files. The Bureau issued this *Order* to correct and clarify this issue in Section 73.3527 of the Commission's Rules.

Section 73.3527 lists the Public Inspection File obligations of noncommercial broadcast stations. Subsection 73.3527(c)(8) requires stations to compile and place in the public file a quarterly "list of programs that have provided the station's most significant treatment of community issues during the preceding three-month period"—often called the Issues and Programs List.

In 1976, prior to the adoption of Section 73.3527 in its present form, the FCC had clarified that Class D FM stations are exempt from the requirement to maintain lists of programs addressing issues in the station's community. When Section 73.3527 was adopted, a Note was added to codify that Class D stations and stations broadcasting exclusively instructional programming were exempt from the mandate regarding the

Issues and Programs List. Over the years since the 1980s, the Commission has adopted a number of orders amending its rules, but never abolished the exemption for Class D stations. Nonetheless, as the text of the rules has been revised and reformatted from time to time, the Note about this exemption has been inadvertently omitted more than once from the formal text of the rule in the Code of Federal Regulations.

To make matters worse, during an interim in 2009 when the Note was missing from the text, the Media Bureau actually fined a station for failing to maintain an Issues and Programs List and rejected the station licensee's argument that Class D stations were exempt. The Bureau now admits that this ruling was an error and affirmatively disavows it.

To rectify this ongoing problem, the Commission has now moved the concept of the exemption that had been expressed in the Note into the text of the rule—in Subsection 73.3527(e)(8). It should be safer there and not subject to accidental pruning as has happened with the Note.

The Bureau determined that it could take this action without allowing for notice and comment because the substance of the rule is not being changed. Rather, a footnote is merely being moved into the text of the rule.

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# Stock Sales Create an Unauthorized Transfer of Control

The FCC's Media Bureau has entered into a *Consent Decree* (DA 22-635) with Radio Cleveland, Inc. ("RCI") to resolve an investigation into whether RCI committed an unauthorized transfer of control when two agreements for the sale of the corporation's stock were consummated prior to the FCC's granting consent for the transactions. RCI is the licensee of five commercial radio stations in Mississippi: WAID(FM), Clarksdale; WCLD(AM), Cleveland; WCLD-FM, Cleveland; WKDJ-FM, Clarksdale; and WMJW(FM), Rosedale.

Section 310(d) of the Communications Act prohibits the transfer of control of a corporation that owns a broadcast license or permit without the prior consent of the FCC. Likewise, Section 73.3540(a) of the FCC's Rules states that "[p]rior consent of the FCC must be obtained for a voluntary assignment or transfer of control."

On June 17, 2020, RCI filed an application for transfer control of WAID. On September 9, 2020, RCI filed another transfer of control application pertaining to the four other stations. The applications request FCC consent to transfer 45 percent of RCI's stock from Clint Webster to Kevin Cox; and to transfer 10 percent of RCI stock from Greg Shurden to Kevin Cox. Implementation of these proposals would result in Kevin Cox holding a 100 percent voting and ownership interest in RCI. The asset purchase agreements that were submitted to the FCC with these applications indicated that the stock transfers had already occurred at some point in time on or before January 1, 2020. Upon inquiry by Commission staff, RCI's counsel confirmed the stock had changed hands prior to filing the applications.

The Media Bureau and RCI entered into the Consent Decree to bring the proceeding to a conclusion without

additional burdensome waste of time or resources. RCI admitted to committing the violation by completing the unauthorized transfer of control, and agreed to pay a civil penalty of \$6,000. In exchange for these concessions by RCI, the Media Bureau agreed to terminate the investigation and to grant the applications, pending payment of the penalty and upon the condition that no other issues arise that would preclude their grant.

The Bureau was able to commit to grant the applications because it had concluded that nothing in the record of this case created a material or substantial question of fact as to whether RCI possesses the basic qualifications to continue to be a broadcast licensee. However, the Bureau's finding that Webster, Shurden, and Cox engaged in an unauthorized transfer of control may be taken into account in the course of any future application, proceeding, or enforcement action involving any of them.

The Commission's *Forfeiture Policy Statement* sets \$8,000 as the base amount for a penalty for an unauthorized transfer of control. When entering into a consent decree or imposing a fine, the FCC can take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Downward adjustments may be made based on: (1) minor violation; (2) good faith or voluntary disclosure; (3) history of overall compliance; and (4) inability to pay. Applying the above factors in this case, the Media Bureau found that a reduction from the \$8,000 base forfeiture amount for an unauthorized transfer of control was appropriate because RCI did not have a history of prior offenses.



# DEADLINES TO WATCH



## License Renewal, FCC Reports & Public Inspection Files

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 1	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).
July 10	Deadline for noncommercial stations to place quarterly report re third-party fundraising in Public Inspection File.		
July 10	Deadline for Class A TV stations to place certification of continuing eligibility for Class A status in Public Inspection File.	August	Television stations in <b>California</b> begin broadcasting post-filing announcements within five business days of acceptance for filing of license renewal application for filing and continuing for four weeks.
August 1	Deadline to file license renewal applications for television stations in <b>California</b> .		
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> .		

## Deadlines for Comments in FCC and Other Proceedings

DOCKET COMMENTS    REPLY COMMENTS

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

Docket 22-127; NOI (FCC 22-29) Improving receiver performance		July 27
Docket 22-203; Public Notice (DA 22-535) Competition in the Communications Marketplace		Aug. 1
Dockets 14-165, 20-36; FNPRM (FCC 22-6) Unlicensed devices in the television band white spaces		Aug. 1
Docket 03-185; 5thFNPRM (FCC 22-40) Franken FMs		Aug. 1
Docket 16-142; 3rdFNPRM (FCC 22-47) Next Gen Television	Aug. 8	Sep. 6
Docket 10-213; Public Notice (DA 22-661) 21st Century Video Accessibility Biennial Report	Aug. 8	N/A
Docket 22-209; Public Notice (DA 22-567) Petition for Rulemaking re New Content Vendor Diversity Report		Aug. 22
Docket 22-239; NPRM (FCC 22-55) DMA assignments for TV stations	FR+30	FR+60
Docket 22-261; 6thNPRM (FCC 22-58) Digital LPTV	FR+30	FR+45

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

**DEADLINE TO FILE CLAIM FOR 2021  
DISTANT TV SIGNAL COPYRIGHT ROYALTIES**

**AUGUST 1, 2022**



# DEADLINES TO WATCH



## 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
Experimental authorizations, Section 73.1510	Aug. 5
FM translator and booster station time of operation, Section 74.1263	Aug. 5
Satellite network non-duplication protection, and satellite syndicated program exclusivity rules, Sections 76.122, 76.123, 76.124	Aug. 8
FM license application form, Form 2100, Schedule 301-FM	Aug. 12
AM pre-sunrise authorization, Section 73.99	Aug. 12

## Lowest Unit Charge Schedule for 2022 Political Campaign Season

During the 45-day period prior to a primary election or party caucus and the 60-day period prior to the general election, commercial broadcast stations are prohibited from charging any legally qualified candidate for elective office (who does not waive his or her rights) more than the station's Lowest Unit Charge ("LUC") for advertising that promotes the candidate's campaign for office. A lowest-unit-charge period is imminent in the following states.

STATE	ELECTION EVENT	DATE	LUC PERIOD
Arizona	State Primary	Aug. 2	June 18 – Aug. 2
Kansas	State Primary	Aug. 2	June 18 – Aug. 2
Michigan	State Primary	Aug. 2	June 18 – Aug. 2
Missouri	State Primary	Aug. 2	June 18 – Aug. 2
Washington	State Primary	Aug. 2	June 18 – Aug. 2
Tennessee	State Primary	Aug. 4	June 20 – Aug. 4
Connecticut	State Primary	Aug. 9	June 25 – Aug. 9
Minnesota	State Primary	Aug. 9	June 25 – Aug. 9
Vermont	State Primary	Aug. 9	June 25 – Aug. 9
Wisconsin	State Primary	Aug. 9	June 25 – Aug. 9
Hawaii	State Primary	Aug. 13	June 29 – Aug. 13
Alaska	State Primary	Aug. 16	July 2 – Aug. 16
Wyoming	State Primary	Aug. 16	July 2 – Aug. 16
Florida	State Primary	Aug. 23	July 9 – Aug. 23
Massachusetts	State Primary	Sep. 6	July 16 – Sep. 6
Delaware	State Primary	Sep. 13	July 30 – Sep. 13
New Hampshire	State Primary	Sep. 13	July 30 – Sep. 13
Rhode Island	State Primary	Sep. 13	July 30 – Sep. 13
United States	General Election	Nov. 8	Sep. 9 – Nov. 8

**DEADLINE FOR LPTV AND FM LICENSEES  
TO FILE CLAIMS FOR TV REPACK REIMBURSEMENT  
SEPTEMBER 6, 2022**

## FCC To Review Next Gen TV continued from page 1

substantially-similar rule has in maintaining the effectiveness and efficiency of simulcasting the 1.0 and 3.0 streams. The Commission asks whether the substantially-similar rule inhibits innovation and creativity in programming.

The Commission's objective is to ensure that the public will continue to have access to broadcasters' primary programming. If a substantial portion of households are not within range of an over-the-air ATSC 3.0 signal, or do not have the capability to receive that signal, access to primary programming would be problematic. The Commission's records indicate that there are 306 stations authorized to operate in ATSC 3.0, scattered across 68 of the 210 television markets. The Commission cited data showing that just over 51 percent of all U.S. households are within range of an over-the-air ATSC 3.0 signal, although of course, most of them are not equipped to receive that signal. The Commission requests comment as to the accuracy of these data. Stations are asked to report on whether the simulcast transition model has been successful. The Commission also wants to know how many markets enjoy ATSC 3.0 service from affiliates of the four largest commercial networks and PBS. The Commission asks to what extent the pandemic has delayed or complicated the rollout of ATSC 3.0 services.

The FCC seeks data on the availability of consumer equipment capable of receiving ATSC 3.0 transmissions, including low-cost set-top converter devices that can be used

to convert 3.0 to 1.0.

From the outset, the FCC has required stations broadcasting the ATSC 3.0 mode to comply with the ATSC A/322 standard. The A/322 standard determines certain technical aspects of the 3.0 signal to ensure that it is compatible with equipment used by consumers and multichannel video programming distributors. The A/322 requirement is scheduled to sunset on March 6, 2023. The Commission invites comment about whether this expiration date should be extended. The Commission seeks to balance the need to protect the compatibility of consumer equipment with the need for flexibility so as not to inhibit the development of new technologies.

Equipment needed for ATSC 3.0 transmissions is subject to patent licensing. The Commission solicits comment about how the marketplace is handling royalties for these patents, and whether licenses are being offered on reasonable and nondiscriminatory terms. The Commission previously found that it would be premature to impose regulations on ATSC 3.0 patent licensing in the absence of issues. The Commission asks if there have been developments that would warrant a change in this policy.

Comments in this proceeding will be due 30 days after publication of public notice in the Federal Register. Reply comments must be filed within 60 days of that publication.

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## New Reference Proposed for DMA Assignments continued from page 1

a reference for DMA station assignments. The Commission requests public comment about this tentative conclusion, and about two aspects of the monthly Report.

The Directory was published annually with data current as of October. As the reference for the triennial must-carry/retransmission-consent cycle, the Commission used the edition published two years prior to the beginning of each cycle. The new resource is published monthly and that presents the question about which issue should be used to establish DMA assignments.

It is unclear to the Commission whether stations will benefit more from knowing DMA assignments well in advance of an election, or from ensuring that assignments are based on more timely information. The Commission therefore seeks comment on whether the rule should reference the October Local TV Report published two years prior to each triennial carriage election, or whether it should rely on a Local TV Report that is published nearer in time to the election deadline. If commenters suggest a time period closer in time to the election, they should identify the month and year that they believe would be most appropriate. Under either alternative, however, the Commission tentatively concludes that it should remove the reference to any specific effective date in the rule. Comment is sought on this tentative conclusion.

Another different feature of the Report is that it does not include Class A or low power television stations unless they attain a certain de minimis average audience size threshold.

The Commission asks whether this matters. These stations are not entitled to mandatory satellite carriage rights. For purposes of mandatory cable carriage, the relevant factors include distance to the cable headend and other matters unrelated to the station's presence in any particular DMA. Thus for purposes of the satellite and cable carriage rules, it appears to be unnecessary to know whether a low power station is located in a given DMA. If such information is necessary for stations other than those already identified in the Report, the Commission notes that Nielsen still gathers this information for all television stations and can generate a report upon request for subscribers that would include all low-power and Class A stations.

The Commission asks whether there are any other differences between the Directory and the Report that should be considered. The Commission also wants to know whether there are other publications that could publicly provide the information needed to assign stations to DMAs. Any commenter suggesting an additional or alternative successor publication should identify the publication as well as the data similarities and differences between the Nielsen Local TV Report and the suggested publication, and explain why the alternative publication is preferable.

The deadline for filing comments in this proceeding will be 30 days after publication of notice of this proceeding in the Federal Register. The deadline for reply comments will be 60 days after that publication.

# Court Vacates Investigation Element of Foreign Sponsorship ID Rule

continued from page 1

programming potentially sponsored by a foreign entity:

(1) Tell the sponsor about the Section 317 disclosure requirement;

(2) Ask the sponsor whether it is a foreign governmental entity or an agent of one;

(3) Ask the sponsor whether anyone further back in the production or distribution chain is a foreign governmental entity or an agent of one;

(4) Independently confirm the sponsor's status, both when the contract for air time is entered into and at the time of any renewal, by checking the Department of Justice's Foreign Agents Registration Act website and the FCC's U.S.-based foreign media outlets reports; and

(5) Document those inquiries and investigations.

Broadcast industry groups led by the National Association of Broadcasters petitioned the Court of Appeals to review the FCC's order. They argued that the obligation to investigate sponsors in government databases is too burdensome for broadcasters.

In its decision, the Court cited the language of Section 317 that specifies the due diligence that a broadcaster must conduct to identify sponsors:

The licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any

program or program matter for broadcast, information to enable such licensee to make the announcement required by this section.

The Court read the statute to mean that the broadcaster should inquire of its employees and of the sponsor directly about the identity of the sponsor. From this, the Court understood that the statute did not authorize the FCC to require anything further, such as investigating government databases maintained by the Department of Justice. The Court said that the law authorized the FCC to impose a duty of inquiry, but not a duty of investigation. It does not make broadcasters responsible for the truth of the information they obtain.

The FCC argued that even if Section 317 does not affirmatively authorize it to require searches of the federal sources, it can require the searches as part of its general authority to "prescribe appropriate rules and regulations to carry out the provisions" of Section 317.

The Court responded that a generic grant of rulemaking authority to fill gaps does not allow the FCC to alter the specific choices Congress made. A general grant of authority cannot displace the clear, specific text of the Act.

The decision is *National Association of Broadcasters, et al., v. Federal Communications Commission*, 2022 U.S.App. LEXIS 19073.

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