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

Memorandum to Clients

August, 2002 | *News and Analysis of Recent Events in the Field of Communications* | No. 02-08

Severe limitations on definition of Δh announced

FCC Re-affirms Availability of Longley-Rice Analysis, But Imposes New Limitations on its Use

By: Lee G. Petro

The Longley-Rice method for calculating signal strength and service contours, an oft-used device which has provided many applicants with the answers necessary to get their applications granted, got a pat on the back and a kick in the butt by the Commission in two recent decisions. As a result, while the Commission's willingness to rely on Longley-Rice showings seems to remain intact, the ability of any individual broadcaster to take advantage of that willingness has been reduced by a staff ruling which restricts the use of such showings.

As a quick refresher course, Longley-Rice is a methodology which predicts signal strength based in part on the actual profile of the terrain in the area surrounding the transmitter in question. Generally, the FCC long ago adopted its own "standard contour prediction" methodology which is used in most routine applications and allotment proceedings. However, that "standard contour" approach assumes, among other things, that the local terrain does not vary more than 50 meters along any of the relevant radials. While that assumption is doubtless valid in many, and possibly most, situations, it is clearly completely inappropriate in a wide variety of situations where substantial obstructions, or substantial depressions, along one or more directions exceed that 50 meter standard.

Alternate methodologies (such as Longley-Rice) were designed to provide a means by which terrain roughness could be factored into the determination of signal strength and, thus, predicted contours. A Longley-Rice study may show that a contour is far more constricted than might have been predicted by the FCC's "standard contour prediction" method -- for example, if a mountain, or even a hill, greater than 50 meters would get in the way of the signal. Similarly, a Longley-Rice study may show that a contour extends a good deal farther than might otherwise have been predicted -- say, the transmitter is on the side of a tall mountain overlooking a flat plain. Either way, a more accurate contour prediction methodology can be extremely useful to an applicant looking, say, to upgrade its facilities, or squeeze a new channel in somewhere, or explain why its main studio is legal when it looks to be a gazillion miles from the city of license.

On the plus side, the Commission has issued a decision specifically reaffirming that Longley-Rice showings ***may*** be used to establish compliance with the main studio rules. As you may recall, when the Commission relaxed its main studio rules in 1998, it established a "bright-line" test for compliance purposes. Namely, a licensee can locate its main studio utilizing any of the following criteria: (1) within the station's community of license; (2) within the 70 dBu contour of any station licensed to the same community; or (3) within twenty-five miles from the center of the community of license.

Recently, a complaint against a licensee alleged that the station's studio did not comply with those standards. The licensee responded by submitting a Longley-Rice showing which demonstrated that the studio site was indeed within the sta-

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To submit or not to submit, that is the question

New Policy Announced Governing the Filing of Attachments to Agreements in Assignment and Transfer Applications

By: Jennifer Wagner

For years, broadcasters have been telling the FCC that contract schedules and other attachments not germane to the Commission's role in overseeing the sale of broadcast stations are none of the Commission's business and, therefore, that those schedules and attachments should not have to be submitted with transfer and assignment applications.

In a recent decision the FCC seems to have decided that schedules and other materials not germane to its oversight may not be any of its business after all. Accordingly, the FCC has announced its intention to "relax" its contract submission requirements to permit applicants to exclude contract attachments that are not material to the FCC's analysis of the transaction.

The Commission's staff is drafting new instructions and certifications for FCC Forms 314, 315 and 316 to put the recent decision into place. In the meantime, the FCC is leaving much of the decision as to what is relevant and must be filed to the discretion of buyers and sellers. However, still feeling the need to be a paternal government agency, it is requiring a detailed list of what is not filed and why.

So here is how it will work, pending the release of revised form instructions:

- Applicants who submit a complete copy of a sales contract, including all exhibits and attachments, may respond "yes" to the relevant question on the FCC form.

- Applicants who choose to omit certain transaction documents that contain information that is not material for Commission processing purposes must respond "No" to the relevant question on the FCC form. These applicants also must submit an exhibit describing each of the omitted documents, stating both the specific reason for the omission and the basis for the determination that the omitted documentation is not material to the Commission's consideration of the application. (According to the FCC, employee benefit plans and lists of vendor supply contracts to be assumed by the buyer are two examples of documents that normally would not be material to its processing of the application.)

The FCC is also quick to remind applicants that the failure to submit documentation containing all material terms of an agreement for the assignment or transfer of control of a broadcast authorization -- license or permit -- ***including the sales price***, will delay processing of the application.

The case that led to this decision focused on the Commission's instructions to assignment and transfer applicants to file "a complete and final copy of the unredacted contract for the sale of the authorizations … including all exhibits and attachments" and to certify, in the application, that they have complied with this requirement. In the recent case, the Commission found that the applicants had falsely certified that they had submitted an entire Asset Purchase Agreement when they had, in fact, omitted all of the APA's schedules. However, the Commission also concluded that the false certifications did not deprive the Commission or the public of access to relevant information. But faced with the seemingly embarrassing situation of having to slap an applicant around for failing to file materials which the Commission really didn't need anyway, the Commission acknowledged the need to rewrite the application forms and to revise the filing requirements to better comport with real-world common sense.

If you have any questions about this case or its relevance to your transactions, please contact either the FHH attorney with whom you normally work or Jennifer Wagner at 703-812-0511 or wagner@fhhlaw.com.

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Focus on FCC Fines

By: R.J. Quianzon and Harry F. Cole

Maybe an earthquake moved it . . . During an inspection of a broadcast tower operated by a licensee using the tower as the transmission site for 15 (count 'em, 15) LPTV stations, diligent FCC agents measured the height of the tower and the transmission equipment and calculated the tower's physical coordinates. Comparing the calculated coordinates with the FCC licensed coordinates for the tower, the FCC agents observed that the tower was 6/10th of a second farther North and 4 seconds farther West than authorized. Oops. In addition, they checked the Commission's antenna registration records, and found that the coordinates listed there for the tower didn't match either the stations' licensed coordinates ***or*** the G-men's calculated coordinates. Double oops. The Feds also measured the tower's height and the height of the licensee's antennas and, sure enough, they didn't match the licensed values, either. The upshot? An $11,000 fine for changing the stations' antenna locations, antenna height above ground and height above mean sea level.

Clients are reminded that the engineering information which is specified on their FCC authorizations must be followed strictly. If clients anticipate a change in the operating parameters of their stations, the FCC should first be notified and temporary authority sought.

More tower news . . . In other tower-related actions, the licensee of Station WLVA(AM) was whacked $12,000 for failure to post antenna structure registration numbers on the five (count 'em, five) separate towers of its directional array, and also for failure to maintain the specified painting on those towers. . . . And Station KNAK(AM) in Delta, Utah, got nicked $7,000 for failure to provide an effective locked fence enclosure around its tower. . . .

Still more tower news, with an EAS twist . . . And in yet more tower-related actions, the licensee of Station WWFE (AM) got spanked for $21,000 for "failure to enclose antenna towers having radio frequency potential at the base with effective locked enclosures", failure to light the tower at night as required, and failure to have operational EAS equipment. . . . And the licensee of Station WQSV(AM) was stung for $4,000 for failure to paint its tower as necessary, failure to send, receive and monitor EAS messages, failure to maintain transmission system monitoring and control, and failure to reduce power after sunset. The fine originally specified for this last laundry list of violations was $25,000, but that got reduced by the FCC after the licensee submitted tax returns which presumably convinced the Commission that $4,000 was punishment enough.

More EAS news, no twist . . . Meanwhile, Station WRHC was written up for $4,000 for failure to have operational EAS equipment, while Station KPOI-FM was hit for $2,000 for failing to retransmit the required monthly EAS test.

Sometimes it's up, sometimes it's down . . . In a follow-up order to a previous decision fining a station $20,000 for antenna violations, the FCC shrank the tab to $500. Citing personal financial information which the station had disclosed, the FCC charged the station a mere 2.5% of the original fine. It should be noted, however, that in order to receive such treatment, the station had to petition the FCC for relief three times and had to disclose gross receipts earnings, financial statements and tax returns to justify the reduction in fine. . . . In contrast to the previously noted case, the FCC effectively quintupled the fine for a non-commercial television broadcaster who broadcast "advertisements". As discussed in this column last month, advertisements are forbidden to be broadcast by non-commercial licensees. The FCC found that the station, which broadcast in several Asian languages including Chinese, aired close to two thousand spots which were, in the FCC's opinion, really commercial advertisements. Citing the gravity of the station's behavior, the FCC quintupled the standard $2000 fine to $10,000 for this station. Ouch.

Dirty deeds, but not dirt cheap . . . At the risk of creating the impression that we have some sick, morbid and socially unacceptable fascination with indecency, we report that, in addition to the WNEW item which has been in the news lately (you know, the one involving St. Patrick's Cathedral in NYC), two other licensees were on the wrong end of indecency rulings in August. The licensee of Station WCOM (FM) was unsuccessful in getting an earlier indecency fine reduced from $16,800. That case involved the broadcast of indecent material on three separate occasions. Meanwhile, WONE-FM got spanked with a $7,000 fine for a single joke -- a tasteless and not particularly funny joke, to be sure -- told by a guest on the station's morning show. The joke did not include reference to any of the "seven dirty words", and was apparently not repeated. But it made enough of a splash to get the FCC's attention, and down came the $7,000 hammer. This last fine raises interesting questions about the direction of the FCC's indecency enforcement efforts. As we reported recently, the Commission seemed to be backing off to some degree when it concluded that the use of such terms as "piss" could be construed to be not indecent. But here, the Commission seems to be charging ahead with an

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even more aggressive approach to indecency, *i.e.*, an approach based on its own broad sense of what is appropriate and acceptable. Jokes, like many things, are not subject to universal agreement, the result being that certain jokes may appall some folks but strike others as riotously funny. While the $7,000 joke in this case was, in our view, at least tasteless, it's not clear to us that it was $7,000 tasteless, or that it is necessarily appropriate to have the FCC making that kind of determination in the first place. This, of course, is a -- and possibly ***the*** -- central problem with the FCC's indecency policy as it has evolved over the years. At bottom, something is "indecent" in the FCC's eyes if it is "patently offensive" -- but what, exactly, does that mean? "Patently offensive" to whom? As Justice Harlan once noted, "one man's vulgarity is another's lyric". Obviously, we can expect more interesting developments in this area. Stay tuned.

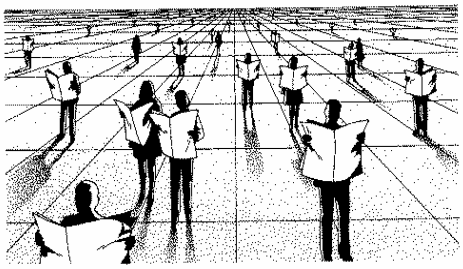
Musings and contemplations . . . Over and above the facts recited above, some more subtle lessons may be learned from these FCC actions. For example, in the case involving the $11,000 fine for relocation of the LPTV antennas, the licensee claimed that it was the ***previous*** licensee who had done the moving, and that the current licensee wasn't aware that there was a problem until the inspectors showed up. In the same vein, the folks who tried unsuccessfully to get their $16,800 indecency fine reduced claimed that they had purchased the controlling interest in the licensee's stock ***after*** the indecency had occurred, so they should not held liable for the transgression. And finally, the licensee who had the five unpainted towers (and got charged $12,000 for that honor) claimed that no one had ever told him that the towers needed to be painted or their registration numbers posted. The Commission didn't buy ***any*** of these explanations. As in most areas of the law, ***ignorance is generally not an acceptable excuse.*** You as a licensee are expected to know what is required of you, and you are subject to penalities if you don't do so. Be forewarned.

If you have any questions about any of these matters, contact the FHH attorney with whom you normally work or R.J. Quianzon at 703-812-0424 or quianzon@fhhlaw.com.

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

Updates on the News

On the Road Again . . . The FCC's off-site mailroom for its Gettysburg Office has moved, effective August 19, 2002. The new address is: 1120 Fairfield Road, Gettysburg, PA 17325. That is the required "ship to" address for all overnight couriers (*e.g.*, FedEx, UPS, Airborne). Materials being sent by regular old U.S. Postal Service may still be sent to the old address (1270 Fairfield Road, Gettysburg, PA 17325), and the USPS will take care of getting it to the new address. Note that this change does ***not*** affect fee filings, which should be sent to the address listed in the applicable Fee Filing Guide.



Give Me Just A Little More Time . . . The Commission has announced that applications (FCC Form 337) for more time to construct DTV facilities ***must*** be filed electronically as of September 3, 2002. As of that date paper versions of the form will not be accepted without an accompanying waiver request.

Hot for Teacher . . . The Commission has launched "the FCC University", an in-house educational program designed to provide FCC staffmembers the opportunity to "engage in continuing professional development." FCCU will incorporate "mission-critical learning and development activities" and will offer a "vast range of courses on generally applicable subjects" on-site, off-site through universities, professional associations and vendors/providers, through self-directed learning, and through distance learning. Ideally this curriculum will include some spare time in which the routine work of the Commission will also get done.

Can I Get A Witness . . . We have encountered some shortcomings in the FCC's database relative to Class A television authorizations -- specifically, in at least one situation the database showed a station as a translator when in fact it had a Class A license. We suspect that other Commission databases may have similar glitches, whether they involve omissions or out-of-date information. In preparing applications, you may want to suggest to your consulting engineer that, to be completely sure about the specs on relevant stations, she or he may want to doublecheck each station's license file over and above the general database.

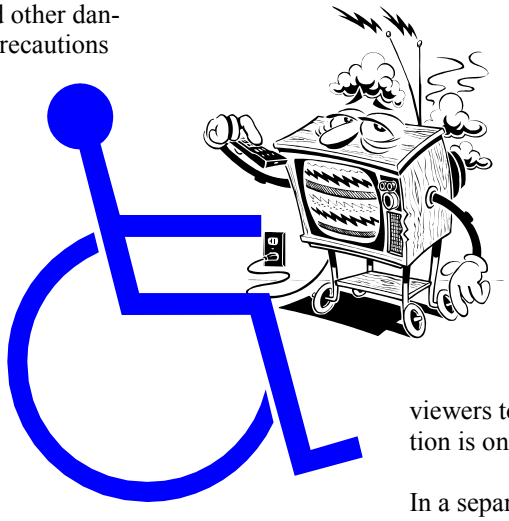
See Me, Feel Me, Touch Me . . . I Want My EAS

Broadcasters Get Second Warning to Provide Emergency Information Accessible to the Persons with Disabilities

By: Jennifer Wagner

Some television broadcasters have been adding confusion to chaos for the hearing impaired, sparking a second public notice from the FCC reminding broadcasters of their obligation to make emergency information accessible to persons with disabilities.

Despite a public notice issued a year ago, the FCC has continued to receive numerous complaints that broadcasters have failed to provide visual information about the direct paths of hurricanes, storms, and other dangerous weather conditions, or about precautions needed to respond to those conditions. Some viewers also reported that broadcasters are blocking critical visual emergency information with other information on the screen.



Since August 29, 2000, the FCC's rules have required video programming distributors, including broadcasters, cable operators, and satellite television services, to make emergency information accessible to persons with hearing disabilities. Emergency information that is provided in the audio portion of the programming must be provided through closed captioning or other methods of visual presentation, such as open captioning, crawls, or scrolls that appear on the screen. Emergency information provided by means other than closed captioning should not block any closed captioning. Closed captioning should also not block any emergency information provided by means other than closed captioning

Emergency information is defined by the FCC as information that helps protect life, health, safety or property. Under the FCC's rules, this can include -- but is not limited to -- information about immediate weather conditions, warnings and watches for impending changes in weather, or other emergencies such as the discharge of toxic gases or widespread power failures. The critical information that must be made available in an accessible form include specific details about the geographic areas that are or will be affected, evacuation orders and routes, approved shelters, road closures, or instructions on how to take shelter or secure personal property.

The FCC's rules already required that the same information must be provided in a manner accessible to persons who are blind or have poor vision. Specifically, emergency information that is provided in the video portion of a regularly scheduled newscast or a newscast that interrupts regular programming must be made accessible. This requires the oral description of emergency information in the main audio. If the emergency information is being provided in the video portion of the programming that is not a regularly scheduled newscast or a newscast that interrupts regular programming, such as through crawling or scrolling during regular programming, this information must be accompanied by an aural tone to alert viewers to the fact that emergency information is on the screen.

In a separate recent public notice, the FCC issued a reminder that DTV receivers and set-top converters shipped in interstate commerce or manufactured in the United States must include DTV closed captioning functionality. With this ability, DTV receivers and set-top converters will be capable of displaying closed captioning in accordance with the FCC's phase-in requirements. Ninety-five percent of programming produced after January 1, 1998, that does not fall under any Commission exemption must be captioned by the first quarter of 2006. Seventy-five percent of all non-exempt programming produced before January 1, 1998, must be captioned by the first quarter of 2008. The captioning rules apply to all non-exempt programming, whether displayed on analog television or DTV.

If you have any questions about closed captioning requirements, please contact the FCC attorney with whom you normally work or Jennifer Wagner, at (703) 812-0511 or wagner@fhhlaw.com.

From a conversation with the FCC staff:

Staff-granted DTV Construction Extensions Limited, Deadline For Extension Applications Shortened . . . And Failure To Build On Time May Result In Fines

By: Anne Goodwin Crump

Recent conversations with high-level FCC Media Bureau staff members indicate that the staff believes it has little flexibility with regard to future extensions of the deadlines for TV stations to complete construction of digital television (DTV) facilities.

When the Commission first established procedures for stations to seek extension of the May 1, 2002, DTV construction deadline, it delegated authority to the staff to grant up to two six-month extensions of time. After that, any further requests for additional time would be reviewed by the full Commission. Because of that limitation, the staff believes that it lacks the authority to approve any further extension requests which suggest that the completion of construction might extend past the next six months.

This could mean problems for some licensees. For example, some group owners had hoped to present the Commission with a plan whereby they would construct DTV facilities for stations in turn, according to a set schedule, without having to undertake the overwhelming expense of constructing facilities for all of the stations at the same time. According to that approach, the licensee could keep all its DTV permits as long it maintained the established construction schedule, even if that schedule meant that some, and possibly many, stations would not get their completed DTV facilities for more than a year. The staff rejected such a plan, however, precisely because of the proposed schedule called for some stations to have their DTV facilities completed more than six months after their current extended deadline. The staff's position was that it could not approve even any additional extensions when the licensee explicitly stated that the plan would be for some facilities to be completed after the expiration of that period. The theory was that approving an extension request based upon an extended construction schedule would overstep the bounds of the staff's authority.

In digging in its heels because of the perceived lack of "delegated authority", the staff is not being entirely unreasonable. The FCC is a bureaucratic organization with its own elaborate set of internal "do's and don'ts". Central to the agency's operational structure is the notion that the full Commission is the boss and the staff can only do what the boss says it can do -- nothing more and nothing less. So when the full Commission has told the staff that it can grant, at most, two six-month extensions, the staff can reasonably conclude that the staff does not have the power to grant any extension which would exceed that Commission-imposed limit. Thus, if a proposal, no matter how reasonable and logical it may appear, would take a permit beyond the "two six-month extensions" limit imposed by the Commission, the staff figures that its hands are tied. In that case, if the proponent wants some action, it will have to ask the full Commission to step in.

Fines may be imposed on stations that are not able to complete construction within the next six months. While subject to change, the original thinking on the amount of such a fine was in the neighborhood of $20,000.

The staff also indicated that any ***further extension applications should be filed 60 days in advance of the current extended construction deadline***. Thus, for stations that were granted an extension early in the process and have a November 1 deadline, any new application should be filed immediately. Stations granted an extension later, with a December 1 deadline, would then have until October 1 to file a new extension application.

The staff further mentioned the possibility that fines may be imposed on stations that are not able to complete construction within the next six months. While subject to change, the original thinking on the amount of such a fine was in the neighborhood of $20,000. Of course, fining somebody for not building DTV facilities because of a lack of funds seems counterintuitive and out of touch with reality. But while this hard-line stance may reflect the Commission's lack of understanding of the real-world problems faced by television stations in today's marketplace, and especially those in smaller markets, broadcasters should be aware of the looming threats facing them.

If you have any questions or would like further information on this matter, please contact either the lawyer in our office with whom you normally work or Anne Goodwin Crump at 703-812-0400 or crump@fhhlaw.com.

The heat is on

FCC Acts On Two Fronts To Encourage Digital TV Roll-out

By: Lee G. Petro

In the long march towards a digital world, the Commission recently released items intended to protect two of the three heads of the digital beast. First, the Commission adopted deadlines for the introduction of DTV tuners. Second, the Commission initiated a rule-making to establish copy protection standards to protect the producers of digital programming.

DTV Tuners

In a major action that the FCC intends to spur the roll-out of digital television, the Commission established a specific timeline for consumer electronics to contain DTV reception capability. The Commission, of course, is determined to push the U.S. into the digital age, but has been repeatedly frustrated in that effort by reluctant consumers, manufacturers and broadcasters, none of whom is inclined to jump forward before the others. The FCC has imposed stringent DTV construction deadlines on broadcasters, but that hasn't helped much because (a) consumer hardware has not been hitting the shelves in volumes and at prices which might be attractive, and (b) even if the hardware and delivery mechanisms were there, the perception is that there is not yet a critical mass of digital sufficiently desirable to warrant buying digital equipment. So the Commission is now trying to goose manufacturers and persuade content providers to get the ball rolling.

Specifically, the Commission established July 1, 2007 as the deadline by which ***all*** television sets with screen sizes 13 inches or greater, and ***all*** video receiving equipment, including VCRs, DVDs, and DVRs (TiVo), must include digital reception capability. The FCC also set the following interim deadlines:

- **Receivers with screen sizes 36 inches and greater** -- 50% of a responsible party's units must include DTV tuners effective July 1, 2004; 100% of such units must include DTV tuners effective July 1, 2005.

- **Receivers with screen sizes 25 to 35 inches** -- 50% of a responsible party's units must include DTV tuners effective July 1, 2005; 100% of such units must include DTV tuners effective July 1, 2006.

- **Receivers with screen sizes 13 to 24 inches** -- 100% of all such units must include DTV tuners effective July 1, 2007.

- **TV Interface Devices** VCRs and DVD players/ recorders, etc. that receive broadcast television signals -- 100% of all such units must include DTV tuners effective July 1, 2007.

The Commission believes that this schedule will help speed compliance with the Congressional requirement that the DTV transition be completed by December 1, 2006, and will spur consumer interest in DTV service.

In other related matters, the Commission declined to adopt requirements for labeling of the television equipment until such time that the marketplace requires such action. Moreover, the Commission declined to establish specific reception quality requirements for DTV receivers, instead trusting the marketplace to establish such thresholds.

Copy Protection

On the content side, the FCC has opened a proceeding relating to the possible protection of digital programming from unauthorized copying (sometimes referred to, less elegantly, as "piracy"). One of the main reasons given for the slow roll-out of digital over-the-air service is the absence of high quality digital programming. And that absence is often attributed to concerns that high quality *copyrighted* digital programming could be pirated very easily.

In light of these concerns, a working group of interested entities has been trying to develop a technological "flag" to protect digital programming. Among the items up for discussion is the "robustness" of the flag with respect to permitted copying. For example, the working group has not reached a resolution with respect to the ability of the "flag" to allow the recording

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Let me tell you how it will be . . .

Annual Regulatory Fees Due in September

By: Alison J. Shapiro

As you are aware, annual regulatory fees are due to be received by the FCC no later than ***September 25, 2002***. This year, payments can be made anytime to and through the ending date.

Any payment not received by Mellon Bank by 11:59 p.m., September 25, 2002, will be assessed a 25% late payment fee.

In a "clarification" issued by the Commission in mid-August, the FCC has advised that, in the list the FCC has released setting out the regulatory fees due from particular broadcast stations, "a small number of AM stations" previously classified as Class D were "erroneously classified as Class B". According to the Commission, "if you are a licensee of a station listed as Class D last year and are presently listed in the [Commission's] listing as a Class B station, and you have made no modifications to your station that would affect its class, you should pay the regulatory fee assessed for a Class D station."

The FCC has issued a *Public Notice* indicating that they have begun mailing notices to all licensees and permittees. If you have any questions about regulatory fees or want to know how much your station must pay this year, please contact the FHH attorney with whom you normally work or Alison Shapiro at 703-812-0478 or shapiro@fhhlaw.com.

Don't Forget to Update Your Political Advertising Disclosure Statement

By: Liliana E. Ward

The Commission's political broadcasting rules require that stations provide candidates all pertinent information about discount privileges available to commercial advertisers, including the lowest unit charges for the different classes of time sold by the station. This can most practically be accomplished by providing the candidates with a written disclosure statement. Before you dust off the disclosure statement you used in the last election and start to hand out copies to candidates in the next election, though, you should be sure to update it to reflect any changes in rates or other similar considerations which might affect the continued accuracy of the disclosure statement.

For more information about Political Disclosure Statements, or to obtain a copy of our Summary of Political Broadcast Regulation (which includes a sample Disclosure Statement), contact the FH&H attorney with whom you usually work, or Liliana E. Ward at 703-812-0432 or ward@fhhlaw.com.

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of at least some programming by consumer electronic devices such as video recorders (for example, TiVo and ReplyTV), and VCRs, but to prohibit the recording of the program for distribution on the Internet.

In response to these unresolved concerns, the FCC released a Notice of Proposed Rulemaking to review whether the FCC should enter the fray and adopt the proposed "flag" as the industry standard. While the FCC believes that adoption of the "flag" as a formal Commission standard may assist to speed the development of digital programming, it questions whether such adoption is necessary and, if so, whether the "flag" is really the appropriate technological solution to the problem. The Commission is also seeking comments on the likely impact of such protections on the public's access to programming, and the public's ability to utilize current and future digital equipment.

Comments in this proceeding are due on October 30, 2002, with Reply Comments due on December 13, 2002.

If you have any questions about this, or if you would like help in preparing comments in response to the Notice of Proposed Rule Making, contact the FHH attorney with whom you normally work or Lee G. Petro at 703-812-0453 pr petro@fhhlaw.com

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tion's 70 dBu contour. The Commission accepted that showing and ruled that the studio was indeed within the 70 dBu coverage contour. Accordingly, it dismissed that portion of the complaint.

So now we know for sure that Longley-Rice showings can be used to determine compliance with the main studio rule. That's the good news.

On the downside, in an unrelated case, the Commission's Audio Division has announced, in a footnote, that the use of alternate contour-calculation methods (such as Longley-Rice) will be more limited than has previously been thought to be the case. In particular, the staff has announced that terrain will not be deemed to "depart widely" unless the terrain roughness factor (known to the *cognoscenti* as "Δh") has a value of "20 meters or less, or 100 meters or more", or where that antenna height above average terrain along radials toward the community of license varies by more than 30% from the HAAT obtained using the standard method. In other words, it appears that the staff is attempting to limit the use of alternate prediction methodologies to relatively extreme terrain situations. This may come as a disappointment to applicants in less severe terrain environments who might otherwise have been able to avail themselves of a Longley-Rice showing.

Terrain will not be deemed to "depart widely" unless Δh has a value of "20 meters or less, or 100 meters or more", or where that antenna height above average terrain along radials toward the community of license varies by more than 30% from the HAAT obtained using the standard method.

Some observers have questioned whether the newly-announced limitations on alternate methodologies may be subject to legal challenge. It could be argued, for example, that the adoption or revision of substantive standards (such as the definition of "departs widely") should be subject to formal rule making procedures -- or at least, that such matters should not be announced in a footnote to a letter to a single licensee. Whether any effort, formal or otherwise, will be made to alter this recent ruling is unclear at this time.

If you have any questions about these matter, contact the FCC attorney with whom you normally work or Lee G. Petro at 703-812-0453 or petro@fhhlaw.com.

FIRST WEBCASTING ROYALTY PAYMENT DUE OCTOBER 20TH

By: Alison J. Shapiro

The royalty rate for streaming has been set at 0.07 cents per performance per listener; the ephemeral recording fee has been set at 8.8% of the performance fees; and the minimum fee for all services who stream over the Internet has been set at $500.00 for each calendar year. These rates go into effect on September 1, 2002. While legislation has been introduced in Congress which might, at some future time, lead to a revision in these streaming rates, any such legislative relief, even if it does materialize, is not likely to occur before the first payments are due under the current standards.

Full payment of royalties for all pre-September 1, 2002 streaming must be made by ***October 20, 2002.*** Since not all broadcasters and Webcasters have kept detailed records of the performances they have streamed up until now, the amount of royalties due can be estimated on the assumption that 15 songs are performed per hour (services may estimate the number of performances through December 31, 2002). Payment for streaming for the month of September is due on or before ***November 14, 2002***, and payments for subsequent months will be due the 45th day after the end of each month for which royalties are owed (*e.g.*, payment for the month of October will be due on or before December 16).

Payments must be sent to:

SoundExchange™
1330 Connecticut Avenue NW
Suite 300
Washington, D.C. 20036
Attention: Mr. Sean Glover

At present it appears that, at some future point, folks interested in streaming music on the Internet will be subject to numerous, and possibly quite elaborate, record keeping requirements. Those record keeping requirements have not as yet formally been adopted, however..

If you have questions regarding the new royalty rates for streaming, call the FHH attorney with whom you normally work or Alison Shapiro at 703-812-0478 or shapiro@fhhlaw.com.

FM ALLOTMENTS PROPOSED 7/19/02-8/23/02

State	Community	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
CA	Los Banos	284B	02-186	Cmts - 9/9/02 Reply-9/24/02	1.420
CA	Planada	284B	02-186	Cmts - 9/9/02 Reply-9/24/02	1.420
GA	Crawfordville	234A	02-225	Cmts - 9/30/02 Reply-10/15/02	Drop-in
LA	Vinton	287A	02-212	Cmts - 9/30/02 Reply-10/15/02	Drop-in
MS	Greenwood	277A	02-209	Cmts - 9/23/02 Reply-10/8/02	Drop-in
NE	Hyannis	250C1	02-210	Cmts - 9/23/02 Reply-10/8/02	Drop-in
OK	Vici	249A	02-205	Cmts - 9/30/02 Reply-10/15/02	Drop-in
SD	Wall	288C	02-211	Cmts - 9/23/02 Reply-10/8/02	Drop-in
TX	Balmorhea	283C	02-185	Cmts - 9/9/02 Reply-9/24/02	Drop-in
TX	Encinal	273A	02-188	Cmts - 9/9/02 Reply-9/24/02	Drop-in
TX	Hooks	231A	02-203	Cmts - 9/30/02 Reply-10/15/02	Drop-in
TX	Pampa	277C2	02-204	Cmts - 9/30/02 Reply-10/15/02	Drop-in
TX	Big Lake	246A	02-206	Cmts - 9/30/02 Reply-10/15/02	Drop-in
TX	Leakey	275A	02-207	Cmts - 9/30/02 Reply-10/15/02	Drop-in
TX	Groom	223A	02-226	Cmts - 9/30/02 Reply-10/15/02	Drop-in
TX	Sonora	272A	02-227	Cmts - 9/30/02 Reply-10/15/02	Drop-in
TX	Spur	254A	02-228	Cmts - 9/30/02 Reply-10/15/02	Drop-in
VT	Albany	233A	02-192	Cmts - 9/9/02 Reply-9/24/02	Drop-in

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.

FM ALLOTMENTS ADOPTED 7/19/02-8/23/02

State	Community	Channel	Docket No.	Availability for Filing
AR	Rison	255A	01-240	TBA
CA	Burney	225A	01-311	TBA
GA	Buena Vista	264C3	02-48	None
GA	Cuthbert	264C3	02-48	None
HI	Lanai City	284C	N/A	None
IA	Des Moines	273C0	N/A	None
KY	Harrodsburg	256A	02-24	None
KY	Keene	256A	02-24	None
MI	Oscoda	243A	01-241	None-Dismissed
MI	Roscommon	246A	01-296	None-Dismissed
MO	Poplar Bluff	223C3	N/A	None
NE	Firth	229A	0-234	TBA
NE	Omaha	222C0	N/A	None
NV	Amargosa Valley	266C1	N/A	None
OK	Arnett	285C2	01-236	TBA
OK	Sayre	269C2	01-237	TBA
OK	Alva	260C1	98-155	None
OK	Tishomingo	259C3	98-155	None
OK	Tuttle	259C3	98-155	None
OK	Woodward	292C1	98-155	None
TN	Henderson	299C2	N/A	None
TX	Pearsall	227A	01-124	None-Dismissed
TX	Pearsall	227A	01-1844	None-Dismissed
TX	Childress	281C2	01-196	TBA
TX	Baird	243C3,	01-197	TBA
TX	Junction	277C3	01-198	TBA
TX	Dilley	264A	01-200	TBA
TX	Goree	275A	01-202	TBA
TX	Leakey	299A	01-203	TBA
TX	Sweetwater	221C3	01-204	TBA
TX	Buffalo Gap	227A	01-221	TBA
TX	Hebbronville	254A	01-238	TBA
TX	Bruni	293A	01-239	TBA
TX	Asherton	284A	01-246	TBA
TX	Big Wells	271A	01-247	TBA

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FM ALLOTMENTS ADOPTED
7/19/02-8/23/02
Continued from preceding page

State	Community	Channel	Docket No.	Availability for Filing
TX	La Pryor	278A	01-262	TBA
TX	Matador	221C2	01-270	TBA
TX	Turkey	244C2	01-272	TBA
TX	Richland Springs	252A	01-274	TBA
TX	Rocksprings	235C3	01-279	TBA
TX	Benjamin	237C3	01-280	TBA
TX	Camp Wood	271A	01-307	TBA
TX	Crystal Beach	268A	N/A	None
TX	Floydada	291C3	N/A	None
TX	Llano	293C3	N/A	None
TX	Pecos	252C3	N/A	None
TX	Pittsburg	276C2	N/A	None
TX	Wichita Falls	280C2	N/A	None
UT	Delta	239C	N/A	None
WY	Kemmerer	297C1	N/A	None

"TBA" means "to be announced". Newly-allotted channels are not likely to become available for filing until after the Commission has resolved certain difficulties with its broadcast auction processes. The Commission has provided no indication of when those difficulties may be resolved.

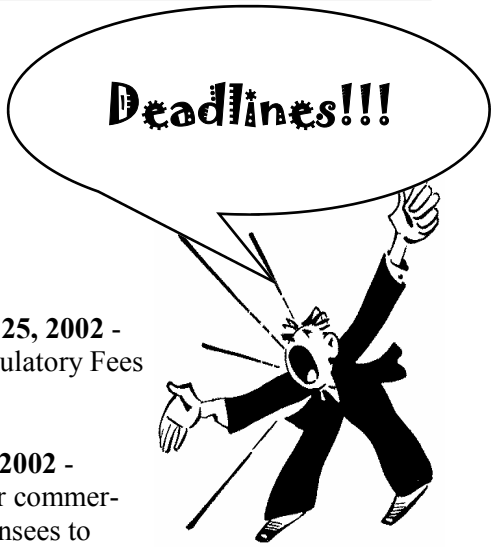
FHH - On the Job, On the Go

Frank Jazzo conducted Political Advertising sessions at the Arkansas Broadcasters Association's annual convention at the Peabody Hotel in Little Rock, Arkansas, on August 9, 2002.

Frank Jazzo has been named Co-Chair of the Federal Communications Bar Association's Mass Media Practice Committee.

Jim Riley, ***Frank Jazzo***, ***Howard Weiss*** and ***Kathleen Victory*** will be staying at the Sheraton Seattle while they attend the NAB Radio Show in Seattle, Washington, from September 12-14, 2002.

Raymond J. Quianzon will be lecturing on legal and regulatory matters facing telephone and wireless companies at the FCC's Telecommunications Initiatives Program on September 19, 2002 in Phoenix, Arizona.



September 25, 2002 - Annual Regulatory Fees due.

October 1, 2002 - Deadline for commercial TV licensees to elect between cable must-carry and retransmission consent.

Also, as indicated in the story on page 6, applications for extension of DTV construction deadlines are due ***60 days in advance of the current expiration date of the DTV construction permit***.