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Antenna™

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

Program Origination Authorized for FM Boosters

The FCC has amended its rules to permit FM booster stations to originate limited amounts of programming in a *Report and Order* (FCC 24-35) in Docket 20-401. This will allow booster stations to provide so-called "geo-targeted" content. This technology was developed by broadcast equipment vendor GeoBroadcast Solutions, LLC ("GBS"), who petitioned the FCC with a proposal to adopt rules to permit its implementation. The Commission solicited comments on this proposal in late 2020 in a *Notice of Proposed Rulemaking* (FCC 20-166) in this docket.

In a service first created in 1970, FM booster stations use a low power transmitter to rebroadcast the signal of a primary station within the primary station's protected contour where reception is poor due to terrain shielding or distance from the primary transmitter. Booster stations must be licensed in

continued on page 6

FCC Seeks To Foster Diverse Video Programming

The FCC has initiated a rulemaking proceeding to consider measures it could adopt to foster independent and diverse sources of video programming. These proposals were set out in a *Notice of Proposed Rulemaking* (FCC 24-44) in Docket 24-115. The Commission observes that video consumption has increased in recent years, partially expedited by changes in viewing habits brought on by the pandemic. The Commission states that one of its primary statutory objectives with respect to multichannel video programming is the fostering of a robust, and competitive marketplace for the delivery of independent and diverse programming. Hence, the agency began this proceeding to address challenges related to the distribution and supply of independent video programming in the wake of rising public consumption of video programming.

In 2016, the FCC opened a proceeding in Docket 16-41

continued on page 3

FTC Bans Noncompete Clauses

By a party-line vote of 3-2, the Federal Trade Commission has adopted a rule that prohibits noncompete clauses in employment contracts. The rule will become effective as of September 4, 2024 – 120 days after publication in the Federal Register. The Commission found that noncompete clauses in employment agreements constitute an unfair method of competition under Section 5 of the Federal Trade Commission Act. Adoption of this rule is the culmination of a 16-month rulemaking proceeding during which the Commission conducted empirical research and received over 26,000 public comments.

The Commission concluded that noncompete agreements restrict the freedom of American workers, suppress wages, and stifle new businesses and ideas. The Commission estimates that the following benefits will result from prohibiting noncompete clauses in employment agreements:

- New business formation will grow by 2.7% per year, creating over 8,500 new businesses each year.

continued on page 8

IN THIS ISSUE

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Late Prize Award Leads to $8K Fine

The FCC's Enforcement Bureau has issued a *Notice of Apparent Liability for Forfeiture* (DA 24-348) to the licensee of KXOL-FM, Los Angeles, for violating Section 73.1216 of the Commission's Rules in failing to conduct a contest substantially as announced and advertised. The proposed fine is $8,000.

The Commission received a complaint from a listener alleging that KXOL-FM did not conduct an on-air contest substantially as announced in the station's own contest rules. The specific lapse was the station's failure to timely deliver the cash prize of $396 won during a contest conducted on October 24, 2019. The Enforcement Bureau sent the station a Letter of Inquiry on June 16, 2021, and the station responded with its explanation of events on July 16, 2021, admitting that there was "undue delay" in delivering the contest prize.

The contest in question, entitled, "Mega Bomba," aired from July 18 to October 25, 2019, with 459 winners. The station's terms for the contest stated that each winner would be awarded their prize "within 30 business days of the date on which the winner completes all required station documents." The contestant completed the paperwork on January 16, 2020. Per the contest terms, the prize should have been delivered on or before March 2, 2020. Despite that requirement, the station did not deliver the prize to the contestant/complainant until May 2021 – over a year past due.

The station attributed the "undue delay" to three factors:

- The station was still processing payments at the onset of the COVID-19 pandemic and unable to access necessary files after the transition to work-from-home in mid-March, 2020.
- The station was subjected to a ransomware attack that disabled corporate IT systems between October 2020 and March 2021.
- After recovering from the ransomware attack, the station lacked enough staff to be able to complete work promptly.

The Bureau ruled that these purported justifications for delay did not excuse the station from its liability for its failure to deliver the prize by the schedule it had announced. The deadline to deliver the prize under the terms of the contest rules was March 2, 2020. The Bureau observed that all of the events that the station offered as explanations for the late delivery of the prize occurred after March 2. Thus they had no part is missing that due date.

Section 1.80(b) of the Commission's Rules sets the base forfeiture for violations pertaining to mishandling a contest at $4,000 per violation or each day of a continuing violation. The Bureau has the discretion to adjust that base amount. In this case, given the totality of the circumstances, the Bureau concluded that an upward adjustment of the fine was warranted. The Bureau considered the nature and circumstances of the violation. The Commission has determined that large or highly profitable companies should expect to pay higher forfeitures. To ensure that the forfeiture in this case is an effective deterrent and not a simply a cost doing business for KXOL-FM, the Bureau found that an upward adjustment of the forfeiture amount to $8,000 was justified. The Bureau said that the large forfeiture would protect the interests of consumers and deter entities from violating the Commission's rules.

KXOL-FM had 30 days in which pay the forfeiture or petition to have it reduced or canceled.

Station Has Must-Carry Rights in Two DMAs

In a *Memorandum Opinion and Order* (DA 24-329) in Docket 24-27, the Policy Division of the FCC's Media Bureau has ruled that WGBP-TV, Opelika, Alabama, is entitled to mandatory carriage on the DISH Network satellite system simultaneously in both the Atlanta and the Columbia-Opelika Designated Market Areas ("DMAs"). The station can qualify for both DMAs because its community of license, Opelika, in Lee County, Alabama, is in the Columbus-Opelika DMA, while the Nielsen Company has assigned the station to the Atlanta DMA for the purposes of audience measurement and ratings.

In September 2017, WGBP filed an application with the FCC to operate a distributed transmission system ("DTS") with two transmitters, one in Warm Springs, Georgia (Atlanta DMA) and the other in Cusseta, Georgia (Columbus-Opelika DMA). The conversion to DTS was completed in December 2020. This enabled WGBP to achieve a stronger presence in the Atlanta market, and Nielsen assigned the station to that DMA.

In September 2023, WGBP sent its election for mandatory carriage to DISH for the 2024-2026 election cycle, demanding carriage in both Atlanta and Columbus-Opelika. DISH responded that it would carry WGBP in the Atlanta DMA and in Lee County. DISH denied carriage for the remainder of the Columbus-Opelika DMA outside of Lee County, observing that the area beyond Lee County was outside of the station's Nielsen-assigned DMA. WGBP filed a carriage complaint with the FCC.

This case turns on interpretation of the FCC's 2000 order implementing elements of the Satellite Home Viewer Improvement Act of 1999. In that order, the Commission explained that the satellite compulsory license includes not only stations licensed to a local market, but also extends to stations licensed in one market but assigned by Nielsen to another market. DISH argued that this language gave the station in question a choice of demanding carriage in either of the markets – but not simultaneously in both.

continued on page 3

FCC Seeks To Foster Diverse Video Programming *continued from page 1*

to examine how certain contractual provisions in carriage agreements between programmers and distributors affected programming competition, innovation, and diversity. That proceeding languished and was eventually terminated as dormant. Nonetheless, the Commission heard from independent programmers in that proceeding and elsewhere that their ability to be viable in the marketplace and to reach consumers depends on their ability to negotiate and secure carriage on multichannel video programming distributors ("MVPDs") and/or online video distributors ("OVDs"). Programmers claimed that two provisions that commonly appear in carriage agreements impact them negatively: most favored nation ("MFN") and alternative distribution method ("ADM") clauses. The Commission now proposes to prohibit these two types of carriage provisions.

An MFN clause gives the program distributor the right to modify a carriage agreement to incorporate more favorable terms that the programmer may agree to in a subsequent contract with a different distributor. Commenters expressed particular concern about unconditional MFN clauses, which entitle the MVPD to receive the best terms and conditions from another distribution agreement without requiring it to agree to the reciprocal obligations of the other distributor that were the consideration for such terms and conditions. Programmers assert that such provisions produce no public interest benefits, unduly limit their flexibility to grow their business, and inhibit independent programming from entering innovative, pro-consumer carriage agreements with small MVPDs and OVDs.

The Commission now proposes to prohibit the inclusion of MFN provisions, both conditional and unconditional, in carriage agreements between MVPDs and independent programmers. An "independent programmer" would be defined as a non-broadcast programmer that (1) is not vertically integrated with an MVPD, and (2) is not affiliated with a broadcast network or entity that holds broadcast station licenses. An MFN provision would be considered "conditional" if the agreement is subject to the MVPD's acceptance of terms and conditions that are integrally related, logically linked, or directly tied to the grant of such rights or benefits in the programmer's agreement with another MVPD, and with which the first MVPD can reasonably comply technically and legally. An "unconditional" MFN agreement is one that does not obligate the MVPD to accept any such terms or conditions.

The Commission invites comment on this proposal and on the specific proposed definitions of the terms. In particular, the agency wants to know whether this proposed rule would benefit programmers and/or consumers.

ADM clauses in a carriage contract generally restrict a programming vendor from exhibiting its programming on alternative video distribution platforms, such as online platforms, for a specified period of time following the program's original linear release, or until certain conditions are met. The FCC proposes to prohibit the inclusion of "unreasonable" ADM provisions in carriage agreements between MVPDs and independent programmers. Whether a particular provision is unreasonable would be a fact-specific question to be decided in the context of program carriage complaint proceeding. The Commission says that by prohibiting only unreasonable ADM clauses, this proposal would recognize that some ADM provisions might serve the public interest by incentivizing MVPDs to invest in new or niche content, while other ADM provisions may have no pro-competitive justifications and actually hinder the provision of diverse programming to consumers.

The Commission asks commenters whether this proposal would help programmers, especially small entities, to compete fairly in the marketplace. Or in the alternative, the agency asks whether such a rule would make it less likely that MVPDs would enter into exclusive carriage agreements with programmers, and thereby limit the carriage opportunities for programmers. The Commission seeks comments about the effect that the proposal would have on consumers' range of choices of programming sources and costs.

Comments in this proceeding are due to be filed by June 6. July 8 is the deadline for reply comments.

Station Has Must-Carry Rights in Two DMAs *continued from page 2*

DISH asserted that allowing a station to claim carriage simultaneously in more than one DMA would give rise to gamesmanship and open the floodgates of stations seeking assignment to DMAs in which they are not local. DISH also expressed concerns about the realities of limited satellite carrier capacity if too many stations suddenly demand carriage in multiple markets.

The Bureau resolved the issue by concluding that a station in this posture can indeed claim carriage in both markets. It explained that a station assigned by Nielsen to one DMA but physically located in another has two local markets in which it may simultaneously demand carriage – one market consisting of the county in which it is licensed and the DMA to which it is assigned, and another overlapping market consisting of the entire DMA in which it is located. The Bureau granted WGBP's mandatory carriage complaint and ordered DISH to commence carrying the station in the Columbus-Opelika market within 60 days.

The Bureau encouraged DISH to raise its concerns about market assignments directly with Nielsen. Furthermore, the Bureau advised DISH that to the extent its objects to carriage throughout both markets due to concerns about localism, it could file a market modification petition with the Commission requesting to modify the local television market of a station to exclude counties with which the station has no local connection.

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 Internet website for all nonexempt radio and television stations in **Arizona, Idaho, District of Columbia, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, West Virginia,** and **Wyoming**.
June 3	Deadline for all broadcast licensees and permittees of stations in **Arizona, Idaho, District of Columbia, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, West Virginia**, and **Wyoming** 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 3	Mid-Term EEO review begins for certain radio stations in **Michigan** and **Ohio**, and certain television 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 for Class A status in Public Inspection File.

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
Informal consumer complaints	June 10
Applications for changes to existing stations, Sections 73.3538, 73.1690(e)	June 14
FM translator/booster license application, Form 2100, Schedule 350	June 17
Communications Disaster Information Reporting Service	July 23

Cut-Off Date for AM and FM Applications to Change Community of License

The FCC has accepted for filing the applications identified below proposing to change the community of license for each station. These applications may also include proposals to modify technical facilities. The deadline for filing comments about any of the applications in the list below is **June 10, 2024**. Informal objections may be filed any time prior to grant of the application.

PRESENT COMMUNITY	PROPOSED COMMUNITY	STATION	CHANNEL	FREQUENCY
Columbia, MS	Bogue Chitto, MX	WFFF	244	96.7
Farmersville, TX	Princeton, TX	KXEZ	221	92.1
Caliente, NV	Dammeron Valley, UT	KIXK	215	90.9
Dammeron Valley, UT	Invins, UT	KCAY	264	100.7
Manassas, VA	Chantilly, VA	WKDV(AM)	N/A	1460

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
Canadian, TX	---	285C1	June 24	July 9

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 24-115; NPRM (FCC 24-44) Diversity and competition in video marketplace	June 6	July 8
Docket 20-401; FNPRM (FCC 24-35) Program origination by FM booster stations		June 17
Docket 15-91; NPRM (FCC 24-30) New alert event code for EAS		June 17
Docket 24-136; NPRM (FCC 24-58) Integrity and security of equipment authorization program	FR+60	FR+90

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

Lowest Unit Charge Schedule for 2024 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. Lowest-unit-charge restrictions are now or soon will be in effect in the following jurisdictions. Some of these dates may be subject to change.

STATE	ELECTION EVENT	DATE	LUC PERIOD
District of Columbia	Dem. Pres. Primary	June 4	Apr. 20 – June 4
District of Columbia	District Primaries	June 4	Apr. 20 – June 4
Iowa	State Primaries	June 4	Apr. 20 – June 4
Montana	Pres. & State Primaries	June 4	Apr. 20 – June 4
New Jersey	Pres. & State Primaries	June 4	Apr. 20 – June 4
New Mexico	Pres. & State Primaries	June 4	Apr. 20 – June 4
South Dakota	Pres. & State Primaries	June 4	Apr. 20 – June 4
Guam	Dem. Pres. Caucus	June 8	Apr. 24 – June 8
Virgin Islands	Dem. Pres. Caucus	June 8	Apr. 24 – June 8
Maine	State Primaries	June 11	Apr. 27 – June 11
Nevada	State Primaries	June 11	Apr. 27 – June 11
North Dakota	State Primaries	June 11	Apr. 27 – June 11
South Carolina	State Primaries	June 11	Apr. 27 – June 11
Oklahoma	State Primaries	June 18	May 4 – June 18
Virginia	State Primaries	June 18	May 4 – June 18
Colorado	State Primaries	June 25	May 11 – June 25
New York	State Primaries	June 25	May 11—June 25
Utah	State Primaries	June 25	May 11 – June 25
Arizona	State Primaries	July 30	June 15 – July 30
Tennessee	State Primaries	Aug. 1	June 17 – Aug. 1
Kansas	State Primaries	Aug. 6	June 22 – Aug. 6
Michigan	State Primaries	Aug. 6	June 22 – Aug. 6
Missouri	State Primaries	Aug. 6	June 22 – Aug. 6
Washington	State Primaries	Aug. 6	June 22 – Aug. 6
Hawaii	State Primaries	Aug. 10	June 26 – Aug. 10
Connecticut	State Primaries	Aug. 13	June 29 – Aug. 13
Minnesota	State Primaries	Aug. 13	June 29 – Aug. 13
Vermont	State Primaries	Aug. 13	June 29 – Aug. 13
Wisconsin	State Primaries	Aug. 13	June 29 – Aug. 13
Alaska	State Primaries	Aug. 20	July 6 – Aug. 20
Florida	State Primaries	Aug. 20	July 6 – Aug. 20
Wyoming	State Primaries	Aug. 20	July 6 – Aug. 20
Massachusetts	State Primaries	Sep. 3	July 20 – Sep. 3
Delaware	State Primaries	Sep. 10	July 27 – Sep. 10
New Hampshire	State Primaries	Sep. 10	July 27 – Sep. 10
Rhode Island	State Primaries	Sep. 10	July 27 – Sep. 10
UNITED STATES	General Election	Nov. 5	Sep. 6 – Nov. 5

Source: National Conference of State Legislatures

Program Origination Authorized for FM Boosters *continued from page 1*

common ownership with the primary station, and they must operate on the same frequency as the primary station.

Until now, the FCC's rules have prohibited booster stations from originating programming. Under these new rules, a booster station may originate a maximum of three minutes per hour of programming that does not come from the signal of the primary station. Such a station will now be known as a "Program Originating FM Booster Station." The Commission found that program originating boosters could further the public interest by enabling radio stations to seek new sources of revenue while providing audiences with hyper-local content.

Commenters expressed concerns that program originating boosters could cause interference to the primary station and to adjacent-channel stations, including digital subchannels. There are no protection requirements for booster co-channel signals in the Commission's Rules. A booster is allowed to cause limited interference to the signal of its primary station provided there is no disruption to that signal within the primary station's community of license.

GBS conducted field tests and submitted results to the record of this proceeding. The Commission said that these tests did not produce evidence that allowing boosters to originate programming would increase the risk of interference to adjacent-channel stations. In any event, changing the content broadcast by a booster will not change the technical characteristics of the booster's signal. The Commission's rules require a booster's signal to be at least 6 dB less than the signal of a first-adjacent channel full power station. Further, existing booster stations have not created adjacent-channel interference because their signals must be contained within the coverage area of the primary station. Potential interference from the booster to adjacent-channel stations is masked by the higher power signal of the co-channel primary station.

Although some commenters expressed worries about interference to HD operations, the Commission also concluded on the basis of the GBS test results involving HD digital signals that boosters can originate programming without material degradation of the listener's HD experience when deployed with optimal system design and successful synchronization. The Commission expects that licensees will be economically motivated to carefully construct booster facilities so as to have minimal effect on the primary station's main and HD signals.

To ensure that announcements of the Emergency Alert System are timely and properly delivered to the public, program originating FM booster stations will be required to have full capabilities for independently receiving alerts and retransmitting them just as the primary station would do.

The Commission is mindful of the concerns expressed by commenters about the potential for program originating boosters to disrupt a number of the ordinary operational facets of the primary and other stations. In response to those concerns, the agency commits to monitor closely the development and implementation of program originating boosters to ensure that the integrity of existing broadcast services is maintained.

With the *Report and Order,* the FCC also released a *Further Notice of Proposed Rulemaking* in which it proposes further refinements in the FM booster rules (discussed below). Between the effective date of the rules adopted in the *Report and Order* (which was May 16, 2024) and the effective date of the final service rules to come later in this proceeding, the Commission will employ a temporary mechanism to authorize booster stations to begin program origination. The licensee of an existing booster station must file a request for an experimental authorization for the booster to originate its own content. When granted, that authorization will be good for one year, and can be renewed if need be. A licensee wishing to establish a new booster with program origination authorization must file a normal construction permit application and the request for an experimental authorization. The Commission directed the Media Bureau to process these requests on an expedited basis. All authorizations issued during the interim period will be subject to the final rules adopted in this proceeding after resolution of the proposals offered in the *Further Notice of Proposed Rulemaking*.

The Local Community Radio Act of 2010 ("LCRA") requires the FCC, among other things, to ensure when licensing new FM translators, FM boosters, and low power FM stations, that licenses are available for future use by stations in each of those categories. The Commission observes that it does not yet know the extent of demand for program originating booster stations, nor the impact that potentially large numbers of such stations in a market could have on spectrum availability. Consequently, to ensure LCRA compliance, and pending the adoption of final regulations in this proceeding, each full power FM station will be limited to a maximum of 25 program originating booster stations.

In the *Further Notice of Proposed Rulemaking*, the FCC proposes refinements to the rules that would govern program originating booster stations. The first of these concerns notice that a station is originating programming. During the interim until the final rules are adopted, an experimental authorization is required for a booster to originate programming. The Commission and any other interested party will have notice in the request for the experimental authorization that the station will be originating programming. That indicator will disappear when the Commission eliminates the requirement for the experimental authorization in the final rules as the agency anticipates doing. The Commission proposes to require licensees of authorized booster stations to file a notification, in machine-readable, open format, of their intention to originate programming. This notice would need to be filed at least 15 days prior to commencing origination. A broadcaster would also need to file a notice within 30 days of when a booster permanently discontinues origination.

Section 74.1204(f) of the Commission's Rules provides for claims of predicted interference outside a protected

continued on page 7

Program Origination Authorized for FM Boosters *continued from page 6*

station's contour against a translator station construction permit application while it is pending and not yet granted. The Commission seeks comment on amending this rule to make booster applications subject to such reviews as well. Section 74.1203 addresses claims of interference against operating stations of both kinds.

As noted above, the Commission found that synchronizing the transmissions of the primary station and the booster station could be an effective means of mitigating or eliminating interference caused by a booster to reception of the primary station's signal. As a matter of self-interest, the Commission anticipates that primary station licensees will employ synchronization technology. In view of this, the agency requests comment on whether a mandate to require synchronization is necessary. If it is necessary, the Commission asks what level would be appropriate. In comments in this proceeding, GBS's engineering consultant noted that the primary and booster stations should be synchronized in carrier frequency, pilot phase, and audio frames for analog FM. On the other hand, the Commission poses the question of whether such a requirement would be an unnecessary burden on station operations.

The new ability of booster stations to originate programming gives rise to issues about political broadcasting as candidates and issue advertisers may want to use them to target specific subsets of a market. The Commission tentatively concludes that to the extent a booster station originates programming, it should be subject to all of the political programming requirements that pertain to full power stations. A new Section 74.1290 in the Rules would address these issues. Full power stations must maintain a political file with records of their political programming as an element of their public inspection files. The Commission proposes to require the primary station to maintain a political file for each booster that independently carries political programming in the primary station's public inspection file.

If a station permits a legally qualified candidate for public office to use its station, it must generally permit all other candidates for the same office to also use the station. The Commission asks whether a candidate who is requesting equal opportunities in response to another candidate's use on an originating booster would be entitled to appear on the primary station, or only on the booster.

Federal candidates have an expectation of reasonable access to commercial broadcast stations. The Commission seeks comment as to whether a primary station and its booster should be considered separate facilities for purposes of determining reasonable access. The same question arises concerning rates charged candidates for advertising. During the 45-day period before a primary election and 60-day period before a general election, stations must offer candidates prices for airtime in connection with their campaigns no more than the station's lowest unit charge for the same class and amount of time. The Commission asks whether a primary station and its program originating booster should be considered different facilities for the purpose of calculating the lowest unit charge.

In comments in this proceeding, the Federal Emergency Management Agency recommended that an FM primary station with originating boosters should provide notice about those boosters to all EAS participants that monitor the primary station. In the *Report and Order*, the Commission required all originating boosters to be capable of directly receiving and retransmitting all of emergency alerts independent of the primary station. In view of the fact that the emergency alerts should be clearly available from every originating booster, the Commission solicits comment about whether such a notice requirement is necessary.

The FCC proposes to clarify that grandfathered superpowered FM stations will be able to establish booster stations only within the standard, non-superpowered maximum contour for their class of station. The Commission believes this should help minimize the risk of booster interference to adjacent-channel stations.

The Commission proposes to adopt a new Section 74.1231(k) of its Rules to require a booster station to suspend operation when the primary station is not on the air, and to file a notice of suspended operation pursuant to Section 73.1740.

The Commission also proposes to modify Section 73.1232 to clarify that a booster may not broadcast programming that is not permitted to be aired on its primary station. Notably, a booster associated with a noncommercial primary station cannot broadcast commercial advertisements.

As mentioned above, the Commission has set a temporary limit of 25 on the number of boosters that a primary station can have. Intending to comply with the requirements of LCRA, the Commission proposes to make that number the permanent cap for each primary station.

The Commission solicits public comment on the proposals and issues raised in the *Further Notice of Proposed Rulemaking*. Reply Comments can be submitted until June 17.

FTC Bans Noncompete Clauses *continued from page 1*

- Earnings of American workers will increase by $400-$488 billion over the next decade.
- Health care costs will decline by $74-$194 billion over the next decade in reduced spending on physician services.
- Innovation will grow with an estimated increase of 17,000-29,000 more patents each year over the next decade

The rule defines "noncompete clause" as a term or condition of employment that prohibits a worker from, penalizes a worker for, or functions to prevent a worker from (1) seeking or accepting work in the United States with a different employer where such work would begin after the conclusion of the employment that includes the term or condition; or (2) operating a business in the United States after the conclusion of the employment that includes the term or condition. A term or condition of employment includes, but is not limited to, a contractual term or workplace policy whether written or oral.

A "worker" is defined as a person who works or who previously worked, whether paid or unpaid, without regard to the worker's title or status under any Federal or State law. The term "worker" includes an employee, independent contractor, volunteer, intern, extern, apprentice, or a sole proprietor who provides a service to the employer. The term "worker" does not include a franchisee in the context of a franchisor-franchisee relationship.

The rule does not prohibit a noncompete clause in the bona fide sale of a business entity. Nor does the rule pertain to a situation where a cause of action, i.e., litigation, arose prior to the effective date of the rule.

New agreements entered into after September 4 cannot include a noncompete clause. The noncompete clause in most agreements existing as of September 4 will be rendered unenforceable. An exception to this concerns "senior executives" whose existing employment agreements as of September 4 include a noncompete provision. The noncompete clauses in such contracts will remain enforceable. A "senior executive" is a worker who earns more than $151,164 per year and who is in a policy-making position.

An employer is required to notify workers who currently have noncompete clauses in their employment agreements that those clauses will be nullified after September 4. Below is the model language that the Commission provided for employers to use in giving this notice. This specific text is not required, but employers who use it can claim a safe harbor for compliance with the requirement.

A NEW RULE ENFORCED BY THE FEDERAL TRADE COMMISSION MAKES IT UNLAWFUL FOR US TO ENFORCE A NONCOMPETE CLAUSE. AS OF SEPTEMBER 4, 2024, [EMPLOYER NAME] WILL NOT ENFORCE ANY NONCOMPETE CLAUSE AGAINST YOU. THIS MEANS THAT AS OF SEPTEMBER 4, 2024:

- **YOU MAY SEEK OR ACCEPT A JOB WITH ANY COMPANY OR ANY PERSON – EVEN IF THEY COMPETE WITH [EMPLOYER NAME].**
- **YOU MAY RUN YOUR OWN BUSINESS, EVEN IF IT COMPETES WITH [EMPLOYER NAME].**
- **YOU MAY COMPETE WITH [EMPLOYER NAME] FOLLOWING YOUR EMPLOYMENT WITH [EMPLOYER NAME].**

THE FTC'S NEW RULE DOES NOT AFFECT ANY OTHER TERMS OR CONDITIONS OF YOUR EMPLOYMENT. FOR MORE INFORMATION ABOUT THE RULE, VISIT ftc.gov/noncompetes. COMPLETE AND ACCURATE TRANSLATIONS OF THIS NOTICE IN CERTAIN LANGUAGES OTHER THAN ENGLISH, INCLUDING SPANISH, CHINESE, ARABIC, VIETNAMESE, TOGALOG, AND KOREAN ARE AVAILABLE AT ftc.gov/noncompetes.