

Multicast Licensing Approved for Next Gen Stations

The FCC has adopted new refinements to its regulations governing the implementation of the ATSC 3.0 broadcast television mode, also known as Next Gen TV. Among other things, the *Third Report and Order* (FCC 23-53) in Docket 16-142 authorizes Next Gen stations to request modification of their licenses to permit non-primary program streams (i.e., multicast streams) to be transmitted by another station – a “host” station – during the general transition from ATSC 1.0 to ATSC 3.0. In this action, the Commission also extended until July 17, 2027, the sunsets for the substantially-similar rule for simulcast streams and the requirement to comply with the ATSC A/322 standard in 3.0 streams.

Because a station cannot transmit in both the ATSC 1.0 and 3.0 modes at the same time, the Commission has developed a system of local simulcasting to promote the development of ATSC 3.0 while ensuring that consumers who continue to use receivers that handle only ATSC 1.0 will not be deprived of programming. Stations are invited

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Existing Franken FMs Allowed To Continue

The FCC has issued a *Fifth Report and Order* (FCC 23-58) in Docket 03-185 to address issues concerning the phenomena of Channel 6 LPTV stations that transmit an aural program stream on 87.75 MHz (sometimes called “Franken FMs”). This frequency is adjacent to the low end of the band regularly used for FM broadcasting, 88 through 108 MHz. Most FM receivers can pick up the signal on 87.75 MHz. When television stations were still broadcasting in analog, some Channel 6 LPTV stations developed an FM-like service on this frequency that consumers came to use in the same way they used regular FM signals. However, digital television broadcasting does not lend itself to this practice. Consequently, the demise of analog transmissions presented a challenge to those who wished to continue to provide the aural service on television Channel 6 (“FM6”).

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LPFM Filing Window Will Be November 1–8

The FCC’s Media Bureau has released a *Public Notice* (DA 23-531) to announce a filing window for applications for new low power FM (“LPFM”) stations that will be open from November 1 through 6:00 pm Eastern Time on November 8, 2023. This will be the first filing window for this class of station since 2013.

LPFM stations are, as the name suggests, FM stations with relatively low effective radiated power. The maximum power permitted for this class of station is 100 watts with an antenna height of 30 meters above average terrain. These stations are permitted on any frequency in the FM band. All LPFM stations are licensed as noncommercial stations, even if they operate in the portion of the FM band normally used by commercial stations.

An LPFM application must propose a transmitter site for the proposed station that would protect all other existing station authorizations, using the protection formulas in the Commission’s Rules. The FCC has developed a tool to assist

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Transition From CDBS to LMS Completed

The FCC's Media Bureau has announced the completion of the transition of its filings and electronic records from the Consolidated Database System ("CDBS") to the Licensing and Management System ("LMS"). According to the Bureau's *Public Notice* (DA 23-600), the public will now submit documents to the Commission exclusively through LMS that were previously filed through CDBS or on a paper form.

These filings include the following:

- Application for Construction Permit for AM Broadcast Station
- Application for AM Broadcast Station License
- Application for Direct Measurement of AM Broadcast Station
- AM Engineering Special Temporary Authorization (STA)
- Extension of AM Engineering STA
- Application for Construction Permit for New Class D Noncommercial Educational FM Broadcast Station
- Application for Construction Permit for New Low Power FM Station

- Equipment Test Authority Notification
- Program Test Authority Notification
- Restoration of Licensed Operation

In January 2022 when the Media Bureau announced that CDBS would no longer accept new filings, it established a temporary email address, audiofilings@fcc.gov, for submission of certain filings that could not be submitted using LMS at that time. That system has been terminated. All of those filings must now be submitted through LMS.

All pertinent information from CDBS has been transferred to LMS and is accessible using LMS. Searches for information regarding broadcast applications filed in CDBS or LMS should be conducted in LMS. However, CDBS records will remain available to the public for a limited period of time. The public is encouraged to contact the Audio Division if records from CDBS do not appear in LMS.

Marketplace for ATSC 3.0 Patents Reviewed

The FCC has launched the *Fourth Further Notice of Proposed Rulemaking* (FCC 23-53) in Docket 16-142 to review the current marketplace for ATSC 3.0 Standard Essential Patents ("SEPs") and the ability of third parties to develop products that rely upon them. The Advanced Television Systems Committee, which developed the ATSC 3.0 standard, requires patent owners to disclose that they hold essential patents and to commit licensing them on reasonable and nondiscriminatory ("RAND") terms. When the Commission adopted the rules for ATSC 3.0 in 2017, the agency determined that it was premature to impose regulations on the private patent licensing marketplace. More recently, the record developed in this proceeding has presented certain issues with respect to the patent licensing marketplace. There are disputes as to whether SEP holders are complying with the RAND requirements. The Commission solicits comment to inform its consideration of whether rules for governing the RAND licensing of SEPs would be appropriate or beneficial.

A fundamental question to be resolved is whether the FCC even has the authority to regulate patent licensing. The Commission may not have jurisdiction over all SEP

holders. Further, there does not appear to be any explicit statutory authority for the Commission to impose RAND requirements.

Assuming that the Commission does have authority to regulate SEP licensing, the agency asks how such regulations could be crafted to minimize potential adverse economic impact while maximizing the opportunity for participation in the ATSC market. One suggestion offered by a commenter is to adopt RAND rules in line with the policy established by the Institute of Electrical and Electronic Engineers ("IEEE"). Others have observed that the Departments of Justice and Commerce have endorsed a case-by-case approach to addressing patent disputes. If the Commission were to establish specific standards, it asks whether there are other resources for possible policies instead of or in addition to the IEEE policy. Regardless of the policy or process adopted, the Commission also seeks input about how to resolve disputes promptly.

Comments are due to be filed by September 15. The deadline for reply comments is October 16.

Existing Franken FMs Allowed To Continue continued from page 1

This *Fifth Report and Order* is the culmination of multiple rounds of inquiry on this topic by the Commission. After reviewing this lengthy record, the Commission has concluded that both the Communications Act and the agency's Rules allow existing FM6 operations to be provided on an ancillary or supplementary basis to a Channel 6 LPTV station's digital television operation and that it is in the public interest to preserve existing FM6 operations. However, the Commission says that it will not authorize new FM6 services.

With the conclusion of the transition to digital television broadcasting on July 13, 2021, some Channel 6 LPTV stations developed a hybrid operation involving ATSC 3.0 with an analog audio stream on 87.75 MHz. This required obtaining a Special Temporary Authorization ("STA") that had to be renewed every six months. There are presently 13 Channel 6 LPTV stations that are authorized to operate an FM6 with an STA. The Commission says that one additional station will also be authorized that has planned to offer FM6, but that has experienced legitimate delays in establishing its ATSC 3.0 service. The Commission found that continuing to permit these long-time audio programming services upon which radio listeners have relied for many years is consistent with the FCC's goal of preserving service. The benefits realized from these services outweigh the risk of harmful interference to other authorized services because these incumbent operators have a demonstrated track record of operating without causing interference.

On the other hand, the Commission says that it will not authorize any additional FM6 operations. Existing FM6 stations' facilities have been frozen in place and were not permitted to be modified. The Commission has established rules to ensure that interference-free operations continue into the future. The Commission states that the same is not true with respect to prospective new FM6 stations or legacy stations that operated FM6 services prior to the digital transition, for which there is no track record of non-interference since the digital transition.

Despite that conclusion, the Commission will authorize one additional LPTV station to broadcast an FM6 signal that has not done so since the digital transition – WVOA-LD, Westvale, New York. That station was previously providing FM6 service while operating in analog, and was making preparations to offer FM6 programming prior to the release of the *Fifth Further Notice of Proposed Rulemaking* (FCC 22-40) ("5th FNPRM") in this proceeding in 2022, which the Commission set as the cut-off date for initiating new FM6 services. The ATSC 3.0 authorization for WVOA-LD has been delayed due to the need for international coordination with Canada. The station will be closely monitored when it goes on the air to ensure that no interference occurs. The underlying rationale for permitting this last station to operate an FM6 service is that it has an existing audience from the analog era which should not be disrupted now.

To maintain the integrity and interference-free environment of the authorized FM6 operations, the

Commission has adopted the following restrictive regulations for them:

- An FM6 LPTV station must operate in the ATSC 3.0 digital format.
- The aural FM6 program stream must be transmitted on 87.75 MHz.
- FM6 operations must not interfere with any other licensed primary or secondary user.
- An FM6 LPTV station must provide at least one stream of synchronized video and audio programming on the ATSC 3.0 portion of the station's spectrum at any time that the station is operating.
- The FM6 coverage area must not exceed the coverage area of the station's ATSC 3.0 synchronized video/audio programming stream.
- An FM6 LPTV station may modify its technical facilities as permitted under Part 74 of the Commission's Rules as long as the modified protected contour remains within the station's current protected contour (with exceptions in the cases of engineering necessity).

The FCC clarified that an FM6 operation is not severable from the LPTV station's digital license. It cannot be assigned or transferred independently from the LPTV station.

While operating under the STAs, each of the stations was required to submit periodic reports to the FCC about its technical operations, confirming that no interference was being caused to other spectrum users. Such reports will not be required with the permanent FM6 authorizations. The Commission says that the record of real-world information collected over the course of two years of FM6 LPTV operations with STAs demonstrates that interference from the 13 existing stations is not likely to occur.

FM6 services are considered ancillary or supplementary services to the principal television service of the station. As with all other types of ancillary and supplementary services, feeable FM6 services are subject to a five percent fee on the gross receipts from such operations. The Commission has defined "feeable" ancillary or supplementary services as those for which payment of a subscription fee or charge is required in order to receive the service, or for which a third party has paid for transmission of material provided by that third party. Commercial advertising revenue used to support a channel for which a subscription fee is not necessary is not considered feeable.

FM6 LPTV stations must maintain the capability to separately broadcast EAS alerts on both the television and the FM program streams. They will also be required to maintain an online Public Inspection File for the FM service just as is required of regular full service FM stations.

The FCC declined to adopt two proposals that were discussed in this proceeding. One of these was the reallocation for FM broadcasting of the spectrum from 82 to 88 MHz normally used for Channel 6 television in areas where there is no Channel 6 station. The Commission found that this proposal was not feasible because of the possibility

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DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

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.	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 any 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 regarding third-party fundraising in Public Inspection File.	August 1	Mid-Term EEO review begins for certain radio stations in North Carolina and South Carolina .
July 10	Deadline for Class A TV stations to place certification of continuing eligibility for 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 .		

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
FM translator and booster construction permit application, Form 2100, Schedule 349	July 31
CORES registration, Form 160	July 31
AM directional field strength measurements, Section 73.61	Aug. 7
Low power auxiliary stations, Section 74.802	Aug. 11
Chief operators, Section 73.1870	Aug. 11
Auxiliary station licenses, Sections 74.432, 74.832	Aug. 14
Rebroadcasts, Section 73.1207, 74.784, 74.1284	Aug. 14
LPTV interference, Section 74.703	Aug. 14
LPTV modification of transmission system, Section 74.751	Aug. 14
LPTV electronic filings, Sections 74.734, 74.735, 74.763	Aug. 14
National Programmatic Agreement re NHPA Section 106 Review Forms 620, 621	Aug. 16
Commercial television and FM construction permit applications Form 301, Form 2100, Schedule A, Form 2100, Schedule 301-FM	Aug. 22
Candidate ad rates, Section 73.1942	Sep. 11
ATSC 3.0 local simulcasting rules, Sections 73.3801, 73.6029, 74.782	Sep. 12
Notice of hearing; appearance in hearing, Section 1.221	Sep. 12
Motions to enlarge, change or delete issues, Section 1.229	Sep. 12
Prehearing and hearing conferences, Section 1.248	Sep. 12
MVPD carriage petition procedures, Section 76.7	Sep. 12
MVPD carriage disputes, Section 76.61	Sep. 12
Unfair MVPD practices, Section 76.1001	Sep. 12
Program access proceedings, Section 76.1003	Sep. 12
MVPD carriage agreements, Section 76.1302	Sep. 12
LPTV, TV and FM translator station records to be maintained Sections 74.781, 74.1281	Sep. 15



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 23-203; NPRM (FCC 23-52) All-in consumer pricing for cable and satellite television service	July 31	Aug. 29
Docket 16-142; 4thFNPRM (FCC 23-53) Next Gen TV patents	Sep. 15	Oct. 16
Federal Trade Commission Docket R311003 Use of consumer reviews and testimonials	FR+60	N/A

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

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
Knoxville, TN	WKNX	7	21	FR+30	FR+45

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

Proposed Amendments to the FM Table of Allotments

The FCC is considering requests to amend the FM Table of Allotments by adding and/or substituting the channels described below. The deadlines for submitting comments and reply comments are shown. Counterproposals must be filed by the deadline for comments.

COMMUNITY	PRESENT CHANNEL	PROPOSED CHANNEL	COMMENTS	REPLY COMMENTS
Koloa, HI	---	272A	Aug. 28	Sep. 12
Lihue, HI	---	292A	Aug. 28	Sep. 12
Puhi, HI	---	284A	Aug. 28	Sep. 12

**FILING WINDOW FOR APPLICATIONS FOR
NEW LOW POWER FM STATIONS**

NOVEMBER 1 – 8, 2023

**DEADLINE TO FILE CLAIM FOR 2022
DISTANT TV SIGNAL COPYRIGHT ROYALTIES**

JULY 31, 2023

LPFM Filing Window Will Be November 1–8 continued from page 1

in determining whether a desired location would meet the protection criteria. The tool can be found online at <https://www.fcc.gov/media/radio/lpfm-channel-finder>. However, note that it will not be updated and available for use until the end of July. While the Commission's channel-finder tool is a useful beginning, more granular engineering research may often be needed to develop a feasible proposal for a new station. Although an LPFM station must protect every other pre-existing station, it is not protected from interference from other stations or applications for new stations or modifications to existing stations except for subsequently filed (post-filing window) applications for other LPFM stations and FM translator stations.

The LPFM applicant and licensee must be a local entity recognized as a nonprofit organization under state law. To be considered local, the applicant must meet at least one of the following criteria:

(1) the applicant, its local chapter or branch is physically headquartered or has a campus within 10 miles of the proposed site for the transmitting antenna for applicants in the top 50 urban markets, and within 20 miles for applicants outside of the top 50 urban markets;

(2) 75 percent of the members of the applicant's governing board reside within 10 miles of the proposed site for the transmitting antenna for applicants in the top 50 urban markets, and within 20 miles for applicants outside of the top 50 urban markets; or

(3) in the case of a Tribal applicant, the Tribal applicant's Tribal lands are within the service area of the proposed LPFM station.

In most cases, an LPFM licensee (including its officers and board members) cannot have an attributable interest in any other broadcast station (except that it can own up to two FM translator stations with 60 dbu contours that overlap the LPFM station's 60 dbu contour and that rebroadcast the LPFM station). Further, except for Tribal entities, an LPFM licensee may own no more than one LPFM station. A Tribal

applicant is permitted to hold up to two LPFM stations.

An organization that has ever operated an unlicensed pirate station, or that has an officer or board member who has operated or been involved with an unlicensed pirate station, is ineligible to hold an LPFM license.

If mutually exclusive applications are submitted during the filing window, the FCC will choose the applicant with the most points as the tentative selectee. Each mutually exclusive application will be awarded one point for each of the following criteria:

(1) Established community presence. An applicant must, for a period of at least two years prior to filing the application and at all times thereafter, have qualified as local.

(2) Local program origination. The applicant must pledge to originate locally at least eight hours of programming per day.

(3) Main studio. The applicant must pledge to maintain a publicly accessible main studio that has local program origination capability, is reachable by telephone, is staffed at least 20 hours per week between 7 a.m. and 10 p.m., and is located within 10 miles of the proposed site for the transmitting antenna for applicants in the top 50 urban markets and within 20 miles for applicants outside the top 50 urban markets. Applicants claiming a point under this criterion must specify the proposed address and telephone number for the proposed main studio in their applications.

(4) Diversity of ownership. An applicant must hold no attributable interests in any other broadcast station.

(5) Tribal applicants serving Tribal Lands. The applicant must be a Tribal applicant, and the proposed site for the transmitting antenna must be located on that Tribal applicant's "Tribal Lands."

If two or more applicants are tied for the highest number of points in a mutually exclusive group, the Commission's rules provide mechanisms for settlements, mergers, and arrangements for time-sharing on the same channel.

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of interference, not efficient because consumers' receivers cannot receive FM signals below 87.7, and not appropriate because the spectrum is still needed for broadcast television.

Secondly, the Commission rejected a proposal to revise the interference rules for FM stations to protect television Channel 6. The current rules were adopted during the era of analog television broadcasting. Stations and applications in the lower FM frequencies are required to protect Channel 6. FM proponents have asserted that these protection standards are no longer needed upon the digital transition of television. The FCC requested comment on this issue in the 5th FNPRM, but the agency states that it did not receive sufficient technical studies and analysis upon which to make any final decision. The Commission says it will seek additional comment on this topic in the future.

FM6 LPTV stations that undertake to continue providing FM6 service pursuant to these new rules will need to file a notice with the FCC to confirm that they intend to continue the FM6 operation and to provide a precise description of their operational parameters. These notices will be due by a date to be announced by the Media Bureau after the Office of Management and Budget reviews and approves the new information collection requirements adopted in this *Fifth Report and Order*. These notices will be in lieu of a request for another STA or other application for an authorization.

A station that voluntarily ceases providing the FM6 service must notify the FCC within 30 days. A station that permanently discontinues FM6 operations will not be permitted to resume them.

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to engage in voluntary partnerships in which one station transitions to ATSC 3.0, but also provides the same program stream in 1.0 for the partner station to broadcast on a portion of the partner's spectrum.

Until now, this arrangement was limited to the Next Gen station's primary program stream on the host station's 1.0 facility. Although the Commission's Rules did not provide for a guest station to license a host station's spectrum to broadcast a multicast stream, stations began to ask for such authorizations. In response to these requests, the Media Bureau implemented an interim process by which a Next Gen station that had converted or was in the process of converting its facility to 3.0 can apply for special temporary authority ("STA") to air 1.0 multicast streams on a host station. Such an STA is good for six months and may be renewed. However, the Commission states that this case-by-case process is resource-intensive for both the FCC and broadcasters. Furthermore, it was difficult for consumers to follow where streams were being hosted. In 2020, the National Association of Broadcasters petitioned the Commission to amend its Rules to standardize this procedure. In response, the Commission proposed to amend its Rules to allow multicast hosting on a regular basis without the need for an STA in the *Third Further Notice of Proposed Rulemaking* in this docket in 2022.

A Next Gen station may now apply for authorization to simulcast both its primary and a multicast stream on a host 1.0 station while it broadcasts them in 3.0 on its own facilities. As with simulcasting the primary stream, the 3.0 and 1.0 multicast streams must be "substantially similar." This means that the programming must be the same on both channels except for advertisements, promotions for upcoming programs, and features that are based on the enhanced capabilities of ATSC 3.0.

A Next Gen station may now also seek authorization to have one or more of its multicast streams air on one or more partner stations in 1.0. As with the simulcast streams, the host station's noise limited service contour must cover the originating station's community of license, and the stations must be in the same designated market area. Multiple host stations may be employed if necessary to avoid loss of service to a significant portion of the originating station's audience.

The Commission adopted a limitation on the number of streams that a Next Gen station can outsource. The streams that it deploys via one or more host stations cannot exceed in the aggregate its own capacity if it were still operating in 1.0. In its application, the Next Gen station must demonstrate compliance with this restriction by either (1) showing that it is seeking hosting only for streams that it was broadcasting on its own 1.0 facility prior to converting to 3.0; or (2) providing an example of another 1.0 station that is carrying or has carried the same or a similar program lineup.

The Commission has modified the Form 2100 license application form to reflect the possibility for proposing

multiple hosts. Applicants must include an exhibit to identify each proposed hosted stream with the following data:

- host station;
- channel number (both RF and virtual);
- network affiliation, or type of programming if unaffiliated;
- resolution;
- predicted percentage of population within the noise limited service contour by the station's original ATSC 1.0 signal that will be served by the host, with a contour overlay map identifying areas of service loss and coverage of the originating station's community of license;
- whether the stream will be simulcast, and if so, identification of the paired stream in the other service.

Throughout the *Third Report and Order*, the Commission described all of these provisions as temporary, intended to mitigate the difficulties arising during the transition from ATSC 1.0 to ATSC 3.0. They will be in effect only until the transition is complete. The Commission reiterated that no station will gain any rights or permanent advantages by virtue of the temporarily altered carriage it may experience on a hosting station. Host stations will not have attributable interests in the streams they transmit for guest stations.

When the FCC adopted the Next Gen regime in 2017, certain provisions of the new rules were set to be temporary and scheduled for sunset, but with a plan to review them prior to the sunset date. One of these was the requirement that the 3.0 stream and the simulcast 1.0 stream should be substantially similar. That requirement was set to expire on July 27, 2023. On the basis of the record in this proceeding, the Commission has found that market incentives alone are insufficient to protect over-the-air ("OTA") viewers from potential loss of 1.0 service. In light of the current state of the transition, the Commission said that elimination of the rule at this time would pose a risk of harm to OTA viewers who rely on 1.0 service. Consequently, the Commission postponed the sunset date for this rule until July 27, 2027. The Commission will review the situation again approximately one year prior to that date to determine whether the rule remains necessary then.

When the FCC authorized television broadcasters to use the ATSC 3.0 transmission standard on a voluntary basis, it mandated that stations comply with the A/322 transmission 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. This requirement was originally scheduled to sunset on March 6, 2023. In March, the Commission extended the sunset pending a resolution in this proceeding. Now the Commission has decided to extend the A/322 requirement until July 17, 2027. This will promote compatibility and certainty for manufacturers and consumers. The Commission found that the A/322 requirement remains essential at this time for protecting

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both innovators and investors in the 3.0 space. Stakeholders can develop and purchase equipment with confidence. The Commission plans to revisit this issue again approximately one year prior to the extended sunset date.

Most of the amendments adopted in this *Third Report and Order* will become effective on August 16. The revisions to the

license application form to include multicast licensing must be reviewed and approved by the Office of Management and Budget before becoming effective. When that process is completed, an announcement will be published in the Federal Register.

**MUST-CARRY AND
RETRANSMISSION CONSENT ELECTIONS
WHICH ELECT A CHANGE IN STATUS
DUE OCTOBER 1, 2023**

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