



October 2006

Updates on the News

FM freeze sets in – To paraphrase B.B. King, the chill is on, or it soon will be. In anticipation of the upcoming Auction 68 in January, the Commission has announced that it will not accept any FM minor change applications – commercial or noncommercial – during the Auction 68 filing window. That window extends from November 6 to November 13. The Commission is also freezing out any rulemaking counterproposal looking to change the channel, class and/or reference coordinates of any of the nine channels up for bids in Auction 68. The rulemaking freeze started as of October 6. After the close of the auction window (*i.e.*, November 13), the staff will not accept any counterproposals which would involve a change in, or which do not fully protect, preferred site coordinates specified in the various Auction 68 applications which the FCC expects will be filed.

LPTV/TV translator settlement period opens – You may recall that, back in April, the FCC invited LPTV and TV translator stations to submit proposals for digital companion channels. Many folks took advantage of that opportunity. And not surprisingly, many of the channel proposals were mutually exclusive with one another. In an effort to let the proponents themselves try to work out their differences, the Commission has announced that, from now until December 15, 2006, parties may enter into settlement agreements or otherwise resolve their mutual exclusivities (say, by some engineering fix). The settlement window does *not* contemplate approval of any settlements which would involve any payment exceeding the payee's legitimate and prudent expenses.

Let's get digital! – Now would be a good time to make a note in your calendar that, effective *December 31, 2006* – this coming New Year's Eve – the FCC's rules will require all DTV and digital radio stations to participate in all national EAS activations. The requirement does not necessarily extend to state and local activations *but* if a station does broadcast state/local EAS alerts digitally, it's got to broadcast them on *all* its various digital channels.

Inflation strikes – As we reported last month, the FCC has issued a new schedule of application fees. You can check out the complete listing of new fees at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-267890A3.pdf. Those fees went into effect as of October 17.

Form 317 goes exclusively on-line – Annually, all DTV licensees are required to file

Form 317 (real name: “Annual DTV Ancillary/Supplementary Services Report for Digital Television Stations”) to advise the Commission as to whether the station provided any ancillary or supplementary services at any time during the 12-month period preceding September 30. Starting this year (actually, starting as of November 1), this form *must* be filed electronically through the FCC’s CDBS electronic filing system.

Get Sirius! – Well, Sirius or XM, it’s apparently all the same. Those rascally folks in the satellite radio biz apparently have something of a problem with earth-bound realities. First, as we and others have reported in recent months, the non-terrestrials were found to have been marketing consumer gear that resulted in excessive FM signals (mainly on certain non-commercial FM channels) which allowed those transmitting units to override legitimate stations operating on those channels. The result has been an on-going rash of complaints from listeners whose contented enjoyment of local NCE programming (think, maybe, classical music, or religion) is suddenly interrupted by some satellite-borne material – the most jarring example of which has tended to be Sirius’s Howard Stern Show.

While the Commission has, at long last, apparently been trying to get a handle on that problem, lo and behold, up pops another problem. It turns out that both XM and Sirius have now acknowledged that they have been operating significant numbers of terrestrial repeater stations with the wrong power and/or at the wrong site or height, and maybe even on the wrong channel. It’s unclear how long these non-conforming facilities have been in operation, but one published report suggests that, at least in some cases, it may have been years. Not to put too fine a point on this, but broadcasters have historically been expected to exercise caution to assure that the facilities they build are in fact the facilities that they have been authorized to build. It is a mystery why the FCC could or should expect anything different from other spectrum users, including XM and Sirius. We should all stay tuned to see what penalty (if any) the FCC metes out in response to the XM and Sirius confessions.

Indecency update – Apparently unwilling to take points off the board, the Commission denied two petitions for reconsideration which asked that the FCC’s 2004 indecency settlements with Viacom and Emmis be reversed. This doesn’t change the, er, lay of the indecency land at all, but it does keep the \$3.8 million settlement payments securely in the government’s coffers.