



**August 2008**

**Digging Into The Details**  
**Beyond the big picture,**  
**practical problems present themselves**

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When the Commission acts, most people tend to focus on the broad outlines and the prominent highlights of the action. But in most instances, changes in the Big Picture invariably entail changes in the details, the minutiae, and it is those fine points which, in the end, often demand attention. Herewith several examples:

***MX'd DTV Maximization Applications*** – When the Commission announced, back in May, that it was lifting the freeze on DTV facility maximization applications, it acknowledged that some applications might end up being mutually exclusive (MX) with one another. No worry – the Commission gave MX'd applicants 30 days in which to resolve their differences by agreement. If no agreement could be reached, the Commission warned, then the MX applications would all be dismissed and the applicants would have to re-file.

While that's all well and good, and certainly the prospect of getting dismissed and having to re-file might induce some folks to get more reasonable about settlement, the problem is that it's not clear that the Commission thought it through thoroughly enough. After all, if some mutually agreeable resolution between two MX applicants can't be reached, and if they get dismissed, won't they likely just re-file at the earliest possible time? And if they both re-file on the same date, won't they find themselves in a time warp, like Bill Murray in *Groundhog Day* – starting the settlement process all over again, presumably with the same likelihood of success?

Of course, if one applicant were to re-file one day before the other, the earlier filer would enjoy cut-off protection, and the later filer would be dismissed. That risk may encourage MX applicants to resolve their differences at the first opportunity. And re-filing will require an additional \$800 filing fee (plus any related engineering and legal fees), so it's certainly not free. Bottom line: the incentives to resolve the MX by settlement or engineering amendment at the first chance are not negligible. But the fact remains that, in some case, settlement or amendment may simply not be viable options. But the Commission does not appear to be ready to address such situations.

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***Eligible Entity CP Extensions*** – In the June *Memo to Clients* we reported on a change in the rules that allows certain purchasers of expiring construction permits to be granted extensions of up to 18 months for the build-out of the CP. (This change was adopted in connection with the Commission’s diversity initiatives.) But again, while the Commission’s action painted the Big Picture, it failed to fill in the details: as a result, the Commission staff appears to be scrambling to set up internal procedures for handling the extension requests which the Commission promised to consider.

The latest word from Commission staff relative to how to ask for the CP extension is somewhat Byzantine, dependent on a number of variable considerations. For example, if the CP assignment application has been granted, the request for CP extension must be made by letter (from the buyer), like a tolling request. If the assignment application hasn’t been granted yet, then the pending application must be amended to include the request. And assignment applications not yet filed should include the request within the assignment application. Of course, there is no blank in the application form that calls for such a showing, so you have to improvise somewhat to get it into the form. Oh yeah, it’s also not 100% clear exactly what the staff wants to see in the request, although presumably a simple statement setting out the basis for the applicant’s claim to eligibility would be among the components in any event.

Curiously, the staff has also advised that the extension request is not reviewed until after the assignment is granted. Far be it from us to question the Commission, but it appears that the post-grant review of the extension request would be irrelevant, since by then the application – which includes the extension request – would already have been, er, granted. But we digress

. . . We will continue to provide updates as we get more glimpses behind the wizard's curtain.

***“AM or FM?” is the question in changes of heart on community of license changes*** – Sometimes you just don’t want to move. So what do you do if you file for and obtain a construction permit to move your station to a new community of license, but then change your mind and decide you want to stay put? The answer, as it turns out, depends on whether the station is AM or FM. An AM station has no problem; it can simply notify the FCC of its intent to remain in City A and turn in the construction permit for new facilities in City B. Its city of license automatically remains City A.

The same is not true on the FM side, though, because a change in city of license for an FM station requires a revision to the table of allotments. Thus, when the CP to move to City B is granted, the table of allotments is revised to delete the allotment for City A. So if the FM guy decides that he really doesn’t want to go to City B, he can’t just turn the

City B CP in and stay put in City A. Rather, he must file a minor modification application of the construction permit to change the allotment back to city A.