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Moment Method Modeling Mystery

Rules in effect soon, but not the forms — What to do?

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In the May, 2007, *Memo to Clients* we called attention to the Commission's proposal to allow some, but not necessarily all, AM licensees to use moment method computer modeling for their directional AM proofs. Use of such modeling was touted as hugely advantageous to many AM licensees because it would relieve them of an exceedingly time-consuming and expensive burden. In late September the Commission adopted its proposal (as we reported on www.commlawblog.com). But just because the Commission approved moment method modeling did *not* mean that we could take advantage of it. The effective date of the new rules was not announced in September; rather, the FCC indicated that they would become effective once the Office of Management and Budget (OMB) had reviewed and approved the revised rules.

So it was something of a surprise when we happened to be thumbing through the Federal Register on October 30 and came across a notice, from the Commission, advising that the changes would become effective **December 1, 2008**, "except for the amendments to §§73.61, 73.68, 73.151, and 73.155." But, as it turns out, those sections are pretty much the only ones that were changed last September – which led to the next obvious question: what exactly goes into effect on December 1?

We asked around and it appears that, as a practical matter, very little goes into effect on December 1 . . . **BUT** there may be some method to the Commission's madness here.

At present, the smart money figures that OMB approval won't kick in until well into the first quarter of 2009. Meanwhile, though, it's possible that a significant number of AM licensees might be in a position to take advantage of moment modeling if they could. The staff's thinking appears to be that, if at least some aspects of the new rules are in effect, then affected licensees may feel it appropriate to prepare and submit applications based on moment modeling, even if the application forms have not technically been approved. While the staff won't be able to act on such applications until OMB has given its thumbs-up to the form, we understand that the staff *is* getting comfortable with the notion that it can grant program test authority based on the not-yet-OMB-blessed application forms.

So the drill goes like this. You prepare your 302-AM using moment modeling as outlined in the not-yet-effective rules and you file it now, asking for program test authority in the process. Don't ask for a waiver – just file the application and PTA request. We understand that the staff is willing to act on the PTA request and (presumably) grant such authority right away, which would enable the station-applicant to commence full operation of its modified facilities. While the license application would then hang around in pending status until OMB approves the forms (thus clearing the way for the Commission to act on the applications), that should not matter much to the station-applicant, since it would be operating merrily along with its PTA in the meantime.

If the staff takes this tack – and we have been led to believe that that's the plan – then they deserve a round of applause for coming up with a way to deliver benefits to the affected industry despite the strictures of a Rube Goldberg-like bureaucracy.