

Asymmetric FM Sidebands Authorized

The FCC has amended its rules to permit FM stations to operate with asymmetric digital sidebands in the *First Report and Order* (FCC 24-105) in Docket 22-405. The Commission states that this will allow stations to operate with different power levels on the upper and lower digital sidebands, facilitating greater digital FM coverage without causing interference to adjacent-channel stations.

This proceeding consolidated consideration of the proposals offered in two Petitions for Rulemaking. A blanket authorization for asymmetric sideband operation was requested in a Petition filed in December 2019 jointly by the National Association of Broadcasters (“NAB”), Xperi Corporation (“Xperi”), and National Public Radio. In another Petition submitted in October 2022, NAB and Xperi asked the Commission to update the methodology used to determine maximum FM digital power levels so as to create more opportunities for stations to increase sideband power levels.

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Forfeiture Actions Draw Commissioner’s Dissent

An unusual voting pattern has developed recently in FCC actions involving forfeitures. In a number of recent Commission decisions to impose fines for a variety of rule violations, Commissioner Nate Simington has dissented. His brief statements of dissent usually do not address the substantive merits of the decision as to whether rules were actually violated or whether the forfeiture is an appropriate sanction. Rather, he questions the FCC’s authority to impose fines. His concern arises from a recent Supreme Court decision that invalidated as unconstitutional a civil fine imposed by the Securities and Exchange Commission (“SEC”). Earlier this year, in *Securities and Exchange Commission v. George R. Jarkesy, Jr., et al.* 144 S. Ct. 2117, the Court ruled that the fine levied by an SEC administrative law judge violated the Seventh Amendment right to a jury trial. Commissioner Simington suggests that the principle set out in that decision might preclude the imposition of certain forfeitures imposed by

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FinCEN BOI Reporting Deadlines Loom

The federal Corporate Transparency Act (“CTA”) has come into full force in 2024, requiring many business entities to file Reports of Beneficial Ownership Interests (“BOI”) with an agency within the United States Treasury Department known as the Financial Crimes Enforcement Network (“FinCEN”). The deadline to do so depends on the date that an entity was organized, as elaborated below. The purpose of the CTA is to detect and deter financial crimes such as money laundering, tax evasion, and the financing of terrorism.

The CTA and/or companion regulations define so-called Reporting Companies, which are the types of companies that must identify those who hold beneficial ownership interests. With certain exceptions, this mandate pertains to any business entity that was established by submitting organizational documents to an agency of any U.S. state or territory (such as a secretary of state or comparable state or territorial agency). This includes corporations of all kinds and limited liability companies – even very small companies with only one or two owners. Certain types of trusts are also

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Bogus EAS Tone Gets Large Fine

The FCC has proposed to fine ESPN, Inc., \$146,976 for six transmissions on its two sports television networks of a promotional spot that included two seconds of an EAS tone in the absence of any legitimate emergency or test transmission. The Commission's consideration of the facts and its explanation for the amount of the fine are set out in a *Notice of Apparent Liability for Forfeiture* (FCC 24-109).

On October 20, 2023, the Commission received complaints alleging that ESPN had transmitted the EAS tones, or a simulation of them, multiple times during promotional spots for its sports programming. The Commission's Enforcement Bureau sent a Letter of Inquiry to ESPN on January 10, 2024, directing ESPN to submit recordings of the programming in question along with explanations. In response, ESPN admitted that it had produced and transmitted the promotional spot that included an EAS tone despite the absence of an emergency or test. ESPN also sent the FCC video recordings of the content in question that aired on October 20, 2023, October 23, 2023, and October 24, 2023.

ESPN explained that the spot was used to promote its coverage of the beginning of the 2023-2024 NBA basketball season. The spot included a "brief, less than two second excerpt of the EAS Attention Signals, immediately followed by a voiceover of a man who states in an exaggerated stentorian tone that, 'we interrupt our program to bring you this important message.'" ESPN stated that the audible tone was only two seconds of an EAS header tone, and that no other elements of EAS tones were involved. ESPN admitted that its producers likely obtained the portion of the EAS Attention Signal recording from a publicly available YouTube video. The production staff, and perhaps other personnel as well, reviewed the spot before its initial transmission. ESPN suggests that its production staff may not have been aware that such a use of the EAS tone was prohibited. ESPN advised the Commission that it "is taking this opportunity to revisit its internal review processes and reeducate its personnel" regarding the FCC's EAS rules.

The Commission determined that each of ESPN's six transmissions of the errant EAS tone constituted a separate

violation of Section 11.45(a) of its rules. Section 1.80 of the FCC's rules lists the base forfeiture for EAS rule violations at \$8,000. The base amount for this group of six violations would come to \$48,000. The agency has the discretion to adjust the base amount of a forfeiture as conditions may warrant, taking into account statutory factors such as: (1) the number of repetitions of the violation; (2) the number of days over which the violation occurred; (3) the audience reach; and (4) the public safety impact. The Commission decided that upward adjustment was warranted in this case. The spots were transmitted over both of ESPN's television networks which are distributed on most cable systems and other multichannel video programming distributors to more than 55 million subscribers. The Commission said that the potential reach to such vast audiences "greatly increases the extent and gravity of the instant repeated apparent violations." The creation and transmission of the spot was for self-promotion of ESPN's NBA-related programming. The Commission found that "this self-promotion for the purposes of additional economic gain at the expense of the integrity of the EAS constitutes egregious misconduct warranting an upward adjustment" of the amount of the fine.

The Commission could find no basis for a downward adjustment. This could not be characterized as a minor violation. Secondly, this case did not involve voluntary disclosure or a good faith compliance effort before the Letter of Inquiry was issued. Immediately upon airing of the spots, ESPN knew what had happened, but apparently did nothing about it until the Letter of Inquiry arrived. Also weighing against ESPN was its past record of similar violations in 2015 (for which it was fined \$280,000) and in 2021 (associated with a \$20,000 forfeiture).

Based on the totality of the circumstances, the FCC concluded that the fine should be increased to the statutory maximum of \$24,496 per incident, multiplied by six for each of the separate violating transmissions to the total proposed forfeiture of \$146,976.

ESPN has 30 days in which to pay the fine or petition for its reduction or cancellation.

Court Overturns FTC's Noncompete Rule

Last spring the Federal Trade Commission adopted a regulation prohibiting noncompete provisions in nearly all employment contracts in the United States. The FTC ruled that such agreements constitute an unfair method of competition under Section 5 of the Federal Trade Commission Act. The ban was set to take effect on September 4. However, before that happened, the regulation was overturned by a court order from the U.S. District Court for the Northern District of Texas, sitting in Dallas. A local company, Ryan, LLC, was joined by the U.S. Chamber of Commerce and other business interests in petitioning the court to enjoin implementation of the rule and ultimately to

vacate it. After preliminary proceedings, both plaintiffs and the defendant FTC filed motions for summary judgment. The court granted the plaintiffs' motion, concluding that in adopting the noncompete ban, the FTC exceeded its statutory authority, and that the rule was arbitrary and capricious.

An administrative agency derives its authority from statutory instructions provided by Congress, in this case the Federal Trade Commission Act. Section 5 of the Act empowers the FTC to prevent the use of unfair or deceptive acts or practices in or affecting commerce. Section 6 of the Act gives the Commission the power to make rules and

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Noncommercial TV Filing Window Set for December 4-11

The FCC's Media Bureau has issued a Public Notice (DA 24-1065) to announce that it will open a filing window for applications for new noncommercial television stations from December 4 until 6:00 p.m. Eastern Time on December 11. Applications can be submitted for 12 existing allotments in the Television Table of Allotments (listed below).

Each applicant must certify that it is either a nonprofit educational institution, a governmental entity other than a school, or a nonprofit educational organization. A nonprofit educational organization that is not a government agency or a school is eligible only if the majority of its leadership, including officers and governing board members, are representative of a broad cross section of the principal community to be served by the proposed station. These leaders should be broadly representative of the educational, cultural, and civic interests of the community. At least four elements of the community must be represented in the applicant's leadership. Examples of such elements of the community are businesses; charities; civic, religious, neighborhood and fraternal organizations, among others.

The Commission's rules provide that a noncommercial television license will be granted only upon a showing that the station will be used primarily to serve the educational needs of the community, for the advancement of educational programs, and to furnish a nonprofit and noncommercial television service. To satisfy this requirement, more than

half of the station's airtime should be devoted primarily to serving the educational, instructional, or cultural needs of the station's community of license.

In situations where mutually exclusive applications are filed, the FCC will evaluate the applications on the basis of comparative points and name the applicant with the most points as the tentative selectee. Comparative points can be awarded for the following qualities:

Three points for being an established local applicant. The applicant must have been local to its community of license for at least two years prior to the application filing deadline. To be considered local, a non-governmental entity must have a physical headquarters or campus, or 75 percent of its governing board residing within 25 miles of the reference coordinates of the proposed community of license. A government unit is considered local anywhere within its jurisdictional boundary.

Two points for diversity of ownership. The applicant must have no attributable interest in any other full-service or Class A television station the principal community contour of which would overlap the principal community contour of the proposed station.

Two points for being a statewide network. Two points are available for certain statewide networks that provide programming to accredited schools. These points are only available to applicants that cannot claim credit for local diversity of ownership.

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Decade-Old Rules up for Review

The Regulatory Flexibility Act mandates that the FCC review its rules when they have been in effect for 10 years to determine whether they have or will have a significant economic impact on a substantial number of small entities. The Commission's Office of Communications Business Opportunities has released a Public Notice (DA 24-782) to announce the agency's review of the rules it adopted in the calendar year 2013. The law requires the Commission to evaluate whether the 10-year-old rules should be continued without change, amended, or rescinded in order to minimize any significant economic impact on small entities. The Public Notice listed the following factors to be considered:

- (1) The continued need for the rule.
- (2) The nature of complaints or comments from the public concerning the rule.
- (3) The complexity of the rule.
- (4) The extent to which the rule overlaps, duplicates, or conflicts with other federal rules and/or state and local government rules.
- (5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

The rules of most interest to broadcasters that are subject to this year's review are identified below. The Commission

invites public comment about them and their impact on small entities until November 18 in Docket 24-245.

- Rules pertaining to the disturbance of AM broadcast station antenna patterns by other structures in the vicinity: Sections 1.3000, 1.3001, 1.3002, 1.3003, and 1.3004.
- Section 73.45(c) permitting use of the "moment method" computer modeling for determining an AM station's radiation pattern.
- Section 73.316(e) requiring the applicant proposing to locate an FM antenna on or near an AM antenna to comply with Section 1.3002 or 1.3003.
- Section 73.685(h) requiring the applicant proposing to locate a TV antenna on or near an AM antenna to comply with Section 1.3002 or 1.3003.
- Rules for the LPFM service adopted to implement provisions of the Local Community Radio Act of 2010: Sections 73.807, 73.809(a), 73.810, 73.811, 73.825, 73.827, 73.850(c), 73.853(a)(3), 73.853(b)(4), 73.853(c), 73.855, 73.860, 73.870(a), 73.871(c)(5)-(7), 73.872(b)-(e), and 73.873.
- Section 73.827(a), (b), prohibiting interference by LPFM stations to input signals for FM translator and booster stations.
- Section 73.875(c) requiring the applicant proposing to locate an LPFM antenna on or near an AM antenna to comply with Section 1.3002 or 1.3003.

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DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

<p>November 10 Deadline to place Issues/Programs List for third quarter of 2024 in Public Inspection File for all full service radio and television stations and Class A TV stations in Florida, Georgia, North Carolina, South Carolina, and Tennessee. This deadline was extended from October 10 to accommodate stations suffering from hurricane damage and dislocation.</p> <p>December 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 Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota, and Vermont.</p> <p>December 2 Deadline for all broadcast licensees and permittees of stations in Alabama, Colorado, Connecticut, Georgia, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota, and Vermont to file annual report on all adverse</p>	<p>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).</p> <p>December 2 Mid-Term EEO review begins for certain radio stations in Colorado, Minnesota, Montana, North Dakota, and South Dakota, and certain television stations in Alabama and Georgia.</p> <p>December 2 Deadline for television stations that provided ancillary or supplementary services during the 12-month period ending September 30, 2024, to file annual Ancillary/Supplementary Services Report.</p> <p>January 10 Deadline to place Issues/Programs List for previous quarter in Public Inspection File for all full service radio and television stations and Class A TV stations.</p> <p>January 10 Deadline for noncommercial stations to file quarterly report re third-party fundraising.</p>
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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
Licensing and technical rules for digital LPTV, Sections 74.787, 74.790, 74.794, 74.796	Nov. 1
Sponsorship identification, Section 73.1212	Nov. 4
Broadcast incubator program	Nov. 12
Closed captioning in IP-delivered video programming	Nov. 18
Post incentive auction implementation, Section 73.3700	Nov. 22
Procedures for FM and TV allotments, Section 1.420	Dec. 6
FM translator modifications, Section 74.1251	Dec. 23

Deadlines for Comments in FCC and Other Proceedings

DOCKET	COMMENTS	REPLY COMMENTS
(All proceedings are before the FCC unless otherwise noted.)		
Docket 24-245; Public Notice (DA 24-782) Revision or elimination of old rules	Nov. 18	N/A

**DEADLINE FOR NON-EXEMPT BUSINESS ENTITIES
CREATED BEFORE JANUARY 1, 2024 TO FILE
BENEFICIAL OWNERSHIP INTERESTS REPORT WITH
FINANCIAL CRIMES ENFORCEMENT NETWORK
DECEMBER 31, 2024**

**FILING WINDOW FOR APPLICATIONS
FOR NEW NONCOMMERCIAL
TELEVISION STATIONS
DECEMBER 4, 2024 –
DECEMBER 11, 2024, 6 PM ET**

Asymmetric FM Sidebands Authorized continued from page 1

In the in-band-on-channel (“IBOC”) mode of FM digital broadcasting, an analog station transmits a digital signal in narrow channels on frequencies immediately above and below the main analog channel called the sidebands. Most stations (except for grandfathered superpowered stations) may operate the sidebands up to a maximum power of -14 dBc. With a demonstration that harmful interference would not be caused to adjacent-channel stations, a station may increase the sideband power up to -10 dBc. Stations have generally been required to maintain the power in the sidebands in symmetric operations at equal levels. The Commission has occasionally authorized asymmetric digital operations – i.e., with the power at a different level in each sideband – for stations that request a special experimental authorization for such operations. An experimental authorization is effective for six months, after which it must be renewed.

The petitioners advocating authorization for asymmetric operations asserted that the present limitations stifle potential new service. They conducted a study which they said showed that many new digital services could be initiated if stations could transmit on at least one sideband with power greater than the currently permitted maximum power of -14 dBc. Out of 10,875 digital FM stations studied, they found that 6,120 stations could increase power on both sidebands to -10 dBc under the current rules. If asymmetric sidebands were allowed, an additional 3,496 stations could increase one sideband to -10 dBc. Another 532 stations would be able to increase the power on one sideband to a level between -14 dBc and -10 dBc. Evidence in the record also indicated that under the right circumstances, a sideband at -10 dBc could be operated so as to avoid interference with an adjacent-channel station.

The FCC found that the record of this proceeding included considerable support by broadcasters for asymmetric sideband operation, and that sidebands can be carefully operated at levels up to -10 dBc (with certain exceptions noted below). Accordingly, the Commission authorized digital FM stations to calculate the maximum digital power separately for each sideband. Advance application for authorization is not required. Stations may operate asymmetric sidebands after notifying the Commission about the power on each sideband on a revised version of Form 2100, Schedule 335-FM in the Media Bureau’s Licensing and Management System. The current version of this form is presently used to notify the agency about digital operations in general. The Commission directed the Media Bureau to inform the digital FM station within 30 days of filing the Schedule 335-FM if

its asymmetric sideband operation is not rule-compliant. Similarly, stations seeking to increase sideband power above -14 dBc must now submit their requests on Schedule 335-FM. Filing a Schedule 335-FM is also required before changing any of the operating parameters of the sideband transmissions, and upon terminating sideband operations altogether.

In the *Notice of Proposed Rulemaking* (FCC 23-61) in this proceeding, the Commission proposed new maximum power levels for digital sidebands in situations where the IBOC station has to protect an adjacent-channel station. In response to comments filed in the proceeding, the Commission has developed a revamped table for the higher power levels to more clearly show the intended values per sideband in operation. This table, shown below, indicates the maximum effective radiated power permitted for a sideband in relation to the power levels of first-adjacent channel stations which must be protected. The table will be found in Section 73.404 of the Commission’s Rules.

Aviation interests filed comments expressing concern about the potential for higher digital power levels at the upper end of the FM broadcast band that might cause interference to users in the Aeronautical Radio Navigation Spectrum. That band is adjacent to broadcast FM, running from 108.0 to 117.95 MHz. These commenters believe that further testing is needed to arrive at a definitive determination as to whether interference will occur. Toward that end, they are working with the NAB and Xperi to do more research. Meanwhile, in the interest of developing a complete record, the FCC is deferring action on the power increase proposal for digital sidebands on Channels 296 to 300, 107.1 to 107.9 MHz. Stations on those channels will be free to commence asymmetric sideband operations within the existing power limitations.

These new regulations have been published in the Federal Register and will generally become effective on November 20. However, the revised Schedule 335-FM must be submitted to the Office of Management and Budget for approval pursuant to the Paperwork Reduction Act. The Commission will announce when that approval occurs and the form becomes available. However, until then, stations will be unable to file notices of asymmetric and/or higher power operations. Stations currently operating rule-compliant asymmetric sidebands pursuant to experimental authorizations may, during the life of the experimental authorization, transition to registration with the Schedule 335-FM at any time after these new rules become effective and the new form is available.

Maximum FM Digital ERP for Each Sideband

<u>IBOC Station’s F(50,10) Field Strength at the Upper or Lower First-Adjacent Channel Station’s Analog 60 dBu F(50,50) Contour</u>	<u>Maximum Permissible FM Digital ERP on the Respective Sideband</u>
51.2 dBu and above	-17 dBc
50.7 to 51.1 dBu	-16 dBc
50.3 to 50.6 dBu	-15 dBc
49.6 to 50.2 dBu	-14 dBc
59.5 dBu or less	-13 dBc

Forfeiture Actions Draw Commissioner's Dissent continued from page 1

other administrative agencies, including the FCC.

The SEC accused Jarkesy and his company, Patriot28, LLC, of violating the agency's rules prohibiting securities fraud. To enforce its rules, the SEC has the option of suing the alleged offender in federal court, or conducting an internal proceeding before its own administrative law judge. The SEC chose to pursue enforcement in-house and levied a fine of \$300,000 for violations of its rules. Jarkesy appealed to the U.S. Court of Appeals for the Fifth Circuit. The Fifth Circuit vacated the SEC decision on the grounds that Jarkesy was entitled to a jury trial under the Seventh Amendment. The SEC appealed that decision to the Supreme Court, which affirmed the Fifth Circuit's ruling.

The Court explained that it is well established that claims recognized under the common law must be heard by a jury in a proceeding where an Article III judge is presiding. The reference is to federal judges who have been nominated by the president and confirmed by the Senate pursuant to Article III of the Constitution. An administrative law judge operating within an administrative agency does not qualify as an Article III judge. Furthermore, proceedings before administrative agencies do not involve a jury. The Court said that the SEC's antifraud rules replicate common law principles about fraud, and therefore fall under the common law rubric for jury trials.

The Court recognized that there is a class of cases concerning "public rights," which are excluded from the

Seventh Amendment requirement for an Article III judge and a jury trial. These are matters that historically could have been determined exclusively by the executive and legislative branches of government and are aside from the common law. Such public rights have involved matters such as collection of revenue, aspects of customs law, immigration law, relations with Indian tribes, the administration of public lands, and the granting of public benefits.

The SEC argued that the public rights exception applied to this case because Congress created new statutory obligations, imposed civil penalties for their violation, and then committed to an administrative agency the function of deciding whether a violation had occurred. The Court responded that Congress cannot "conjure away the Seventh Amendment by mandating that traditional legal claims be taken to an administrative agency."

Commissioner Simington called for the FCC to open a Notice of Inquiry to determine the new constitutional contours of the Commission's enforcement authority. The issue to be decided is whether, on one hand, the FCC is enforcing a rule akin to the principles of the common law, which, according to the *Jarkesy* precedent, would seem to require a jury trial, or on the other hand, is enforcing a matter of public right, which could be resolved by the FCC in-house. It is conceivable that the FCC's range of enforcement matters could fall on both sides of that divide.

Court Overturns FTC's Noncompete Rule continued from page 2

regulations for the purpose of carrying out the provisions of the statute. The Commission asserted that it adopted the noncompete rule in the exercise of this rulemaking power granted by Section 6.

However, the court found that Section 6 is a "housekeeping" provision intended to facilitate adoption of procedural rules for the purpose of carrying out the FTC's responsibilities under Section 5. The court labeled the noncompete rule as a "substantive" regulation. It found that Section 6 does not expressly grant the Commission authority to promulgate substantive rules regarding unfair methods of competition. The court also cited Section 18 of the Act and the Magnuson-Moss Act which it said limit the FTC's ability to make rules dealing with unfair or deceptive practices – but not unfair methods of competition.

The Administrative Procedure Act provides that in reviewing an action by an administrative agency, a court should set aside the action if it is found to be arbitrary, capricious, an

abuse of discretion, or otherwise not in accordance with law. The court said that the noncompete rule was arbitrary and capricious because it was unreasonably overbroad without a reasonable explanation. The rule imposed a one-size-fits-all approach with no end date. The court found that the Commission failed to establish a rational connection between the facts found and the choice made. The court said that the agency lacked evidence as to why it chose to impose a sweeping mandate that prohibits entering and enforcing all noncompetes instead of targeting specific harmful noncompetes. The court determined that the rule was based on inconsistent and flawed empirical evidence. Further, the court asserted that the FTC failed to sufficiently address alternatives to adopting the rule. Upon these grounds, the court concluded that the FTC's action in adopting the noncompete rule was arbitrary and capricious, and therefore should be set aside.

The decision is *Ryan, LLC v. FTC*, 2024 U.S. Dist. LEXIS 148488. The FTC has stated that it intends to appeal this ruling.

Decade-Old Rules up for Review continued from page 3

- Section 73.1675(c)(1) permitting certain changes to auxiliary facilities with a license modification application without the need for a construction permit.
- Section 73.1690(c) permitting certain changes to transmission facilities with a license modification application without the need for a construction permit.
- Section 73.6025(c) requiring the applicant proposing to

locate a Class A TV antenna on or near an AM antenna to comply with Section 1.3002 or 1.3003.

- Section 74.780 listing broadcast regulations applicable to television translator and low power television stations.
- Section 74.1237(e) requiring the applicant proposing to locate an FM translator antenna on or near an AM antenna to comply with Section 1.3002 or 1.3003.

FinCEN BOI Reporting Deadlines Loom continued from page 1

covered. This BOI reporting requirement does not pertain to sole proprietorships or unregistered partnerships.

For business entities created prior to January 1, 2024, the filing deadline for an initial BOI Report is December 31, 2024. For entities that were formed anytime in 2024, the filing deadline is 90 days after the date of formation. For entities formed on or after January 1, 2025, the filing deadline will be 30 days after formation.

Revised or updated reports are similarly required to be submitted within 30 days of the occurrence of any change in the information on file in a prior report. The obligation to file a report and to maintain the accuracy of the BOI on file continues until the formal process for dissolution of the entity is complete, including the filing of dissolution papers with the appropriate state government agency.

The new law defines a Beneficial Owner as any person who holds at least a 25 percent stake in the equity ownership and/or value of the company, and any person who holds a position to exert control over the company's decision-making, including all officers and members of the governing board.

Information to be provided for each beneficial owner includes name, residential address, birth date, and a PDF copy of a government-issued identification document (such as a driver's license or passport). A change of address or the addition or departure of just one officer or board member would trigger the need for an updated BOI Report.

A number of categories of business entities are exempt from FinCEN filing requirements. Among these, the two most

likely to be of interest to broadcasters are "large operating companies" and tax-exempt entities.

To qualify as a large operating company, a business must: (1) have more than 20 full-time employees who work within the United States, (2) regularly operate with a physical location within the United States, and (3) show gross receipts of at least \$5,000,000 on its tax return for the previous tax year, generated from domestic operations or sales within the United States.

Entities that are tax-exempt under Section 501(c) of the Internal Revenue Code are also exempt from FinCEN obligations. To qualify for this exemption, the organization must have requested and received a tax-exempt designation from the IRS. Entities that are wholly-owned subsidiaries of tax-exempt entities are also exempt from FinCEN requirements, as are entities whose purpose is to assist tax-exempt entities.

It is important to note that a corporation that is nonprofit under state law, but which does not have tax-exempt status from the IRS, is NOT exempt from the FinCEN obligations.

The law provides stiff penalties for knowingly failing to file and/or update a required BOI Report. Possible sanctions include civil fines of \$591 per day (with no stated cap on the number of days), criminal penalties of \$10,000, and up to two years in prison.

BOI Reports are filed with FinCEN online at www.fincen.gov/boi, where additional information is available. A number of states are contemplating adopting or have already implemented similar BOI reporting obligations.

Noncommercial TV Filing Window Set for December 4-11 continued from page 3

Two points or one point for the superior technical proposal. One point will be awarded to an applicant if its proposed service area and population are both 10 percent greater than those of the next best proposal in the mutually exclusive group. Two points will be awarded if the applicant's proposed service area and population are at least 25 percent greater than the next best applicant.

If the comparative points evaluation produces a tie, the tie-breaker criterion will be the total number of radio and television authorizations attributable to each applicant. The applicant with the fewest attributable interests will prevail. If the tie is not broken, a second tie-breaker factor will be the number of pending new and major change television station applications attributable to each applicant. The applicant with the fewest applications will prevail.

The snapshot date for establishing points and comparative qualities will be the last day of the filing window, December 11, 2024.

The allotments available for applications in this filing window are listed below:

Community	Channel
Vernon, Alabama	4
Anchorage, Alaska	26
Bethel, Alaska	3
Colusa, California	2
Fort Bragg, California	4
Tulare, California	3
Filer, Idaho	18
Ames, Iowa	21
Alamogordo, New Mexico	4
Jacksonville, Oregon	4
Waco, Texas	20
Waynesboro, Virginia	12

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