



**November 2009**

## **Updates on the News**

**Form 323 Update** – If you’ve been reading our blog ([www.commlawblog.com](http://www.commlawblog.com)), you already know that there’s been plenty happening on the Form 323 front. Since it’s a fast-moving target, we figured we wouldn’t bother to prepare a stand-alone article for this month’s *Memo to Clients*, but rather hit a couple of the highlights here and refer our readers to the blog for continuing timely updates. So here’s the scoop. As of last month, the deadline for the new commercial broadcast Ownership Report (Form 323) was December 15, to which it had been moved from the original November 1 filing date announced, ever so arbitrarily, by the Commission last May. Of course, back then they didn’t have the revised form ready to roll, so picking a date, any date, was kind of a crapshoot, but what the heck. Of course, by early October the form *still* hadn’t been released by the Commission, so the date got moved to December 15. As we reported last month, in mid-October the Office of Management and Budget signed off on the FCC’s draft revisions, which theoretically teed up the form for immediate deployment. Initially, the Commission indicated that the form would be available for use on or about November 16, but then that got moved back to sometime the week of November 16, and then later still. As of this writing (November 30) it’s still a no-show. The webpage which the FCC has dedicated to Form 323 merely refers searchers to the OMB website, where a “draft Form 323, for reference purposes only” may be viewed.

Oh yeah, what with the additional delay in finalizing the new form, the Commission moved the filing deadline to January 11, 2010.

Meanwhile, we at Fletcher Heald filed a Motion for Stay with the Commission (just before the deadline got moved from December 15 to January 11), suggesting that, in view of the many serious, still unresolved, problems, it would be in everybody’s interest for the Commission to put deployment of the new form on hold indefinitely to give the Commission time to resolve those problems. So far, no word on that from the Commission.

Next, we filed a Petition for Reconsideration, laying out in considerable detail the major league flaws underlying the way in which the changes to the form were developed by the Commission. No word back from the Feds on that yet, either. (If you’re interested in reading either the Motion or the Petition, you can find links to them at [www.commlawblog.com](http://www.commlawblog.com) – search for “Form 323”.)

We have heard conflicting rumors about what might be going on inside the Commission with respect to Form 323. Word is that the new form was being beta-tested, and that some problems may have been encountered. We have also heard that there may be some sentiment among some folks at the FCC to re-think the issue of mandatory FRN disclosure for each and every individual who holds any kind of “attributable interest” in a licensee. (That disclosure requirement is probably the most sensitive aspect of *L’Affaire 323*, because in order to get the FRN which would have to be disclosed, all those individuals would have to cough up their social security numbers into the gaping maw of some FCC database.) Commissioner McDowell, for one, expressed surprise that any such requirement was even considered: according to one published report, he was “very troubled” that the Commission was asking for social security numbers, and he went so far as to say that, had he known that such a measure was being considered, he “would not have endorsed” it. McDowell’s surprise that social security number disclosure turned out to be an element in the new Form 323 underscores the troubling (and, we think, fatal) lack of adequate notice which characterized the development of Form 323 over the last six or seven months.

Bottom line for right now: January 11, 2010 is still the official deadline for the new form, but stay tuned for further developments. This continues to be a moving target.

***Keep your mind on your driving, keep your hands on the wheel*** – As we have reported in recent months, the FCC has adopted a very generous view of its jurisdiction. Childhood obesity, violence, parenting – they’re all areas in which the Commission (would that be the “Federal Whatever Commission”?) thinks it has something to say. And now we can add yet another entry to the FCC’s already burgeoning résumé: Safe Driving Advocate. In November it convened a workshop on “distracted driving”. The goal was to “explore technology innovations and applications that may eliminate or significantly reduce the problem of distracted driving.” Ideally the Department of Transportation (not to mention the 50 or so state transportation agencies) will not be miffed that the FCC is elbowing into their turf. We recommend that the Commission adopt Paul Evans’s classic tune “Seven Little Girls” as its theme here.

***Who remembers the DTV transition?*** – A year ago, you couldn’t go more than maybe 30 seconds without being assaulted with word of the DTV transition. Well, the transition came, it went, and society appears to have survived and moved on. According to the Denver Post, the last of the DTV converter coupons (Converter coupons? Talk about a trip down Memory Lane!) expired in mid-November, putting a merciful end to that much-hullabalooed aspect of the much-hallabalooed transition. According to the Post, of the 64.1 million coupons distributed by NTIA in connection with the transition, just over half were redeemed, leaving (by some rough estimates) more than \$500 million in the

government's coffers. But hey, why dwell on the past, when we now have All Things Broadband to deal with?