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

Memorandum to Clients

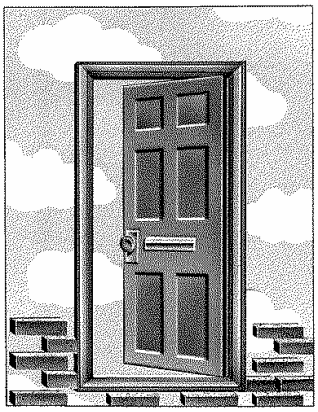
September, 2002 | *News and Analysis of Recent Events in the Field of Communications* | No. 02-09

Localism, Diversity, And Competition...Oh My!

All Broadcast Ownership Rules On the Table In Omnibus Rule Making

By: Lee G. Petro

On the heels of court actions overturning its national and local TV ownership rules, and with two rulemakings concerning the newspaper/broadcast cross-ownership rule and the local radio multiple ownership rules already underway, the Commission has issued a comprehensive Notice of Proposed Rulemaking ("NPRM") through which the Commission apparently plans to sort out the future of broadcast ownership rules. Since the Commission had already solicited and received comments with respect to the local radio multiple ownership rulemaking and the newspaper/broadcast cross-ownership rulemaking, those comments will be integrated into the current proceeding.



As reported in prior issues of the Memo To Clients, the U.S. Court of Appeals for the D.C. Circuit has twice rejected the Commission's attempts to put numerical limits on the ownership of television stations. Specifically, in the *Fox Television* decision the Court rejected the Commission's rules that prohibited one party from owning TV stations reaching more than 35% of the national audience. And in the *Sinclair Broadcast Group* case the Court rejected the Commission's numerical limitation on the number of television stations one entity could control in the local television market. In both decisions the Court was particularly critical of the lack of any hard evidence to support the notion that the Commission's numerical limitations are serving the goals for which they were adopted.

In the wake of these two decisions, the Commission has decided to consolidate all broadcast-related ownership rulemakings into an omnibus rulemaking proceeding. In addition, studies were commissioned by the FCC to derive empirical evidence relating to the effects of competition on the local media markets, and the level of local service currently being provided by broadcasters. These studies are to be released to the public for review within the next few weeks. The publication of the studies will also trigger the comment period for the NPRM.

In the NPRM the Commission literally has thrown open consideration of all broadcast ownership rules, and is seeking comments on all aspects of the subject, including:

? whether the historical policy goals of diversity, competition and localism, for which the broadcast ownership

(Continued on page 10)

The Scoop Inside

FCC Punts on DTV, Tauzin/Dingell Float 2006 Transition 2
Focus on FCC Fines 3
Late Payment of Regulatory Fees Can Be Costly in Unexpected Way 3
FCC Clarifies Second Adjacent Translator Interference Calculation 4
Third Adjacent LPFM Interference Studies Underway 5
The Internet Page 6
Commission Designates for Hearing Two More FM Assignment Applications On Local Concentration Issues 7
FEC Rule Making Could Mean More Work for Broadcasters 8
Radio Renewal Cycle Approaching Soon 9
FM Allotments 11

While FCC Fiddles, Is Congress Starting to Burn?

Commission Punts on DTV, Tauzin/Dingell Float 2006 Transition

By: Vincent J. Curtis, Jr.

After coming down hard on the electronic manufacturing industry for what it perceived was foot-dragging on DTV, the FCC itself has declined to take action on a number of major long-pending DTV issues. It had been anticipated in some corners that the Commission would, during its September meeting, address at least some of those issues, which include dual must carry, satellite carriage, cable tier digital programming and the quality of the stations' digital signal as carried by a cable system. It was also anticipated that the Commission would act on the various petitions for reconsideration that remain from the last major action by the Commission addressing the DTV/cable areas.

However, the Commission chose ***not*** to include ***any*** of these important issues on its September agenda. Since the Commission has repeatedly expressed its concern about delays in the DTV conversion process, it is more than a little ironic that the Commission itself would fail to act on DTV-related matters which are clearly ripe for action.

As with most observed phenomena in Washington, the Commission's reluctance to act may be rooted in politics. There is obviously wide disagreement among the Chairman and his three fellow Commissioners about how the Commission should proceed in this area. Whether or not would-be Commissioner Adelstein would make a difference is, of course, not known. Adelstein's nomination is currently being held up on the Hill because of political maneuvering involving delays by the Democrats in the Senate on acting on judicial nominations previously sent up by the President. Senate Majority Leader Daschle has indicated that he will take the Adelstein vote to the floor regardless of attempts by fellow Senators to hold up action.

When the Commission will look at these issues is still up in the air. It is bruited about that they may well wait until after the November elections to determine the composition of the Congress they will have to be dealing with over the next two years. If the Democrats retain control of the Senate and pick up the House as well, there could be a change in course on many telecommunications matters.

However, Representative Billy Tauzin (R-LA) and John Dingell (D-MI) have recently circulated a draft bill which would require broadcasters to begin digital-only broadcasting by December 31, 2006 ***regardless of the number of digital sets in service in any community***. At the present time, broadcasters are subject to a December 31, 2006 deadline for final transition from analog to DTV -- but that deadline is subject to an exception which provides that there be at least 85% digital use in any market before stations in that market would be required to convert to digital. Under the draft bill being circulated, that 85% litmus test would be removed and December 31, 2006 would be an absolute drop-dead date not subject to any exemptions. This certainly would be a very different ballgame for not only broadcasters but consumers as well. It is very doubtful that the Congress would have the courage (or shortsightedness) to cut off over the air television to the public who do not have digital sets by 2006.

Interestingly, even the Tauzin-Dingell draft bill fails to discuss various key issues for broadcasters, such as analog/digital must carry, including multicasting use.

The circulated draft bill was set up for a September 25 meeting which Tauzin called to discuss DTV issues. Tauzin has been an outspoken critic of the broadcast industry failing to move more quickly to get the DTV signal out and DTV programming available to the public. To many, though, the Tauzin-Dingell approach is another example of the government trying to force a consumer-driven industry to move forward where there is clearly little or no demand, particularly in a very weak economy.

As progress, if any, occurs, we will keep you advised.

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**:** Office@fhhlaw.com
Web Site: fhhlaw.com

Supervisory Member
Vincent J. Curtis, Jr.

Co-Editors
Howard M. Weiss
Harry F. Cole

Contributing Writers
Ann Bavender, Harry F. Cole, Vincent Curtis, Anne Goodwin Crump, Lee G. Petro, R.J. Quianzon, Alison Shapiro, Jennifer D. Wagner and Liliana Ward

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

Focus on FCC Fines

By: R.J. Quianzon

Pirate Locked-Up A radio pirate from Jupiter, Florida has been sentenced to 15 months of hard time in addition to a $25,000 fine. The pirate, arrested two years ago, was sentenced after a seven day trial in federal court. As continually noted in this column, the FCC has significantly increased its enforcement efforts in the last several years and has adopted a close-to-zero tolerance policy.

Evidence Optional The FCC has reaffirmed that a letter from an upset listener in which the listener describes what he heard on the radio is sufficient to support a $14,000 fine on a radio station. The station here repeatedly argued that allowing a listener's characterization of a broadcast (as opposed to a tape or transcript of the broadcast) to be the basis of a fine violated due process and was unnecessarily burdensome to a station who would have to refute a listener with no evidence, but the FCC rejected that argument.

EAS Again And now for this column's monthly mantra: "Make sure that your EAS equipment is installed and tested." The latest targets on the EAS inspection front were two New Mexico stations spanked with a $13,000 fine. It is very important to ***properly install and routinely test the equipment***, and to ***fully document those steps***. The base forfeitures for EAS fines are punishingly high.

"I Just Bought It" is No Excuse New owners of an AM station were slapped with a $3000 fine after FCC agents detected that the station did not reduce its power at night time. The agents received complaints about the station two weeks after new owners took over. The new owners advised that operations by the former owners could not be corrected in such a short time. However, the FCC was not impressed and levied a fine as a house warming gift for the new owner's station.

Stations Need Studios If you are operating a broadcast station you need to have a main studio or a waiver from the FCC of its main studio rule. The FCC has fined an FM station for not complying with this widely known rule. The station without a main studio was operated as a satellite for a station in another state. FCC agents attempted to inspect the main studio of the station but they could only find a transmitter. Agents called the license to find out how to get to the main studio and were advised that they could go to the local library for the public inspection file. The FCC was not pleased and levied a $5000 fine.

Pay Now Or Pay — Really Pay — Later

Late Payment of Regulatory Fees Can Be Costly In Unexpected Ways

By: Donald J. Evans

It may be too late to help with Fall, 2002 regulatory fees, but one little-known consequence of making late payments is worth highlighting. The hefty 25% late payment penalty which the FCC assesses on regulatory fee payors is a strong incentive to get those payments in on time. In addition, however, prospective participants in FCC auctions are required to certify under penalty of perjury that they are not currently delinquent on any non-tax debt owed to any federal agency, and must also indicate whether in the past they, their controlling interests, their affiliates and the affiliates of their controlling interests have *ever* defaulted or been delinquent on such a debt. If you are currently in default, you can't participate at all in the auction. If you are a "former defaulter" who has since cured your outstanding delinquencies, you may participate but ***you have to pay 150% of the upfront payments that would otherwise be due.***

One auction participant became all too familiar with these provisions recently when it got a notice that a regulatory fee from last year had apparently been received by the FCC one day late. The licensee wanted to dispute the 25% late fee which was assessed by the FCC on the eve of the auction. The late fee involved was only a few hundred dollars, but the applicant had to pay the disputed fee in order to be eligible to join the auction. Then, adding insult to injury, it had to make an additional 50% upfront payment because it had assumed the dubious status of a "formerly delinquent" payor. In some auctions, this add-on to the upfront payment could amount to thousands or even millions of dollars, even though the late payment at issue was only a hundred dollars. The rule is especially vexing for companies with many affiliates who routinely make payments to various federal agencies in addition to the FCC. Even one late payment by any affiliated entity puts you in the penalty box.

If you have any questions about this, please contact Don Evans at 703-812-0430 or evans@fhhlaw.com.

FCC Clarifies Second Adjacent Translator Interference Calculation

By: Jennifer Wagner

There was no question that the proposed FM translator would cause prohibited interference to a full service FM station in a populated area. Being a secondary service, the FM translator's application was dismissed. And then, like a knight in shining armor, a newly adopted interference standard rode in to save the day.

The FCC's rules already allowed for the grant of an FM translator application notwithstanding predicted interference if the applicant could demonstrate that no actual interference would occur over any populated area -- *e.g.*, if the interference area would be limited to the middle of a lake.

In the recent case of *Living Way Ministries, Inc.*, a translator application had been dismissed because the Commission concluded that the proposed translator would cause interference over populated areas. The applicant petitioned for reconsideration, although the prospects for the success of that petition were not great. But lo and behold, the Commission did indeed reconsider its earlier action.

What changed at the 11th hour was the FCC's method of determining whether interference will occur: the Commission adopted a relaxed second-adjacent channel interference protection standard, which was applicable in this case. Instead of requiring use of the contour overlap method to predict interference, applicants may instead use the undesired-to-desired signal ratio method to meet the lack-of-population standard. This newly accepted method, combined with a U.S. Geological Survey topographical map that showed no structures in the small overlap area defined under this new method, resulted in the reinstatement of the application earlier this month.

*Instead of requiring use of the contour overlap method to predict interference, applicants may instead use the undesired-to-desired signal ratio method to meet the lack-of-population standard [and] USGS topographical maps -- but **not** US Census data -- provide an acceptable way to demonstrate lack of population in the area defined under the undesired-to-desired signal ratio method.*

In reinstating the application, the Commission also took the time to explain how applicants attempting to satisfy the lack-of-population exception can meet their burden of proof. The argument has been made in other cases that proving "no population" is impossible. How, after all, can an applicant be expected to prove conclusively that there are absolutely no people within a given area? The Commission has rejected that argument, saying (unhelpfully) that an applicant bears the burden of demonstrating that an area of predicted interference is unpopulated.

In its recent decision, however, the Commission clarified that USGS topographical maps -- but ***not*** US Census data -- provide an acceptable way to demonstrate lack of population in the area defined under the undesired-to-desired signal ratio method. According to the Commission, Census data that show no population in an area do not necessarily establish a "lack of population" for purposes of an interference showing. Although this may initially sound like a head-spinner, it is based on the Commission's definition of "listeners and potential listeners" as "those who live, work, or regularly travel in an area." So an area that includes only commercial sites or major highways with no reportable residential population for Census purposes will nevertheless be considered populated for FCC interference purposes.

According to the FCC, the following considerations will govern whether USGS topographical maps may be used to establish the presence or absence of population in an area where actual interference will occur:

- Where a USGS topographical map shows residences, commercial or industrial area, or major roads within an area of predicted interference, or other potentially occupied sites where one would expect listeners, the FCC will presume that the lack-of-population exception does ***not*** apply; ***BUT***

- Where a USGS topographical map does not depict structures, major roads, or other potential listening sites within the area of predicted interference, and where there are no conflicting data (such as information about recently developed structures), the Commission will presume that the lack-of-population exception ***does*** apply.

If you have any questions about how this new standard affects pending or planned applications, please contact either the FHH attorney with whom you normally work or Jennifer Wagner at 703-812-0511 or wagner@fhhlaw.com.

Third Adjacent LPFM Interference Studies Underway

By: Ann Bavender

Congressionally mandated field tests are moving forward to determine whether third-adjacent LPFM stations would cause interference to existing full power FM stations. When the FCC created the LPFM service, it declined to include third-adjacent protection requirements. In 2000, after broadcasters raised concerns that third-adjacent LPFM stations would cause interference to full power FM stations, Congress ordered the FCC to modify its rules to include LPFM third-adjacent channel distance separation requirements. The FCC subsequently modified its rules to include the third-adjacent protection.

Also in 2000, as part of the compromise between broadcasters and the FCC, Congress ordered the FCC to conduct experimental field tests to determine whether LPFM stations not subject to third-adjacent minimum distance separation requirements would cause interference to full power FM stations and FM translator stations. Congress ordered the field tests to be made in up to nine FM radio markets, including urban, suburban, and rural markets.

Pursuant to the Congressional mandate, the FCC chose Comsearch as the independent testing organization to conduct the field tests. Comsearch recently applied for experimental LPFM licenses to conduct the tests in the following areas: San Francisco; Minneapolis-St. Paul; Hartford, Connecticut; Sacramento, California; Portland, Maine; and Rochester, Minnesota. The FCC is required to release a report on the tests once they have been completed. The report is to include the FCC's recommendations to Congress on reducing or eliminating LPFM third-adjacent minimum distance separations.

Meanwhile, the FCC is also moving forward to finalize processing the remaining pending LPFM applications. As part of this effort, it has requested amendments to those applications which do not propose protection to third-adjacent FM stations because they were filed before the FCC modified its rules to require third-adjacent protection. A very short window -- from October 28 to November 1, 2002 -- will be open for filing these amendments.

In addition, the FCC has issued a list of LPFM applications in Alabama, Arkansas, Guam, Kentucky, Massachusetts, and Montana (and a few in other states) which it has found acceptable. Petitions to deny the applications are due October 7, 2002.

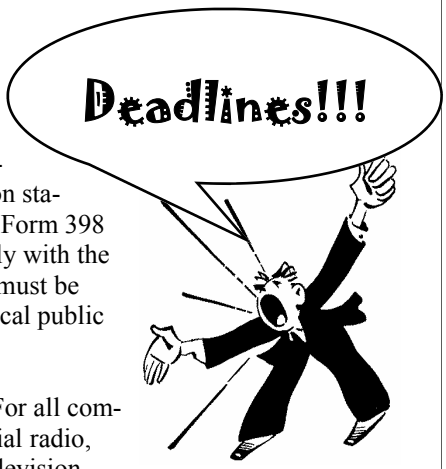
If you have any questions about pending LPFM applications or how they may affect your existing stations, please contact the FHH attorney with whom you normally work or Ann

FHH - On the Job, On the Go

On October 23 ***Harry Martin*** will be a guest speaker on a panel at the Kagan Radio Summit at the Park Lane Hotel in New York City. The topic of the panel is "Will Radio Get Reined In?"

Neo-natal news — Lee and Na-Rae Petro are the proud parents of Sarah Jane, born September 12. Baby, parents, and sister Emily are all doing fine.

October 10, 2002



Children's Television Programming Reports - For all commercial television and Class A television stations, the reports on FCC Form 398 must be filed electronically with the Commission, and a copy must be placed in each station's local public inspection file.

Issues/Programs Lists - For all commercial and noncommercial radio, television, and Class A television stations, a listing of each station's most significant treatment of community issues must be placed in the station's local public inspection file. The list should include a brief narrative describing the issues covered and the programs which provided the coverage, with information concerning the time, date, duration, and title of each program.

Congress to the rescue???

Possible Congressional Relief From Streaming Royalties On The Horizon?

By: Alison J. Shapiro

Streaming may be saved after all. Shortly before Congress recessed in August, the Internet Radio Fairness Act ("IRFA") was introduced to address the Copyright Arbitration Royalty Panel ("CARP") process and potential fees for streaming. The bill is designed to make the copyright royalty arbitration process fairer for smaller entities. The current royalty rate harms not only the hundreds of Webcasters (many of whom have shut down their operations), but also Internet users seeking innovative programming and artists seeking alternative avenues through which to promote their music.

According to IRFA's proponents, changing the standard for setting royalty rates is crucial to the survival of Webcasting. The IRFA is intended to strike a balance between just compensation and Internet development. Highlights from IRFA include: a small business ($6 million or less in gross revenues) exemption from paying royalty fees; a small business exemption from payment for participation in future CARP proceedings; elimination of the ephemeral recording royalty payment; and mandated future modification of the royalty rate standard, ideally transforming it from the "willing-buyer/willing-seller" mode to the traditional standard codified in the 1976 Copyright Act.

If IRFA is to survive, it will have to pass both Houses of Congress. Any differences between the House and Senate versions of IRFA would have to be reconciled before it could be sent to the President for signature. And all of this legislative activity would have to be completed before the end of the Congressional session later this year. We're keeping our fingers crossed.

And while we await word on the fate of the IRFA, at press time news has arrived of the introduction of a bill in the House seeking an emergency six-month stay of streaming royalties. The goal of this bill is to afford broadcasters and streamers the opportunity to challenge the streaming royalty structure in court ***before*** they have to start paying.

In the meantime, if you have any questions about IRFA or would like a copy of the bill, please contact the attorney with whom you normally work or Alison Shapiro at 703-812-0478 or shapiro@fhhlaw.com.

Broadcasters Request Stay of Royalty Payment for Streaming

By: Alison J. Shapiro

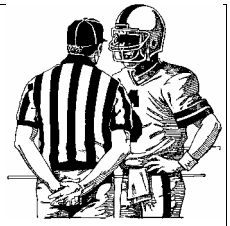
On another front in the on-going struggle by streamers against the royalty system, the Copyright Office is seeking comments on a motion filed by several broadcasters and the National Association of Broadcasters requesting a stay of radio stations' obligation to pay royalties for internet streaming. Those royalties, which cover a four-year period, are currently slated for payment on October 20, 2002. On-going royalty payments would then be due monthly thereafter. The stay request seeks to have the royalty process put on hold for the foreseeable future. Oppositions to the motion and replies to any oppositions were required to be filed by the end of September. We will keep you apprised of any developments.

MEMO TO CLIENTS NOW AVAILABLE BY EMAIL!

For those of you interested in reducing the amount of paper on your desk, the FHH Memo to Clients is now available via email! If you are interested in receiving the Memo to Clients by email, please let us know by email addressed to office@fhhlaw.com. Same great content, much less paper.

Interested in looking at back issues of the Memo to Clients? Visit our website at www.fhhlaw.com.

There's a flag on the play . . .



Commission Designates for Hearing Two More FM Assignment Applications On Local Concentration Issues.

By: Howard M. Weiss

After more than a year of deliberation, the FCC designated two more unopposed assignment applications in the Beaumont, Texas market. These actions were the latest taken pursuant to the Commission's November 2001 Local Radio Ownership NPRM. That order launched a proceeding to develop new rules on local radio concentration above and beyond the numerical caps specified in the Telecommunications Act of 1996 (which were concededly met by the Beaumont applicants). The NPRM adopted an interim policy to apply to so-called "flagged" applications, *i.e.*, those that proposed transactions which would result in 50 percent or more of the advertising revenues in the relevant Arbitron market being controlled by one party or 70 percent or more being dominated by two parties.

Despite aggressive and comprehensive showings by the buyers, Clear Channel and Cumulus, the Commission concluded that the proposed transactions raised substantial and material questions about concentration of ownership in the Beaumont market. Based on BIA data and revenue estimates from the applicants, the Commission found that Clear Channel would have 58.7% of market revenues if its proposed purchase were approved, while Cumulus would have 37.4% of these revenues. According to the FCC, the proposed acquisition by Clear Channel would eliminate the independence of the third highest rated station in the market; the proposed Cumulus acquisition would eliminate the independent station with the most advertising revenues in the metro. Thus, in the FCC's view, the transactions would "entrench a duopoly market," with two owners owning six of the seven commercial FM stations. The Commission's view is that, to be truly competitive, even a market the size of Beaumont must have at least three viable competitors.

In designating these applications for hearing, the Commission gave short shrift to a number of arguments made by applicants in prior cases and reiterated by the Beaumont applicants. The Commission refused for example even to consider that Cumulus' share (*i.e.*, 37.4%), standing alone, did not approach the flagging standard, and that the number two player's acquisition thus ***enhanced*** competition in the market by strengthening Cumulus' position vis-á-vis Clear Channel. Whether this is practicable from a real-world perspective, given the already dominant share held by the two radio giants in this small, overshadowed market, is not addressed by the FCC.

The Commission also rejected the buyers' arguments that limiting the relevant product market for competition analysis purposes to radio advertising was improper and that utilizing the Arbitron market as the geographical standard was inappropriate. Efforts to include the revenues of Houston and other out-of-market stations whose signals reach Beaumont were likewise turned aside on various grounds, including their ownership by Clear Channel and Cumulus, low audience reach, and Cumulus' own arguments that one of Cumulus' stations had re-focused its attention on the Houston market.

The Commission's HDO is essentially a pointless exercise because the parties are likely to exercise the option of putting their hearing on hold until new local radio ownership rules are adopted.

As it has done in similar hearing designation orders in the recent past, the Commission gave the parties the option of putting their hearing on hold until new local radio ownership rules are adopted. The Commission's HDO is thus essentially a pointless exercise because the parties are likely to exercise that option, thereby deferring any hearing until some time after new rules are adopted -- and possibly eliminating the need for a hearing altogether, should the applications pass muster under whatever new rules are ultimately adopted. It is, of course, unclear when those rules will be released, although there is some hope that their incorporation in the latest FCC biennial review (see article in this edition of the Memo to Clients) may lead to a resolution by next spring.

At press time, yet another Hearing Designation Order emerged from the FCC. The Commission designated an application by Clear Channel to buy WAAM(AM), Ann Arbor, Michigan. BIA data indicated that the purchase would give Clear Channel a 99% share in the market. Clear Channel's attempt to dilute this share by factoring in Detroit stations was rejected by the FCC.

If you have any questions about the Commission's radio ownership rules or the hearing designation process, contact the FHH attorney with whom you normally work or Howard M. Weiss at 703-812-0471 or weiss@fhhlaw.

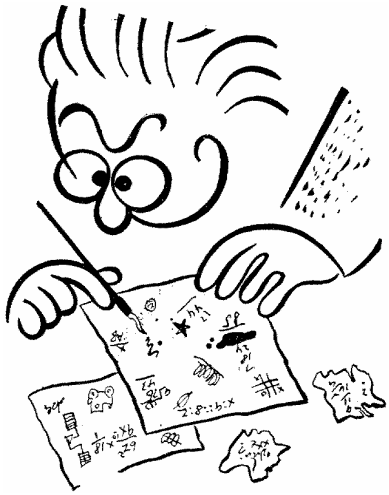
FEC Rule Making Could Mean More Work For Broadcasters

By: Liliana E. Ward

How many people in your congressional district can hear the political programming you broadcast? How many people in someone else's congressional district can hear it? Who paid for the political programming? Why are we asking these questions?

Because someone is going to have to know the answers once new rules proposed by the Federal Election Commission ("FEC") are adopted.

These issues arise from the Bipartisan Campaign Reform Act of 2002 ("BCRA"), a neat little piece of legislation passed by Congress earlier this year. The BCRA added new provisions to the Federal Election Campaign Act regarding "electioneering communications". Among other things the BCRA required anybody making "electioneering communications" to file disclosure statements concerning such communications about them under certain circumstances, and it limited the sources that could be used to fund such communications. The BCRA also prohibited corporations and labor organizations from making "electioneering communications".



Having put the BCRA on the books, Congress instructed the FEC to implement its provisions. So the FEC has dutifully issued a Notice of Proposed Rule Making ("NPRM").

So how do broadcasters come into this?

It turns out that Congress defined the term "electioneering communications" to mean any *broadcast, cable, or satellite communication that*: (1) refers to a clearly identified candidate for Federal office; (2) *is publicly distributed* within 60 days before a general, special or runoff election, or within 30 days before a primary of preference election, or a convention or caucus of a political party that has the authority to nominate a candidate; (3) does not fall within any of the exceptions to the electioneering communication specified in the statute; *and* (4) except in the case of a candidate for an office other than President or Vice-President, *is targeted to the relevant electorate*. (emphasis added). A communication is "targeted" if it can be received by 50,000 or more persons in the district or State the candidate seeks to represent (*i.e.,* the target audience). Internet subscribers do not count.

Several issues present potential concerns for broadcasters.

First, it is not clear if broadcasters will be under any obligation to determine whether any particular political advertisement constitutes an "electioneering communication" within the meaning of the BCRA and, if it is an "electioneering communication", whether it complies with the BCRA.

Second, since the definition of "electioneering communication" includes consideration of the number of persons who can "receive" the communication, somebody is going to have to figure out how many potential listeners each station has for purposes of determining whether a political ad broadcast on each station in fact constitutes an "electioneering communication".

Both the National Association of Broadcasters (NAB) and the FCC have filed comments in response to the FEC's NPRM. The NAB urges that the FEC expressly state that broadcasters need not determine before airing any political advertising or program whether: (1) such advertisement or program constitutes an electioneering communication; (2) the entity paying for the programming is prohibited from airing such communications; and (3) the entity that paid for the programming adhered to BCRA's disclosure requirements. Further, the NAB argues that no broadcaster should be subject to criminal or civil liability for the inadvertent airing of an "impermissible" electioneering communication.

The NAB also requests that, if broadcasters must be involved, the FEC carefully craft regulations clearly defining electioneering communications, with no requirement that broadcasters pre-screen each non-candidate advertisement and program. Instead, the NAB proposes that the FEC rely on the broadcaster's good faith judgment regarding whether a political advertisement or program should be aired.

(Continued on page 9)

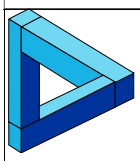
(Continued from page 8)

With respect to the 50,000 person target audience, the BCRA requires that the FCC compile and maintain any information the FEC may require to determine whether an electioneering communication will reach its intended audience. The rules proposed in the FEC's NPRM would require that the FCC collect information regarding the population served by individual stations, by State and congressional district, and provide such information in a searchable database. This database would purportedly be definitive evidence of whether a communication could have been received by 50,000 or more targeted persons.

Further complicating the matter, the FEC's NPRM asks whether broadcast stations should be required to provide the FCC with information regarding the cable and satellite systems that carry their signal and whether the cable and satellite systems in turn should be required to provide subscriber information to help determine potential target audiences.

Both the NAB and the FCC ask that the FEC defer to the FCC's expertise regarding the audience count and database, lest the project become too costly, intrusive and/or time-consuming. Both indicate that counting cable and satellite audiences, in addition to broadcast audiences, could result in double-counting the target audience. They also note that, realistically, the FEC should not expect this database to be available any time soon, given its potential complexity. Further, the FCC questions whether even the most carefully crafted database could "definitively" determine whether a communication could reach 50,000 people.

Unfortunately, there are no answers to any of these questions at the moment, but the deadline for promulgation of these rules is December 22, 2002. We'll let you know what happens.



The Never-ending Story

RADIO RENEWAL CYCLE APPROACHING SOON

By: Anne Goodwin Crump

Believe it or not, the license renewal cycle for radio stations may be closer than you think, with the first group of licenses scheduled to expire in about a year, on October 1, 2003. Further, the actual beginning of activities in connection with renewal applications is scheduled to begin six months earlier, with the required pre-filing announcements starting on April 1, 2003, and renewal applications due on June 1, 2003. The cycle then will proceed through groups of states and territories at two-month intervals. The television renewal cycle is scheduled to begin a year later, with the first pre-filing announcements to start on April 1, 2004. LPTV and TV translator stations are now on the same schedule as full-power television stations.

The first group of radio stations to begin the renewal process will be those licensed in the District of Columbia, Maryland, Virginia, and West Virginia. As before, the timing of announcements, renewal applications, and license expirations is based entirely upon the state in which a station in licensed. The schedule of pre-filing announcement start dates during next year is as follows:

April 1, 2003 - District of Columbia, Maryland, Virginia, and West Virginia

June 1, 2003 - North Carolina and South Carolina

August 1, 2003 - Florida, Puerto Rico, and the Virgin Islands

October 1, 2003 - Alabama and Georgia

December 1, 2003 - Arkansas, Louisiana, and Mississippi

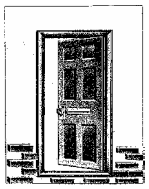
The renewal applications then will be due to be filed two months later, or four months prior to license expiration. Interested parties will be able to file petitions to deny the renewal application up to one month prior to the license expiration. Unlike prior renewal cycles, however, there will be no opportunity for other parties to file competing applications at that juncture.

There is no word yet on what changes, if any, the Commission will make to the renewal application form for this cycle. It is a good bet, however, that the Commission will move as quickly as possible toward electronic filing of the applications.

It also is likely that questions related to such matters as a station's public inspection file and potential RF radiation hazards will remain on the renewal application file. It also is possible that, by the time renewal applications are due, some form of Equal Employment Opportunity (EEO) rules may once again be in place. The precise form of those rules, or how compliance with them might be reflected on the renewal application, is not yet known, however.

We recommend that, in order to prepare for the renewal process, stations review their local public inspection files to make sure that everything is in order. In particular, stations should make sure that copies of quarterly issues/programs list for each quarter since the beginning of the current license term have been properly prepared and placed in the public file, along with copies of station licenses, contour maps, ap-

(Continued on page 10)



(Continued from page 1)

rules originally were adopted, are still relevant in the current multi-media world. If these three goals are still relevant, the Commission seeks empirical evidence as to the effectiveness of the current rules, and what changes can be made.

? what the current role of local television is in the media markets, with particular focus on the local TV multiple ownership rule. Given the proliferation of cable news networks, DBS, and the Internet, and the decision in *Sinclair Broadcast Group* which rejected the Commission's "voice count" methodology, the Commission is seeking comments and empirical evidence, if any, that local television stations are still seen as a critical link in the local media markets. And if local television stations have lost their preeminent role in the local market, then the Commission is seeking comment on whether the relaxation of the local ownership rules would cause harm to the public policy goals.

? what requirements or limitations, if any, should be placed on ownership of radio and television stations in the same market. The current Commission limits on such common local ownership are intended to promote the general goals of localism, diversity and competition. If the Commission does abandon the structural regulations currently in place, it seeks comment on what, if any, requirements should be imposed on future mergers. Such possible replacements could be a case-by-case approach or an outlet approach similar to that currently used to determine the number of "voices" in the market. The Commission is also seeking comment as to whether the current calculation of "voices" is appropriate, or whether further modifications are necessary.

? whether the national television ownership rules and the Dual Network Rule are still necessary or appropriate. In *Fox Television*, the DC Court of Appeals rejected the 1999 Commission decision maintaining the 35% national audience cap established in the 1996 Telecommunications Act. The Commission is now seeking comments on, among other things, the likely effect on localism and diversity should the rule be repealed. With respect to the Dual Network Rule, the Commission is seeking comment on whether the rule, which prohibits the merger of two or more of the top four networks, is still necessary. Last year, the Commission lifted the restrictions that prohibited a top four network from merging with either UPN or WB. The Commission is seeking comment on the effect of that action, and the likely effect of lifting ***all*** restrictions, on the goals of promoting localism, diversity and competition in the local and national markets.

While the Commission has solicited comment on an extensive laundry list of topics, the Commission has provided no actual proposed rules about which to comment.

While the Commission has solicited comment on an extensive laundry list of topics, it has provided virtually no guidance as to the future rules that it may plan to adopt. Instead, the Commission seems simply to have opened the door for the public to provide any and all comments on the entire universe of broadcast ownership restrictions. Parties interested in submitting comments should recognize that, unlike more conventional rule making situations, the Commission has provided no actual proposed rules about which to comment.

Once the "empirical" studies discussed above are released, we will provide further analysis. In the meantime, if you have any questions about the NPRM, you should contact the FHH attorney with whom you normally work or Lee G. Petro at 703-812-0453 or petro@fhhlaw.com.

(Continued from page 9)

plications, ownership reports, and other required documents. In order to avoid RF radiation issues, stations should make sure that any required fences are in place, in good condition, and a safe distance from the base of the tower. (The issue of fencing, especially for AM stations, also has become a "hot" item for FCC inspectors, along with posting of antenna structure registration numbers. Since the Commission has now allocated more money for inspections, it would be wise to address these matters soon even without the impending renewal cycle.)

If you would like any further information concerning the renewal process or public inspection file issues in general, please contact the attorney at the firm with whom you normally work or Anne Goodwin Crump at 703-812-0400 or crump@fhhlaw.com.

FM ALLOTMENTS PROPOSED 8/24/02-9/20/02

State	Community	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
OH	Chillicothe	293A	02-266	Cmts - 10/21/02 Reply-11/05/02	1.420
OH	Dublin	294B1	02-266	Cmts - 10/21/02 Reply-11/05/02	1.420
OH	Hillsboro	294B1	02-266	Cmts - 10/21/02 Reply-11/05/02	1.420
OH	Marion	295B	02-266	Cmts - 10/21/02 Reply-11/05/02	1.420
TX	Alpine	253C	02-239	Cmts - 10/21/02 Reply-11/05/02	Drop-In
OK	Clayton	241A	02-240	Cmts - 10/21/02 Reply-11/05/02	Drop-In
TX	Guthrie	252A	02-241	Cmts - 10/21/02 Reply-11/05/02	Drop-In
TX	Hebbronville	232A	02-242	Cmts - 10/21/02 Reply-11/05/02	Drop-In
TX	Mertzon	278C2	02-243	Cmts - 10/21/02 Reply-11/05/02	Drop-In
TX	Premont	287A	02-244	Cmts - 10/21/02 Reply-11/05/02	Drop-In
TX	Roaring Springs	276C3	02-245	Cmts - 10/21/02 Reply-11/05/02	Drop-In
TX	Rocksprings	291A	02-246	Cmts - 10/21/02 Reply-11/05/02	Drop-In
TX	Sanderson	286C2	02-247	Cmts - 10/21/02 Reply-11/05/02	Drop-In
TX	Smiley	280A	02-248	Cmts - 10/21/02 Reply-11/05/02	Drop-In
OK	Thomas	288A	02-249	Cmts - 10/21/02 Reply-11/05/02	Drop-In
OR	Depoe Bay	264C2	02-255	Cmts - 10/21/02 Reply-11/05/02	1.420
OR	Garibaldi	288C3	02-255	Cmts - 10/21/02 Reply-11/05/02	1.420
OR	Cottage Grove	288A	02-255	Cmts - 10/21/02 Reply-11/05/02	1.420
OR	Veneta	288C3	02-255	Cmts - 10/21/02 Reply-11/05/02	1.420
OR	Toledo	264C2	02-255	Cmts - 10/21/02 Reply-11/05/02	1.420
TX	Dickens	294A	02-258	Cmts - 10/21/02 Reply-11/05/02	Drop-In
TX	Floydada	255A	02-259	Cmts - 10/21/02 Reply-11/05/02	Drop-In
TX	Freer	271A	02-260	Cmts - 10/21/02 Reply-11/05/02	Drop-In
TX	Ozona	289C1	02-261	Cmts - 10/21/02 Reply-11/05/02	Drop-In
TX	Rankin	229C3	02-262	Cmts - 10/21/02 Reply-11/05/02	Drop-In

(Continued on page 12)

FM ALLOTMENTS PROPOSED
8/24/02-9/20/02 *(Continued from page 11)*

State	Community	Channel	Docket No.	Deadlines for Comments	Type of Proposal (i.e., Drop-in, Section 1.420, Counterproposal)
TX	San Diego	273A	02-264	Cmts - 10/21/02 Reply-11/05/02	Drop-In
TX	Westbrook	272A	02-265	Cmts - 10/21/02 Reply-11/05/02	Drop-In
CO	Las Animas	234C1	02-250	Cmts - 10/21/02 Reply-11/05/02	Drop-In
TX	Muleshoe	227C1	02-251	Cmts - 10/21/02 Reply-11/05/02	Drop-In
TX	Rocksprings	263A	02-252	Cmts - 10/21/02 Reply-11/05/02	Drop-In
TX	Rankin	273C1	02-253	Cmts - 10/21/02 Reply-11/05/02	Drop-In
TX	Big Lake	296C2	02-254	Cmts - 10/21/02 Reply-11/05/02	Drop-In
FL	Jasper	298A	02-274	Cmts - 11/12/02 Reply-11/26/02	Drop-In
WI	Tigerton	295A	02-275	Cmts - 11/12/02 Reply-11/26/02	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 8/24/02-9/20/02

State	Community	Channel	Docket No.	Availability for Filing
AL	Brookwood	290C3	01-62	None
AL	Gadsden	279C1	01-62	None
AL	Hoover	288C2	01-62	None
AL	New Hope	278A	01-62	None
AL	Russellville	278A	01-62	None
AL	Troy	289C0	01-62	None
AL	Trussville	279C1	01-62	None
AL	Tuscaloosa	288A	01-62	None
AL	Winfield	249A	01-62	None
MS	Columbus	280C2	01-62	None
MS	Okolona	280C2	01-62	None
MS	Vardaman	258A	01-62	None
TN	Linden	267A	01-62	None
TN	McMinnville	280A	01-62	None
TN	Walden	279C3	01-62	None
CA	Needles	296C1	DA02-228	None
GA	Valdosta	239C2	DA02-229	None
ID	Weston	240C3	DA02-230	None
SD	Rapid City	222C1	DA02-231	None
WA	Mabton	254C2	DA02-232	None
MI	Monroe	252A	02-115	None
MI	Luna Pier	252A	02-115	None
NC	Rose Hill	284C3	02-110	None
NC	La Grange	284C3	02-110	None
CO	Ridgway	279C1	02-118	None
CO	Rangely	257C1	02-118	TBA

"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.