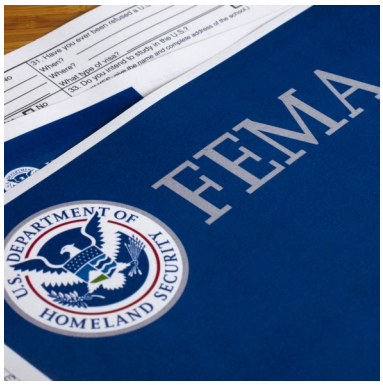
Fletcher, Heald & Hildreth®

MEMORANDUM TO CLIENTS

July 2020

No. 20-06

No National Test this Year for FEMA's Integrated Public Alert & Warning System



The Federal Emergency Management Agency ("FEMA") has announced that it will not conduct a national test of the Integrated Public Alert and Warning System ("IPAWS") via the broadcast Emergency Alert System ("EAS") and Wireless Emergency Alert ("WEA") system this year. As we have written about in the past, EAS tests are sometimes postponed due to natural disasters and other extenuating circumstances, but this will be the first time in nearly a decade that they are canceled.

In a statement released late last week, FEMA indicated cancellation of the 2020 nationwide test is intended to help lower the workload for broadcast staff – already overburdened adjusting to COVID-19 – in particular by removing the need to file EAS reports. FEMA is only required to test the IPAWS system every three years, and the Federal Communications Commission ("FCC" or the "Commission") found that last year's test was largely effective, having reached 82.5% of participants. Broadcast weekly and monthly tests are not effected and must continue to be conducted.

FCC Issues Ruling, Seeks Comments, to Facilitate Implementation of ATSC 3.0 "Broadcast Internet"

by Paul J. Feldman & Peter Tannenwald
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Three years ago, the FCC authorized deployment of a new IP-based broadcast TV standard, ATSC 3.0, with the hopes that TV broadcasters would implement innovative new data transmission services. That has not yet happened to any significant extent; so the FCC voted to issue a *Declaratory Ruling* ("Ruling") that it hopes will remove what may be a regulatory barrier to wide-spread implementation: the FCC ruled that a broadcaster's lease of spectrum to a third party for provision of ancillary, non-broadcast services does not trigger attribution for the FCC's broadcast ownership rules. This comes with support from a wide group of stakeholders and trade associations including the National Association of Broadcasters (NAB), America's Public Television Station (APTS), the Consumer Technology Association (CTA), Public Media Group, and of course the Advanced Television Systems Committee. It is unclear if that Ruling will significantly speed the implementation of ATSC 3.0; and perhaps for that reason, the FCC also issued a *Notice of Proposed Rulemaking* ("NPRM") in the same document, seeking comments on other proposals intended to enhance implementation of ATSC 3.0.

Background on ATSC 3.0 and the Ownership Rule

ATSC 3.0, an Internet Protocol (IP)-based broadcast transmission platform, is the newest TV transmission standard developed by Advanced Television Systems Committee. As the FCC stated in 2017, the ATSC 3.0 standard will allow broadcasters to "offer exciting and innovative services, including superior reception, mobile viewing capabilities, enhanced public safety capabilities (such as advanced emergency alerting capable of waking up sleeping devices to warn consumers of imminent emergencies), enhanced accessibility features, and now for the first time in broadcasting technology, localized and/or personalized content, interactive educational children's content, and other enhanced features." These new offerings over broadcast spectrum were originally referred to by the FCC as "Next Generation" TV, and now by some as "Broadcast Internet" services, to distinguish them from traditional over-the-air video services. The FCC's Media Bureau

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began accepting applications for ATSC 3.0 licenses on May 28, 2019. So far, broadcasters in only about a half dozen markets have implemented the new standard, although conversion of some stations to ATSC 3.0 is planned in some 60 markets in 2020. As the demand for broadband Internet services continues to grow, the FCC is turning over every stone to find ways to "unleash" additional spectrum.

But while ATSC 3.0 holds great promise for broadcast and Internet services alike, there are various technological and business reasons why initial implementation has been slower than anticipated. The FCC may not be able to control those factors, but it can address regulatory issues that may have been a barrier to implementation. One possible regulatory issue may be the requirements in the FCC's ownership rules, and concerns that a lease of TV spectrum to another party to be used for non-broadcast services could result in that outside party's media ownership interests being attributed to the host broadcaster, thereby limiting the broadcaster's ownership options as well as the ability of a third-party to lease spectrum from multiple stations. So-called "ancillary services" using broadcast television spectrum have been permitted since the DTV transition that began more than a decade ago, but the available data capacity before ATSC 3.0 was not sufficient to attract financial investment, and the ownership question was a further deterrent. The technology advance may have resolved the economic part of the equation, but the ownership cloud has remained. Thus, the FCC has issued the Ruling, to eliminate that concern:

> "Specifically, we clarify that the lease of excess broadcast television spectrum to a third party, including another broadcaster, for the provision of ancillary and supplementary services does not result in attribution under our broadcast television station ownership rules or for any other requirements related to television station attribution (*e.g.*, filing ownership reports). That is, our attribution rules do not confer a "cognizable interest" solely by the existence of a lease agreement to provide ancillary and supplementary services over the station's spectrum."

So, TV licensees and spectrum-based service providers, go forth and lease. Hopefully, the new regulatory relief will encourage the leasing of spectrum for Broadcast Internet services and foster local competition in the provision of Internet-based services – whether that be for commercial wireless broadband or more niche uses such as autonomous vehicle support, Internet of Things, and smart agriculture - even though for now, broadcast signals can still travel in only the one-way outbound direction. Time will tell whether this ideal will be realized or if the elimination of the ownership uncertainty will instead further solidify the power of the top players. For example, a single entity could use this Ruling to acquire the rights to offer Broadcast Internet services on multiple broadcast channels in the same market or to put together a nationwide footprint for the provision of Broadcast Internet services. The Commission under Chairman Pai seems content to allow the marketplace to sort it out.

It should be noted that this ruling will apply to the ancillary capacity under both the ATSC 1.0 and ATSC 3.0 technical standards, so stations that have not yet adopted the 3.0 standard may still take part. Consistent with existing Commission rules and policies, a broadcaster using either ATSC 1.0 or 3.0 must continue to provide at least one over-the-air video program signal at no charge to viewers and remain in compliance with all other applicable Commission broadcast rules for that signal. Existing rules that determine the applicability of attribution to Time Brokerage or Local Marketing Agreements Joint Sales Agreements, and Shared Services Agreements will remain unchanged.

Noncommercial stations will also continue to be subject to the tougher requirement that they devote a "substantial majority" of their spectrum capacity to noncommercial services. Once they meet the substantial majority requirement, they may provide commercial non-broadcast services, including subscription-based video and non-broadcast data, using their remaining capacity; but any service that meets the definition of "broadcasting" must remain noncommercial.

Questions Raised for Comment

Recognizing that its Ruling may not suffice to drive the implementation of ATSC 3.0, the FCC also issued an NPRM seeking comments on other steps that it could take to facilitate that implementation, including:

How much capacity and what grade of service should be the minimum broadcast requirement? Should noncommercial

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stations have to devote more capacity to conventional broadcasting than commercial stations?

How should spectrum leases be regulated? The FCC currently requires that the term of a lease not extend beyond the license term of the host station, although automatic renewals are permitted. Should any other lease provisions be regulated?

The FCC suggests that broadcasters will be held liable for content transmitted by their lessees, but that is not the scheme that has been promulgated in the past for ancillary services like FM radio subcarriers. Past rules have applied regulatory schemes appropriate for the type of service provided; for example, if the service is common carrier in nature (rare in practice), neither the host station nor the spectrum lessee is liable for the content of end-user messages.

Should any regulatory schemes from other types of services apply, such as wireless service regulations? Might wireless spectrum caps then come into play and negate the initial conclusion that there should be no limit on how much spectrum one party may lease?

Should Class A and Low Power TV stations have as much leasing freedom as full power stations – and maybe even more, by being freed from minimum broadcast capacity requirements?

Is the statutorily mandated fee on ancillary services a barrier to implementation? If so, should it be reduced, keeping in mind that the statute requires that fee payments approximate the value the Government would receive if the spectrum capacity were auctioned? If the fee is a barrier, should it be imposed only when ancillary service revenues exceed a certain threshold? Should revenues from services with high public interest value, such as telehealth and homeland safety, be completely exempt? Should the fee be variable, depending on the type of service provided and/or the host broadcaster's revenues?

How should the FCC calculate the revenue on which the fee is based? Currently, the ancillary service fee is set at 5% of the broadcaster's gross ancillary services revenue, without regard to the revenues of any spectrum lessee, which may be much greater. What happens if broadcasters invest in spectrum lessees and derive revenues from both the lessor and lessee sides? How should the FCC treat like-kind consideration, such as a lessee paying for all the equipment needed for a TV station to implement ancillary services? When and how should broadcasters report their revenues and pay their fees?

Finally, what about the elephant in the room – who is going to design, manufacture, and market receivers for broadcast ancillary services? If the FCC hopes that TV ancillary operations will help to close the digital divide and make Internet access more universal, the public will need access to inexpensive receiving equipment. Most of the major cellphone handset providers refuse to activate FM radio receiver chips in their phones. Will anything motivate them to accommodate TV Internet chips?

Comments on the NPRM will be due 30 days after publication in the *Federal Register*, which has not happened yet. Please contact us if you are interested in filing comments, or would like further information on this matter.

The FCC Releases Reconsideration of Procedures for Conversion from ATSC 1.0 to 3.0

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The FCC has issued a *Second Report and Order and Order on Reconsideration*, largely leaving intact the rules it adopted in 2017 authorizing television broadcast stations to implement the ATSC 3.0 technical standard, now known as "NextGen" TV.

Full Power and Class A TV stations converting to NextGen must continue to simulcast their programming in the currently deployed ATSC 1.0 format. That is normally done by channel-sharing with one or more other stations, where each station in the group transmits with either the 3.0 or 1.0 format and carries its own streams and the streams of other stations in that format. The FCC did not change the simulcast requirement; but recognizing that not every station will be able to find a simulcast partner, it provided guidance as to what it will require to waive the rule.

If there are two or fewer other stations in a station's designated market area ("DMA"), the FCC will presume that the sta-

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tion cannot reasonably find a simulcasting partner, without requiring proof that no partner is available. A request to allow stations to certify that they asked all the other available stations and were turned down was rejected. The presumed availability of other stations is limited to stations of the same class – full power or Class A. LPTV and TV Translator stations are not counted as being available, although they may voluntarily be used for simulcasting provided that their signal coverage is sufficient.

The FCC turned down requests to exempt non-commercial educational full power stations ("NCE") and all Class A stations from the simulcast requirements, as both station classes provide important services that should remain accessible to viewers. It estimates that 8% of non-commercial full power stations, 5% of commercial full power stations, and 71% of Class A stations will have two or fewer available simulcast partners and so will be able to qualify for a simulcasting waiver.

The fact that a station is carried on cable and/or satellite ("MVPD") will not be sufficient to justify a waiver of the simulcast requirement. The FCC also did not change its earlier decision not to require simulcasting by LPTV stations, even those stations (not many in number) affiliated with a Big Four network.
If a station qualifies for a waiver and decides to convert to NextGen, it must take other steps to ensure the continued availability of its programming to viewers who do not have NextGen receivers. The FCC suggests giving away or selling converter devices at a low price to households that receive the station over-the-air. Only one converter per household is required. Although the requirement will apply only to viewers in the station's community of license, the FCC encourages, and appears to expect, that converters will be made available to all viewers in a station's noise-limited signal coverage area.

The earlier decision to allow ATSC 1.0 simulcasting to be in standard definition format and not high definition, was not changed, although of course high definition simulcasting is permitted.

The FCC also stressed that no NextGen signal has or will have MVPD must-carry rights, even if it delivers its programming to MVPDs by fiber in baseband format, which is neither ATSC 1.0 nor ATSC 3.0 and so is not affected by an over-the-air format change. However, the FCC will also not restrict the ability of TV stations to use their bargaining power in retransmission consent negotiations to get their ATSC 3.0 signal carried by MVPDs.

Although must-carry rights will not include NextGen signals, a station's status as significantly viewed for purposes of MVPD carriage and MVPD copyright liability will be retained. There is nothing to stop an MVPD from petitioning the FCC to remove a station from the significantly viewed list, but such a petition will succeed only if new audience measurements show that over-the-air viewership has declined below the required threshold.

The FCC decided not to change its present sunset dates for the NextGen ATSC A/322 technical standard and the simulcasting requirement. All NextGen stations must adhere to the A/322 standard until March 6, 2023, and must simulcast in ATSC 1.0 and 3.0 until July 17, 2023 (except for ATSC 3.0 features, such as targeted advertising, not available in ATSC 1.0). The FCC said that it will re-examine these deadlines one year before the current deadline dates.

Nodding to objections by LPTV stations, "White Spaces" proponents, and wireless microphone users, all of which need open TV channels to survive, the FCC adhered to its previous decision not to allow NextGen stations to obtain temporary use of a second channel while the simulcasting requirement remains in effect.

Finally, the FCC decided not to attempt to take on the issue of patent royalty costs imposed on NextGen stations. That problem does not appear yet to be severe enough to generate FCC concern.

Some of the FCC's decisions will facilitate conversion to NextGen; others may end up being barriers. Stations in Pittsburgh, Las Vegas, Phoenix, and Portland (Oregon), both full power and Class A, have already started or are close to starting NextGen service. Time will tell how easy or difficult the overall process turns out to be.

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FCC Pressed to Expand Local Origination on FM Translators and Boosters

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A group of 24 radio broadcast licensees has petitioned the FCC to expand the concept of localized program content beyond FM boosters and to allow localized origination by FM translators as well.

On April 24, 2012, and April 13, 2020, we blogged about a proposal by GeoBroadcast Solutions, LLC, ("GeoBroadcast") to allow FM radio stations to operate on-channel boosters that do not entirely duplicate the content of the main station. Each booster could broadcast local content intended for just the specific portion of the main station's service area where the booster is located. The FCC invited comments on the proposal, which were due May 4, 2020.

On that date, a consortium calling itself "Broadcasters for Limited Program Origination" (BLPO) filed comments supporting the GeoBroadcast Solutions petition but asking that the localized content concept be expanded to include FM translators. While FM boosters and translators both rebroadcast the signal of a full power parent FM, and translators may rebroadcast an AM station, boosters operate on the same frequency as their FM parent, while translators operate on separate FM frequencies. GeoBroadcast wants both booster and translators to be able to broadcast content separate from the content of the parent station.

GeoBroadcast also asks that the separate content on both boosters and translators not be limited to promotions, hyper-localized programming, or advertising but rather that there be no restrictions on separate content. Moreover, boosters and translators would be required to rebroadcast the content of their parent station only 40 out of the 168 hours in each week.

Relying on the recent new FM interference rules that allow complaining FM stations to protect service out to their 45 dBμ contour and rules that permit AM stations to locate translators up to 25 miles from their transmitter, BLPO would allow all licensee-owned translators to operate at the greater of the two distances, thus expanding the area that licensee-owned and supported commercial translators are now permitted to serve. Finally, BLPO proposes that FM translators originating separate content be permitted to apply for their own four-letter call signs with the suffix "-FX"

The BLPO proposal offers significant opportunities for AM and FM stations to compete with hyper-local targeted streaming services. However, LPFM stations, which use similar technology but are currently restricted to a lower power level than FM translators, may conclude that allowing FM translators to originate separate programming and to have their own call signs will subject LPFM to an unfair disadvantage, especially since all LPFM stations are prohibited from broadcasting commercials, while FM translators in the commercial FM band (92.1-107.9 MHz) have no such restriction. Full power FM stations may also fear the additional proliferation of FM translators, which have generated a significant number of interference complaints.

The fact that the FCC has assigned a separate file number to the BLPO request suggests that it may plan to address FM booster origination separately and deal with translator origination later. The FM booster proposal is likely to generate less opposition than the translator proposal, so splitting the two might allow more prompt action with respect to boosters.

Comments on the BLPO proposal may be filed by July 23, 2020. These will be only initial comments in response to the BLPO petition. A formal *Notice of Proposed Rulemaking*, with a new comment opportunity, will be required before final rules can be adopted.

Selected New Developments in Broadband – through mid-June

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Capitol Hill

The Trump Administration has again voiced support for a $2 trillion stimulus and infrastructure package (that would presumably have a broadband component), but Senate Republicans are not there yet. In May, the House passed the Democrats' multi-trillion dollar Heroes Act on a party-line vote. This is the next installment of COVID-19 response legislation and contains several multi-billion dollar broadband spending programs. Some of the broadband pieces of the Heroes Act have been introduced as standalone bills which, along with other bills of interest, are summarized below:

- **Supporting Connectivity for Higher Education Students in Need Act** (Senate version). This act would appropriate $1 billion to establish an Emergency Higher Education Connectivity fund at the National Telecommunications Information Administration (NTIA) to directly help students in need pay for at-home internet connections and equipment such as routers, modems, Wi-Fi hotspots, laptops, tablets, and internet-enabled devices to students.

- **Healthcare Broadband Expansion During COVID-19 Act** (House version). This act would appropriate $2 billion in temporary Federal Communications Commission (FCC or the Commission) Rural Health Care (RHC) program funding and temporarily waive competitive bidding rules to allow health care providers to obtain funding to immediately upgrade their existing level of service from their existing provider.

- **Emergency Educational Connections Act of 2020** (Senate version). This act would appropriate $4 billion ($2 billion in House version) in extra temporary funding for the E-rate program to support Wi-Fi hotspots, modems, routers, and connected devices during emergency periods relating to COVID□19, and for other purposes.

- **Remote Learning During COVID-19 Act** (developed by E-rate advocacy groups who recently asked Congress to introduce the bill). This act would appropriate $5.25 billion for the E-rate program to support home broadband service, broadband network equipment, end-user devices (such as laptops or tablets), and cybersecurity; explicitly allows schools and libraries to extend their existing E-rate-funded networks to serve the surrounding community (including for backhaul). The Schools, Health & Libraries Broadband (SHLB) Coalition has a detailed summary of the bill here.

National Telecommunications and Information Administration (NTIA)

On May 28, 2020, President Trump directed NTIA to submit a petition for rulemaking asking the FCC to propose regulations to clarify the precise scope of Section 230 of the Communications Decency Act. There has been growing criticism by both Democrats and Republicans of Section 230, but for different reasons. (Wikipedia has a historical overview of Section 230.)

The most recent NTIA monthly webinars were held on May 20, 2020 (Using Smart Technologies to Drive Regional Transformation) and June 17, 2020 (Utilizing Federal Data to Measure the Digital Divide). Information from past webinars is available in the webinar archive. The June BroadbandUSA Newsletter is now available.

NTIA hosts a searchable database featuring 50 federal broadband funding opportunities across a dozen federal agencies. The NTIA Broadband USA main page features a state-by-state summary of state broadband programs (scroll down to the map and click on a state). NTIA recently released the pilot results of its National Broadband Availability Map (NBAM) which was authorized by Congress in 2018. The NBAM currently covers eight states: California, Utah, Minnesota, Tennessee, North Carolina, West Virginia, Massachusetts, and Maine. The NBAM incorporates FCC Form 477 data along

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with broadband data from third-party sources including other federal agencies. Because the NBAM includes both public and proprietary data, coverage details are available only to state and federal partners and not the general public.

USDA – Rural Utilities Service

Grant Programs

The official funding announcement for the next tranche of ReConnect Program funding (initially $550 million) is available here. The ReConnect application has closed but this year included an additional $100 million for ReConnect grant funding authorized by the CARES Act. Proposed ReConnect projects (published to facilitate overbuild challenges) are here; awardees are identified here; proposed and funded projects are depicted on an interactive map here. The Distance Learning & Telemedicine Grant Program received an additional $25 million in funding in the CARES Act and has opened a second application window which closes July 13, 2020.

Precision Agriculture

The FCC's Precision Agriculture Connectivity Advisory Task Force met virtually on March 25, 2020; that meeting can be viewed here. (The April 2019 USDA report on rural broadband infrastructure and next-generation precision agriculture is available here.)

Federal Communications Commission

The FCC's June 9, 2020 open meeting included a *Public Notice* regarding the upcoming Rural Digital Opportunity Fund (RDOF) phase one auction, an order proposing rules to reorganize the 70/80/90 GHz spectrum bands to support 5G point-to-point backhaul, and a *Declaratory Ruling* regarding so-called Broadcast Internet services. At its May meeting the Commission, among other things, adopted rules to reorganize the 900 MHz band (currently used mostly by utilities and industries for private-two-way radio) to create a 6 MHz broadband segment for commercial use (order). Responding to the COVID-19 pandemic, the FCC between meetings has issued numerous emergency orders and waivers and launched the COVID-19 Telehealth Program. Some of these actions are addressed further below.

White Spaces

The unused spectrum between TV station channels or in places where channels are vacant are called "white spaces." This vacant broadcast spectrum represents a resource for mobile broadband, particularly in rural areas. In March 2020 the FCC proposed updated rules to facilitate increased innovation in the white spaces area and comments are currently being filed.

Spectrum

Below are summaries of selected FCC spectrum proceedings that are active and which will impact the public availability of broadband.

L-Band (1.0GHz to 2.0GHz)

The FCC on April 20 unanimously, and with broad bipartisan support, approved a controversial and long-pending request by Ligado Networks (f.k.a LightSquared) to utilize a portion of the L□band spectrum that it owns. Because Ligado's spectrum is close to spectrum reserved for GPS, the Department of Defense (DOD), Department of Transportation (DOT), and other interests strongly oppose this move. On May 22, NTIA (on behalf of DOD and DOT) formally challenged the FCC's decision through a petition for reconsideration and a petition for stay.

2.5 GHz Rural Tribal Priority Window (formerly EBS)

The FCC last summer decided to auction remaining unlicensed Educational Broadband Spectrum (EBS) (2.5 GHz band) to commercial users. This spectrum is suitable for mobile and fixed point-to-point wireless services. Prior to the auction, tribal entities in rural areas have a limited opportunity to apply for licenses for available 2.5 GHz spectrum in their areas. This rural tribal priority window opened February 3, 2020, and closes August 3, 2020. The FCC has not responded to

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calls to extend the tribal window deadline due to COVID-19.

In response to the COVID-19 pandemic, the FCC has granted temporary (60-day) emergency access to 2.5 GHz spectrum for requesting tribal groups including the Pueblo Zuni tribe in New Mexico and Navajo Nation in Arizona, New Mexico, and Utah. With the June 2, 2020, waiver for Harlan County, Kentucky, at least one poor Appalachian community is also benefitting from temporary emergency use of the spectrum. These temporary spectrum access grants do not affect the availability of spectrum for the 2.5 GHz rural tribal priority window.

C-Band (3.7-4.2 GHz)

Broadcast satellite operations are the current licensed users of the mid-band C-Band spectrum. The FCC in February 2020 voted (along party lines) to approve two orders to reorganize and reclaim 280 MHz of the band for flexible-use and to facilitate public auctions of the newly available bands. The public auction is slated to commence December 8, 2020, with the new spectrum slated to be in use by September 2025. On June 1, 2020, Chairman Pai announced that five of the major satellite operators had agreed on an accelerated timeline to vacate the first chunk of the airwaves they currently hold by December 2021. Smaller operators on May 1 filed legal challenges to the FCC C-Band order and have sought a stay.

3.1-3.55 GHz

The Commission recently approved an NPRM for Facilitating Shared Use in the 3.1-3.55 GHz Band (link fixed). The 3.1-3.55 GHz band is currently used by the Department of Defense (DOD) for fixed and mobile radar as well as secondary non-federal amateur and experimental users. The Commission's goal is to relocate non-federal users to clear as much as 100 MHz spectrum for commercial 5G. The comment period is over but comments can be browsed here.

Citizens Broadband Radio Service (CBRS) (3.55-3.65 GHz)

This spectrum is being used for naval radar and so away from the coasts much of the spectrum is unused. In recently deciding to reorganize the spectrum, the Commission allowed licensed use (through PALs), and General Authorized Access (GAA), which allows unlicensed access to available channels managed by a frequency coordinator called a Spectrum Access System (SAS). The FCC's CBRS auction of PALs will go forward this summer but has been delayed by one month to July 23, 2020 – due to COVID-19. Each PAL will consist of a 10-year renewable license for a 10 MHz unpaired channel. According to the FCC this auction "will offer the greatest number of spectrum licenses ever made available for bidding in a single auction and is intended to further the deployment of fifth-generation (5G) wireless, the Internet of Things, and other advanced spectrum-based services for the benefit of the public." The Commission *Public Notice* establishing the CBRS PALs auction procedures was approved at the February 2020 open meeting.

5.9 GHz Band

The Commission recently approved a *Notice of Proposed* Rulemaking (NPRM) for Promoting Innovation in the 5.9 GHz Band which would reorganize spectrum previously reserved for Dedicated Short Range Communications to support the development of next-generation "Cellular Vehicle to Everything" (C-V2X) technology as well as increase unlicensed utilization (*e.g.*, more Wi-Fi channels). The FCC proposes to make the lower 45 MHz of the 5850-5925 MHz band available for unlicensed use and allocate the upper 20 MHz for C-V2X. The DOT and auto safety interests oppose the FCC plan – while Wi-Fi interests support it.

6 GHz Band

The recent 6 GHz Order and NPRM freeing new unlicensed spectrum for Wi-Fi are here. C-NET has reported that industry estimates that this spectrum will lead to supercharged Wi-Fi and create billions in value for the economy. Some claim this is the most important decision the FCC has made on unlicensed spectrum use in 25 years. Qualcomm recently released its plans for new products later this year that will take advantage of the spectrum.

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E-rate & Rural Health Care COVID-19 Waivers

The Commission on March 18, 2020, waived the gift rules for both the E-rate and RHC programs through September 30, 2020. The Commission in both E-rate and RHC extended programmatic deadlines for filing funding applications, appeals, invoicing, service delivery, and information requests, as well as waived certain rules regarding contract extensions.

E-rate

The Park Hill decision, released in late April 2020, is the first major FCC decision (by the Wireline Competition Bureau) addressing the contours of the rules governing self-constructed networks. Park Hill is a school district in Kansas City, Missouri, that partnered with the city to build its own self-constructed network. Of course, before moving forward, Park City had established that this self-provisioning partnership was significantly less costly than service-based alternatives. As part of a long-term cost-sharing agreement, the city received fiber strands in exchange for in-kind contributions including conduit and maintenance. The Universal Service Administration Company (USAC) objected to this arrangement. In reversing USAC, the Bureau clarified that "an E-Rate eligible entity may . . . share the services and equipment used to construct and/or operate a self-provisioned network supported by E-Rate funding with an ineligible third-party entity so long as the ineligible third-party entity pays its fair share of the costs, *i.e.,* its *pro-rata* portion of the undiscounted costs of the network."

Rural Health Care

USAC delays processing funding applications for 2019 are at the forefront, with many program participants still receiving 14-day information requests from USAC for funding applications submitted over a year ago. It is clear USAC is way behind the pace of processing applications in prior years and some are calling for the FCC to act.

Net Neutrality

On October 1, 2019, the DC Circuit upheld in significant part the FCC's 2017 repeal of net neutrality rules, as well as the so-called transparency rule which requires carriers to disclose changes in their terms of service. The Court reversed the FCC on blanket state preemption and remanded several issues including jurisdictional questions over pole attachment regulation, impacts on public safety, and funding broadband through the Lifeline Program. In February 2020 the FCC sought public comment on the three remanded issues (comments here).

FCC Extends Sponsorship ID Waiver for Sponsored COVID-19 PSAs

Last week, the Media Bureau extended the waiver it enacted in April to alleviate broadcast sponsorship identification requirements concerning air time donated by commercial advertisers for public service announcements ("PSAs") provided by the Centers for Disease Control and Prevention ("CDC") and other government agencies addressing the COVID-19 pandemic. Pursuant to this extension, commercial time donated for COVID-19 PSAs will not be required to be accompanied by a sponsorship ID through August 31, 2020.

Welcoming Kristen Corra to Fletcher, Heald & Hildreth, P.L.C.

We are pleased to announce the arrival of Kristen Corra, who has joined the firm as an Associate. Having represented a major wireless carrier and assisted with securing commercial leasing, licensing, and potential acquisition of telecommunications infrastructure, Kristen brings her prowess to the firm's formidable team of telecom-focused attorneys.

Kristen comes to the firm from Nashville, where she was an attorney at Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. Among other tasks, she helped in negotiations for the installation of traditional tower structures, utilities, fiber, and small cell infrastructure, all being subjects with which she is very knowledgeable. Prior to that, she was a Licensing Specialist for Crown Castle specializing in licensing with wireless carriers.

While in Nashville Kristen-- found time to sample the best "hot chicken" the city has to offer. She is very opinionated on the subject.

Kristen graduated *magna cum laude* from Michigan State University's College of Law, where she was a member of the International Law Review. While at Michigan State, she also participated in their First Amendment Law Clinic, teaching the next generation of journalists how to exercise their constitutional rights.

"I'm excited to expand upon my foundational knowledge within the telecommunications world," said Kristen, "and to continue learning the industry's intricacies under the tutelage of the experienced attorneys at Fletcher Heald."

Already admitted to practice law in Tennessee, Kristen is pending admission to the Virginia bar and is working under the supervision of a licensed Virginia attorney until admitted. An avid hiker and fan of our National Parks, Kristen is accustomed to reaching new milestones, and we are confident this will be no different.

"We are looking forward to the contributions she will make for our firm and our clients," said co-managing member Dan Kirkpatrick. "Our team will benefit greatly from adding an attorney of Kristen's caliber."

Upcoming FCC Broadcast and Telecom Deadlines for July – September

Broadcast Deadlines:

July 10, 2020

Children's Television Programming Reports – For the first time, and after two delays, all commercial television and Class A television stations must file electronically annual children's television programming reports with the Commission, although the first one will cover only the portion of the year which began with the effective date of the revised rules (September 16-December 31, 2019). These reports should be automatically included in the OPIF, but we would recommend checking, as the FCC bases its initial judgments of filing compliance on the contents and dates shown in the online public file.

Issues/Programs Lists – For all commercial and noncommercial radio, television, and Class A television stations, listings of each station's most significant treatment of community issues during both the first and second quarters of 2020 must be placed in the station's OPIF. The lists should include brief narratives describing the issues covered and the programs which provided the coverage, with information concerning the time, date, duration, and title of each program with a brief description of the program. Although with the postponed deadline, it should not matter whether these reports are formatted as one report or two, we would recommend retaining two separate reports and uploading one for each quarter to avoid confusing future reviewers.

Class A Television Stations Continuing Eligibility Documentation – The Commission requires that all Class A Television Stations maintain in their OPIF documentation sufficient to demonstrate that the station is continuing to meet the eligibility requirements of broadcasting at least 18 hours per day and broadcasting an average of at least three hours per week of locally produced programming. While the Commission has given no guidance as to what this documentation must include or when it must be added to the public file, we believe that a quarterly certification which states that the station continues to broadcast at least 18 hours per day, that it broadcasts on average at least three hours per week of locally produced programming, and lists the titles of such locally produced programs should be sufficient. Whether you upload one document or two in this category, make sure you include both the first and second quarters in the time period covered.

August 1, 2020

Radio Post-Filing Announcements – Radio stations licensed in Illinois and Wisconsin must begin broadcasts of their post-filing announcements concerning their license renewal applications on August 1. If the renewal application is not filed until the August 3 deadline, wait until then to begin the post-filing announcements. Either way, these announcements must continue on August 16, September 1, September 16, October 1, and October 16. Once complete, a certification of broadcast, with a copy of the announcement's text, must be posted to the OPIF within seven days, or by August 23.

Television Post-Filing Announcements – Television stations licensed in North Carolina and South Carolina must begin broadcasts of their post-filing announcements concerning their license renewal applications on August 1. If the renewal application is not filed until the August 3 deadline, wait until then to begin the post-filing announcements. Either way, these announcements must continue on August 16, September 1, September 16, October 1, and October 16. Once complete, a certification of broadcast, with a copy of the announcement's text, must be posted to the OPIF within seven days, or by August 23.

August 3, 2020

Radio License Renewal Applications Due – Applications for renewal of license for radio stations located in Illinois and Wisconsin must be filed in the Licensing and Management System (LMS). These applications must be accompanied by Schedule 396, the Broadcast Equal Employment Opportunity (EEO) Program Report, also filed in LMS, regardless of the number of full-time employees.

Television License Renewal Applications Due – Applications for renewal of license for television stations located in North Carolina and South Carolina must be filed in LMS. These applications must be accompanied by Schedule 396, the

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Broadcast EEO Program Report, also filed in LMS, regardless of the number of full-time employees.

EEO Public File Reports – All radio and television station employment units with five or more full-time employees and located in California, Illinois, North Carolina, South Carolina, and Wisconsin must place EEO Public File Reports in their OPIFs. 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.

September ??, 2020
Annual Regulatory Fees – On a date not yet determined but certainly before September 30, 2020, annual regulatory fees will be due. These will be due and payable for Fiscal Year 2020 and will be based upon a licensee's/permittee's holdings on October 1, 2019, plus anything that might have been purchased since then and less anything that might have been sold since then. The fees must be paid through the FCC's online Fee Filer, and once again this year, the FCC will not accept checks as payment of the fees but will require some form of electronic payment (credit card, ACH transfer, wire transfer, and the like). Please keep in mind that timely payment is critical, as late payment results in a 25 percent penalty, plus potential additional interest charges.

Telecom Deadlines:

July 1, 2020
Eligible Telecommunications Carrier Data Collection (FCC Form 481) – Eligible Telecommunications Carriers (ETCs) that receive funds from the High Cots Program and/or Lifeline support program must complete Form 481. Mobility Fund recipients are not required to submit the form. Form 481 collects financial and operations information regarding ETCs and fulfills the annual certification requirement in Section 54.313 of the Commission's rules. ETCs required to submit Form 481 must file the form electronically using their online USAC portal.

August 1, 2020 (Due August 3, 2020 this year because August 1 falls on a Saturday)
Numbering Resource Utilization Forecast (NRUF) (FCC Form 502) – Twice a year, service providers with numbers from the North American Numbering Plan Administrator (NANPA), a Pooling Administrator, or another telecommunications carrier must file a numbering resource utilization forecast. Subscriber toll-free numbers are not included in the report. Interconnected Voice over Internet Protocol (VoIP) providers are subject to the reporting requirement along with other service providers who receive NANPA numbers, such as wireless carriers, paging companies, incumbent local exchange carriers (ILECs), and competitive local exchange carriers (CLECs). The next biennial reporting deadline is August 1, 2020.

Quarterly Telecommunications Reporting Worksheet (FCC Form 499-Q) – FCC rules require telecommunications carriers and interconnected VoIP providers to file quarterly revenue statements reporting historical revenue for the prior quarter and projecting revenue for the next quarter. The projected revenue is used to calculate contributions to the Universal Service Fund (USF) for high cost, rural, insular and tribal areas as well as to support telecommunications services for schools, libraries, and rural health care providers. USF assessments are billed monthly.

August 14, 2020
Quarterly Percentage of Interstate Usage (PIU) Reporting and Certification – Prepaid calling card providers (PCCPs) must report the percentage of interstate use factors and associated call volumes to carriers that provide them with transport services. Additionally, PCCPs must file traffic information and a certification signed by a company officer stating that the provider is in compliance with the FCC's PIU and USF reporting requirements.

September 1, 2020
FCC Form 477 – This form is filed online biannually on March 1 and September 1. The Commission collects a variety of information about broadband deployment and wireless and wired telephone service on Form 477. Broadly speaking, the following providers must fill Form 477: 1) facilities-based providers of broadband connections to end users, 2) providers of wired or fixed wireless local exchange telephone service, 3) providers of interconnected VoIP service; and 4) facilities-based providers of mobile telephony (mobile voice) services. If you have any questions about whether your company must file Form 477 or what information your company is required to submit in the filing, you should contact your telecommunications counsel.