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Memorandum to Clients

May, 2007 | *News and Analysis of Recent Events in the Field of Communications* | No. 07-05

DTV Update

Some longstanding questions answered, some new questions asked

FCC Prepares For Final Stage of DTV Conversion

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With the February, 2009, deadline for transition to digital television looming ever larger on the horizon, the Commission took several actions in late May to tie up a number of loose ends relating to the transition. The FCC also teed up many questions relating to various nuts and bolts items for stations still in the throes of the transition process.

Only time will tell for sure whether anything close to 100% compliance with the FCC's new consumer awareness labeling requirement will be realized.

Digital Labeling Requirements

As previously reported, the Commission has already adopted rules requiring that all television sets imported and/or marketed in the United States as of no later than March 1, 2007, include a digital tuner. However, recent studies indicate that more than 60% of the public still does not know that there is a DTV transition on the way. As a result, the Commission is concerned that the public may be unknowingly purchasing equipment (most likely on clearance racks) that will not be able to receive digital signals after the transition.

To promote consumer awareness, the Commission has adopted a labeling requirement, effective on May 25, 2007, requiring all analog-only television sets to contain a label on the actual product, or positioned next to the product, informing potential purchasers of the limitations of the product in question and the effect those limitations will have on the product's usefulness. For on-line marketers, the same notice must be displayed next to the image of the television set. The FCC-mandated notice reads:

> This television receiver has only an analog broadcast tuner and will require a converter box after February 17, 2009, to receive over-the-air broadcasts with an antenna because of the Nation's transition to digital broadcasting. Analog-only TVs should continue to work as before with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products. For more information, call the Federal Communications Commission at 1-888-225-5322 (TTY: 1888-835-5322) or visit the Commission's digital television website at: www.dtv.gov.

In light of the fact that the complete text of the Commission order specifying this language was not released until May 18, 2007 – thus leaving manufacturers and retailers a measly seven (count 'em, seven) days to comply with the order –

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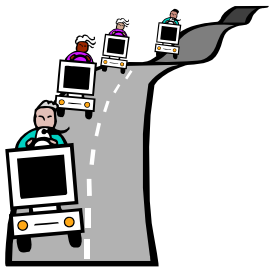
FHH Launches Blog

Fletcher, Heald & Hildreth is pleased to announce that its blog site is now up and running. You can find it at:

www.commlawblog.com

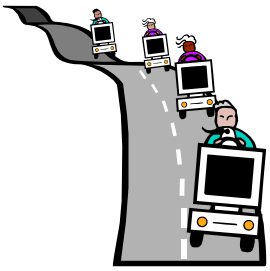
FHH attorneys will be adding news and observations on current developments in broadcast regulation as well as a wide range of non-broadcast matters (including , wireless broadband, wireline telephone, VoIP, cable TV, license-exempt services) in a real-time environment. Readers will have the opportunity to chime in with their own perspectives on developments at the FCC.

Check it out!



FCC road block to (video) service stations

No CARS for Truck Stop TV



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Clarity Media Systems's proposal to distribute television programming at Flying J Travel Plazas nationwide was rejected by the FCC in an Order released May 3.

As detailed in the September, 2006 *Memo to Clients*, Clarity asked the Commission for permission to distribute television programming through a low power, multichannel digital television distribution service using frequencies in the Cable Television Relay Service (CARS). Clarity lobbed in ten applications for CARS licenses in February, 2006, and another 248 applications this past January. Clarity requested a waiver of the CARS rules (nestled in FCC Part 78) to create service in the 2025-2110 MHz band.

Under Clarity's proposal, 70 channels of live or pre-recorded television programming would be provided using digital video compression at a subscription cost of no more than $39 per month. Among the public interest benefits touted by Clarity was the ability to serve a community of more than 2.5 million people "who lack regular and dependable television service."

But the Commission wasn't convinced that the supposed benefits of Clarity's proposed service would justify a waiver of the CARS rules, particularly in view of the concerns expressed by more than a dozen parties filing comments/reply comments in opposition to the proposal – parties who included MSTV, NAB, NASA, ABC and Fox. Holding that the underlying purpose of the Part 78 CARS rules would not be served by grant of Clarity's request, the FCC Order concluded that Clarity had failed to demonstrate that its proposed system would not cause harmful interference to Broadcast Auxiliary Service (BAS) operations. Broadcasters use BAS extensively for electronic news gathering (ENG). The Commission found that the public interest benefits of Clarity's proposal did not outweigh the potential harmful interference to BAS, CARS and NASA communications, and that Clarity failed to establish that it has no reasonable alternative.

The Commission also observed that Clarity's proposal – which would have utilized CARS frequencies to provide service directly to subscribers – was at odds with the primary purpose of the CARS service, which is to provide intermediate transmission links in cable networks. In the FCC's view, Clarity failed to identify how the purpose of the CARS rules would be frustrated by their strict application in this case.

The Commission was not persuaded by Clarity's claim that its proposal would not cause harmful interference to BAS/ENG operations. In July, 2005, Clarity was granted an experimental license to test its system at two locations in Utah and one in California. Clarity conducted six months of tests prior to submitting its initial ten applications. According to the FCC, Clarity did not attempt to actually receive a BAS signal at a fixed receive site or a mobile site, nor did it provide received signal level measurements at any of the fixed BAS receive sites. The Commission also expressed concern about potential interference with NASA operations – NASA uses the CARS band for essential, emergency communications. In addition, Clarity's proposal to establish a 24-hour hotline for shutting down service in case of interference was deemed insufficient given the amount of time involved in identifying and solving such issues.

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Focus on FCC Fines

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FCC explains statute of limitations to Infinity – An Infinity FM station in Buffalo was fined $4,000 for broadcasting a telephone conversation without first notifying the other person on the line that the call was on the air. The FCC's Enforcement Bureau issued the fine and even took a second look at the case (although the second look didn't change anything – the Bureau stood by its original $4,000 fine). Infinity appealed the case to the full five Commissioners and was able to get the fine dropped to $3,000.

In front of the Commissioners, Infinity advanced a number of challenges to the Bureau's action. Of particular interest was Infinity's assertion that, in calculating the latest fine, the Bureau improperly considered a fine which Infinity had been tagged for back in 2001. In Infinity's view, the Bureau was prohibited from considering that earlier fine because of a statute of limitations which bars imposition of fines for misconduct which occurred beyond a certain point in the past. Not surprisingly, the FCC disagreed with Infinity's analysis. The FCC explained that although there is a five-year statute of limitation on facts being used to determine if a violation occurred (as Infinity argued), that limitation does ***not*** apply in determining the degree of culpability. In other words, in the FCC's view the Commission may ***always*** refer to previous fines (even fines issued years earlier) in determining the true character of broadcasters who are caught with other violations. While an old mistake may not come back to haunt you if you aren't caught, an old mistake ***can*** be used against you if you are caught for something else.

However, the Commissioners knocked $1,000 off of the fine because Infinity took disciplinary action against the employee responsible for the call. Infinity bragged that it disciplined the employee even before the FCC looked into the matter. The FCC responded that the disciplinary action cannot undo the damage caused by the phone call, but the fact that the station disciplined the employee without FCC prompting *was* a mitigating factor for reducing the fine.

Nevada FM station convinces FCC to lower fine from $8,000 to $250 – FCC agents conducted an inspection of a Nevada station and discovered non-functioning EAS equipment. The agents proposed slapping the station with an $8,000 fine. The station responded that it would be unable to pay a fine that large. The FCC issued an Order which emphasized how important the EAS system (including proper testing and maintenance of individual stations' equipment, to assure that the system will in fact work) is to the nation's safety. However, the Order also reduced the station's fine to $250. As a cautionary note to readers, the FCC is very strict about lowering fines due to a claimed inability to pay. In making this decision, the FCC normally considers the gross receipts of the station and has previously established as a benchmark that a fine totaling 7% of gross receipts is reasonable. Information on the Nevada station's finances were not made part of the Order, although one might gather from the paltry fine that they were not the best.

North Carolina station convinces FCC to lower fine by 20% – The FCC received a complaint about a North Carolina AM station that was not powering down at night. FCC agents inspected the station and determined that the complaint was valid. During their inspection, the agents asked to see the station's public file. Station staff could not produce the file because it was not kept at the main studio. The FCC hit the station with a $10,000 fine for the public file violation and $4,000 for its operating power problems. The station pointed out that it had a history of compliance with the FCC's rules and the FCC reduced the fine by 20%.

Idaho station gets 40% discount on forfeiture – An Idaho AM station uses a three-tower array and an FCC inspection found problems with two of the three towers – and contrary to the Meat Loaf classic, two out of three *was* bad. The FCC inspection revealed that the towers were not enclosed within an effective locked fence. At one of the towers, the FCC found that a fence existed on only one side, leaving the other three sides wide open. On a second tower, the FCC determined that the significant portions of fencing were missing or lying on the ground. The FCC proposed slapping a $7,000 fine on the station.

The licensee told the FCC that it was aware of the problem and that it had been working on repairing the fences. The station also pointed out that it had a history of compliance with the FCC's rules. The FCC accepted the station's explanation that it had been working to repair the problem and reduced the fine by 20%. And expanding its generosity, the FCC also knocked off an additional 20% for the station's history of compliance. However, in the end, the station still

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Tick . . . tick . . . tick . . .

Violence Report:
FCC pulls the pin and tosses the grenade to Congress

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As we reported in the March, 2007, *Memo to Clients*, over three years ago some members of Congress requested a report from the FCC on the impact of violent television programming on children. At the end of April, the FCC finally got around to releasing the long-awaited report. As expected, the FCC concluded that televised violence has a negative effect on children. And while the FCC also concluded that it should be possible to come up with a workable definition of "violent" programming, the Commission took a pass on that particular task and left it to Congress to craft such a definition. Ditto for coming up with some regulatory mechanism that might survive an attack based on the First Amendment: the Commission says that such a mechanism can probably be developed, but it leaves it to Congress to take the first cut.

The Commission's approach is akin to that taken by Sallah, Indiana Jones's colleague in *Raiders of the Lost Ark*, when he realizes that the ancient tomb into which he and Indy are about to descend is full of snakes: "Asps. Very dangerous. You go first."

As our readers know, the FCC is in the midst of a continuing crackdown on indecent programming. While "sex and violence" is to some a modern-day catchphrase for the perceived evils of media, the two topics are distinct from one another in an important way: violent programming has historically been beyond the FCC's substantive regulatory reach because, as the FCC has seen things (with the approval of the courts), the FCC's authority to regulate subject matter is generally limited to material that includes sexual or excretory acts or body parts or that includes certain "presumptively profane" language.

In its recent report on violence, however, the Commission noted that even speech that is protected under the First Amendment can be subject to regulation if the government's interest is "substantial" and the regulation is "narrowly tailored" to further that interest. After reviewing several studies (and noting views to the contrary), the FCC found that, on balance, the studies provide "strong evidence that exposure to violence in the media can increase children's aggressive behavior in the short term." Based on this finding, the Commission concluded that the government has a "substantial interest" in protecting children from such ill effects.

With respect to the "narrowly tailored" measures Congress could impose, the Commission offered two principal suggestions. First, Congress could impose "time channeling" restrictions on violent programming – restricting violent programming to late-night hours, as is done with indecent programming. Second, the FCC managed to turn the issue into a pitch for requiring cable and satellite operators to sell programming on an à la carte basis (a cause FCC Chairman Kevin Martin has long supported). The Report argued that parents could limit children's exposure to violent programming if parents were given the à la carte option, which would allow them to avoid buying channels that tend to contain violent programming.

In support of its preferred solutions, the Commission dismissed the effectiveness of viewer-controlled blocking (including the V-Chip and similar cable technology), citing studies that claim that parents don't know such blocking exists, don't know how it works and generally don't use it. The Report similarly disparaged the current ratings systems, citing studies that found that the current system inaccurately labels content and that most parents don't understand the current system anyway.

The FCC recognized that the central problem of regulating violent content is defining what might be "violent" or even "excessively violent." The Report cited several commenters and judicial decisions that described the extraordinary difficulty in separating out acceptable, or even beneficial, depictions of violence (*e.g.*, news programming, Shakespeare, the Bible) from "gratuitous" violence (*e.g.*, Jerry Springer).

After recognizing that defining violence will be difficult, the Commission tossed the hot potato over to Congress. In so doing, the FCC did offer Congress the advice that any definition would need to be "narrowly tailored" to pass judicial scrutiny and clear enough to provide

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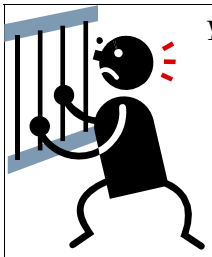

You can check out any time you want but . . .

Hotel California, FCC-Style

Stuck inside of Grayson with the Lawrenceville blues again

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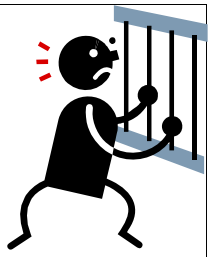

Some myths die hard, and one of those myths is the FCC's notion that a station licensed to a particular community will invariably serve as a "local transmission service" for that community *uber alles*, and that the community's audience, in turn, will develop a slavish dependence on that service which must not be disappointed.

The licensee of WPLO(AM), licensed to serve the 765 residents of Grayson, Georgia, recently learned this the hard way.

The station participated in the 2004 AM auction, proposing to change its community of license to Lawrenceville, Georgia, population 22,397. Mind you, no other changes were proposed – the station was going to keep its transmitter and power where they had always been, and was not going to alter its signal in any way. It just wanted to be associated with the larger (almost 30 times the population of Grayson) Lawrenceville.

The Commission's once-allotted-always-allotted policy is largely based on an assumption that the Commission cannot prove.

And while there appeared to be no technical problems with the proposal, the Commission still said "no".

The problem was Section 307(b) of the Communications Act. That section mandates that broadcast frequencies be allocated fairly, efficiently and equitably among the several states and communities. Now you might think that allotting a station to a community of 22,000 would be more "efficient" and "equitable" than leaving that station in a community of 765 – especially if the smaller town would continue to receive the station's signal without any change.

The problem is that the Commission believes that, if a station is the only one licensed to a particular community, then the audience in that community has some expectation that the station will continue to serve the community *ad infinitum*. And so the station is placed in regulatory shackles and permanently affixed to that community of license.

The only way a station which finds itself in this situation can extricate itself from Smallville and move on up to Slightlybiggerville is to arrange for a "backfill" station to be allotted to Smallville in its place. This, of course, is easier said than done in most instances, because there is usually not a huge supply of stations champing at the bit to move into a very small community whose only existing station is trying to get out.

The Commission's policy has been around for years, most frequently applied in the FM allotment area. The Grayson AM situation underscores not only the continuing vitality of the policy, but the FCC's willingness to apply to the AM side as well.

While the Commission's policy is presumably based on a concern about the general abandonment of small towns for larger communities, it's a bit hard to see how Grayson would be abandoned here if the station's signal was not going to change one iota. In other words, Grayson would continue to receive AM service from the station.

But the Commission's policy is also based on the notion that a station licensed to a particular community invariably must, and will, provide "local programming" directed primarily, if not solely, to that community. And extending that notion, the Commission then figures that the community must become so dependent on that local programming that the community should not be forced to forgo the programming. The trouble with all this figuring is that the FCC has absolutely no way of determining whether its underlying assumption has any validity at all. Since the onset of deregulation more than two decades ago, the Commission has no means by which to routinely assess what kind of programming any station is broadcasting – and, perhaps more importantly, the Commission has no regulations in place which require any particular kind of programming to be broadcast by any station at any time (other than station ID's and the occasional EAS announcement).

In other words, the Commission's once-allotted-always-allotted policy is largely based on an assumption that the Commission cannot prove. Moreover, not only is that assumption not provable, but it runs counter to the view

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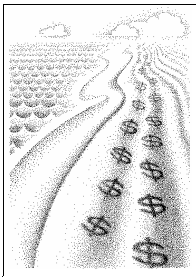

Beware the ides of July

Streaming Royalties :

Reconsideration rejected, rate revision re-affirmed

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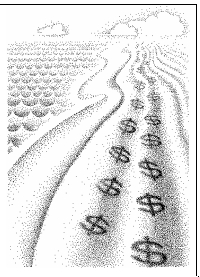

The future of Internet radio remains up in the air as all three branches of government now appear ready to weigh in on royalty rates for webcasting during the years 2006-2010. After the Copyright Royalty Board (CRB) denied petitions for rehearing of its decision to significantly increase the royalty rate over the next five years, several webcasters immediately and inevitably stated their intention to appeal the matter to the federal courts. Meanwhile, a bill was introduced in Congress that could overturn the CRB's decision and institute a new rate structure. Many webcasters have stated that they will be forced to discontinue service if the new rates become effective; others hope either to find alternative methods for raising revenue, such as increasing advertising time or rates, or to limit expenses by capping the number of listeners on the stream at any given time.

As discussed in last month's *Memo to Clients*, in March the CRB issued a decision that many see as a death knell for the once-flourishing Internet radio industry. Hardest hit were small webcasters – defined as entities with less than $1.25 million in gross annual revenue – who will no longer be given the option of paying rates calculated as a percentage of gross revenue. In addition, the CRB jacked up the rates imposed on commercial radio stations – in some cases more than tripling the likely annual royalties – and mandated the per performance method of calculating royalties. That means that the aggregate tuning hour calculation method – preferred by many webcasters because it is more compatible with current streaming software – is no longer an option.

Webcasters now have until July 15, 2007 to pay up. (*See* sidebar on the next page for details on the revised rate calculation system.) The July payment will include not only royalty payments (using the newly-announced rates) for the months beginning March, 2007, but also make-good payments for the period January 1, 2006 to March, 2007. The historical payments already paid in for that latter period were calculated using the old rate structure, with the understanding that a revision in the rate (like the CRB just adopted) would require an after-the-fact recalculation using the new rates. Now it's time to settle up for the difference.

Large and small webcasters alike filed petitions for rehearing with the CRB, all of which were predictably denied. However, the CRB conceded that calculating retroactive payments on a per performance basis would be difficult for those stations that had been using the aggregate tuning hour method of calculation, so it created an aggregate tuning hour rate structure for retroactive payments to January 1, 2006. Stations will still have to calculate royalties on the per performance basis going forward.

The next stop for the Streaming Royalty Express will likely be the U.S. Court of Appeals, assuming that at least some unhappy webcasters choose to seek judicial review. But even if an appeal is filed, that will not likely stay the July 15, 2007 start date for the new rate structure. And any court review is unlikely to be completed in less than a year, and possibly more, so the very strong likelihood is that affected webcasters will all be having to get their checkbooks out on or before July 15.

The very strong likelihood is that affected webcasters will all be having to get their checkbooks out on or before July 15.

In light of that fast-approaching date, several Members of Congress have stepped in as would-be saviors of Internet radio. On April 26, 2007, Reps. Jay Inslee (D-WA) and Donald Mazullo (R-IL) introduced HR 2060, the Internet Radio Equality Act. In an admirable attempt at revisionism through legislation, that bill provides that the CRB's March and April rulings on webcasting royalties would "not [be] effective and shall be deemed never to have been effective." In place of the CRB's approach, the bill proposes a rate structure comparable to that utilized in the statutory license applicable to satellite radio.

Under that alternate approach, Internet radio operators would be charged a minimum annual fee of $500 per provider of services. Commercial radio stations would be given a choice between payment of .33 cents per aggregate tuning hour and 7.5 percent of revenues directly attributable to streaming for the year. Noncommercial stations would be required to pay 1.5 times the amount paid to SESAC, ASCAP and BMI for use of the underlying musical compositions, though separate agreements could be negotiated. The bill also contemplates greater

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Clip and save!

A Handy Guide to the New Streaming Rates

Because the legislative cavalry is not likely to arrive in time, Internet radio stations should be prepared for the following rate structure to take effect on July 15:

NONCOMMERCIAL STATIONS

Noncommercial stations do not have to pay any royalty rates unless the station exceeds 159,140 aggregate tuning hours in a month. This is an increase from the previous maximum of 146,600 per month.

Retroactive to January 1, 2006

If the station did not exceed 159,140 aggregate tuning hours in any single month, it does not have to pay anything, as long as it paid its $500 annual minimum for both 2006 and 2007.

If the station did exceed 159,140 aggregate tuning hours per month, it must pay at the new rates for commercial stations that are listed below, subtracting any amounts already paid for the month in question.

For all months beginning May, 2007

If the station does not exceed 159,140 aggregate tuning hours in any single month, it does not have to pay anything beyond the $500 annual minimum payment.

For any month in which the station exceeds 159,140 aggregate tuning hours, it must pay royalties at the new rates for commercial stations that are described in the next column.

COMMERCIAL STATIONS

The reduced rates for certain webcasters created in the Small Webcaster Settlement Act are no longer effective. All commercial webcasters must pay as follows:

Retroactive to January 1, 2006

If the station chooses to calculate according to the per performance method, it must pay $ 0.0008 per performance for 2006 and $ 0.0011 per performance for 2007, subtracting any amounts already paid for the months dating back to January 1, 2006.

The station can also choose to calculate according to the aggregate tuning hour method. If it chooses this option, it would pay $ 0.0092 per aggregate tuning hour for 2006 and $ 0.0127 per aggregate tuning hour for 2007, subtracting any amounts already paid for the months dating back to January 1, 2006

For all months beginning May, 2007

Payments must be calculated according to the per performance method beginning with May 2007. Royalty rates are:

$ 0.0011 per performance for 2007
$ 0.0014 per performance for 2008
$ 0.0018 per performance for 2009
$ 0.0019 per performance for 2010

(Continued from page 6)

participation by the FCC, NTIA and CPB in any future rate-making proceedings, requiring those entities to file certain reports relating to the effects of proposed rate determinations on localism, diversity and competition in both the over-the-air and Internet radio marketplaces.

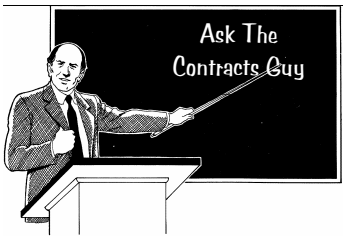
While the Internet Radio Equality Act has 43 co-sponsors, it is viewed as more of a starting point for legislation on this topic and is unlikely to move through Congress and be signed by the President (whose views on the bill are unknown) before July 15, 2007.

For more information or assistance in calculating retroactive payments, payments going forward or any other aspect of the statutory licensing scheme for digital audio transmissions, do not hesitate to contact a Fletcher, Heald & Hildreth attorney.

(Continued from page 5)

(which the Commission has itself recognized) that, as a practical, real world matter, broadcast stations tend to serve ***markets***, rather than particular cities.

But while the Commission's policy may thus be susceptible to attack, that fact doubtless comes as little consolation to the Grayson licensee. Any station which happens to be the only station licensed to a given community should recognize that relocating out of that community is still an uphill struggle.



Good contracts (can) make good neighbors

Compelling Co-tenant Coordination

Sharing tower space can create practical problems

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Many (dare we say most?) of us have never climbed a broadcast tower, and probably have no desire ever to do so. We can only imagine the hazards faced by the hardy souls who climb towers to earn a living. In addition to the natural dangers (wind, rain, temperature extremes, and flocks of migratory birds which, according to some, smash themselves into towers pretty much all the time), tower workers must also contend with man-made radiofrequency electromagnetic fields (REFs) generated by broadcast users of towers.

In an ideal world, at least from a tower worker's perspective, transmitters should be turned off so that antennas stop radiating RF when people have to climb a tower to maintain it or install/repair/remove equipment attached to it. Of course, this solution is less than ideal to those broadcasters who would have to turn their stations off, albeit temporarily – after all, their businesses are based on beaming their signals out to their audiences, so turning off means shutting down the shop. Such shut-downs can alienate advertisers and drive previously loyal listeners to other stations. Obviously, most broadcasters are reluctant to risk either of these phenomena.

If you have a contract with the other site user(s) or the tower owner, you have the option of going directly to state or local court where relief may be much quicker and more effective.

In order to protect tower workers, the FCC's rules limit the amount of REF to which broadcasters can expose people working around transmitter and tower sites. The FCC emphasizes the importance of compliance with these particular rules by including the following explicit written condition in each new construction permit and broadcast license it issues: "The permittee/licensee in coordination with other users of the site must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines."

At this point you're probably saying: "Hey, who's writing this article, and what have they done with the Contracts Guy?" (We are, after all, four paragraphs deep into the piece, and so far nothing about contracts – what gives?) Well, it is the issue of "coordination" between two or more parties to reduce power or cease operations that makes a contract very useful in this context. For while the FCC's rules – and the terms of each broadcast license – require broadcasters to coordinate with each other to protect workers at a tower site, actual enforcement of that coordination is made a lot easier when a tower user has the right wording in a tower lease or other site sharing agreement with other users.

The difference is that if you rely only on the FCC rules and the FCC's enforcement of those rules to resolve coordination conflicts, you could wait for a long time for the FCC to act and still not get the relief you are seeking. But if you have a contract with the other site user(s) or the tower owner, you have the option of going directly to state or local court to enforce the terms of your contract, and relief may be much quicker and more effective.

A hypothetical situation may help to illustrate this point: Able Radio, Inc. and Baker Television Company both are tenants on a tower owned by Big Stick Tower Corp. Baker wants to install a new DTV antenna at the top of the tower. Able's FM antenna is side-mounted on the tower about 100 feet below Baker's antenna. In order for the tower crew to install Baker's new antenna, Able will have to reduce its signal to 10% of its normal power from 8:30 a.m. to 5:30 p.m., Monday through Friday, for two weeks while the tower crew rigs up, takes the old antenna down, puts the new DTV antenna up and then rigs down. If there is bad weather, that procedure could be extended for another week or more.

In many cases, Able Radio might be very happy to cooperate. But let's throw a wrinkle into the fact pattern. Let us assume that Baker's DTV installation is scheduled right in the middle of Arbitron's rating period in Able's market. Able's showing in those ratings will directly affect Able's ability to sell advertising time on its station for the next calendar quarter. So turning its station off smack in the middle of ratings is clearly not an attractive option for Able, no matter how altruistic it might otherwise choose to be.

So Able tells Baker that Baker's work will have to wait until after the ratings measurement period is over. Baker says that this is the only time that the tower crew will be available for the foreseeable future, the work has been scheduled for a long time in advance, and Baker just can't

(Continued on page 9)

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wait.

If Baker doesn't have a provision in its tower lease that forces Big Stick to make Able reduce power, or if Baker doesn't have a tower sharing agreement directly with Able which covers this issue, then Baker's only avenue for relief is to ask the FCC to enforce its rules requiring Able to "coordinate" with Baker.

The problem Baker faces is that the FCC's staff may think that making Baker wait is reasonable, regardless of the economic cost or inconvenience to Baker of delaying its new DTV antenna's installation. Or the FCC might try to craft a compromise position that would require Able to reduce power only between the hours of 10:00 a.m. and 4:00 p.m., thus preserving Able's full power signal during "drive-time" hours – thereby helping Able keep its ratings up, but costing Baker more money in the process, since this altered schedule would take the tower crew longer to complete the work. Also, the speed at which the FCC's staff may consider the parties' arguments and decide upon a solution could be lengthy if the Commission's staff is preoccupied with other issues of more universal concern than a simple dispute between two licensees.

Worries about how and when the FCC might act may be avoided through negotiated power reduction coordination provisions in the tower lease, and/or a separate agreement with other tenants on the tower.

Worries about how and when the FCC might act could have been avoided if Baker had previously negotiated power reduction coordination provisions into its tower lease, and/or struck a separate agreement with Able directly when it first became a tenant on the tower. In such circumstances, Baker would have the option of going to a local court and asking for an injunction to enforce such agreements. Although the enforceability of any particular contract term often varies from jurisdiction to jurisdiction, most courts have rules which permit expedited hearings for requests for injunctions or restraining orders. Baker's ability to take action in a local court, although not guaranteed to ultimately be any more successful that asking the FCC to enforce its rules, at least gives Baker some additional leverage in negotiating with Able and Big Stick to reach a satisfactory solution to the competing economic interests of the parties.

So when negotiating a tower lease, broadcasters should consider trying to include carefully crafted wording dealing with how and when users of the tower will coordinate power reductions to protect tower workers from REF hazards. Alternatively, broadcasters should consider the possibility of negotiating an agreement directly with the other tower tenant(s) to deal with this issue. Negotiating these issues will generally be easier *before* an actual dispute arises than after the gloves hit the ice, and will in most cases afford greater predictability for all parties involved.

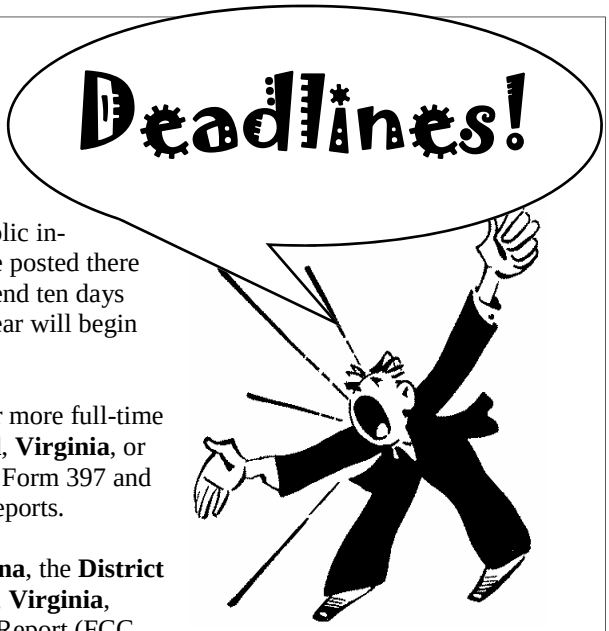
(Continued from page 3)
faces a fine and the decision will be on its permanent record (see Infinity story earlier in this column).

Renewal applications continue to produce fines – The FCC continues to pick up loose change from renewal applicants who, in the course of filing their renewal applications, establish that they have violated one or more rules. The admission of violation may come in response to the public inspection file certification, or the children's television certification – or even in the mere fact that the application was filed after the deadline for such applications. As noted in previous installments of this column, while some fines seem to have a set price, others seem to vary significantly. This month's set of renewal application fines ranged from simply admonitions to a price tag of up to $20,000.

The baseline fine for filing a renewal application late appears to be $1,500 per application. BUT if you file your renewal application after your license has already expired (*i.e.*, more than four months after the renewal application was originally due), the FCC piles on another several thousand dollars – for unauthorized operation (because if the station was operating after its license expired, it was doing so without any authority from the Commission). Fines in such cases have ranged from $3,000 to $7,500. As noted above, a station's renewal application contains certifications about public files and children's programming reports. These certifications continue to give the FCC plenty of reason to fine licensees. A Georgia station faces a $20,000 fine for admitted violations of both the public file and children's programming rules. Several other stations were tagged with $10,000 fines for similar violations. Inexplicably, a Buffalo station walked away with only an admonition from the FCC for children's programming problems.

As we have previously observed in this column, in filing its renewal application, a licensee is required to certify that it has complied with certain rules. The failure to certify compliance can result in a station paying a fine (or, in some instances, simply facing an admonition). Careful compliance with the rules throughout the license term permits a licensee to avoid the embarrassing and costly circumstance of having to narc itself out to the Commission at renewal time.

June 1, 2007



EEO Public File Reports - All *radio* and *television* stations with five (5) or more full-time employees located in **Arizona**, the **District of Columbia**, **Idaho**, **Maryland**, **Michigan**, **Ohio**, **Nevada**, **New Mexico**, **Utah**, **Virginia**, **West Virginia**, and **Wyoming** must place EEO Public File Reports in their public inspection files. For all stations with websites, the report must be posted there as well. Per announced FCC policy, the reporting period may end ten days before the report is due, and the reporting period for the next year will begin on the following day.

EEO Mid-Term Review - All *radio* stations with eleven (11) or more full-time employees and located in the **District of Columbia**, **Maryland**, **Virginia**, or **West Virginia** must file Broadcast Mid-Term Reports on FCC Form 397 and attach the two most recent (2006 and 2007) EEO Public File Reports.

Radio Ownership Reports - All *radio* stations located in **Arizona**, the **District of Columbia**, **Idaho**, **Maryland**, **Nevada**, **New Mexico**, **Utah**, **Virginia**, **West Virginia**, and **Wyoming** must file a biennial Ownership Report (FCC Form 323 for commercial stations or Form 323-E for noncommercial stations). All reports must be filed electronically.

Television Ownership Reports - All *television* stations located in **Michigan** and **Ohio** must file a biennial Ownership Report. All reports filed must be filed electronically on FCC Form 323 or 323-E.

June 1 - 10, 2007

Children's Television Programming Reports - Analog and Digital - *Date postponed from April 10* - For all *commercial television* and *Class A television* stations, the reports on newly revised FCC Form 398 for the first quarter of 2007 (January-March) must be filed electronically with the Commission, and a copy must be placed in each station's local public inspection file. For the first time, information will be required for both the analog and DTV programming, both of which are included in the new form. The revised form became available online on May 15, 2007.

July 10, 2007

Children's Television Programming Reports - Analog and Digital - For all *commercial television* and *Class A television* stations, the reports on revised FCC Form 398 for the second quarter of 2007 (April-June) must be filed electronically with the Commission, and a copy must be placed in each station's local public inspection file. Once again, information will be required for both the analog and DTV operations.

Commercial Compliance Certifications - For all *commercial television* and *Class A television* stations, a certification of compliance with the limits on commercials during programming for children ages 12 and under must be placed in the public inspection file.

Website Compliance Information - *Television* station licensees must place and retain in their public inspection files records sufficient to substantiate a certification of compliance with the restrictions on display of website addresses during programming directed to children ages 12 and under.

Issues/Programs Lists - For all *radio, television,* and *Class A television* stations, a listing of each station's most significant treatment of community issues must be placed in the station's local public inspection file. The list should include a brief narrative describing the issues covered and the programs which provided the coverage, with information concerning the time, date, duration, and title of each program.

Burden of proof to be eased?

New Directional Directions

FCC looks to clarify, reduce directional AM obligations

The FCC has requested comments on a proposal to let some, but not necessarily all, AM directional applicants use moment method computer modeling to demonstrate that their directional antennas perform as authorized.

The proposal was advanced by a coalition of broadcast engineering mavens – broadcasters, manufacturers, consulting engineers – in early May, following several months of meetings and deliberations. The idea is to reduce the burden, both on AM applicants and on the Commission's processing staff, by eliminating the need to conduct and analyze field strength measurements of directional arrays in order to verify that they're working like they're supposed to.

Historically, the Commission has required directional AM applicants to undertake elaborate, labor-intensive measurements to confirm that their arrays were working properly. Those measurements were then sent to the Commission, where staff members reviewed them as well.

But moment method computer programs (also referred to as NEC, or Numerical Electromagnetics Code, programs) permit the accurate calculation of actual performance based on certain internal antenna parameters, such as current and phase. The coalition also came up with draft rules which would permit the use of moment method modeling to assess the effect of nearby reradiators on the resulting pattern.

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fair warning about what is covered. The Report also modestly suggested that ratings systems and scientific studies might provide a basis for such a definition.

Although the matter is now back before the Congress, it is unclear how soon we could see legislation on the issue. Regulation of violence does not appear to be on a fast track at the moment, but that could change quickly as we enter the election season.

Industry groups are not waiting for draft legislation to appear to counter the Report's conclusions, however. The Media Institute released a study in mid-May that (in the Institute's view, at least) refutes the Report's finding that the preponderance of studies show that children exposed to TV violence can become more aggressive. In addition, a coalition of trade groups, including the NAB, the National Cable & Telecommunications Association and the Motion Picture Association of America has hired leading constitutional law scholar and Harvard Professor Lawrence Tribe to push the case that any attempt to regulate violent content will fail First Amendment scrutiny. The engagement of Professor Tribe, who has been involved with many high-profile political and constitutional issues, indicates that this will be a fight worth watching.

(Continued from page 2)

If it were discovered that there was interference, broadcasters would be prevented from collecting and distributing breaking news, despite Clarity's best efforts to remedy the situation as quickly as possible.

The Commission was also unimpressed with Clarity's promise to carry Amber Alerts on its proposed system. In the FCC's view, "installing (Amber Alerts) at the risk of interfering with broadcast station coverage that is distributing the same alerts to a much wider audience is not prudent."

Finally, the Commission stated that Clarity failed to establish that it has no reasonable alternative. In fact, multiple alternatives are plainly available to Clarity. But, Clarity chose not to pursue such alternatives (*e.g.*, purchasing spectrum at auction or using unlicensed spectrum or installing cable at its truck stops) because of the cost and the burden of negotiations. The Commission was not persuaded that such rationales should override the possibility of harm to established users of the spectrum.

With Clarity back to square one, it will have to begin considering these traditional alternatives if Flying J's vision is to become a reality.

(Continued from page 1)

it's a reasonable bet that less than 100% compliance by the effective date was achieved, although only time will tell for sure whether anything close to 100% compliance will be realized. In a rather impassioned Statement, Commission Copps helpfully took the Commission to task for failing to adopt the fairly simple labeling requirement earlier in the transition. Commissioner Copps noted that there were 11 million analog sets sold in 2006, and questioned how many of these purchases would have been made if the labeling requirements were imposed earlier.

Carriage of Digital Signals

Having resolved the notice requirement for those pesky clearance items, the Commission turned its attention to how cable systems will operate in a digital-only universe. In a Second Further Notice of Proposed Rule Making, the Commission advanced some preliminary proposals concerning carriage obligations to be imposed on cable operators. (NOTE: These proposals do ***not*** include resolution of the long-pending question of multi-channel must-carry – *i.e.*, whether cable systems will be required to carry all of a broadcasters multiple program stream, if the broadcaster chooses to provide multiple over-the-air digital program streams. That controversial issue is still under consideration.)

To some degree the Commission is proposing to put the monkey on the back of cable operators to assure a seamless conversion in the eyes of the viewing public.

The Commission is now proposing that cable operators will either have to: (1) carry the signals of all must-carry stations in an analog format to all analog cable subscribers, or (2) for all-digital systems, carry those signals only in digital format, provided that all subscribers have the necessary equipment to view the broadcast content. The goal here is to assure that all cable subscribers have the ability to watch all local "must-carry" programming. The Commission, recognizing that that ability may be dependent on the various types of equipment which consumers will be using (especially in the early post-conversion phase), is proposing to put the monkey on the back of cable operators to assure a seamless conversion in the eyes of the viewing public.

Additionally, the FCC has reaffirmed that, if a broadcast station is transmitting a high definition (HD) signal, the cable system must carry such signals in HD format without material degradation. The key here is what constitutes "material degradation" – and the Commission has requested comment on precisely that crucial definitional question. At least two possible approaches are under consideration: first, the Commission could require that all "content bits" transmitted by the broadcaster be carried by the cable operator; alternatively, the Commission could elect to use the existing non-discrimination requirement to determine material degradation. (The non-discrimination requirement prohibits cable operators from treating cable programming services more favorably than broadcast signals for purposes of degradation.) In a further possible approach, the Commission proposes a negotiation phase to occur between the cable system and the broadcaster if a cable system seeks in certain cases to reduce the digital bit stream (due to null bits or the like)

Comments in this proceeding are due no later than July 16, with reply comments due August 16.

Waiver Requests and Extensions of DTV Construction Permit Deadlines

Okay, we have now dealt with the delivery of the digital signal via cable, and the equipment used to watch the digital signal. Both of these issues presuppose that there is, in fact, a digital signal to watch.

As most everybody must know by now, there have been a series of digital construction deadlines, the most recent occurring last July. The Commission initially required that all stations construct and operate facilities transmitting a digital signal – although such service could be limited to low-power digital facilities capable of providing service to the station's community of license, but not much more. By July, 2006, however, the Commission required each television licensee to beef up its digital facilities so that the station would serve 80% to 100% of its service area (depending on the post-transition DTV channel) or face the possibility of losing considerable interference protection for its permanent facility.

By the time that latter deadline rolled around, 145 stations had filed for extensions of their construction permits (*i.e.*, to construct even the basic facility), and 192 stations had filed for waivers of the interference protection deadlines. The Commission has now for the most part granted the pending extension requests and waiver requests, but established three new deadlines for compliance, depending on various circumstances.

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DTV Update

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First, a large majority (more than 60%) of the parties received six months from the May 18 release date to come into compliance with the Commission's obligations. The affected stations are those which claimed that equipment delays, financial problems or other circumstances beyond their control had prevented them from meeting the earlier construction deadlines. In these cases, the affected station must construct its full digital facility if it has not done so, or it must complete construction if it is operating with less than full facilities.

Next, a second group of stations presented a different problem. These stations are currently operating on one digital channel, but after the transition they will be operating on a different digital channel. (This situation can arise when, for example, a station has chosen for its ultimate digital channel the channel on which it is presently transmitting its analog signal. Come the transition, such a station will abandon the channel on which its digital signal is now being provided, and will use its current analog channel for digital.) The Commission granted folks in such circumstances extensions and waivers until 30 days after the Commission's order relating to the Third Periodic Review (discussed below) becomes effective. As highlighted below, the Commission is considering rules that would permit licensees to choose not to construct their digital facilities on their ***pre***-transition channel, allowing them instead to focus on construction of their ***post***-transition channel. In view of this, the Commission decided to permit those that sought extensions and waivers to wait until the final rules in the Third Periodic Review are adopted to fully consider what options are available.

Finally, a smaller group of stations face various technical problems peculiar to their particular situations. Some stations have encountered international coordination problems, while others have run into practical difficulties – for example, some licensees whose analog antenna is top-mounted have had to side-mount their digital antenna on at least an interim basis, thus delaying complete construction of their maximum digital facilities. In such cases, the Commission determined that it would grant extensions and waivers until the transition deadline – February 17, 2009. The Commission stated that any further request for an extension or waiver beyond what was provided in these orders would be dealt with under a strict review policy, and would not be routinely granted.

Thus, absent clear and compelling circumstances, licensees who have opted for a DTV channel other than their current analog channel will have six months – until November, 2007 – to complete the build-out of their digital facilities or else lose their interference protection rights. The stricter guidelines for further extensions or waivers will likely not lead to many grants, and a station lacking a compelling story will put itself in substantial risk of losing interference protection rights.

Because the Commission considered each of these several hundred waiver requests largely on a case-by-case basis, any potentially affected licensee would be well-advised to review the Commission's order carefully to determine the extent to which the circumstances of any particular waiver might be relevant to its situation.

Third Periodic Review NPRM

Finally, with technical cable carriage matters all teed up, equipment labeling requirements in place, and the resolution of the current status of the digital conversion process (on a station-by-station basis) reasonably in hand, the Commission turned its attention to the future and asked what practical steps it will have to take between now and February 17, 2009, to assure that, by that date, all full-power stations are operating in digital.

Under one proposal, every TV broadcaster would have to file a report with the Commission (to be posted on the Commission's website) providing a snap-shot of (a) where the station is in relation to the completion of the construction of its digital facility and (b) what steps still need to be taken. The proposed form (FCC Form 387) would be filed by December 1, 2007 (assuming that the order is adopted prior to that date) and would require the broadcaster to disclose what specific steps (*e.g.*, receipt of FAA clearance, delivery of new transmitter) are necessary before it can complete construction and licensing of its post-transition DTV facility.

At the same time, the Commission released a table with 752 stations believed to be ready to operate with their licensed post-transition DTV facilities at this point. The Commission has asked the licensees of the listed stations to advise the Commission if its understanding concerning their "ready" status is mistaken.

Next, the Commission addressed what to do with those broadcasters that are going to operate post-February 2009

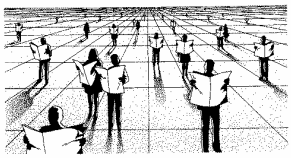
(Continued on page 15)

Stuff you may have read about before is back again . . .

Updates on the News

Tower inspection requirement waived for Eagle, HARK systems – The Commission has agreed to waive the rule that towers subject to lighting requirements be inspected at least every three months to confirm that their lighting systems are operating properly. The waiver, issued to two companies which own a boatload of towers, is based on the fact that all of the affected towers are rigged with automatic monitoring systems which provide adequate safeguards against undiscovered outages. As a result, instead of quarterly (*i.e.*, at least every three months) inspections, the two companies need only inspect their towers annually.

The monitoring systems in question were developed by Flash Technology (its Eagle Monitoring System) and Hark Tower Systems, Inc. Both systems include alarm notifications sent to alarm response centers, automatic 24-hour polling of all tower sites, and capability for manual contact and diagnostic review of any tower on the system. All of this is coordinated through primary and backup network operations call (NOC) centers. In granting the waivers, the FCC noted that it already has in the pipeline a rule making proposal to exempt from the quarterly inspection requirement monitoring systems using NOC-based technology. The waivers will be subject to whatever action the FCC ultimately takes on that proposal. In the meantime, the Commission has made clear that it will consider waiver requests from others using monitoring systems with characteristics similar to the Eagle and Hark systems.



Found in translation – In recent months the FCC has granted several AM licensees the authority to rebroadcast their programming on FM translators. It happened again this past month. There is, of course, a proposal pending to change the rules so that AM's could use FM translators as a matter of course, but that proposal appears to be bogged down somewhere in the bureaucracy – so in the meantime, the Commission has been considering, and granting, requests for such authority on a case-by-case basis.

Form front – If you think you may be filing for renewal of a CARS license anytime soon, heads up. The form (FCC Form 327) is now available on-line through the Commission's Cable Operations and Licensing System (COALS). You can get there at http://www.fcc.gov/coals.

And in other form news, the new childrens' TV programming report (FCC Form 398) has hit the stands on CDBS. Here's a time-saving tip when you get around to filling it out. Question 7(b) asks whether the licensee broadcasts the same programming on its digital stream as it does on its analog. If the answer to that question is "yes", it is ***not*** necessary to re-list all that programming in response to the questions concerning digital programming, since those programs have presumably already been identified in the response to the corresponding question on the analog side.

Home shopping inquiry lives on – More than 14 years ago the Commission undertook (at Congress's direction) an inquiry into the extent to which broadcast stations which air predominantly home shopping programming can be said to serve the public interest. The answer, set out in a 1993 Report and Order (in MM Docket No. 93-8), was a somewhat tentative and conditional endorsement of home shopping. A petition for reconsideration of that decision was filed in 1993, and has been sitting, forlorn and forgotten, in some file drawer or other at the Commission ever since. In May, however, the FCC announced that it wants to "update the record" before ruling on that petition, so it has invited comments and reply comments to be filed. Comments are due June 18; replies are due July 2. It's not clear why the FCC is asking for more comments now. Perhaps it's some kind of cicada-like phenomenon which manifests itself in scientifically-observable-but-otherwise-incomprehensible decade-spanning cycles. While the Commission has invited comments, it has not committed to resolving this proceeding any time soon.

FHH - On the Job, On the Go

Lee Petro has been elected Chairman of the FCBA Foundation for 2007-2008.

Vince Curtis and **Frank Jazzo** will join **Roy Stewart** (Senior Deputy Media Bureau Chief) on a panel at the New Mexico Broadcasters Convention in Albuquerque on June 8. They will discuss current FCC issues.

Howard Weiss will be appearing on political broadcasting panel at the Virginia Association of Broadcasters 70th Annual Summer Convention in Virginia Beach on June 14.

Bob Gurss will join in a panel on "Managing Public Safety Spectrum for Efficiency and Protecting the Public Interest" at the FCC's First Summit on Spectrum Policy and Management on June 1 in the FCC's Meeting Room in Washington.

And the *Media Darling of the Month* is **Frank Montero**, whose article on "Trends in Hispanic Radio" appeared in the May 21 issue of *Radio Ink.*

FM ALLOTMENTS ADOPTED –4/18/07-5/21/07

State	Community	Approximate Location	Channel	Docket or Ref. No.	Availability for Filing
WV	Wardensville	32 miles SW of Winchester, VA	239A	05-143	TBA

FM ALLOTMENTS PROPOSED –4/18/07-5/21/07

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
TX	Christine	50 miles S of San Antonio, TX	245C3	07-78	Cmnt:6/18/07 Reply: 7/3/07	Drop-in
CO	Dinosaur	207 miles E of Salt Lake City, UT	262C0	07-79	Cmnt:6/18/07 Reply: 7/3/07	Drop-in

Notice Concerning Listings of FM Allotments

Consistent with our past practice, Fletcher, Heald & Hildreth PLC provides these advisories on a periodic basis to alert clients both to FM channels for which applications may eventually be filed, and also to changes (both proposed and adopted) in the FM Table of Allotments which might present opportunities for further changes in other communities. Not included in this advisory are those windows, proposed allotments and proposed channel substitutions in which one of this firm's clients has expressed an interest, or for which the firm is otherwise unavailable for representation. If you are interested in applying for a channel, or if you wish us to keep track of applications filed for allocations in your area, please notify the FHH attorney with whom you normally work.

DTV Update

(Continued from page 13)

on a different digital channel from that which they were previously authorized (and required) to construct their facilities. This includes those stations that selected their analog channel for the post-transition DTV channel, and those whose assigned digital channels were changed through negotiated settlements and the like.

The Commission acknowledged that many broadcasters had not moved as swiftly to construct their pre-transition DTV facilities as might have been desired. And while the Commission does not want to reward such behavior, the Commission has nevertheless tentatively concluded that, with the deadline less than two years away, the public interest might be best served by permitting such broadcasters to cease working towards constructing their pre-transition DTV facility so that they can devote their efforts to the construction of their post-transition DTV facility. The Commission sought comment on what factors to consider in permitting the termination of pre-transition DTV and analog facilities, and whether it should permit the complete cessation of analog service, or merely permit the reduction of analog facilities.

Next, to expedite the transition, the Commission has proposed to permit licensees to commence operating on their post-transition channel prior to February 17, 2009, if it will not cause interference to the pre-transition operation of other stations. The Commission is seeking comment on how it would authorize such action, and whether it should rely upon the broadcasters to cooperate in this effort.

The Commission also expressed its intention to expedite the processing of applications to build out post-transition DTV facilities. The Commission proposes to require applications to be submitted within 45 days after the final rules are adopted and will require that the applications do not deviate substantially from the final DTV table. The Commission also proposed to extend the freeze on applications until all applications for post-DTV facilities are processed, but sought comment on whether it was possible for parties to maximize their post-transition facilities prior to that date.

Finally, the Commission has proposed to adopt a 0.5% interference standard for all maximization and new allotment requests in the post-transition world. Previously, the Commission had permitted a proposed modification or allotment to cause up to 2.0% interference, but now intends to tighten the interference protection rights.

Obviously, there are many subsidiary issues discussed in the NPRM, and we have hit only the highlights in our summary above. A broadcaster with its post-transition DTV station already constructed and licensed will not have the same concerns as an analog-singleton licensee. To that end, we strongly recommend that you review your transition plan, and let us know if you have any questions. The comment date has yet to be set, but the Commission has pledged to act quickly.

Fletcher, Heald & Hildreth, P.L.C.
11th Floor
1300 North 17th Street
Arlington, Virginia 22209

First Class

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The coalition's proposal, which is supported by 20 group owners and 10 consulting firms, has been submitted to the Commission in connection with its long-running inquiry in AM directional antennas (MM Docket No. 93-177). While not all AM applicants would be eligible to use the proposed modeling approach, it appears that that approach would still save considerable time and effort throughout the industry.

Comments on the coalition's proposal are due by July 23, 2007; reply comments are due by August 22, 2007.

Meanwhile, also on the directional AM front, the Commission has amended its rules to clarify the circumstances, and time frames, in which a directional AM station must act when it runs into problems with operation of its antenna system. Two rules – Sections 73.62 and 73.1350 – govern such situations, but they have historically provided conflicting directions. Now that has been straightened out. Under the new versions, Section 73.62 requires an AM licensee to identify and address directional antenna problems within ***27 hours*** when those problems result in operating parameters in excess of ± 15% sample current radio or ± 3º phase tolerances required by the rules, or when any monitoring point field strength exceeds 125% of the licensed limit, or when the operation at variance results in interference complaints. And Section 73.1350, which requires a scanty ***three-minute*** response time, will now kick in when the operation at variance poses a threat to life or property or is likely to significantly disrupt the operation of other stations. Variant operations not covered by Section 73.62 or the three-minute provision of 73.1350 must be addressed within three hours. Of course, if you run into any problem which might trigger any of these provisions, you should consider contacting your consulting engineer or the FHH attorney with whom you normally work to determine how best to deal with the situation.