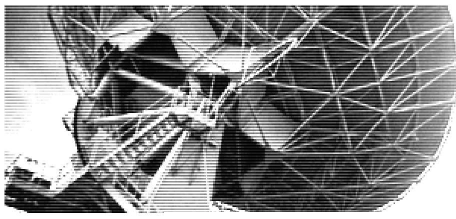


FLETCHER, HEALD & HILDRETH

Communications Law & Regulation

MEMORANDUM TO CLIENTS

News and Analysis of Recent Events in the Field of Communications

FCC falls for fill-in filings

In the DTV Christmas Stocking: Replacement Translators!!

By Peter Tannenwald
tannenwald@fhhlaw.com
703-812-0404

Having canceled its December 18 open meeting and substituted a quick conference call on December 30 to meet the statutory monthly meeting requirement, the FCC now seems to relish putting out significant items just in time to keep everyone working over Christmas. A very recent example: the December 23 (that's right, Christmas Eve Eve) release of a Notice of Proposed Rulemaking (NPRM) proposing to open a special opportunity for full power television stations to apply for what will be known as digital "Replacement" translators to fill in gaps in the coverage of their primary signal. These applications will be accepted even though applications for new translators generally may not be filed absent a general translator application window, which the FCC evidently does not intend to open until any rush of Replacement translator applications dies down.

The new service will serve as the spackle patching over holes in signal coverage.

Because the new "Replacement" service will serve as the spackle patching over holes in signal coverage resulting from the fast-approaching DTV transition, the Commission has put the NPRM on a super-fast track. Comments will be due a mere 10 days after the proposals are published in the *Federal Register*. And even before the clock for comments starts running, applications will be accepted: the FCC authorized the Media Bureau to start accepting applications as early as Christmas Eve, just as Santa Claus began cranking up his reindeer and sleigh. And while the applications may not be granted until the rulemaking is completed, the staff will be able to grant special temporary authority (STA) in the meantime.

If you want to file an application, do it quickly, because applications will be processed on a first-come, first-served basis, with the earliest filed application getting priority. If more than one mutually exclusive application is filed on the same day, the FCC will allow a 10-day settlement period. If there is no settlement, the applications will go to auction (and who knows when that'll happen?)

Replacement translators may be requested only by the licensee of a full power station and only to fill in an area covered by the station's analog signal but not covered by its digital signal (although the FCC asks whether *de minimis* extensions of the analog service area should be permitted – and if so, how "*de minimis*" should be defined). The translator license will be firmly riveted to the full power license, so it cannot be sold or assigned apart from the full power station. Presumably a Replacement translator may not convert to a Low Power TV Station or originate separate programming, although the FCC does not explicitly say that in the NPRM.

Applicants must first search for a channel in the range 2-51. If no channel is available, an application may be filed for Channels 52-59, with notice to be given to local public safety entities that will ultimately have access to those channels. Stations are encouraged to consider installing multiple transmitters on their full power channel, under

(Continued on page 9)

December, 2008 **No. 08-12**

Inside this issue . . .

When is an Omni Not an Omni? 2
Focus on FCC Fines 3
ION the Prize 4
.Tel Me More, .Tel Me More 5
30-Day Emergency Post-Transition "Analog Nightlight" Service Coming Soon 6
Revised Endorsement/Testimonial Guides Out for Comment at FTC 7
Postcard from the Sausage Factory 8
Michelle McClure Named Member 11
Allotments 11
Updates on the News.................................. 12
Deadlines.. 13

When is an Omni Not an Omni?

By Harry F. Cole
cole@fhhlaw.com
703-812-0483

The Ghost of Public Notices Past dropped by the FCC recently, rattling its creaky 24-year-old regulatory chains. While the Audio Division staff had little difficulty shooing the problem away, this kind of ghost is hard to exorcise entirely. Broadcasters (and particularly FM stations) with plans to change their antennas in the near term may wish to take note.

The public notice in question is a four-paragraph item, released in September, 1984, entitled "Criteria for Licensing of FM Broadcast Antenna Systems". According to the notice, the Commission assumes that omnidirectional FM antennas have "perfectly circular horizontal radiation patterns". The notice then warns ominously that the "use of any technique or means (including side mounting) which intentionally distorts the radiation pattern of what is nominally a non-directional antenna makes that antenna directional and it must be licensed as such." Of course, the licensing process tends to be considerably more complicated and expensive for a directional than for an omni, so it would normally be an unpleasant surprise if you planned on installing an omni only to find that the FCC will be treating it as a directional.

As far as we can tell, the 1984 notice has been cited by the FCC only twice in the last 24 years, and not at all since 1992. The Commission does not appear ever to have even suggested, much less formally held, that the public notice could or should be invoked with respect to your average, garden-variety omni installation, whether that antenna be top-mounted or side-mounted. Despite the fact that hundreds – or, more likely, thousands – of omni antennas have been proposed, installed and licensed since 1984, none of them has been declared a de facto directional under the public notice.

But that didn't stop a petitioner who recently tried to block a proposed station modification by claiming (among other things) that the omnidirectional antenna proposed should be treated as a directional.

The petitioner was relying largely on claims by the antenna manufacturer that suggested that its specially-designed-and-mounted "lambda" design would effectively "directionalize" the station's pattern. The manufacturer in this case was ERI, a highly-experienced, highly-respected company. According to its website, the performance of most omni antennas is determined by "free space evaluation", meaning that the evaluation is made as though the antenna were magically suspended in space, far away from any nearby structure (like, say, a supporting tower) that might otherwise distort the antenna's pattern. But since, as a matter of physics, close proximity to a large metal object (like, say, a supporting tower) will invariably alter the antenna's performance in various ways, the theoretical omni pattern will be subject to distortion as soon as it gets mounted in the real world. Accordingly, ERI devised the "lambda" system to take into account the distortive effects of the tower and mounting hardware (and other factors) and produce a more accurately predictable signal.

So yes, the "lambda" system "intentionally" affects an omni signal in some sense, but only for the purpose of counteracting the unintended distortion which naturally occurs when you bolt the antenna onto a tower. If the goal is to correct unintended-but-unavoidable natural distortion, can that really be said to be "intentional distortion"? That seems quite a stretch.

The Commission's staff accepted the applicant's (and ERI's) explanation, which ideally will send the 1984 public notice back into the dusty books for good. After all, the mere mounting of an omni on a piece of hardware ***will*** cause some distortion –

(Continued on page 13)

FLETCHER, HEALD & HILDRETH P.L.C.

1300 N. 17th Street - 11th Floor
Arlington, Virginia 22209
Tel: (703) 812-0400
Fax: (703) 812-0486
E-Mail: Office@fhhlaw.com
Web Site: fhhlaw.com
Blog site: www.commlawblog.com

Supervisory Member
Vincent J. Curtis, Jr.

Co-Editors
Howard M. Weiss
Harry F. Cole

Contributing Writers
Anne Goodwin Crump,
Kevin M. Goldberg, Patrick Murck,
Lee G. Petro, R.J. Quianzon, and
Peter Tannenwald

Memorandum to Clients is published on a regular basis by Fletcher, Heald & Hildreth, P.L.C. This publication contains general legal information which is not intended to be deemed legal advice or solicitation of clients. Readers should not act upon information presented herein without professional legal counseling addressing the facts and circumstances specific to them.

Distribution of this publication does not create or extend an attorney-client relationship.

Copyright © 2008 Fletcher, Heald & Hildreth, P.L.C.
All rights reserved
Copying is permitted for internal distribution.

Fox fined for failure to file – In 2006, Fox Television planned a corporate recapitalization that shifted control of the company (and 37 television stations) from Rupert Murdoch to Fox Entertainment Group. Since a technical transfer of control was involved, Fox filed appropriate applications with the Commission. There were no objections from the public, and the FCC routinely approved the transaction. In due course, the corporate reorganization was completed by the end of the year.

Focus on FCC Fines

By R.J. Quianzon
quianzon@fhhlaw.com
703-812-0424

Several months into 2007, the folks at Fox realized that they had not included all of their licenses in the transaction – in particular, Fox had forgotten to tell the FCC about 35 pesky satellite earth station licenses (those would be the big honkin' dishes usually sitting in the parking lots of Fox's stations). Fox dutifully alerted the Commission to this lacuna in August, 2007, and asked the Commission to grant the satellite transfers of control *nunc pro tunc* (*i.e.*, as if the applications had been filed back in 2006). Although the FCC did approve the satellite transaction, it fined Fox for consummating the transfer of control of the satellite licenses without prior FCC approval.

Television stations frequently have more than one license from the FCC. To be sure, a broadcast license is usually the most valuable among a station's FCC licenses. But there are often other licenses for walkie talkies, studio-transmitter links, translators, remote pick-up units and satellite links. While some of those are effectively integral to the primary license – meaning that no separate authority to transfer them is required – others are deemed by the FCC to be separate and distinct authorizations as to which proposed transfers must be separately blessed by the FCC. In this case, the failure of Fox to ask the FCC for permission to transfer control of its 35 earth stations – and, more importantly, to get that permission *before* completing the deal – netted Mr. Murdoch a fine of $500 per station. Fox has 30 days to plead its case to the FCC or simply pony up the $17,500.

All broadcasters should bear in mind that any transaction which requires FCC authority to change control of a broadcast license may implicate less prominent licenses. For those broadcasters who have been a party to an assignment of license or transfer of control, you may recall having read in the fine print of the FCC consent that the official approval includes *auxiliary* licenses associated with a broadcast license. However, one must know what the FCC means by *auxiliary* licenses. As Fox found out, the auxiliary licenses do ***not*** include satellite earth station licenses.

Good fences make good FCC inspections – The FCC hit a Mississippi AM station with a $15,000 fine for having a hole in its fence, failing to have a main studio and failing to broadcast its call sign. Someone tipped off the FCC that the Corinth, Mississippi, station had been operating without a main studio. An FCC agent tried to contact the station, but was unable to speak with anyone. The agent then set out to inspect the station.

The agent arrived at the transmitter site and found a large hole in the fence around the transmitter. The agent spotted a small building inside the fence's perimeter, but there was no staff at the building. The FCC determined that the station should be fined for having an ineffective fence and for failing to have a main studio.

In its response to the FCC, the station was faced with a curious situation. The station claimed that the small building at the transmitter site was its main studio. However, under FCC rules, a main studio must be accessible to the public. In order for the building to qualify as a main studio, the hole in the fence would have to be deemed as accessible to the public. Yet, the same hole gave rise to the FCC's assertion that the transmitter was not effectively protected. In the end, the FCC did not buy the story about the main studio. The station was fined $15,000 for having a hole in its fence, for failing to maintain its main studio and for not broadcasting its callsign.

Antenna lamps work better when plugged in – A Missouri FM station is facing a $2,000 fine for failing to light its antenna tower. The FCC received a complaint about a tower that was not lighted at night. An agent was dispatched and verified that the lights were dark. When the station was approached with the findings, it responded by producing a six-month old receipt proving that they had purchased new lamps; the licensee also advised the FCC that remote monitoring equipment was checked once daily.

However, when the FCC asked more probing questions, it discovered that the receipt and statement regarding monitoring were not the best evidence. Upon further examination, the FCC determined that even though replacement lamps were purchased in April, 2008, they were not installed until after the FCC inspected the tower in October, 2008. In addition, although the station stated that it monitored the tower lights once a day, the monitoring was occurring during daylight hours when no alarm would be registered. The remote monitoring equipment could have alerted the station to the lighting problems, but that gear would have done so only when the lights should have been illuminated. The FCC fined the station $2,000 for having faulty lights for at least six months.

New meaning for "time-share" and "license"?

ION the Prize

By Howard M. Weiss
weiss@fhhlaw.com
703-812-0414

Talk about outside-the-box thinking. In a deft attempt to snag FCC-blessed mandatory cable carriage for non-primary digital streams – an issue which the FCC has managed to dodge for years – ION Media Networks and BET founder and billionaire Robert Johnson have lobbed in an assignment application which, if granted, would likely have profound effects on the DTV television industry. And by stirring more than a dash of "diversity" flavoring into the mix, ION and Johnson are looking to take advantage of the fascination with diversity that has gripped the Commission for the last year or two (and which will almost certainly continue to grip it in the upcoming Obama administration).

The FCC has invited public comment on (or petitions to deny) the proposal, and has declared that the application will be treated as a "permit-but-disclose" proceeding – meaning that interested parties may have private meetings with Commission officials to discuss the applications. Parties taking advantage of that opportunity still have to file written summaries describing their meetings, but they don't have to serve copies on anybody else (and, at least in our experience, the summaries tend to be a bit light on detail.)

The application, filed by ION and a new Johnson-controlled company (Urban Television LLC), proposes the "assignment" of the licenses of 42 television stations currently held by ION. But ION would not be letting go of its stations in any conventional sense. Rather, Urban is proposing to buy "licenses" to operate on a second digital stream of each of ION's stations. In other words, ION and Johnson are asking the FCC to treat non-primary digital streams as separate, and separately licensable, authorizations. The proposal contemplates that Urban would hold a separate license for its operations in each of the 42 markets, while ION would continue to hold its own licenses in those same markets.

Of course, the notion that digital streams might be treated as separately licensable "stations" is novel, to say the least. But don't try to tell that to ION/Urban. To read their application, this is just a straightforward arrangement which falls comfortably under the Commission's "share time" rule. (That rule may be found in Section 73.171 of the FCC's rules – good luck finding any reference in that rule to digital streams, though.)

The "separate licenses" component is an essential element of the proposal because ION and Urban are specifically asking, as part of their application, that the FCC rule that the cable and satellite must-carry rules will require MVPD carriage of Urban's separate digital channels *as well as* ION's primary stream programming. The must-carry rules accord carriage rights to "stations", not "streams" – hence the insistence of ION/Urban on making sure that whatever Urban ends up with will be called licensed "stations". This will likely be one of the most controversial elements of the new proposal, as the Commission has thus far resisted intensive efforts to secure must-carry rights for more than one digital stream in the face of vehement opposition by the cable and satellite industries.

The notion that digital streams might be treated as separately licensable "stations" is novel, to say the least. But don't try to tell that to ION/Urban.

Even if the Commission were to adopt the concept, appeals will almost certainly follow. It's far from clear that the proposed ION/Urban approach will get a judicial thumbs-up. Further, the mere fact that must-carry issues would be back before the courts could be bad news, since that might provide the courts an opportunity to throw out the entire concept of must-carry, much to the chagrin of many broadcasters.

Before the FCC gets to the must-carry issues, it will have to address the proposed "share-time" approach. Historically, the concept of share-time agreements has been limited primarily to radio stations, with two (or more) licensees sharing a given frequency by allotting each sharer particular time periods during which it could operate. In other words, parties to a share-time deal would not be able to operate simultaneously; rather, one party would operate the station for a while, then it would turn off its operation and the other party would turn on, and so forth, all according to a precise schedule set out in their respective licenses. Informal contacts with the FCC's staff indicate that the sharing (and simultaneous operation) of digital television *channels*, combined with the issuance of separate licenses to multiple operators on the digital channels, would be difficult to sell to the staff. But, of course, the staff is not the Commission and the past is not always prologue. A new Democratic-controlled FCC may be enthused about the ION/Urban proposal, as would be Chairman Martin, whose views on cable regulation are not generally sympathetic to cable.

And doubtless in an effort to appeal both to Martin and to the ascendant Democratic administration, the ION/Urban proposal is larded with features likely to attract their favorable attention. Johnson, of course, is an African American who happens not to own any full-power TV sta-

(Continued on page 10)

Coming soon: the phone book of the future

.Tel Me More, .Tel Me More

By Kevin M. Goldberg
goldberg@fhhlaw.com
703-812-0462

On December 3 the window opened for registering ".tel" domain sites. ".tel" is a new top level domain name that is intended to identify repositories of corporate and personal contact information. As we become increasingly reliant on our Blackberries, iPhones, Palms, Treos and even plain old mobile phones, ".tel" domains are likely to become essential resources for accessing important information that once required a computer or even those old things known as "books".

The ".tel" domain name will allow anyone – individual or business – to store any and all of its contact information directly in the DNS (Domain Naming System) for on-the-run access by anyone with a handheld device. In other words, information stored in the ".tel" domain can comprise a virtual phone book: extending well beyond simple addresses and phone numbers, it can include links to websites, keywords and any other forms of contact information now known or conceived of in the future. And the page will not require "building" by the user.

Businesses should consider registering their business names, trade names and trademarks as ".tel" domain names .

A ".tel" address owner can thus assure that, with a simple click on the ".tel" address, anyone in the world can find all the contact information the owner wants to make available – no heavy phone book with microscopic print, no full website navigation, no directory assistance necessary.

An example: Let's say we here at Fletcher, Heald & Hildreth register the domain name www.fhhlaw.tel. We can upload to that domain not only the firm's address and main number, but also the names, direct-dial numbers and email addresses of all of our personnel, as well as links to our website and blog, and just about any other potentially useful contact information. Anyone accessing www.fhhlaw.tel from a handheld or other device would get a listing of all that uploaded information, complete with hyperlinks that would allow the user to, *e.g.*, directly dial our phone number(s) or click through to our website. No need for graphics or other high-falutin' web development.

Clearly, businesses should consider registering their business names, trade names and trademarks as ".tel" domain names alongside any .com, .org, .edu, .tv or other domains they already own. Such intellectual property can represent a very substantial investment in accumulated good will (not to mention promotion). Failure to incorporate those names and marks in ".tel" domains gives rise to the risk that cybersquatters will register them, in which case persons looking to reach your company would likely be directed elsewhere instead (and we can probably assume safely that "elsewhere" in this context means someplace with which you would prefer not to be associated). The Anti-Cybersquatting Consumer Protection Act and Internet Corporation for Assigned Names and Numbers' Uniform Domain Name Dispute Resolution Policy will apply to .tel domain names, but while helpful in evicting cybersquatters, that can be a cumbersome and even expensive process. It is far simpler to invest the ounce of prevention by registering the name yourself in the "Sunrise" period discussed below if you own a trademark or get in early during the "Landrush" period if you do not.

".tel" domain names can be registered through any ICANN accredited registrars. Registrations will be good for up to 10 years. These domain names may be sold or transferred like any other intellectual property in the event that all or part of a related business is sold.

A list of accredited .tel registrars is available at www.telnic.org.

The .tel launch is set to roll out in three separate phases. Trademark owners need to act on or before ***February 2, 2009*** to ensure ownership of a related domain name. The phases are as follows:

Part 1 — Sunrise

3:00 p.m., Greenwich Mean Time (10:00 a.m., Eastern Standard Time), on December 3, 2008 through 11:59 p.m., Greenwich Mean Time (6:59 p.m., EST), on February 2, 2009.

During the Sunrise phase, the owner or licensee of any federally registered trademark may apply for a .tel domain name incorporating that trademark. The trademark must already be registered *via* an application originally filed prior to May 30, 2008 (so if you did not have an application on file by that date, despite our earlier suggestions that you register your call signs for federal trademark protection, you will be excluded from registering in this first phase).

Part 2 – Landrush

3:00 p.m., Greenwich Mean Time (10:00 a.m., EST), on February 3, 2009 through 11:59 p.m., Greenwich

(Continued on page 10)

Congress leaves a light on

30-Day Emergency Post-Transition "Analog Nightlight" Service Coming Soon

By Lee G. Petro
petro@fhhlaw.com
703-812-0453

Over-the-air analog TV will live on beyond February 17, 2009, thanks to our elected officials in Washington – but at most it will live on only for 30 days, and only subject to severe content limitations.

One of the biggest fears associated with the DTV Transition is that, when folks wake up on February 18, 2009, to find the catastrophic [fill in any disaster scenario of your choice here – blizzard, earthquake, wildfire, tsunami, train wreck, etc., etc.] conditions that arose while they were sleeping, they will turn on their over-the-air analog TVs looking for news and get, instead, nothing but static. Congress and the Commission are concerned that any viewers still reliant on over-the-air analog service – *i.e.*, viewers who will be unable to get weather or emergency information post-DTV Transition – will spill their coffee, shriek with horror and then, in the ultimate act of retribution, conclude that Congress is to blame for the problem and vote the bums out at the next opportunity. (While FCC Commissioners technically can't get voted out, they can certainly experience what forensic experts refer to as "blowback".)

Analog stations, where technically feasible, may continue to operate for 30 days after the transition date to provide public safety and digital transition information.

In a preemptive effort to head off any such PR disaster, the Commission imposed extensive DTV Education requirements which we have covered repeatedly in past *Memos to Clients*. But misgivings still exist (possibly exacerbated by the results of the Wilmington, NC DTV test last summer). And so, on December 11, Congress chimed in by passing the Short-term Analog Flash and Emergency Readiness ("SAFER") Act. President Bush signed it into law on December 23, and the very next day – that's right, Christmas Eve – the Commission issued a Notice of Proposed Rulemaking (NPRM) looking to implement the provisions of the SAFER Act (although in the NPRM the FCC refers to it as the "Analog Nightlight Act").

The legislation permits analog stations, where technically feasible, to continue to operate for 30 days after the transition date to provide public safety and digital transition information. The FCC is required to establish a plan by January 15, 2009, under which analog TV stations will be allowed to stay on the air, ***but only*** for the purpose of providing:

- Emergency information that is broadcast (or required to be broadcast) on the station's digital signal.
- Information – *in English **and** Spanish, **and** accessible to persons with disabilities* – about the digital transition and what steps to take to continue receiving TV service (including emergency information). This information will include a phone number and Internet address by which help with the transition may be obtained in both English and Spanish.
- Consumer education about the digital transition and/or public health and safety or emergencies.

The Analog Nightlight Act requires the Commission to make sure that any post-Transition analog operations will not cause harmful interference to the reception of digital television signals. Also, the Act specifically exempts this limited post-Transition analog operation from any cable or satellite carriage rights. And providing further protection to MVPDs, the Act requires the FCC to take into consideration whether such operation would preclude or inhibit the delivery of the digital signals to cable or satellite headends. Finally, the legislation prohibits analog operation on Channels 52-69 and, where there is an authorized or pending request for public safety use, on Channels 14-20.

The NPRM follows the legislative script carefully. And given the short turn-around time for implementation specified by Congress, the Commission imposed commensurate time limits in the NPRM – a mere five days in which to comment and another three days for replies. (The comment and reply periods don't start until the NPRM is published in the Federal Register, but you can bet that that detail will be taken care of pronto.)

In an effort to streamline the analog nightlight process, the Commission has included in the NPRM a list of stations which it believes to be eligible to provide nightlight service consistent with the statutory limits (*i.e.*, no interference to digital or public safety operations). Those "pre-approved" stations may obtain the go-ahead to provide analog nightlight service by filing a Legal STA request through CDBS by February 10. (The Commission also suggests that such stations advise the Commission of their intentions in comments filed in response to the NPRM.) Stations which are not on the "pre-approved" list but which believe that they are eligible to be nightlights may seek such authority by filing Engineering STA requests (also through CDBS) in which they provide a satisfactory technical showing. Such STA requests should be filed by February 3. The Commission will publish a list of such requests and will afford a limited opportunity for objections.

(Continued on page 7)

*Does it **really** do that?*

Revised Endorsement/Testimonial Guides Out For Comment at FTC

By Patrick Murck
murck@fhhlaw.com
703-812-0476

The FTC is seeking comment on proposed revisions to its Guides Concerning the Use of Endorsements and Testimonials in Advertising (FTC Guides). The proposed revisions would subject advertisers to increased scrutiny for false or unsubstantiated statements made through endorsements, or for failing to disclose material connections between themselves and their endorsers. Comments are due January 30, 2009. You can find a copy of the proposed Guides at http://www.ftc.gov/os/fedreg/2008/november/081128guidesconcerningtheuseofendorsementsandtestimonials.pdf

The FTC Guides have been around for more than 30 years in one form or another. They are intended to give advertisers (and advertising agencies and production houses) an idea of where the line is when it comes to the use of endorsements or testimonials in their ads. The bottom line, of course, is that consumers should not be misled by endorsements/testimonials into thinking that an advertised product is likely to give the consumer better results than should really be expected. The FTC Guides thus favor ads which focus on typical results, rather than on atypical results (even if those atypical results are accompanied by a disclaimer alerting the audience to the fact that the audience should not really expect to achieve the results described in the endorsement/testimonial). The proposed changes also address a wide range of issues relating to endorsements by celebrities, experts, Joe Six-Packs, and even groups.

Where do broadcasters fit into this picture? Any broadcaster that helps produce an advertisement may find itself under the jurisdiction of the FTC and responsible for the claims made in the advertising. We discussed this potential problem in the October 2007 *Memo to Clients*, when Premiere Radio Networks, Inc. got itself crosswise with the FTC because of a questionable ad for "Height Max". ("Height Max" was a potion said to increase one's overall height by multiple inches in a matter of months while increasing lead body mass and reducing body fat.) As we saw back then, while the mere act of broadcasting ads does ***not*** itself necessarily subject the broadcaster to liability arising from claims made in the ads, such liability ***may*** attach when the broadcaster is involved deeply enough in the production of the ad.

Broadcasters who assist in the production of advertising for their clients should exercise caution.

As a result, broadcasters who assist in the production of advertising on behalf of their clients should exercise caution and ensure that claims are substantiated and that endorsements are in line with the FTC Guides. Broadcasters in this position should also take a gander at the proposed changes to the Guides so that they will know what's likely in store for them.

If asked to help produce an advertiser's materials in any way, broadcasters should be sure to take appropriate steps to protect themselves from any possible problems arising from the content of the ads.

(Continued from page 6)

Note that stations – "pre-approved" or otherwise – opting into the "nightlight" program will also be expected to update their DTV Transition Status Report (FCC Form 387) to reflect that participation. Magnanimously, the Commission has agreed ***not*** to charge any filing fee for the Legal or Engineering STA requests that participants will have to file.

With respect to the content of "analog nightlight" service, the Act is very clear: such programming will be limited to emergency information and DTV-education information. No other programming – *including any advertising* – is permitted under the Act, and the FCC has dutifully proposed to so limit the service. While the Act requires that DTV educational information be (a) made available both in English and Spanish and (b) accessible to persons with disabilities, the Commission appears to extend those requirements to emergency information as well.

The NPRM seeks comment on a variety of questions relating both to station eligibility for "analog nightlight" service and to the content of such service. But in view of the circumstances here, any request for comments seems to be little more than a perfunctory gesture made to comply with the letter of the Administrative Procedure Act. As noted above, comments on the NPRM are due within five days following publication of the NPRM in the Federal Register, and reply comments are due three days later. And anticipating extension requests, the Commission has emphasized that the deadlines will ***not*** be extended "[n]otwithstanding the holiday season". Ho ho ho.

Despite all the hoopla and hurry-up associated with analog nightlight service, the fact remains that such service will last a mere 30 days and will be subject to extreme limits content-wise. Some may question the practical utility of the exercise. But if the goal is to provide one later-than-last chance to avoid (or at least minimize) confusion among that relatively small universe of viewers who have not already gotten the DTV message, the analog nightlight approach may be the last best hope. We shall see.

Democrats to Martin: Wish you weren't here

Postcard from the Sausage Factory

By Harry F. Cole
cole@fhhlaw.com
703-812-0483

With much ballyhoo, on December 9 a report from the majority (*i.e.*, Democratic) staff of the House Committee on Energy and Commerce was released, slapping the bejeebers out of Chairman Martin. (The Republicans, claiming foul, refused to sign on.) Titled "Deception and Distrust: The Federal Communications Commission under Chairman Kevin J. Martin", the report concluded a year-long investigation. But despite a considerable amount of grandstanding on the part of the House Committee, the report itself is disappointing on a couple of levels.

While it does conclude that Martin "withheld important and relevant data", "manipulat[ed]" a staff report, "undermined the integrity of the staff", engaged in "senseless waste of resources", yadda, yadda, yadda, the report does *not* contain any truly blockbuster, make-your-eyes-bleed, exposés – no 8'x10' glossies or lurid videos of Martin *in flagrante delicto* committing [fill in the political nightmare of your choice here]. In fact, none of the Committee's charges even seems to rise to the level of a punishable violation of law or rule (although the Committee does suggest that further investigation into some matters may be in order).

The report tends to confirm seldom-articulated beliefs about the way the FCC operates.

More depressingly, though, the report tends to confirm the long-held but seldom articulated beliefs of a number of observers about the way the FCC operates, regardless of who happens to be its Chair. And the odds are that the issuance of the report is not likely to change anything.

The report itself is a mere 26 pages long, but the real fun is in the 75 pages of exhibits, which include copies of email threads to and from FCC staffers. (Memo to self: remember what your mother used to say – "Don't write it if you can say it, don't say it if you can nod.")

For example, the materials demonstrate that, as many suspected, the Commission's 180° flip on the question of à la carte cable pricing was dictated not by any actual analytical flaws in the FCC's initial analysis of the issue (endorsed during the tenure of Chairman Powell), but rather by Team Martin's blind preference for à la carte. Any "justification" that came along with the flip got concocted after the fact, as the staff struggled to come up with a rationale to support the foregone conclusion. Interestingly, it appears that even some Martin loyalists tasked to work on the project were not convinced that à la carte would be in the public interest. Any such concerns got trampled over, though, in the forced march toward the predetermined conclusion.

And then there's the matter of Martin's attempt to rejigger the 70/70 calculation so as to justify increased FCC regulation of cable (a recurring theme in the Martin administration). As it turns out, we casual observers who didn't happen to be within the Martin Inner Circle weren't the only ones who thought something was fishy. The report includes an email from none other than Commissioner McDowell expressing the view that "the books have been cooked to trigger the '70/70' rule." (To his credit, McDowell dissented, issuing a tough statement describing Martin's tactic as "statistical prestidigitation" and using such pejoratives as "disturbing", "puzzling", "illogical" and "dubious".)

The report also chronicles the Chairman's insistence on signing-off on all but the most picayune of agency activities, and it documents Martin's absolute control over virtually all hiring decisions. On the personnel front, the report concludes that a "climate of fear and intimidation" prevails at the FCC, with even the most senior employees living in dread of being "Martinized", *i.e.*, involuntarily transferred to one gulag-like office or another because they happen to disagree with Martin's policies or agenda.

The report also raises serious questions about (a) the independence of the FCC's Inspector General – a position which is *supposed* to be *maximally* independent – and (b) apparent violations of various travel regulations by the Chief of the FCC's Public Safety and Homeland Security Bureau (who just happened to be the Director of Public Safety at Martin's alma mater, UNC).

All of these allegations are (or should be) troubling, but none of them is anywhere close to a knock-out punch. While the Committee may fume about "dysfunction" and "abuse of power", Martin's allies can respond (and have responded) that the report merely establishes that Martin "doesn't play well with others". Since Martin, the report's primary target, is expected to exit the Furnitureship with the upcoming change of administrations, it's not likely that the report will have any real, long-lasting effect.

And that's the most tragic aspect here.

(Continued on page 9)

(Continued from page 8)

There is, of course, no shame if an FCC Chairman has a particular agenda. Though the House Committee may exclaim, Captain Renauld-like, that it's shocked, shocked to learn that the FCC has become politicized, it really ought to spare us that particular bloviation. The Chairman and Commissioners are appointed by the President and confirmed by the Senate, for crying out loud – how could anyone think that they are *not* political animals? And the Communications Act itself allocates Commission seats according to political party. So let's not pretend to get our knickers in a twist over the fact that the Chair might have his/her own political slant on things.

Rather, let's be concerned about how that slant can or should be allowed to affect the agency's decision-making processes, its day-to-day operations, the fundamental fairness afforded to regulatees, and the service rendered to the public. Isn't there some way that the system can be adjusted to assure that consensus exists among knowledgeable folks so that prospective policies enjoy real factual support and do reflect the public interest *before* those policies are etched in stone. While the Administrative Procedure Act is theoretically supposed to help along those lines, we can see from the report that that doesn't always work.

The "knowledgeable folks" involved in the decision-making process should include the working stiffs in the Commission's various bureaus, the people who have experience in how the system operates. This is not to say that the system should not or cannot be changed – it merely recognizes that people who have actually had to implement policies for extensive periods probably have some reasonable insight into the operation of those policies, insight which is not necessarily held by the occasional political appointee with little or no previous hands-on experience in the area. The views of people with experience should be sought out, not stomped on, regardless of the final result.

Having taken its shots at the soon-to-exit Martin, the Committee will likely see its job as done.

And by the way, where is it written that the Eighth Floor should be reserved for politicians and friends of politicians, people who have virtually no actual experience in the industries which the Commission regulates? Yes, the appointment process is political in nature, but that doesn't mean that the only, or the best, candidates will be Washington-based politicos. Wouldn't it make sense to include on the Commission at least some individuals who have had actual experience in providing service to the public and competing in the industries subject to the FCC's control?

And while we're at it, how about going back to the notion that each Commissioner's office should include an engineer to advise that Commissioner on technical matters – just like the old days? If that means whacking, say, a lawyer from each Commissioner's staff, well, it's hard to believe that one lawyer would really be missed.

These are the types of questions which the report raises and which should be answered sooner rather than later. Unfortunately, having taken its shots at the soon-to-exit Martin, the Committee will likely see its job as done, leaving us with nothing more than this unhappy postcard showing the sausage factory in operation. The American public and the full range of industries under the FCC's regulatory control deserve more.

(Continued from page 1)

the recently adopted distributed transmission systems (DTS) rules; buying time on existing Low Power Television (LPTV) stations; and buying time on another full power station's secondary digital stream. Exhausting these possibilities does not seem to be a firm prerequisite for filing for a Replacement digital translator, but some commenters will undoubtedly request that Replacement translators be a solution of last resort. The FCC also proposes a short-leash use-it-or-lose it policy, where Replacement translator construction permits are valid for only six months rather than the traditional three years.

Applications for Replacement translators will have priority over all other Class A, LPTV, and TV translator applications except applications for displacement relief where a station is forced off its channel by interference. Replacement translators will have equal priority with displacement applications; so presumably, the first-come, first-served principle would protect earlier filed displacements. However, pending applications for new or modified Class A, LPTV, and TV translator stations, including digital companion channels, could be bumped by a Replacement translator application. It appears that all granted Class A, LPTV, and TV translator applications would be protected, even if the facility is unbuilt.

The FCC proposes that Replacement translators be a secondary service, even when an application is granted – meaning that they could be bumped by a full power station application. The FCC also invites comments on the impact that Replacement translators might have on the availability of "White Space" spectrum in urban areas for unlicensed wireless networks. White Space proponents, some of whom have already suggested that their service should not be secondary, may be sharpening their fangs in preparation for battle.

Whatever your viewpoint may be on translator and White Space issues, it does appear that the Replacement translator train is barreling down the track rather quickly – it would not surprise us to hear that a Report and Order approving the proposed rules has been written already, even before comments are received and reviewed. However, there may be opportunities for commenters to shape some aspects of the rules, even if defeat of the entire proposal is unlikely.

In view of the very short comment period, check our blog (www.commlawblog.com) periodically for updates.

(Continued from page 4)

tions. As a result, Urban (controlled by Johnson) is being pitched as a "new entrant in the broadcasting industry". So the proposal would boost minority ownership, a strong plus in the eyes of many at the Commission. (To be sure, some might question whether this is precisely what is contemplated by the popular notion of "diversity". After all, Johnson is a billionaire with extensive media ties, and he would control only 51% of Urban – while ION, a non-minority entity with its own stable of full-power TV stations, would own the remaining 49%.)

And Urban is promising to launch a new programming format, including informational and issue-oriented programming targeted to serve the interests of African American viewers and other "underserved" persons in the 42 markets — presumably along the lines of what Johnson proposed to do with BET before he sold it to NBC. Details on exactly what that programming might consist of are sketchy at this point, and Urban's promise is somewhat porous. ("Urban will retain the flexibility to adapt its format to changing viewer needs and interests and other programming that is available in the marketplace.") But the notion of minority-targeted programming in 42 TV markets provides a potentially irresistible sizzle – despite the fact that any FCC decision based on proposed programming would be subject to huge practical problems (f'rinstance, how would the Commission define "minority-targeted" programming, and how would the Commission define "underserved" persons, and what would happen if the licensee elected to abandon that programming – would the Commission attempt to impose its own programming preferences?)

Though the application is sparse on details, the Commission is clearly taking the proposal quite seriously.

The proposed share-time licensing approach raises interesting questions about the extent to which a TV licensee can (or should) control the use of the spectrum. If, as ION/Urban suggest, a DTV license really consists of multiple separate licenses, and if the licensee chooses not to use all of the separately licensable channels, why should that licensee be the one to decide who should be the "licensee" of the unused portions? Why should not the Commission make that call through, say, an auction process? Such an approach would open significant opportunities to smaller entrepreneurs, including, for example, numerous LPTV licensees. Additionally, it's not clear how the ION/Urban approach would jibe with other proposals (*e.g.*, Media Access Project's "S Class" plan) for fostering greater diversity in media ownership.

Finally, it must be noted that the ION/Urban application is sparse on details. It doesn't even include a copy of the assignment agreement governing the proposal – curiously, ION/Urban claim they don't have to provide it with their application. The share-time agreement (which the applicants *did* file) is all of two pages long. It includes only the most generalized description of the arrangement and the ownership structure of Urban, providing that "the Parties will further specify the detail of their investments in Urban following the execution of this agreement."

Still, the Commission is clearly taking the new share-time proposal quite seriously. The FCC has issued a public notice inviting comments or petitions on the proposal, although how anyone might be expected to comment on the application as it presently stands is something of a mystery. Let us know if you wish to participate.

(Continued from page 5)

Mean Time (6:59 p.m., EST), on March 23, 2009.

Anyone may apply for any previously unregistered .tel domain name at a premium price (yet to be disclosed). In other words, this registration period is open to those who are willing to pay more to obtain a specific .tel domain name.

Registration will be on a first come, first served basis. ***If you have a domain name, but do not have a federally registered trademark that corresponds to the domain name, you may only register the same domain as a ".tel" domain name in the Landrush period and would be best served by doing so as soon as possible after the Landrush phase opens on February 3.***

Part 3— General Availability

Anytime after 3:00 p.m., Greenwich Mean Time (10:00 a.m., EST), on March 24, 2009.

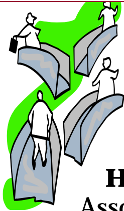
During the General Availability phase, anyone may apply for any previously unregistered .tel domain name. Any .tel domain names that have still not been registered will be available for registration at a price lower than the premium price offered during Landrush phase (also yet to be disclosed).

Registration will be on a first come, first served basis. We urge our clients who have registered trademarks, especially those consisting of call signs, to register a .tel domain name during the Sunrise period. Those without a registered trademark – *including those who already have the same term registered in other top level domains* – should still consider paying the premium rate to register a domain name when the Landrush phase opens at 3:00 p.m. Greenwich Mean Time (10:00 a.m. EST) on February 3, 2009. Please do not hesitate to contact a Fletcher, Heald & Hildreth, P.L.C. attorney if you need assistance or advice in the registration process.

Michelle McClure Named Member

FHH is pleased to announce that, as of January 1, Michelle McClure has become a member of the firm.

Michelle has been with FHH since January, 2008. She has both a telecommunications law and engineering background, and has represented telecommunications industry clients as in-house counsel, a consultant and as an attorney in private practice. Her practice has encompassed a wide range of regulatory and transactional matters for broadcast, satellite, wireless, common carrier, and cable clients. Michelle is a graduate of the University of Colorado School of Law (1993) and also concurrently earned a Master of Science degree in Telecommunications Engineering from the Graduate School of Engineering of the University of Colorado (1994). She is admitted to the District of Columbia Bar, Colorado Bar, North Carolina Bar and is a member of the Federal Communications Bar Association.



FHH - On the Job, On the Go

Scott Johnson (along with representatives of the FCC's Atlanta Field Office) will present a program on FCC Rules and Regulation at the South Carolina Broadcasters Association's Winter Convention on January 8 in Columbia.

Harry Martin will appear on a panel with the FCC's **Roy Stewart** at the Winter Conference of the Tennessee Association of Broadcaster in Murfreesboro on January 27.

Lee Petro will be attending the Annual Convention of the National Religious Broadcasters in Nashville from February 5-7.

Vince Curtis has been elected Treasurer of the Library of American Broadcasting Foundation. **Vince** is also on the Foundation's Board of Directors and Executive Committee. The Library is located at the University of Maryland and contains more than 1,100 oral histories, over 250,000 photographs, more than 10,000 books, and over 4,300 radio and television scripts, among other items.

We can't ring out the old year and ring in the new without a tip of the *MTC* hat to **Frank Jazzo, Howard Weiss** and **Peter Tannenwald**, all of whom got ink in *Communications Daily* this past month. **Frank** was quoted twice, once commenting on the continuing pace of regulatory business (despite a noticeable decline in lobbying activity on the Eighth Floor, possibly attributable to the upcoming change of administrations), and then in a separate article, along with **Peter,** on the possibility of DTV signal coverage shortfalls. And **Howard**'s blog on the proposed ION/Urban transaction (*see* page 4 of this issue) was noted and quoted. So Happy New Year to **Frank, Howard** and **Peter**– you're our co-*Media Darlings of the Month*!

FM ALLOTMENTS PROPOSED – 11/20/08-12/18/08

State	Community	Approximate Location	Channel	Docket No.	Deadlines for Comments	Type of Proposal (*i.e.*, Drop-in, Section 1.420, Counterproposal)
TX	Mount Enterprise	76 miles SW of Shreveport, LA	279A	08-226	Cmnts-1/21/09 Reply-1/5/09	Accommodation Substitution
TX	Batesville	83 miles SW of San Antonio, TX	250A	08-227	Cmnts-1/21/09 Reply-1/5/09	Drop-in

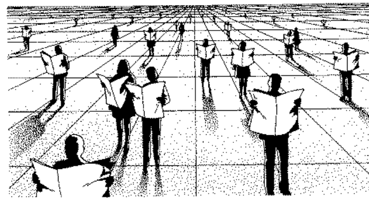
Notice Concerning Listings of FM Allotments

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.

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

Updates on the News

Ones and zeroes coming up short? – The Commission has released two reports showing anticipated changes in the coverage of television stations as they switch from analog to digital service. The goal here is to "proactively identify the changes associated with the switch to digital broadcasting" and to share that information with viewers. According to the Commission, more than two percent of the population covered by analog service will not be covered by digital service in the cases of 319 stations. The reports identify the stations in question and provide detailed maps illustrating the anticipated differences in coverage. By issuing the reports, the FCC is seeking to "make every resource available for broadcasters to mitigate any lost service to consumers." Various options – including the new "Replacement translator" service (*see* article on page 1), distributed transmission systems, power maximization and other techniques – are available to help in that mitigation effort.



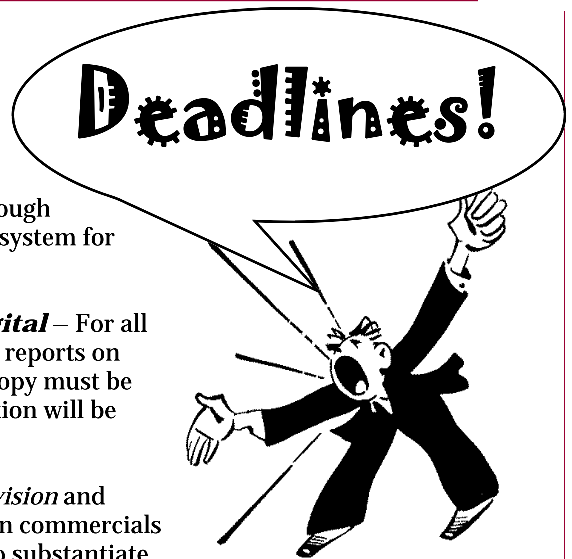
When next shall we five meet? – The Communications Act requires that the FCC convene at least one meeting each month – not a huge imposition, one might think. On December 11, the Commission dutifully issued notice that it had scheduled its December meeting for the 18th, at which time it planned to take up a variety of items. But the next day the Commission cancelled that meeting, saying that all the items would be voted on by circulation (*i.e.*, each Commissioner would consider the items and register her/his vote electronically, without the benefit of the collegial open-meeting repartee we have come to know and love). The cancellation came on the heels of a letter from a couple of Members of Congress who suggested that, what with the fast-approaching DTV Transition and all, the Commissioners maybe should be devoting all of their time and attention to a smooth transition, and not take their eye off the ball by considering other, obviously less pressing matters. To satisfy the letter of the Communications Act, though, the Commission convened a conference call "regarding Commission announcements" on December 30, in just under the end-of-the-month wire. Meanwhile, at least Commissioner Adelstein was doing his bit for the DTV cause – on December 11, he held a meeting on the Transition at Aunty Sally's Luau House in Hilo, Hawaii. Not bad work if you can get it.

We have a wiener!! – As you doubtless recall, we ran the annual FCC-themed crossword puzzle in last months' issue, which was shipped out the day before Thanksgiving. Lo and behold, the following Tuesday we received word that one of our faithful readers had successfully completed this year's puzzle. So let's give it up for ***Skip Pizzi***, media technology consultant extraordinaire, frequent author and editor, NPR vet and all-around tech guru. Congrats, Skip, you're this year's ***MTC Puzzle Maven***. And in response to all you cruciverbalists who asked for the answers, we have posted the completed puzzle on our blog. Check it out at www.commlawblog.com/2008/12/articles/fhh/memo-to-clients-crossword-puzzle-solution/#more.

From each according to his abilities . . . – The FCC's Inspector General (IG) is charged with investigating allegations of wrong-doing, fraud and abuse in the administration of the Commission's policies and activities. According to its most recent semiannual report to Congress, this past year the IG received a couple of complaints about the Media Bureau. One complaint raised questions about the Bureau's handling of noncommercial (NCE) FM applications, charging that minor mod applicants were "unnecessarily inconvenienced and their positions made vulnerable" by the fact that the Bureau did not publicly disclose information about the flood of new NCE applications filed in the October, 2007, window "until weeks after the filing period end[ed]". A second complaint alleged generally that CDBS "was flawed". In both instances the IG investigated and concluded that there did not seem to be any problem. According to the IG, the "Bureau articulated legitimate reasons for proceeding as it did" relative to the NCE applications, and "remedial efforts regard [CDBS] were already underway". But the IG did not stop there. As to the NCE matter, the IG committed to "make recommendations to help devise a system that will better address the needs of the regulated community." And as to CDBS, the IG indicated that it "may test the new [CDBS] system once it is publicly available." Of course, it's not entirely clear what might qualify the IG to weigh in on such esoteric, highly technical matters (matters with which the Media Bureau obviously have scads more direct, day-to-day, operational experience), but what the heck. We can all look forward to the IG's helpful suggestions.

Order of the Month – Our friends in the Audio Division issued a terse, four-sentence order in December. The last two sentences were purely perfunctory administrative boilerplate. The real nitty-gritty was in the first two, which read as follows: "The Audio Division, on its own motion, hereby sets aside the *Notice of Proposed Rule Making and Order to Show Cause,* DA 08-****. The Commission has already released a *Notice of Proposed Rule Making and Order to Show Cause* in this proceeding."

January 10, 2009



DTV Consumer Education Quarterly Activity Reports – All *television* stations must file a report on FCC Form 388 and list all station activity to educate consumers about the DTV transition. The period to be included is October 1 through December 31, 2008. As was true for previous Form 388 reports, the fourth quarter report will be filed through the Consolidated Data Base System (CDBS), the general electronic filing system for applications and reports.

Children's Television Programming Reports - Analog and Digital – For all c*ommercial television* and *Class A television* stations, the fourth quarter reports on FCC Form 398 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, or other evidence to substantiate compliance with those limits, 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.

February 1, 2009

EEO Public File Reports – All *radio* and *television* stations *with five (5) or more full-time employees* located in **Arkansas**, **Kansas**, **Louisiana**, **Mississippi**, **Nebraska**, **New Jersey**, **New York**, and **Oklahoma** 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 Reports – All *television* station *employment units with five (5) or more full-time employees* and located in **Arkansas**, **Louisiana**, or **Mississippi** must file EEO Mid-Term Reports electronically on FCC Form 397. All *radio* station *employment units with eleven (11) or more full-time employees* and located in **Kansas**, **Nebraska**, or **Oklahoma** must file EEO Mid-Term Reports electronically on FCC Form 397. For both radio and TV stations, this report includes a certification as whether any EEO complaints have been filed and copies of the two most recent EEO Public File Reports for the employment unit.

Television Ownership Reports – All *television* stations located in **Arkansas**, **Louisiana**, **Mississippi**, **New Jersey**, and **New York** 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.

Radio Ownership Reports – All *radio* stations located in **Kansas**, **Nebraska**, and **Oklahoma** must file a biennial Ownership Report. All reports filed must be filed electronically on FCC Form 323 or 323-E.

(Continued from page 2)
that's just the way these things go. Does that mean that the staff should re-visit each and every omni that has been installed since 1984 to check on distortion levels? And so what if some intentional counter-distortion is engineered into the installation for the purpose of insuring that the signal goes where it's predicted to go – does it make sense to penalize such efforts?

Still, at least one petitioner thought it was a good idea to conjure up the 1984 public notice. Perhaps it's time for the Commission to dispatch that notice to the ever-after for good, so that it can't haunt the FCC's halls anymore. At a minimum, if the public notice is going to linger on, the FCC might want to provide broadcasters, equipment manufacturers and tower riggers some clear guidance as to just what the notice means, so that all concerned can avoid any unexpected surprises.

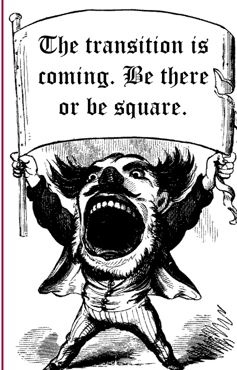
Fletcher, Heald & Hildreth, P.L.C.
11th Floor
1300 North 17th Street
Arlington, Virginia 22209

First Class

Coming Soon: The Memo to Clients Digital Transition

As previously announced, **we are going to stop distributing the *Memo* in a paper edition**. Instead, we will distribute it electronically. No firm date has been set yet, but we expect we will stop the paper edition sometime in the first quarter, 2009. If you want to be sure that you continue to receive the *Memo* uninterrupted, listen up!

We already have an e-mailing list of several hundred subscribers. If you are among them, you need do nothing – your continued receipt of the *Memo* is taken care of.



If, on the other hand, you are one of our 1,400 or so subscribers who receive their monthly *MTC* fix on paper via snail mail , and if you wish to continue to receive the *Memo* (and who wouldn't?), you will need to send us the email address(es) through which we can alert you to each month's edition. Just specify your preferred email address(es) in an email to ***cole@fhhlaw.com***; it *will be helpful if the subject line reads "**MTC email address change**".*

There are still more than 1,000 of you out there who will be *Memo*-less when we make the transition ***unless*** you get us your preferred e-mail address(es) (Yes, you can list as many separate addresses, and addressees, as you want.) As the FCC did in the DTV Transition, we will provide further warnings as the Big Day approaches – but we encourage you to act sooner rather than later to avoid any possible delivery interruption.