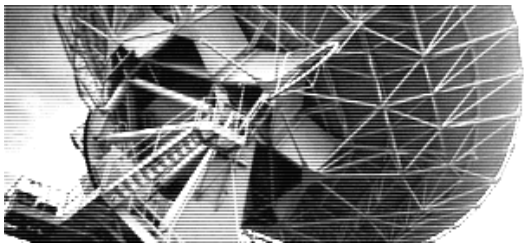
June, 2009



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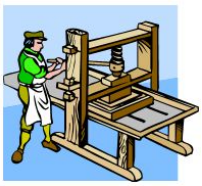
Current Issues in Telecommunications Law and Regulation



A Note From the Editor

It's been some time since our last issue of FHH Telecom Law – not due to any lack of enthusiasm on our part, but rather due to a remarkable dearth of regulatory news in the non-broadcast world. As we reported last issue, the FCC has been treading water furiously since the departed Chairman Martin vacated his post in January. Acting Chairman Copps has been loath to advance any significant measures until a permanent chairman is in place, but the installation of soon-to-be Chairman Genachowski has hit a snag. (Congress is seeking to fill the vacant Republican slot at the same time that it fills the vacant Democratic slots.) With Commissioner Adelstein itching to move over to his new quarters at the Rural Utility Service, the Commission is in danger of falling short of its statutory three-person quorum if things don't get moving soon. In any case, the confirmation delay has had the unfortunate effect of putting all non-routine FCC activity on hold. Still, our intrepid reporters have searched the far corners of the globe for newsworthy telecommunications developments, and we present them here for your consideration. DE

Spectrum Auction Bidders in Qui Tam Scam Jam

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

With the public issuance of letters to certain winners in Auctions 58 (PCS licenses), 66 (AWS licenses) and 73 (700 MHz licenses), the Commission has lifted the curtain ever so slightly on a melodrama that has been playing out in Federal District Court since 2007. While we still don't know the entire cast of players, much less how the melodrama will be resolved, we can say one thing for sure: it is ***NOT*** a good idea to try to play cute with the FCC's bidding rules in an effort to secure undeserved bidding credits. Even if the FCC doesn't catch you, a little-known provision of Federal law provides private parties both a major league financial incentive to blow the whistle on such misconduct ***and*** a non-FCC forum in which to blow that whistle.

The source of the somewhat obscure process is the False Claims Act (FCA). Usually invoked by "whistleblowers" eager to call attention to waste in the government procurement process (think hammers bought by Uncle Sam for $5,000 a pop), the FCA permits anyone to file a complaint "on behalf of the U.S. Government" to recover ill-gotten gains. (The *cognoscenti* refer to such actions as "*qui tam*" suits – don't ask why.) To sweeten the deal, another provision of the law also permits the person making the claim to skim off up to 30% of any settlement or damages award that might result. And

(Continued on page 6)

*BRS – as in **B**ite-size, **R**ag-tag **S**pectrum?*

On the Auction Block: BRS Dregs At Rare Vintage Prices

By Donald J. Evans
evans@fhhlaw.com
703-812-0430

The FCC has announced that it plans to auction off in October the bits and pieces of Broadband Radio Service spectrum that have come available over the past few years. Like family heirlooms at a foreclosure sale, the licenses in this auction are redolent of the failed hopes and broken dreams of MMDS auction winners who in 1996 had great plans for broadband service. An ever-evolving set of regulatory rules served to put MMDS pretty much on hold for more than a decade, driving many an intrepid entrepreneur to bankruptcy (if not to madness) and forfeiture of its FCC licenses. The 78 licenses to be auctioned are BTA licenses that have, one way or another, returned to the FCC's stock and are therefore available for auction. A list of the open markets – some of which are large markets like Miami, Richmond and Sarasota, but most of which are small and medium-sized markets – can be found at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-843A2.pdf.

There are a few major problems with the FCC's proposal, most of which were aired by commenters in response to the FCC's proposed auction terms. The FCC set minimum bids for these markets by using its usual one-cent per MHz/pop formula. However, in doing this calculation it used the *whole* population of the BTA and the *whole* spec-

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Now –75% quicker!!!

FCC Shortens Number Porting Interval

By Michelle A. McClure
mcclure@fhhlaw.com
703-812-0484

The Commission may have only three sitting Commissioners, but that didn't stop them from unanimously adopting new number portability provisions in a *Report and Order and Further Notice of Proposed Rulemaking* (*R&O/FNPRM*) released May 13, 2009. In the *R&O* portion of the decision, the Commission reduced the porting interval for simple wireline and simple intermodal port requests. Under the new rules, all entities subject to local number portability rules ***must*** complete simple wireline-to-wireline and simple intermodal port requests ***within one business day***. ("Intermodal ports" here include wireline-to-wireless ports, wireless-to-wireline ports, and ports involving interconnected Voice over Internet Protocol (VoIP) service.)

Previously, such simple wireline port requests had to be completed within four business days. However, the wireless industry has established a voluntary standard of two and one-half hours for wireless-to-wireless ports, and the Commission saw no good reason why wireline-to-wireline requests could not also be completed within one business day for most carriers. Furthermore, a shorter porting requirement would help consumers by shortening wait times and increasing the benefits of local number portability provisions.

The Commission also directed the North American Number Council (NANC) – which coordinates number issues for carriers – to develop a number of new procedures within 90 days after the effective date of the Order to implement the new rules. In particular, NANC must now define "business day" for purposes of the porting interval, and it also has to come up with a means of measuring porting time. Within nine months after the NANC submits its revised provisioning flows to the Commission, all providers (except small providers) will be required to comply with the one-business-day porting interval. "Small providers" here means entities with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide and Tier III wireless carriers (CMRS carriers with 500,000 subscribers or fewer as of the end of 2001). Small providers will have 15 months from the date that NANC submits its revised provisioning flows to the Commission within which to implement the new porting interval requirements.

Carriers may apply for waivers of the one-business-day porting interval. The Commission has delegated authority to the Chief, Wireline Competition Bureau, to deal with such requests on a case-by-case basis. Waiver requests must show with particularity that it would be unduly economically burdensome for the provider to comply with the shortened porting deadline. The showing should address the number of porting requests the carrier typically receives on a monthly basis and the specific costs of complying with the shortened time interval. Upon consideration of a waiver request, the Bureau may impose a porting interval requirement of one to four business days.

In the *Further Notice of Proposed Rulemaking* portion of the decision, the Commission has requested comments on what further steps it should take to improve the process of changing providers. It's also looking for any new ideas that reflect and build on the new requirements just adopted. Comments are due 30 days and reply comments 60 days after publication of the *R&O/FNPRM* in the Federal Register.

Fletcher, Heald & Hildreth
A Professional Limited Liability Company

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

Editor
Donald J. Evans

Design
Harry F. Cole

Contributing Writers
Paul J. Feldman, Michelle McClure, Patrick Murck, R.J. Quianzon and Ron Whitworth

Focus on fate of USF funds

David vs. Goliaths

By Donald Evans
evans@fhhlaw.com
703-812-0430

Tier III carrier Corr Wireless Communications got out its sling shot and let fly last month at two national carriers about a thousand times its size. Corr had noticed that the funds it received from the Universal Service Fund had been slashed drastically as a result of the Commission's imposition of an "interim" cap on the amounts of money that could be distributed to eligible telecommunications carriers. To add insult to injury, Corr then noticed that there seemed to be no increase in the already paltry distribution despite the fact that Verizon and Sprint had both disclaimed monies that they would have received from the Fund. (The FCC had pressured both carriers to give up USF funding in return for approval of major merger applications that they were prosecuting.) Both carriers seem to have had the "understanding" that the funds that they disclaimed would not go back into the pool for distribution to other carriers. Yet the FCC never indicated in any way that its own understanding matched theirs.

Despite the absence of any explicit directive from the FCC, the Universal Service Administrative Corporation had decided, without telling anyone, that it would not re-distribute to other carriers the millions of freed-up dollars which should have flowed back into the capped pool of funds. Corr finally confirmed this with USAC, and promptly demanded that the FCC direct USAC to stop abiding by Verizon's and Sprint's unilateral understandings of what should be done with the money they renounced and instead comply with the officially adopted order of the FCC. The author of this article, it should be noted, helped aim Corr's shot.

Many smaller carriers who will benefit by the addition of these funds to the capped pool filed supporting comments, with only Verizon and Sprint opposing. Meanwhile, the imposition of the interim cap itself is under review by the U.S. Court of Appeals for the D.C. Circuit, where Corr has entered an appearance as an amicus in support of the challengers of the FCC's cap. If either that appeal or Corr's challenge of USAC is successful, hundreds of millions of dollars will be freed to flow to wireless ETCs who have been providing universal service to customers without receiving full compensation from the USF fund.

Despite impatience with FCC delay

Court OK's Intermodal Number Portability Order

By Paul Feldman
feldman@fhhlaw.com
703-812-0403

Swatting aside claims that the FCC had, again, violated the Regulatory Flexibility Act (RFA), the U.S. Court of Appeals for the D.C. Circuit has upheld the Commission's Intermodal Number Portability order. That order was initially adopted by the agency in 2003, but then set aside by the Court in 2005 because of RFA problems. A couple of years later, the Commission finally got around to addressing those RFA problems, and the Court has now approved that second effort. But in so doing, the Court has signaled its impatience with the FCC's slow-motion deliberations in the related intercarrier compensation (ICC) proceeding.

The RFA is a legacy of the Reagan era. It requires federal agencies to analyze the impact of new rules on small businesses. The theory is that, by forcing an agency to review and articulate the impact of its rules on the Little Guys, the RFA may prevent, or at least discourage, unnecessarily burdensome regulations. As a practical matter, though, the RFA provides little help in most situations. The agency is ordinarily accorded substantial deference by the courts. That's even truer when it comes to compliance with the RFA's requirements, which the D.C. Circuit has characterized as "purely procedural" – and by that the court seems to mean that, as long as the FCC jumps through the limited number of hoops set out in the RFA, the FCC can expect to insulate itself from pretty much any RFA-based appeal. (While the Court did send the 2003 number portability order back to the Commission on RFA grounds, that was because the FCC had declined to perform *any* RFA analysis at all. The FCC said it thought that its 2003 order was exempt from the RFA. Nice try.)

In its most recent decision reviewing the FCC's three-years-in-the-making RFA analysis, the Court had no trouble concluding that that analysis passed muster. The Court confirmed that the FCC touched all the bases required by the statute, and that its analysis was neither arbitrary nor capricious. So even though small carriers will be subjected to significantly in-

(Continued on page 5)

FCC knows them when it sees them . . .

After 40+ Years, "Antenna Farm" Still Undefined

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

Do you know what constitutes an antenna farm?

Nobody else does, either. Except maybe the FCC. But, for reasons that aren't exactly clear, they're not telling.

The question came up recently when an applicant for a broadcast construction permit mistakenly thought it knew, but it didn't, and but for a legal technicality (let's hear it for statutes of limitations!) it would have been socked with a fine from the FCC's Audio Division.

The recent case involved folks who had failed to jump through the various pre-application environmental hoops established in the Commission's National Programmatic Agreement. One reason they relied on for not doing so: their proposed tower was to be built in an "antenna farm", and the Commission's rules specifically state that a proposal for a new tower in an established antenna farm is categorically excluded from environmental processing. Since the proposed site already included two existing towers reasonably close together, it seemed reasonable to conclude that that site could be deemed an "antenna farm", thus relieving them of the environmental homework.

Why the FCC has declined to provide some useful definition for a term which it itself stuck in its own rules is a complete mystery.

Wrong.

The Division concluded that their site was neither an officially designated antenna farm nor a *de facto* antenna farm.

Let's take a step back here. For openers, what exactly is an antenna farm? More than 40 years ago, the Commission added Section 17.9, entitled "Designated Antenna Farm Areas", to its rules. That section currently reads, *in its entirety* (including the bracketed language quoted below, which is exactly as it appears in the rule), as follows:

> The areas described in the following paragraphs of this section are established as antenna farm areas [appropriate paragraphs will be added as necessary].

As it turns out, the Commission has *never* actually designated any site as an official antenna farm. Nor, for that matter, has the Commission ever bothered to articulate exactly what factors it would consider if it ever got around to gracing any site with that designation. So the site that was recently touted, by the applicant, as an "antenna farm" had not been officially so designated, at least not by the FCC.

No problem. The categorical exclusion from environmental processing includes, in addition to officially designated antenna farms, "*de facto*" antenna farms. The environmental rule refers to antenna farms as areas "in which similar antenna towers are clustered, whether or not such area has been officially designated as an antenna farm." Certainly a site featuring two existing towers would satisfy *that* definition.

Uh, no, not really, according to the Division.

The Audio Division acknowledged that no threshold requirements have been specified in determining what a *de facto* antenna farm is, but the Division was nevertheless able to determine that the site in question was not a *de facto* antenna farm.

The site consisted of two towers, both located within about 1,000 feet of the proposed third tower. The applicant reasonably argued that the close proximity of two existing towers qualified the site as a *de facto* antenna farm. But the Division thought this analysis was overly simple, even though the applicant had made considerable efforts to research every situation in which the Commission had addressed, directly or otherwise, sites that might be deemed "*de facto* antenna farms".

The Division duly considered each of the cases cited by the applicant, noting the factors (over and above the number of towers and their relative proximity) that

(Continued on page 5)

(***Intermodal Portability*** *-Continued from page 3)*
creased costs as a result of the number portability system imposed by the Commission – a result which the RFA was intended to discourage, if possible – that system has now survived judicial review.

Having won this one, the Commission may have been emboldened to increase the regulatory load on wireline carriers. On May 13, the FCC reduced the maximum allowable time for porting numbers – a reduction which would likely be burdensome for wireline carriers. Since the Court did not have any problem with the new burdens imposed by its prior intermodal number portability requirements, the Commission must have figured that similar, or even greater, burdens could safely be heaped on without fear of reversal. (*See* related story on Number Portability Interval at page 2)

The Court has clearly signaled that it is running out of patience.

But the Court didn't let the Commission off scot free. In rejecting the argument that porting imposes disproportionate transport costs on small carriers, the Court explicitly relied on the FCC's assurances that it will be addressing transport costs more broadly in the long-pending ICC proceeding. This may put some heat on the FCC to get that proceeding going again, particularly because the Court pointedly observed that "[w]e assume the Commission will complete its work [on ICC] soon. If not, an appropriate party may of course file a petition for mandamus." Essentially, the Court was inviting parties to seek "mandamus", *i.e.*, a special writ by which parties may seek relief from "unreasonable delay" by an agency. Such an invitation is music to the ears of parties who would otherwise have to cool their heels, waiting for years for the FCC to act. As recently as 2008, a party sought and obtained from this very Court, an order requiring the FCC to rule on ICC for ISP-bound traffic.

So while the FCC may currently lack the set of permanent Commissioners needed to properly address the ICC proceeding (a proceeding that has dragged on for over eight years already), the Court has clearly signaled that it is running out of patience. Optimists might figure that the FCC may feel the need to take up the ICC proceeding even before the new Commissioners are seated. However, if history is any predictor, we suspect that the FCC will have to be further pushed into action, kicking and screaming.

(***Antenna Farms*** *-Continued from page 4)*
might be relevant to a site's status as a *de facto* antenna farm. Among those factors, according to the Bureau:

- the size and purpose of the towers (although this seems to contradict the designated antenna farm implementation order where the FCC, way back in 1967, specifically addressed the inclusion of all communications towers and not merely broadcast towers; this factor came into play here because the two other, existing, towers are not used by broadcast stations);
- any agreement, by communities and licensees, to utilize one site for antenna siting (such as the Empire State building in New York or Mount Wilson in Los Angeles);
- whether there are a number of tall (over 1,000 feet) towers on the site;
- whether the FAA has approved additional tall towers in a given site;
- whether the proposed tower is similar to other existing towers at the proposed site.

Despite its lengthy discussion of these other situations, the Bureau stopped short of providing any useful guidance concerning what, exactly, a site has to have to be deemed an antenna farm. Instead, the Bureau told the applicant that, whatever an antenna farm might be, the applicant's site didn't fit the bill – not an especially helpful approach, either for the applicant or for anybody else who might find himself or herself in a similar situation in the future.

Exactly why the Commission has declined, for more than four decades, to provide some useful definition for a term which the Commission itself chose to stick in its own rules is a complete mystery. But it certainly seems clear from the Bureau's recent decision that that failure is a conscious choice and not some mere inadvertent oversight.

In light of the Bureau's decision, though, applicants would be wise *not* to assert that their proposals are exempt from environmental processing under the antenna farm exemption unless they have very conclusive evidence that their sites do, indeed, constitute antenna farms. But based on the Bureau's obvious reluctance to give any sites that designation, formally or otherwise, we suspect that such conclusive evidence will be extremely hard to find.

(**Qui Tam** - *Continued from page 1)*

since the Act *also* provides for ***treble damages***, the potential payday can easily reach into the eight digits.

The FCA first snuck into the FCC's back yard several years ago, when allegations of misconduct were directed against a number of bidders in FCC auctions. The claim was that the targeted bidders – who had claimed entitlement to bidding credits – were in fact fronts for a real party in interest who would not have been entitled to such credits. As a result, according to the allegations, the government was underpaid for the spectrum to the tune of tens of millions of dollars. The case was litigated over several years. It was finally resolved in a settlement in which the accused party did *not* admit any guilt, but still coughed up about $130 million to put the whole thing behind him. Mr. Whistleblower, *i.e.*, the guy who initially invoked the FCA, took home more than $30 million.

The availability and potential profitability of qui tam actions are no longer hidden secrets.

Soon after that settlement was reached in 2006, two more cases were brought. They targeted completely different parties and deals, but the litigation approach was strikingly similar: the plaintiffs alleged that successful bidders in certain FCC auctions had improperly claimed to be entitled to bidding credits and had, thus, cheated the Feds out of a bunch of money.

These most recent cases were placed "under seal", meaning that the proceedings have been withheld from the public eye. But a couple of months ago, the presiding judges agreed to lift the seal just enough to permit the FCC, on behalf of the government, to publicly disclose the complaints and to request the targeted applicants to respond to the allegations. In the letters released by the FCC in April, it did just that.

At this point it is impossible to say what will come of these cases. It is entirely possible that the bidders are being wrongly accused, and that they will ultimately be vindicated. It is also possible that they are guilty as charged. And, as was the case in the earlier *qui tam* case, it is possible that the case will be settled without any admission of guilt, but with a sizable payment to make it all go away.

But however these cases shake out, one thing is clear: the availability and potential profitability of *qui tam* actions are no longer hidden secrets. Word has obviously started to get around, doubtless in large measure because of the impressive pay-outs that await successful plaintiffs.

Because of this development, anyone claiming bidding credits in a spectrum auction should take special care to avoid ***any*** circumstances which could trigger suspicions and accusations of impropriety. Even if your deal is squeaky clean, the filing of a *qui tam* suit can drag you into long, stressful and expensive litigation. Remember, in the 2006 settlement, the alleged wrong-doer admitted no guilt, but still had to suffer through several years of litigation and still ended up paying more than $100 million in settlement.

Remember, too, that *qui tam* suits can be brought by pretty much anybody, including former spouses, disgruntled former employees, disappointed former business associates, etc., etc. You get the point. Anybody with a big grudge and a little knowledge can cause major problems even if the grudge is unjustified and the "knowledge" turns out to be completely inaccurate.

So if you plan to claim bidding credits in a spectrum auction, proceed with caution.

(**BRS Auction** - *Continued from page 1)*

trum range of the BRS service. This approach might have been sensible for virgin markets where there were no pre-existing licenses, but here the licenses are heavily encumbered by a host of legacy licensees. What's left in many of the markets is just slivers and pockets of geographic territory which happen to lie outside the 35-mile radius geographic service areas of existing licensees. Not only are these slivers and pockets difficult to serve without intruding on the protected boundaries of the incumbents, but they tend to be outside the main pockets of civilization and thus are underpopulated and hard to reach from any central location. This puts a serious damper on the usefulness of these scraps.

(Continued on page 7)

What's in a name?

VoIP Gets "Telecommunications" Treatment

But FCC still avoids official pigeonholing

By Paul J. Feldman
feldman@fhhlaw.com
703-812-0403

Recently, the FCC issued a Report and Order (Order) designed to protect consumers of interconnected VoIP service from abrupt discontinuance, reduction, or impairment of their service without notice. Specifically, the FCC extended to providers of interconnected VoIP service the discontinuance obligations that currently apply to traditional wireline telecommunications carriers under Section 214 of the Communications Act of 1934. Under the new requirements, before an interconnected VoIP provider may discontinue service, it must comply with the streamlined discontinuance requirements under Part 63 of the Commission's rules, including the requirements to provide *30 days prior written notice to all affected customers*, notify relevant *state authorities*, and *file an application* at the FCC for authorization of the planned discontinuance.

In effect, the FCC has almost rendered the categorization issue moot.

None of the above discontinuance requirements are generally seen as particularly burdensome, though customers deserve and will certainly appreciate the 30 days prior written notice requirement. What is really notable about the FCC's Order is that it is yet another in a long line of actions in which the Commission has imposed traditional telephone regulation on VoIP providers, while continuing to avoid the issue as to whether VoIP is properly categorized as "telecommunications" or an "information service." When the FCC first began looking at the issue almost six years ago, VoIP was a nascent service, not subject to any traditional telephone regulation, and thus the issue of categorizing VoIP as "telecommunications" or an "information service" seemed to be critical to whether and how VoIP would be regulated. In fact, the FCC took a different approach – rather than categorizing VoIP as "telecommunications" and then applying to it all of the regulatory structure associated with telecommunications carriers, the FCC imposed most of that regulatory structure on VoIP, in a series of ad hoc orders, without ever addressing the more difficult question of categorization. In effect, the FCC has almost rendered the categorization issue moot.

We shall see how the new FCC addresses VoIP – whether it decides to take on categorizing VoIP, or whether it continues the piece-meal approach to regulation. At this point, the largest outstanding issue for VoIP is one of the toughest: whether VoIP providers are or should be required to pay access charges for the termination of their traffic to the public switched telephone network. Stay tuned.

(***BRS Auction*** *- Continued from page 6)*

The Commission needs to revise downward its minimum bid prices severely or it may have few takers for these licenses.

In addition, one commenter noted that the FCC failed to provide that winners of these licenses would not have to meet the looming build-out deadline of May, 2011. If auction processing runs true to form, the auction will not be complete and licenses issued until the spring of 2010 – only one year away from the dread date. Unless the Commission changes this, winners will have to scramble to build out very quickly.

Finally, the FCC has still not resolved the many late-filed license renewal situations which have been pending since at least 2006. Prospective bidders will not know for sure what they are bidding on because the FCC has unaccountably – and unconscionably, in our view – sat on a host of pending reconsideration, reinstatement and waiver petitions involving incumbent BRS and EBS licensees. The outcome of those proceedings will have a marked impact on the value of the BTA licenses which will or will not be encumbered. The FCC's correction of these oversights will affect the attractiveness of these licenses markedly.

Government Hikes Filing Fees After Only Seven Months

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

Leaving no stone unturned in its quest to charge those whom it regulates, the FCC has again raised filing fees for wireless licensees and common carriers. Readers may recall that filing fees for several services were increased only seven months ago in September. However, that did not deter the new three-person FCC from increasing fees on those applicants yet again. Across the board, the FCC put wireless and common carriers in its cross-hairs while hunting for revenue sources; nobody escaped. The increases range from several hundred dollars to only five dollars. However, the timing of the latest price increase certainly takes a toll on licensees, many of who are also seeing declines in revenues. The table below refers to the more common fees encountered by carriers and licensees – however, given the rapid pace at which the government continues to raise its costs, readers should check the actual fee amount prior to filing.

NEW FCC APPLICATION FILING FEES (Effective April 2009)

	New	Renew	Modify	Assign	Transfer	Lease
Cellular & Paging	$385	$ 60	$385	$385	$385	$385
Broadband Radio	$260	$260	$260	$ 95	$ 95	$ 95
Broadcast Auxiliary	$145	$ 60	$145	N/A	N/A	N/A
Marine Coast	$470	$470	$470	$120	$ 60	$ 60
Part 90 (below 470 MHz)	$260	$260	$260	$ 60	$ 60	$ 60
Part 90 (above 470 MHz)	$460	$460	$460	$ 60	$ 60	$ 60
Local TV Transmission Srv	$660	$660	$260	$ 95	$ 95	$ 95
Part 101 Microwave	$660	$660	$260	$ 60	$ 60	$ 60

The cost of a CALEA Petition has been increased to $ 5,880.

To apply for Section 214 authority, the fee is now $1,015.

To file a Tariff, the fee is now $815.

Applicants working with the Office of Engineering and Technology face these fees:

Certification – Receivers (other than TV and FM)	$ 475
Certification – Parts 11, 15 & 18 devices	$ 1,220
Certification – all other devices	$ 615
Experimental Authorizations (new, renew or modifications)	$ 60

Because much of the FCC process is now automated, applicants are likely to be prompted with the new FCC filing fee (even if they are increased again) when filing. However, for planning purposes and for those who prefer to mail their fees, be alert to future fee increases.

See you in C-U-B-A?

U.S. Telecom Companies Poised to Expand Service to Cuba

By Ron Whitworth
whitworth@fhhlaw.com
703-812-0478

A mid-April announcement by President Barack Obama created an immediate buzz amongst U.S. telecommunications providers eyeing Cuba. A press release from the Obama Administration indicated that the President intends to lift many of the U.S. sanctions against Cuba, opening the door for American companies to provide telecom services there.

The Obama administration has directed the Secretaries of State, Treasury and Commerce to take the steps necessary to authorize U.S. telecom providers to enter into a variety of agreements to provide telecom services to Cuba. These policy changes will enable U.S. companies to establish fiber-optic and satellite links between the U.S. and Cuba, enter roaming service agreements with Cuban telecom providers, provide and pay for telecom, satellite radio and television services for Cuban customers, and export certain donated communications devices.

Until instructed otherwise, the FCC will continue following the policy directives it received nearly 16 years ago.

Companies have been lining up to get their foot in the door once the policy changes go into effect, which could happen imminently. *FHH Telecom Law* spoke with a senior official in the Office of Foreign Assets Control (OFAC), which is "fast tracking" the process of crafting new regulations to effectuate the wishes of President Obama. As this issue went to press, the rules had not yet been finalized, but all indications are that this will happen soon. Once OFAC signs off on the rules, they will be published in the *Federal Register* and should become effective immediately.

FHH Telecom Law also spoke with a senior official in the International Bureau of the FCC, who confirmed that until instructed otherwise, the FCC will continue following the policy directives it received nearly 16 years ago from the State Department, which contain the familiar restrictions inhibiting U.S. telecom providers' efforts to serve Cuba. The Obama announcement has had no effect on how the Commission currently treats proposals to serve Cuba, but once the new rules become effective, the FCC is likely to receive new instructions quickly and a new set of application procedures will be introduced.

FHH attorneys and clients are anxiously awaiting the release of the new regulations to determine precisely what is included. The OFAC official, who is involved in the crafting of the new rules, indicated that the idea is to build on the current licenses offered by OFAC to provide telephone service between U.S. and Cuba to include internet, text messaging and satellite communications. Travel licenses will be expanded to allow U.S. companies seeking to provide these services to Cuba to negotiate contracts.

OFAC has received an overwhelming number of inquiries from FHH clients and others concerning the new regulations. Some have already submitted proposals contemplating service under the forthcoming rules. OFAC has encouraged those wishing to provide service under the new rules to submit their proposals now (understanding that upon the release of the rules, aspects of each proposal may need to be adjusted).

Please feel free to contact your FHH attorney if you would like more information, or if you would like to be notified upon release of the rules.

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

First Class

COMING NEXT YEAR: The *FHH Telecom Law* Digital Transition

Following the FCC's example in herding the public into a digital universe, we at *FHH Telecom Law* are planning to do the same in 2010. In an effort to reduce our carbon footprint and bring the news to our readers as quickly as possible (and in color!), we are going to stop distributing *FTL* 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, 2010.

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

If, on the other hand, you are one of our several hundred subscribers who receive their monthly *FTL* fix on paper via snail mail , and if you wish to continue to receive *FTL* (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 "**FTL email address change**".*

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.