

the money to fund the FirstNet public safety network will likely come out of the AWS-3 auction proceeding. “The FCC shouldn't be in a hurry to get this rushed through when the pressure is off financially,” he said.

Broadcasters' win against Aereo left Smith "smiling," he said, saying the Supreme Court affirmed the copyright holders' control over their content. Though he said NAB would oppose an attempt by Aereo to lobby for copyright rule changes, broadcasters aren't necessarily against a review of copyright law, he said: “Copyright law is extremely difficult to do.”

Aereo's success offering broadcast content online doesn't necessarily mean that broadcasters aren't doing enough in that arena themselves, Smith said. He said the effort to create a new ATSC 3.0 standard needs to move more quickly, affirming Sinclair's recent push to hasten the new standard. Sinclair “was right,” Smith said. A new standard would greatly improve broadcaster options for delivering content to mobile devices, he said.

Many NAB members believe that recent ownership policies by the FCC are designed to force them to participate in the incentive auction, Smith said. Though he said he didn't agree, he was becoming “more convinced.” By changing the rules governing TV station sharing arrangements — a change currently facing an NAB court challenge — FCC Chairman Tom Wheeler “changed rules in the middle of the stream,” Smith said. — *Monty Tayloe* ([mtayloe@warren-news.com](mailto:mtayloe@warren-news.com))

## Appeals Pending

### **LPFM Hopefuls Weigh Time Sharing, Collaboration to Resolve MX Groups**

The low-power FM community is gearing up for an upcoming FCC public notice identifying mutually exclusive (MX) groups among the pool of applicants that filed for new LPFM construction permits during the 2013 filing window, community radio organizations said. Petitions for reconsideration also are pending concerning dismissed applications that were the focus of a large number of objections, an FCC official said. The Media Bureau has said there was an unprecedented number of objections to many applications (CD June 16 p10).

The release of the public notice will start a 90-day period where applicants tied with the highest points in a group can aggregate their points if they enter into a time-share agreement, the FCC official said. The rules promote that kind of collaboration and “incentivizes” frequency sharing, which, for the FCC, is maybe one of the best outcomes where there's limited spectrum, the official said.

Applicants placed in MX groups will have to work together to resolve issues about desired frequencies, the LPFM advocates said. The bureau will have to untangle the MX groups, which include a vast number of applicants in the top 20 markets, said Tracy Rosenberg, Media Alliance executive director. “Those applicants are in a negotiation struggle process where they have to look at time sharing arrangements, or at navigating the point structure at the FCC as various groups drop out.” Some groups that aren't in an advantageous position “might want to look at working together and combining their points in order to have success at getting a permit for the station,” she said. A joint application will help them have a station to share, which would help resolve the mess, she said.

Major channel changes will probably help resolve some of the issues, said Michi Eyre, founder of REC Networks. Eyre is helping a large group of Los Angeles applicants in the settlement process, she said. The applicants working together and aggregating points — used by the FCC to determine which applicant wins in MX situations — will be important, she said.

Other organizations in the mid-level to lower markets that have been awarded construction permits are likely in different stages of raising money, looking for equipment and figuring out their programming content, said Rosenberg, but they'll still have to negotiate for transmitter sites. Clay Leander, Common Frequency president, said "it's in the best interest of the applicants to try to find opportunities to pool resources to collaborate and negotiate with one another, and consider what they can realistically sustain." Where there are numerous applicants in a market, it is probably better for the community to time share, rather than "fight each other to the death until the construction permit is given to one survivor," Rosenberg said.

### **Application Objections**

Objections were filed against about 250 applications, with most of those applications filed with the assistance of the Hispanic Christian Community Network (HCCN), headed by Antonio Guel, an FCC official said. The bureau dismissed 14 of those applications from organizations mostly in Texas and Las Vegas due to major media ownership changes that were made and for failing to have reasonable site assurance prior to filing, the bureau said last month in a letter to Guel (<http://bit.ly/TmOteG>). The applications are singletons, making them the only applications aimed at a particular frequency.

The organizations attached to the dismissed applications include Fort Worth Community Radio, North Las Vegas Community Radio and Sugar Land Community Radio. They filed a joint petition for reconsideration this month, arguing that each applicant had "reasonable assurance of its transmitter site prior to the filing of its application" (<http://bit.ly/1iyUQaT>). They also claimed that for six applicants whose applications were dismissed due to major ownership changes, "amendments have been filed by each applicant curing the defect, as permitted under Commission policies."

REC Networks filed an informal objection to 245 of those applications last year (<http://bit.ly/1jnZ0gL>), said Eyre. The intent was "to show what the magnitude of the issue was," she said. REC alleged that many of the HCCN-assisted applications appeared suspicious because they had the same educational statement and listed apartment complexes and post office boxes as main studio locations, she said. "They have the same boilerplate educational statement, even though each applicant is unique."

There is concern that the applications are holding up frequencies that could be available to other "legitimate" applicants, said CF's Leander. Common Frequency also filed petitions to deny some of the applications, he said. In at least one situation, the only application for a frequency is a questionable application assisted by Guel, he said. "It would be a shame to completely lose the frequency." He urged the FCC to present an opportunity "to reavail that frequency to local, legitimate groups in a subsequent smaller filing window if that application is dismissed."

The Guel-assisted filings didn't limit a potential competitor's ability to file, the FCC official said. If no other local group applied for use of a frequency, the opportunity to use that frequency goes away, the official said. However, if another application were filed in the window and is close to that frequency, it would be possible to amend that application to get that frequency, the official said. Due to the pending appeal, the frequencies requested from the 11 applicants aren't currently available, the FCC official added.


The dismissed applicants confirmed to the FCC that they received reasonable assurance of sites via phone calls with the site owners, said Dan Alpert, a broadcast attorney who worked with Guel and represents the applicants. The FCC should have put out a further notice saying it needed proof of the phone calls before it dismissed the applications, he said. Applications have been reinstated in the past after fixing a basic deficiency, he said, referring to the alleged ownership changes. Alpert said he believes those issues were fixed to the commission’s satisfaction. The applications were similar because they were collated and put together by him, he said. Guel was able to "successfully help his clients find frequencies that ultimately weren’t 'MXed' with anybody," Alpert said. Most of those applications managed to be singletons, he said. "That’s supposed to be a good thing and less work for the FCC." — **Kamala Lane** (*klane@warren-news.com*)

**Justices' Ideology No Factor**

**Shapiro on Aereo Decision: David Lost to Goliath 'PR Machine'**

CEA President Gary Shapiro views the just-completed Supreme Court battle between Aereo and the TV networks as an epic David vs. Goliath fight that David lost amid a big public relations onslaught from the content and broadcast industries, he told us Thursday in an email.

That the three justices who sided with Aereo in the 6-3 decision handed down Wednesday (CD June 26 p1) happened to be the most conservative on the bench played little factor in the final outcome, Shapiro said. As Justice Antonin Scalia noted in his dissent, Shapiro said, “the majority had to use rather tortured statutory interpretation so they could get the result they wanted.” Scalia was joined in his dissent by Justices Samuel Alito and Clarence Thomas. “They wanted Aereo to be shut down as they viewed its service as morally unacceptable,” Shapiro said.

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