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Antenna™

An update on broadcasting law & issues from Donald E. Martin

Legislation Would Keep AM in Vehicles

Legislation has been introduced in both the U.S. Senate and the U.S. House of Representatives to require all motor vehicles to be equipped with AM radio receivers. The "AM Radio for Every Vehicle Act of 2023" was introduced in each chamber with bipartisan sponsors.

If enacted, the bill would require the Secretary of Transportation, in consultation with the FCC and the Federal Emergency Management Agency, to issue a rule within one year of enactment of the legislation that would require:

- AM receivers to be installed as standard equipment in all motor vehicles manufactured in the United States, imported into the United States, or shipped in interstate commerce; and
- dashboard access to AM stations in a manner that is conspicuous to a driver.

Between the enactment of the bill and the effective date of the rule, all such vehicles that are not equipped with an AM radio would be required to bear clear and conspicuous labeling to inform purchasers that the vehicle does not include an AM receiver.

The bill would also direct the Comptroller General to conduct a study to assess whether an alternative communication system exists for delivering emergency alerts to the public via the Integrated Public Alert and Warning System ("IPAWS") to people in vehicles that can reach at least 90 percent of the population of the United States and that is as reliable, resilient, and cost effective as AM broadcasting. The results of the study, along with recommendations for appropriate legislation or administrative regulation, are to be reported to Congress within 18 months of enactment.

The bills, S. 1669 and H.R. 3413, were referred to the appropriate committee in each chamber.

Mid-Term EEO Review Cycle Begins

The FCC's Enforcement Bureau has announced the beginning of its mid-term review of the EEO practices of broadcast stations. As the Bureau explained in a *Public Notice* (DA 23-381), each television station that is part of an

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Lower Regulatory Fees Proposed for FY 2023

To fund the cost of the FCC's operations, the Communications Act requires the agency to collect regulatory fees annually from the entities that it oversees. For the fiscal year ending September 30, 2023, Congress is requiring the Commission to impose and collect fees totaling $390,120,000, which is about two percent greater than the total for fiscal year 2022. The Commission proposes how to calculate and allocate these fees in a *Notice of Proposed Rulemaking* (FCC 23-34) in MD Docket 23-159. Due to reallocating the Commission's costs among the categories of regulatees, many broadcasters' fees are proposed to be lower this year than they were in 2022.

The Commission proposes to continue with the same general methodology that it has used in the past for allocating fees among its regulated entities. The basis for the allocation formula is the estimated amount of FCC personnel resources expended on each kind of regulatee, as expressed in units of staff time, each equal to one full-time staff member, or

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

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DIRS Refresher Offered

The FCC's Public Safety and Homeland Security Bureau has released a *Public Notice* (DA 23-414) to announce its annual Disaster Information Reporting System ("DIRS") refresher exercise for DIRS filers on June 6 and 7, 2023. At times when emergency information and relief are needed during and after disasters such as hurricanes, wildfires, and earthquakes, the FCC may activate DIRS. Communications providers can use DIRS to quickly and efficiently report the operational status of their service and infrastructure to the FCC, as well as to request assistance. The planned refresher will help ensure that communications providers, including broadcasters, can access and file in the DIRS system; train new employees to become familiar with the DIRS reporting process; and update DIRS contact information.

The Bureau encourages service providers who have not previously participated in DIRS reporting to take advantage of this opportunity to register and become familiar with the system. Providers can create an account at the following link: https://www.fcc.gov/nors/disaster/.

The Bureau states that the exercise will include a simulated disaster event. The Bureau will send a mock activation letter on June 5 to all registered DIRS participants. The mock activation letter will provide a list of pre-selected counties that form the disaster area for this practice event. Providers will be asked to report data on any of their communications assets (e.g., broadcast, cable, satellite, wireless, and wireline) in the affected area. As this is only a simulated event, the Bureau does not expect to receive actual counts of outages. If a provider does not have any communications assets in the affected counties, it can still participate by reporting notional data for the pre-selected counties.

Event participants are asked to provide their initial data sets by 10:00 a.m. EDT on June 6 with an updated report filed by June 7 at 10:00 a.m. EDT. The Bureau will send a deactivation letter by 3:00 p.m. EDT on June 7 notifying participants that the simulated event has been completed.

To participate in the practice event, providers should email michael.caiafa@fcc.gov and gerald.english@fcc.gov with the following information:

1. Name of the provider;
2. Names of all participants from the provider;
3. Email and phone numbers of all participants from the provider; and
4. Specific geographic areas (counties, state) that the provider would like to have included in the disaster area for this exercise (optional).

There is no response necessary for providers who do not wish to participate.

Questions about this exercise or about DIRS generally should be directed to the following in the Public Safety and Homeland Security Bureau, Cybersecurity and Communications Reliability Division:

- Michael Caiafa: michael.caiafa@fcc.gov or (202) 418-1311
- Jay English: gerald.english@fcc.gov or (202) 418-0432

Reduced Power Misstep Leads to Fine

The FCC's Media Bureau has issued a *Notice of Apparent Liability for Forfeiture* (DA 23-404) to Abacus Television, the licensee of low power television station WIIC-LD, Pittsburgh, Pennsylvania for operating the station for over three and one-half years at reduced power without authority to do so. The proposed fine is $16,000.

WIIC-LD is licensed to operate on channel 31. On September 12, 2019, it was displaced when full power station WYTV, Youngstown, Ohio, began operating with increased power on the same channel. Abacus determined that the station was causing approximately 5.33 percent interference to WYTV, which is more than the maximum interference allowed under the FCC's Rules. On October 16, 2019, Abacus reduced the station's power from the licensed 15 kW to 7.5 kW in an effort to eliminate prohibited interference. Abacus informed the FCC's staff of this power reduction informally by email, but never filed a formal request for a special temporary authority. In November 2019, FCC staff informed Abacus that operation at 7.5 kW would not resolve the problem. Commission staff suggested that operating WIIC-LD at 0.0363 kW would reduce interference to WYTV below the five percent threshold but did not formally approve such operations. Responding to the FCC staff suggestion, Abacus reduced the station's power to 0.0363 kW and continued to operate at that level until March 16, 2023, when the station went silent. However, Abacus never formally requested special temporary authority to operate in this manner.

A displacement modification application was filed in November 2019, proposing to move the station to channel 10. However, that application has also been plagued by interference issues with other stations and remains pending.

An inquiry about the status of the modification application triggered a letter of inquiry from the Media Bureau concerning the station's operational status. In its response of March 24, 2023, to the letter of inquiry, Abacus admitted to the facts described above. It explained that "while no single factor explains or excuses [its] failure . . . a confluence of misjudgments and distractions resulted in [its] failure to act in accordance with the Rules."

The Media Bureau found that Abacus violated Section 73.1745(a) of the FCC's Rules by failing to operate within the terms of its authorization, and violated Section 73.1635(a) of the Rules by failing to request special temporary authority to operate outside of its licensed parameters. The Bureau said that Abacus gave no justifiable reason for its failures. The

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LPFM Station Fined $15K for Underwriting Violations

The FCC's Enforcement Bureau has issued a *Forfeiture Order* (DA 23-382) levying a fine of $15,000 against low power FM station KELS-LP, Greeley, Colorado, for broadcasting announcements that the Commission found to be paid advertisements. All low power FM stations are licensed for noncommercial service, and Section 399B of the Communications Act prohibits noncommercial broadcast stations from airing commercial advertisements. Noncommercial stations are permitted to broadcast brief messages acknowledging contributors, often called "underwriting announcements." However, these announcements cannot promote the underwriter or its products or services.

The Bureau said that from as long ago as 2015, the Commission has received multiple complaints that the station was broadcasting commercial advertisements. Upon reviewing the complaints, the Bureau investigated and monitored the station. During a period of three months in 2018, Enforcement Bureau staff observed that the station aired commercial announcements on more than 1,600 occasions, promoting the products, services, or businesses of at least 14 of the station's contributors.

Subsequently in 2020, the Bureau issued a *Notice of Apparent Liability for Forfeiture* (DA 20-435) ("NAL"), proposing a $15,000 fine. In the NAL, the Bureau described the rule violations it found in 14 frequently broadcast announcements. Eleven of them promoted the underwriter's business, products, or services. Nine of the spots included information about the price of the underwriter's products or services. Six announcements included excessively long lists (or "menus") of the underwriter's products or services. Six of the messages were longer than 30 seconds.

The Enforcement Bureau explained that it determined the amount of the proposed fine by applying the base forfeiture of $2,000 for violations of the underwriting requirements, and then considering the nature, circumstances, extent, and gravity of the violations. The station licensee's culpability, history of violations, and ability were also factored into the deliberation. The Bureau said that the amount was adjusted upward due to the protracted length of time during which the prohibited announcements were aired and the number of messages involved.

In its response to the NAL, KELS-LP did not dispute the Enforcement Bureau's findings. Instead, it asked that the fine be reduced or eliminated on the basis of its inability to pay the proposed amount. The Commission does entertain requests to reduce or eliminate forfeitures from parties that are financially unable to pay them. However, such requests must be supported with documentation to show the party's financial condition for the prior three years. The station said that its fundraising had been hindered by the economic dislocations associated with the COVID-19 pandemic, and that it had been operating with a deficit during the first half of 2020.

However, upon review of the licensee's tax returns and other relevant financial information, the Bureau determined that the station's average annual gross receipts for the period 2018-2020 had been $228,796. The Bureau concluded that "total gross revenues of this magnitude alone are sufficient to sustain a $15,000 forfeiture." The Bureau rejected KELS-LP's argument about its inability to pay the fine and imposed the $15,000 forfeiture as had been proposed in the NAL.

FM Translator Revived

The FCC's Commissioners have revived the license for an FM translator station that the Media Bureau's Audio Division had declared expired for having been silent for longer than 12 months. In a *Memorandum Opinion and Order* (FCC 23-38) concerning translator station W253AF, Bennington, Vermont, owned by Absolute Broadcasting, LLC, the Commission clarified two principles for evaluating whether a station has been technically silent for a prolonged period, triggering license expiration pursuant to Section 312(g) of the Communications Act. (Section 312(g) provides that the license automatically expires when a station has been continuously silent for 12 consecutive months.) The first is that the requirement for evidence to support a claim that the station has been on the air must be commensurate with the circumstances of the station. Secondly, a station operating from the authorized transmitter site and on the authorized channel can still be credited for being on the air even with facilities that are otherwise inconsistent with its authorization.

Absolute is the licensee of WGHM(AM), Nashua, New Hampshire. In 2016, the company acquired the translator for the purpose of moving it from Bennington to Nashua and pairing it with WGHM as a fill-in translator. The modification included moving the station on the FM dial as well, to channel 260. On December 21, 2017, Absolute filed an application for a license and began broadcasting with Program Test Authority. On February 12, 2018, Saga Communications of New England, LLC filed an interference complaint and informal objection to the license application, alleging listener interference to Saga's co-channel translator station W260CF, Manchester, New Hampshire. In response to this interference complaint, Absolute took the station off the air on February 22, 2018. For the remainder of 2018 and 2019, the station was mostly silent as the parties disputed whether it was causing prohibited interference.

Saga filed a petition on March 8, 2019, asking the FCC to declare the translator's license expired, alleging that the station had been continuously silent for 12 months and therefore the license had expired under Section 312(g) of the Communications Act. Saga referred to Absolute's "Response

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DEADLINES TO WATCH

License Renewal, FCC Reports & Public Inspection Files

June 1 — Deadline to place EEO Public File Report in Public Inspection File and on station's website for all nonexempt radio and television stations in **Arizona, the District of Columbia, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia,** and **West Virginia.**

June 1 — Deadline for all broadcast licensees and permittees of stations in **Arizona, the District of Columbia, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia,** and **West Virginia** 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).

June 1 — Mid-Term EEO review begins for qualified radio stations in the **District of Columbia, Maryland, Virginia,** and **West Virginia**.

July 10 — Deadline to place quarterly Issues and Programs List in Public Inspection File for all full service radio and television stations and Class A TV stations.

July 10 — Deadline for noncommercial stations to place quarterly report regarding third-party fundraising in Public Inspection File.

July 10 — Deadline for Class A TV stations to place certification of continuing eligibility of Class A status in Public Inspection File.

August 1 — Deadline to place EEO Public File Report in Public Inspection File and on station's website for all nonexempt radio and television stations in **California, Illinois, North Carolina, South Carolina,** and **Wisconsin.**

August 1 — Deadline for all broadcast licensees and permittees of stations in **California, Illinois, North Carolina, South Carolina,** and **Wisconsin** 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 — Mid-Term EEO review begins for qualified radio stations in **North Carolina** and **South Carolina**.

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
Freedom of Information/Privacy Act requests	June 2
Application for permit to deliver programs to foreign broadcast station, Sections 73.3545, 73.3580, Form 308	June 5
International broadcast station application forms, Forms IBFS-309, IBFS-310, IBFS-311, and 496	June 12
CORES registration form, Form 160	June 12
Broadcast license renewal application, Form 2100, Schedule 303-S	June 20
Assignment and transfer-of-control application form for low power TV, TV translator, FM translator stations, Form 2100, Schedule 345	June 20
Licensing auxiliary stations, Sections 74.432, 74.832	July 3
Low Power FM rules, Part 73, Subpart G; Form 2100, Schedule 318	July 3
Rebroadcasts, Sections 73.1207, 74.784, 74.1284	July 3
Visual modulation monitoring, Section 73.691	July 5
Earth stations and space stations, Forms 312, 312-EZ, 312-R	July 5
License modification application, Section 73.3544	July 10
Section 106 Preservation Act review process, Forms 620, 621	July 10
Remittance Advice Form 159	July 10
Determining operating power, Section 73.51	July 14
Settlement agreements, Section 73.3525	July 17

DEADLINES TO WATCH

Deadlines for Comments in FCC and Other Proceedings

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

DOCKET	COMMENTS	REPLY COMMENTS
Docket 23-153; Public Notice (DA 23-367) Petition for declaratory ruling by Border International Broadcasting, Inc. re foreign ownership.	June 5	June 20
Docket 23-126; NPRM (FCC 23-23) Implementation of Low Power Protection Act		June 13
Docket 23-159: NPRM (FCC 23-34) 2023 Regulatory Fees	June 14	June 29

Mid-Term EEO Review Cycle Begins *continued from page 1*

employment unit of five or more full-time employees and each radio station that is part of an employment unit of 11 or more full-time employees is subject to this review at the midpoint in its license term. These reviews are required by Section 334(b) of the Communications Act and Section 73.2080(f)(2) of the Commission's Rules.

The Bureau conducts these reviews just after the fourth anniversary of the deadline for a station to file its license renewal application. The earliest license renewal filing deadline in the renewal cycle that recently ended (with television stations in Delaware and Pennsylvania) was June 1, 2019, for radio stations in the District of Columbia, Maryland, Virginia, and West Virginia. The mid-term review for those radio stations will begin on June 1, 2023. The review process will continue on a rolling basis for stations in other geographic areas as the fourth anniversary of their license renewal filing deadline approaches. On August 1, 2023, radio stations in North Carolina and South Carolina will be subject to the mid-term review.

Enforcement Bureau staff will evaluate the station's performance as reflected in its annual EEO Public File Reports for the past two years. The staff may also request additional information if necessary. The Bureau says that its staff will inform stations of any needed improvements in their recruitment practices and may take other enforcement action as appropriate.

Although radio stations in employment units with five or more full-time employees must upload the EEO Public File Report to their online public files, only those with 11 or more full-time employees are subject to the mid-term review. Until 2019, stations were required to file a Broadcast Mid-Term Report that informed the FCC about staff size and helped guide the mid-term review process. However, the Broadcast Mid-Term Report has been eliminated. Now, to inform FCC staff about the size of its staff, a radio station filing its annual EEO Public File Report will find a new Yes/No question in the online public file to answer that will indicate to the FCC whether it has 11 or more full-time employees. Stations disclosing that they have 11 or more full-time staff members will be subject to the mid-term review.

Television stations will not encounter the question about staff size because all television stations with five or more full-time employees are subject to the mid-term review.

Reduced Power Misstep Leads to Fine *continued from page 2*

Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of $3,000 for failing to file a required form, and $10,000 for construction and operation without an authorization. The Bureau found that Abacus failed on two separate occasions to file a required form when it should have requested special temporary authorization for reduced power at 7.5 kW on October 16, 2019, and for 0.0363 kW on November 8, 2019. It proposed a fine of $3,000 for each of those occasions, and $10,000 for operating without an authorization. The total proposed fine comes to $16,000.

Abacus has 30 days in which to request the cancellation or reduction of the forfeiture.

DISASTER INFORMATION REPORTING SYSTEM
MOCK DRILL

JUNE 6-7, 2023

Lower Regulatory Fees Proposed for FY 2023 *continued from page 1*

"FTE." The FTEs are divided into two categories: direct and indirect. Direct FTEs are those involved in the four core bureaus that provide services directly to regulatees: the International Bureau, the Wireless Telecommunications Bureau, the Wireline Competition Bureau, and the Media Bureau. All other FTEs are considered to be indirect. In the past the indirect FTEs have been allocated among the four core bureaus in proportion to the non-auctions direct FTEs used in each bureau's operations. (FTEs involved in the conduct of auctions are not included in these calculations because they are funded from the proceeds of the auctions.) The total FTEs allocated to each core Bureau were then distributed among the categories and individual regulatees served by each respective Bureau.

In response to comments received last year in response to a Notice of Inquiry, the Commission proposes to reallocate to core bureaus some of the FTEs formerly designated as indirect. Analysis of certain functions performed in non-core bureaus and offices has revealed that they are primarily related to a service or function of a core bureau. By way of this reallocation, the Commission intends to spread the burden of the regulatory fees more equitably among the various categories of fee payors. These reallocations are proposed only for the purpose of computing the 2023 fees.

The FCC's Human Resources Management Office has determined that for fiscal year 2023 there are 339.25 direct non-auctions FTEs distributed among the core bureaus. The Commission proposes to reallocate 63 indirect FTEs to core bureaus collectively from the Office of Economics and Analytics, the Office of General Counsel, and the Public Safety and Homeland Security Bureau. The table below shows how these 63 FTEs would be distributed among the core bureaus, each bureau's new total FTEs, and each bureau's percentage of the total number of FTEs in the FCC. The remaining unreallocated indirect FTEs would be divided among the core bureaus in proportion to each bureau's new total FTEs. The total amount of regulatory fees to be collected would then be divided among the core bureaus pro rata to their respective new total FTEs.

Bureau	Reallocated FTEs	New Total FTEs	Percentage of All 2023 FCC FTEs	Percentage of All 2022 FCC FTEs
Media	14	130.0	32.10%	36.10%
Wireline Competition	23	143.25	35.73%	33.94%
Wireless Telecom	23	98.0	24.44%	21.40%
International	3	31.0	7.73%	8.56%

This proposal would reduce the fee burden for Media Bureau regulatees from last year. The Media Bureau's share of 36.10% of the Commission's total fees for 2022 was $137,889,950. The corresponding figure for 2023 would be 32.10% of $390,192,00, or $125,251,632. This reduction of more than $12.5 million in the Media Bureau's share of the total fees to be collected would be reflected in reductions in the fees to be paid by individual fee payors. The table following at the end of this article shows the proposed 2023 fee for most types of authorizations of concern to broadcasters (except for full power television). The table also compares these proposed amounts to the fees that were charged for 2022.

Fees for radio broadcasters are computed on the basis of the class of the station and population within the station's protected service contour. In the past there have been eight tiers of population sizes. The smallest group included stations covering any size of population at or less than 25,000. The Commission proposes to divide this tier for the benefit of the stations with the smallest population base. The new smallest tier with small fees would be for stations serving a population of 10,000 or fewer people. The next tier would include stations covering populations between 10,001 and 25,000. The table at the end of this article shows these new tiers.

The fee for television stations is calculated on the basis of the actual population within each station's service area. The fee proposed for 2023 is $0.007799 per person in the service area. This would be a reduction from the 2022 fee, which was $0.00843 per person. The Commission has determined the precise fee for each station using this formula and listed each of them in Appendix G to the *Notice of Proposed Rulemaking*, which is available online here: https://www.fcc.gov/document/fy-2023-regulatory-fees-notice-proposed-rulemaking.

The Commission invites comments about whether it should extend any of the temporary measures adopted in prior years for the relief of regulatees experiencing financial hardship resulting from the pandemic. These included a reduced interest rate, a waiver of the down payment requirement for installment payments, and a partial waiver of the red-light rule to permit delinquent debtors to seek relief, and procedures for streamlined filing of requests for relief. The Commission also requests comment on broadcasters' proposal to allow them to prepay regulatory fees in increments in advance of the payment deadline.

The deadline for paying fees will be set later. Typically, it falls in late September.

Comments on these proposals are due by June 14. The deadline for reply comments is June 29. Note that the Communications Act requires the Commission to collect regulatory fees. Therefore, comments must be limited to the proposals for calculating fees rather than whether fees should be imposed.

Lower Regulatory Fees Proposed for FY 2023 *continued from page 6*

REGULATORY FEES FOR FISCAL YEAR 2023

Type of Authorization	Actual FY 2022	Proposed FY 2023
Full Power TV Construction Permit	$ 5,200	$ 5,100
Class A TV, LPTV, TV/FM Translator & Booster	330	260
AM Radio Construction Permit	655	620
FM Radio Construction Permit	1,145	1,085
Satellite Earth Station	620	570

ACTUAL FY 2022 REGULATORY FEES FOR RADIO

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM A, B1, C3	FM B,C,C0,C1,C2
0-25,000	$ 1,050	$ 755	$ 655	$ 720	$ 1,1145	$ 1,310
25,001-75,000	1,575	1,135	985	1,080	1,720	1,965
75,001-150,000	2,365	1,700	1,475	1,620	2,575	2,950
150,001-500,000	3,550	2,550	2,215	2,435	3,870	4,430
500,001-1,200,000	5,315	3,820	3,315	3,645	5,795	6,630
1,200,001-3,000,000	7,980	5,740	4,980	5,470	8,700	9,955
3,000,001-6,000,000	11,960	8,600	7,460	8,200	13,040	14,920
6,000,000+	17,945	12,905	11,195	12,305	19,570	22,390

PROPOSED FY 2023 REGULATORY FEES FOR RADIO

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM A, B1, C3	FM B,C,C0,C1,C2
0-10,000	$ 595	$ 430	$ 370	$ 410	$ 650	$ 745
10,001-25,000	990	715	620	680	1,085	1,240
25,001-75,000	1,485	1,075	930	1,020	1,630	1,860
75,001-150,000	2,230	1,610	1,395	1,530	2,440	2,790
150,001-500,000	3,345	2,415	2,095	2,300	3,665	4,190
500,001-1,200,000	5,010	3,620	3,135	3,440	5,490	6,275
1,200,001-3,000,000	7,525	5,435	4,710	5,170	8,245	9,425
3,000,001-6,000,000	11,275	8,145	7,060	7,745	12,360	14,125
6,000,000+	16,920	12,220	10,595	11,620	18,545	21,190

FM Translator Revived *continued from page 3*

to Interference Complaint" disclosing that it had taken the station off the air. Saga further supported its argument with a statement from its chief engineer stating that he had "periodically monitored" the station's frequency during 2018 and had not heard any broadcasts. Saga also argued that even if the station had been on the air during this period, that operation was unauthorized because Absolute had installed a two-bay antenna instead of the one-bay antenna authorized in its permit. Absolute responded with a statement from its contract engineer who stated that he had placed the station on the air during the period July 2 to 11, 2018.

In September 2019, the Media Bureau issued a letter of inquiry directing Absolute to provide evidence of its operational status since going silent on February 22, 2018. The Bureau included a comprehensive list of items that it requested, including (1) the location, effective radiated power and antenna height above ground level for all periods of operation from February 22, 2018, to date; (2) copies of all leases, personnel records (including payroll records), engineering records, station logs, invoices, bills, checks written or received, credit card charges, wire transfers or deposits of funds relation the station's operation; (3) pictures of the station's studio and transmission facilities during the relevant timeframe; and (4) exact station coordinates.

Absolute responded on October 28, 2019, confirming the station had been silent most of the time period while it addressed the interference issue. However, it asserted that the station had been broadcasting for the week previously documented in July 2018, and again from June 17 to 25, 2019. Absolute also submitted: (1) the station's location, power, antenna height and antenna description; (2) screenshots of the station's transmitter

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FM Translator Revived *continued from page 7*

log during June 17-25, 2019; (3) pictures of the station's studio and transmission facilities; and (4) the station's coordinates. As for other documentation, Absolute explained that it could not provide any because "there are no personnel records, invoices, bills, checks, etc. because this is an FM translator and not a primary station." Because the station had operated only briefly, there was "little accounting data available."

The Media Bureau issued a *Staff Letter* on May 26, 2020, finding that Absolute had failed to demonstrate that the station had been on the air during the relevant period of time and therefore the station's license had automatically expired pursuant to Section 312(g). The Bureau relied heavily on the fact that Absolute had failed to provide the requested documents and it gave little weight to the declarations from the contract engineers, calling them "uncorroborated statements" from witnesses who were not disinterested.

Absolute petitioned the Media Bureau for reconsideration of the *Staff Letter*, submitting a sworn statement from a third-party engineer who reviewed the station's electrical usage and found that it was consistent with the translator being operational during the periods in question. Absolute also included statements from five listeners who claimed to have heard the station during the relevant periods of time. The Bureau dismissed the Petition for Reconsideration on procedural grounds, stating that this evidence should have been submitted earlier. However, the Bureau also remarked that if it had considered the merits of the Petition, the additional evidence would have failed to demonstrate that the station had been on the air. It said the engineer's statement was "specious evidence" and that the listener statements were "uncorroborated by any of the information requested in the [letter of inquiry].

Absolute then filed an Application for Review, asking the full Commission to reverse the Bureau's ruling. It argued that since it was unable to furnish the other information requested by the Bureau in the letter of inquiry, it should be permitted to demonstrate station operation through other means, especially where the consequence is the draconian action of license cancellation.

The Commission found that considered as a whole, the evidence does not reasonably support a finding that the station was silent for 12 consecutive months. The chief engineer's statement provided by Saga only showed that the station was periodically off the air – an assertion with which no one disagrees. The statement did not demonstrate that the station had been silent *continuously* for a 12-month period. On the other hand, Absolute provided its own statements and those of the engineers, under the penalty of perjury and with first-hand knowledge, that the station did indeed operate during brief intervals. Those statements were corroborated to the extent possible by the documentary evidence that Absolute was able to provide in response to the letter of inquiry.

The Commission criticized the Bureau's heavy reliance on Absolute's failure to produce the standardized list of requested documents without considering the service- and license-specific factors affecting Absolute's ability to produce them. In this case where the translator and its primary station shared the same facilities, personnel, and expenses, the Commission found it plausible that Absolute did not have separate documents relating specifically to the translator. The Commission remarked that many of the items requested by the Bureau might be more relevant to determining whether a full-service station had been constructed and operated as authorized. Under the circumstances, declarations from individuals with personal knowledge of the situation formed a reasonable alternative basis for believing that the station had been on the air.

The Commission also addressed Saga's argument that the operation of the station with an unauthorized antenna could not be credited as bona fide operation of the station and that such operational periods, if any, should be deemed legally equivalent to silence. It observed that the agency had not directly addressed the question of whether any noncompliance with a technical or regulatory requirement means a station has failed to transmit broadcast signals for purposes of Section 312(g). Prior decisions in which unauthorized operation was disallowed for credit against a silent period involved broadcasting from an unauthorized transmitter site or on an unauthorized channel. The Commission observed that for other nonconforming operations, even if the violation lasted longer than a year, the Media Bureau has typically entered into a consent decree or imposed a forfeiture. Confirming this approach as agency policy, the Commission clarified that not every instance of nonconforming operation that lasts for more than a year leads automatically to the loss of the station's license pursuant to Section 312(g). Nonetheless, the Commission did find the use of an unauthorized antenna system to merit consideration for less drastic enforcement action and it referred this issue back to the Bureau.

In conclusion, the Commission reversed the Media Bureau's action, reinstated the station's license, and returned the application for the license to cover the modification construction permit to pending status.

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