FLETCHER, HEALD & HILDRETH, P.L.C.

Memorandum to Clients

January, 2002 | *News and Analysis of Recent Events in the Field of Communications* | No. 01

Collocate - But Investigate

Factsheet Outlines Rules for Towers and Historic Sites

By Jennifer Wagner

Broadcasters who locate their antennas on new towers near historic sites may face greater scrutiny under terms of an agreement reached early last year and clarified in a long-awaited factsheet this month.

It was the proliferation of wireless towers that initially drew the ire of the National Conference of State Historic Preservation Officers (NCSHPO), which saw the recent rapid increase in towers as a threat to historic sites. With their consciousness raised, NCSHPO and the Advisory Council on Historic Preservation (ACHP) drafted the agreement with the FCC to protect historic sites from encroaching towers.

The March 16, 2001 agreement encourages collocation on existing towers, buildings and other structures, striving to protect historic properties while reducing the need for new towers. However, the agreement -- which was peppered with references to the wireless communications facilities that inspired it -- was ambiguous as to its applicability to broadcasters. The factsheet, released jointly by the FCC's Wireless Telecommunications Bureau and Mass Media Bureau, clarifies that broadcasters are indeed covered. In fact, broadcasters may face serious sanctions, such as fines, if they locate on a structure that does not adhere to the agreement.

The terms of the agreement are straightforward. Commission licensees and applicants must comply with National Historic Preservation Act (NHPA) procedures for facilities that may affect sites that are listed or eligible for listing in the National Register of Historic Places. If a broadcaster's antenna is located on a tower, building or other structure constructed on or before March 16, 2001, the broadcaster likely falls under the agreement's grandfathering clause and won't need new review under the NHPA, except under enumerated special circumstances.

But if a broadcaster is located on a tower, building or structure built ***after*** March 16, 2001, it ***must*** ensure that the tower has passed muster under the NHPA and has documentation to prove it. Collocation on a new tower will still require review if: (a) the NHPA analysis is not yet complete; (b) the FCC has determined that the collocation has a continuing adverse effect on a historic property; (c) a complaint against the collocation's impact on a historic property is before the FCC; or (d) the collocation will result in a

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Further Review of 2000 EEO Rules Denied
(but rules proposed in 2001 still under consideration)

On January 22, 2002, the Supreme Court declined to consider an appeal of a decision by the federal appeals court in Washington holding that the FCC's former equal employment opportunity rules were unlawful. The Supreme Court's decision is the end of the line for the Commission's old EEO rules, which had been adopted in 2000.

BUT, as reported in last month's edition of the Memorandum to Clients, the Commission has initiated a rule making proceeding to consider yet a new set of proposed EEO rules. Comments on those newly proposed rules are due on March 15, 2002, and reply comments are due on April 15, 2002.

The Scoop Inside

E pluribus . . . pluribus

Commission Reorganizes Itself Again

Mass Media Bureau is folded into new "Media Bureau"

The Commission adopted a new bureaucratic look in January, shuffling and merging offices and responsibilities in an effort to become "more effective, efficient and responsive." The resulting reorganization, which is subject to Congressional notification, is particularly noteworthy because it eliminates the Mass Media Bureau. The functions of the Mass Media Bureau are being rolled into the new "Media Bureau", which will regulate cable television, multichannel video program distribution and direct broadcast satellite as well as broadcasting.

According to the Commission, the organizational overhaul – which affects all offices within the FCC – was guided by the following principles or goals: to develop a standardized organizational structure across the bureaus; to move toward a functional alignment; to reflect changes in regulation and workload; to recognize that dynamic industry change will continue; and to use the reorganization to improve the technical and economic analysis in decisionmaking.

The recent changes echo similar changes made two decades ago, when the former Broadcast Bureau was put out to pasture, to be replaced by the Mass Media Bureau which encompassed broadcasting and cable regulation. But then cable regulation was split back off into its own bureau about ten years later.

So we appear to be witnessing governmental verification of the Gallic expression "plus ça change, plus c'est la même chose" . . . or, as Peter Townshend presciently observed, "Meet the new boss, same as the old boss."

From a practical perspective, it is unlikely that the reorganization will have any immediately noticeable effect on the day-to-day lives of broadcasters. Perhaps the biggest change will be the fact that, for the first time in 12 years, Roy Stewart will not be the Bureau Chief in charge of broadcast regulation. He is moving over to be the Chief of the new Office of Broadcast License Policy within the Media Bureau. Roy enjoyed the longest tenure of any Broadcast Bureau or Mass Media Bureau chief in the history of the Commission. He oversaw dramatic changes in broadcast regulation, and he worked long and hard to assist broadcasters in their interactions with the government. The broadcast industry owes Roy an enormous debt of gratitude for years of dedication to their cause.

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substantial increase in the size of the tower.

Broadcasters who locate on new towers which were built after March 16, 2001 but which have not undergone historic review may face sanctions. To avoid such a fate, broadcasters should check with the relevant State Historic Preservation Officer ***before*** putting their antennas up on the "new" tower. Also, broadcasters leasing space on "new" (*i.e.*, post-March 16, 2001) towers might also consider insisting on a clear provision in their lease agreement requiring the tower owner to maintain, and demonstrate, its compliance with NHPA.

Independent reviews by the FCC, ACHP and NCSHPO of the impact of collocations on historic sites have been infamously cumbersome, often resulting in long construction delays. The NCSHPO/ACHP/FCC agreement is intended to streamline that process between federal agencies. The factsheet, in turn, is intended to provide guidance to broadcasters on how to satisfy NHPS requirements and speed review of requests to collocate on new towers. Additionally, the ACHP has organized a telecom working group to streamline historic preservation siting requirements and create a model that individual states may use to speed their own reviews of the impact of communications antenna and related infrastructure on historic sites.

If you would like further information on collocation and historic sites, please contact the FHH attorney with whom you normally work.

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Focus on FCC Fines

by R.J. Quianzon

FCC: On Second Thought, Pinching Nurses and Viagra May Not Be Indecent.

In two recent orders issued in tandem, the FCC further muddied the definition of indecent broadcasting. Less than a year after it issued its Indecency Policy Handbook (See "How to be Indecent" in the April edition of this Newsletter, 01-No. 04, p.2), the FCC continues to create further confusion about what it considers to be an "indecent" broadcast and what the consequences of broadcasting "indecency" can be.

In the first of the two recent cases, the FCC's Enforcement Bureau changed its mind and decided that what it had, less than a year ago, called "unmistakable offensive sexual references" were actually permissible broadcasts that did not violate federal law or FCC Rules. In June, this column reported that the Enforcement Bureau fined a station $ 7,000 for broadcasting a radio edit version of a song by controversial music artist Eminem. The song, "The Real Slim Shady," had been significantly edited by a radio station with bleep tones before it was aired. Certain unedited phrases referred to the singer pinching nurses in a nursing home and his disappointment with the effects of the prescription pharmaceutical Viagra.

As noted above, just seven months ago the Enforcement Bureau found the unedited portions of the song to contain references that were "unmistakable offensive sexual references." However, seven months later the same bureaucrats have now decided that the references were not really "unmistakable" and "offensive"; now, it seems, those references were actually just "oblique." In the intervening months, nothing had changed other than the Enforcement Bureau's mind. The Bureau's latest actions fail to provide any reassurance to broadcasters about the arbitrary nature of the government's regulation of speech.

To further complicate the matters surrounding this decision, Commissioner Copps, a self-described minority of one, issued a separate press release. Commissioner Copps is currently the only Democrat on the Commission. The Commissioner stated that "issues of indecency on the people's airwaves . . . compel Commissioner-level action." In a speech to clergymen the day following his press release, Commissioner Copps continued to complain about sexually explicit and profane programming. While warning that the FCC will rigorously investigate listener complaints, the Commissioner claimed that it would be good management and good citizenship for all broadcasters to record and retain recordings of their broadcasts. Presumably these recordings could later be used by the FCC as evidence against the broadcasters who voluntarily make them.

The lack of a recording by a broadcast station was cited as a reason to ignore FCC fines by the Enforcement Bureau in the second confusing indecency order. In the second order, which was released on the same day as the reversal order discussed above, the FCC issued a $14,000 fine to an FM licensee and then advised that if the fine was ***not*** paid the FCC would not use the fine or findings against the licensee.

The latter case involved a listener who complained to the FCC about a morning talk show and provided a description of what the listener remembered hearing. The radio station did not challenge the listener's recollection but instead pointed out that there was no evidence (tape or transcript) of what was actually broadcast. The only information before the FCC was a listener's recollection and description of what was broadcast. The FCC found the listener's description sufficient and fined the station $14,000.

The more puzzling part of the FCC's decision is the extra effort which the FCC took to advise the station that if it did not pay the fine, it might suffer no real harm. According to the Commission, absent voluntary payment of the fine by the licensee, the decision could not be used against the licensee unless "a court of competent jurisdiction" were to issue an order "after a trial de novo requiring payment of the forfeiture." In other words, the licensee can insist that the FCC (through the Department of Justice) sue the licensee in court for the forfeiture payment. In the course of such a proceeding, the FCC would have to prove the violation. The fine would have to be paid only if the court so required. And if there were no such decision, then the FCC's decision could not be used "to the prejudice of the licensee".

As a practical matter, the likelihood of the Department of Justice initiating a suit to collect a $7,000 fine for the FCC seems fairly remote, particularly with the wide range of other, far more important, items on the DOJ's plate just now. So there is a reasonable possibility that, despite the FCC's decision, the licensee here might end up not paying anything and not suffering any adverse consequences as a result. In-

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The Engineers' Corner

DTV: Reduce Expense While Preserving "Maximization"

By: Joseph M. Davis, P.E.

In its November 15, 2001 Reconsideration Order on Digital Television, the FCC adopted a significant policy that will allow DTV stations to start small and "grow" into their allotment or Construction Permit. [*Editor's note: while we provided a description of this development in the last issue, the following provides a far more detailed, engineering-oriented analysis which may be useful for those of you working on DTV construction plans.*]

Many DTV Construction Permits have been granted for "maximized" facilities for the purpose of expanding the DTV service area beyond that originally allotted by the FCC. Typically, such expansion was accomplished with an increase in effective radiated power above the allotted value (up to 1000 kW for UHF DTV assignments, for instance).

The creation of a "Class A" television service for eligible LPTV stations led to a "filing frenzy" in early 2000 as DTV stations sought to expand their service areas without having to protect eligible LPTV stations. Also, the DTV Table of Allotments contains many 1000 kW assignments, which are generally necessary to replicate a "paired" VHF NTSC facility.

But construction and operation of a 1000 kW DTV facility has proven to be very expensive. Many stations authorized for high UHF DTV power levels faced a May 1, 2002 deadline (May 1, 2003 for non-commercial stations) for constructing these large facilities. The alternative was a risk of being "downgraded".

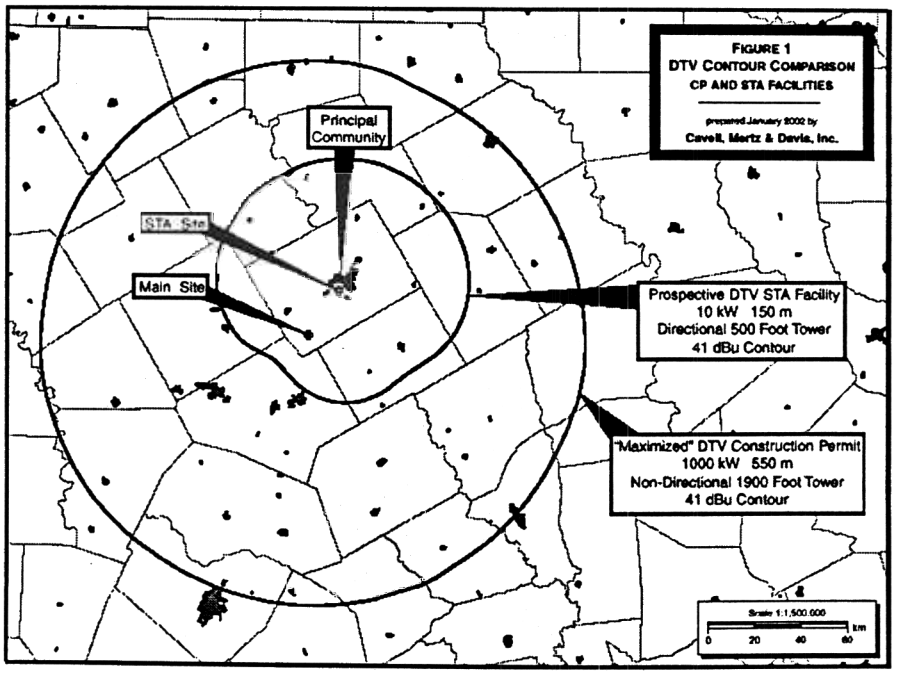
Fortunately, the FCC's November Reconsideration Order will permit DTV stations to meet the May 1, 2002 (or 2003) on-air deadline without having to construct their expensive "maximized" facility. The Order permits a DTV station to commence operation with a smaller facility without risk of losing its right to later construct its larger Construction Permit or allotted facility. The FCC will authorize such initial facilities under a Special Temporary Authorization ("STA").

The STA facility must comply with two basic technical requirements. Namely, the FCC's principal community coverage requirements must be met, and the STA facility cannot extend the DTV service contour beyond what the allotted or Construction Permit facility would provide.

A modest STA facility will allow stations to comply with the FCC's May 1, 2002 (or 2003) on-air deadline without building a "full power" facility right away, while retaining the opportunity to increase power later. In fact, only a comparatively small amount of power is necessary to provide principal community coverage in most cases.

As an example, **Figure 1** shows the DTV service contour for a hypothetical 1000 kW DTV station Construction Permit. This facility would operate non-directionally from a top-mount position on a 1900-foot tower, and would be very costly to construct and operate.

The service contour for a prospective STA facility is also shown in **Figure 1.** In this case, the STA facility would operate with 10 kW effective radiated power from an antenna 500 feet high. While this facility does not provide wide area service to rural areas as authorized in the "maximized" Construction Permit, it does easily provide the required principal community service. Even lower powers and heights are possible, which should make an initial DTV facility much more affordable. A larger facility could be built (or power increased) as marketplace conditions change (*e.g.*, as more digital sets are sold or more digital programming becomes available). The STA facility may then serve as an independent backup to the full-power "main" operation. It is important to understand that the STA facility does ***not*** need to be located at the paired NTSC facility's transmitter site or at the site specified in the DTV Construction Permit or allotment. In the example depicted in **Figure 1**, the STA facility is located at a tower site closer to the principal community (although in this example the same nominal DTV facility could provide required principal community coverage from the



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The Engineers' Corner

FM Upgrades: A Challenging Process

By: Jefferson G. Brock

The simple days of improving facilities and/or changing the community of license of FM stations are, in most cases, over. Some FM upgrades can be accomplished through the one-step minor modification application process, which also allows three other stations to propose adjacent channel changes in contingent applications. But, as many FM licensees have probably learned, a petition for rule making – and all that that entails – is most often the only means of changing the community of license or making non-adjacent channel changes.

The Allocations Branch recently announced a new policy that will likely prevent the original petitioner from filing a more desirable counterproposal to its own proposal. The FCC felt that this would minimize the potential for inefficient and time-consuming counterproposals and the danger of superseding notice to other parties. The FCC stated that, in cases where the petitioner files a counterproposal, the counterproposal may be subject to a new Notice of Proposed Rule Making, thus negating the advantages of the counterproposal approach. (*Editor's note: This new policy was described in last month's edition.*) However, there may be options available that would not trigger this unfortunate outcome.

In particular, licensees interested in modifying their facilities in ways which require a rule making proceeding should keep an eye on new allotment proceedings initiated by others. There have been numerous petitions filed over the last several months for seemingly insignificant, remote communities. Many of these proposals may seem a bit odd, especially since they often strain to establish (as required by the FCC's allotment policies) that the community warrants an allotment when the community often turns out to be unincorporated, with the proposed channel likely serving 1,500 or fewer persons. But these may provide optional entry points for counterproposals that would not trigger the new Commission policy. While there may not be an opportunity to allow every potential upgrade and/or change in community to be submitted as a counterproposal, it is at least a possible option. Carefully reviewing pending petitions as they are filed may bring such opportunities to light. However, keep in mind that you may not be the only party thinking along these lines, so be prepared for mutually exclusive proposals.

> *"There are opportunities for new and expanded service, if the right proposal for the right channel in the right community pops up, and if the chain of channel facility and community changes can be worked out."*

Thus, there are opportunities for new and expanded service, if the right proposal for the right channel in the right community pops up, and if the chain of channel facility and community changes can be worked out. Some require only two other allocation changes, whereas some may require more than ten. Further, with the ever-changing face of the FM spectrum, including moves, upgrades, downgrades, changes in community of license and the new Class C0 FM facilities, there are and will be additional opportunities out there in the not too distant future.

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deed, by paying the fine, the station would admit its guilt, but by ignoring the fine, the station would admit nothing and the agency's decision would be inadmissible in other FCC proceedings (including any proceedings arising in connection with license renewal).

Obviously, whether or not to pay a fine is a decision which must be made on a case-by-case basis. Even though the possibility of not paying may be attractive, there may be other sound business reasons for paying the fine and moving forward without having to worry about further possible fine-related proceedings. Still, it is important to be aware of the availability of the "I'm not paying – so sue me" approach if you are faced with an FCC forfeiture order.

Of course, broadcasters should always exercise reasonable judgment in deciding what they air on their stations. The broadcast of indecent and obscene material is unlawful, although, as the recent cases demonstrate, determining what is unlawfully "indecent" is not an easy task. Clients can expect the long-running attempt to define indecent material to continue for quite some time when even the bureaucrats continue to change their minds. If you have questions about the fluid FCC indecency standard please contact the FHH attorney with whom you regularly work or the author at (703) 812-0424 or Quianzon@fhhlaw.com. If you receive a notice that you owe a fine, please contact us even faster.

Ask Mr. Contracts Guy

FOCUS ON BROADCAST DEALS: CONSENTS AND ASSUMPTIONS OF LIABILITY

By: Howard M. Weiss

It may seem a pedestrian issue, but making sure that both buyer and seller are happy with the resolution of post-closing or post-LMA allocation of contractual rights and responsibilities is vitally important. Addressing the issue properly requires written or oral contacts and laborious, pain-staking paperwork to ensure that leases, programming contracts, licensing agreements, and other related arrangements are either terminated or passed on to the buyer, as it elects. The process and issues also differ when the deal is a stock purchase because the buyer of stock generally assumes all corporate obligations, while the buyer of assets does not unless the agreement so provides. (This, of course, makes stock deals more dangerous for the buyer.)

The first step is to provide emphatically in the asset or stock purchase agreement that only contracts and liabilities explicitly referenced are assumed. Typically, this is done with boilerplate language and a schedule or schedules listing the items with identifying information. It is important that the schedule be complete and comprehensive. Buyer and seller should review all contracts (with the help of counsel) to determine whether they are assignable and under what terms, as well as the schedule, before it is finalized to ensure that they are satisfied. In most states, a contract is assignable ***unless*** the agreement restricts assignability.

The next step is to contact vendors, landlords, programmers and other third parties from whom consent is needed or to whom notice of assignment or termination must be provided. Ideally, this should be done promptly although it is difficult to finalize consents before you have a closing date. On the other hand waiting until the week before closing is risky for obvious reasons. The process of securing consents is often cumbersome, depending on whether the third party is represented by counsel or a broker, is an individual or a large company, has been paid timely in the past or not, etc. Generally, the response is a simple unexceptional form to be executed by seller and buyer, but occasionally a payment will be requested in return for cooperation. More often, the boilerplate language in the form will require seller to remain liable on the obligation, an onerous demand that is usually unacceptable to a seller unless it is remaining in the market after the sale. The third party often retreats from this position, but may request a guarantee from the buyer's parent (if it is a licensee corporation) or credit information from the buyer. If the buyer is Clear Channel or Cumulus, the issue is usually simply addressed by a call from their counsel or a referral to their website. If, on the other hand, the party from whom consent is sought is a small outfit unknown to the vendor, the issue may be more difficult to resolve. However, it is unlikely that any prudent seller would agree to remain liable in this context.

Once the closing date is set, consent must be obtained ***in writing*** from the third party. In those instances, not uncommon, where there is no written lease or agreement, the oral arrangement should be reduced to writing before closing. Often, consents are not obtained by closing due to delays beyond the parties' control. If the buyer is willing to disburse funds in reliance on the consents coming through, or to escrow funds to the Seller's satisfaction, closing can proceed. If not, the conveyance process comes to a grinding halt. It is prudent (certainly from the buyer's perspective) to enter into a written letter agreement or amendment to the purchase agreement if closing is to proceed before receipt of consents, in variance from the terms of the purchase agreement.

When all consents of terminations are received, they should be organized into a binder or file and retained for several years, so that, if questions arise later, the party affected can document its position.

As with other aspects of the contract process, attention to detail and tying matters down in written, executed documents is imperative. Failure to do so can lead to unpleasant consequences for seller when buyer later reneges on a lease or contract, or for buyer when it discovers that seller never terminated an obligation buyer did not wish to assume.

If you need assistance with these issues, contact the author at (703) 812-0471 or weiss@fhhlaw.com or the FHH attorney with whom you normally work.

FHH - On The Road Again

Kathleen Victory, in her role as General Counsel, attended the AFCEA West Conference in San Diego, January 13-15. She also took part in the Executive Committee and the Board of Directors meetings. . . ***Vince Curtis*** and ***Frank Jazzo*** conducted a seminar on Political Broadcasting for the Mississippi Association of Broadcasters on January 17 at the Jackson Hilton in Jackson, Mississippi. . .***Frank Jazzo*** and ***Howard Weiss*** will be attending MSTV's 15th Annual DTV Update at the Ronald Reagan Building/International Trade Center in Washington, D.C., on February 13, 2002.

Commission Says Birders' Objections To Towers Won't Fly

Doubtless raising the hackles of birders near and far, the FCC has dismissed Objections/Petitions to Deny, jointly filed by two environmentally-friendly organizations which challenged 29 applications for antenna structure registration. The Commission held that the two organizations – the Friends of the Earth ("Friends") and the Forest Conservation Council ("Forest") – lacked standing to object.

The two organizations objected to each and every antenna structure registration application appearing in FCC public notices over the seven-week period from February 23, 2001 to April 6, 2001. They claimed that the "Environmental Assessments" included in all the applications lacked sufficient documentation for the Commission to make a "finding of no significant impact" as required by the National Environmental Protection Act ("NEPA"). The objectors also claimed that the Commission's rules do not adequately implement the requirements of NEPA, do not consider the Migratory Bird Treaty Act, and are inadequate to comply with the Endangered Species Act.

The Commission ducked those arguments, though, and the objections didn't get off the ground.

The objectors' goose was cooked when the Commission concluded that they had not alleged sufficient facts to demonstrate that grant of the applications would affect their interests or cause any specific injury to either organization. (In fact, with few exceptions, the allegations in each of the 29 objections were virtually identical. They merely cited boilerplate language regarding migratory birds without even showing how any of the proposed structures would cause injury to the organizations, their members, or the birds.)

In rejecting the objectors' claims, the Commission observed that their main complaint was not so much with the individual applications as with the Commission's antenna registration rules. The FCC properly noted that such complaints are more appropriately raised in a rule making proceeding, rather than in petitions directed against individual applications.

It would be nice to think that the objectors were simply acting on a lark, and that the rejection of their complaints marks the end of the line. But defeat is difficult to swallow. Speaking to Communications Daily, a spokesperson for Friends and Forest, whose feathers were obviously ruffled, groused that the Commission's decision was "an absurd cop-out". Apparently believing that they were rooked, he crowed that "It is our intent to take this to the next level at the FCC. . . We doubt [the order] would hold up in the courts." At least he is not likely to say that the FCC is for the birds.

If you have any questions regarding the antenna structure registration process – whether they involve birds or not – you should contact the FHH attorney with whom you normally work or Liliana E. Ward at 703-812-0432 or ward@fhhlaw.com.

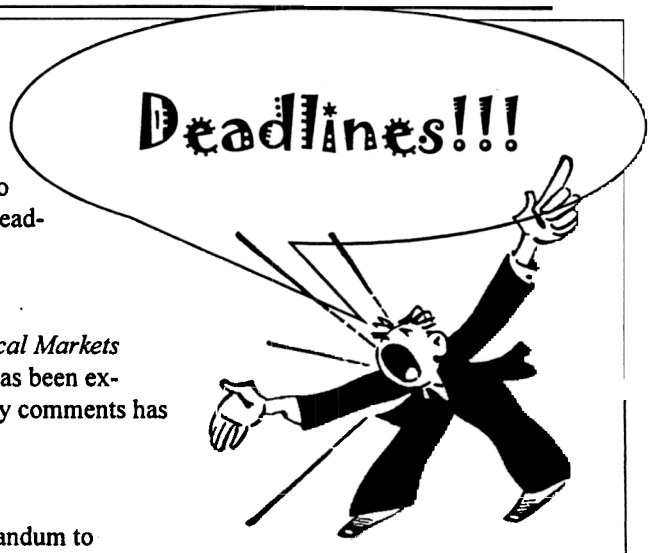
Website Privacy Policies: You May Need One More Than You Think

By: Alison J. Shapiro

Protecting the privacy of your listeners is an important part of maintaining a Website – not only because it is the right thing to do for your listeners, but because your insurance coverage may ***require*** it. In one instance, a broadcaster lost insurance coverage for its Website because it did not have a privacy policy covering, and posted on, its Website. Once that omission was brought to the broadcaster's attention (and particularly once the consequences of that omission were also mentioned), an appropriate policy statement was drafted and placed it on the station's Website, and within twenty-four hours the insurance company resumed coverage of the Website. It is clearly important to recognize that your insurance coverage may require attention to such details.

Generally, it is imperative that your Website have a posted privacy policy which states exactly what the station will do with personal information supplied by visitors to the Website. By placing such a privacy policy statement on your Website, you not only protect your insurance coverage, but you show your listeners that you care about their privacy.

If you would like help in developing a privacy statement to be posted online, please contact the FHH attorney with whom you normally work or Alison Shapiro at 703-812-0478 or at shapiro@fhh-telcomlaw.com.



January 31-March 1, 2002
DTV Extensions of Time - Any commercial television station requiring an extension of time beyond May 1, 2002, for completion of construction of its DTV facilities must file an extension request on FCC Form 337, which will detail the station's good faith efforts to meet the deadline and the reasons why it will be impossible for the deadline to be met.

March 13, 2002
Comments in Multiple Ownership of Radio Broadcast Stations in Local Markets (MM Docket No. 01-317) - The comment period in this proceeding has been extended from February 11 to **March 13, 2002.** (The deadline for reply comments has also been extended to April 10, 2002.)

March 15, 2002
EEO Comments – As reported in last month's edition of the Memorandum to Clients, the Commission has issued a Notice of Proposed Rule Making with respect to a newly proposed EEO program. Comments on the proposal are due by **March 15, 2002.** (Reply comments are due by April 15, 2002.)

The Engineers' Corner

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main site).

In point of fact, it might be practical to operate a minimal DTV STA facility from the station's studio location, as these are often located within the principal community and commonly have a companion small tower structure (used for microwave links, weather radar, etc.) immediately adjacent to the studio.

Submission of an interference analysis is not required with a request for a DTV STA, and at this time FCC Staff will not perform any such interference evaluation. However, if a transmitter site other than the allotted or Construction Permit site is to be used (such as in the example here), it is possible that the STA facility will cause interference that would not have occurred from an authorized site.

Such interference is particularly possible if there are other stations that are first-adjacent to the DTV facility serving the same area (which might even be the "paired" NTSC station). Certain other non-adjacent "taboo" relationships apply to UHF channels. So implementation of a first-adjacent station should be carefully planned. FCC Staff indicates that STA's can be revoked "at will" if there are unresolved interference complaints.

DTV STA facilities must also comply with other applicable Commission Rules, including those regarding RF exposure and Antenna Structure Registration. Your consulting engineer should thoroughly review your plans to implement a DTV STA facility to ensure compliance and avoid an interference problem.

The FCC will require DTV STA facilities to comply with the "enhanced" principal community coverage requirement by December 31, 2004 (December 31, 2005 for non-commercial stations). Still, a well-planned modest facility should easily provide this level of service in most cases. The deadline to construct a "maximized" facility (or the full allotment) will be addressed in the FCC's next "periodic review" of DTV.

For those stations that do opt to construct their "maximized" DTV facility now, there is often an opportunity to operate it at reduced power under an STA (which could save considerable operating expense for a UHF station). However, recent actions suggest that there may be difficulty in gaining FCC approval for such a reduced operation if the DTV has been on the air for some time. This is principally because, in the FCC's view, such a proposal might represent a "reduction" in service to the public. You should therefore consult with legal and engineering counsel before pursuing this approach.

(Joe Davis is a principal with Cavell, Mertz & Davis, Inc. Consulting Engineers, and may be reached at 703-591-0110 or jdavis@cmdconsulting.com